## LEGAL SUPERVISION OVER PROPERTY MANAGEMENT SERVICES

### *Foreign Invested Property Management Enterprises*

According to the Provisions on Guiding the Orientation of Foreign Investment (指導外商投資方向規定) issued by the State Council on February 11, 2002 and came into effect on April 1, 2002, foreign investment projects are divided into four categories, namely "encouraged", "permitted", "restricted" and "prohibited" categories. Foreign investment projects of the encouraged, restricted and prohibited categories are listed in the Catalog of Industries for Guiding Foreign Investment (外商投資產業指導目錄). Foreign investment projects that are not of the encouraged, restricted and prohibited categories belong to the permitted foreign investment projects which are not listed in the Catalog of Industries for Guiding Foreign Investment.

Pursuant to Announcement of the NDRC and the MOFCOM [2016] No. 22 (中華人民共和國國家發展和改革委員會、中華人民共和國商務部公告2016年第22號) issued on October 8, 2016, the special management measures for foreign investment access shall be implemented with reference to the relevant regulations as stipulated in the Catalog of Industries for Guiding Foreign Investment in relation to the restricted foreign-invested industries, prohibited foreign-invested industries and encouraged foreign-invested industries. Pursuant to the Provisional Administrative Measures on Establishment and Modifications (Filing) for Foreign Investment Enterprises ("Interim Administrative Measures") (外商投資企業設立及變更備案管理暫行辦法) promulgated by MOFCOM on October 8, 2016 and amended on July 30, 2017 and June 30, 2018, establishment and modifications of foreign investment enterprises that are not subject to the approval under the special management measures for foreign investment access shall be filed with the delegated commercial authorities.

The Provisions on Guiding the Orientation of Foreign Investment (指導外商投資方向規定) and the Catalog of Industries for Guiding Foreign Investment (2017 Revision) (外商投資產業指導目錄) (2017年修訂) classify industries to be invested by foreign investors into two categories: encouraged industries and industries contained in the Negative List (including restricted industries and prohibited industries). Foreign investment can directly invest in an encouraged industry by setting up a wholly foreign-owned enterprise. For industries contained in the restricted industries, foreign investment may be conducted through the establishment of a wholly foreign-owned enterprise, subject to certain requirements, and in some cases, the establishment of a joint venture enterprise is required with varying minimum shareholdings for the Chinese party depending on the particular industry. Foreign investment of any kind is not allowed to invest in a prohibited industry. Any industry not falling into any of the encouraged, restricted or prohibited industries is a permitted industry, which is generally open to foreign investment unless specifically prohibited or restricted by other PRC regulations. And the property management industry is an industry that allows foreign investors to make investments.

The Special Administrative Measures (Negative List) for Access of Foreign Investment (Edition 2019) (外商投資準入特別管理措施(負面清單) (2019年版)) ("**Negative List**") was issued by the NDRC and the MOFCOM on June 30, 2019 and came into effect on July 30, 2019, and the Special Administrative Measures for Access of Foreign Investment (Negative List) (2018 Edition) was replaced simultaneously. Pursuant to the Negative List, sectors not specified in the Negative List shall be subject to administration under the principle of treating domestic investments and foreign investments equally. Foreign investors shall not invest in any of the prohibited sectors specified in the Negative List; they must obtain the permit for access of foreign investments if they intend to invest in other sectors that are not prohibited. The property management industry does not fall within the Negative List.

On March 15, 2019, the National People's Congress promulgated the Foreign Investment Law, which will come into effect on January 1, 2020 and replace the trio of existing laws regulating foreign investment in China, namely, the Sino-foreign Equity Joint Venture Enterprise Law, the Sino-foreign Cooperative Joint Venture Enterprise Law and the Wholly Foreign-invested Enterprise Law, together with their implementation rules and ancillary regulations. The existing foreign-invested enterprises established prior to the effective of the Foreign Investment Law may keep their corporate forms within five years. The implementing rules of the Foreign Investment Law will be stipulated separately by State Council.

