



China Regulatory Updates

December 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 Updates Regulations for Registration of PRC Representative Offices of Foreign Enterprises

MOHURD and SAFE Jointly Regulate Housing Purchases by Foreign Entities

SAFE Strengthens Administration of Foreign Exchange to Further Curb Hot Money Inflows

■ SOCIAL INSURANCE

NPC Adopts Social Insurance Law to Cover Expatriates

■ FOREIGN-RELATED DISPUTE RESOLUTION

NPC Clarifies Rules for Foreign-Related Civil Dispute Resolution

Shanghai Office

Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811

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 Updates Regulations for Registration of PRC Representative Offices of Foreign Enterprises

The State Council recently promulgated the *Regulations on the Administration of Registration of Resident Representative Offices of Foreign Enterprises* (the “Regulations”), in a bid to enhance compliance requirements for representative offices of foreign enterprises (“Rep Offices”). The Regulations will come into effect on March 1, 2011 and the *Administrative Measures for Registration of Resident Representative Offices of Foreign Enterprises* (the “Administrative Measures”) promulgated by SAIC in 1983 will be annulled at the same time.

Compared with the Administrative Measures, the Regulations clearly define the non-profitable nature and the business scope of Rep Offices, and further elaborate requirements on the registration, establishment, information change, cancellation of registration and legal responsibilities of representative offices of foreign enterprises (including enterprises from Hong Kong, Macao and Taiwan), among which the following changes deserve more attention:

- (a) Rep Offices are not allowed to engage in any profitable business operations except for those allowed to carry out profitable business according to international treaties or agreements that the PRC government has concluded or acceded to;
- (b) Foreign enterprises must be in existence for at least 2 years before applying to establish a Rep Office; and, in addition to the chief representative, foreign enterprises may appoint 1 to 3 representatives according to business needs; and
- (c) Rep Offices should, at any time from March 1 to June 30 each year, submit an annual report (including information about the lawful existence of foreign enterprises, the business activities carried out by the Rep Offices and their income and expenses audited by an accounting firm and other relevant information) to the competent registration authorities.

MOHURD and SAFE Jointly Regulate Housing Purchases by Foreign Entities

On December 4, 2010, the Ministry of Housing and Urban-Rural Development of the PRC (“MOHURD”) and the State Administration of Foreign Exchange (“SAFE”) jointly issued the *Circular on Further Regulating the Administration of Housing Purchases by Foreign Institutions and Individuals* (the “Circular”), pursuant to which a foreign individual is allowed to purchase only one set of housing for self-residence purpose within the territory of mainland China; and a foreign institution may only purchase non-residential housing for office use in the city where it is registered. The Circular also stipulates that the competent authorities in charge of real estate administration shall examine and verify various documentation and proof when handling the filing of advance sales contracts for commercial housing and the registration of housing property rights. According

to previous regulations, foreign institutions and individuals may purchase commercial housing for self use or self-residence purposes according to their actual needs, which did not set any quantity limit on housing purchases by foreign individuals, or prohibit foreign institutions from purchasing residential real estate for private use.

By issuing this Circular, the PRC government intends to further regulate the real estate market so as to curb housing purchases for speculation or investment purposes on the one hand and curb inflows of hot money on the other hand. The Circular may, to some extent, cause negative impact on overseas real estate investment funds’ activities in the real estate market of mainland China.

SAFE Strengthens Administration of Foreign Exchange to Further Curb

Hot Money Inflows

SAFE has recently issued the *Circular on Issues Concerning Strengthening Administration of Foreign Exchange* (the "Circular"), which further tightens administration of foreign exchange affairs concerning the position of banks' settlement and sale of foreign exchange, online inspection and administration of export receipts and settlement, short-term foreign debt indicators and foreign guarantee balance, capital contributions by foreign investors to FIEs, examination of fund repatriation

by Chinese companies listed overseas, establishment of SPVs by PRC domestic institutions and individuals, as well as penalties for banks in violation of foreign exchange regulations. Specifically, the Circular requires banks to strengthen examination of the authenticity of customer transactions and the consistency of foreign exchange receipts and disbursements so as to guide cross-border capital flow and curb illegal inflows of hot money.

SOCIAL INSURANCE

NPC Adopts Social Insurance Law to Cover Expatriates

The Standing Committee of the National People's Congress ("NPC") has recently adopted the *Social Insurance Law of the People's Republic of China* (the "Law"), which will come into effect on July 1, 2011. It is the first time that China regulates the social insurance system at the national legislation level.

The Law specifies five forms of social insurance, i.e., the basic pension insurance, the basic medical insurance, the work-related injury insurance, the unemployment insurance and the maternity insurance. The Law also provides for issues such as social insurance coverage, social insurance

treatments and conditions to enjoy such treatments, social insurance agencies, supervision of social insurance funds, payment of social insurance premiums, and drawing of social insurance funds, among others. It is noteworthy that expatriates are entitled to the same social insurance benefits as Chinese citizens. However, the Law has not clarified whether all forms of social insurance will be available to expatriates, compulsorily or optionally, or the way for expatriates to obtain the basic pension insurance funds, which are therefore subject to further clarifications by the competent authorities in the future.

FOREIGN-RELATED DISPUTE RESOLUTION

NPC Clarifies Rules for Foreign-Related Civil Dispute Resolution

The NPC has recently issued the *Law of the People's Republic of China on Application of Law for Foreign-Related Civil Relations* (the "Law") to clarify the application of law in foreign-related civil relations, which is not explicitly stipulated in most civil and commercial regulations of the PRC. The Law will come into force on April 1, 2011. It is believed that the Law is in line with the development trend of the contemporary international private law which will facilitate the settlement of foreign-related civil disputes and enhance the protection of the legitimate rights and interests of the parties concerned.

The Law has provided basic principles for the

application of law for foreign-related civil relations and has also stipulated certain specific applicable rules for common foreign-related civil affairs, including, among others, civil subject, marriage and family, inheritance, property rights, creditors' rights and intellectual property rights. Pursuant to the Law, the parties concerned may select by agreement the applicable law for general purpose foreign-related contracts (including assignment and licensed use of intellectual property rights). If no applicable law is selected, the law of the habitual residence of the party whose performance can best reflects the nature and characteristics of the contract or the law with the closest connection with the contract shall apply in most cases. With

respect to the applicable law for international arbitration agreements, the parties concerned may choose by agreement, or, in the event no applicable

law is selected, the law of the arbitration place or of the place where the arbitration institution is located shall apply.

For further information, please write us at 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.