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TABLE OF CONTENTS / 本期内容

GENERAL CORPORATE / 公司法

Requirements on Paid-in Capital and Minimum Registered Capital Amount
Removed by Amended *PRC Company Law* / 全国人大常委会修订《公司法》取消
注册资本实缴制及最低注册资本额等要求 2

FOREIGN INVESTMENT / 外商投资

MOFCOM Streamlined Procedures for Cross-Border RMB Direct Investments / 商
务部进一步简化跨境人民币直接投资手续 2

ADMINISTRATIVE APPROVAL / 行政审批

State Council Continues to Cancel and Delegate Administrative Approvals / 国务
院进一步取消和下放一批行政审批项目 2

CAPITAL MARKET / 资本市场

The *New Third Board* Expanded Nationwide / “新三板”扩容 3

CSRC Amended Rules for Unlisted Public Companies to Promote *New Third Board's*
Expansion / 证监会修订非上市公众公司相关规定 落实“新三板”扩容 3

CSRC Reformed IPO Pricing System for A More Market-Oriented Mechanism / 证
监会修订《证券发行与承销办法》取消新股发行行政限价 4

Ministry of Finance Specified Requirements for Issuance of Convertible Bonds by
State-Owned Financial Enterprises / 财政部规范国有金融企业可转债发行 4

TAXATION / 税收

SAT Released Working Rules on Special Tax Treatment Applicable to Equity
Transfers by Non-Resident Enterprises / 国税总局公布非居民企业股权转让适用特殊
性税务处理的操作规范 4

Quotes from Han Yi

*So long as everybody
abides by his/her
professional rules, we
will have a harmonious
society. / 所谓和谐社会,
就是每个人都恪守其职业
道德。-- L. He*

GENERAL CORPORATE / 公司法

Requirements on Paid-in Capital and Minimum Registered Capital Amount Removed by Amended *Company Law* 全国人大常委会修订《公司法》取消注册资本实缴制及最低注册资本额等要求

After the State Council decided to promote a nationwide reform on companies' capital contribution and registration system in late October 2013 (see our November 2013 issue of *China Regulatory Updates for a brief introduction thereof*), the PRC legislative authority amended the *PRC Company Law* on December 28, 2013. According to the amended law, starting March 1, 2014, except otherwise required by applicable PRC laws, administrative regulations or decisions of the State Council, no paid-in capital or minimum registered capital amount will ever be required for the establishment of any corporate entity.

Consequently, the paid-in capital amount will no longer be recorded on a company's business license, nor shall any capital verification report be required for company registration. The amount and schedule of capital contributions to a company will instead be determined by shareholders in the articles of association of the company. However, for foreign invested enterprises or FIEs, the paid-in capital requirements may still need to be followed until applicable laws and regulations governing FIEs are amended.

继2013年10月下旬国务院召开常务会议部署推进公司注册资本登记制度改革

的工作（本所2013年11月刊《中国法律更新》对此有所介绍）之后，全国人大常委会于2013年12月28日通过并发布了《中华人民共和国公司法》修正案。

根据该修正案，自2014年3月1日起，除法律、行政法规及国务院决定另有规定外，公司注册资本实缴登记制及最低注册资本额将被取消，公司实收资本不再作为营业执照记载事项，公司登记时亦无需再提交验资报告，股东的出资额及出资时间表将均在章程中自行约定。不过对于外商投资企业而言，在“三资企业法”修订之前，恐怕仍将执行分期实缴资本制。

FOREIGN INVESTMENT / 外商投资

MOFCOM Streamlined Procedures for Cross-Border RMB Direct Investments

商务部进一步简化跨境人民币直接投资手续

On December 16, 2013, MOFCOM released the *Announcement on Certain Issues Concerning Cross-Border RMB Direct Investment* (the "Announcement") and further simplified the procedures for cross-border RMB direct investments. According to the Announcement, if foreign investors want to switch funding currency from foreign currency to RMB, they may simply proceed with bank account opening, fund remittance and other formalities directly without the need to obtain any additional approval from MOFCOM offices on modification of the relevant joint venture contract and/or articles of association.

The Announcement also reiterated the restrictions on use of RMB funds under cross-border direct investments as stipulated under the *Circular of the Ministry of Commerce on Certain Issues Relating to Cross-Border RMB Direct Investments* in 2011, i.e., the proceeds shall not be used for direct or indirect investments in securities or other financial derivatives (except for strategic investments in listed companies) and extension of entrusted loans. The Announcement became effective since January 1, 2014.

