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恒为律师事务所

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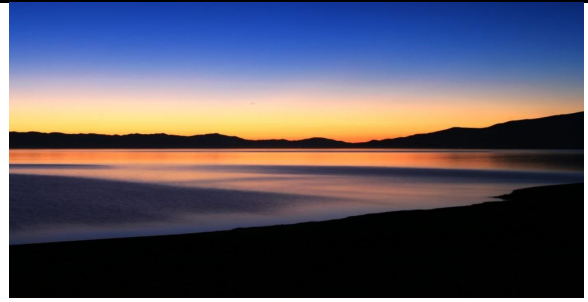
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Series of Company Law Seminar—Construction and Protection of Corporate Intellectual Property System will be hold by us soon



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From the Editor
卷首语

很多人说，现在是一个梦想缺失、心浮气躁的年代。梦想之于我们，似乎已经成为最最奢侈的物品。然而，我却幸运的找到了一群与我有着共同的事业梦想和法律理念的同仁——共同创立一家专业的、具有鲜明特色的商务律师事务所。而更加幸运的是，我们都愿意为了将梦想变成现实而努力着、痛并快乐地工作着！

“恒为”就是我们梦想的起步。经历了将近 10 年的律师执业生涯的起起伏伏，我深深体会到，“坚持”是在律师这个职业道路上走下去的最重要的品质！我们需要时刻提醒自己，坚持对法律的信念，坚持对公正的信仰，更重要是坚持自己的选择和梦想。也就是在这份坚持下，恒为专业期刊的创刊号终于推出了。

我们每个恒为律师，都将“坚持”、“专业”、“创造”、“执行”和“灵活”的原则贯彻到我们的法律服务之中。恒为期刊的出版不但凝聚了我们恒为人的心血和智慧，还是我们朝着创立专业、品牌律师事务所的梦想迈出的坚实的第一步。

随着新一届政府对我国经济体制的进一步深化改革，我国的《公司法》再一次进行了全面的修订。而上海自贸区的设立，更是加速了各项公司制度改革措施的出台。其中，公司注册资本登记制度、企业信息公示制度和外商投资公司注册登记制度的改革更是对原有相关制度的彻底革新。这些新的制度的出台，预示着我国的市场经济更趋于成熟，与国际市场日渐接轨。这样的市场大环境赋予了每一个市场参与主体更大的发展空间和公平竞争的机会。而同时，这些日渐宽松的政策措施的出台，在弱化了政府干预的同时，也要求市场主体更加自律、更加诚信，学会遵循市场规则，尊重法律。本期期刊的专题内容便是立足于帮助企业去解读公司法的各项新政新规，帮助企业更快、更好地适应新的市场规则，以使自身获得更长远的发展。

我们真诚的希望各位读者能够从我们的劳动成果中有所收获，这是我们全体恒为律师创作这个期刊的初衷，也是我们继续“持之以恒、依势而为”的恒为梦想的最佳动力。谢谢大家！

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动态新闻

News Briefs

Corporate Compliance Seminar held on May 23

On May 23 of 2014, Corporate Compliance Seminar — as the first section of series of Company Law Seminars — was hosted by Law View Partners Law Office at Greenland Marriott Hotel. More than thirty managers from all walks of life participated in the event.

In the Seminar, Flora Lu firstly elaborated the definition and necessity of corporate compliance, having made the attendees have a general understanding of compliance. Then, Annie Wang, Founding Partner of the Firm, addressed on how to manage risks of commercial bribery and monopoly so as to achieve compliance in the course of company operations. After that, Managing Partner, Michael Qu, analyzed the topic of compliance management in the corporate merger and acquisition based on his ample experience in corporate practice. At last, Anson Shen elaborated the prevention and control of legal risks from the perspective of employment law.

After the lectures by four lawyers, the attendees raised some questions they have encountered in the corporate compliance, which was then answered and clarified by our lawyers. Later on, we will host seminars on other topics related to corporate investment and management, please stay tuned.

Law View Partners Has Been Engaged as Special Legal Counsel for the Event of Care Show China 2014

As the partner for many years of Care Show China, our firm has been engaged as special legal counsel of Care Show China 2014 recently.

As early entrants as legal professionals in China senior care industry, **Michael Qu** and **Joe Christian**, Managing Partner, and Senior Foreign Lawyer, respectively, will host a pre-conference on August 25th. Their presentation will cover the full spectrum of issues in the development of senior care business, from the establishment of small-scale assisted living facility to investment in rehabilitation hospital, from the starting up cooperative deal in senior housing development to large-scale deal transaction of senior care business. Participants will gain an in-depth and strategic understanding of regulatory reforms, strategic plan of startup senior care business, operational structures and risk requirements behind the various models of elderly care market in China.

We cooperate with Shanghai Bank to Service Elderly Clients

Lately, Shanghai Bank and Law View Partners Law Office have signed Cooperation Agreement of Value-Added Services for Endowment Clients, to officially cooperate on providing legal services for the elderly clients.

During the cooperation of providing value-added services, our firm will participate in a series of public activities with Shanghai Bank. The elderly citizens will have opportunities to participate in the activities organized by Dapu Branch and our Firm merely with Endowment Card issued by Shanghai Bank. In addition, we will provide pro bono services once based on the clients' specific needs, and will give a certain degree of preferential to them on follow-up consulting fees and service fees.

The cooperation highly fits our practicing areas, and will be another brand-new exploration in our senior care services.



我所举办公司合规讲座

2014年5月23日,我所举办的公司法系列讲座第一期在上海绿地万豪酒店顺利举行。本次讲座主题为——“合之有道,规以方圆——公司合规体系的构建”。三十余位来自不同行业的企业管理者出席了此次活动。

在讲座上,陆蕾律师首先就公司合规的定义、必要性等内容进行了阐述,让到场嘉宾对公司合规有了初步的感性认识。之后,本所创始合伙人王妮律师介绍了在公司运营中如何对商业贿赂和垄断进行防范与控制,从而达到合规的效果。而后,本所创始合伙人兼管理合伙人瞿沁律师凭借其在公司并购方面多年的实践经验,向与会者阐述了企业并购中的合规问题及解决方案。最后,沈青律师从劳动法的角度切入,阐述了企业日常经营中最为常见的劳动法律风险及防控。

四位律师演讲环节结束后,到场嘉宾就各自在公司管理中遇到的实际合规问题进行现场提问,律师们详尽地为嘉宾一一进行了解答。今后,本所还将陆续推出与企业投资经营相关的主题讲座,敬请关注。

我所被聘为 2014 Care Show 特邀法律顾问

作为国际养老产业(上海)峰会暨博览会(Care Show China)的历年合作伙伴,我所近期被聘为2014年Care Show的特邀法律顾问。

作为早期就涉足于中国养老行业的律师,本所管理合伙人瞿沁律师、高级外国律师 Joseph Christian 还将于8月25日在上海世博展览会主持2014 care show 专题研讨会并作主题演讲,内容将涵盖养老业务开展过程中全方位的事项:从小规模辅助生活设施的建设到对康复医院的投资、从在养老地产开发合作到养老业务的大规模交易。与会者将获得对中国养老产业法律制度变革、创业期养老业务的战略规划、以及在不同模式下的运营构架、风险管理等方面的深入和战略上的理解。

我所与上海银行就养老事务展开合作

日前,我所与上海银行打浦路支行签订了关于养老客户增值服务的合作协议,正式与上海银行就为老年客户提供法律服务的事项展开合作。

上海银行作为我国银行体系中最具生机和活力的商业银行之一,他们一直致力于成为养老金融服务方面的专家。上海银行打浦路支行更是先后获得了“全国敬老模范单位”、“上海市敬老十佳楷模单位”、“敬老服务示范网点”等荣誉称号。同时作为全国优秀养老事务服务网点,打浦路支行先后已与多家不同行业的服务商建立了合作关系,为其养老金客户提供优惠增值服务,并取得了非常好的反响。此次,我所非常荣幸的成为了与打浦路支行建立合作关系的第一家律师事务所,为其养老金客户提供了接受优质法律服务的机会。作为国内为数不多的专注于养老产业法律事务的律师事务所,本次与上海银行的合作,无疑与我所的业务领域高度契合,这也将是我所在养老特色增值服务领域的又一全新探索。我们相信我所拥有的优秀为老服务法律团队,将为老年人带来便捷、优质的法律服务。

Legal Update

新法速递



1. 《商务部关于开展优化外商投资项目审批公告》

颁布机关：商务部

颁布时间：2014年5月28日

实施时间：2014年5月28日

该公告贯彻了深化行政审批制度改革的精神，规范审批行为，优化审批管理，提高审批效率。

主要内容包括：1)除外商投资直销项目外，依法由商务部审批的外商投资企业设立和变更事项全部列入本次审批试点范围。2)简化试点范围内审批事项的申报程序，取消省级以下商务主管部门转报环节；3)简化申报文件；4)商务部行政事务大厅统一受理申请人申报材料等。

2. 《深化医药卫生体制改革2014年重点工作任务》

制定机关：国务院医改办会同各有关部门

颁布机关：国务院办公厅

颁布时间：2014年5月28日

实施时间：2014年5月28日

该任务把县级公立医院改革作为2014年公立医院改革的重点，深入推进医疗、医保、医药三医联动，巩固完善基本药物制度和基层医疗卫生机构运行新机制，统筹推进相关领域改革的思路，共提出6方面共31项医改工作任务。

主要内容包括：1)加快推动公立医院改革；2)积极推动社会办医；3)扎实推进全民医保体系建设；4)巩固完善基本药物制度和基层运行新机制；5)规范药品流通秩序；6)统筹推进相关改革工作。

3. 《商务部关于改进外资审核管理工作的通知》

颁布机关：商务部

颁布时间：2014年6月17日

实施时间：2014年6月17日

该通知为贯彻《国务院关于注册资本登记制度改革方案的通知》和《国务院关于废止和修改部分行政法规的规定》，落实注册资本登记制度改革，就部分外商投资管理工作提出改进措施。

