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M&T Merger&Aquisition Newsletter

— Merits & Tree Law Offices —

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 **New Regulations and Policies in the Market****1. Industry Policies****(a) Financial industry**◇ **Current Focus: Index Funds**

In recent years, publicly offered index funds have developed rapidly and have become important asset allocation instruments and important participants in the capital market. At the same time, some problems are also coming out on operational aspects of index funds, which need to be identified as soon as possible. For the purposes of further standardizing investment operations of index funds, better optimizing the attributes of asset allocation tools of index funds, promoting more medium-term and long-term funds to enter into the market, and protecting the legitimate rights and interests of investors, on the basis of learning from the regulatory experience of overseas mature markets, China Securities Regulatory Commission ("**CSRC**") has promulgated the *Guidelines on Operation of Public Securities Investment Funds No. 3 — Guidelines on Index Funds (Draft for Comment)* ("**Guidelines on Index Funds**").

Guidelines on Index Funds consist of 13 articles, mainly regulating the professional competence of managers, the quality of underlying indices, the investment operation of index funds, the special regulatory requirements for exchange traded funds (ETFs) and feeder funds, etc.

On July 31, 2020, Shanghai Stock Exchange ("**SSE**") and Shenzhen Stock Exchange ("**SZSE**") promulgated the *Guidelines of the Shanghai Stock Exchange for the Development of Index Securities Investment Funds (Draft for Comment)* and the *Guidelines of the Shenzhen Stock Exchange for the Development of Index Securities Investment Funds (Draft for Comment)* respectively to further clarify the specific regulatory requirements for index funds, which refer to ETFs and index LOFs listed and traded on SSE and SZSE and operated by means of complete replication or sampling replication in compliance with the *Guidelines on Index Funds*.

(b) Life Sciences & Health
✧ Current Focus: Suzhou to be built as “China Sinopharm Valley”

At the Suzhou Biomedical Development Conference in 2020, *the Implementing Proposals for Striving to Create Suzhou Landmarks for the Biomedical Industry (2010- 2030)* were announced, aiming to establish a Suzhou-featured Biomedical Industry ecological system by benchmarking and learning from the "Boston Experience" of the U.S., and strive to build it into an internationally renowned, and domestically the most competitive and influential, industrial landmark named "China Pharmacy Valley" within ten years.

Periodical Target:

Indicators	2022	2025	2030
Total number of enterprises	4000	6000	10000
Enterprise Scale	RMB 280 billion	RMB 400 billion	One Trillion
The Number of Ten Billion Enterprises	2	5	15
The Number of Five billion enterprises	3	8	30
The Number of One Billion Enterprises	30	40	100
The Number of Listed Enterprises	20	30	50
The Number of Key Talent Teams	10	30	50
The Number of Drugs newly Admitted to the Market	5 per year	15 per year	30 per year
The Number of New Category II and Category III Medical Devices Admitted to the Market	100 per year	200 per year	400 per year

✧ Current Focus: Chinese First Biological Pharmaceutical Industry IP Securitization Products Landing in Pingshan

On July 16, 2020, the Release Conference of IP and Financial Support for Scientific and Technological Development Achievements was held at Pingshan Yanzihu International Exhibition Center and the Chinese First Biological Pharmaceutical

Industry IP Securitization Product was successfully approved, marking the official landing of the Chinese First IPR Securitization Products focusing on biological medicine professional fields and providing a new model for solving the pain points of financing for small and medium-sized enterprises, fundamentally enhancing the impetus of enterprises for scientific and technological innovation and creatively expanding the channels of government support policies.

The current "Phase 1 to Phase 10 Special Scheme for IP Asset Support of Pingshan District – Southern Center – Yangtze River" has been approved for issuance in SZSE in the form of shelf offering, and more than 10 biomedical enterprises in Pingshan District will be benefit from the first phase of RMB100 million financing.

✧ **Current Focus: Internet Medical Treatment Management**

On July 21, 2020, the General Office of the State Council issued the *Implementing Opinions on Further Optimizing the Business Environment to Better Serve Market Players* (the "**Implementing Opinions**"), which points out that it is imperative to improve the inclusive and prudential regulation of new business forms, specifically including: (i) accelerating the evaluation of the published market entry and regulatory policies relating to new business forms; and (ii) resolutely cleaning up all kinds of unreasonable management measures. In this *Implementing Opinions*, three main points are mentioned in relation to internet medical services:

- (1) On the premise of ensuring medical safety and quality, further broadening the scope of internet diagnosis and treatment;
- (2) Including eligible internet medical services into the reimbursement scope of medical insurance;
- (3) Formulating and promulgating Chinese unified examination and approval standards for internet medical services.

(c) **Real Estate and Infrastructure Industry**

✧ **Current Focus: Urban Renewal**

On July 20, 2020, the Standing Committee of Shenzhen Municipal People's Congress released an announcement on seeking public comments for the *Regulations of Shenzhen Special Economic Zone on Urban Renewal (Draft for Comment)* (the "**Urban Renewal Regulations(Draft)**"), which means the *Regulations of Shenzhen Special Economic Zone on Urban Renewal* (the "**Urban**

Renewal Regulations") which have been in preparation for many years finally enters into the fast track of legislation and promulgation for implementation.

