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Compulsory Record Filing to Make PE Regulation Free from Chaos

Hot News

Compulsory Record Filing to Make PE[1] Regulation Free from Chaos

Written By Ada Lin, Zero2IPO Research Center

Despite the investment boom in China's equity market in recent years, such problems as chaotic inter-authority coordination and regulation still remain. To regulate the development of domestic equity invest ment market, the National Developm ent and Reform Commission (NDRC) officially issued the *Circular on Further Regulating the* Development *and Record Filing of Equity Investment Enterprises in Pilot Areas* (hereinafter referred to as *the Circular*) on February 14, 2010, changing voluntary record filing to compulsory and intending to regulate PE in full aspects including accredited investors, fundraising forms and information disclosure.

Zdatabase, the most authoritative database in VC and PE field in Greater China, will launch the "NDRC Record-filing Institutions" functional module before long, which will cover more than 450 VC institutions already filed and include information about every filed institution like the date of establishment, record-filing date, managed capital and registration at the industrial & commercial authority concerned. According to the website of the NDRC, the equity investment institutions filed at the NDRC numbered 22, while those filed in Beijing, Shanghai, Jiangsu Province and Zhejiang Province numbered more than 30 respectively. (See Table 1)

At present, domestic regulation over the VC/PE industry is mainly in the charge of such authorities as the NDRC, the Ministry of Commerce (MOC), China Securities Regulatory Commission (CSRC), China Banking Regulatory Commission (CBRC) and China Insurance Regulatory Commission (CIRC) as well as self-disciplined industrial associations set up locally. According to the *Interim Measures for the Administration of VC Investment Firms*, the VC *firms*, the VC firms registered at state or local industrial & commercial administration shall apply to the state or local NDRC for record-filing regulation; The MOC and the State Administration of Foreign Exchange are mainly responsible for the regulation over the foreign-related equity investment funds and management firms; The CSRC, on one hand, exercises regulation over the equity investment firms exited via listing of Chinese companies, and on the other hand, exercises regulation over the business of the companies directly invested by securities companies; The CBRC and CIRC regulate the commercial banks or insurance companies engaged in equity investment businesses pursuant to relevant policies; Industrial associations help members carry out investment businesses by offering guidance and

[1]Note: The PE mentioned in this article refers to the Private Equity Fund in the broad sense that make equity or quasi-equity direct investment in the companies prior to or after IPOs (PIPE), including companies in the seed stage, early stage, expansion stage and late stage.

Table 1 Record-filing Statistics at National and Regional Development & Reform Commissions (Partial)

Authority	No. of Filed GPs	No. of Filed Funds
National Development & Reform Commission	22	-
Beijing Municipal Development & Reform Commission	33	35
Shanghai Municipal Development & Reform Commission	34	34
Tianjin Municipal Development & Reform Commission	20	26
Guangdong Provincial Development & Reform Commission	5	5
Jiangsu Provincial Development & Reform Commission	92	101
Zhejiang Provincial Development & Reform Commission	30	38
Sichuan Provincial Development & Reform Commission	3	3
Chongqing Municipal Development and Reform Commission	4	4
Anhui Provincial Development & Reform Commission	11	11

Source: Zero2IPO Research Center

coordination. (See Table 2)

Every country has been considering the financial system reform and regulation following the financial crisis. The US president signed the Dodd-Frank Act intended for a financial reform not long ago, which included hedge fund and PE (excl. VC) in the scope of regulation; The EU decided to set up one bank and three committees, i.e. additionally establishing European Systematic Financial Risk Management Committee besides the European Central Bank, and launching European Banking Authority, European Securities Authority and European Insurance Authority to regulate systematic risks and industrial risks respectively; The UK is also pondering upon a financial

