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HAN KUN LAW OFFICES

# Newsletter

China Practice

Global Vision



10th Edition of 2013

## ■ ■ Insights & Ideas

1. HKEx Updates Listing Decision on Contractual Arrangements

## ■ ■ Legal Updates

1. First Chinese Hedge Fund Park Launched in Shanghai's Hongkou District
2. Beijing AIC Simplifies Business Registration Procedures
3. Qianhai Issues Tentative Measures on Record-Filing and Approval of Social Investment Projects

## Insights & Ideas

### **HKEx Updates Listing Decision on Contractual Arrangements (Authors: Huan WANG, Alan LUO)**

In 2005, the Hong Kong Exchanges and Clearing Limited (the “**HKEx**”) issued a listing decision (cited as HKEx-LD43-3, the “**Listing Decision**”) regarding a listing applicant incorporated outside Hong Kong (the “**Applicant**”), which controls an entity that is incorporated inside China (the “**OPCO**”) to run business via contractual arrangements. HKEx should determine whether the Applicant has demonstrated the legality of contractual arrangements and whether it has the ability to ensure the sound and proper operation of the contractual arrangements based on material facts and the PRC legal opinion. If the decision were positive, HKEx should adopt a disclosure-based approach to deal with the application, and so long as appropriate disclosures in terms of contractual arrangements and the risks associated therewith were included, the Applicant as well as its business should be suitable for listing.

In November 2011, HKEx amended the Listing Decision, pursuant to which, in principle, HKEx should accept contractual arrangements on a case-by-case basis when assessing a listing application. If the business covered by the contractual arrangements is not restricted to or prohibited from foreign investment in accordance with applicable PRC laws and regulations, the Listing Division of HKEx should normally refer the case to the Listing Committee of HKEx. Meanwhile, HKEx further requests that (1) the Applicant should disclose the rationale for adopting the contractual arrangements; (2) the Applicant should unwind the contractual arrangements as soon as the law allows the business to be operated without contractual arrangements; and (3) the Applicant should follow a series of provisions to ensure the proper implementation of contractual arrangements.

In August 2012, HKEx amended the Listing Decision, emphasizing the disclosure requirements of contractual arrangements in prospectus, which reflects that HKEx, in the belief that the fundamental risk of the contractual arrangements cannot be eliminated for now, adopted the full disclosure approach as the best option to protect investors.

In November and December 2012, HKEx further amended the Listing Decision, requiring that the contractual arrangements must be disclosed as material contracts and the insurance status of the contractual arrangements is a mandatory disclosure as well.

In November 2013, in consideration of the recent incidents with respect to contractual arrangements and the risks involved, HKEx, again, adopted another amendment (the “**Amendment**”) to the Listing Decision, further limiting the applicable scenario of contractual arrangements, and requiring certain

endorsements from the issuer’s PRC legal counsel. We will interpret the provisions of the Amendment with reference to certain arrangements of Boyaa Interactive International Limited (Stock code: 0434) (“**Boyaa Interactive**”), a newly listed company on HKEx adopting contractual arrangements.

S/N in the Listing Decision	Revised Contents	Note/Interpretation/Solution
16A	<p>Where restricted businesses are involved, the use of contractual arrangements is permitted only to address the foreign ownership restriction, e.g. foreign investors can only operate the restricted businesses under joint ventures with the foreign portion of the total investment and hence shareholding below 50%.</p> <p>For requirements other than the foreign ownership restriction, applicants should demonstrate to the satisfaction of the HKEx that they have, upon advice from their legal counsel, reasonably assessed the requirements under all applicable rules and have taken all reasonable steps to comply with them before listing.</p>	<p>HKEx explicitly clarifies that the use of contractual arrangements is limited to the businesses with certain restriction of the foreign portion of the equity interests; as for the foreign-investment-restricted businesses with no restriction of the foreign portion of the equity interests, the applicant should demonstrate to the HKEx the reasonability of its contractual arrangements with the endorsement of its PRC legal counsel.</p>
18b	<p>The OPCO’s registered shareholders must undertake that, subject to the relevant laws and regulations, they must return to the applicant any consideration they receive in the event that the applicant acquires the OPCO’s shares when unwinding the contractual arrangements. Such undertaking must be disclosed in the listing document.</p>	<p>The OPCO’s registered shareholders to make respective undertakings. Please refer to relevant descriptions on page 85 of Boyaa Interactive’s prospectus.</p>
18A	<p>Where the relevant laws and regulations specifically disallow foreign investors from using any agreements or contractual arrangements to gain control of or operate a foreign restricted business (HKEx specifically refers to the on-line game</p>	<p>The PRC legal counsel issues a PRC legal opinion, supported by appropriate regulatory assurance. Please refer to relevant descriptions on pages 91 to 92 of Boyaa Interactive’s prospectus.</p>