Pursuant to the Foreign Investment Law, "foreign investors" means natural person, enterprise, or other organization of a foreign country, "foreign-invested enterprises" (FIEs) means any enterprise established under PRC law that is wholly or partially invested by foreign investors and "foreign investment" means any foreign investor's direct or indirect investment in mainland China, including: (i) establishing FIEs in mainland China either individually or jointly with other investors; (ii) obtaining stock shares, stock equity, property shares, other similar interests in Chinese domestic enterprises; (iii) investing in new projects in mainland China either individually or jointly with other investors; and (iv) making investment through other means provided by laws, administrative regulations, or State Council provisions.

Pursuant to the Foreign Investment Law, China implements the management system of pre-establishment national treatment plus a negative list to foreign investment and the government generally will not expropriate foreign investment, except under special circumstances, in which case it will provide fair and reasonable compensation to foreign investors. Foreign investors are barred from investing in prohibited industries on the negative list and must comply with the specified requirements when investing in restricted industries on that list. When a license is required to enter a certain industry, the foreign investor must apply for one, and the government must treat the application the same as one by a domestic enterprise, except where laws or regulations provide otherwise. In addition, foreign investors or FIEs are required to file information reports and foreign investment shall be subject to the national security review.

On December 30, 2019, the Ministry of Commerce and the State Administration of Market Regulation issued the Measures for the Reporting of Foreign Investment Information (《外商投資信息報告辦法》), which came into effect on January 1, 2020 and replaced Interim Administrative Measures. Since January 1, 2020, for foreign investors carrying out investment activities directly or indirectly in China, the foreign investors or foreign-invested enterprises shall submit investment information to the commerce authorities pursuant to these measures.

***Qualification of Property Management Enterprises***

According to the Regulations on Property Management (2018 revision) (物業管理條例 (2018年修正)) issued by the State Council on June 8, 2003, came into effect on September 1, 2003 and revised on August 26, 2007 and February 6, 2016, a qualification system for companies engaging in property management activities has been adopted.

According to the Decision of the State Council on Canceling the Third Batch of Administrative Licensing Items Designated by the Central Government for Implementation by Local Governments (國務院關於第三批取消中央指定地方實施行政許可事項的決定) issued by the State Council on January 12, 2017 and came into effect on the same day, province and city level second class or below

property management company qualifications acknowledged by Provincial and municipal government departments of Housing and Urban-Rural were canceled.

According to the Decision of the State Council on Canceling a Group of Administrative Licensing Items (國務院關於取消一批行政許可事項的決定) issued by the State Council on September 22, 2017 which came into effect on the same day, qualification accreditation for property management enterprises of Level One was canceled.

According to the Notice of the General Office of Ministry of Housing and Urban-Rural Development on Effectively Implementing the Work of Canceling the Qualification Accreditation for Property Management Enterprises (住房城鄉建設部辦公廳關於做好取消物業服務企業資質核定相關工作的通知) issued by the General Office of Ministry of Housing and Urban-Rural Development on December 15, 2017 and came into effect on the same day, application, change, renewal or re-application of the qualifications of property management enterprises shall not be accepted, and the qualifications obtained already shall not be a requirement for property management enterprises to undertake new property management projects.

Pursuant to the Decision of the State Council to Amend and Repeal Certain Administrative Regulations (2018) (國務院關於修改和廢止部分行政法規的決定(2018)) issued by the State Council on March 19, 2018, the Regulations on Property Management (2018 revision) (物業管理條例 (2018年修正)) was amended and all the qualification requirements for the property management enterprises were removed.

***Appointment of Property Management Companies***

According to the Property Law of the PRC (中華人民共和國物權法) issued by the National People's Congress on March 16, 2007 and came into effect on October 1, 2007, property owners can either manage the buildings and ancillary facilities by themselves or engage a property management company or custodians. As regards the property management company or any other custodians hired by the developer, property owners are entitled to alter it in accordance with law. Property management companies or other custodians shall manage the buildings and ancillary facilities within the area of the building as agreed with the property owners, and shall be subject to the supervision by them.