Compared with *Urban Renewal Regulations*, the *Urban Renewal Regulations (Draft)* have the following new highlights:

- (1) **For the first time, the implementation of urban renewal work is put forward for being oriented by social public interests**, among which the emphasis is laid on the strengthening and improvement of supporting public services and infrastructure construction, which are undoubtedly of great benefit to the immigrant city of Shenzhen short of medical and educational resources. Meanwhile, it puts forward the requirements for greening and strengthening the protection of historical features in the urban renewal work, which is also a measure conforming to the requirement for the sustainable development of a city.
- (2) **The *Urban Renewal Regulations (Draft)*, by reference to the advance notice registration system of the *Real Right Law*, stipulate that advance notice registration may be made for real property when relevant relocation compensation and resettlement agreements have been signed, which is a highlight and innovation of the *Urban Renewal Regulations (Draft)*.** With respect to market players, the advance notice registration mode shall be regarded as a favorable policy, which can effectively avoid the circumstance such as "selling same properties twice" and arbitrary breach of contract by property owners. However, the effective implementation of such policies need to rely on the introduction of specific implementing rules by follow-up real estate registration departments, and refine the qualification conditions and procedures for handling advance notice registration. Meanwhile, as advance notice registration is not a mandatory step during the implementation of urban renewal, how to urge right holders to waive part of its rights and interests in real estate and make advance notice registration in order to achieve its policy effects still needs to be further tested in the market.
- (3) **The "individual expropriation" mode created by the *Urban Renewal Regulations (Draft)* is the key highlight of this legislation.** That is, the government may expropriate and compensate the houses of a few owners who fail to sign the agreement, and after the houses are expropriated under the name of the government, the government may acting as the right holder sign a compensation plan with market players. From the perspective of market players, this model is helpful to solve the problem of "nail households" in urban renewal, but the provision itself faces many challenges.

As the *Urban Renewal Regulations(Draft)* are still at the stage of solicitation for opinions, and conclusions have not yet been reached on many issues, if you are interested in the relevant legal analysis of the *Urban Renewal Regulations(Draft)*, please let us know and we will send you the "Real-time Interpretation of Key Clauses of the *Regulations of Shenzhen Special Economic Zone on Urban Renewal (Draft for Comment)*" published on our official WeChat account.

(d) Consumer Goods Industry

✧ Current Focus: Supervision on Online Live Marketing

(1) Further Standardizing the Regulation of Online Live Marketing

With the vigorous development of the online live-streaming industry in China, China increasingly attaches importance to the rule of law and standardized guidance in this field. To this end, the State Administration for Market Regulation (the "SAMR") has issued the *Guiding Opinions on Strengthening the Regulation of Online Live-streaming Marketing Activities (Draft for Comment)*, the China Advertising Association has formulated the *Code of Conduct for Online Live-streaming Marketing*, and the Media Shopping Committee of China Business Confederation has drafted and formulated the *Group Standards for the Live Shopping Industry: the Basic Code of Operation and Service for Live Video Shopping (Draft for Comment)*, to help the online live-streaming marketing industry operate legally and standardizing. Meanwhile, in the process of further standardizing the supervision, the industry associations also punish some broadcasters in violation of the laws and regulations and self-discipline rules.

➤ ***Guiding Opinions on Strengthening the Regulation of Online Live-streaming Marketing Activities (Draft for Comment) (the "Guiding Opinions (draft)")***

On July 29, 2020, the SAMR promulgated the *Guiding Opinions (draft)*. The *Guiding Opinions (draft)* mainly regulate online live-streaming marketing from three aspects, namely, clarifying relevant players' legal liabilities, strictly regulating online live-streaming marketing behaviors, and investigating and punishing illegal online live-streaming marketing behaviors in accordance with the law. The specific contents are as follows:

Main Points	Relevant Contents
Online platform operator	Online platform operators providing online business premises, transaction matching, information dissemination services etc, and providing live-streaming technical services for business operators, which sell commodities or provide services or promote commodities or services through online live-streaming, shall perform the responsibilities and obligations of E-commerce platform operators pursuant to the provisions of the <i>E-commerce Law</i> .
Participation of Online Platforms in Advertising and Promotion	Where an online platform operator advertises and promotes online live-streaming marketing activities, it shall perform the responsibilities and obligations of advertisement publishers or advertising operators in accordance with the <i>Advertising Law</i> .
Commodity Seller	Those who sell goods or provide services through online live-streaming shall perform corresponding duties and obligations in accordance with relevant laws.
Online Anchors	If the conduct of online anchors constitutes a commercial advertisement, the responsibilities and obligations of the advertisement publisher, advertisement operator or advertisement endorser shall be performed by online anchors in accordance with the <i>Advertising Law</i> .
Marketing of Goods or Services	Establish and implement the inspection and acceptance system for incoming goods, and check relevant supporting documents in accordance with laws. Online live-streaming shall not be allowed to sell goods or services prohibited by laws and regulations from production and sales; online live-streaming shall not be allowed to sell tobacco products and other goods or services prohibited by laws and regulations from commercial marketing and promotion; online live-streaming shall not be allowed to sell specific full-nutrition formula food and other goods or services prohibited by laws, regulations and rules from online transactions.
Advertisement Review and Release	Advertisements shall be published in accordance with the advertisement review provisions, and shall not be published without being reviewed; no advertisement of medical treatment or drug, which shall be reviewed before publication as required by laws and regulations, shall be published in the form of online live broadcast.

Main Points	Relevant Contents
Advertising Endorsement	It is prohibited to carry out advertising endorsement activities in online live-streaming marketing activities by <u>using minors under the age of 10</u> , or entrusting natural persons, legal persons or other organizations <u>that have been imposed administrative penalties</u> for making recommendations or certifications in false advertisements within last three years.
Electronic Commerce	Primarily investigate and punish illegal behaviors such as fictitious transactions, deletion or fabrication of user comments without authorization, failure to take necessary measures against operators on the platforms who infringe legitimate rights and interests of consumers, failure to fulfill the obligation of qualification examination, failure to fulfill the obligation to guarantee personal and property safety of consumers, etc.
Infringement on the Legitimate Rights and Interests of Consumers	Focus on investigating and punishing illegal activities of consumers such as request for repair, redo, replacement, return of goods, make-up for quantity shortage, refund of payment for goods and services, or compensation for losses, and intentional delay or refusal without reason.
Unfair competition	Focus on investigating and punishing illegal activities such as implementation of false or misleading commercial publicity activities, assisting other operators to conduct false or misleading commercial publicity activities, business confusion, commercial defamation and improper prize-attached sales, etc.
Quality of the Products	Focus on investigating and punishing illegal activities such as adulterating, passing fake imitations for genuine, selling seconds at best quality prices, passing substandard products off as standard ones, falsifying the place of origin of products, forging or falsely using the factory names and addresses of others, selling "three non-products" and infringing others' intellectual property rights.
Food Safety	Stress shall be laid on investigating and punishing such illegal activities as selling food without operation permit, selling food not in compliance with the safety standards and selling food with false production date or exceeding the quality guarantee period.