	business in the PRC, which is subject to GAPP's Notice 131 <sup>1</sup> ), the legal counsel' opinion on the contractual arrangements must include a positive confirmation that the use of the contractual arrangements does not constitute a breach of those laws and regulations or that the contractual arrangements will not be deemed invalid or ineffective under those laws and regulations. The legal opinion must be supported by appropriate regulatory assurance, where possible, to demonstrate the legality of the contractual arrangements.	
19j	A separate disclosure of revenue from contractual arrangements ff the applicant generates revenue from other subsidiaries apart from the OPCO.	Disclosure requirement
19k	If the OPCO's operations are in the PRC, a positive confirmation from the PRC legal counsel that the contractual arrangements would not be deemed as "concealing illegal intentions with a lawful form" and void under the PRC contract law.	With full demonstration and comparison of relevant cases, the PRC legal counsel issues a PRC legal opinion. Please refer to relevant descriptions on page 31 of Boyaa Interactive's prospectus.

In consideration of the recent incidents with respect to contractual arrangements and the risks involved (please refer to the legal commentary prepared by Han Kun, *Legal Analysis on Rulings related to VIE Structure* <http://www.hankunlaw.com/backuser/picinfo/2013781184.pdf>), HKEx adopted the Amendment to regulate risks and fully protect the investors' interests, by limiting the applicable scenario of contractual arrangements and requiring certain endorsements from the PRC legal counsel. Given that more and more Chinese companies, including TMT companies, has taken Hong Kong as a desirable listing location, the attitude of the HKEx towards contractual arrangements is worth attention. It is advisable that PRC companies that are considering listing on overseas stock exchanges seek advice from their PRC counsels, before setting up or adjusting contractual arrangements to avoid any unnecessary trouble.

<sup>1</sup>"Notice Regarding the Consistent Implementation of the "Stipulations on 'Three Provisions'" of the State Council and the Relevant Interpretations of the State Commission Office for Public Sector Reform and the Further Strengthening of the Administration of Pre-examination and Approval of Internet Games and the Examination and Approval of Imported Internet Games" (Xin Chu Lian [2009] No. 13) published jointly by PRC General Administration of Press and Publication, National Copyright Administration, and National Office of Combating Pornography and Illegal Publications on 28 September 2009 (as amended from time to time).

## Legal Updates

### 1. First Chinese Hedge Fund Park Launched in Shanghai's Hongkou District (Authors: James WANG, Kelvin GAO, Abby MEI, Julie HUANG)

Riding on the wave of the establishment of China (Shanghai) Pilot Free Trade Zone and the development of an international financial center under the State Council's and Shanghai's strategy, the first hedge fund park – Shanghai Hedge Fund Park, was launched on October 18, 2013 in the north Bund in Shanghai's Hongkou District. The first 12 hedge funds have already settled in. Firms and institutions settled in Shanghai Hedge Fund Park will enjoy a series of preferential supporting policies provided by the municipal and district governments in respect of guidance of funds, an incentive mechanism for talents, financial support, rent, health care, transportation, etc. By analyzing the *Supporting Measures of Hongkou District for Promoting the Development of Shanghai Hedge Fund Park*<sup>2</sup>, which came into effect on November 18, 2013 ("Supporting Measures"), this commentary gives a brief summary of the supporting policies.

#### Supporting Policies' Scope of Application

The Supporting Measures came into effect on November 18, 2013 and will be valid through December 31, 2016. In the hedge fund industry, firms or projects satisfying the conditions under the Supporting Measures and wishing to receive the benefits shall make an application to or negotiate with the relevant district authorities. Only with the approvals from relevant local authorities may the firms or projects become eligible for the benefits of the supporting policies.

