

Haiwen Finance and Asset Management Monthly (December)

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Introduction

To make the finance and asset management industry keep abreast of the latest industry developments, Haiwen prepares the “Haiwen Finance and Asset Management Monthly”. This monthly reading aims to introduce and provide brief comments on regulatory development and industry news.

In December of 2023, **for new rules and regulations**, the National People’s Congress Standing Committee (the “**NPC Standing Committee**”) adopted newly-revised Company Law; the National Administration of Financial Regulation (the “**NAFR**”) released the *Interim Measures on the Administration and Management of Pension Insurance Companies*; the China Securities Regulatory Commission (the “**CSRC**”) issued the *Provisions for Strengthening the Administration of the Securities Transactions of Publicly Offered Securities Investment Funds (Draft for Comment)* and the *Measures for the Supervision and Administration of Private Investment Funds (Draft for Comment)*; the State Council issued the *Regulations on the Supervision and Administration of Non-Bank Payment Institutions*; the Ministry of Finance (the “**MOF**”) issued the *Measures for the Administration of Domestic Investment of the National Social Security Fund (Draft for Comment)*; the CSRC revised and published the *Rules for Repurchase of Shares by Listed Companies*; the CSRC issued the *Regulatory Guidelines for Listed Companies No. 3—Distribution of Cash Dividends of Listed Companies* and other regulatory documents; the CSRC and State-Owned Assets Supervision and Administration Commission of the State Council jointly issued the *Notice on Supporting the Issuance of Green Bonds by Central Enterprises*.

For industry news, the NAFR issued a document emphasizing the reinforcement of supervision over trust companies, wealth management companies, and insurance asset management companies; the Supreme People’s Procuratorate and the Supreme People’s Court issued the *Model Cases of Lawfully, Strictly Combating Private Fund Crimes*; the CSRC addressed questions of reporters regarding the implementation of the new margin trading rules; the State Administration of Foreign Exchange (the “**SAFE**”) expanded the pilot program of high-level opening-up of cross-border trade and investment (to a broader range of regions, namely

Shanghai, Jiangsu, Guangdong (including Shenzhen), Beijing, Zhejiang (including Ningbo), and the entire Hainan); the SAFE issued the *Notice of Further Deepening Reform to Promote Cross-Border Trade and Investment Facilitation*; the first publicly offered fund management company controlled by securities companies in Hainan Free Trade Port established in Haikou.

I Latest Rules and Regulations

1. The NPC Standing Committee Adopted the Newly-Revised *Company Law*

On December 29, 2023, the NPC Standing Committee approved the newly-revised *Company Law of the People's Republic of China* (the "[New Company Law](#)"), which will take effect on July 1, 2024. The New Company Law, building on the 13 chapters and 218 articles of the 2018 version, has removed 16 articles and added or amended 228 articles, with substantial modifications in over 110 articles. Key amendments include: (1) strengthening the responsibility of shareholders for capital contribution; (2) significant adjustments to the company governance structure; (3) further clarifying the essential differences between companies limited by shares and limited liability companies; (4) enhancing the protection of minority shareholders' rights; (5) reinforcing the responsibilities of controlling shareholders, directors, supervisors, and senior management. For more details, please refer to our [series of articles on the revisions to the *Company Law*](#).

Haiwen Comments

This revision represents the second comprehensive overhaul of the *Company Law* since its promulgation in 1993. The New Company Law systematically modifies the existing legal framework and systems, elevating effective practices, reform achievements, company registration reforms, and judicial interpretations to national law.

2. The NAFR Released the *Interim Measures on the Administration and Management of Pension Insurance Companies*

On November 25, 2023, the NAFR issued the *Interim Measures on the Administration and Management of Pension Insurance Companies* (the "[Pension Insurance Companies Measures](#)"). The Pension Insurance Companies Measures specifically provided on capital management, assessment mechanism, business scope, risk control and other aspects given the operation characteristics of pension insurance companies, including: (1) increasing registered capital requirements by level according to different types of businesses operated by pension insurance companies, mandating the establishment of diversified capital supplementation mechanisms; (2) requiring that the investment management assessment period for commercial pension insurance and other businesses should not be less than 3 years; (3) clarifying that pension insurance companies should primarily engage in pension-related business and not manage insurance funds or conduct insurance asset management business; (4) mandating pension insurance companies to establish and improve risk management systems, strengthen risk isolation between different businesses, and conduct regular internal and external audits.