According to the Regulations on Property Management (2018 revision) (物業管理條例 (2018年修正)), a general meeting of the property owners of a community can engage or dismiss the property management companies with affirmative votes of owners who own more than half of the GFA floor area of the community and who account for more than half of the total number of the property owners. Property owners' association, on behalf of the property owners, can sign property management contract with property management companies engaged at the general meeting. Before the engagement of a property management company by property owners and a general meeting of the property owners, a written preliminary service contract should be entered into between the property developer and the selected and engaged property management company. The preliminary property management contract may stipulate the contract duration. If the property management contract signed by the property owners' association and the property management company comes into force within the term of preliminary property management, the preliminary property management contract automatically terminates. Property developers of residential buildings shall enter into preliminary management contracts with property management enterprises through tender process.

According to the Regulations on Property Management (2018 revision) and the Regulations on Property Management and the Interim Measures for Tender and Bidding Management of Preliminary Property Management (前期物業管理招標投標管理暫行辦法) issued by the Ministry of Construction on June 26, 2003 and came into effect on September 1, 2003, developer of residential buildings and non-residential buildings in the same property management area shall engage property management enterprises by inviting bid. In case where there are less than three bidders or for small-scale properties, the developer can hire a property management company directly by signing an agreement with the approval of the real estate administrative department of the local government of the place where the property is located. Where the developer fails to hire the property management company through a tender and bidding process or hire the property management company by signing agreement without the approval of relevant government authority, the competent real estate administrative department of the local government at the county level or above shall order it to make correction within a prescribed time limit, issue a warning and impose with the penalty of no more than RMB100,000.

In addition, Interpretation of the Supreme People's Court on Several Issues the Specific Application of Law in the Trial of Cases of Disputes over Property Management Service (最高人民法院關於審理物業服務糾紛案件具體應用法律若干問題的解釋) that issued by the Supreme People's Court on May 15, 2009 and came into effect on October 1, 2009, stipulates the interpretation principles applied by the court when hearing disputes on specific matters between property owners and property management companies. For example, the preliminary property management contract signed according to the relevant laws and regulations by the developer and the property management company and the property management contract signed by the property owners' association and property management companies hired according to the relevant laws and regulations by the general meeting are legally binding on property owners, the people's court shall not support a claim if property owners plead as property owners are not a party to the contract. The court shall support a claim if property owners' association or property owners appeal to the court to confirm that the clauses of property management service contracts which exempt the responsibility of property management companies or which aggravate the responsibility or harm the rights of property owners' association or property owners are invalid.

***Fees charged by Property Management Enterprises***

According to the Measures on the Charges of Property Management Enterprise (物業服務收費管理辦法), which was jointly issued by the NDRC and the Ministry of Housing and Urban-Rural Development on November 13, 2003 and came into effect on January 1, 2004, property management companies are permitted to charge fees from owners for the repair, maintenance and management of houses and ancillary facilities, equipment and venues and maintenance of the sanitation and order in relevant regions according to related property management contract.

The fees charged by property management companies nationwide are regulated by the competent price administration department and construction administration department of the State Council. The competent price administration department of the local people's governments at or above the county level and the competent property administration departments at the same level are responsible for supervising and regulating the fees charged by property management companies in their respective administrative regions.

The fees charged by property management companies shall be based on both the government guidance price and market regulated price on the basis of the nature and features of relevant properties.

The specific pricing principles shall be determined by the competent price administration departments and property administration departments of the people's governments of each province, autonomous region and municipality directly under the Central Government.

As agreed between the property owners and property management companies, the fees for the property management services can be charged either as a lump sum basis or a commission basis. The lump sum basis refers to the charging mode requiring property owners to undertake the fixed property management expenses to property management companies who shall enjoy or assume the surplus or deficit. The commission basis refers that property management companies may collect its service fee in the proportion or amount as agreed from the property management income in advance, the rest of which shall be exclusively used on the items as stipulated in the property management contract, and property owners shall enjoy or assume the surplus or deficit.