The Supporting Measures are only applicable to hedge fund firms, functional institutions and supporting service providers registered at Shanghai Hongkou Administration of Industry & Commerce and Shanghai Hongkou Taxation Bureau (the so-called "dual registration") and satisfying the Park's access conditions<sup>3</sup> with approvals from relevant authorities, and such firms are required to continuously provide services in Hongkou District for at least five years from the grant of supporting benefits. The Supporting Measures adopted a broad definition for 'hedge funds', which covers all types of private investment funds investing in the secondary market, including those placed through trusts and mutual fund management company special accounts or brokerage firm's collective wealth management schemes, i.e., including the current hedge funds, sunshine private investment funds and other new financial investment models. If a private equity fund already dually

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<sup>2</sup> Relevant detailed rules specifying the supporting policies are expected to be released toward the end of 2013.

<sup>3</sup> According to officials at the Hedge Fund Park, any hedge fund dually registered in Hongkou District and investing in the secondary market is eligible to enjoy the supporting policies in accordance with the Supporting Measures; national and Shanghai local regulations shall govern the qualifications and establishment of relevant enterprises and the Park has no other specific "access conditions".

registered in the Hongkou District pursues hedge fund business, it may enjoy supporting policies with reference to the Supporting Measures after approved by the relevant authorities based on the ratio of the revenue from the hedge fund business to the company's total revenues.

In respect of projects, the Supporting Measures provide certain amount of subsidies for significant industrial service projects, exhibitions, research subjects, fairs, exchange meetings, etc.

On the one hand, the Supporting Measures offer a large amount of subsidies to the subject companies. On the other hand, the Supporting Measures impose restrictions on the award of subsidies. For instance, the amount of supports is limited to the subject company's economic contribution to the district (i.e., the part of local tax revenue retained in the Hongkou District) during the support period; subsidies for investment, management fees, housing purchase and rental shall be equally deducted according to the subject company's economic contribution to the district during the support period. The subject company shall not enjoy the advantage of supporting policies granted by governments at different levels duplicatively. In the case of a subject company to which both national and Shanghai's regulations apply, they shall first be awarded the benefits provided by national and Shanghai local regulations. The Supporting Measures shall then apply with respect to any deficiency (if any).

### **Subsidies for Enterprises and Institutions**

The Supporting Measures provide various supports for various enterprises and institutions.

For newly introduced hedge funds, private equity funds and other new financial business, the Hongkou District will provide lump-sum investment rewards of up to 10% of the enterprise's paid-in capital or a lump-sum management subsidy of up to 5% of the management fees for fund raising. The amount of such subsidy shall not exceed RMB 5,000,000 and will be paid in installments.<sup>4</sup>

Functional institutions newly established in Hongkou and verified by Hongkou District Financial Service Office, e.g., various types of associations and organizations, research institutions, trading service agencies, qualification certification agencies, will receive lump-sum rewards according to the levels of the institutions, and the rewards shall not exceed RMB 500,000, RMB 400,000 and RMB 300,000, respectively for institutions classified as international level, national level and provincial level and below.

The Supporting Measures give certain rewards to service entities such as operating enterprises, owners of business buildings or building management companies that introduce hedge funds, sunshine private equity funds and other funds and make contribution to the aggregation of the industry. If the newly attracted enterprise's annual economic contribution to the district is not less

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<sup>4</sup> At present, the specific amount of subsidy and installment plan shall be decided through negotiation with relevant authorities according to the actual situation of the project and enterprise.

than RMB 100,000 since the approval and verification of such enterprise, the service entity will receive a reward equal to 10% of such enterprise's economic contribution to the district. The amount of the abovementioned rewards to an individual service entity shall not exceed RMB 500,000 per year and shall only be available for no more than three years.

### **Housing Purchase and Rental Subsidies**

In order to develop an internationally renowned professional financial industry center, Hongkou District provides enterprises and institutions with housing purchase and rental subsidies according to their specific situations. Subsidized properties shall not be re-rented or sold within five years.

Newly-introduced hedge funds, private equity funds and other new financial business and functional institutions which purchase office premises for self-use in Hongkou District will receive a lump-sum subsidy paid in installments and not exceeding 1.6% of the actual purchase price or RMB 1,000,000 according to the Supporting Measures.