主要内容包括：1)取消对外商投资（含台、港、澳投资）的公司首次出资比例、货币出资比例和出资期限的限制或规定，2)除法律、行政法规以及国务院决定对特定行业注册资本最低限额另有规定外，取消公司最低注册资本的限制。3)《通知》所列《暂不实行注册资本认缴登记制的行业》的注册资本出资事项，在有关法律、行政法规以及国务院决定未修改前，暂按现行规定执行。4)但就外商投资的出资比例而言，商务部仍然规定公司注册资本和投资总额的比例应符合《关于中外合资经营企业注册资本与投资总额比例的暂行规定》及其他现行有效规定中的相关内容实行。

4. 《非上市公众公司收购管理办法》，《非上市公众公司重大资产重组管理办法》

颁布机关：证监会

发布时间：2014年6月23日

实施时间：2014年7月23日

两个办法突出了股东自治原则和市场化的约束机制，制度设计以市场化为导向，进一步放松管制，强化事中、事后监管，构建有别于交易所市场和上市公司的并购重组制度体系。

主要内容包括：1)非上市公众公司不实施强制全面要约收购制度；2)对自愿要约价格、支付方式、履约保证能力进行适度放宽，给予收购人多种选择；3)简化发行股份购买资产的重大资产重组程序，不设重组委；4)缩短审核期限等等。

5. 《上市公司重大资产重组管理办法(征求意见稿)》

颁布机关：证监会

发布时间：2014年7月11日

该征求意见稿对上市公司重大资产重组进行了全面修订，对并购重组行政许可做了减少和简化，并在强化信息披露、加强事中事后监管、督促中介机构归位尽责、保护投资者等方面作出配套安排，为推进并购重组市场化提供了更好、更完善的制度环境。

主要内容包括：1)大幅取消对上市公司重大购买、出售、置换资产行为审批，对不构成借壳上市的上市公司重大购买、出售、置换资产行为，取消审批；2)改善发行股份购买资产的市场化定价机制，对发行股份的定价增加了定价弹性和调价机制规定；3)完善借壳上市的界定，明确对借壳上市执行与IPO审核等同的要求，遏止规避IPO规定的“绕道上市”；4)进一步丰富并购重组支付工具；5)取消向非关联第三方发行股份购买资产的门槛要求和相应的盈利预测补偿强制性规定；6)丰富要约收购履约保证制度，强化财务顾问责任；7)明确分道制审核制度，加强事中事后监管，督促中介机构归位尽责。



New Measures on Reform of Company Registration System in China 中国公司登记制度的改革新举措

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随着国务院《关于印发注册资本登记制度改革方案的通知》(国发〔2014〕7号文，以下简称“7号文”)的颁布及紧随其后《公司法》相关条款的修订，新的公司登记制度改革工作于2014年3月1日起正式在全国范围开始施行。

根据国家工商行政管理总局近日发布的今年4月份全国市场主体发展报告显示，注册资本登记制度改革的全面实施引发新登记企业数量持续“井喷式”增长，可见改革的“红利”正在释放，尤其是私营企业数量及资本增长强劲。

新修订《公司法》的主要变动在于将公司注册资本实缴登记制改为认缴登记制，取消注册资本最低限额和简化登记事项和登记文件等方面。站在新的改革起点，投资者尤其需要关注和适应中国公司登记制度的变革内容和发展方向。

主要的改革举措

在新修订的《公司法》中处处体现了一个原则，即：宽进严管。具体来讲，实收资本将不再作为公司登记事项，新法对于首次出资20%和注册资本验资都不再作要求，而将更多的权利交给股东通过章程和协议进行自治约定。但7号文同时也明确了部分行业暂不实行注册资本认缴登记制，其中包括证券类公司、基金类公司、信托公司、商业银行、金融租赁公司、金融资产管理公司、保险类公司和劳务派遣公司等。

有观点认为准入机制的放宽会造成大量“皮包公司”的产生，我们认为这可能只是这项改革实施初期面临的短期困境，这项与国际接轨的改革举措将最终实现以完全的市场机制来平衡自治和监管之间的微妙关系，并且将迫使市场主体认识到商业信用的重要性，从而规范和重塑一个诚信的经济市场。事实上我们已经认识到，一方面，改革前，注册资本的大小在很大程度上已经不能代表一家公司真实的资金实力和对外承担民事责任的能力；另一方面，过度倚仗用注册资本来衡量企业的信誉所带来的负面效果也越来越明显。

After promulgation of Notice on Issuance of Reform Plans on Registered Capital Registration System (Guofa<2014>No.7)(the “Notice”) and the subsequent amendments to the relevant clauses of China Company Law, the national enforcement of the reform of the company registration system was officially launched on 1st March 2014.

According to the National Market Entities Development Report for April issued recently by the State Administration for Industry and Commerce, the full implementation of the registered capital registration reform is driving the continuous growth explosion in the amount of newly registered companies. Thus we can see that the “dividend” of the reform is being released, especially in respect of the amount of private companies and the strong growth in capital.

The principal changes of the newly amended China Company Law include e.g. changing the paid-in registered capital regime to a subscribed capital regime, lifting the minimum registered capital requirement and simplifying the registration items and documents. Standing at the new starting point of the reform, investors should particularly pay attention to and adapt to the changes and the direction of the company registration system in China.

有鉴于此，我国政府正试图通过立法来逐步建立和完善一套基于征信体系对公司实施监管的制度。取消年检代之以年报制度正是这次公司法改革跨出的第一步。与之配套的法律规定正在密集出台过程中，这其中包括即将实施的《企业信息公示条例》（2014年7月23日，国务院常务会议已经审议通过了《企业信息公示暂行条例（草案）》）、《企业公示信息抽查办法》、《经营异常名录管理办法》等一系列配套法规。这意味着原本形式化的年检制度被更加透明开放的年报制度取代，公司需要通过公示的方式来向社会反馈自己的经营状况，这一方面对公司的财务管理、制度安排和整体运营提出了更高的要求，另一方面也让社会主体可以凭公示信息自主判断企业的信用和经济实力。

同时，政府也将运用企业信用信息公示系统等手段对企业的信用状况进行评价。在行政许可、资质资格认定、监督管理、政府采购、工程招投标、国有土地出让等工作中，将企业信息作为重要考量因素，对守信主体予以支持和奖励，对被列入严重违法企业名单的企业及其法定代表人或者负责人依法予以限制或者禁入。信用约束机制和信用状况评价体系，从长远来讲，是规范市场主体自律行为、提升市场主体诚信度的长效体制，具有积极的社会意义。

企业征信体系的建立使我国商事登记制度更向发达国家和地区靠拢，企业“一处违法，处处受限”的措施本身并不能杜绝违法行为或“皮包公司”的产生，但是可以为商事交易的相对方提供可参考的信息，让商业信用成为企业“优胜劣汰”立足之本。有鉴于此，从上文提到的几项规定中，我们看到政府将重点放在了发现和载入（登记）失信违法行为，而不仅仅是行政制裁。这些措施包括：各地工商行政管理部门按3%至5%的比例开展企业公示信息抽查；将企业未按规定进行年报、公示信息、或住所（经营场所）无法取得联系等情况载入经营异常情况；将违法超过一定期限的企业列入严重违法企业名单等等。

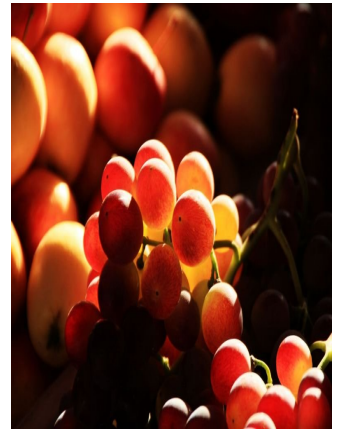
其实，在加强企业登记后续登记监管制度方面，深圳，作为最有可能与香港在商事、贸易规则接轨的城市，在这方面已经有经验可以借鉴。目前，深圳市已经建立起企业信用数据库，将其与深圳市个人信用征信系统和人民银行深圳市中心支行的金融业统一征信系统实现数据交换和共享，今后还将发挥行业协会等社会力量的作用。据报道，推行商事主体经营异常名录制度一年多来，深圳市市场监管局将22253户通过登记的住所或经营场所无法联系的商事主体载入经营异常名录并向社会公示，占全市累计实有商事主体的1.6%。载入经营异常名录的商事主体及相关人员被纳入信用监管体系，在办理相关的登记许可审批、资质认定、银行贷款等业务时受到限制，初步实现“一处违法，处处受限”。

自贸区政策红利的溢出效应

中国上海自由贸易试验区（“自贸区”）自2013年9月29日正式挂牌以来，截至今年6月底已吸引新设企业逾万余家，自贸区很多先试先行的政策将为商事登记制度的改革带来很多宝贵的经验。除了上述提到的注册资本认缴登记制和年度报告公示制是借鉴了自贸区的经验外，针对外商投资的“负面清单”管理模式同样也有非常好的借鉴意义。在负面清单模式下，负面清单以外的外商投资，将按照限制或禁止投资的领域和产业管理办法施行；但在负面清单以外的，则按照内外资一致的原则，把项目的核准制改为备案制。

自贸区的此项规定更符合世界主要国家商事登记制度的惯例，国务院在当初制定自贸区方案时便提出了要将自贸区的外商投资制度与全国的商事登记制度改革相衔接。在这样的趋势下，2014年5月17日，《外商投资项目核准和备案管理办法》（国家发展和改革委员会令12号，以下简称《办法》）终于公布，自2014年6月17日起正式实施。该办法对如何进一步规范外商投资项目核准和备案管理、简化流程、提高效率以及增强透明度等做出了全面规定。《办法》改革了外商投资项目管理方式，将项目全面核准改为有限核准和普遍备案相结合的管理方式。其中，除《外商投资产业指导目录》中有中方控股（含相对控股）要求的鼓励类项目和限制类项目，以及属于《政府核准的投资项目目录（2013年本）》第一至十一项所列的外商投资项目实行核准制外，其余外商投资项目均实行备案制。《办法》的出台，标志着在准入管理上，我国逐渐对外商投资给予国民待遇；而从准入管理的程序和要求上，《办法》则进一步加强了与《政府核准投资项目管理办法》（国家发展改革委令11号）的衔接，外商投资项目核准管理在申报材料、核准条件及程序等方面的要求与内资项目也基本一致。

