



## Company

### 1. State Council Announces the Interim Regulations on the Public Disclosure of Enterprise Information

国务院公布《企业信息公示暂行条例》(07/08/2014)

On August 7, 2014, the State Council announces the *Interim Regulations on the Public Disclosure of Enterprise Information (the Regulations)*, which becomes effective October 1, 2014.

#### **Establishment of the Public Disclosure of Enterprise Annual Reports and the Enterprise Credit Information Database**

The Regulations establish a system for the public disclosure of enterprise annual reports and the enterprise credit information database, specifying the period within which enterprises' annual reports are required to be submitted, the procedures for the public disclosure of such information, and the information required to be made public within 20 working days after the generation of such information through the enterprise credit information database.

The applicable administration of industry and commerce is required to publish in the enterprise credit information database the following enterprise information: (i) registration and filing information; (ii) chattel mortgage registration information; (iii) equity pledge registration information; (iv) administrative penalty information; and (v) other information to be made publicly available. Other government departments are required to publish the following information generated during the execution of their duties: (i) information on grant, change and renewal of administrative licenses; (ii) administrative penalty information; and (iii) other information to be made publicly available.

Enterprises are required to submit between January 1 and June 30 of each year their annual reports for the preceding year, which are required to include the following information: (i) mailing address, postal code, phone number, email address of the enterprise; (ii) the current status information of the enterprise

such as start and closure of business and liquidation; (iii) information regarding the investment made by the enterprise; (iv) if the enterprise is a limited liability company or company limited by shares, the information on the amount of capital contribution subscribed and paid by its shareholders or promoters, the timing and manner of capital contributions; (v) information on equity change of a shareholder of a limited liability company; (vi) name and URL of the enterprise's website or online store; and (vii) number of employees, total assets, total liabilities, guarantees provided to third parties, total owners' equity, total operating revenues, primary business revenue, total profit, net profit, and total tax amount of the enterprise.

### **Penalty for failure to enforce the Regulations**

The Regulations provide that enterprises failing to disclose their annual reports to the public within the prescribed time limit or that are found to have committed fraud in their disclosure of enterprise information will be listed in the directory of enterprises with abnormal operation, which will be made available to the public through the enterprise credit information database.

In addition, in order to encourage enterprises to rebuild their credit, the Regulations also establish a credit restoration system.

### **Conclusion**

The change in the disclosure of enterprise information is an important part of the reform on business registration system.

- *Interim Regulations on Enterprise Information Publicity*
- 《企业信息公示暂行条例》
- *Issuing authority: the State Council*
- *Date of issuance: August 7, 2014 / Effective date: October 1, 2014*

## **2. SAIC Announces the Interim Measures for the Administration of the Directory of Enterprises with Abnormal Operations**

国家工商总局发布《企业经营异常名录管理暂行办法》(19/08/2014)

On August 19, 2014, the State Administration for Industry and Commerce (the **SAIC**) released the *Interim Measures for the Administration of the Directory of Enterprises with Abnormal Operations* (the **Measures**), which became effective October 1, 2014.

Under the Measures, the relevant local administration for industry and commerce (the **local AIC**) is responsible for managing "the directory of enterprises with abnormal operations" (the **Directory**). The following circumstances will cause an enterprise to be listed in the Directory:

- > Failure to timely submit its annual reports;
- > Failure to timely make public disclosure of relevant enterprise information required to be disclosed;
- > The concealment of facts or otherwise making fraudulent statements in its public disclosure of enterprise information; and/or
- > Failure to be reached by the local AIC at its place of registration or business.

The procedures for the listing and the removal of an enterprise from the Directory are also specified.

The Measures clarify that the local AICs will publicize the Directory through the enterprise credit information database. Enterprises that are listed on the Directory may apply for an administrative review or bring an administration suit to dispute the decisions by the local AIC to place such enterprise on (or not to remove it from) the Directory.

### Conclusion

The *Interim Measures for the Administration of the Directory of Enterprises with Abnormal Operations* is a supplementary law to the *Interim Regulations on the Public Disclosure of Enterprise Information*.

- *The Interim Measures for the Administration of the Directory of Enterprises with Abnormal Operations*
- 《企业经营异常名录管理暂行办法》
- Issuing authority: the State Administration for Industry and Commerce
- Date of issuance: August 19, 2014 / Effective date: October 1, 2014

### 3. The State Council Promulgates the Decision on Cancelling and Adjusting a Batch of Administrative Examination and Approval Items

国务院发布《关于取消和调整一批行政审批项目等事项的决定》(22/07/2014)

#### SAIC Regulates Business Registration Since Matters Subject to Prior Approval are Adjusted to Post-Registration Approval

工商总局发布《关于做好工商登记前置审批事项改为后置审批后的登记注册工作的通知》(19/08/2014)

On July 22, 2014, the State Council promulgated the *Decision of the State Council on Cancelling and Adjusting a Batch of Administrative Examination and Approval Items* (the **Decision**).

The Decision (i) cancelled or delegated 45 administrative examination and approval items, (ii) cancelled 11 occupational qualification licensing and certification items, and (iii) modified 31 items (the **Post-Registration Approval Items**) that were previously subjected to examination and approval before registration at the applicable administration for industry and commerce (**AIC**) to become items that require examination and approval after AIC registration. These 31 items include the following:

- > Certification of the qualification for intermediary service institutions for self-funded overseas students
- > Examination and approval of coal mining
- > Permission for disposal of waste electrical and electronic products
- > Examination and approval of international maritime transportation operations and maritime transport supporting operations
- > Examination and approval of operation of international ship administration business
- > Examination and approval of operation of domestic waterway transport and waterway transport business
- > Permission for port operation
- > Verification and issuance of the license for veterinary drug production

- > Certification of the qualification for tractor driving training schools and driving training classes
- > Verification and issuance of the license for operation of veterinary drugs
- > Verification and issuance of the agricultural machinery maintenance technology qualification certificates
- > Examination and approval of the establishment of China-foreign equity or cooperative joint performance brokerage institutions
- > Examination and approval of the establishment of China-foreign equity or cooperative joint business entities of performance places
- > Examination and approval of the establishment of equity or cooperative joint or solely funded performance brokerage institutions in the mainland by investors from Hong Kong and Macao
- > Examination and approval of the establishment of equity or cooperative joint or solely funded business entities of performance places in the mainland by investors from Hong Kong and Macao
- > Examination and approval of the establishment of equity or cooperative joint performance brokerage institutions in the mainland by investors from Taiwan
- > Examination and approval of the establishment of equity or cooperative joint business entities of performance places in the mainland by investors from Taiwan
- > Examination and approval of the establishment of domestic-funded performance brokerage institutions
- > Examination and approval of China-foreign equity or cooperative joint entertainment places
- > Examination and approval of the establishment of domestic-funded art performance groups
- > Examination and approval of the establishment of domestic-funded entertainment places
- > Examination and approval of the establishment of Internet access service business sites
- > Sanitary licensing of public places (excluding the sanitary licensing of parks, stadiums and public transport carriers)
- > Examination and approval of the establishment of branches by foreign-invested advertising enterprises
- > Verification and issuance of the port sanitary license
- > Permission for inspection and testing of imported and exported commodities
- > Examination and approval of the establishment, alternation of business scope or merger, consolidation and division of a movie distribution unit
- > Examination and approval of the establishment, alternation of business scope or merger, consolidation and division of a movie projection unit
- > Examination and approval of qualification for travel agencies to operate outbound tourism business
- > Business licensing of foreign-invested travel agencies

> Verification and issuance of the business license for a travel agency

In accordance with legal procedures, the State Council will submit a proposal to amend provisions of relevant laws and regulations to the Standing Committee of the National People's Congress.