2013年12月16日，商务部发布《关于跨境人民币直接投资有关问题的公告》

（“《公告》”），进一步简化了跨境人民币直接投资的手续：境外投资者若申请将原出资币种由外币变更为人民币，将毋庸办理合同或章程变更审批，按相关规定办理开户、资金汇兑等手续即可。

《公告》同时重申了《商务部关于跨境人民币直接投资有关问题的通知》（商资函[2011]第889号）中关于跨境人民币直接投资资金的使用限制，即，不得用于在中国境内直接或间接投资有价证券和金融衍生品（但战略投资上市公司除外）或发放委托贷款。《公告》自2014年1月1日起实施。

ADMINISTRATIVE APPROVAL / 行政审批

State Council Continues to Cancel and Delegate Administrative Approvals

国务院进一步取消和下放一批行政审批项目

The State Council recently cancelled and delegated some additional 82 items that previously require central government authorities' review and approval in various areas and sectors of the national economy.

Additionally, for the investment area, the State Council released the amended *Investment Project Catalogue Approved by the Government (2013 Version)* (the "New Catalogue") on December 13, 2013 to supersede the 2004 version of

catalogue annexed to the *Decision of the State Council on Reform of the Investment System*. Under the New Catalogue, investment projects requiring central government's approval have approximately been reduced by 60%.

The New Catalogue covers over ten areas of investments, including transportation, information industry, high-technology, social undertakings, foreign investments and outbound investments, among others. One of

the highlights is that for outbound investments, except for projects with a total investment amount exceeding US\$1 billion by Chinese investor(s) or involving sensitive industry or destination country/region that remain subject to central NDRC's approval, all other projects will only need to go through a filing and registration process with relevant NDRC offices (although detailed procedures and requirements thereof are yet to be promulgated).

国务院于近日发布了《关于取消和下放一批行政审批项目的决定》（国发[2013]44号），共计取消和下放了82项行政审批事项，涉及国民经济的多个领域和环节。

此外，针对投资领域，国务院于2013年12月13日发布了《政府核准的投资项目

目录（2013年本）》（国发[2013]47号，“新《目录》”），对2004年《国务院关于投资体制改革的规定》（国发[2004]20号）所附目录进行了修订。根据新《目录》，需报相关中央部委核准的项目数量减少了约60%。

新《目录》共涉及13类投资项目，涵盖

交通运输、信息产业、高新技术、社会事业、外商投资、境外投资等领域。其中，就境外投资而言，除中方投资10亿美元及以上的项目和涉及敏感国家、地区或行业的项目由国家发改委核准外，其他项目将实行备案管理。不过相关备案手续该如何履行，目前尚不明确。

CAPITAL MARKET / 资本市场

The New Third Board Expanded Nationwide “新三板”扩容

On December 14, 2013, the State Council circulated the *Decisions on Issues Concerning the National Equities Exchange and Quotations*, while CSRC published interpretations to facilitate the implementation of the Decisions, signifying the adoption of the national equity exchange quotation system (i.e., the so-called “New Third Board”) on a nationwide basis (see our July 2013 issue of *China Regulatory Updates* for a brief introduction of the evolution of the New Third Board).

As the third national securities trading market in addition to the Shanghai and Shenzhen Stock Exchanges, the New Third Board is expected to play an active role in developing China’s multi-level capital market. Unlike Shanghai or Shenzhen Stock Exchange which offered a platform for securities trading by individual investors, the New Third Board is primarily targeting institutional investors, aiming to provide intermediary services to small, medium - and even micro-sized innovative, entrepreneurial and growth enterprises by connecting them with industrial and

institutional funds. In addition, compared to complicated rules for listing on Shanghai or Shenzhen Stock Exchange, there are no rigid financial criteria for companies traded on the New Third Board (*they are however still subject to such basic requirements as having clear scope of businesses, clean title to properties, and being operated in compliance with all applicable laws*). On all tax issues related to the New Third Board, however, they will be dealt with by reference to applicable tax rules governing Shanghai and Shenzhen Stock Exchanges and companies listed thereon.

It is noteworthy that rules governing such other matters as listing of New Third Board companies on Shanghai or Shenzhen Stock Exchange or trading on the New Third Board of companies originally listed on regional equity exchanges, reorganization of companies traded on the New Third Board and etc., are yet to be formulated and further issued by CSRC.