Enterprises and institutions renting offices for self-use in Hongkou District will receive subsidies in accordance with the actual rental area for no more than 3 years. For new financial enterprises, subsidies are equal to 80% of the annual rent if the leased area is smaller than 100 m<sup>2</sup>; 60% of the annual rent if the leased area is between 100 m<sup>2</sup> and 200 m<sup>2</sup> (including 200 m<sup>2</sup>); 50% of the annual rent if the leased area is between 200 m<sup>2</sup> and 500 m<sup>2</sup> (including 500 m<sup>2</sup>); and 30% of the annual rent if the leased area is larger than 500 m<sup>2</sup>. Meanwhile, new financial enterprises have the option to use the office space in the Park provided by the Hongkou government. If an enterprise leases an area no more than 200 m<sup>2</sup> in the office space provided, it need not pay any rent, and it may receive rental subsidies if the leased area is larger than 200 m<sup>2</sup>. For functional institutions, the Hongkou government will provide subsidies up to 30% of the annual rent. Except where enterprises or institutions use the office space provided by the government in the Park, the rental subsidies shall not exceed RMB 1,000,000 per year.

### **Supports for Exhibitions and Research Projects**

Hongkou encourages the organization of events or development of projects such as exhibitions, research subjects, industry exchange and talent exchange related to the hedge fund industry. With the approvals of relevant authorities, these projects will obtain subsidies at various levels.

- a. For a new or rebuilt significant industrial service project, Hongkou government will provide a lump-sum subsidy of up to 20% of the project investment and the maximum amount is RMB 3,000,000.
- b. An influential meeting or exhibition held in Hongkou related to hedge fund industry will get a lump-sum subsidy according to the level of the meeting or exhibition, i.e., an international project, a national project or a provincial project and below. The maximum subsidy for each



level is RMB 1,000,000, RMB 500,000 and RMB 300,000, respectively, and will be paid in installments.

- c. A research project closely related to the development of software environment in Shanghai Hedge Fund Park will receive a lump-sum subsidy according to the level of the project, i.e., an international project, a national project or a provincial project and below. The subsidies for each level are limited to 30%, 25% and 20% of the research fees, respectively, will be paid in installments and shall not exceed RMB 500,000 in any case.
- d. If hedge funds, private funds and other new financial business participate in and exhibit at any fairs, talent exchanges or relevant activities held by the State or Shanghai with the recommendation of Hongkou District Financial Service Office, the Hongkou government will provide them with lump-sum subsidies of up to 50% of stand fees actually incurred and the maximum amount of subsidy is RMB100,000.

### **Incentive Mechanism for Talents**

In order to attract more fund professionals, the Hongkou government will provide senior executives and management personnel (not lower than deputy department head within an enterprise) and core personnel (those who possess a working experience of 3 years in financial industry, other than the senior executives and management personnel) with certain amount of housing allowance and rewards.

A senior executive working in a hedge fund, private equity fund or other new financial enterprise newly attracted to Hongkou will receive a lump-sum housing allowance of RMB 200,000, provided that the enterprise' economic contribution to the district is no less than RMB 2,000,000. Meanwhile, the Hongkou government encourages new financial enterprises to carry out training programs and postgraduate courses. Based on the scale of such financial institution, the Hongkou government will, upon verification and certification, provide the deputy general manager and senior executives holding certain positions in such institution with some rewards in accordance with the economic contribution they made.

Management personnel and more personnel working in financial enterprises and functional institutions newly attracted to Hongkou will be granted talent rewards after a comprehensive assessment. If they reside in the talent apartments designated by the Hongkou District, they will acquire rental subsidies for no more than three years.

With the rapid development of Shanghai as an international financial center, Hongkou District seized the opportunity to establish the first hedge fund park in China, offers various supporting policies to new financial enterprises and institutions in an effort to distinguish itself from other districts in Shanghai, and endeavors to create a favorable ecosystem for hedge funds. The Hongkou government also indicated that the Park will provide as much convenience as Shanghai



Free Trade Zone does in respect of company registration and that if all required documents are complete, it will only take two days to complete the registration process. The preferential supporting policies provided by the Supporting Measures are expected to attract more hedge funds, private equity funds and other enterprises to settle in the Park to take advantage of the favourable environment.