To support the Decision, on August 19, 2014, the State Administration for Industry and Commerce (the **SAIC**) released the *Circular on Effectively Carrying out the Work of Business Registration since the Matters Subject to Prior Examination and Approval for Registration Were Changed to Post Examination and Approval* (the **Circular**).

Under the Circular, AICs are required to effectively carry out the work of business registration after the adjustment to the examination and approval procedures for the purpose of business registration in an orderly manner, as summarized below.

### **Change in Registration Procedures**

The Circular provides that as the Post-Registration Approval Items are no longer required to be examined and approved prior to business registration, the applicants are no longer required to submit the relevant licenses or certificates issued by the relevant examination and approval authorities.

### **The Registration of Business Scope**

The Circular also specifies that AICs should, in accordance with the articles of association, partnership agreement or applications of an enterprise and with reference to the Industrial Classification for National Economic Activities, register the business scope and indicate such registration under the "business scope" column of the business license.

### **Improve the registration management information systems and the enterprise credit database**

Additionally, the Circular provides that AICs at all levels should timely adjust the catalog for the ex-ante approval items in the registration and management information system and information query system, and ensure the steady operation of such systems. The enterprise credit database should be improved as well and the registered information shall be disclosed timely to the public.

### **Conclusion**

The change in the business registration from ex-ante approval to post-ante approval is an important part of the business-registration-system reform.

- *Decision of the State Council on Cancelling and Adjusting a Batch of Administrative Examination and Approval Items*

- 《国务院关于取消和调整一批行政审批项目等事项的决定》

- Issuing authority: the State Council

- Date of issuance: July 22, 2014 / Effective date: July 22, 2014

- *The Circular on Effectively Carrying out the Work of Business Registration since the Matters Subject to Prior Examination and Approval for Registration Were Changed to Post Examination and Approval*

- 《关于做好工商登记前置审批事项改为后置审批后的登记注册工作的通知》

- Issuing authority: the State Administration for Industry and Commerce

- Date of issuance: August 19, 2014 / Effective date: August 19, 2014

#### 4. SAIC Seeks Comments on the Proposed Amendment to Regulations on Enterprise Business Scope Registration

国家工商总局就修订《企业经营范围登记管理规定》公开征求意见 (12/08/2014)

On August 12, 2014, the State Administration for Industry and Commerce (the SAIC) released for public comments the proposed draft *Administrative Regulations on Enterprises Business Scope Registration (Draft for Comment)* (the **Draft**), which would replace the *Administrative Regulations on Enterprise Business Scope Registration for Enterprises* issued in 2004 (the **2004 Version**). The public comment period ended September 11, 2014.

They key differences between the 2004 version and the Draft include:

- > The classification of business scope items into “operational items subject to approval” and “general operational items” has been eliminated. Instead, in accordance with the reform on the business registration system and the principle of “first license then approval” (instead of “first approval then license”), the Draft makes the distinction between (i) operational items requiring approval prior to business registration (the **Pre-Registration Approval Items**); (ii) operational items requiring approval after business registration (the **Post-Registration Approval Items**); and (iii) other operational items.
- > The Draft provides that with respect to Pre-Registration Approval Items, the relevant enterprise should obtain applicable approval from the relevant government agency prior to business registration with the applicable local administration for industry and commerce (the **local AIC**).
- > With respect to Post-Registration Approval Items, the relevant enterprise should first register with the local AIC and then obtain the applicable approval from the applicable government agency. Once the approval is obtained, the enterprise may commence its operations.
- > The Draft requires enterprises to disclose certain enterprise information (such as information relating to its administrative approvals or any change to such information) to the public via the enterprise credit information database.

#### Conclusion

The Draft proposes to update the 2004 version to include provisions that would implement the larger reform on the business registration system.

- *The Administrative Regulations on Enterprises Business Scope Registration (Draft for Comment)*
- 《企业经营范围登记管理规定》公开征求意见稿
- Issuing authority: the State Administration for Industry and Commerce
- Date of issuance: August 12, 2014 / Public Comment Deadline: September 11, 2014

## 5. SAIC Releases Guidelines on Regulation of Standard Terms of Contract for Online Trading Platforms

国家工商总局发布《网络交易平台合同格式条款规范指引》(30/07/2014)

On July 30, 2014, the State Administration for Industry and Commerce (**SAIC**) released the *Guidelines on the Regulation of Standard Terms of Contract for Online Trading Platforms* (the **Guidelines**), which became effective on the same day.

The Guidelines apply to operators of online trading platforms (the **Operators**) established in the People's Republic of China which enter into electronic standard terms of contract (the **Standard Terms**) with business operators or consumers on such platforms (the **Counterparties**) through the Internet (including the mobile Internet).

The Guidelines set forth certain requirements on the Standard Terms. Key requirements include:

- > The Operators' and the Counterparties' rights and obligations should be specified based on the principles of fairness, openness and good faith;
- > Any revisions to the Standard Terms should be made public and notified to the Counterparties at least seven days in advance;
- > The Standard Terms (or electronic link thereto) should be presented conspicuously on the website homepage;
- > The Standard Terms may not relieve the Operators from or place limitations on certain specified Operator liabilities, such as the liability in connection with causing personal injuries to consumers and the liability to compensate consumers for damages incurred as a result of the Operators' intentional misconduct or gross negligence;
- > The Standard Terms may not impose certain specified liabilities of the Counterparties, such as the liability to pay liquidated damages exceeding reasonable amounts or the liability to bear certain responsibilities that are the legal responsibilities of the Operators, or the liability to perform contractual obligations during an unclear contract term; and
- > The Standard Terms may not eliminate or place limitations on certain specified rights of the Counterparties, such as the right to terminate the contract, the right to take remedial measures for breach, the right to recovery of damages, and the right to sue, apply for arbitration or to take other dispute resolution measures in instances of a contract dispute.

Under the Guidelines, in the event of a dispute over the interpretation of the Standard Terms, the Standard Terms should be interpreted based on general understanding. If there are more than one interpretation, the interpretation adverse to the Operators should govern.

- *Guidelines on Regulation of Standard Terms of Contract for Online Trading Platforms*
- 《网络交易平台合同格式条款规范指引》
- *Issuing Authority: the State Administration for Industry and Commerce*
- *Date of Issuance: July 30, 2014 / Effective Date: July 30, 2014*

## E-Commerce

### 6. China Customs Releases its Announcement on Matters Concerning the Supervision and Administration of Imported and Exported Goods and Articles via Cross-Border E-commerce 海关总署发布《关于跨境贸易电子商务进出境货物、物品有关监管事宜的公告》 (23/07/2014)

On July 23, 2014, the General Administration of Customs (**Customs**) released its *Announcement on Matters Concerning the Supervision and Administration of Imported and Exported Goods and Articles via Cross-Border E-commerce* (Announcement of the General Administration of Customs [2014] No.56) (the **Announcement**), which became effective August 1, 2014.