Haiwen Comments

For pension insurance companies managing the public's pension, regulatory priorities encompass the principles of prudent operation, concentration on core business, and proactive risk prevention. Currently, there are 10 insurance companies which are specialized in pension insurance business in the Chinese insurance market, including Ping An Annuity and Taiping Pension. Ping An Annuity has formally declared its intention to divest its asset management business in strict compliance with regulatory requirements. Similarly, other pension insurance companies have expressed their commitment to seamlessly transitioning their operations in alignment with prevailing regulatory policies.

3. The CSRC Issued the *Provisions for Strengthening the Administration of the Securities Transactions of Publicly Offered Securities Investment Funds (Draft for Comment)*

On December 8, 2023, the CSRC issued the *Provisions for Strengthening the Administration of the Securities Transactions of Publicly Offered Securities Investment Funds (Draft for Comment)* (the “[Securities Trading Regulations](#)”). The Securities Trading Regulations consist of sixteen articles, covering key aspects such as: (1) reducing the commission rates for securities transactions of publicly offered funds; (2) lowering the upper limit of the commission distribution ratio for securities transactions; (3) strengthening the supervision of commission distribution practices in securities transactions of publicly offered funds; (4) clarifying the disclosure requirements for the annual report of commission expenses in securities transactions by public fund manager.

Haiwen Comments

In July 2023, the CSRC issued a work plan for public fund fee reform, which comprehensively optimized the fee structure of public funds and called for fee reduction. The issuance of the Securities Trading Regulations marks a further deepening of the fee reform in the public fund industry, aiming to reduce investment costs for investors and fostering the robust development of the public fund industry.

4. The CSRC Issued the *Measures for the Supervision and Administration of Private Investment Funds (Draft for Comment)*

On December 8, 2023, the CSRC issued the *Measures for the Supervision and Administration of Private Investment Funds (Draft for Comment)* (the “[Draft](#)”). Compared to the existing regulations, noteworthy updates of the Draft include: (1) refining the standards for qualified investors; (2) elaborating on the qualification for private fund managers serving as securities investment advisors; (3) prohibiting fund managers from setting up branches; (4) adding mandatory custodian scenarios: funds mainly investing in a single target, mainly investing in overseas assets, off-market derivatives, engaging in leverage financing, and funds accepting investments from asset management products and private funds; (5) enhancing requirements for expansion of fund size: special-purpose funds may only raise additional funds from existing investors; (6) imposing heightened requirements for single limited partner (LP) funds: general private institutions or individuals may not qualify as a single LP investor; (7) for private funds where over 80% of the fund property is invested in a single target, aside from employee co-investments, natural person investors must contribute no less than 10 million yuan; (8) increasing the capital contribution amount required for a single investor: the paid-in amount for investing in private equity funds must be no less than 3 million yuan, and for funds mainly investing in single targets, overseas assets, off-market derivatives, etc., the paid-in amount must be no less than 5 million yuan; (9) introducing a requirement that managers reaching a certain scale of assets under management should make risk provisions.

Upon the official approval of the Draft, the *Interim Measures for the Supervision and Administration of Private Investment Funds* and the *Several Provisions on Strengthening the Supervision of Private Investment Funds* will be concurrently repealed.

Haiwen Comments

The Draft provides detailed and refined implementation of the *Regulations on the Supervision and Administration of Private Investment Funds* released by the State Council in July 2023. It applies differentiated regulation to various types of private funds, further elevating regulatory standards within the private fund industry. This aligns with the recent regulatory trend in private fund oversight, characterized by supporting excellence, limiting suboptimal practices and funding channels. The newly proposed requirements for funds predominantly investing in a single target, if officially incorporated in the final draft, could potentially have a significant impact on fund managers whose primary strategy revolves around investing in single-target funds in the market.

5. The State Council Released the *Regulations on the Supervision and Administration of Non-Bank Payment Institutions*

On December 9, 2023, the State Council issued the *Regulations on the Supervision and Administration of Non-Bank Payment Institutions* (the “[Non-Bank Payment Regulations](#)”), which will take effect on May 1, 2024. The Non-Bank Payment Regulations set forth supervision of non-bank payment institutions in the following four aspects: (1) establishing a “Permit First, Registration Later” management model, which requires non-bank payment institutions to first obtain a payment business permit from the People’s Bank of China (the “PBOC”) before registering with the market supervision and administration departments to receive a business license; (2) categorizing payment business into “storage account operation” and “payment transaction processing”, where the former involves opening payment accounts or providing prepaid value, resembling characteristics of depository institutions with potential implications for liquidity and credit risks, while the latter does not have these characteristics. The PBOC is authorized to formulate specific rules; (3) clarifying the principles of fairness in payment service agreements, user information handling, and reserve fund management measures to enhance user rights protection; (4) intensifying penalties for severe violations and non-compliance. For more details, please refer to [China Upgrades Regulation of Payment Institutions](#).