## **2. Beijing AIC Simplifies Business Registration Procedures (Author: Yang CHEN, Lan LI)**

In order to facilitate applicants to apply for business licenses, further reduce procedural costs of enterprises, and build a better business environment for innovation and entrepreneurship, the Beijing Administration of Industry and Commerce ("**Beijing AIC**") issued the *Opinions on Simplifying Business Registration Procedures and Optimizing Access Services* (the "**Opinions**") on October 2013, coming into force on November 11, 2013.

### **Simplify Company Formation Procedures**

#### a) Simplify Name Registration Procedures

The Opinions allow cross-district name pre-registration. Except for names that are subject to the approval of the State Administration of Industry and Commerce (the "**SAIC**"), an applicant may select a branch of Beijing AIC in any district or any county to apply for name pre-registration. Prior to the Opinions, a company is only allowed to apply for name pre-registration with the branch of Beijing AIC where it is supposed to be domiciled.

The Opinions greatly simplify the procedures for name registration. Applicants may apply for name pre-registration by submitting the Application Form of Name Pre-approval and the Power of Attorney issued by any one shareholder (investor). A Power of Attorney issued by all investors is no longer required. The registration authorities do not conduct pre-review on qualifications of investors and premises any more, but will remind applicants of risks regarding application for business licenses.

As to a branch named after its parent company, its name does not have to indicate its industry or use specific administrative division but may include "North China 华北", "North 北方", "South Beijing 京南", "West Beijing 京西", "District 地区", "Area 区域" and similar wording.

#### b) Simplify Registered Capital Registration Procedures

The Opinions no longer requires registered capital to be put into special account. An enterprise can directly go to the bank and transfer its registered capital from the capital verification account to its business account by submitting its business license, and no approval from the registration authorities is required. Shareholders or investors may select any commercial banks to deposit monetary capital. Where shareholders or investors contribute in non-monetary assets, they may carry out the procedures by submitting the capital verification certification issued by a verification

agency and assets appraisal reports are not required any more.

c) Carry out Examination-free System for Unimportant Content of Articles of Association and Partnership Agreement

The Opinions stipulates that with respect to articles of association or partnership agreements, the registration authority will only examine important content such as the enterprise's name, premises, names of investors, amount of registered capital, forms of investment, installment amount, payment term, and will conduct no examination on other content. Shareholders and investors may determine autonomy management issues according to applicable laws and regulations. Registration authorities shall not require enterprises to draft articles of association or partnership agreement(s) in standard formats.

### **Simplify Alteration Registration Procedures**

a) Simplify Application Materials for Alteration Registration

Application forms of alteration registration can be signed by legal representatives or any persons to be appointed as legal representatives without common seal. As to domestic enterprises, related resolutions, decisions and amended articles of association or agreements are not required to be submitted to alter their premises or business scopes.

b) Remove Certain Alteration Registration Procedures

A branch of a domestic enterprise can conduct business beyond the business scope of its parent enterprise upon written consent of its parent enterprise which is not required to expand its business scope under such circumstances any more.

If a joint stock company in the over-the-counter market has already registered for custody with a trustee agency of share registration, it is not required to carry out procedures for alteration registration of shareholders with any registration authorities.

The registration of an enterprise group and the alteration registration of its parent enterprise can be carried out simultaneously. The articles of association and the Application Form of Group Companies of the group company are not required to be submitted. The Registration Certificate of Group Companies and the amended business license of its parent company will be issued together.