Property management companies shall charge service fees at an expressly marked prices according to the regulations of competent price administration departments of the people's government, revealing the service information, standards, charged items and standards to the public at prominent positions within the property management region.

According to the Provisions on Clearly Marking the Prices of Property Services (物業服務收費明碼標價規定), which was jointly issued by the NDRC and the Ministry of Construction on July 19, 2004 and came into effect on October 1, 2004, property management companies shall clearly mark the price, as well as state service items and standards and relevant information on services (including the property management services as stipulated in the property management service agreement as well as other services requested by property owners) provided to the owners. If the charging standard changes, property management companies shall adjust all relevant information one month before implementing the new standard and indicate the date of implementing the new standard. Property management enterprises shall neither use any false or misleading price items or mark prices in a false or misleading manner to commit price fraud, nor charge any fees not clearly specified, other than those expressly marked.

According to the Property Management Pricing Cost Supervision and Examination Approaches (Trial) (物業服務定價成本監審辦法(試行)) which was jointly issued by the NDRC and the Ministry of Construction on September 10, 2007 and came into effect on October 1, 2007, the competent price administration department of people's government formulates or regulates property management charging standards, the pricing cost of property management services should be the social average cost of community property services as verified by the competent price administration department of the people's government. With the assistance of competent real estate administrative department, competent pricing department is responsible to organize the implementation of the property management pricing cost supervision and examination work. Property management service pricing cost shall include staff costs, expenses for daily operation and maintenance on public facilities and equipment, green conservation costs, sanitation fee, order maintenance cost, public facilities and equipment as well as public liability insurance costs, office expenses, shared administration fee, fixed assets depreciation and other fees approved by property owners.

According to the Circular of NDRC on the Opinions on Relaxing Price Controls in Certain Services (國家發展和改革委員會關於放開部分服務價格意見的通知) which was promulgated by NDRC and became effective on December 17, 2014, the competent price administration departments of all provinces, autonomous regions and municipalities directly under the Central Government are supposed

to make efforts to perform relevant procedures to decontrol the prices of property management services for non-government supported houses and parking services in residential community.

## LEGAL SUPERVISION OVER THE INTERNET INFORMATION SERVICES

### *Supervision on Internet Information Services*

According to the Administrative Measures on Internet Information Services (互聯網信息服務管理辦法), which was issued by the State Council on September 25, 2000 and revised on January 8, 2011, Internet information service refers to the provision of information through internet to web users, and includes two categories: commercial and non-commercial. Commercial internet information service refers to the service activities of compensated provision to online subscribers through the internet of information or website production. Non-commercial internet service refers to the provision free of charge of public, commonly-shared information through the internet to web users. Entities engaged in providing commercial internet information service shall apply for a license for value-added telecommunication services of internet information services. As for the operation of non-commercial internet information services, record-filing is required. Internet information service provider shall provide services within the scope of their licenses or filing. Non-commercial internet information service providers shall not provide services with charge of payment. In case an internet information service provider changes its services, website address, *etc.*, it shall apply to submit such changes within 30 days in advance at the relevant government department.

According to the Provisions on Administration of Mobile Internet Application Information Services (移動互聯網應用程序信息服務管理規定), which was issued by the Cyberspace Administration of PRC on June 28, 2016 and came into effect on August 1, 2016, entities providing information services through mobile internet applications shall obtain relevant qualifications according to law. Mobile internet application provider shall not use mobile internet application program to carry out activities prohibited by laws and regulations, such as endangering national security, disturbing public orders, and infringing other's legal rights and interests, or use mobile internet applications to produce, copy, publish and spread illegal information prohibited by laws and regulations. The Cyberspace Administration of China shall be responsible for the supervision and administration of information on mobile internet applications. The local cyberspace administrations shall be responsible for the supervision and administration of information on mobile internet application program within the administrative regions.