Main Points	Relevant Contents
Illegal Advertising	Focus on investigating and punishing such illegal activities as issuing false advertisement deceiving or misleading consumers, issuing illegal advertisement violating good social morals and advertisement endorsement in violation of regulations.
Price Violation	Focus on investigating and punishing illegal activities such as fabricating or spreading price increase information and inveigling consumers into transactions by false or misleading price information.

➤ ***Code of Conduct for Online Live-streaming Marketing (the "Code of OLM")***

On June 24, 2020, the China Advertising Association ("CAA") formulated *Code of OLM*. The Code focuses on providing a guide to the conduct of various market players engaged in online live-streaming marketing activities. Non-live video marketing that falls under the scope of advertising activities shall comply with the provisions of the *Advertising Law*; other marketing activities shall be regulated with reference to these specifications. The *Code of OLM* applies to online live-streaming marketing activities in which business operators, broadcasters and other participants sell goods to or provide services for users in the form of live streaming on e-commerce platforms, content platforms, social networking platforms and other network platforms.

➤ ***Basic Specifications for Operation and Services of Live Video Shopping (Draft for Comment) (the "Specifications (Draft)")***

On May 18, 2020, the China Business Federation Media Shopping Committee (the "CFTU") drafted and formulated the group standards for the live shopping industry — *the Specifications (Draft)*. This draft mainly proposes the relevant administrative requirements concerning the quality of commodities, management of operators, live broadcasters, services of MCN institutions, outsourcing of logistics and etc.

➤ ***48 Anchors Being Blacklisted by the Online Performances (Live Broadcast) Branch of China Performance Industry Association***

On August 9, 2020, the China Performance Industry Association Online Performances (Live Broadcast) Branch blacklisted 48 anchors for engaging in activities in violation of the laws and regulations, and banned them from being registered and broadcasting live in the industry for five years. Therefore, the competent authorities have begun to gradually regulate online live-streaming activities.

(e) Cultural and Entertainment Media Industry

❖ Current Focus: Gradually Restoring Entertainment/ Developing New Economies and Online Games

(1) Gradually revive the entertainment /new economy

- Ministry of Commerce, and relevant authorities in Chongqing Province advocate "small store economy" and "night economy"

On July 16, 2020, seven authorities including the Ministry of Commerce jointly issued the *Circular on Launching the Promotion of Small Store Economy*, announcing the launch of the promotion of small store economy from this year. The Circular makes it clear that by 2025, there will be 1,000 small store agglomeration areas within China, with the goal of "thousands of stores in hundreds of cities and districts" achieved.

On July 21, 2020, ten departments including Chongqing Municipal Commission of Commerce and the Ministry of Culture and Tourism jointly promulgated the *Opinions on Accelerating the Development of the Night-time Economy and Promoting Consumption Growth*, stating that Chongqing will accelerate the development of the night-time economy in six aspects, namely, strengthening the planning and layout of the night-time economy, constructing diversified night-time consumption places, cultivating and enriching the night-time life business, creating the brands of night-time consumption, promoting the innovation, upgrading and development of the night-time economy, and improving the supporting night-time economic functions.

- Gradual Restoration of Openness of Places of Entertainment in Beijing

On July 21, 2020, the Beijing Municipal Bureau of Culture and Tourism issued the *Circular on Orderly Resumption of Business Activities at Performance Venues, Entertainment Venues and Internet Access Service Business Venues*. It

requires that, on the basis of adhering to the principle of normal prevention and control, orderly opening up and restriction of traffic, and strictly implementing the primary responsibility, territorial responsibility and various prevention and control measures and upon the approval of the local government, the business activities at performance, entertainment and internet access service business venues within the jurisdiction shall be steadily and orderly resumed, but the resumption of business activities at high-risk areas shall be postponed temporarily.

(2) Online Games

➤ Real Name Authentication System to be Launched by September

On July 30, 2020, a newspaper reporter was informed at the China International Digital Interactive Entertainment Exhibition that, for the purpose of preventing teenagers from becoming addicted to online games, China was speeding up the construction of the real-name authentication system for online games, and that the system was initially scheduled to be launched by September.

➤ Zhejiang Province Shall Incorporate Game Advertising into Statutory Regulatory Scope

The 22nd Session of the Standing Committee of the 13th Zhejiang Provincial People's Congress deliberated and adopted the *Regulations of Zhejiang Province on Administration of Advertisements (the "Regulations")* on 31 July 2020, which incorporates game advertisements which have attracted more public attention in recent years into the scope of statutory regulation, and specifies that advertisers and publishers of illegal advertisements shall be held accountable and punished accordingly. Under the *Regulations*, game advertisements must indicate the proper age range in a notable manner, and provide proper hints or caution on the control of game length and frequency. Such advertisements must not induce, incite or suggest the users to overplay the games. Online game advertisements shall not contain the content that such virtual properties as game equipment, props and credits may be exchanged, or exchanged in a disguised form for cash or physical objects, and shall not contain the content that induces the recharge of online game products and services by random selection or other accidental ways. If an advertiser violates the aforesaid provisions, the Market Supervision and Administration Authority shall order it to stop publishing the advertisement and eliminate the impact to the extent possible; a fine of not less than one time but not more than three times of the advertising fees shall be imposed; if the advertising fees cannot be

calculated or are obviously low, a fine ranging from 100,000 yuan to 200,000 yuan shall be imposed; in serious cases, a fine of not less than three times but not more than five times of the advertising fees shall be imposed; if the advertising fees cannot be calculated or are obviously low, a fine ranging from 200,000 yuan to 1 million yuan shall be imposed. Besides, if the advertisement operators and issuers still provide assistances in design, production, agency and release of the advertisements though they are aware of or should be aware of the illegal activities, they shall face the same penalties as the advertisers. The Market Supervision and Administration Authority may also suspend the advertising publishing business thereof or revoke its registration certificate for publishing advertisements.