2013年12月14日，国务院发布《关于全国中小企业股份转让系统有关问题的决定》（“决定”），同日，中国证监会就落实《决定》有关事宜答记者问，推动“新三板”，即全国中小企业股份转让系统的正式扩容（本所2013年7月刊《中国法律更新》对该系统的演化发展作过简要介绍）。

作为第三家全国性证券交易场所，“新三板”与沪、深两市等同为我国多层次资本市场体系的重要组成部分。不过“新三板”的功能定位是中小微企业与产业资本的服务媒介，即主要为创新型、创业型和成长型中小微企业的发展、资本投入及退出服务，而不以交易为主要目的，实行较为严格的投资者适当性制度，将以机构投资者而不是普通个人为主要投资者群体。在“新三板”挂牌的公司，在法律属性上均为非上市公众公司，挂牌无盈利要求，但挂牌主体至少需做到业务明确、产权清晰、合规经营。“新三板”涉及的税收问题则将比照沪深两市及上市公司的现有规定处理。

至于“新三板”与沪深两市及区域性股权转让市场之间具体的转板机制，“新三板”挂牌公司的并购重组等问题，还有待证监会发布实施细则。

CSRC Amended Rules for Unlisted Public Companies to Promote New Third Board’s Expansion 证监会修订非上市公众公司相关规定，落实“新三板”扩容

To facilitate the development of the New Third Board, CSRC released the amended *Measures on Supervision and Administration of Unlisted Public Companies* (the “UPC Measures”) on December 27, 2013.

According to the amended UPC Measures, (i) trading of unlisted public companies shall be effectuated on the New Third Board going forward and stocks of such publicly traded companies shall be registered and deposited with China Securities Depository and Clearing Co., Ltd.; (ii) trading of unlisted public companies with less than 200 shareholders on the New Third Board will continue to be exempted from CSRC’s examination and approval, but CSRC’s review and

approval exemption on small-scale private placement by unlisted public companies will be abolished; and (iii) if otherwise qualified, companies organized before the issuance of the amended UPC Measures with more than 200 shareholders may also apply to CSRC for trading on the New Third Board or listing on Shanghai or Shenzhen Stock Exchange, while companies in this category not seeking public trading should all be operated and supervised pursuant to the amended UPC Measures.

配合“新三板”扩容，证监会于2013年12月27日发布并实施经修订的《非上市公众公司监督管理办法》。

根据修订后的办法，(i)非上市公众公司

（简称公众公司）今后公开转让股票均应在全国中小企业股份转让系统（即“新三板”）进行，公开转让的公众公司股票应在中国证券登记结算公司（“中证登”）集中登记存管，其他公众公司则自行决定其股票是否在中证登存管；(ii)股东人数未超过200人的公司申请股票公开转让的，将继续豁免中国证监会的核准，并由全国中小企业股份转让系统自律管理，但证监会原先对于小额融资定向发行的审核豁免则被取消；以及(iii)修订后的办法生效前，股东人数超过200人的股份公司，符合条件的，可直接向证监会申请在“新三板”挂牌公开转让股票、首次公开发行并在证券交易所上市，而其他不上市、不挂牌、股东人数超过200人的股份公司也应按要求规范后申请纳入公众公司监管。

CSRC Reformed IPO Pricing System for A More Market-Oriented Mechanism

证监会修订《证券发行与承销办法》，取消新股发行行政限价

On December 13, 2013, CSRC promulgated and implemented the modified *Administrative Measures for Securities Issuance and Underwriting* (the "Measures"), developing the IPO pricing and placing mechanism towards a more market-oriented mode. It is regarded as one of the CSRC implementing rules to advance its *Opinions on Further Promoting the Reform of the IPO System* (see our November 2013 issue of *China Regulatory Updates* for a brief introduction of the CSRC Opinions).

Some highlights under the modified Measures include, among others, (i) the administrative restrictions on IPO pricing are removed and an inquiry

and placing mechanism led by lead underwriters is introduced; (ii) subscription through off-line allotment is increased and on-line placing mechanism is improved; (iii) requirements on information disclosure by issuers and lead underwriters during the whole process of securities offering and underwriting are tightened up; and (iv) accountability system and penalty enforcement are strengthened and emphasized.

Supplemental rules to carry out the modified Measures are also expected to be promulgated by such other agencies as Shanghai/Shenzhen Stock Exchange and the Securities Association of China.