## SUPERVISION OVER REAL ESTATE BROKERAGE BUSINESS

According to the Urban Real Estate Administration Law of the PRC (中華人民共和國城市房地產管理法) which issued by the Standing Committee of the National People's Congress on July 5, 1994 and came into effect on January 1, 1995 and revised on August 30, 2007, August 27, 2009 and August 26, 2019, real estate intermediate service agencies include real estate consultants, real estate evaluation agencies, real estate brokerage agencies, *etc.* Real estate intermediate agencies shall meet the following conditions: (i) have their own name and organization; (ii) have a fixed business site; (iii) have the necessary assets and funds; (iv) have a sufficient number of professionals; and (v) other conditions specified by laws and administrative regulations.

According to the Administrative Measures for Real Estate Brokerage (房地產經紀管理辦法) issued by the MOHURD, NDRC and Ministry of Human Resources and Social Security on January 20, 2011 and came into effect on April 1, 2011 and revised on March 1, 2016, real estate brokerage refers

to the acts of providing intermediary and agency services to and collecting commissions from clients by real estate brokerage institutions and real estate brokers for the purpose of promoting real estate transactions. Sufficient real estate agents shall be equipped to establish real estate brokerage agencies and their branches. Real estate brokerage agencies and their branches shall go to the competent housing and urban-rural development (real estate) authority for filing formalities within 30 days from the date of receiving business licenses.

## LEGAL SUPERVISION OVER HOTEL OPERATION AND CATERING SERVICES

### *Supervision On Security Control*

According to the Measures for the Control of Security in the Hotel Industry (旅館業治安管理辦法) which was issued by the Ministry of Public Security on November 10, 1987 and was revised on November 8, 2011, anyone who applies to operate a hotel is subject to examination and approval by the local public security authority and must obtain a special industry license. The Measures for the Control of Security in the Hotel Industry impose certain security control obligations on the operators. For example, the hotel must examine the identification card of any guest to whom accommodation is provided and make an accurate registration. The hotel must also report to the local public security authority if it discovers anyone violating the law or behaving suspiciously or an offender wanted by the public security authority.

### *Supervision on Public Area Hygiene*

According to the Public Area Hygiene Administration Regulation (公共場所衛生管理條例) which was promulgated by the State Council on April 1, 1987 and amended on February 6, 2016 and April 23, 2019 and according to the Implementing Measures for the Public Area Hygiene Administration Regulation (公共場所衛生管理條例實施細則) which was promulgated by the Ministry of Health on March 10, 2011 and amended by the National Health and Family Planning Commission on January 19, 2016 and December 26, 2017, a hotel must obtain a public area hygiene license before opening for business, the hotels failing to obtain a public area hygiene license or comply with other requirements set forth in such regulations may be subject to the following administrative penalties depending on the seriousness of their respective activities: (i) warnings; (ii) fines between RMB500 and RMB30,000; (iii) orders to correction within a stipulated period or (iv) orders to suspend operations for rectification, or to revoke the public hygiene license.

According to Decision of the State Council on the Integration of Health permits and Food Business licenses in Public places for Restaurant Services (國務院關於整合調整餐飲服務場所的公共場所衛生許可證和食品經營許可證的決定), which was promulgated by the State Council on February 3, 2016, the hygiene permits issued by the local health authorities to four kinds of public places, such as restaurants, cafes, bars and teahouses are canceled, and integrate the contents of the food safety permits into the food business licenses issued by the China Food and Drug Administration ("the CFDA").

### *Supervision on Food Sanitation*

With the purpose of guaranteeing food safety and safeguarding the health and life safety of the public, Standing Committee of the National People's Congress enacted the PRC Law on Food Safety (中華人民共和國食品安全法) on February 2009 which was amended on April 24, 2015 and December 29, 2018. The State Council adopted the Implementation Rules of the Food Safety Law (中華人民共和國食品安全法實施條例) which came into effect on July 20, 2009 and was amended on

February 6, 2016 and March 26, 2019. In August 2015, the CFDA promulgated the Administrative Measures for Food Operation Licensing (食品經營許可管理辦法) which was subsequently amended on November 17, 2017. The CFDA adopted the Announcement on Launching the Use of Food Business License (關於啟用<食品經營許可證>的公告) which came into effect on September 30, 2015. Under above measures, a food operation permit shall be obtained in accordance with the law to engage in food selling and catering services within the territory of the PRC. Pursuant to the PRC Law on Food Safety, hotels failing to obtain a food service license (or formerly food hygiene license) may be subject to: (i) confiscation of illegal gains, food illegally produced for sale and tools, facilities and raw materials used for illegal production; and (ii) fines ranged from RMB50,000 and RMB100,000 if the value of food illegally produced is less than RMB10,000 or fines equal to 10 to 20 times of the value of food if such value is equal to or more than RMB10,000.