The Announcement places under the supervision of Customs e-commerce enterprises and individuals that conduct cross-border trading of imported and exported goods and articles (the **E-Commerce Goods and Articles**) via Customs-recognized e-commerce platforms that are connected to the Customs' network. The Announcement also requires operators within the Customs' supervision areas (the **Customs Control Areas**) that store E-Commerce Goods and Articles to file their e-commerce business with Customs and accept the supervision of Customs.

According to the Announcement, the e-commerce enterprises and individuals, payment enterprises, operators in the Customs Control Areas, and logistics enterprises should timely transmit the transaction, payment, warehousing and logistics data to the e-commerce clearance administration platform via the e-commerce clearance service platform.

Customs will conduct clearance administration and logistical control of the E-Commerce Goods and Articles.

#### E-Commerce Clearance Administration

Key components of the clearance administration regarding E-Commerce Goods and Articles under the Announcement include the following:

- > Prior to declaring the E-Commerce Goods and Articles, the e-commerce enterprises and individuals, payment enterprises, and logistics enterprises are required to submit to Customs information relating to the purchase orders, payment and logistics.
- > Within 14 days after the E-Commerce Goods to be imported cross the border, or 24 hours before the E-Commerce Goods to be exported are loaded after arriving at the Customs Control Areas, the e-commerce enterprises (or their agents) should fill out the "Clearance Form of Goods" and handle the Customs' clearance procedures. With respect to E-Commerce Articles, the e-commerce individuals (or their agents) should fill out the "Clearance Form of Articles" and handle Customs' clearance procedures. Generally, the "Clearance Form of Goods" and "Clearance Form of Articles" should be declared through the paperless platform.
- > On a monthly basis, the e-commerce enterprises (or their agents) should summarize their "Clearance Forms of Goods" from the preceding month on the "Declaration Form for Imported and Exported Goods" and submit such form to Customs for declaration.



**E-Commerce Logistics Control**

The Announcement provides that the inspections of E-Commerce Goods and Articles are to be conducted in the Customs Control Areas. In addition, the operators in the Customs Control Areas should manage the E-Commerce Goods and Articles through the e-warehousing management system that such operators have established and submit on a monthly basis information relating to the E-Commerce Goods and Articles entering or exiting the Customs Control Areas in the preceding month to Customs.

- *Announcement on Matters Concerning the Supervision and Administration of Imported and Exported Goods and Articles via Cross-border E-commerce*
- 《关于跨境贸易电子商务进出境货物、物品有关监管事宜的公告》
- *Issuing Authority: the General Administration of Customs*
- *Date of Issuance: July 23, 2014 / Effective Date: August 1, 2014*

## Foreign Direct Investment

### 7. NHFPC and MOFCOM Jointly Release the Circular on Carrying Out the Pilot Program on Establishing Wholly Foreign Owned Hospitals

国家卫生计生委、商务部联合印发《关于开展设立外资独资医院试点工作的通知》  
(25/07/2014)

On July 25, 2014, the National Health and Family Planning Commission (NHFPC) and the Ministry of Commerce (MOFCOM) jointly released the *Circular on Carrying Out the Pilot Program on Establishing Wholly Foreign Owned Hospitals* (Guo Wei Yi Han [2014] No.244) (the **Circular**), which allows foreign investors to establish wholly foreign owned hospitals in Beijing, Tianjin, Shanghai, Jiangsu, Fujian, Guangdong and Hainan by way of new establishment or merger and acquisition, starting July 25, 2014.

The Circular provides that foreign investors applying for the establishment of wholly foreign owned hospitals must have direct or indirect experience in the investment in or the management of health and medical care. Further, the applicant must fulfill one of the following requirements:

- (1) Capability of introducing internationally advanced hospital management principles, management models and services models;
- (2) Capability of introducing internationally leading medical technologies and equipment; and
- (3) Capability of supplementing or improving deficiencies in local medical care services, medical techniques and medical equipment.

Under the Circular, the power to examine and approve the establishment of wholly foreign owned hospitals is delegated to the competent authorities at the provincial level. Foreign investors applying for the establishment of wholly foreign owned hospitals should file their applications with the city-level health and family planning administrative authorities where the wholly foreign owned hospitals are proposed to be established, and after the city-level health and family planning authorities provide their preliminary examination opinions, the applications are then subject to the examination and approval of the health and family planning administrative authorities at the provincial level.

- *Circular on Carrying out the Pilot Program on Establishing Wholly Foreign Owned Hospitals*
- 《关于开展设立外资独资医院试点工作的通知》
- *Issuing Authority: the National Health and Family Planning Commission and the Ministry of Commerce*
- *Date of Issuance: July 25, 2014 / Effective Date: July 25, 2014*

### 8. MOFCOM and SAFE Simplify Record-Filing Procedures for Foreign Investment in Real Estate

商务部、外汇局发布《关于改进外商投资房地产备案工作的通知》(24/06/2014)

The Ministry of Commerce (**MOFCOM**) and the State Administration of Foreign Exchange (**SAFE**) jointly released the *Circular on Improving the Record-Filing for Foreign Investment in Real Estate* (Shang Zi Han [2014] No.340) (the **Circular**) June 24, 2014, which became effective August 1, 2014.

The Circular simplifies the current record-filing procedures for foreign investment in real estate in two ways. First, the records with MOFCOM will now be filed electronically (as opposed to in paper form).

Second, MOFCOM will strengthen its random filing check both during verification and post-verification.

Under the Circular, MOFCOM authorizes commerce authorities at the provincial level (the **Provincial MOFCOM**) to verify the materials submitted by foreign-invested real estate enterprises for record-filing purposes. After the materials are verified, the Provincial MOFCOM should send such materials electronically to MOFCOM via the record-filing system. MOFCOM will then conduct a weekly random check on the submitted records. MOFCOM will make public on its website those projects that have been verified but are not selected for random check as well as projects that pass verification and random check.

In addition, in order to reinforce post-verification supervision, MOFCOM will conduct a random check on projects that have been made public on its website. If it discovers any violation in the verification process, the applicable Provincial MOFCOM and foreign enterprise will be blacklisted, and MOFCOM will conduct more rigorous examinations on future changes of such foreign enterprise.

The above is in contrast to the system prior to the Circular in which after the materials submitted by foreign-invested real estate enterprises for record-filing purposes were verified, the Provincial MOFCOM would submit the Archival Filing Forms of Foreign Investment in Real Estate Industry to MOFCOM. MOFCOM would then randomly select five to 10 enterprises each quarter for further verification.

The Circular also provides that MOFCOM will establish a credit system to increase the level of disclosure on violations, and improve the relevant information sharing mechanism between government agencies. Foreign-invested real estate enterprises and their investors that are found to have committed violations will be listed in a “blacklist” and the information of such enterprises will be timely shared with SAFE and the relevant departments of the State Council.