- The Internet Game Copyright Commission of the China Copyrights Association is Established

On August 2, 2020, the inaugural meeting of the China Copyright Association for Internet Game Copyright Commission was held in Liaoning Mansion in Beijing. The Commission, which is subordinated to China Copyright Society (the "CCS") and initiated by 18 entities including Shenzhen Tencent Computer System Company Limited, Guangzhou NetEase Computer System Co., Ltd., and 37 Entertainment (Shanghai) Technology Co., Ltd., was a public welfare non-governmental organization voluntarily participated by the relevant enterprises, entities and individuals in the field of online game copyright, under the direct leadership of the CCS, and served as the second level committee of the CCS. In the future, the Working Committee of CCS will promote the creation, application, protection and management of the copyright of the industrial chain of online game content and the copyright licensing; promote the theoretical research and academic exchange of online game copyright to publicize and popularize copyright knowledge; coordinate the relations within and outside the industry, strengthen the industry self-discipline, promote enterprises to make more use of technical means to strengthen copyright protection, stop copyright infringements and unfair competition, strengthen the protection of minors, and constantly promote the healthy development of the game industry of our country.

(f) Emerging Industries

✧ Current Focus: Blockchain

On July 22, 2020, the Central Bank of China ("PBOC") issued the *Circular on Promoting the Standardized Application of Blockchain Technology* (the

"**Blockchain Rules**") and the *Appraisal Rules for the Assessment of the Application of Blockchain Technology and Finance* (the "**Appraisal Rules**"), which are the first normative documents regarding blockchains issued by Chinese supreme authority.

Under the *Blockchain Rules* released by the PBOC, the *Appraisal Rules* have been examined and approved by the Chinese Financial Standardization Technical Committee, and have been implemented since then. Financial institutions are required to earnestly implement the *Appraisal Rules* in light of actual situations, establish and improve the risk prevention and control mechanism for the application of blockchain technology, regularly carry out external security assessments, and promote the standardized application of blockchain technology in the financial field. Meanwhile, financial institutions are required to, on the basis of meeting financial-related standards and provisions, file records for the application of blockchain technology in accordance with the *Administrative Provisions on Blockchain Information Services*.

The successive introduction of the *Appraisal Rules* and related services has enabled financial institutions such as banks, securities traders, and insurance companies to conduct product design, software development, and system assessment for the financial application of blockchain technologies, and will usher in unified standards and standardized services. On this basis, the prospect of blockchain technology finance application is worth looking forward to.

(g) Taxes

✧ **Current Focus: Integration of Yangtze River Delta**

On July 31, the State Administration of Taxation (the "SAT") promulgated the *Circular on Several Measures for Further Supporting and Serving the Integration Development of Yangtze River Delta Region*, launching 10 measures on tax collection and administration services for facilitating the high-quality development of Yangtze River Delta integration, including:

- ◆ Improving the tax-related big data service capability
- ◆ Further application of electronic VAT invoice
- ◆ Promoting the Five-into-One consolidated tax declaration
- ◆ Exploring the promotion of tax declaration and prepayment services

- ◆ Simplifying the procedures for handling VAT levy and refund
- ◆ Accelerating the handling of land VAT exemption
- ◆ Facilitating outbound payments in foreign exchange for service trade
- ◆ Making an overall plan for taxation risk management
- ◆ Promoting the implementation of unified standards for tax policies
- ◆ Establishing a unified tax law enforcement list system

In particular, the third measure, reading "promoting the Five-into-One consolidated tax declaration", states that four types of taxes, including the urban land use tax, real estate tax, stamp tax (excluding those declared for each time only), and land VAT tax, will be declared quarterly in a uniform manner for the tax collection period. When declaring the aforesaid four types of taxes and enterprise income tax, a taxpayer may choose to carry out consolidated declaration of different types of taxes through the electronic tax bureau to materialize "one statement, one declaration, one payment, one proof".

2. Investment and Market Entry

- (a) **The 2020 Negative List for Admission of Foreign Investment shall come into force as of July 23, 2020.**

The *Special Administrative Measures (Negative List) for Admission of Foreign Investments (2020)* (the "**National Negative List**") and the *Special Administrative Measures (Negative List) for Admission of Foreign Investments to Free Trade Zones (2020)* (the "**FTZ Negative List**") shall be implemented with effect from July 23, 2020. In particular, the number of items in the *National Negative List* is reduced from 40 to 33, and that of the *FTZ Negative List* is reduced from 37 to 30. The main changes are as follows:

- (1) **Speed up the opening up of major fields in the service sector.** In the financial sector, the restrictions on the proportion of foreign capital shares in securities companies, securities investment fund management companies, futures companies and life insurance companies were cancelled. Up to now, the financial sector has been fully opened to foreign investors. In the field of infrastructure, the requirement that the construction and operation of urban water supply and drainage pipe networks with a population of more than 500,000 must be controlled by the Chinese Party is cancelled.
- (2) **Relax admission to manufacturing and agriculture.** In the manufacturing sector, the restrictions on foreign equity ratios in the manufacturing of commercial vehicles were canceled, and foreign investment is allowed in radioactive mineral smelting, processing and nuclear fuel production. In the agricultural sector, in the past, the controlling shareholder of the company engaged in breeding of new varieties of wheat and seed production must be Chinese Party. But now, it only requires that Chinese Party hold 34% or more of the shares.
- (3) **Continuing to launch pilot programs in the FTZ.** On the basis of national opening-up trend, the Shanghai FTZ shall continue to carry out pilot practices. In the field of medicine, the prohibition on foreign investment in Chinese herbal medicine was cancelled. In the field of education, wholly foreign owned enterprises are allowed to set up vocational education institutions in the educational system.