证监会于2013年12月13日发布并实施了新的《证券发行与承销管理办法》（“《办法》”）。修订后的《办法》作为《中国证监会关于进一步推进新股发行体制改革的意见》（相关内容可参见本所2013年11月刊《中国法律更新》）的配套措施之一，改革和规范了新股发行的定价与配售方式，旨在进一步提高新股发行的市场化程度。

证监会本次对《办法》的修订主要包括取消行政限价、引入主承销商自主询价和配售机制，提高网下配售比例，改进网上配售方式，提高对发行人及主承销商在发行/承销全程的信息披露要求，强化对各个参与主体的事后问责等。

沪深交易所、中国证券业协会、中证登等机构将分别出台配套规则以完善《办法》的实施。

Ministry of Finance Specified Requirements for Issuance of Convertible Bonds by State-Owned Financial Enterprises

财政部规范国有金融企业可转债发行

In December 2013, the Ministry of Finance issued the *Circular on Matters Relating to the Issuance of Convertible Bonds by State-owned Financial Enterprises* (the "Circular"), specifying qualifications and other requirements for state-owned financial enterprises to issue convertible bonds (or CBs). The Circular emphasizes that as a general principle the controlling position of

state-owned stakes shall remain unchanged after any conversion of CBs. In addition, the Circular clearly prohibits state-owned financial enterprises from issuing any exchangeable bond that would allow the bond holder to become a shareholder of a specific entity owned by the bond issuer upon conversion.

财政部于2013年12月上旬发布《关于

国有金融企业发行可转换公司债券有关事宜的通知》（财金[2013]116号，“《通知》”），就国有金融企业发行可转债的主体资格、财务标准等问题作出了规定，要求国有股的控股地位在可转债行权后保持不变。此外，《通知》明确禁止国有金融企业发行可交换公司债券，即在一定期限内依据约定的条件可以交换为发债公司所持特定公司股份的债券。

TAXATION / 税收

SAT Released Working Rules on Special Tax Treatment Applicable to Equity Transfers by Non-Resident Enterprises

国税总局公布非居民企业股权转让适用特殊性税务处理的操作规范

SAT recently promulgated and implemented the *Announcement on Issues Concerning the Special Tax Treatment Applicable to Equity Transfer by Non-Resident Enterprises* (the "Announcement No. 72") with an attempt to provide detailed operating regulations and guidelines for special tax treatment in the cross-border reorganizations.

Special tax treatment under cross-border reorganizations usually is a preferential tax treatment for taxpayers, which may, under certain conditions, reduce, avoid or defer their tax payables. In accordance with the Announcement No. 72, special tax treatment would be available for non-resident taxpayers in mainland China under one of the following circumstances: (i) where a non-resident enterprise transfers its equity interest in a PRC resident enterprise to another non-resident enterprise 100%

under its direct control, no change will be caused thereby to the withholding tax obligation associated with the underlying equity transfer income, and the transferor non-resident enterprise undertakes to the competent PRC tax authority in writing that it will not transfer the equity of the transferee non-resident enterprise it holds within three years thereafter; and (ii) where a non-resident enterprise transfers its equity interest in a PRC resident enterprise to another directly 100% affiliated PRC resident enterprise.

It is noteworthy that, according to the Announcement No. 72, where an equity transfer satisfies the situation described under item (i) above for which the special tax treatment has been implemented, if the transferor and the transferee are registered in different jurisdictions and the retained earnings of the target company accrued before the equity transfer are

distributed to the transferee after the equity transfer is completed, the transferee should not be entitled to any preferential tax treatment on dividend payments it received from the target company pursuant to any tax treaty between its home country and mainland China.

国税总局于近期公布并实施了《关于非居民企业股权转让适用特殊性税务处理有关问题的公告》（“72号文”），拟为企业跨境重组适用特殊性税务处理提供具体的操作规程及指引。

涉及企业重组的特殊性税务处理多是一项对纳税人有利的税收待遇，在一定条件下可以减少、免除或者推迟纳税人的应缴税款。根据72号文，非居民企业股权转让适用特殊性税务处理的情形包括：(i)非居民企业向其100%直接控股的另一非居民企业转让其拥有的居民企业股权，且未因此造成未来该项股权转让所得预提税负担变化，同时转让方非居民企业须向主管税务机关书面承诺在

3年内不转让其拥有的受让方非居民企业的股权；或(ii)非居民企业向与其具有100%直接控股关系的居民企业转让其拥有的另一居民企业股权。

值得注意的是，根据72号文，非居民企业股权转让属于上述(i)项情形并选择特殊性税务处理时，转让方和受让方不在同一个国家或地区的，若被转让方转让

前的未分配利润在转让后分配给受让方的，不得享受受让方所在国家/地区与中国签订的税收协定中关于股息减税优惠的待遇。

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