- *Circular on Improving the Record-Filing for Foreign Investment in Real Estate*
- 《关于改进外商投资房地产备案工作的通知》
- *Issuing Authority: the Ministry of Commerce and the State Administration of Foreign Exchange*
- *Date of Issuance: June 24, 2014 / Effective Date: August 1, 2014*

## 9. Shanghai Announces Regulations on the Shanghai Pilot Free Trade Zone

上海发布中国（上海）自由贸易试验区条例 (01/08/2014)

On July 25, 2014, the Stand Committee of Shanghai People’s Congress published the *Regulations on China (Shanghai) Pilot Free Trade Zone* (the **Regulations**), just before the first anniversary of the debut of the Shanghai Pilot Free Trade Zone (the **FTZ**). The Regulations went into effect August 1, 2014.

The Regulations introduce several reforms and principles that will be implemented in the FTZ, including reforms in the areas of foreign investment, outbound investment, international trade, financial services and foreign exchange.

### Foreign Investment and Outbound Investment

The Regulations state the principle that in the FTZ restrictions on investments (including investor qualification requirements, limitations on foreign shareholding percentage and limitations on business

scope) in the areas including financial, shipping, trading, professional, culture and social services will be suspended, relaxed or eliminated.

Further, the FTZ will implement the “Negative List (负面清单)” model with respect to the supervision of foreign investments. Foreign investments in industries outside of those stated on the Negative List will only be subject to record-filing requirements, instead of being subject to governmental approval.

With respect to outbound investments, the Regulations state the principle that investors in the FTZ may engage in multiple forms of outbound investments, and that in principle outbound investments, will only be subject to record-filing requirements.

### **International Trade**

With respect to international trade, the Regulations provide different levels of regulatory control depending on the areas between which the trade occurs. Trading activities between the FTZ and areas outside of China are referred to as “front-line” trades, and trading activities between the FTZ and other parts of China are referred to as “second-line” trades. The Regulations state the regulatory principle of “opening up for the front-line, safe and efficient control of the second-line and free flow within the FTZ.”

The Regulations also state certain concrete international trade measures to be implemented in the FTZ, including (but not limited to):

- > The establishment of a Customs supervision system based on the status of goods that will be managed based on an electronic network;
- > Paperless clearance with low-risk, high-speed release;
- > The customs declaration procedure can be done after the goods to be imported are shipped into the FTZ; and
- > No time limitation will be imposed on goods under bonded warehousing in the FTZ.

### **Financial Services**

With respect to financial services, the Regulations state the general principle that, under the assumption that the risks are controllable, the FTZ will gradually implement RMB conversion for capital items, the marketization of financial market interest rates, cross-border use of RMB and foreign exchange reforms.

The Regulations provide that a free trade account system will be set up in the FTZ. Residents and non-residents in the FTZ may open free trade accounts. Funds between free trade accounts and between a free trade account and an overseas account can be freely transferred. Cross-border financings and guarantees can be conducted under free trade accounts in accordance with relevant regulations.

The Regulations also provide that the foreign exchange process for cross-border direct investments will be simplified.

### **Other Areas**

In addition to the above, the Regulations have provisions relating to merger control, tax collection, immigration matters and other comprehensive supervision measures to facilitate business in the FTZ. The Regulations also encourage professional service firms, such as accounting firms, law firms and intellectual property agent firms, to develop business opportunities in the FTZ.

- *The Regulations on China (Shanghai) Pilot Free Trade Zone*
- 《中国（上海）自由贸易试验区条例》
- *Issuing authority: the Stand Committee of Shanghai People's Congress*
- *Date of issuance: July 25, 2014 / Effective date: August 1, 2014*

## Foreign Exchange

### 10. SAFE Announces Notice on Several Issues Concerning Reform Pilot Program of Registered Capital Conversion by Foreign Invested Enterprise in Certain Regions

国家外汇管理局发布关于在部分地区开展外商投资企业外汇资本金结汇管理方式改革试点有关问题的通知 (04/08/2014)

On July 4, 2014, the State Administration of Foreign Exchange (**SAFE**) published the *Notice on Several Issues Concerning Reform Pilot Program of Registered Capital Conversion by Foreign Invested Enterprise in Certain Regions* (the **Notice**), which became effective August 4, 2014. The Notice implemented certain reforms in the registered capital conversion system applicable to foreign-invested enterprises (**FIEs**) in the following pilot regions (the **Pilot Regions**):

- > Tianjin Binhai New Area
- > Economy Group of Shenyang
- > Suzhou Industrial Park
- > Donghu National Independent Innovation Demonstration Zone
- > Guangzhou Nansha New Area
- > Hengqin New Area
- > Chengu High-Tech Industrial Development Zone
- > Zhongguancun Science Park
- > Chongqing Liangjiang New Area
- > Border development and opening-up regions in Heilongjiang province in which pilot foreign exchange administration reform is carried out
- > Wenzhou Comprehensive Financial Reform Pilot Area
- > Pingtan Comprehensive Experimental Area
- > China-Malaysia Qinzhou Industrial Park
- > Guiyang Comprehensive Bonded Zone
- > Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone
- > Qingdao Comprehensive Wealth Management and Financial Reform Pilot Area

The Notice replaced the *Notice by Comprehensive Department of State Administration of Foreign Exchange on Practice Concerning Improving the Regulation over Payment and Foreign Exchange Conversion of the Registered Capital of Foreign Invested Enterprises (Circular 142)* and its subsequent circulars with respect to the Pilot Regions.

### Discretionary Conversion

In contrast with Circular 142, the Notice specifies that the FIEs formed in the Pilot Regions may convert their registered capital on a discretionary basis (as opposed to the payment-based system under Circular 142). That is, after the local SAFE confirmed the injection of the registered capital, FIEs may choose to convert such registered capital into RMB for use in its business operations. The Notice provides that 100 percent of registered capital may be converted, but this percentage is subject to adjustment by SAFE.

FIEs electing to convert its registered capital on a discretionary basis are required to open a capital account of “Account Pending for Foreign Exchange Settlement Payment” and the converted RMB is required to be deposited into this capital account.

The Circular also provides FIEs with the option of converting its registered capital into RMB on a payment-based system in accordance with the procedures under Circular 142.

### Usage of Registered Capital and RMB as Converted

Another significant change under the Notice is that FIEs in the pilot regions, subject to certain administrative procedures with SAFE and foreign investment-related regulations, may acquire equity of domestic target companies by way of reinvestment. Additionally the Notice provides that FIEs directly wire transfer their converted registered capital to the bank accounts of their invested companies. However, the Notice provides that the registered capital and the RMB converted therefrom may not be used for the following purposes:

- > Payments that are directly or indirectly outside of the business scope or prohibited by laws;
- > Direct or indirect investment in stocks unless otherwise permitted;
- > Extending RMB entrusted loans (unless within the business scope), repaying inter-corporate loans (including third-party advances), or repaying RMB bank loans that have been sub-lent to third parties; or
- > Purchase of real estate not for self-use (unless the FIE is a foreign-invested real estate enterprise).

Furthermore, FIEs in the Pilot Regions may convert roughly USD 100,000 equivalent as petty cash for daily operation, compared to USD 50,000 outside of the Pilot Regions.

### Due Diligence Obligation on Banks

SAFE has been delegating more powers to banks as part of the recent reforms on foreign exchange conversion system. The Notice contains provisions consistent with this trend by requiring the banks be responsible for performing due diligence when conducting registered capital conversions.