另外，《办法》对外商投资项目核准、备案的条件也进行了大量简化，不再对项目的市场前景、经济效益和产品技术方案等应有企业自主决策的内容进行审查，注重让市场发挥配置资源的决定性作用，赋予企业投资自主权，努力提高外商投资便利化水平。



值得一提的是，在上海，黄浦区的区域版“负面清单”已经先行出台，而核心商务区静安区的区域规定也呼之欲出。据悉，黄浦区主要针对金融服务业、专业服务业、商贸流通业、文化创意业、航运物流和休闲旅游业等第三产业实施“负面清单”的管理模式，通过对部分行业审批流程简化试点，逐步推行“形式审查”的审批流程，提高区域内企业设立审批的速度。类似黄浦区这样的“负面清单”会对投资者选择公司注册所在地产生深远的影响。

“宽进严管”对外商投资的影响

鉴于目前新《公司法》刚刚完成修订，一系列工商登记措施尚面临过渡性的安排，尤其对外商投资者而言，由于“三资企业法”在除自贸区以外的其他地方仍然有效，其中与新《公司法》和商事登记制度不一致的地方仍有待进一步修改和完善。

而在公司内部层面，在公司登记制度改革的大背景下，股东之间对于公司章程或合资、合作协议内容的有效约定将变得格外重要。有关这方面的内容，尚有很多地方有待相关部门尽快出台具体的政策和解释。例如：虽然新法取消了注册资本实缴及注册资本最低限额，但在外资项目审批制度尚未完全取消的环境下，外资项目的可行性研究能够在多大程度上体现股东之间对出资额、认缴期限约定的合理性？某种程度上来讲，尽管“一元钱注册公司”已成可能，但对于通过跨境资本流动实现对外投资的国外投资者而言，与项目投资相匹配的注册资本和投资总额仍然是其首要考虑的公司设立要素之一。

上海浦东新区在2014年3月底发布了外商投资“一口受理”新政，将准入审批制变为告知承诺制，实质审查变为形式审查，将外资项目设立和变更批准时间缩短为2个工作日，同时实现外资批准文件、营业执照、组织机构代码证、税务登记证、食品前置许可“五证联办”，浦东市场监管局开设“一口受理”窗口。可以预见，上海地方实施的针对外商投资的一系列便利和“友好”的新政将在全国起到示范作用，为外商投资企业相关法律法规进一步改革积累经验。

在本文行将结束时，我们看到商务部出台了《取消外商投资公司首次出资比例和最低注册资本限制》的配套规定，但我们相信这只是商务部主导的外资管理领域变革的开始，随着新一届政府落实促进市场公平竞争、维护市场正常秩序措施的进一步落实，我国公司登记制度改革也会进一步在内外资领域全面推进。投资者需要保持对此持续的关注，才有机会在日益激烈的市场竞争环境中立于不败之地。

Principal Reform Measures

The newly amended China Company Law reflects in all respects the principle of easy entry and strict supervision. Specifically, the actual paid-in registered capital will no longer be required to be registered, the requirements of the first capital contribution, i.e. 20% and registered capital verification have been removed, and shareholders will be granted more rights to run their companies according to the articles of association and the shareholders agreement. However the Notice also provides that the subscribed capital regime does not apply to some industries for the time being, including securities companies, fund companies, trust companies, commercial banks, financing leasing companies, financial assets management companies, insurance companies and labour dispatch companies.

One of the opinions is that relaxation of the entry regime will result in registration of many bubble companies. We however take it that such result may only be a temporary dilemma at the initial stage of the reform. Such reform measures, aligning with the international practice, will eventually cause the sensitive relationship between self-management and supervision to be monitored by the market regime and force the market entities to realize the importance of commercial credibility, which will then regulate and rebuild a trustworthy economic market. As a matter of fact, it has already been noticed that, on one hand, the amount of the registered capital, in many respects, cannot represent the true financial strength of a company or its capacity to take civil responsibilities before the reform. On the other hand, the adverse effect resulting from evaluation of the credibility of a company overly depending on its registered capital has become more obvious.

In view of the above, the government is attempting to gradually build and improve, by legislation, a company supervision system based on the credit reporting system. The first step of the reform of China Company Law is to replace the annual inspection system by the annual reporting system. The government is in the process of issuing the relevant laws and regulations, including e.g. the Regulation on Publicity of Enterprise Information, Measures on Random Check on Publicized Enterprise Information and Measures on Management of List of Abnormal Operations, which indicates that the formalized annual inspection system will be replaced by the annual reporting system with more openness and transparency. Further, companies will have to publicize the information on its operation conditions, which on one hand will raise a higher requirement on the financial management, arrangement of policies and overall operation of companies, and on the other hand will enable the public to evaluate the credibility and financial strength of companies by the publicized information.





In addition, the government will also evaluate the credibility of companies by the enterprise credibility information publicity system. Such enterprise information will be considered as the major factor in issue of administrative permits, recognition of qualifications, supervision management, governing procurement, project bidding and grant of state-owned land use right. Support and award will be provided to the trustworthy entities. However, the companies within the list of the enterprises with serious offences and their legal representatives or responsible persons will be restricted or prohibited from market participation. The credibility binding mechanism and the credibility evaluation system, in the long run, will become a long-term mechanism of social significance to regulate the self-regulatory activities of market entities and promote their credibility.

The development of enterprise credit reporting system will further enable the business registration system to align with the practice of the developed countries and areas. The measure of “one offence leading to restrictions everywhere” may not prohibit offences or bubble companies. However such system may provide reference information to the parties of business deals and the credibility will become the foundation of the principle of “Survival of Fittest”. In light of the above, we can see from the aforesaid regulations that other than the administrative penalties, the government will also focus on discovery and record (registration) of bad faith and offences. The measures include, e.g. the local administration for industry and commerce will conduct random check on 3% - 5% of the enterprise publicized information, failure to conduct the required annual reporting or publicize the relevant information or no contact in the registered address (business place) will be recorded as abnormal operations, and the enterprises with uncorrected offence for a certain period time will be stated in the list of enterprises with serious offences.

As a matter of fact, Shenzhen, as the city that is most likely to align with Hong Kong in respect of commerce and trading rules, has provided experience for reference regarding enhancement of post-registration supervision system. Currently Shenzhen has set up the data base for enterprise credibility, which can exchange and share information with Shenzhen Individual Credit Reporting System and the Banking Industry United Credit Reporting System of People's Bank Shenzhen Branch. Such data base will also play the role of industry association in future. It was reported that after over one year's implementation of the list of abnormal operations, 22,253 market entities that cannot be reached by their registered addresses or business places have been recorded under the list of abnormal operations and provided to the public by Shenzhen Market Supervision Bureau, which takes 1.6% of the total market entities in Shenzhen. The market entities and the relevant persons under the list of abnormal operations will be recorded into the credit supervision system and restrictions will be imposed in case of e.g. approval of registration, recognition of qualifications and grant of bank loans. Thus the purpose of “one offence leading to restrictions everywhere” has been initially realized.

Overflow Effect of the “Dividend” of the Policies in the Free Trade Zone

More than 10,000 companies (statistics until end of this June) have been set up in China (Shanghai) Pilot Free Trade Zone (“Free Trade Zone”) since its launch on 29th September 2013. Many pilot policies in the Free Trade Zone have provided valuable experience for the reform of business registration system. Apart from the aforesaid subscribed registered capital registration system and the annual reporting system which are borrowed from the experience of the Free Trade Zone, the management model of “Negative List” for foreign investment can also be taken as a valuable reference.

Under the model of Negative List, the foreign investment falling within the scope of the Negative List will be subject to the management measures applying to the areas and industries restricted or prohibited from foreign investment; Otherwise same treatment will be provided to the domestic investment and foreign investment, i.e. approval will be replaced by recordal for establishment of companies.

Such policies in the Free Trade Zone are more in line with the practice of the business registration systems in major countries in the world. The State Council indicated that the foreign investment registration system in the Free trade Zone should be connected to the reform of the national registration system when the Free Trade Zone proposal was formulated. Under such circumstances, Measures on Management of Approval and Recordal of Foreign Investment Projects (National Development and Reform Committee Order No. 12)("Measures") was finally issued and enforced on 17th June 2014. The Measures provide a comprehensive guideline for further regulating the management of approval and recordal of foreign investment, simplifying procedures and improving efficiency and transparency. Reform of the management style of foreign investment projects has been provided under the Measures, under which the overall approval regime has been replaced by a combination of limited approval and general recordal. Other than the encouraged industries where the Chinese party is required to be the controlling shareholder (including relative controlling) and the restricted industries under the Guideline Catalogue for Foreign Investment Industries and the foreign investment items subject to approval under Item 1 to Item 11 of Catalogue of Investment Subject to Government Approval (v2013), all the foreign investment projects will only be subject to recordal. Promulgation of the Measures indicates that China will gradually provide national treatment to foreign investment in respect of entry management. The Measures further align with the Measures on Management of Investment subject to Government Approval (National Development and Reform Committee Order No. 11), i.e. the requirements on the application documents, approval conditions and procedures of foreign investment will be generally same as those for domestic projects. Furthermore, the Measures have also greatly simplified the conditions for approval and recordal of foreign investment projects. The requirement on review of the market prospect, economic benefits and product technologies which should be decided by companies has been lifted. The market will play a decisive role in resource allocation. Companies will be given a free hand in investment. Thus efforts will be taken to provide more convenience to foreign investment.