Haiwen Comments

The Non-Bank Payment Regulations represent a significant update and revision to the *Administrative Measures on Payment Services of Non-financial Institutions* issued by the PBOC in June 2010. This revision aims to address the lag of regulatory provisions behind market development and practical needs, elevating the level of departmental regulations to administrative regulations, thereby solidifying the legal foundation for the standardized and healthy development of the payment industry.

6. The MOF Issued the *Measures for the Administration of Domestic Investment of the National Social Security Fund (Draft for Comment)*

On December 6, 2023, the MOF issued the *Measures for the Administration of Domestic Investment of the National Social Security Fund (Draft for Comment)* (the “[Social Security Fund Measures](#)”). The Social Security Fund Measures primarily stipulate, in respect of the social security fund, the management and investment operation, investment scope and proportion, investment managers, custodians, investment return distribution and fees, account and financial management, reporting system, and legal responsibilities.

Haiwen Comments

The Social Security Fund Measures represent a systematic and comprehensive review of multiple special approvals previously issued by the MOF and the Ministry of Human Resources and Social Security regarding social security fund investments. Considering the continual growth in the scale of the social security fund, enhanced investment capabilities, and the increasing breadth and depth of asset allocation, the Social Security Fund Measures are designed to adapt to the current financial market development and the situation of social security fund investment management. This is conducive to standardizing investment behavior and promoting the value preservation and appreciation of the social security fund.

7. The CSRC Revised and Published the *Rules for Repurchase of Shares by Listed Companies*

On December 15, 2023, the CSRC revised and published the *Rules for Repurchase of Shares by Listed Companies* (the “[Repurchase Rules](#)”), optimizing certain provisions. The main revisions include: (1) relaxing criteria related to repurchase price, conditions, and transaction declarations. For example, the trigger threshold for repurchase conditions, previously set as “the cumulative decline in the closing price of the company’s stock within 20 consecutive trading days reaches 30%” is adjusted to “accumulatively reaching 20%”, and the basic conditions for repurchase of listed companies are moderately relaxed, previously “having been listed for one year” is changed to “having been listed for six months”; (2) further improving the repurchase restraint mechanism, such as adding provisions that listed companies shall be encouraged to improve the shares repurchase mechanism in their AOA or other governance documents, and specify the trigger conditions, repurchase process, and other specific arrangements for repurchase of

shares. Additionally, the Repurchase Rules remove the requirement for independent directors to express separate opinions on repurchase matters, stipulate that listed companies shall not carry out share repurchase and share issuance concurrently, and include provisions that the stock exchange may take self-regulatory measures or disciplinary measures in accordance with the business rules.

Haiwen Comments

In response to the actual development of share repurchases by listed companies and changes in the market environment, the CSRC issued the revised and improved Repurchase Rules. These amendments encourage listed companies to use repurchases as a reasonable means to reward investors, while also strengthening supervision over potential irregularities in repurchase activities.

8. The CSRC Issued the *Regulatory Guidelines for Listed Companies No. 3—Distribution of Cash Dividends of Listed Companies and Other Regulatory Documents*

On December 15, 2023, the CSRC released the *Regulatory Guidelines for Listed Companies No. 3—Distribution of Cash Dividends of Listed Companies* (the “Cash Dividend Guidelines”), along with the *Decision on Amending the Guidelines on the Articles of Associations of Listed Companies* (the “Articles of Association Guidelines”). Concurrently, the Shanghai Stock Exchange and Shenzhen Stock Exchange also amended their relevant rules.

The revisions of Cash Dividend Guidelines focus on three main aspects: (1) encouraging cash dividends and strengthening disclosure requirements for the listed companies that do not distribute dividends; (2) simplifying the process for interim dividend distribution, encouraging companies to increase dividend distribution frequency when conditions permit; (3) paying special attention to companies that are capable of but do not distribute dividends, or those with unusually high cash dividend ratios, and taking regulatory measures to guide reasonable dividend distribution. Correspondingly, the Articles of Association Guidelines encourage listed companies to increase the frequency of cash dividend distribution under the conditions of profit distribution, to stabilize investors’ dividend expectations. The Articles of Association Guidelines also include new requirements for the completion timeline of interim dividend distribution and mandate that listed companies clearly define the objectives of their cash dividend distribution policy and the circumstances under which profit distribution is not conducted in their articles of association.