### Conclusion

The Notice is a step forward in the reform of the foreign exchange conversion system by introducing a discretionary-basis conversion system with respect to the conversion of FIEs' registered capital.

- *Notice on Several Issues Concerning Reform Pilot Program of Registered Capital Conversion by Foreign Invested Enterprise in Certain Regions*

- 《国家外汇管理局关于在部分地区开展外商投资企业外汇资本金结汇管理方式改革试点有关问题的通知》

- *Issuing authority: the State Administration of Foreign Exchange*

- *Date of issuance: July 4, 2014 / Effective date: August 4, 2014*

## Tax

### **11. China Promulgates Administrative Measures on Taxpayer Credit (Trial) and Measures Concerning Information Disclosure of Material Tax-Related Misconducts and Violations (Trial)** 国家税务总局发布《纳税信用管理办法（试行）》（01/10/2014） 与《重大税收违法案件信息公开办法（试行）》（01/10/2014）

For the purposes of building up a credit system in China, the State Administration of Taxation issued two measures—*Administrative Measures on Taxpayer Credit (Trial)* (the **Credit Measures**) and *Measures Concerning Information Disclosure of Material Tax-related Misconducts and Violations (Trial)* (the **Disclosure Measures**, and the two measures collectively, the **Measures**.)

#### **Taxpayer Credit Information Collection and Assessment**

The Credit Measures are applicable to all enterprise taxpayers. The State Administration of Taxation and its local branches are responsible for collecting the credit information of each taxpayer on a monthly basis and releasing an annual credit assessment. Taxpayer credit information consists of taxpayer credit history, information internal to tax bureaus and external information from relevant agencies.

With respect to the annual credit assessment, in general for each taxpayer, the local tax bureau will produce a credit score and a credit category (A, B, C and D) generated based on the credit score.

Additionally, under the Disclosure Measures, when tax bureaus prosecute taxpayers for materially violating tax laws, the tax bureau may publicly disclose such violating taxpayers and directly put such taxpayers in the D credit category.

#### **Incentives and Disciplines Based on Credit Categories**

Each year the local tax bureaus may release and disclose the credit assessment results to the public and adjust such assessment results from time to time based on a taxpayer's credit performance.

The local tax bureaus will provide certain incentives to A-rated taxpayers, including the public announcement of A-listed taxpayers and the ability by A-rated taxpayers to obtain three-months use amounts for value added tax invoices.

For taxpayers rated in category D, the local tax bureaus will impose certain disciplines, including the public disclosure of the responsible persons as the taxpayers and the direct imposition of a category D assessment on affiliated entities for which the same persons are responsible. Category D taxpayers may also face obstacles from relevant agencies in the areas of import and export, financing, land acquisition, and permits and license applications.

#### **Conclusion**

The Measures further advance the credit system in China, which will facilitate (among other things) due diligence performed by a company into its potential business partners.

- *Taxation Promulgates Administrative Measures on Taxpayer Credit (Trial)*
- 《纳税信用管理办法（试行）》
- *Issuing authority: the State Administration of Taxation*
- *Date of issuance: July 04, 2014 / Effective date: October 1, 2014*



- *Measures Concerning Information Disclosure of Material Tax-related Misconducts and Violations (Trial)*
- 《重大税收违法案件信息公布办法（试行）》
- *Issuing authority: the State Administration of Taxation*
- *Date of issuance: July 04, 2014 / Effective date: October 1, 2014*

## Labor

### 12. China Supreme Court Clarifies Issues Concerning Hearing Administrative Cases for Disputes Over Work-Related Injury Insurance

最高法院发布《关于审理工伤保险行政案件若干问题的规定》(20/08/2014)

On June 18, 2014, the Supreme People's Court (the **SPC**) promulgated the *Provisions on Several Issues Concerning the Hearing of Administrative Cases for Disputes over Work-related Injury Insurance* (the **Provisions**), which became effective September 1, 2014.

#### Determination of “Work-Related Injuries”

The Provisions clarify the circumstances in which an injury will be deemed to have occurred for work-related reasons, during working hours and within the workplace, during a work-related trip or on the way to or from work.

According to the Provisions, the following circumstances, which are recognized by the administrative department of social insurance (the **Social Insurance Agency**) as injuries “for work-related reasons, during working hours and within the workplace,” should be upheld by the competent people's court:

- (i) the employee is injured at the workplace during working hours, and the employer or the Social Insurance Agency provides no evidence showing the injury is not related to work;
- (ii) the employee is injured when participating in an activity organized by the employer or by another entity designated by the employer;
- (iii) during working hours, the employee is injured due to work-related reasons in the reasonable area when travelling between workplaces relevant to his or her work duties; and
- (iv) other circumstances in which an employee is injured due to performance of his or her work duties in a reasonable area during working hours.

According to the Provisions, the following circumstances fall into the scope of during the period of a business trip:

- (i) the period when the employee engages in activities related to his or her work duties beyond the workplace as directed by the employer or due to work needs;
- (ii) the period when the employee is designated by the employer to travel for training or to attend meetings; and
- (iii) the period when the employee leaves the workplace for other activities due to work needs.

However, during the period of a business trip, if an employee is injured while conducting personal activities irrelevant to his or her work or the training or meeting that he or she has been directed to attend, such injury shall not be recognized as a work-related injury.

According to the Provisions, where a Social Insurance Agency determines that an employee was “on the way to or from work” under any of the following circumstances, such determination should be upheld by a competent people's court:

- (i) the employee was commuting along a reasonable route between his or her workplace and registered residence, habitual residence or the dormitory provided by his or her employer within a reasonable period of time;
- (ii) the employee was commuting along a reasonable route between his or her workplace and the residence of his or her spouse, parents or children within a reasonable period of time;
- (iii) the employee was carrying out activities necessary to meet the needs of his or her daily work and life along a reasonable route on the way to or from work; or
- (iv) the employee was using one of the other reasonable routes on the way to or from work within a reasonable period of time.

#### **Determination Regarding the Decision Made by the Social Insurance Agency Concerning the Work-Related Injuries for a Third Party's Reason**

The Provisions clarify when the employee will be deemed to have been injured for a third party's reason:

- (i) where the employee is injured for a third party's reason, and the Social Insurance Agency decides not to designate such injuries as a work-related injury based on fact that the employee or his or her immediate family has filed a civil lawsuit against or obtain civil compensation from the third party, the people's court should not support such decision;
- (ii) where the employee is injured for a third party's reason and the Social Insurance Agency has recognized the injury as the work-related injury, but the employee or his or her immediate family does not file a civil lawsuit against or obtain civil compensation from the third party, if the employee or his or her immediate family sues the Social Insurance Agency for payment of benefits for work-related injury insurance, the people's court should support such claim; and
- (iii) where the employee is injured for a third party's reason but the Social Insurance Agency refuses to pay the benefits for work-related injury insurance based on the fact that the employee or his or her immediate family have filed a civil lawsuit against the third party, the people's court should not support such refusal (except with respect to the medical costs already paid by the third parties).