What worth mentioning is in Shanghai, the district "Negative List" of Huangpu District has been first issued and the district policy of the CBD of Jinan District is also ready to be issued. It is understood that the Negative List of Huangpu District principally applies to the tertiary industry e.g. financial services, professional services, commerce and trade industry, cultural and creative services, transportation and logistics services. The approval procedures will be simplified in some pilot industries, and then formality examination will be implemented step by step to speed up the approval process for company establishment within the district. District "Negative List" like this will have profound impact to investors in their decision-making of choosing registration domain.



Impact on Foreign Investment by "Easy Entry and Strict Supervision"

As the amendment of China Company Law has just been completed, transitional arrangement will have to be made for registration with the industry and commerce administration. For foreign investors in particular, as the "Laws on Foreign Invested Companies" is still effective outside the Free Trade Zone, of which the clauses inconsistent with the new Company Law and the business registration system are still subject to further amendments and improvement.

However, at the internal level of a company, under the reform of company registration system, the valid agreement between the shareholders on the articles of association or the shareholders agreement on equity or cooperative joint venture will become exceptionally important. We are still waiting for the detailed policies and explanations from the relevant authorities in this respect. For instance, the new law has lifted the requirement on the paid-in registered capital and the minimum registered capital. However, the requirement on approval of foreign investment has not been removed completely, therefore, how can the feasibility study report of a foreign investment project justify the agreement between the shareholders on the amount of capital contribution and the timeframe thereof? To some extent, though "1RMB Company" is already a possible option, the amount of the registered capital and the total investment in line with the scale of the investment is still one of the primary criteria to be considered for company establishment by foreign investors who will make investments with cross-border capital flow.

The new policy of "One Window All Services" was announced by Shanghai Pudong New District at the end of March 2014, under which the entry approval system has been changed to the notification and undertaking system, material examination has been replaced by formality examination, and the official time required for establishment and change of a foreign investment project has been shortened to 2 working days. In addition, the five licenses, i.e. approval, business license, organization code certificate, tax registration certificate and pre-registration food permit will be processed jointly. Pudong Market Supervision Bureau has set up a window for "One Window All Services".

It can be foreseen that the convenience and friendly new policies implemented in Shanghai for foreign investment will set an example in this respect in China, gathering valuable experience for further reform of the relevant laws and regulations regarding foreign investment.



At the closing of this article, we find the Ministry of Commerce ("MOFCOM") has issued a Notice of Eliminating Requirement of First Paid-in Capital and Minimum Registered Capital for Foreign-invested Enterprises. We believe this is just the beginning of new wave of regulatory reform to the foreign investment regime which is under the jurisdiction of MOFCOM. Coupled with the deepening of a series of measures driving by the central government in respect to promoting fair competition and maintaining regular market activities, more registration reform measures on both domestic and foreign investment will be seen. It is therefore advisable for every investor to keep abreast of all updates in this respect to survive in the competitive marketplace.

医疗健康

Health Care

2014年2月12日，国务院常务会议审议通过了《医疗器械监督管理条例》（下文简称“《条例》”）的修订案，并于6月1日起实施。这是自2000年旧版《条例》实施14年以来的首次修订。近年来，中国医疗器械行业的市场规模扩张迅猛，根据相关报告预测，到2015年，中国将成为仅次于美国的世界第二大医疗器械消费市场。不过，整个医疗器械业仍然面临着小、散、乱等诸多问题。新版《条例》的及时颁布显得尤为必要。

相较于旧版《条例》，新版《条例》关于医疗器械产品的监管更全面、详细和国际化。具体说来，主要有以下几个亮点：

产品的分级管理

我国医疗器械种类多、跨度大，各种产品风险差异大。而旧版《条例》分类管理制度不够完善，有些措施没有体现分类的差异性，对高风险产品监管不够，对一些低风险产品监管该放开的没有放开。针对这一问题，新修订的《条例》明确规定，对医疗器械按照风险程度实行分类管理，按风险从低到高将医疗器械相应分为一、二、三类，并根据医疗器械生产经营使用情况对产品分类目录及时进行调整，而且要求制定调整目录的时候，要充分听取各方面的意见，参考国际医疗器械分类实践。条例同时完善了分类监管措施，遵循宽严有别的原则，重点监管高风险产品。具体说来，在注册环节，明确第一类医疗器械实行产品备案管理，第二类由省一级食品药品监管部门实施产品注册管理，第三类则由国家总局实施产品注册管理。在经营环节，放开了第一类医疗器械的经营，既不用获得许可，也不实施备案。对第二类医疗器械的经营实行备案管理，对第三类医疗器械的经营实行许可管理。

全程监管

旧版《条例》在医疗器械监管方面存在重产品审批，轻过程监管的问题。而新《条例》将医疗器械的研制、生产、经营、使用四个环节统一纳入到监管范围，增设医疗器械生产质量管理规范以及注册医疗器械的再评价、医疗器械的召回等制度，强化经营企业进货查验销售记录和使用单位的维修保养、使用记录等义务，基本形成了严密的监管体系。医疗器械不良事件监测、再评价、召回与医疗器械生产、经营、使用质量管理体系、监督抽验等监管手段，共同形成了比较全面的产品监管体系，实现了对医疗器械全生命周期的监管。

On 12nd of February, 2014, the amendment of *Regulations for the Supervision and Administration of Medical Devices* (hereinafter referred to as the "Regulation") was approved by the Standing Committee of the State Council, and came into effect as of June 1st. This is the first revision since the 2000 version of the Regulation was promulgated, which has then been implemented for 14 years. China's market scale of medical devices industry has seen rapid expansion over the recent years. According to a recent report, in 2015, China will become the second largest medical devices market in the world, second to the U.S. However, the whole industry is still facing several problems given the fact that the market is relatively small, scattered and disorder in some areas. The promulgation of the new Regulation thus seems to be definitely essential and in time.

Compared to the previous version, the new Regulation on the medical devices supervision and administration is more overall, detailed and internationalized. Specifically, it has several highlights in the following:

Classification of Products and Administration

The medical devices in China have numerous categories, with large spans of functions. Differences in product risk are varied among different products. In the previous version, the classification mechanism is not comprehensive: some measures do not reflect differences in classification with inadequate supervision of high-risk products and hypercritical supervision of low-risk products. To address these problems, the new Regulation clearly stipulates that classification administration shall be implemented on medical devices in accordance with the degree of risk. The medical devices shall be accordingly categorized into three classes by risk from low to high, and timely adjustment of product catalog shall be made in accordance with the production, operation and use conditions of medical devices. The Regulation also states that the opinions from all sides shall be fully sought with reference to international medical device classification practices when making catalog adjustment. Meanwhile, the classification administration shall be improved in accordance with the principles of leniency-strictness effect, e.g., high-risk products shall be intensely supervised. Specifically, during the process of registration, the Regulation provides that medical devices of Class I shall be administrated in accordance with product filing; those under Class II shall be under administration in accordance with product registration to Food and Drug Administration at provincial level; those under Class III shall be administrated in accordance with product registration to the State Food and Drug Administration. While in the process of operation, the operation of medical devices under Class II shall be under administration in accordance with product filing and those under Class III shall be administrated in accordance with approval, leaving only those under Class I subject to no filing or approval.

医疗器械监管新规出台

New Regulation for Supervision and Administration of Medical Devices

加大企业责任

条例加大生产经营企业和使用单位的责任。一是加大生产经营企业在产品方面的控制责任，比如生产企业应当建立医疗器械质量管理体系，同时要保证整个体系有效运行，还应当定期向监管部门提交自查报告。二是建立经营和使用环节的进货查验记录和销售记录制度。要求经营企业和使用单位要查验它的供货资质以及产品合格证明文件。三是明确了使用单位的医疗器械管理义务。较之旧《条例》较为笼统的规定，新《条例》中有八个条款明确规定了医疗器械使用单位对医疗器械的管理义务。

惩罚力度加大

新《条例》首次从法律层面提高了惩罚力度。新《条例》按照违法行为的严重程度，分条分项设定法律责任，以增强条款的可操作性。与此同时，还调整了处罚幅度，增加了处罚种类，以加大对严重违法行为的震慑力。例如，对未经许可擅自生产经营医疗器械的行为实施重罚，规定了最高为货值金额 20 倍的罚款；检验机构出具虚假报告的，一律撤销机构检验资质，10 年内不得受理资质认定申请；对受到开除处分的直接责任人员，规定 10 年内不得从事医疗器械检验工作。

其实在新版《条例》出台前，国家食品药品监督管理总局为进一步规范医疗器械市场的秩序，就已于 3 月中旬开始了全国范围的为期 5 个月的“五整治”行动，重点整治虚假注册申报、违规生产、非法经营、夸大宣传以及使用无证产品等五种行为。通过专项整治来促进医疗器械产业健康有序的发展。我们相信，随着新《条例》的深入实施，政府的监管力度会进一步加强。

此外，我们也关注到《医疗器械使用质量管理规范》、《医疗器械经营监督管理办法》、《医疗器械注册（备案）管理办法》等配套规范的征求意见稿也正在审议过程中，预计很快将会出台。对医疗器械的生产和经营者而言，及时掌握法律监管的变化和趋势显得尤为重要，我们也将持续关注相关法规的正式出台和施行。



作者：瞿沁

By: Michael Qu

Whole-course Supervision and Administration

The previous version has the shortfall of over-stress product approval and oversight progress supervision to the medical devices, while the new Regulation stipulates that all of the four processes (i.e. development, production, operation, use of medical devices) shall be in the scope of supervision, along with the addition of Good Manufacturing Practice (GMP), re-evaluation of registered medical devices and recall of medical devices, and the operation enterprises' obligation of checking sales records and the business users' obligation of maintenance and use of records, which basically constitute a comprehensive regulatory system. The above-mentioned supervisory means forms overall product supervisory system and can achieve the supervision over the full life circle of medical devices.