Pursuant to the Administrative Measures on Food and Beverage Service Licensing (餐飲服務許可管理辦法) promulgated by the Ministry of Health On March 4, 2010 and Administrative Measures on Food Safety Supervision in Food and Beverage Services (餐飲服務食品安全監督管理辦法), the local food and drug administrations at various levels are responsible for the administration of food and beverage service licensing. Catering service providers are required to obtain a food service license and are responsible for safety in catering services in accordance with the law. A service provider, providing catering services at different locations or venues must obtain separate food service licenses for each venue. In the event of any change in the operation locations, an update of food service license is required.

## SUPERVISION ON FIRE PREVENTION

According to the Fire Prevention Law of the People's Republic of China ("Fire Prevention Law") (中華人民共和國消防法) which was adopted by Standing Committee of the National People's Congress on April 29, 1998 and was amended on October 28, 2008 and April 23, 2019, before the use or commencement of the business operations of public gathering places, the construction entities or the entities using such places shall file an application for fire safety inspection with the fire rescue agencies of the local people's governments of such places at or above the county level. The fire rescue agencies shall, within ten working days of accepting the application, conduct fire safety inspection on such public gathering places according to the technical standards and administrative provisions for fire protection. Public gathering places that have not undergone or have failed the fire safety inspection shall not be put into use or carry out business operations. If any entity puts a public gathering place into use or into business operation without permission when the place has not undergone fire safety and protection inspections or has failed to satisfy fire safety and protection requirements, the violator shall be ordered to suspend construction, use, production or business operations and be imposed with a fine not lower than RMB30,000 and not higher than RMB300,000.

Pursuant to the Fire Prevention Law, property management service enterprises in residential areas shall maintain and manage shared fire fighting facilities within the area under their management and provide services in support of fire safety and prevention.

## SUPERVISION ON TRAVEL AGENCIES

According to Regulations on Travel Agencies (旅行社條例) as amended on March 1, 2017, for applying for domestic travel and inbound travel businesses, a travel agency shall acquire the status of a legal person and have a registered capital of not less than RMB300,000 and shall apply to the

competent travel administration in the province, autonomous region or centrally-administered municipality where it is domiciled or the competent travel department in the city divided into districts which has been entrusted for the travel business license. According to Regulations on Travel Agencies, in the event that a travel agency has been operating for two years after acquiring the license and has not been imposed a fine or more severe penalty by administrative organs for infringing on the legitimate rights and interests of tourists, it may apply for outbound travel business.

According to Regulations on Travel Agencies, the foreign investment in travel agencies includes Chinese-foreign equity joint venture travel agencies, Chinese foreign cooperative travel agencies and wholly foreign-owned travel agencies. The establishment of foreign-invested travel agencies shall also be in compliance with the laws and regulations governing foreign investment. Foreign-invested travel agencies shall not engage in outbound travel business (including Hong Kong, Macau and Taiwan) for Chinese mainland residents except as otherwise provided in the decisions by the State Council, free trade agreements and the Mainland and Hong Kong and Macau Closer Economic Partnership Arrangements signed by China.