### **Further Delegate Examination and Approval Authority**

The appendix 1 of the Opinions, the *Implementing Rules of Beijing AIC on Simplifying Business Registration Procedures and Optimizing Access Service*, explicitly stipulates the types of enterprises that shall be registered with Beijing AIC, officers of Beijing AIC based in local branches of Beijing AIC and local branches of Beijing AIC respectively:

a) The enterprises that shall be registered with Beijing AIC include:

- i. Domestic limited liability companies with registered capital equal to or more than RMB 100million;
  - ii. Joint stock companies;
  - iii. Companies that municipal state-owned assets supervisory authorities perform the contributor's duties and subsidiaries in which the companies hold more than 50% equity interest;
  - iv. Enterprises that conduct business of intermediary agencies for personal entry and exist, registration agents, used motor vehicle brokers, futures brokers, investment funds (excluding fund management companies), credit investigation, maternal and child care, colliery;
  - v. Enterprises that are exclusively engaged in car trade market;
  - vi. Foreign-invested enterprises with registered capital equal to or more than USD 10million;
  - vii. Foreign-invested partnerships and their branches;
  - viii. Group companies;
  - ix. Enterprises that shall be registered with Beijing AIC upon delegation of the SAIC;
  - x. Enterprises that shall be registered with provincial-administration for industry and commerce according to laws, regulations or decisions of the State Council;
  - xi. Enterprises that shall be registered with Beijing AIC according to related regulations.
- b) The enterprises that shall be registered with officers of Beijing AIC based in local branches include:
- i. Foreign-invested enterprises with registered capital less than USD 10 million;
  - ii. Branches of foreign-invested enterprises (excluding branches of foreign-invested partnerships).
- c) Branches of Beijing AIC in various districts or counties shall be in charge of registration of other enterprises except the abovementioned.

Where a domestic limited liability company or a foreign-invested enterprise increases its registered capital to be more than RMB 100 million or decrease its registered capital below UDS 10 million, the registration authority in charge of its establishment shall take care of its change registration matters. Changes in registered capital resulted from corporate restructuring, M&A by foreign investors, or domestic companies transformed from FIEs may follow the above provisions.

## Enhance Approval Efficiency

Beijing AIC branches may shorten the time limit of 5 working days for issuance of business license according to actual situations. Online registration applications may receive responses within 3 working days upon submission. Where an application is revised as requested by a Beijing AIC branch, it shall be handled within 1 working days upon re-submission.

By using information technology measures, Beijing AIC and its branches will provide one-off notifications according to applicants' need. They will simplify and classify the current documents and forms of registration, and provide instructions on how to fill in the application forms. The registration authorities will set up hotlines to answer registration inquiries and arrange courier services for delivering business licenses.

### 3. Qianhai Issues Tentative Measures on Record-Filing and Approval of Social Investment Projects (Authors: Jason WANG, Sheldon CHEN)

On October 22, 2013, Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone Administration Bureau (the "**Qianhai Administration Bureau**") issued the *Tentative Provisions on the Administration of Record-Filing and Approval of Social Investment Projects in Qianhai*, coming into force on November 1, 2013. The validity period of the Tentative Measures shall be five years. The Tentative Measures mainly specifies the classified administration and relevant procedures on record-filing and approving social investment projects in Qianhai.

#### Definition of Social Investment Projects

In accordance with the Tentative Measures, social investment projects refer to fixed assets investment projects invested and constructed in Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone ("**Cooperation Zone**") by domestic enterprises, public institutions, social organizations, non-governmental organizations and foreign-invested enterprises using their own funds or through financing. Here, foreign-invested enterprises refer to enterprises (including Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprises, foreign-invested joint stock companies) registered in the Cooperation Zone and FIEs established by foreign investor in the Cooperation Zone through merging and acquiring domestic enterprises.

The Tentative Measures further stipulates that it does not apply to fixed assets investment projects constructed with financial funds provided by the State, Shenzhen governments at various levels and the Cooperation Zone, policy-related loans of the State, loans from foreign governments and loans from international financial organizations.

## Classified Administration of Social Investment Projects

The Tentative Measures set forth that the Qianhai Administration Bureau is responsible for classified administration of social investment projects in Qianhai.

### a) Projects Subject to Approval Administration

Projects as listed in the *Approval Catalogue of Social Investment Projects of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone* (the “**Approval Catalogue**”, see Appendix I for details) shall be subject to approval administration. The Approval Catalogue covers agriculture, forestry and water conservancy, energy resources, transportation, information industry, urban construction, social undertakings, finance and foreign investment.