Increase the Liability of Enterprise

The liabilities of production and operation enterprises and business users are increased in the Regulation. Firstly, the liability of production and operation enterprises on the product control shall be increased. For instance, the production enterprises shall build quality management mechanism, in order to ensure the effective execution of whole mechanism. It is also required to submit the inspection report to supervision department on a regular basis. Secondly, a system that can track new inventory records and sales record during operation and use process shall be established. The Regulation requests the operation enterprises and business users to exam their supplier qualification and product qualification certificate. Thirdly, the medical device administration obligation of business users is specified. Compared to general stipulations of the previous version, the new Regulation has eight terms specifically stipulating the administration obligation of business users on medical devices.

Increase the Penalties

The new Regulation increases the penalty for the first time from the legal perspective. The liabilities of violation have been set out item by item in accordance with the severity of illegal behaviors, which seemly to be more enforceable. At the same time, the penalty range has been adjusted in order to prevent practitioners from conducting severe illegal behaviors. For instance, the behavior of producing and operating the medical devices without the approval shall be severely punished with the maximum fine, which is twenty times of the value amount; the inspection qualification of inspection authorities issuing false reports shall be all withdrawn and the qualification application of them shall not be accepted within 10 years; the directly responsible personnel who have been dismissed from these illegal behaviors shall not be permitted to practice medical device inspection within 10 years.

关注医疗机构对民营资本的进一步开放

Further Opening on Medical Institutions for the Private Capitals



最近，一系列的政策红利都指向了医疗健康领域，而在这其中，鼓励社会资本办医成为关注的焦点。国务院最新制定的《深化医药卫生体制改革2014年重点工作任务》中，“积极推动社会办医，重点解决社会办医在准入、人才、土地、投融资、服务能力等方面政策落实不到位和支持不足的问题”被放在了非常重要的位置。而之前由国家卫生计生委、国家中医药管理局颁布的《关于加快发展社会办医的若干意见》(以下简称“卫计委意见”)、以及去年年底《国务院关于促进健康服务业发展的若干意见》(国发[2013]40号,以下简称“国务院意见”)等政策,都为民营资本进入医疗健康行业注入了一剂催化剂。这些法律文件的核心内容都是鼓励民营资本参与健康服务业(尤其是医疗服务业)的建设,旨在形成以非营利性医疗机构为主体、营利性医疗机构为补充,公立医疗机构为主导、非公立医疗机构共同发展的多元办医格局。在一系列利好政策的推动下,我们看到近期资本市场上医药、健康服务题材的股票受到了资金的青睐。那么对民营资本而言,医疗服务行业究竟是“香饽饽”还是“看上去很美”,我们不妨来分析一下近期的政策及行业动向。

Recently, a range of policy dividends have been distributed on the medical care area, among which, the encouragement of social capital to develop medical care becomes a highlighted topic. The concept that “actively promote social capital to develop medical care and address the problems of policy implementation and lack of support on market entry, talents, land, investment and financing and service capacity will be treated as crucial issues in the newly enacted Key Task in 2014 of Deepening the Medical Care System Reform by the State Council. Prior to this, the National Health and Family Planning Commission and State Traditional Chinese Medicine Bureau together launched “Several Opinions on Speeding up the Development of Private Medical Institutions” (hereinafter refer to “H&F Commission Opinions”, which is a catalytic for private capitals into the medical and healthcare industry. It is another detailed regulation promulgated by the Chinese Authority, following last year’s “Several Opinions of State Council on Promoting the Development of Health Care Industry”(GuoFa [2013] No.40, hereinafter refer to “State Council’s Opinions”). The core contents of these two Opinions are to encourage private capitals to participate in the investment and construction of health care business (especially in the medical service industry).

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进一步开放政策的内容

卫计委意见中提到了将“进一步放宽境外资本在内地设立独资医院的范围，将香港、澳门和台湾服务提供者在内地设立独资医院的地域范围扩大到全国地级以上城市；其他具备条件的境外资本可在中国（上海）自由贸易试验区等特定区域设立独资医疗机构；同时，按照逐步放开、风险可控的原则，中外合资、合作医疗机构境外资本股权比例要求也将进一步放宽。尽管国家对完全放开外资投资医疗机构的速度没有外界期望的那么快，目前对大部分国外资本而言，中方必须参股至少30%的限制在大部分地区仍无法突破，但对于港澳台投资者和在上海自贸区内的投资者而言，独资已经不再遥不可及。需要提醒投资者注意的是，对“合格境外投资者”的定义，CEPA提出了三年以上实质性经营的年限，而自贸区的相关规定则要求外国投资者“具有直接从事医疗机构投资与管理5年以上的经验”。因此，千万不要误以为只要是港澳台资本或者外资在自贸区里都可以设立独资的医疗机构。值得欣喜的是，商务部官员在参加世界贸易组织（WTO）第五次对中国贸易政策审议会议时透露，中国正研究考虑在北京、上海等7个城市允许设立外资独资医院，试水多年的外资医院有望真正破题。

除了直接投资医疗机构外，根据相关规定，中国政府还将“支持并优先选择社会信誉好、具有较强管理服务能力的社会资本，通过多种形式参与部分公立医院（包括国有企业所办医院）的改制重组”。事实上，公立医院的改制重组早在数年前就已经开始，但是民营资本参与其中并非想象得那样简单，这其中存在制度性的障碍（如事业单位或民办非企业的医疗机构在变更为企业时各地政府部门对变更登记流程所持的不同态度）需要克服，以及在医院管理模式、人员聘用制度等各方面的挑战。但是，随着新政策的进一步实施，我们相信民营资本以合资、并购、托管等多元化方式参与医疗机构重组的案例会越来越多。

相关政策对养老护理行业的影响

与医疗紧密联系的养老行业近几年也备受民营资本的关注。“医养结合”一直是许多养老项目开发者的产品定位。其实不仅对老年消费者而言，随着他们需求的日益增长，医疗和养老的关系将越来越密不可分，对于众多行业投资者而言，合理地配置医疗和养老护理的资源也是实现综合提高技术和盈利水平的必要条件。

在上述一系列政策中，我们都看到了“鼓励医疗机构将护理服务延伸至居民家庭”、“建立健全医疗机构与养老机构之间的业务协作机制，鼓励开通养老机构与医疗机构的预约就诊绿色通道”、“鼓励社会资本直接投向资源稀缺及满足多元需求服务领域，举办康复医院、老年病医院、护理院、临终关怀医院等医疗机构，鼓励社会资本举办高水平、规模化的大型医疗机构或向医院集团化发展”等措辞。的确，纵观养老行业市场，我们看到一些医疗机构，如美资的和睦家，已经将服务延伸到了居家护理；一些辅助型的养老机构，如美资的凯建，也将投资中国的医疗机构；而更多的情形是开发商在新建的养老社区中建造了康复医院和老年护理院等配套设施，以满足社区老人就近医疗的需求。

It is the aim of the government to form a market with diversified participants with not-for-profit medical institutions as the main part and for-profit medical institutions as the supplemental part, while public medical institutions as the dominant part and non-public medical institutions as co-develop part. Driven by a series of incentive policies, we recently find stocks related to medical and healthcare services are favored by investors on the capital market. In light of this, we try to analyze in this article the recent policies and industrial trend to help private investors to understand whether the medical service industry is a “honey cake” or “just looks beautiful”.

Contents of further opening policies

The H&F Committee Opinions mention that “it will further broaden the scope of setting up wholly-foreign owned hospitals; service providers from Hong Kong, Macao and Taiwan are permitted to set up wholly-foreign owned hospitals in the cities at provincial levels of China; other qualified overseas capitals are only permitted to set up wholly-foreign owned hospitals in some special areas such as China (Shanghai) Free Trading Zone (“FTZ”); meanwhile, according to the gradually opening up and risk controlling principle, the requirement on the minimum proportion of overseas capital shares in Sino-Foreign Equity and/or Cooperative Joint Venture Medical Institutions will also be relaxed. Although the opening speed of foreign investment on medical institutions are not as quick as public expect, and in most of the cities, the threshold of at least 30% of domestic share is still not broken for most of the foreign capitals, the wholly-foreign owned medical institutions are no longer impossible for investors from Hong Kong, Macao, Taiwan, or those within Shanghai FTZ. Furthermore, it is worth noting that when it comes to the definition of “qualified overseas investors”, CEPA requires the investors shall have at least 3 years substantial operational experience, and the regulation of FTZ requires the foreign investors shall have more than 5 years experience of direct operation or management of medical institutions”. Therefore, we advice investors to be aware that NOT every investors from HongKong, Macao and Taiwan, or foreign investors within Shanghai FTZ could set up wholly-foreign owned medical institutions. Meanwhile, we are delighted to see that the officials in the Ministry of Commerce disclosed when participating in the fifth review meeting of WTO on China trade policies, that China was under the consideration of permission for establishment of wholly foreign owned hospitals in seven cities such as Beijing and Shanghai, which would finally achieve the long-waiting goal of the market access for pure foreign-invested hospitals.

Except for direct investment on the medical institutions, according to relevant policy, Chinese government will also support and select private capitals with good reputation and strong management competences at the first priority to participate in the reform and restructuring of public hospitals (including state-owned hospitals) through diversified approaches. In fact, the restructuring and reform of public hospitals has already started several years ago.

另外值得关注的是，民政部（养老机构的主管部门）从今年起也开始了公办养老机构改革的试点工作，养老机构的改制在很大程度上和上文提到的医疗机构改革非常相似，借鉴医疗机构的改制经验可以使养老机构的改制少走很多弯路。

诚然，这些政策的对消费者而言的确是好事，但目前社会资本投资的医疗机构的仍呈现四个方面的特点：一是在中国医疗服务中所占比例仍然很小；二是主要集中在北京、上海、广东等较发达地区；三是服务对象比较集中，主要是在华工作或旅游的外籍人士以及国内少部分高收入或特殊需求的阶层；四是投资举办的主要是投资小、收益好、国内相对短缺的专科诊所。虽然我们看到最近这几年民营资本收购综合性医院的脚步开始加快，但我们也关注到“适度引导”、“合理布局”这些看似简单的要求，却给政府规划和引导带来了巨大的挑战。而对于投资者而言，如何在新一轮医疗健康产业爆发时抓住机遇，是必须思考的问题。



However, it is not that easy for private capitals to enter into this area, given the existence of systematic obstacles yet to be overcome (e.g. the different attitudes of local authorities in dealing with the registration process of changing the business nature of institutions or private non-enterprise to for-profit enterprises), and other challenges in respect to, for example, the hospital managing models and human resource issues. Nevertheless we believe there will be more and more private capital willing to enter into the reform of medical institutions through all kinds of mechanisms, i.e. joint venture, merger, management entrustment, among others, after the new policies being implemented.