Comparison of the National Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
1	Selection and cultivation of new varieties of, and production of seeds of, wheat and corn, must be undertaken by a company controlled by the Chinese party.	The Chinese party shall hold at least 34% of the shares of a company undertaking the selection and cultivation of new varieties of, and production of the seeds of, wheat; selection and cultivation of new varieties of, and production of seeds of, corn, must be undertaken by a company controlled by the Chinese party.
2	Foreign Investment in smelting and processing of radioactive minerals, manufacturing of nuclear fuel shall be prohibited.	(deleted from the list)
3	Except for special vehicles and new-energy vehicles, shares of a manufacturer producing other types of vehicles, held by Chinese parties, shall be 50 percent at least, and a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles (Limits on the foreign shareholding will be removed for commercial vehicles in 2020. In 2022, limits on the foreign shareholding will be abolished for passenger vehicles, and the restriction that a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles will be eliminated as well).	Except for special vehicles, new-energy vehicles and commercial vehicles , shares of a manufacturer producing other types of vehicles, held by Chinese parties, shall be 50 percent at least, and a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles (In 2022, limits on the foreign shareholding will be abolished for passenger vehicles, and the restriction that a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles will be eliminated as well).
4	Construction and operation of urban water supply and drainage network for urban population of 500,000 and above, must be undertaken by a company controlled by the Chinese party.	(deleted from the list)
5	Investment in the construction and	Investment in the construction and

Comparison of the National Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
	operation of civil airports must be relatively controlled by the Chinese party. Foreign parties are not allowed to participate in air traffic control system.	operation of civil airports must be relatively controlled by the Chinese party. Foreign parties are not allowed to participate in the construction and operation of airport towers.
6	The proportion of foreign capital invested in a securities company shall be less than 51 percent, the proportion of foreign capital invested in a securities investment fund management company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	(deleted from the list)
7	The proportion of foreign capital invested in a futures company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	(deleted from the list)
8	The proportion of foreign capital in a life insurance company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	(deleted from the list)
9	Investment in a market survey is limited to equity joint venture and cooperative joint venture; specifically, investment in a broadcasting and television listening and rating survey must be controlled by the Chinese party.	Investment in market surveys is limited to joint ventures ¹ ; specifically, investment in broadcasting and television listening and rating surveys must be controlled by the Chinese party.

¹ We understand that such amendment is made because cooperative joint venture is no longer a valid company form for foreign invested enterprises after the implementation of the Foreign Investment Law.

Comparison of the National Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
10	Investment in geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of topographical maps, world administrative maps, national administrative maps, administrative maps at the provincial level or below, national school maps, local school maps and true three-dimensional maps, compiling of navigation electronic maps and regional investigations in terms of geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology is prohibited.	Investment in geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of topographical maps, world administrative maps, administrative maps at the provincial level or below, national school maps, local school maps and true three-dimensional maps, compiling of navigation electronic maps and regional investigations in terms of geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology is prohibited (Mining right owners working within the scope of their mining rights will not be impacted by this special administrative measure).
11	Investment in medical institutions is limited to equity joint venture and cooperative joint venture.	Investment in medical institutions is limited to joint ventures. ²

Comparison of the FTZ Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
1	Investment in the application of such processing techniques of traditional Chinese medicine decoction pieces as steaming,	(deleted from the list)

² Ibid.

Comparison of the FTZ Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
	frying, cauterizing and calcining and the manufacturing of Chinese patent medicine products with a secret formula is prohibited.	
2	Except for special vehicles and new-energy vehicles, shares of a manufacturer producing other types of vehicles, held by Chinese parties, shall be 50 percent at least, and a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles. (Limits on the foreign shareholding will be removed for commercial vehicles in 2020. In 2022, limits on the foreign shareholding will be abolished for passenger vehicles, and the restriction that a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles will be eliminated as well.)	Except for special vehicles, new-energy vehicles and commercial vehicles , shares of a manufacturer producing other types of vehicles, held by Chinese parties, shall be 50 percent at least, and a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles (In 2022, limits on the foreign shareholding will be abolished for passenger vehicles, and the restriction that a single foreign investor may establish up to two joint ventures in China to manufacture the same type of vehicles will be eliminated as well).
3	Investment in the construction and operation of urban water supply and sewage pipe networks in a city with more than 500,000 residents must be controlled by the Chinese party.	(deleted from the list)
4	Investment in the construction and operation of civil airports must be relatively controlled by the Chinese party. Investment in air traffic control is prohibited.	Investment in the construction and operation of civil airports must be relatively controlled by the Chinese party. Foreign parties are not allowed to participate in the construction and operation of airport towers.
5	The proportion of foreign capital invested in a securities company shall be less than 51 percent; the proportion of foreign capital invested in a	(deleted from the list)

Comparison of the FTZ Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
	securities investment fund management company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	
6	The proportion of foreign capital invested in a futures company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	(deleted from the list)
7	The proportion of foreign capital invested in a futures company shall be less than 51 percent (this limit on the foreign shareholding proportion will be canceled in 2021).	(deleted from the list)
8	Investment in a market survey is limited to equity joint ventures and cooperative joint venture; specifically, investment in a broadcasting and television listening and rating survey must be controlled by the Chinese party.	Investment in a market survey is limited to joint ventures ³ ; specifically, investment in a broadcasting and television listening and rating survey must be controlled by the Chinese party.
9	Investment in geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of topographical maps, world administrative maps, national administrative maps, administrative maps at the provincial level or below, national school maps, local school maps and true three-dimensional maps, compiling of navigation electronic maps and regional investigations in terms of geological	Investment in geodetic surveying, hydrographic surveying and charting, surveying and mapping via aerial photography, ground mobile surveying, surveying and mapping of administrative area borders, compiling of topographical maps, world administrative maps, national administrative maps, administrative maps at the provincial level or below, national school maps, local school maps and true three-dimensional maps, compiling of navigation electronic

³ Ibid.