Table 2 Present Regulation over China's PE Industry

Authority	Regulatory Object	Regulatory Mode	Main Regulatory Content	Laws & Regulations
National Development and Reform Commission	VC/PE Investment Firms	Record Filing Application	1. The VC firms filed at the authority and their management advisory institutions shall submit annual financial reports and business reports audited by CPAs to the authority within four months upon the end of every accounting year, and reported major events during the investment operation process in a timely manner;	*The Interim Measures for the Administration of VC Investment Firms*
			2. The authority shall annually inspect the VC firms and their management advisory institutions within five months upon the end of every accounting year. Irregular inspection into the investment operation can be conducted if necessary. Those not observing relevant provisions shall be ordered to make correction within 30 working days, and in case of failure in correction, the filing shall be canceled and their application for re-filing will not be accepted within three years upon the date of cancelling the filing.	
			3. Locally registered equity investment fund management institutions and locally filed funds shall be regulated by local governmental authorities; But local governmental authorities need to be guided by the NDRC during the regulation process.	
	Industrial Funds	Examining & Approving	-	-
Ministry of Commerce State Administration of Foreign Exchange	Foreign-related Equity Investment Funds and Management Firms	Record Filing	1. When investing in the enterprises of the encouraged or allowed types, foreign-funded VC firms shall be filed at the authorized commercial authorities in the places where the invested enterprises are located.	*Provisions Concerning the Administration of Foreign-funded VC Investment Firms, Circular on Issues Concerning Approval of Foreign-funded VC Firms and VC Management Firms, Foreign Investment Industrial Guidance Catalogue, Document No.10 of the MOC, Document No.142 and No.75 of the State Administration of Foreign Exchange*
			2. When investing in the enterprises of the restricted types, foreign-funded VC firms shall file an application to the provincial-level competent commercial authorities in the places where the invested enterprises are located for filing.	
			3. In case that foreign-funded VC firms invest in the projects that are gradually opened to foreign investment in the service trade field, relevant provisions of the state shall be followed in approval.	
			4. Foreign-funded VC firms shall submit the records about the fund raising and utilization over the previous year to competent approval authority every March for filing.	
			5. In case that, in the registered capital of an enterprise invested by a foreign-funded VC firm, the actual capital contribution by the foreign investor or the capital contribution the foreign investor made jointly with other foreign investors makes up 25.0% of the total or above, the invested enterprise will enjoy relevant preferential treatment for foreign-funded enterprises.	

Source: Zero2IPO Research Center

reform. It can be seen that increasingly tougher financial regulation is a global trend, and China is vigorously exploring ways for intensified VC/PE regulation as well. The Circular released by the NDRC was the first policy specifying regulation over equity investment firms, with the contents including two parts--regulation over development and administration over record filing and involving such aspects as establishment, fundraising, risk control, information disclosure, record-filing procedures, industrial self-discipline and proper regulation. The main breakthroughs are as follows:

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Authority	Regulatory Object	Regulatory Mode	Main Regulatory Content	Laws & Regulations
China Securities Regulatory Commission	Equity investment firms exited via listing of Chinese companies	-	1. VC/PE funds shall be approved by the CSRC when investing in listed companies.	*Securities Law of the People's Republic of China*
			2. VC/PE funds shall be reviewed by the CSRC when exiting via listing.	
	Companies directly invested by securities companies	Examining & Approving	1. The direct investment subsidiaries of securities companies shall submit annual reports to the securities regulatory bureaus in the places where the securities companies are located within four months upon the end of every accounting year, and submit the electronic version of the annual reports through the regulation information system of the authorities. The direct investment subsidiaries of securities companies shall report the significant events arising from their investment process to the securities regulatory bureaus in the places where the securities companies are located.	*Guidance for the Pilot Business of Direct Investment by Securities Companies*
			2. In case of changes in the registered capital, directors, supervisors, senior managerial personnel and members of investment decision-making organs in the direct investment subsidiaries of securities companies, or in case of significant changes in corporate charters and texts of main institutions, the securities companies shall report the changes to the securities regulatory bureaus in the places where they are located for filing.	
China Banking Regulatory Commission	Commercial Banks	-	1. According to the Article 43 under *the Law of The People's Republic of China on Commercial Banks*, commercial banks haven't been allowed to directly invest in the VC/PE funds within the territory of China so far.	*The Law of The People's Republic of China on Commercial Banks, the Circular on Relevant Issues Concerning Further Regulating the Investment Management in Individual Wealth Management Business of Commercial Banks*
			2. According to *the Circular on Relevant Issues Concerning Further Regulating the Investment Management in Individual Wealth Management Business of Commercial Banks* released by the CBRC, individual wealth management products cannot be invested in the equity of unlisted enterprises, but the wealth management plans targeted at high-end customers are not restricted.	

Institutionalized record filing: According to *the Circular*, the VC/PE firms with the scale reaching RMB500M must be filed at the NDRC within the specified period of time after the first phase of funds are put in place, and need to disclose information to the NDRC and submit annual financial reports as well. The NDRC has the right to conduct annual inspection or even on-site inspection into the VC/PE firms; The VC/PE firms not filed within the required period of time will be announced on the website of the NDRC as "equity investment firms with non-compliant operation and managment".

Regulating ways of fundraising: According to *the Circular*, SMS, lectures, seminars and other public fundraising approaches in disguised forms shall not be allowed; Equity investment firms shall not promise fixed returns and the investment fields are only limited to the corporate equity not traded publicly.

Simplifying filing processes: In addition, *the Circular* clearly specified the record filing processes. The equity investment firms that apply for filing shall submit relevant documents to the authorities concerned for preliminary review, and forward the opinions about preliminary review which are given within 20 working days to the NDRC. The NDRC shall announce the filing of the equity investment firms free from opposition during the review on its portal website within 20 working days upon the receipt of the preliminary review opinions and application documents.