Some Impacts on the Senior Care Industry

It is to the prime concern for many private capitals of the senior care industry, as well as when they are targeting at the medical institutions. “Combination of Medical Service and Senior Care” is always pursued by many project developers as they positioning of their products. Relationships between medical service and senior care is imperative to each other not only due to its importance to senior consumers as their nature needs grow over time, but also to the industrial investors, who could reasonably allocate the resource of medical service and senior care to enhance their technical and profitable competence.

We notice the wordings in the foresaid series of policies of “encouraging the medical institutions to extend the care service to residential homes”, “establishing collaborative mechanism and also encouraging to build green channel of doctor appointment between medical institutions and senior care facilities”, and “encouraging private capitals to directly invest in medical institutions, such as rehabilitation hospital, geriatric hospital, nursing home, hospice facility, etc., to satisfy various demands; encouraging private capitals to invest in high-end and large scale medical institutions or hospital conglomerates”. Back to the senior care market, we find some medical institutions have already expand their services to home care sector, such as US brand United Family Hospital; and some senior care operators already have the intention to invest in medical institution in China, i.e. US brand Cascade Health care. Nowadays it is popular that the developers build rehabilitation hospitals and senior care facilities as the infrastructure of senior care community to satisfy the demands of neighborhood seniors.

Meanwhile, it is worth noticing that the Ministry of Civil Affairs has launched trials on the reform of public senior care institution since this year. The reforms between senior care institutions and medical institutions are very similar to a great extent, and therefore the experience of the reform on medical institution could be a valuable learning course for that of the senior care institutions.

Undoubtedly, all these policies are good news to consumers, however private investment in medical institution has presented itself in four major trends: still very small margin among total investment in the industry of China’s medical service; mostly locate in developed cities such as Shanghai, Beijing and Guangdong; only have a targeted consumers of foreigner working or travelling in China or some wealthy people with special needs; and mainly as specialist clinics with small scale, investment and seemingly sound profit. Although M&A cases of full-scale medical institutions by private capitals are often seen in recent years, challenges for government to properly plan and guide this industry yet to be addressed. “Modest guidance”, “reasonable planning”, targets among others look very simple, but presents itself an ever challenging task for the government. For the private investors, priority is always to find a way to benefit themselves under the emergence of this industry, though, orchestrating a sound, strategic planning is ever an easy job.

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在上海这样一个国际化的大都市，各种资源在这里被充分地利用、融合，劳动力资源自然也是其中不可或缺的组成部份。企业面对多元化的劳动力资源，应当在合理合法的范围内进行有效地整合，那么，对于需要外国劳动力资源的企业来说，应当如何合法地聘用和管理外国人？下面我们将根据国家和上海市的相关法律规定，为企业提供一些有效的参考意见。

虽然劳动保护具有国籍性，国家对企业聘用非本国国籍的外籍人有特殊规定，但是，企业还是应当给予其国民待遇，而不是优惠待遇或者差别待遇。

目前，我国现有的关于外国人就业管理的规定主要分为聘用前的审核和聘用后的管理两大部份内容。

一、聘用前的审核

《外国人在中国就业管理规定》（以下简称规定）和上海市关于《外国人在中国就业管理规定》的若干意见（以下简称意见）中对企业如何聘用外国人作了比较详细的规定，体现在：

- 1、企业应当聘用符合规定的外国人（规定第七条、意见第六条）；
- 2、外国人应当有有效的护照及签证并办理相关居留证（规定第八条、意见第七条）；
- 3、聘用外国人的企业应当事先提交劳动行政部门进行审批并获得许可证（规定第三章、意见第十、十一、十二条）；以及
- 4、外国人在获得就业证后才能正式被企业聘用，在就业证到期前，企业应当提前 30 日为其申请续期或者延期，就业证期限应当与劳动合同期限或者工作期限一致。

二、聘用后的管理

在经过严格的聘用前审核之后，企业对所聘用的外国人进行用工管理应当符合劳动合同法的规定和上海市劳动行政管理部门的规定，例如，工资待遇不得低于上海市最低工资标准、给予其相应的劳动保护、加班应当支付加班工资等。

需要注意的是，对于社会保险的缴纳，是有特殊的规定（《在中国境内就业的外国人参加社会保险暂行办法》及《社会保险法》）：外国人在中国境内就业的，参照社会保险法的规定参加社会保险。所谓“参照”是指原则上依照社会保险法规定执行，但允许有变通。这些变通规定包括社会保险费缴纳暂行条例、有关社会保险的双边协定等。目前我国分别与韩国、德国签订了社会保险双边协定。根据双边协议规定，德国公民和韩国公民在中国境内就业，可以分别不参加基本养老保险、失业保险和生育保险，但还应参加医疗保险和工伤保险。在不符合变通条件的情况下，企业聘用外国人应当参加社会保险。

但是，目前因为各地对外国人缴纳社会保险都有不同规定，没有统一标准，上海市对企业为外国人缴纳社会保险的规定是外国人与上海公司签劳动合同，如果在合同中约定参加上海社会保险，可以参加缴纳，但只缴纳养老、医疗、工伤三险。由此可以看出，目前为止，上海对外国人缴纳社会保险的规定暂时还是以约定为准。

通过对我国现行立法规定的分析，我们建议企业在聘用外国人时，最主要是注重做好对外国人就业资格的审核，因为这个是立法特别明确规定的主体资格，而在录用后，应当和本国员工一样对外国人进行合法有效地管理，以避免在用工过程中遇到不必要的麻烦。

Shanghai, as an international metropolis, has seen various resources fully used and integrated, of which labour resource has become an indispensable component. Enterprises should integrate diversified labour resource in a legal and reasonable manner. Thus, how should the enterprises in need of foreign labour resource recruit and manage foreigners legally? We set out below some useful advice for reference according to the relevant national and Shanghai laws and regulations.

Labour protection may vary by nationality and special rules have been issued for employment of foreign employees. However, enterprises should still offer foreign employees national treatment, instead of preferential or discrimination treatment.

The current regulations regarding management of employment of foreigners principally include pre-recruitment examination and post-recruitment management.

I. Pre-recruitment examination

Administrative Provisions on Employment of Foreign Nationals in China ("Provisions") and *Several Opinions on Administrative Provisions on Employment of Foreign Nationals in China* issued in Shanghai ("Opinions") provide details on how to legally recruit foreign employees, which includes:

1. Enterprises should recruit foreign employees who can meet the requirements set by the relevant regulations (Article 7 of the Provisions and Article 6 of the Opinions);
2. Foreign employees should have valid passports and visas and have secured residence permits (Article 8 of the Provisions and Article 7 of the Opinions);
3. Enterprises which decide to hire foreigners should submit applications to Labor Administration Department for approval and obtain licenses in advance (Chapter 3 of the Provisions and Article 10, 11 and 12 of the Opinions); and
4. Enterprises could not recruit foreign employees unless their employment permits have been granted. Besides, Enterprises should also apply for renewal 30 days prior to the expiration date of employment permits. In addition, the terms of employment permits should be same as those of labor contracts or length of service.

II. Post-recruitment Management

After strict pre-recruitment examination, enterprises should comply with the Labour Contract Law and the regulations issued by the labour administrative department in Shanghai. For instance, remuneration should not be less than the minimum wage standard in Shanghai, corresponding labour protection should be provided, and overtime pay should be paid for overtime worked.

Please note that there are special rules related to payment of social insurance (*Interim Measures for Foreigners Working in China to Participate in Social Insurance and Social Insurance Law*), i.e. foreigners working in China should participate in social insurance by reference to Social Insurance Law. "By reference to" means that Social Insurance Law should be observed in principle, but flexibility is also allowed. Such flexibility includes interim regulations on collection of social insurance and bilateral treaties in relation to social insurance.

So far China has signed treaties regarding social insurance with Korea and Germany respectively. According to such treaties, German employees and Korean employees working in China are not required to participate in pension insurance, unemployment insurance or maternity insurance; However, medical and work-related injury are still mandatory. Where the above flexibility does not apply, foreign employees should participate in the social insurance.

However, currently there are different local rules regarding payment of social insurance for foreign employees, and thus there is no unified standard in this respect. In Shanghai, the relevant regulations prescribe that a foreign employee may participate in social insurance if so agreed in the labour contract between the foreign employee and his/her employer, i.e. a company registered in Shanghai, and only pension insurance, medical insurance and work-related insurance will apply. Therefore according to the local rules in Shanghai, payment of social insurance for foreign employees is subject to the agreement under the labour contracts for the time being.

We suggest, based on the analysis on the current legislation, enterprises should focus on examination of the employment qualification of foreigners in case of recruitment of foreigners, as such qualification is specifically required by the law. After a foreigner is employed, such foreign employee should be managed as local employees in an efficient and legal manner to avoid any unnecessary trouble during employment.