Haiwen Comments

The Cash Dividend Guidelines and the Articles of Association Guidelines provide guidance and regulation at the policy level for the dividend distribution of listed companies. This is beneficial in enhancing the awareness and level of dividend distribution among listed companies, strengthening investor returns, and promoting the long-term stable development of the capital market.

9. The CSRC and State-owned Assets Supervision and Administration Commission of the State Council Issued the *Notice on Supporting the Issuance of Green Bonds by Central Enterprises*

On December 8, 2023, CSRC and the State-owned Assets Supervision and Administration Commission of the State Council jointly issued the *Notice on Supporting the Issuance of Green Bonds by Central Enterprises* (the “Green Bond Notice”).

The Green Bond Notice encompasses four main aspects: improving the mechanism of financing support for

green bonds, facilitating the green and low-carbon transformation and high-quality development of central enterprises, maximizing the leading role of central enterprises in green investment and strengthening organization and implementation guarantees. Among them, regarding improving the mechanism of financing support, the Green Bond Notice specifically proposes that central enterprises are encouraged to issue medium- and long-term bonds based on the expected investment recovery cycle of green projects; the bond financing service mechanism shall be optimized, the review arrangements for the issuance of green bonds by high-quality central enterprises shall be optimized, the requirements for information disclosure, and other aspects shall be simplified by reference to the standards for well-known and mature issuers; securities companies shall be encouraged to actively provide intermediary services for green bonds and establish a long-term cooperation mechanism with central enterprises in green industries; and the inclusion of green bonds issued by high-quality central enterprises and subsidiaries in benchmark market making products shall be promoted, and market makers shall be encouraged to actively provide green bond market making quotation services and improve the liquidity of green bond trading.

Haiwen Comments

The Green Bond Notice reflects a comprehensive approach to promoting green finance and supporting central enterprises, takes the financing of green bonds by central enterprises as the anchor to unify the objectives of the low-carbon transformation of central enterprises, the promotion of green bonds for downstream green science and technology, the supply of funds for green key areas, and the construction of low-carbon supply chain systems, and fosters a sustainable development model to deepen and implement green development.

II Industry News

1. The NAFR issued a document emphasizing the reinforcement of supervision over trust companies, wealth management companies, and insurance asset management companies

On December 27, 2023, the NAFR issued a document, titled *Advancing the '8+5+5+3' Initiative: Crafting the Chapter on Asset Management in China's Journey to Becoming a Financial Power in the 21st Century*, which acknowledged that while trust companies, wealth management companies, and insurance asset management companies are all engaged in asset management activities, they have significant differences in historical origins, resource endowments, and regulatory approaches.

From the perspective of rational resource allocation for supervision, the NAFR aims to gradually establish a supervisory framework where the NAFR oversees major matters, and its dispatched agencies oversee day-to-day operations. This approach emphasizes enhanced coordination between the central authority and its regional agencies, harnessing the collective regulatory strength.

Regarding the optimization of regulatory tools, a balanced approach is advocated. This involves harmonizing traditional regulatory methods with financial technology applications. While continuing to utilize conventional tools such as regulatory reports and ratings, there is also a focus on bolstering digitalization in supervision. The utilization of data-driven supervisory tools, including the EAST system, is prioritized to enhance transparency and prevent regulatory arbitrage and hidden risks among various asset management products.

In terms of investor protection, particular attention is directed toward safeguarding the legitimate rights and interests of high-net-worth clients and ordinary wealth management clients already associated with trust companies, wealth management companies, and insurance asset management companies. Simultaneously, there is an emphasis on enhancing disclosure management and promptly addressing various investor complaints and reports to address investor concerns.

2. The Supreme People's Procuratorate and the Supreme People's Court jointly issued the *Model Cases of Lawfully, Strictly Combating Private Fund Crimes*

On December 20, 2023, the Supreme People's Procuratorate and the Supreme People's Court jointly released the *Model Cases of Lawfully, Strictly Combating Private Fund Crimes* addressing significant legal application controversies in judicial practice, which includes 5 cases, covering prevalent crimes in the private equity fund sector such as illegal fundraising, fundraising fraud, misappropriation of funds, embezzlement, and bribery of non-state officials. These cases provide guidance in finding facts and application of law for judicial handling and also establish boundaries and requirements for practitioners in the private fund industry, emphasizing the importance of carrying out fundraising in accordance with the law, making investments in compliance with provisions, and operating with integrity in terms of fundraising.