Comparison of the FTZ Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
	mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology is prohibited.	maps and regional investigations in terms of geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters and remote sensing geology is prohibited (Mining right owners working within the scope of their mining rights will not be impacted by this special administrative measure).
10	Investment in pre-school institutions, senior high schools and institutions of higher learning is limited to schools jointly run by Sino-foreign entities; such schools must be dominated by the Chinese parties (principals or major administration heads in charge of such schools shall be of Chinese nationality, and Chinese members of the council, board of directors or joint management committee shall account for half at least). (Foreign education institutions, other groups or individuals (excluding those for occupational training institutions beyond the educational system) shall not independently establish schools or other educational institutions mainly intended for recruiting Chinese citizens as their students, but foreign educational institutions may cooperate with Chinese educational institutions in establishing educational institutions that mainly recruit Chinese citizens as their students.)	Investment in pre-school institutions, senior high schools and institutions of higher learning is limited to schools jointly run by Sino-foreign entities; such schools must be dominated by the Chinese parties (principals or major administration heads in charge of such schools shall be of Chinese nationality, and Chinese members of the council, board of directors or joint management committee shall account for at least half). (Foreign education institutions, other groups or individuals (excluding those for occupational training institutions beyond the educational system and occupational education institutions within the educational system) shall not independently establish schools or other educational institutions mainly intended for recruiting Chinese citizens as their students, but foreign educational institutions may cooperate with Chinese educational institutions in the

Comparison of the FTZ Negative List for Admission of Foreign Investment		
No.	2019 Version	2020 Version
		establishment of educational institutions that mainly recruit Chinese citizens as their students.)
11	Investment in medical institutions is limited to equity joint venture and cooperative joint venture.	Investment in medical institutions is limited to joint ventures. ⁴

In addition, other highlights of this Amendment are as follows:

- ✧ Article 5 is added to the Preamble of the 2020 Negative Lists, which reads as, "After being examined by the relevant competent departments of the State Council and reported to the State Council for approval, specific foreign investments may not be subject to the restrictions set out in the Negative List for Admission of Foreign Investment on the relevant sectors."

Neither the *Foreign Investment Law* nor the *Implementing Regulations of the Foreign Investment Law* has specified the supervision over the VIE structure to which the industry and market pay close attentions. However, according to the definition of "foreign investment" set forth in Article 2 of the *Foreign Investment Law*, it is theoretically possible to cover the investment made by Chinese investors or foreign investors in China in the form of VIE structure within the scope of "foreign investment".

As Article 5 is added to the Preamble of National Negative List and FTZ Negative List (2020 version), we understand that this provision provides a policy space of "special approval" for certain regulatory exceptions to the negative lists, which may grant permission to Chinese investors making a round-trip investment or investing through the VIE structure.

(b) Further reduce restrictions on investment and operation of foreign-invested trade enterprises

On July 21, the General Office of the State Council promulgated *the Implementing Opinions on Further Optimizing the Business Environment to Better Serve Market Players (the "Market Opinions")*, specifying that "the business environment of foreign-invested trade enterprises shall be optimized". Article 9 requires to "further reduce the restrictions on the investment and operation of foreign-funded trade enterprises". The specific

⁴ Ibid.

measures include: (i) supporting foreign trade enterprises to sell their exported products domestically; (ii) promoting the replacement of relevant domestic certification with self-declaration by foreign trade enterprises; (iii) for products which have obtained relevant international certification and the certification standards are not lower than domestic standards, permitting foreign trade enterprises to directly market such products after making written commitments that they meet domestic standards, and strengthening interim and ex post regulation, and (iv) authorize all the cities at the prefecture level or above to carry out registration of foreign-invested enterprises.

3. Listing and Restructuring Policies

(a) Specification of the Standards for Major Adjustments to the Restructuring Plan and Method of Issuance Price Adjustment

On July 31, 2020, the CSRC promulgated *the Opinions on the Application of Articles 28 and 45 of the Administrative Measures for the Material Assets Reorganization of Listed Companies – No.15 Opinions on the Application of Securities and Futures Laws (the "No.15 Opinions")*. The main contents of the No. 15 Opinions include:

- (1) Specify the standards that constitute material adjustments to the restructuring plan. According to Article 28 of the Administrative Measures for Material Assets Reorganization of Listed Companies ("*Reorganization Measures*"), where a reorganization scheme is adjusted materially after being deliberated at the general meeting of shareholders of the listed company, the procedures for voting by the board of directors or the general meeting of shareholders shall be performed again and a timely announcement shall be made. No. 15 Opinions specify how to make adjustments that meet the above-said criterion of "significant adjustments" in respect of the counterparty, targets of the transaction, raising of supporting funds, etc.
- (2) Clarify the relevant requirements for adjustment to the issuance price. According to Paragraph 4 of Article 45 of Reorganization Measures, the issuance price adjustment plan shall be clear, specific and operational, specifying whether the pricing and quantity of the assets to be purchased are subject to adjustment and the reasons therefor. Such plan shall be fully disclosed at the time of the first announcement of the board resolutions, and submitted to the general meeting of shareholders for deliberation according to the relevant provisions, No.15 Opinions specify requirements in respect of specific indicators and procedures, such as the change in indices, unilateral and bilateral adjustments, benchmark date, issuance price adjustment mechanism, resolution of the board of directors, and verification by intermediaries.

