



# China Regulatory Updates

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- › *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*



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## FOREIGN INVESTMENT

### MOFCOM Strengthens Regulation on Foreign Investment in Real Estate Enterprises

The General Office of the PRC Ministry of Commerce (“MOFCOM”) recently issued the *Circular on Strengthening Approval and Filing Administration of Foreign Investment in the Real Estate Sector* (the “Circular”), requiring local MOFCOM offices to strengthen approval and filing administration of foreign investment in real estate projects.

The Circular strengthens regulation mainly on the following aspects: (i) it requires provincial MOFCOM offices to specifically verify the completeness of land documents related to foreign-invested real estate projects (e.g., land use right grant contracts, land use right certificates and other land transaction certificates and documents); and (ii) it requires MOFCOM offices to, jointly with foreign exchange, land/building and other authorities, strengthen supervision on cross-border investment and financing activities and prevention of real estate market risks, including prohibiting foreign capital from making profits through purchase and sale of domestic existing real estate

or construction in progress, granting no approval of investment companies engaging in real estate development and operation business, strictly controlling the establishment of domestic real estate enterprises via round-trip investments, and further strengthening approval regulation and data review on the establishment or capital increase of real estate projects through M&As, equity investments, and etc.

The approval/filing of foreign investment in real estate projects will to some extent become more difficult and time-consuming after the promulgation of the Circular. The Circular, together with the regulations on restricting housing purchase by foreign institutions and individuals promulgated on November 7, 2010 by the PRC Ministry of Housing and Urban-Rural Development and the State Administration of Foreign Exchange, has indicated the authorities’ attitude towards curbing foreign speculative investments in the domestic real estate market and ensuring the effective implementation of real estate regulation and control policies.

### Medical Institutions Further Opening Up to Private Capital

In order to deepen China’s medical system reform and enhance the efficiency and quality of medical services, on November 26, 2010, the PRC National Development and Reform Commission, the Ministry of Health, MOFCOM and several other ministries jointly issued the *Opinions on Further Encouraging and Guiding Social Capital to Establish Medical Institutions* (the “Opinions”), which broadens the scope of social capital to establish medical institutions and improves the practice environment for medical institutions invested by social capital. It is noteworthy that that the Opinions have further relaxed the requirements for foreign investors to establish medical institutions in China:

1. To further relax restrictions on foreign investors to establish medical institutions: (i) foreign investment in medical institutions will fall under the permitted category instead of the current restricted category; (ii) to gradually cancel the 70% foreign shareholding cap in Sino-foreign equity joint venture and Sino-foreign cooperative joint venture medical institutions;

- (iii) to carry out trial establishment of wholly foreign owned medical institutions by qualified foreign investors and gradually put into practice; (iv) foreign investors may establish both profitable and non-profitable medical institutions; and (v) foreign investors are encouraged to establish medical institutions in the middle and western regions of China. Where investors from Hong Kong, Macao and Taiwan establish medical institutions in mainland China, they will enjoy preferential policies according to relevant regulations (e.g., relatively relaxed establishment requirements).

2. To simplify approval process for foreign investors to establish medical institutions: the Opinions provides that the approval authorities for the establishment of Sino-foreign equity joint venture and Sino-foreign cooperative joint venture medical institutions will be delegated from the Ministry of Health and MOFCOM to their respective provincial level counterparts, except that the establishment of wholly foreign

owned medical institutions is still subject to approvals of the Ministry of Health and MOFCOM. The detailed measures for the approval procedures will be promulgated by relevant departments on a separate basis.

It should be noted that the Opinions has only provided principles and stipulations in a general manner. It needs to be further clarified by relevant authorities as to how to implement the above measures, including, among others, the time table for canceling foreign shareholding cap, the specific

requirements and locations for trial establishment of wholly foreign owned medical institutions, the specific measures for encouraging foreign investors to invest in middle and western China and the detailed measures for the approval procedures. After all, the promulgation of the Opinions has indicated China's position and tendency to gradually ease the conditions for foreign investors to establish medical institutions and the relevant measures could be reasonably expected hopefully in the near future.

### FINANCE

#### PBOC Refines Administration on Payment Services of Non-Financial Institutions

In order to facilitate the implementation of the *Administrative Measures for Payment Services by Non-Financial Institutions* (the "Measures") (Please refer to our July 2010 issue of *China Regulatory Updates* for more information) and to further regulate the payment services of non-financial institutions and prevent payment risks, the People's Bank of China ("PBOC") recently issued the *Implementation Details on Administrative Measures for Payment Services by Non-Financial Institutions* (the "Implementation Details"), which provides in further detail the scope of prepaid cards under the Measures, clarifies the qualifications required for the applicant and the major capital contributors and senior management of the applicant, sets forth the

approval procedures for renewing the payment business license and reapplication procedures in case of loss or destruction of the payment business license, and etc. The provisions of the Implementation Details indicate that the regulation on payment services of non-financial institutions will become more executable in practice.

It should be noted that the Implementation Details is silent on the business scope of foreign-invested payment service institutions, qualifications and investment proportions of foreign investors, which means that currently there is no definite and clear legal basis for the establishment of foreign-invested payment institutions.

### INTELLECTUAL PROPERTY

#### National Copyright Administration Regulates Copyright Pledge Registration

The PRC National Copyright Administration ("NCA") recently issued the *Measures for Registration of Copyright Pledge* (the "Measures"), with an aim to provide policy support to the improvement of the registration of copyright pledge and the market-oriented use of copyright. The Measures will come into force on January 1, 2011 and the *Interim Measures for Administration of Registration of Copyright Pledge Agreements* (the "Interim Measures") promulgated on September 23, 1996 will be annulled at the same time.

Compared with the Interim Measures, the Measures, mainly on the basis of the *PRC Property Right Law* and the *PRC Copyright Law*, clarifies that it is the pledge rather than the pledge agreement that is subject to copyright pledge registration. In addition, to facilitate internal administration and public access, the Measures has incorporated provisions on copyright pledge register, which provide that, on one hand, the registration authority (i.e., NCA) will issue a copyright pledge registration certificate to the applicant and, on the other hand, the registration authority will establish a copyright

pledge register to record relevant information of the pledge registration. In case there is discrepancy between the information specified in the registration

certificate and the register, the register shall prevail, unless there is evidence that the information recorded in the register is incorrect.

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