传统银行及相关金融机构对于逾期不良贷款的处置方法，除了前期催收以外，就是向法院起诉要求借款人归还借款本金，若有抵押物的，便会以拍卖、变卖抵押物来实现债权。

众所周知，传统诉讼程序一般审理期限较长，即便一审判决下来，亦有对方对判决不服提起上诉的情况，案件便会进入二审，进一步拉长实现担保物权的周期，显然不利于短期内盘活金融资产。

2013年1月新修订的《中华人民共和国民事诉讼法》（以下简称《民事诉讼法》）正式生效实施。对比修订前《民事诉讼法》有了较大的改动，特别是新增加了实现担保物权的特别程序，对于有抵押物而争议较少的案件，大大缩短了司法处理周期。

我们先来看一下有关法条《民事诉讼法》：

第一百九十六条 申请实现担保物权，由担保物权人以及其他有权请求实现担保物权的人依照物权法等法律，向担保财产所在地或者担保物权登记地基层人民法院提出。

第一百九十七条 人民法院受理申请后，经审查，符合法律规定的，裁定拍卖、变卖担保财产，当事人依据该裁定可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以向人民法院提起诉讼。

再来看一下有关案例：

2011年8月，平安银行某分行与浙江某材料公司签订了一份《综合授信额度合同》，约定给予该材料公司2.4亿元的综合信用额度。同时双方签订了《最高额抵押担保合同》，最高额抵押为7500万元，约定以材料公司的土地及厂房作为抵押。2011年9月，该分行向该公司发放了7500万元贷款，截至2012年12月27日，借款已经逾期，所以该分行向法院提出实现担保物权的申请。

受理法院举行了公开听证会。法院审查后认为，双方签订的《综合授信额度合同》、《最高额抵押担保合同》等均合法有效，双方还办理了抵押物登记。材料公司对银行的债务，于2012年9月到期，到期时材料公司理应支付借款本金8174万元，但材料公司不履行到期债务，且双方未就抵押权实现方式达成协议。法院依法作出裁定：准予对被申请人浙江某材料公司的担保财产采取拍卖、变卖等方式依法变价，申请人对变价后所得款项优先清偿借款本金等。

参照该案例，我们发现实现担保物权的优势在于：

1. 处理时间短

根据《民事诉讼法》关于适用包括实现担保物权的特别程序审限规定，即应当在立案之日起三十日内审结，有特殊情况需要延长的，须经本院院长批准。可以看到，比起诉讼（简易程序一般三个月，普通程序一般六个月），大大缩短了处理期限。

2. 成本相对小

由于实现担保物权案件是此次民事诉讼法修改后新增内容，现行的《诉讼费用交纳办法》对如何收费并未有明确规定。高法院有法官认为，实现担保物权的案件增设在新民事诉讼法第十五章特别程序中，故应当参照《诉讼费用交纳办法》的相关规定按件收取申请费，而不应以申请实现抵押物权的标的为据收取。

人民法院作出拍卖、变卖担保物的裁定后，申请人向人民法院申请强制执行的，则应按执行金额收取申请执行费，并由被执行人负担。

但实际上可能各个法院尤其是上海法院对收费并没有做出一个统一的规定，但可以肯定的是相对于一般传统的诉讼案件，诉讼费的成本要少的多。

3. 程序简单，一审终审，双方均不能上诉

根据《民事诉讼法》第十五章第178条规定有关特别程序一般规定，特别程序即涉及实现担保物权案件实行一审终审制。这就意味着，一旦法院做出拍卖、变卖抵押物的裁定，就立即生效。申请人依法申请强制执行裁定书内容。

笔者提醒读者要注意的地方：

1. 争议较大案件并不适用

如果被申请人提出异议，无论是什么方面的异议，人民法院则都会进行审查，一般采用的方式是“听证”。若被申请人的异议确实成立的，法院则会按规定裁定驳回申请。这就意味着若务人或押人对基础关系的成立与否、履行情况、违约事项等情况提出异议或抗辩的，一般都将被法院视为异议成立。

但银行及相关金融机构一般对于相应的借款合同、抵押登记、证据固定都做得会比较完备，所以借款人可能提异议的可能性相对较小。因此在适用这一程序前，可以对具体案件作详细的评估，是否存在较大的争议，是否可以适用这一特别程序处理抵押物。

2. 不能请求其他相关保证人承担连带还款责任

很多情况下债权人除要求借款人要求设定抵押物外，还会要求借款人提供保证人承担保证责任。故要求受理法院在实现担保物权的特别程序的同时处理保证人的清偿责任是不能实现的。当然这并不妨碍借款人向保证人要求承担保证还款责任。

笔者顺便提一下有关同一债权既有保证又有物的担保的情况。若有这样情况的，债权人应当按照约定方式实现债权；如没有约定或约定不明，债务人自己提供物的担保的，债权人应当先就该物的担保实现债权；第三人提供物的担保的，债权人可以就物的担保实现债权，也可以要求保证人承担保证责任。

3. 有些情况法律规定不够明确，各法院也操作不一

由于实现担保物权的特别程序属于《民事诉讼法》新修订的内容，实务上会遇到各类问题，如借贷人下落不明的情况下，付款凭证的真实性法院是否需要审查；如申请实现的担保物权非第一顺位的抵押权，在先行抵押权尚未实现的情况下，后顺位的抵押权人是否有权申请拍卖担保物以实现担保物权。又如担保物上有查封，抵押权人是否可以申请拍卖等等，所以有待最高院及地方高院出台相应司法解释及指导意见。故申请实现担保物程序可能会出现一些不能预料的情况，需提前并加强与办案法官的沟通，真正起到快速处理担保物的目的

Finance 金融

《民诉法》新修订后银行等金融机构便捷快速实现不良债权的新途径

——实现担保物权特别程序

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By: Anson Shen

笔者认为，这次修订《民事诉讼法》之所以要新加入实现担保物权特别程序的内容，就是为了更好地保护担保物权人的合法权益，便利担保物权的实现，节约诉讼资源，所以有关债权人要善用法律新“武器”来保障自己的相关利益。

上海工业用地新规定对土地市场的影响

Impacts on the Land Market of New Industrial Land Regulations in Shanghai

最近，上海市人民政府办公厅发布了由上海市规划和国土资源管理局制定的针对工业用地的试行办法和规定，分别是《关于加强本市工业用地出让管理的若干规定（试行）》和《关于本市盘活存量工业用地的实施办法（试行）》（以下合称“新规定”）。新规定的试行期限均为二年，自2014年4月1日起至2016年3月31日止。

从上述新规定的内容和试行期限，我们不难看出在上海这个大都市，土地资源尤为稀缺的今天，相关政府部门积极主动的在《土地管理法》的大框架下，试图探讨和研究出一条更能充分利用工业用地的途径。其实这和国务院近几年来颁布的一系列提高土地节约集约利用水平的通知和规定的根本立意是相同的。

由于新规定的主要目的就是为盘活存量工业用地，下面就新规定的一些新内容进行初步分析和探讨。

一、一般项目工业用地的出让年限大幅调低

自2002年我国土地出让引入招拍挂制度以来，土地的出让年限一般都以法律规定的该类土地的最高年限进行出让。而这次的新规定实行工业用地弹性年期出让制度。对新增工业用地产业项目类出让年限不超过20年，从这个期限的规定我们可以发现，由于政府是带项目带方案的出让该等工业用地，在此方式的操作下，虽然土地仍采用挂牌出让方式，但溢价的可能性和幅度均不大。所以政府在土地的出让年限上作出限制，通过缩短期限的方式，方便政府在较短的时间内根据市场价格的变化，对该类土地的价格进行控制；同时，这样的政策也有利于一些企业通过相对较低的价格取得土地使用权，从而进行实业投资。当然期限的缩短也不排除政府相关部门可以根据城市不断的扩张和发展，调整规定使用用途等。新规定同时提到，对一些重大项目，经过认定后，仍可以按最高出让年限50年进行挂牌。

由于新规定同时适用于新增产业项目类、标准厂房类、研发总部产业项目类、研发总部通用类等建设用地上，而对于规划用途为后三类的工业用地，规定仍通过公开招拍挂方式出让，最高年限为50年。

二、在满足规划条件下，工业用地可以用于一些非工业用途

新规定赋予了各区县政府按照市级相关规划、区域发展规划及实际情况，确定区域整体产业转型的权力，具体而言，存量工业用地通过政府批准的方式，可以转型为研发总部类用地（其中包括产业项目类和通用类）；商务办公用地；教育、医疗、科研、养老等用途。当然不同类别的转型，批准方式和相关手续也不尽相同；对于转型用地政府也设置了相应的限制条件，比如开发单位以自用为主，必须持有一定比例的产权，房屋不得分割转让等等。

从这一内容可以发现，由于上海城市定位功能，工业用途的土地单纯用于传统意义上的用途，已经不符合城市的规划功能。如何盘活并充分利用这些工业用地，已经是政府部门推进产业升级、拉动地方经济的当务之急。从很大意义上来说，这次新规定的推出也仅仅是缓和一下土地供应市场的供需矛盾而已。这个新政策也大大鼓励了一些开发商投资开发工业用地，根据规划功能配置不同用途的物业比例。此条内容，无疑对各路投资者进入该行业注入了新动力，也对吸引一些研发类总部提供了利好消息。毕竟参考近几年的土地成交价，商业用途和其他同类用途的土地成交价和工业用地的土地成交价相差非常大。虽然新规定也规定了这些用地的起始最低价，新规定下的新规划用途的工业用地的成交价何去何从，也是值得我们在新规定的实施期限内加以关注的。

Recently, General Office of Shanghai People's Government promulgates "Several Provisions on Strengthen Industrial Land Grant Administration in Shanghai (Trial)" and "Measures on Implementation of Vitalized the Inventory Industrial Land in Shanghai (Trial)" (hereinafter collectively called the "New Regulations") drafted by Shanghai Planning and Land Resource Administrative Bureau. The trial period of the New Regulations is two years, from April 1, 2014 to March 31, 2016.

From the contents and trial period of the New Regulations, we could understand that the local authorities are creatively working out an approach for better utilizing the industrial land within the framework of "Land Administration Law" under the background of land resource scarcity in Shanghai. Actually it serves the same purpose of a series of "Notices and Regulations of Improving Intension and Utilization Level of Land" promulgated by the State Council these years.

Follows are the initial analysis and studies of the New Regulations:

1. Substantially lower the land use right grant period for general industrial projects

Normally, land use right will be granted to the maximum terms of the corresponding land type as of the nation-wide adoption of land bid, auction and listing system since 2002. However the New Regulations implement the flexible grant term system for industrial land. As it provides, the grant term shall not exceed 20 years for all new industrial land projects, which we could easily find that the authorities grant these industrial land together with projects or plans of this plot. Under this model, it is less likely the ranges of premium will be raised higher should the land use right be granted through listing procedure.