- *The Provisions on Several Issues concerning the Hearing of Administrative Cases for Disputes over Work-related Injury Insurance*

- 《关于审理工伤保险行政案件若干问题的规定》

- Issuing authority: Supreme People's Court

- Date of issuance: June 18, 2014 / Effective date: September 1, 2014

## Intellectual Property

### 13. The State Administration for Industry and Commerce Publishes Regulations on Recognition and Protection of Well-Known Trademarks

国家工商总局发布《驰名商标认定和保护规定》(03/08/2014)

On July 3, 2014, the State Administration for Industry and Commerce (the **SAIC**) published the *Regulations on Recognition and Protection of Well-Known Trademark* (the **Regulations**), which became effective August 3, 2014. The Regulations were a response to the increasing number of trademark infringements on renowned brands and trademarks and were aimed at reinforcing the current trademark protection mechanism.

#### Well-Known Trademark and Recognition

The current *Trademark Law* contains provisions relating to the protection of well-known trademarks (the **Well-Known Trademarks**). The Regulations supplement the Trademark Law by further clarifying the recognition and protection of the Well-Known Trademarks.

The Regulations define Well-Known Trademarks as trademarks that are widely known by consumers, manufacturers, distributors, retailers and service providers of the products or services branded with such trademarks (the Well-Known Trademarks). A trademark holder may prove to the trademark bureau that its mark qualifies as a Well-Known Trademark by providing documents relating to trademark registration status, history and geographical regions covered by such trademark, promotion records and advertisement volumes and geographical coverage, as well as sales and market statistics data to support that such trademark is widely used and well acquainted by the public. To qualify as a Well-Known Trademark, a mark does not need to be registered.

A trademark holder may proactively apply to the Trademark Bureau to recognize its marks as a Well-Known Trademark. The Trademark Bureau, the trademark review panel and the applicable administration for industry and commerce (**AIC**) may also initiate recognition of a mark as a Well-Known Trademark during the process of trademark registration or resolving trademark disputes.

#### Well-Known Trademark Protection

The Regulations provide that the AICs should strengthen their protection of the Well-Known Trademarks during their trademark registration and administration work. When a trademark holder applies for Well-Known Trademark protection in the process of trademark registration review, trademark dispute resolution or trademark infringement prosecution, the mark holder may submit records evidencing that the mark was protected previously as a Well-Known Trademark in China.

The holder of a Well-Known Trademark may file claims against any infringer with the municipal AIC for investigation and enforcement to protect its interests in the mark.

#### Conclusion

The Regulations require the AICs to enhance and tighten the protection over Well-Known Trademark in its daily administration and trademark registration.

- *Regulations on Recognition and Protection of Well-Known Trademark*
- 《驰名商标认定与保护规定》
- *Issuing authority: the State Administration for Industry and Commerce*
- *Date of issuance: July 03, 2014 / Effective date: August 03, 2014*

## Food and Drugs

### 14. National Food and Drug Administration Publishes Newly Modified Measures Regarding Medical Devices

国家食品药品监管总局发布《医疗器械注册管理办法》、《体外诊断试剂注册管理办法》、《医疗器械说明书和标签管理规定》、《医疗器械生产监督管理办法》及《医疗器械经营监督管理办法》(30/07/2014)

On July 30, 2014, the National Food and Drug Administration released newly modified *Administrative Measures for the Registration of Medical Devices* (the **Medical Devices Registration Measures**) and four other measures regarding medical devices, including the *Administrative Measures for the In Vitro Diagnostics Registration* (the **IVD Measures**), the *Administrative Measures for the Instructions and Labels of Medical Devices* (the **Instructions and Labels Measures**), the *Measures for the Supervision and Administration of Medical Devices Production* (the **Medical Devices Production Measures**), and the *Measures for the Supervision and Administration of Medical Devices Operation* (the **Medical Devices Operation Measures**). Key changes introduced by these measures are summarized below.

#### Filing and Registration in Accordance with Classifications of Medical Devices

The Medical Devices Registration Measures provide that Class-I Medical Devices should be managed by record-filing, and Class-II and Class-III Medical Devices shall be managed by registration, which is different from the current stipulation that all medical devices should be managed by registration. In accordance with this change, the IVD Measures correspondingly modify the current practice of registration for all IVD devices, a special kind of medical devices, into the record-filing for Class-I IVD devices and registration for Class-II and Class-III IVD devices.

#### Specified Registration (Filing) Procedures

The Medical Devices Registration Measures provide specific requirements to regulate the technical review during the registration procedures. The competent Food and Drug Administration (**FDA**) should forward the application materials to the relevant technical review agency within three working days upon its acceptance of such application. The technical review agency should complete the technical review of an application for the registration of a Class-II or a Class-III medical device within 60 or 90 working days respectively. In addition, during the technical review, if the quality management system verification is considered to be necessary by the FDA, the FDA should finish such verification within 30 working days; however, the time spent on quality management system verification is excluded from the time limitation for the technical review.

#### Supervision Liability of Medical Devices Production/Operation Enterprises

The Medical Devices Production Measures and Medical Devices Operation Measures both introduce specific chapters to regulate the supervision liability of the medical devices' production or operation enterprises:

- > The Medical Devices Production Measures provide that the medical devices' production enterprises should establish a quality management system and keep the effective operations in accordance with relevant administrative rules regarding quality management for production of medical devices.

- > The Medical Devices Operation Measures provide that the medical devices' operation enterprises should establish an operation management system which covers the quality control of the medical devices in the whole process of operation and keep complete records of related procedures in order to guarantee the operation conditions and actions continuously meet the requirements in accordance with relevant administrative rules regarding quality management for operations of medical devices.

### **Stricter Rules on Instructions and Labels of Medical Devices**

The newly modified Instructions and Labels Measures provide stricter rules on the instructions and labels of medical devices.

- > With respect to the instructions of medical devices, the Instructions and Labels Measures require the instructions to include (i) the name, address, contact information and after-sale service entity of the registrant of the medical devices, (ii) the list of accessories, (iii) the explanation of the diagrams, symbols and abbreviations used in the labels, as well as (iv) the edit date or modification date of the instructions.
- > With respect to the labels of medical devices, the Instructions and Labels Measures require the labels to include (i) special storage and operation conditions and instructions, and (ii) the warning symbols or Chinese warning instructions for medical devices that may cause negative environmental influences or may be radioactive.

- *Administrative Measures for the Registration of Medical Devices*

- 《医疗器械注册管理办法》

- Issuing authority: China National Food and Drug Administration

- Date of issuance: July 30, 2014 / Effective date: October 1, 2014

- *Administrative Measures for the In Vitro Diagnostics Registration*

- 《体外诊断试剂注册管理办法》

- Issuing authority: China National Food and Drug Administration

- Date of issuance: July 30, 2014 / Effective date: October 1, 2014

- *Administrative Measures for the Instructions and Labels of Medical Devices*

- 《医疗器械说明书和标签管理规定》

- Issuing authority: China National Food and Drug Administration

- Date of issuance: July 30, 2014 / Effective date: October 1, 2014

- *Measures for the Supervision and Administration of Medical Device Production*

- 《医疗器械生产监督管理办法》

- Issuing authority: China National Food and Drug Administration

- Date of issuance: July 30, 2014 / Effective date: October 1, 2014

- *Measures for the Supervision and Administration of Medical Device Operation*

- 《医疗器械经营监督管理办法》

- Issuing authority: China National Food and Drug Administration

- Date of issuance: July 30, 2014 / Effective date: October 1, 2014

### 15. National Food and Drug Administration Publishes Provisions on the Supervision and Administration of Commissioned Production of Drugs

国家食品药品监管总局发布《药品委托生产监督管理规定》(14/08/2014)

On August 14, 2014, the National Food and Drug Administration (the **National FDA**) published the *Provisions on the Supervision and Administration of Commissioned Production of Drugs* (the **Provisions**), which regulate the application, inspection, permit and supervision of the commissioned production of drugs between domestic drug production enterprises, and became effective October 1, 2014.