It is noteworthy that the Approval Catalogue is classified based on the approval authority levels:

- i. Projects subject to the State’s approval include projects subject to approval of the State Council and the competent investment authority of the State Council (or the competent industry authorities of the State Council). All the projects subject to the State’s approval shall go through the preliminary examination by Qianhai Administration Bureau and then be submitted to the State Council and its relevant departments for approval by Shenzhen Development and Reform Commission (“**SDRC**”);
- ii. Projects subject to the Cooperation Zone’s approval shall be governed by Qianhai Administration Bureau in accordance with the Tentative Measures.

### b) Projects Subject to Record-filing Administration

All the social investment projects not listed in Approval Catalogue are subject to record-filing administration except as otherwise provided by the State’s laws and regulations. The Tentative Measures explicitly set forth that real estate projects shall be subject to record filing.

In addition to situations mentioned under items 2.1 and 2.2 above, cross-Cooperation Zone fixed assets investment projects shall be handled to SDRC in accordance with the relevant provisions.

## Record-Filing and Approval Procedures

### a) Comparison between Procedures of Record-filing and Approval

	Record-filing Procedures	Approval Procedures
<b>Documentation</b>	<ol style="list-style-type: none"><li>1. Application form for social investment projects</li><li>2. Organization code certificate , business license, a statutory letter of attorney</li><li>3. Certification documents on</li></ol>	<ol style="list-style-type: none"><li>1. Application form for social investment projects</li><li>2. The organization code certificate , the business license, a statutory letter of attorney</li><li>3. Project application report compiled by an agency with corresponding engineering consulting qualification</li></ol>

	Record-filing Procedures	Approval Procedures
	capital	<ol style="list-style-type: none"> <li>4. Certification documents on capital (a foreign investment project application shall be accompanied by letter of financing intent, and resolution of the board of directors on capital increase or an acquisition or merger project)</li> <li>5. The financial audit report of the latest period</li> <li>6. A foreign investment project application shall be accompanied by qualification certificate of real estate development and relevant certificate materials relating to land</li> <li>7. Franchise projects, special operations projects, monopoly projects, projects in restrictive industries and projects required allocation of resources under coordination of government shall be accompanied by approval documents or examination opinion of relevant governmental departments</li> </ol>
<b>Examination Principles</b>	<ol style="list-style-type: none"> <li>1. Comply with <i>the</i> State's laws and regulations</li> <li>2. Comply with the <i>Industry Entry Catalogue of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone</i></li> <li>3. Comply with the scope of record-filing administration</li> </ol>	<ol style="list-style-type: none"> <li>1. In compliance with the State's laws , regulations and macro-control policies</li> <li>2. In compliance with the <i>Industry Entry Catalogue of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone</i>, fixed assets investment projects invested by foreign-invested enterprises shall comply with <i>Catalogue of Industries for Guiding Foreign Investment</i> in addition</li> <li>3. In compliance with industry entry standards</li> <li>4. Rationally developing, and utilizing resources</li> <li>5. In compliance with relevant provisions of state capital projects administration and foreign debt administration</li> <li>6. No material adverse effect on economic security and public interests</li> </ol>
<b>Examination Period</b>	Normally within 3 working days after formal acceptance of record filling; under special circumstances, the time limit may be extended by 3 working	Normally within 5 working days after formal acceptance of record filling; under special circumstances, the time limit may be extended by 5 working days upon approval

	Record-filing Procedures	Approval Procedures
	days upon approval	

**b) Effect of Record-filing and Approval**

In accordance with the Tentative Measures, the recordation and approval document will be valid for three years dated as of the issuance date. Where the construction of the project has not been completed within the period of validity, the project applicant shall apply for an extension to the Qianhai Administration Bureau 30 days prior to the expiration of the validity period. The original recordation and approval document shall automatically become invalid if the construction of the project has not been completed or the extension application has been disapproved.

Additionally, with respect to the recorded or approved projects, if there is any change in the project name, investors, proposed construction site, major construction contents, construction scale, main products or the total investment increasing or decreasing by 20% or more compared to the initial investment, then the project applicant shall submit a written application regarding such change to the Qianhai Administration Bureau for change procedure.