3. The CSRC addressed questions from reporters regarding the implementation of the new margin trading rules

On December 27, 2023, the CSRC responded to media inquiries regarding inconsistencies in the implementation of the new margin trading and securities lending rules by various brokerage firms. The CSRC stated that following the release of the notices on the optimization of margin trading and securities lending transactions by the Shanghai Stock Exchange, Shenzhen Stock Exchange and Beijing Stock Exchange on October 14, 2023, which further improved the requirement that "restricted stocks cannot be used for margin trading" and introduced the requirement for securities firms to conduct thorough checks on investors, regulatory authorities and industry associations have been actively supervising and urging securities firms to comply with the new rules. Most securities firms have substantially implemented the new requirements, but on-site inspections revealed that a few securities firms had issues with insufficiently thorough checks on related parties.

The CSRC emphasized that in the next steps, it will comprehensively strengthen penetration supervision in accordance with the requirements of the Central Financial Work Conference. It will not only enhance the responsibilities of securities firms but also strengthen regulatory enforcement, taking strict measures against violations of the "restricted stocks cannot be used for margin trading" requirement and other rules.

4. The SAFE expanded the pilot program of high-level opening-up of cross-border trade and investment (to a broader range of regions, namely Shanghai, Jiangsu, Guangdong (including Shenzhen), Beijing, Zhejiang (including Ningbo), and the entire Hainan)

In accordance with the directives of the Central Financial Work Conference and to further facilitate cross-border trade and investment, the SAFE issued a notice on December 15, 2023, outlining the decision to broaden pilot areas of high-level opening-up of cross-border trade and investment, to a broader range of regions, namely Shanghai, Jiangsu, Guangdong (including Shenzhen), Beijing, Zhejiang (including Ningbo), and the entire Hainan (the "Notice"), building upon the experience gained from the pilot program conducted in 2022, to replicate and extend the successful policies and measures that facilitated foreign exchange liberalization during the previous phase of the pilot program.

The Notice introduces eight pilot policy measures: five for the current account—simplifying foreign exchange receipts and payments, supporting innovative international trade settlements, broadening net clearing of trade revenues and expenses, exempting special remittance returns from registration, and optimizing the management of reimbursement or apportionment business under trade-in service; and three for the capital account, include the exemption of registration for domestic reinvestment by foreign-invested enterprises, shared foreign debt quotas for parent and subsidiary companies engaged in financial leasing, and enabling banks to directly manage foreign debt and overseas listing foreign exchange registrations.

The foreign exchange bureaus in the pilot areas will further develop detailed implementation rules to facilitate the execution of these

policies.

5. The SAFE issued the *Notice of Further Deepening Reform to Promote Cross-Border Trade and Investment Facilitation*

On December 8, 2023, the SAFE issued the *Notice of Further Deepening Reform to Promote Cross-Border Trade and Investment Facilitation* (the “[Notice](#)”). The key highlights of the Notice include: (1) promoting the facilitation of foreign exchange receipts and payments for trade—optimizing foreign exchange administration for market procurement trade, relaxing the netting settlement of processing trade receipts and payments, improving the receipts and payments of funds in cross-border trade under entrustment, facilitating the settlement of foreign exchange funds for domestic institutions' operating leases; (2) expanding capital account facilitation policies—promoting the pilot policies for facilitating cross-border financing nationwide, facilitating the payment and use of funds raised from equity transfer under domestic reinvestment made with foreign direct investment (FDI) and proceeds from overseas listing; (3) optimizing foreign exchange management under the capital account: improving the negative list-based management of the use of receipts under the capital account, canceling the confirmation of the opening of foreign debt accounts at different places. Except for the aforementioned optimization measures related to FDI, which will take effect from June 3, 2024, the rest of the measures will be implemented from the date of the issuance of the Notice.

6. The first publicly offered fund management company controlled by securities companies in Hainan Free Trade Port established in Haikou

On November 24, 2023, Peng An Fund Management Co., Ltd. (“[Peng An FMC](#)”) was granted approval by the CSRC for its establishment. It is registered in Haikou with a registered capital of 100 million yuan. Peng An FMC is wholly owned by Kaiyuan Securities Co., Ltd. (“[Kaiyuan Securities](#)”) and is the first publicly offered fund management company with a securities company background registered in Hainan Province.

Peng An FMC's business scope includes the management of publicly offered securities investment funds, fund sales, private asset management, and other businesses permitted by the CSRC. It is the 71st domestic publicly offered fund company with securities company background. With this development, Hainan has added two publicly offered fund management institutions in consecutive years, with both Peng An FMC and Hui Bai Chuan Fund Management Co., Ltd. establishing their presence in Haikou.

The source of industry news in this article:

- <https://baijiahao.baidu.com/s?id=1786445577794799629&wfr=spider&for=pc>
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