Before the Provisions, the commissioned production of drugs was only regulated by the *Measures for the Production of Drugs* (the **Measures**), which are considerably general and simple. The Provisions provide a more specific and detailed system of administration and supervision on the commissioned production of drugs, and the key elements of the Provisions are summarized below.

#### Clarify Definition of Commissioned Production of Drugs

The Provisions provide a clear definition of the commissioned production of drugs, which makes up the deficiency in the Measures. The Provisions define the commissioned production of drugs as the activity of a drug producer (the **Principal**) commissioning another drug producer (the **Agent**) to complete the whole process of production of the Principal's drugs with drug approval numbers under the condition that the Principal is temporarily lacking of production conditions or capability as a result of technical transformation or is temporarily lacking of sufficient production capacity to guarantee the market supply.

#### Unification of Approval Authority

The Measures provide that depending on the different types of the drugs, the approval authorities of the commissioned production of drugs may vary from the National FDA and the FDA at the provincial level. In the Provisions, the approval authority has been unified to the FDA at the provincial level with an exception that narcotics, psychotropic drugs, precursor chemicals and compound preparations thereof for drugs, medical toxic drugs, biological products, multicomponent biochemical drugs, traditional Chinese medicine injection, and bulk pharmaceutical chemicals shall not be produced on a commissioned basis, and the list for drugs that shall not be produced on a commissioned basis may be adjusted by the National FDA according to practical supervision and administration demand.

#### Specify Responsibilities of Both Principal and Agent

The Measures only provide that the Agent assumed the commissioned production of drugs should be a drug producer with the certificate of Good Manufacturing Practice for Drugs, which is consistent with the drugs to be produced on a commissioned basis. However, the Provisions provide that both the Agent and the Principal should be the drug production enterprises with the aforesaid certificate. Moreover, the Provisions provide that the Principal is responsible for obtaining the drug production approval number and the quality of drugs produced on a commissioned basis (including carefully examining the production condition, technical level and quality management competence of the Agent, providing the Agent with technical and quality documents for commissioned production of drugs, confirming that the Agent has the condition and ability for commissioned production, and the approval and acceptance of drugs produced on a commissioned basis), and the Agent shall be responsible for performing the quality agreement, effectively controlling the production process, and guaranteeing the drugs and the production process to meet the requirements of registration and Good Manufacturing Practice for Drugs.



### Detailed Approval Procedures

In addition to the provisions on the time limits for the approval by the competent FDA in the approval procedures, such as the acceptance of application documents, review of the application, and issuance of the permit which have been specified in the Measures, the Provisions further provide detailed procedures of on-site inspection during the review of an applicant's first application for the commissioned production. The Provisions emphasize that the key points of the on-site inspection is to assess the Agent's production condition, technical level, quality management competence, as well as the consistency to the Principal's drug prescription, production process and quality standard.

### Conclusion

The Provisions provide a more specific and complete system of rules to guide the drug production enterprises for the operation of commissioned production of drugs and may manage the commissioned production of drugs more effectively.

- *Provisions on the Supervision and Administration of Commissioned Production of Drugs*
- 《药品委托生产监督管理规定》
- *Issuing authority: China National Food and Drug Administration*
- *Date of issuance: August 14, 2014 / Effective date: October 1, 2014*

## Private Equity Funds

### 16. China Securities Regulatory Committee Publishes Interim Supervision and Administration Regulations on Private Investment Funds

中国证券监督管理委员会发布《私募投资基金监督管理暂行办法》(21/08/2014)

On August 21, 2014, China Securities Regulatory Committee (**CSRC**) promulgated the *Interim Supervision and Administration Regulations on Private Investment Funds* (the **Regulations**), which became effective the same day.

#### Application of the Regulations

The Regulations apply to the investment funds which are established within the territory of the People's Republic of China by raising funds through non-public offering from investors (the **Private Fund**).

The Regulations govern the following activities:

- > the registration, fund-raising and investment operation of the companies and partnerships which are established through a non-public offering and for the purpose of conducting investment activities, and whose assets are managed by the fund managers or general partners; and
- > the Private Fund business of securities companies, fund management companies, futures companies and their subsidiaries (if such business is not otherwise regulated).

#### Registration and Filing Requirements

The Regulations do not impose any administrative examination and approval on the establishment of Private Fund management agencies and issuance of Private Funds, but requires the Private Fund manager to register with the Asset Management Association of China (**AMAC**), a national fund industry self-discipline organization formed and authorized by CSRC. In addition, after the closing of a Private Fund, the fund manager also needs to file necessary documents and information of such Private Fund with AMAC, including, among others, the investment strategy and fund size, private placement memorandum or prospectus, the business license of such Private Fund (if established in the form of company or partnership) and governing agreement.

#### Qualified Investors Only

According to the Regulations, the fund manager can only raise capital from a qualified investor which refers to the entity or individual who invests in a single Private Fund no less than RMB 1 million and meets all criteria as provided under the Regulations with a capacity to identify the risks associated with its investment and to assume such risks (the **Qualified Investor**). Also, when a Qualified Investor attempts to transfer its fund interest, it has to transfer such fund interest to another Qualified Investor.

In addition, the number of Qualified Investors for a single Private Fund is generally limited to a certain number as specified under relevant regulations. When the Private Fund adopts partnership or contractual vehicles in order to pool more investors directly or indirectly, the Regulations require that the fund manager must "look through" in verifying the qualification of the ultimate investors and also in counting the number of Qualified Investors.

**Fund Raising Requirements**

With respect to the target audience and manner adopted by the fund manager for raising the Private Fund, the Regulations require that the fund manager and placement agency are prohibited from raising the fund (i) from any entity or individual other than Qualified Investors, or (ii) in a manner of advertising, marketing or promoting on newspaper, radio, television, Internet and other public media, or in seminar, lecture, phone message, social media and email in order to disseminate to non-specific target entities or individuals.

**Disclosure Obligation**

The fund manager should, in accordance with its agreements with investors, disclose to its investors information with respect to the investment of the fund, assets and liabilities status, allocation of return from investment, fund expenses, conflict of interest as well as other material information that may have impact on the fund interest held by investors.

**Special Provisions on Venture Capital**

The Regulations provide that AMAC may treat venture capital distinctly from other Private Funds in terms of registration and file requirements for the purpose of encouraging the financing activities to unlisted start-up enterprises.

