



# China Regulatory Updates

May 2010

## Connotation of "Han Yi"

- › *Standardization*
- › *Unique player in the PRC legal service market*
- › *Simplicity, but always with a focus on key points and attention to details*

## Our Values

- › *Professionalism*
- › *Cost Efficiency and Effectiveness*
- › *Constant Self-Improvement Towards Perfection*



## Foreign Investment

State Council Releases New Policy Statements to Encourage Foreign Investment

## Securities

Securities Companies and Securities Investment Funds May Participate in Stock Index Futures Transactions

Measures for Onsite Inspection over Listed Companies Amended

Road Map of Sustainable Convergence of ASBE and IFRS Issued

## Energy

Energy Management Companies Gain Government Support

**Shanghai Office**  
Suite 4103, II Grand Gateway  
3 Hongqiao Road  
Shanghai 200030, China  
Tel: (86-21) 6448-5600  
Fax: (86-21) 6448-5611

**Beijing Office**  
Suite C203-5A  
Lufthansa Centre Office Building  
Beijing 100125, China  
Tel: (86-10) 6410-5322  
Fax: (86-10) 6410-5322

## Foreign Investment

### State Council Releases New Policy Statements to Encourage Foreign Investment

On April 13, 2010, the State Council formally released *Several Opinions concerning Further Improving the Work of Utilizing Foreign Capital* (“Opinions”) in an effort to attract more foreign investors. The Opinions contain twenty provisions that cover, among others, approaches to improve the quality and variety of foreign investment, to redeploy certain foreign capital to central and western regions, to streamline the foreign investment regulatory system and to create a healthy investment environment.

Pursuant to the Opinions, local authorities will be granted more power to examine and approve foreign invested projects and procedures for examination and approval will be further simplified. The total investment threshold for foreign invested projects that require the central level approval will be raised from US\$100 million to US\$300 million for projects that fall in the encouraged and permitted sectors in the *Catalogue for the Guidance of Foreign Investment Industries* unless the projects require central level approval in accordance with *Catalogue of Investment Projects Examined and Approved by the State*, which will greatly encourage foreign investors to make large investment. However, the Opinions do not change the total investment threshold for foreign-invested projects in the restricted category that require central level approval, which remains at US\$50 million.

The Opinions explicitly provide that the *Catalogue for the Guidance of Foreign Investment Industries* will undergo another round of amendments and areas open to foreign investors will be expanded. Foreign investors will be encouraged to invest in sectors of high-end manufacturing, hi-tech, modern service, new energy, energy conservation, environment protection and to invest in environment friendly and labor-intensive industries in the central and western regions. Qualified foreign invested companies (“FIEs”) in the eastern regions are encouraged to relocate to the central and western regions and companies in western China may continue enjoying the preferential enterprise income tax treatment.

The Opinions restate and clarify some existing policies, including without limitation, (i) to encourage multinational companies to set up regional headquarters and R&D centers in China; (ii) to encourage foreign investors to participate in the restructuring process of domestic enterprises and A-share listing companies to introduce onshore and offshore strategic investors; (iii) to promote qualified companies to list in the overseas market in accordance with its own development need and national strategy; (iv) to promote the experimental operation of foreign invested guarantee companies for small and medium sized enterprises; (v) to encourage the establishment private equity funds by foreign investors and to perfect their exit mechanism; and (vi) to promote qualified FIEs to publicly issue stocks, enterprise bonds or medium-term notes in the domestic capital market, and steadily allow more foreign participants to issue RMB-denominated bonds in China. As the Opinions only give principal policy statement, it seems that relevant government authorities may further implement regulations to effectuate these policies in the near future.

Some provisions of the Opinions set out specific new measures that will benefit foreign investors immediately, for example, priority to land supply will be given to foreign invested projects of intensive land utilization in the encouraged industries and the base transfer-prices of such land may be reduced up to 70% of the price of the equivalent land stipulated in the *National Standards for the Minimum Transfer Prices of Land for Industrial Purposes*. In addition, formalizing existing practice, the Opinions allow FIEs which legally conduct business but cannot contribute their capital timely for shortage of funds to extend their time limit for capital contribution.