Record-filing by foreign-funded PE firms: *The Circular* includes the filing by foreign-funded VC/PE firms, providing

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Authority	Regulatory Object	Regulatory Mode	Main Regulatory Content	Laws & Regulations
China Insurance Regulatory Commission	Insurance Companies	Examining & Approving	1. Insurance companies shall apply to the CIRC for approval when making significant equity investment, and report to the CIRC the equity transfers or exits related to significant equity investment.	*Interim Measures for the Administration of Utilization of Insurance Funds, the Interim Measures for Equity Investment with Insurance Funds, etc.*
			2. When making non-significant equity investment or investing in funds, insurance companies shall report that to the CIRC within five working days upon signing the investment agreement and submit relevant documents as well. The CIRC has the right to order the insurance companies for correction where breach of relevant laws & regulations or these measures during investment process are discovered.	
			3. When investing enterprise equity, insurance companies shall submit quarterly reports and annual reports to the CIRC respectively within 15 working days upon the end of each quarter and prior to every March 31, and attach relevant written documents as well. The annual reports shall specify investment return and distribution, etc., attached with relevant reports audited by professional institutions.	
			4. The investment institutions shall submit annual reports concerning the insurance funds invested in equity investment funds to the CIRC prior to every March 31.	
			5. The custodian institutions shall submit quarterly reports and annual reports concerning the insurance funds invested in enterprise equity and investment funds to the CIRC respectively within 15 working days upon the end of every quarter and prior to every March 31, and attach relevant documents as well.	
Industrial Association	Members of Industrial Association	-	Local self-disciplined VC/PE investment associations help their members carry out investment businesses by offering guidance and coordination.	-

that "in case that the entrusted management institution of an equity investment firm is a foreign-funded one or a joint venture, the assets of the equity investment firm shall be assigned under the mandate of a custodian with legal personality and within the territory of China."

Opinions about the regulation over the VC/PE market vary. From the perspective of investment institutions, proper governmental regulation is expected and regarded as a supplement to market regulation and industrial self-discipline; However, some investment institutions that hope to obtain the status for social security fund investment and thus make themselves more standardized and reputable rush for filing; But as for governments, intensified regulation based on drawing the lessons from foreign financial crisis is inevitable to market growth as domestic VC/PE industry develops rapidly and participants from various parties increase gradually. The launch of the Circular is another big step forward into the regulation over VC/PE institutions and will play a positive role in promoting the fast and sound development of China's VC/PE industry. ■

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2011 China Venture Capital & Private Equity Forum @ Europe will lead you on a fantasy journey in Zurich. One day forum will cover most of the hot topics on investment market in China. There will be more than 30 industries titans share experience with you. Investment issues and opportunities will be discussed in depth.

IDG and DCM Jointly Invest US$10M in Uya100.com

Mar. 3, 2011, Tech.sina.com.cn, Lin Ming

Chen Tenghua, founder of the home textile B2C e-commerce website Uya100.com, revealed that the company has completed its first round of financing totaling US $10M from IDG Capital Partners and DCM.

The funds will go to employees recruitment, category optimization and production development, said Chen Tenghua.

Designed to be an online fashion home life shop, Uya100.com was launched only two months ago and mainly sells such home textiles as beddings and towels of both self-owned brands and other brands.

It is noteworthy that besides serving as a platform for the sales of home textiles of other brands, Uya100.com also launched its own brand Toscaso. Developing self-owned brands is a trend for vertical B2C websites as that can help control manufacturing, cost, quality and channels effectively and bring higher profits as well, Chen Tenghua said.

He added that the company will not run offline real exhibition shops although it has self-owned brands. He considers that the home textile B2C business will see surging sales in the next two to three years and hopes that Uya100.com can become the No. 1 in the home textile B2C field.

Fengze Rubber Receives RMB40M from Hinwill Investment

Mar. 3, 2011, PEdaily.cn

According to a source, Fengze Engineering Rubber Science and Technology Development Co., Ltd. (Fengze Rubber), a company specialized in the production of vibration damping bracket, expansion joints and water stop ties, received RMB40M of equity investment. The funds will be earmarked for

It is learnt that the investment was led by Shanghai Hinwill Investment Co., Ltd. and its subordinate fund Lifu Capital. Hinwill Investment is a Shanghai-based VC institution devoted to the investment in such industries as advanced manufacturing, clean energy and modern agriculture. Since its inception, Hinwill has invested in the companies including Yingli Green Energy Holding Company Limited, Shenzhen Anxin Digital Co., Ltd., Goldcup Electric Apparatus Co., Ltd., Nantong Tongda Silicon Steel Punching Co., Ltd. and Zhongshan Huanya Plastic Packaging Co., Ltd.

Fengze Rubber is located in Hengshui, Hebei