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By: Flora Lu



三、新规定的其他值得注意的地方

3.1 容积率的提高

传统的工业用地土地容积率大都保持在 1.0 至 2.0 之间，而新规定则允许将最高容积率设定为 4.0，这不仅和新规定出台的基本目的保持一致，也是和上述探讨的工业用的功能调整密切相关。只有提高容积率，才能规划为不同功能的用途，从而提高土地利用效率。

3.2 政府加强对项目投资实施的监管力度

土地合同中对投资力度、项目的开工竣工时间等都会进一步的细化，而且引入履约保证金的概念，监督土地使用者按照约定进行开发建设。对于取得土地使用权后没有按照合同约定的期限、投资力度进行开发的，也将根据不同的情况，要求主动退出或强制退出。

3.3 对土地的转让进行的限制

我国的土地管理法对土地转让的条件做了约定，但新规定对该类工业用地的转让有进一步限制的约定。例如：转型为商务办公用地后建设的物业，开发单位须持有 50% 以上的物业产权。

可见，政府对土地利用的控制权更大，由于工业用地转型后的开发大都会涉及合作开发、融资等交易行为，因此我们建议使用者在取得和开发该类用地时一定要注意对应用途土地转让的限制。

3.4 其他

新规定对工业用地的登记、抵押、地下空间、环境保护等也一一做了规定。这些对实际操作过程均有指导性的作用。

其实在新规定颁布前，利用工业用地进行转型产业的开发和利用的案例早已遍地可见，但由于缺少政府统一的政策进行引导和规范，导致区域性规划混乱、政府审批口径不统一等问题。虽然业界对新规定的颁布褒贬不一，但我们认为，新规定的出台至少为存量工业用地的再开发提供了法律依据。而新规定才刚刚执行，在实践中会遇到什么挑战、是否会给全国其他地区起到示范效应、二年的试行期过后按照新规定操作的项目何去何从、及对土地市场的影响究竟是好是坏等问题，都有待我们进一步观察和思考。

The authorities could limit the land grant term to control the land grant price and change the benchmark land price within relatively short period according to market demands; meanwhile investors could also acquire land use right with comparatively low price to realize their industrial investment purpose. Of course the shortening of land grant terms does not exclude the right of local authorities to adjust the planning usage or purpose to fit the continuing city expansion and development through a further shortening. The New Regulations also mention that grant term could remain to be the maximum of 50 years for some major projects after going through proper certified process.

The New Regulations will simultaneously apply to the new industrial projects, standard factory projects, research & development HQ industrial projects, and general research HQ projects. The New Regulations stipulate that the grant terms of the latter three types' industrial lands shall still be within the maximum 50 years' while they are granted through public bid, auction or listing procedures .

II. Industrial land can serve some non-industrial purpose if certain planning requirements are satisfied

The New Regulations stipulate that the district or county level governments have the rights to adjust its planned area's industry according to the correspondence of planning, local development planning and actual situations formulated at municipal level. Specifically, Inventory Industrial Land can be transformed to Research & HQ Land (including industrial projects and general projects), Commercial & Office Land, Education Land, Medical Land, Scientific Research Land, and Senior Care Land after obtaining the competent authorities' approval. Of course, it shall go through different approval process and procedures in correspondent of different land purposes. Meanwhile the New Regulations also set forth some limitations or conditions on land transition process for local authorities to follow, such as the developer must hold certain percentage of ownership after project completion, and the property could not be transferred by units.

From the contents of the New Regulations we could find that the single purpose of industrial land could not satisfy the dynamic metropolis's planning function. How to fully vitalize and utilize these industrial lands is already one of the urgent and important issues for local authorities to address in the process of upgrading its industrial sector and enhancing its local economy. To a large extent, the New Regulations could ease the shortfalls between supplying and demanding in the land transaction market. The New Regulations also encourage more developers to invest and develop industrial land, upon which certain proportion of different functional property could be built based on the planning. Undoubtedly, it instills new energy to investors and also is an incentive policy to some research HQ operators. After all, land transaction market in recent years has seen a very big gap between the commercial land transaction price and industrial land transaction price. Even though the New Regulations put minimum on the initial price of these lands, how the actual land transaction price of the new functional planning industrial land goes remains uncertain and deserves more attention during the implementation of the New Regulations.

III. Other Highlights of the New Regulations

i) Increasing of Building Ratio

The building ratio of traditional industrial land is normally around 1 to 2, however the New Regulations allow the building ratio to be as high as 4, which is in correspondence with the New Regulations' legislation purpose and the aforesaid functional transition. It is easy to understand only when the building ratio is increased, different functional purposes can therefore be achieved on the same plot and land utilization is optimized eventually.

ii) Enhancement on Supervision of Projects Performance

The land grant contract will have more detailed clauses related to the investment promise, the construction starting date and completing date, and other relevant conditions. And it will also introduce the performance deposit concept to enforce the grantee to develop and construct according to the requirements set forth in the land grant contract. The investor will also be requested to return the land use right, either voluntarily or compulsorily, in occurrence of varies situations, if they could not develop or build the project in compliance with what has been agreed in the land grant contract.

iii) Limitations on Land Transferring

In addition to the land transferring conditions in the Land Administration, the New Regulations have set forth some further requirements and limitations on the transferring of such industrial land. For example, developer must hold at least 50% of ownership for those commercial and office properties built on industrial land. We notice the authorities aims to put more controls on the utilization of industrial land, and therefore it is advisable for investors to pay more attentions to these conditions or limitations during the acquisition stage, especially when it comes to corporation and financing deals upon those lands.

iv) Others

The New Regulations also stipulate the registration, mortgage, underground space and environmental protection in respect to the industrial land, which will all be the guidelines for development activities in practice.

Actually cases of using industrial land for other purposes already existed before the New Regulations' promulgation, however many problems were found due to the lack of an uniform policy or guideline. The New Regulations has raised many different opinions, though, we believe that it will provide legal base for the development of inventory industrial land for other purposes. As the New Regulations have just been implemented, we are querying on many questions: what kind of challenges it will be facing? Whether it will be the model for other cities to follow suits? What about the aftermath of the trial period for these projects constructed pursuant to the New Regulations? And, will it bring positive or negative impacts to the land market? All of these questions deserve further observation.



Upcoming Events 活动传真

我们将在 2014 国际养老产业（上海）峰会暨博览会上进行专题演讲
We will Host Legal Workshop for the Care Show China 2014 on August 25

作为国际养老产业（上海）峰会暨博览会（Care Show China）的历年合作伙伴，我所近期被特聘为2014年Care Show的特邀法律顾问。作为国内为数不多的专注于养老地产和医疗健康行业的律师事务所，我们拥有国内外的专业团队和网络资源，熟悉行业运作模式，目前已经为来自该行业的多家境内外企业提供项目开发、运营阶段所需的全方位法律服务。

本所管理合伙人瞿沁律师、高级外国律师 Joseph Christian 将在本次大会作专题演讲，为境外投资者就养老和医疗项目的选址、合作、可行性研究、建设、融资、开业前筹备、开业后运营和资产处置等方面作全方位的介绍，具体会议议程敬请浏览大会官网 <http://www.careshow.com.cn/>

As the partner for many years of Care Show China, our firm has been engaged as special legal counsel of Care Show China 2014 recently. Being one of the few firms that are specialized in senior living and healthcare, we have an international professional team and network resources, and we are familiar with various operational models of this industry. Till now, our firm has provided legal service on the full spectrum of issues in project development and operation for many domestic and foreigner enterprises in this industry.

Michael Qu, managing partner, and Joseph Christian, senior foreign lawyer will give a half-day workshop in the pre-conference section of this event, providing the introduction for foreigner investors on the full spectrum of issues in project development during the site selecting, cooperation, feasibility study, construction, financing, pre-opening preparation, post-opening operation and disposal of senior care or hospital facilities.

For more information, please visit the website:
<http://www.careshow.com.cn>



恒为律所公司法系列讲座第二期通知 ——企业知识产权体系的构建和保护

在成功举办公司法系列讲座第一期之后，恒为律师事务所公司法系列讲座第二期即将再次开讲！本次讲座的主题是企业知识产权体系的构建与保护。

在全球一体化进程快速推进的时代，互联网技术的发展，带来了全球信息大爆炸。而随着全球化的进程，中国企业要更好的参与全球竞争和发展，必然要意识到知识产权之于企业的重要性。近年来，跨国的知识产权侵权案件频发，我国的企业由于知识产权意识相对淡薄，经常在知识产权侵权案件中败诉。企业是否意识到了知识产权的重要性？企业该如何建立有效的知识产权保护体系？知识产权保护体系中包含了哪些重要内容？我国在今后一段时间内知识产权保护的法律趋势又将如何？

我们将在本次讲座中对前述问题给出答案。本次知识产权法讲座具体信息如下：

一、培训时间：暂定2014年9月18日下午14：00-16：30（最终日期以本所后续通知为准）

二、培训地点：上海市黄浦区江滨路99号上海绿地万豪酒店3楼

三、培训和内容：

本次讲座将分为三个部分，将由恒为律师事务所合伙人和特邀的知识产权领域的权威嘉宾共同主讲，

主要内容暂定如下：

一公司知识产权保护体系的构建和保护

一互联网知识产权侵权典型案例分析

一我国专利保护的立法进程和趋势

以上内容可能会有一定变化，最终以正式讲座通知确定的内容为准。

四、报名对象和人数：各企业高级管理人员；公司技术部门主管、合规、法务人员等；

本次培训限额50人。

五、报名时间及办法：本所将在事务所网站、微博、微信等平台更新相关信息，敬请关注。

如您对本次讲座感兴趣，也可向本律所邮箱发送报名信息，我们将向您及时反馈报名情况以及讲座

通知。本所报名邮箱地址如下：hengwei@lawviewer.com