The Opinions represent the government’s fundamental position to continue an open up policy to welcome foreign investors, which will have a significant positive effect on foreign investment. However, we will need to see how this non-binding policy declaration will be effected and reflected in the foreign investment field in practice.

## Securities

### Securities Companies and Securities Investment Funds May Participate in Stock Index Futures Transactions

Recently, China Security Regulatory Commission (“CSRC”) has promulgated *Guidance on Participation of Securities Companies in Stock Index Futures Transaction* (“Guidance I”) and *Guidance on Participation of Securities Investment Funds in Stock Index Futures Transaction* (“Guidance II”), pursuant to which securities companies and securities investment funds are allowed to engage in the transaction of stock index futures. The participation of these two biggest kinds of institutional investors implies the boom of stock index futures. A CSRC official indicates that relevant guidance on QFII’s participation in stock index futures transaction is under drawing and CSRC may coordinate with other competent regulatory departments to promote the participation of insurance funds, social security funds and other institutional investors.

According to Guidance I, the self-support business of securities companies for the purpose of hedging and the securities assets management business (including collective, oriented and limited amount specific assets management business) of securities companies may participate in the stock index futures transaction, while the special-purpose assets management business is excluded. According to Guidance II, stock index futures is available to stock fund, mixed fund and capital preservation fund but not available to bond fund and money market fund. Moreover, Guidance I and Guidance II set up limits on the total futures contract value for different businesses of securities companies and different types of funds.

### Measures for Onsite Inspection over Listed Companies Amended

On April 22, 2010, CSRC published the amended *Measures for Onsite Inspection over Listed Companies* (“Measures”) to strengthen the supervision over listed companies. The Measures extend the onsite inspection scope from listed companies and their affiliated enterprises and institutions to controlling shareholder or actual controller, parties involved in M&A and securities service institutions, etc. According to the Measures, to protect the rights and benefits of

minority shareholders, onsite inspection will focus on (i) compliance of company governance, (ii) regularization of controlling shareholder and actual controller to excise their shareholder rights or controlling power, and (iii) authenticity, accuracy, completeness, timeliness and fairness of information disclosure. The Measures also provide for requirement of the inspectors’ and the inspected entities’ behaviors, procedures for onsite inspection and so on.

### Road Map of Sustainable Convergence of ASBE and IFRS Issued

To drive forward the sustainable convergence of the Chinese Accounting Standards for Business Enterprises (“ASBE”) and the International Financial Reporting Standards (“IFRS”) and to build globally unified accounting standards with high quality, on April 14, 2010, the Ministry of Finance issued the *Road Map of Sustainable Convergence of Chinese Accounting Standards for Business Enterprises and International Financial Reporting Standards* (“Road Map”).

The current ASBE, which is similar to IFRS, has been stably and effectively implemented in listed companies and unlisted large and medium-sized enterprises. Within the interim from 2009 to the end of 2011, Chinese enterprises may directly prepare financial statements in accordance with ASBE while entering into the capital market in the European Union. According to the Road Map, the schedule for amending ASBE will keep in step with

the plan of the International Accounting Standards Committee, and the amendments will be completed by the end of 2011. Then Chinese enterprises may directly prepare financial statements in

accordance with ASBE when being listed abroad, which will greatly reduce the cost of preparing financial statement and audit.

---

### Energy

---

#### Energy Management Companies Gain Government Support

The State Council has recently issued *Opinions on Promoting Energy Management Contract and the Development of Energy Management Industry* ("Energy Opinions"), explicitly emphasizing that the energy management industry will enjoy several preferential financial and tax treatments.

Pursuant to the Energy Opinions, the Chinese government will adopt the following measures, among others, to support the energy management industry: (i) the expenses of energy management contract project will be included in the central

government budget and the funding scope of central specific fund of energy saving and emission reduction and such project will be provided with fund subsidy or premium; (ii) exemption of part of business tax, value added tax and enterprise income tax; and (iii) encouraging energy management companies to conduct M&A and restructuring, and encouraging banks or other financial institutions to provide project financing, factoring or other financial services to such energy management companies.

---

*For further information, please write us at [inquiry@hanyilaw.com](mailto:inquiry@hanyilaw.com).*

*These updates are intended for information purpose only and are not a legal advice or a substitute for legal consultation for any particular case or circumstance. © Han Yi Law Offices All rights reserved.*