**Appendix I:** the Approval Catalogue of Social Investment Projects of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone



## Appendix I

### Approval Catalogue of Social Investment Projects of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone

Category	Projects subject to State's Approval	Projects subject to Cooperation Zone's Approval
<b>Agriculture, Forestry and Water Conservancy</b>	Other water projects excluding reservoir: the projects on international rivers and projects concerning the trans-provincial (or trans-autonomous regional, or across municipalities directly under the central government) allocation and adjustments of water resources that need the coordination of the Central Government	Water projects except for reservoir and the projects subject to the approval of the state(the trans- municipal projects shall be subject to the approval of the competent investment authority of provincial government)
<b>Energy Resources</b>	<p>1. Electric power : power grid projects with 330 kV voltage grade or above</p> <p>2. Petroleum and natural gas: oil pipe networks (excluding oil field collection and transportation pipe networks): projects of trans-provincial (or regional, municipal) trunk line pipe network ; gas pipe networks (excluding oil-gas field collection and transportation pipe networks): Trans-provincial (or trans-autonomous regional, or across municipalities directly under the central government) projects or projects with an annual gas transportation capacity of 0.5 billion cubic meters or above</p>	<p>1. Electric power : power grid projects with less than 330 kV voltage grade, State planned non cross-border and the trans-provincial (or regional, municipal) AC network projects with 500 kV voltage grade</p> <p>2. Petroleum and natural gas : oil pipe networks (excluding oil field collection and transportation pipe networks) : projects that are not subject to the approval of the State(the trans-municipal projects shall be subject to the approval of the competent investment authority of provincial government) ; gas pipe networks (excluding oil-gas field collection and transportation pipe networks): projects with an annual gas transportation capacity of below 0.5 billion cubic meters; oil and gas pipe network: non cross-border projects, trans-provincial (or regional, municipal) projects</p>
<b>Transportation</b>	Highways : projects of national backbones, national highway networks, Trans-provincial (or trans-autonomous regional, or across	Highways: projects that are not subject to the approval of the State(the trans-municipal projects shall be subject to the approval of the competent

	<p>municipalities directly under the central government) projects; independent highway bridges and tunnels: trans-border, trans-gulf, and trans-great-river projects (areas open to navigation)</p>	<p>investment authority of provincial government, the trans-regional projects shall be subject to the approval of the competent investment authority of municipal government); Independent highway bridges and tunnels: projects that are not subject to the approval of the State(the trans- municipal projects shall be subject to the approval of the competent investment authority of provincial government, the trans- regional projects shall be subject to the approval of the competent investment authority of municipal government)</p>
<b>Information Industry</b>	<p>Telecommunications: domestic backbone transmission networks (including broadcast and television networks), international telecommunication transmission circuits, international gateways, international communication facilities for special telecommunication networks, and other telecommunication infrastructure projects involving information security; postal services: International gateways and other postal infrastructure projects involving information security</p>	
<b>Urban Construction</b>	<p>Urban water supply: trans-provincial (or regional, municipal) projects of water diversion with a daily water diverted volume of 500 thousand tons or above; urban roads and bridges: projects of bridges and tunnels that cross great rivers (areas open to navigation) or major gulfs</p>	<p>Urban rapid rail transit: shall be subject to the approval of the State (the trans-regional projects shall be subject to the approval of the competent investment authority of municipal government). Urban water supply: projects that are not subject to the approval of the State (the trans-municipal projects shall be subject to the approval of the competent investment authority of provincial government)</p>
<b>Social Undertakings</b>	<p>Education, health, culture, radio, film and television; recreation: project of large</p>	<p>Tourism: projects of tourism development and resource protection facilities within</p>

	theme parks; other social undertaking projects: projects subject to the approval of the State	the areas of major State places of interest, State natural protection areas, and the important cultural relic protection areas of the State with the total investment of CNY 50 million or above, and projects within the world natural and cultural heritage protection areas with a total investment of CNY 30 million or above
<b>Finance</b>	Projects of paper money printing, coinage and banknote papers	
<b>Foreign Investment</b>	Encouraged or permitted projects with a total investment (including increased capital) of USD 100 million or above as prescribed in the <i>Catalogue of Industries for Guiding Foreign Investment</i> ; restricted projects with a total investment (including increased capital) of USD 50 million or above as prescribed in the <i>Catalogue of Industries for Guiding Foreign Investment</i>	Foreign investment projects except for the projects subject to the approval of the State

Note: real estate projects are subject to record-filing administration.

## **Important Announcement**

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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