(b) Guidelines for the Application of Regulatory Rules — Listing No.1

In order to fully implement the upper-level legislations including the new *Securities Law*, further deepen the reform of "streamlining administration,

delegating power, strengthening regulation and improving services", improve regulatory transparency, clarify the expectations of market players, and release the market vitality of mergers, acquisitions and reorganizations, the CSRC has sorted out and integrated the regulatory questions and answers relating to the routine regulation of listed companies as well as the examination and approval of mergers, acquisitions and reorganizations on July 31, 2020, and has re-promulgated the *Guidelines for the Application of Regulatory Rules — Listing No.1* for implementation as of the date of promulgation, when the original regulatory questions and answers shall be repealed simultaneously. The applicable scope includes 16 items, such as raising supporting funds, performance compensation and incentives, determination of the net amount of minority equities and assets acquired, offering targets, whether enterprises participating in IPO should participate in the restructuring, recognition of the profits and losses during the transitional period and the relevant time points, private equity investment funds and asset management plans, disclosure of the refinancing and investment projects constituting major asset restructuring, information disclosure of the VIE structure, requirements for verification of insider trading in mergers and acquisitions, requirements for verification of abnormal performance or proposed assets to be acquired before the restructuring of listed companies, classified review arrangements, the relevant requirements of intermediaries, the relevant procedures after the rejection of restructuring, matters relating to the acquisition of listed companies, and the relevant information disclosure of equity changes under the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect.

(c) SZSE Promulgates the Revised Guidelines on Handling the Transfer of Listed Companies' Shares by Agreement

SZSE released the *Guidelines of the Shenzhen Stock Exchange for Handling the Transfer of Listed Companies' Shares by Agreement (Revised in 2020)* (the "**Guidelines**") on July 24, 2020. Revisions made this time are specified as follows: (1) appropriately reducing burdens, cancelling administrative approval documents on the exemption of tender offers, notarization of agreements involving natural persons or overseas legal persons, and simplifying the application materials. (2) to be transparent and convenient, formulating supporting Guidelines, refining material requirements, reference format text and handling procedures, and providing clear guidance for market players in facilitating business handling. (3) Controllable risks. The contents of commitments and guarantees made by the business-related

parties concerned shall be added, the responsibilities of subjects concerned shall be specified, and it is clarified that the Stock Exchanges may take self-regulatory measures or disciplinary sanctions against violations.

(d) The SSE and CSDC Issue Guidelines for Shareholders of Listed Companies on The Scientific Innovative Board to Reduce Their Shares by Inquiry Transfer and Allotment to Specific Institutional Investors

On July 17, 2020, the SSE and CSDC issued the *Guidelines for Shareholders of Listed Companies on The Scientific Innovative Board to Reduce Their Shares by Inquiry Transfer and Allotment to Specific Institutional Investors*. The Guidelines mainly made stipulations on the following two aspects: (1) Optimizing the enquiry transfer system: adjust the expression of "non-public transfer" in the draft for comments to "Inquiry Transfer and Allotment to Specific Institutional Investors"; cancel the stage of solicitation for transfer intent and corresponding requirements for information disclosure to improve transfer efficiency; and require the transferor to declare and lock up the amount of shares to be transferred, and the transferee shall not give up subscription without justified reasons. (2) Detailed rules on the reduction through allotment: the shareholders involved in the allotment shall make allotment to the registered shareholders of the scientific innovative company on the date of equity registration, and the date of equity registration shall be disclosed in the announcement of the allotment plan; where the allotment subjects intend to subscribe for shares, the subscription shall be made through the system of the SSE on the 5th trading day after the date of equity registration; where the shares allotment subjects subscribe for are not enough, the shareholders involved in the allotment shall sell the shares in proportion and shall apply for locking up the amount of shares to be allotted, and undertake that they have sufficient shares available for allotment; and the disclosure of the proportion of allotment rights is required.

► Case and Trends

1. Hot Market Cases

(a) United States Entirely Blocks TikTok Overseas Version

(1) Event Timeline

Since July 6, 2020, when the Government of the United States suspected TikTok of violating the *Child Privacy Protection Agreement* and posing a “information security threat” to the United States, and considered banning the use or acquisition of TikTok by US companies, we combed through the following timeline regarding the US outright ban of the TikTok overseas version.



(2) Case focus: Role of CFIUS in the Tiktok Incident

CFIUS is the abbreviation of the United States Foreign Investment Commission (“*CFIC*”). It is an inter-agency body of the United States federal government and has the authority to specifically review foreign investments operating in the United States to assess whether the investment poses a threat to the national security of the United States. The President of the United States is authorized to enjoin or unwind a transaction if such transaction constitutes a threat to the national security of the United States. It is worth noting that the President will

have the authority to unwind the transaction even after closing if no party has voluntarily notified the transaction to CFIUS in advance and cleared the CFIUS review process.

The scope of authority of the CFIUS over foreign investment review has been further expanded since the promulgation of *the Modern Foreign Investment Risk Review Modernization Act ("FIRRMA")* in August, 2018. Under FIRRMA, CFIUS reserves the right to review non-passive investments by foreign investors in the purchase or lease of commercial real estate in the United States and by foreigners in any U.S. business involving critical infrastructure, the production of critical technologies or the maintenance of sensitive personal data that may affect national security. Identification of a “national security threat” is not clearly delineated by FIRRMA. In addition, because the CFIUS review authorized by FIRRMA is not based on the premise that “national security causes real harm”, but uses ex ante review or “potential harm” review. Thus, FIRRMA has granted CFIUS broad power to review foreign investment in the United States.