- *Interim Supervision and Administration Regulations on Private Investment Fund*
- 《私募投资基金监督管理暂行办法》
- *Issuing authority: China Securities Regulatory Committee*
- *Date of issuance: August 21, 2014 / Effective date: August 21, 2014*

## Miscellaneous

### 17. China Solicits Comments on the Interim Regulations on Real Estate Registration (Draft for Comments)

国务院法制办就《不动产登记暂行条例（征求意见稿）》公开征求意见 (15/08/2014)

On August 15, 2014, the Legislative Affairs Office of the State Council published the *Interim Regulations on Real Estate Registration (Draft for Comments)* (the **Draft Regulations**) to seek public comments. The Draft Regulations have six chapters and 30 articles, which regulate various aspects of real estate registration, including, without limitation, the subjects for registration, registration authority, real estate registration and registration procedures. The key contents of the Draft Regulations are summarized below.

#### Subjects for Registration

The Draft Regulations define in Article 2 that “**real estate registration**” should refer to the recording of the real estate property ownership and other statutory affairs in the real estate register by the real estate registration authority in accordance with the law, and “**real estate**” should refer to land, sea area and fixtures such as buildings and forests. Article 4 of the Draft Regulations further provides that 10 kinds of real estate rights should be subject to real estate registration: (1) collective land ownership, (2) ownership of constructions and structures (such as buildings), (3) ownership of forests and woods, (4) contracted management right of farmland, forest land and grassland, (5) right to use land for construction, (6) right to use house sites, (7) right to use sea area, (8) easement, (9) mortgage, and (10) other rights of real estate required to be registered according to relevant laws.

#### Registration Authority

The Draft Regulations aim to unify the registration authorities of the real estate rights, and provide in Article 6 that the real estate registration should be made by the real estate registration authority of the people’s government of the county where the real estate is located.

#### Real Estate Register

The Draft Regulations provide in Chapter 2 that the real estate registration authority should establish a unified real estate register in accordance with the requirements of the Department of Land and Resources of the State Council. The real estate register should record the natural conditions (e.g., location, space and usage), ownership conditions (e.g., owner, type, term, change of ownership) and other related matters (e.g., limitation on real estate rights).

#### Registration Procedures

The Draft Regulations provide in Chapter 3 that the party concerned or its agent should submit the required application documents for real estate registration at the location of the registration authority. The registration authority should complete the preliminary examination on the application documents within five working days upon its receipt of such documents, to determine (i) whether such application is within its scope of registration duties; and (ii) whether the application documents are complete and in compliance with the legal form. Once the application is accepted, the registration authority would examine the application documents in accordance with the following requirements: (a) whether the

contents of documents which specify the boundary, space bound and area of the real estate are consistent with the conditions of the real estate subject to registration; (b) whether the proof of origin of ownership and relevant proof materials are consistent with the content applied for registration; (c) whether there is any dispute concerning the ownership of the real estate subject to registration; and (d) whether the application violates any mandatory provisions of laws and administrative regulations. In addition, the registration authority may take on-the-spot inspection of the real estate under specific circumstances. The registration authority should complete the registration procedures within 30 days from the acceptance date of the application. The registration authority would issue an ownership certificate or registration license to the applicant upon completion of registration.

- *Interim Regulations on Real Estate Registration (Draft for Comments)*

- 《不动产登记暂行条例（征求意见稿）》

- *Issuing authority: Legislative Affairs Office of the State Council*

- *Date of issuance: August 15, 2014 / Effective date: N/A*

### 18. China Publishes Interim Provisions on the Administration of the Development of the Public Information Services of Instant Messaging Tools

国家互联网信息办公室发布《即时通信工具公众信息服务发展管理暂行规定》(07/08/14)

On August 7, 2014, the National Internet Information Office published the *Interim Provisions on the Administration of the Development of the Public Information Services of Instant Messaging Tools* (the **Interim Provisions**) in order to further advance the sound and orderly development of instant messaging services, protect the legitimate rights and interests of the citizens and organizations, and safeguard the national security and public interests.

#### Key elements of the Interim Provisions include:

- > The Interim Provisions should apply to the public information services of instant messaging tools carried out within the territory of the People's Republic of China. For the purpose of the Interim Provisions, "**instant messaging tools**" refer to the Internet-based applications that provide instant messaging services to end users, and "**public information services**" refer to the activities of releasing information to the public through public accounts of the instant messaging tools or other means.
- > Any service providers of instant messaging tools who engage in the public information services should obtain the license for provision of Internet news information services.
- > A service provider of instant messaging tools should follow the principle of "a real name backstage, and a freely-chosen name on stage" and require its users to register their accounts with real identity information.
- > The opening of public accounts for public information services by the users of the instant messaging tools should be examined by the service providers of instant messaging tools, and such opening of public accounts should be filed with the competent Internet information authorities by the service providers of instant messaging tools.
- > The public accounts of instant messaging tools opened by (i) news agents, (ii) news websites, or (iii) non-news agents who have obtained a license for provision of Internet news information services may release or reproduce political news. Other public accounts are not allowed to release or reproduce political news.

- *Interim Provisions on the Administration of the Development of the Public Information Services of Instant Messaging Tools*
- 《即时通信工具公众信息服务发展管理暂行规定》
- *Issuing authority: National Internet Information Office*
- *Date of issuance: August 7, 2014 / Effective date: August 7, 2014*

The *Greenberg Traurig China Newsletter* is prepared by GT's [China Practice Group](#). Inquiries regarding this information or about our China Practice may be directed to the following GT attorneys:

**Shanghai Office**

George Qi  
+86 (21) 6391-6633  
[qiq@gtlaw.com](mailto:qiq@gtlaw.com)

Dawn Zhang  
+86 (21) 6391-6633  
[zhangd@gtlaw.com](mailto:zhangd@gtlaw.com)

<b>Albany</b> 518.689.1400	<b>Denver</b> 303.572.6500	<b>New York</b> 212.801.9200	<b>Shanghai</b> +86 21 6391 6633
<b>Amsterdam</b> + 31 20 301 7300	<b>Fort Lauderdale</b> 954.765.0500	<b>Northern Virginia</b> 703.749.1300	<b>Silicon Valley</b> 650.328.8500
<b>Atlanta</b> 678.553.2100	<b>Houston</b> 713.374.3500	<b>Orange County</b> 949.732.6500	<b>Tallahassee</b> 850.222.6891
<b>Austin</b> 512.320.7200	<b>Las Vegas</b> 702.792.3773	<b>Orlando</b> 407.420.1000	<b>Tampa</b> 813.318.5700
<b>Boca Raton</b> 561.955.7600	<b>London*</b> +44 (0)203 349 8700	<b>Philadelphia</b> 215.988.7800	<b>Tel Aviv^</b> +03.636.6000
<b>Boston</b> 617.310.6000	<b>Los Angeles</b> 310.586.7700	<b>Phoenix</b> 602.445.8000	<b>Warsaw~</b> +48 22 690 6100
<b>Chicago</b> 312.456.8400	<b>Mexico City+</b> +52 55 5029.0000	<b>Sacramento</b> 916.442.1111	<b>Washington, D.C.</b> 202.331.3100
<b>Dallas</b> 214.665.3600	<b>Miami</b> 305.579.0500	<b>San Francisco</b> 415.655.1300	<b>Westchester County</b> 914.286.2900
<b>Delaware</b> 302.661.7000	<b>New Jersey</b> 973.360.7900	<b>Seoul∞</b> 82-2-369-1000	<b>West Palm Beach</b> 561.650.7900

*This Greenberg Traurig Newsletter is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2014 Greenberg Traurig, LLP. All rights reserved.*