(3) M&T Notice

Except for a small number of foreign investments involving sensitive industries, CFIUS declaration is not mandatory for most investment transactions in the United States. However, once a transaction falls under the jurisdiction of CFIUS and has not been reviewed by CFIUS, CFIUS shall have the right to order the relevant counterparties to file the transaction for CFIUS review, regardless of whether such transaction has closed or not. In some extreme cases, the outcome of the CFIUS review process would be to compel foreign investors to divest their interests in the US involved in the deal. Given that FIRRMA grants CFIUS more power and procedures to proactively review transactions not filed for CFIUS review, the full implementation of the bill will increase the risks that CFIUS will conduct proactive review or even divestiture of foreign investors' investments in the US.

Despite these ex post facto risks, if a FIUS transaction can be declared and approved in advance for CFIUS review, the approval result will be permanent and will greatly reduce the risks associated with CFIUS review, with a few exceptions. It is suggested that foreign investors in the US, if permitted by transaction time and cost, report the proposed transactions that fall into the jurisdiction of CFIUS to CFIUS review in

advance.

2. Judicial Cases

- (a) **Can an investor claim both performance compensation and equity repurchase against the shareholders of the target company in a Valuation Adjustment Mechanism (VAM) dispute?**

(1) Policy Interpretation

We have discussed the validity of VAM in our May newsletter, which is summarized as follows:

Method of VAM	Effect of VAM Agreement	The Enforceability of Actual Performance
Between Investors and Shareholders	Valid	Effective
Between Investors and the Company	Valid if there is not any statutory cause for invalidity	In the event of share repurchase, the target company shall complete capital reduction procedures; in the event of cash compensation, the target company shall have sufficient distributable profits.

(2) Case Dynamics

Although the judicial practice has confirmed the legitimacy and validity of VAM at the time of investment, if an investor claims both performance compensation and equity repurchase after investment has been made, whether such arrangement is legitimate and valid or not is not provided in the judicial interpretations or policies such as the *Circular of the Supreme People's Court on Issuing the Summaries of the National Conference for the Work of Courts in the Trial of Civil and Commercial Cases (2019, No. 254)*, which causes disputes in the judicial practice. For example, in the capital increase dispute case between Shandong Hongli Ainiville Environment Technology Group Co., Ltd. and Tianjin Pukaitianji Equity Investment Fund Partnership Company, [Case No.: (2019) Supreme Court Civil Appeal No. 5691; Closing Date: December 24, 2019], the court sustained the claim of the investor who claims both performance compensation and equity

repurchase; while in the capital increase dispute case between Guo Yinghui and Chongqing Jingqing Heavy Machinery Co., Ltd. [Case No.: (2019) Supreme Court Civil Appeal No. 6709; Closing Date: December 26, 2019], the similar claim of the investor was not sustained.

- **Focus of Controversy: Can the investor claim performance compensation and equity repurchase against the shareholders at the same time?**

Sustained	
<ul style="list-style-type: none"> ➤ (2019) Supreme Court Appeal No. 5691 <p>The conditions applicable to performance compensation are that the net profit in 2020 fails to meet the criteria, while the conditions applicable to equity repurchase is that the company is not listed on A-shares before December 31, 2014, and <u>the applicable conditions and the agreed exercise time of the two are not the same</u>. At the time, when the conditions for performance compensation were met, the conditions for equity repurchase in question had not yet been met, and Pukai Tianji and Pukai Tianxiang remained the shareholders of Hongli Heat Pump, and there was no issue in respect of Hongli Group's claim that Pukai Tianji and Pukai Tianxiang were not shareholders and could not enjoy the rights for performance compensation and equity repurchase at the same. Finally, the claim of the Investor was supported.</p>	<p>Similar cases: (2019) Su 05 Civil Final No. 9001; (2019) Yue 06 Civil Final No. 187; (2017) Su 04 Civil Final No. 3295</p>
Rejected	
<ul style="list-style-type: none"> ➤ (2019) Supreme Court Appeal No. 6709 <p>If the Company fails to achieve its operation target, the Investor shall have the right to request the Original Shareholders or the Company to pay the compensation in cash, which is essentially a distribution of profits of the Company. <u>The terms of profit distribution are neither adopted by the shareholders' general meeting nor in compliance with Article 166 of the Company Law, and a claim for equity or cash compensation cannot be made therefor</u>. Where there is no specific agreement on share repurchase with the shareholders, the company shall not assert that the shareholders bear repurchase obligations.</p>	<p>Similar cases: (2017) Jing 01 Civil Final No. 814; (2015) Zhe Shao Commercial Initial No.13</p>

(3) M&T Notice

In the abovementioned cases, in the sustaining cases, the court mainly considered that performance compensation and equity repurchase are subject to different application conditions and in parallel positions, so the investor is entitled to claim for both at the same time as long as such provisions are valid and effective. Meanwhile, in the rejecting cases, the Supreme Court did not specifically forbid the concurrent claims, but rejected the claim of the investor on the grounds that the performance compensation belongs to profit distribution, but the profit distribution fails to be approved by relevant resolutions and does not meet the relevant provisions of the *Company Law*.

We understand that the performance compensation and equity repurchase are financing agreements entered into by the investor and the shareholders of the target company on a voluntary basis and the parties are clearly aware of such arrangements. The agreement shall belong to the scope of autonomy of the parties, and shall be valid provided that it does not violate mandatory provisions of laws and administrative regulations. However, in order to avoid the risk that in practice some courts deem it cannot be claimed at the same time, we suggest that the investment agreement should clearly stipulate that when the performance compensation and equity repurchase conditions are triggered, in addition to the claim against the target company, an investor has the right to claim against the shareholders or actual controller of the target company at the same time.

It is hereby declared that:

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