## SUPERVISION ON CONSUMER GOODS AND SERVICE

Pursuant to the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (the "No.7 Order") (中華人民共和國消費者權益保護法), which was promulgated by Standing Committee of the National People's Congress on October 31, 1993 and was amended on August 27, 2009 and October 25, 2013 and became effective on March 15, 2014, business operators shall fulfill the obligations stipulated in the relevant laws, regulations and the obligations agreed upon in the agreements reached between business operators and consumers. Business operators shall guarantee that the goods and services they supply meet the requirements concerning personal or property safety and business operators that operate such places of business as hotels, shopping malls, restaurants, and movie theaters shall be obligated to protect the safety of consumers. A consumer, who suffers personal injury or property damage as a result of purchasing or using commodities or receiving services, is entitled to compensations according to the relevant law. Where the commodity or service provided by a business operator does not comply with the quality requirements, the consumer may return the commodity, or require the business operator to perform its obligations such as replacement or repair according to the requirements of the State or the agreement between the parties. A consumer, whose legitimate rights and interests are infringed while purchasing or using goods, has the right to claim for compensations from the seller concerned. Where the liability is with the manufacturers or other sellers who provide the goods to the said seller, the seller shall, after paying the compensations to the consumer, have the right to claim compensations from the manufacturers or the other sellers. Consumers or other victims suffering from personal injuries or property damages due to defects of goods have the right to claim compensations either from the sellers or from the manufacturers of the products. If the liability is with the manufacturers, the sellers shall, after paying the compensations, have the right to claim compensations from the manufacturers; if the liability is with the sellers, the manufacturers shall, after paying the compensations to the consumer, have the right to claim compensations from the sellers. Consumers whose legitimate rights and interests are infringed while receiving services have the right to claim compensations from providers of the services.

Pursuant to the Measures for Punishments against Infringements on Consumer Rights and Interests (侵害消費者權益行為處罰辦法), which was issued by the SAIC on January 5, 2015 and became effective on March 15, 2015, administrations for industry and commerce shall, in accordance with the provisions of No.7 Order and other relevant laws and regulations, protect the rights and

interests of consumers when they purchase and use goods or receive services for daily consumption needs, and mete out administrative penalties against activities committed by business operators that infringe upon consumer rights and interests.

Pursuant to the Opinions of the State Administration for Industry and Commerce on Enhancing the Protection of Consumers' Rights and Interests in the Internet Sector (工商總局關於加強互聯網領域消費者權益保護工作的意見), which was promulgated and came into effect by SAIC on October 19, 2016, to further strengthen the protection of consumers' rights and interests in the internet sector, SAIC decided to carry out supervision and law enforcement in the key fields of the protection of online consumers' rights and provided the following opinions: (i) adhering to integrated supervision and administration to protect consumers' legitimate rights and interests in the internet sector in accordance with the law; (ii) adhering to highlighting key points and effectively reinforcing the supervision and administration of the quality of goods traded online; (iii) adhering to the principle of problem-oriented, and crack down on the illegal acts infringing consumers' rights and interests in online trading; (iv) adhering to reform and innovation, improving the online complaints and after-sales rights protection mechanism for online trading; (v) adhering to information disclosure, and promoting the construction of the network operators' integrity and self-discipline system; (vi) adhering to joint social governance and building a long-term mechanism for the protection of consumers' rights and interests in the internet sector; and (vii) adhering to education and guidance to improve online consumers' self-protection awareness and ability.

## SUPERVISION ON TRADE MARKET

Pursuant to the Guiding Opinions of Twelve Authorities including the Ministry of Commerce on Promoting the Development of the Platform Economy via Commodity Trade Markets (商務部等12部門關於推進商品交易市場發展平臺經濟的指導意見), which was promulgated and came into effect on February 12, 2019, MOFCOM and related authorities shall, among others, adhere to the fundamental goal of serving the real economy via commodity markets, strictly standardize administration, strengthen risk prevention and control; establish a legalized business environment of fair competition, build a co-governance mechanism combining enterprise autonomy, industry self-discipline, social supervision and government regulation; strictly adhere to the bottom line of risk prevention, and guide compliance and orderly development; implement the entity responsibilities of platform operators for safe production, quality, safety and other aspects; and safeguard the market order and the legitimate rights and interests of consumers.

## LEGAL SUPERVISIONS OVER LABOR PROTECTION IN THE PRC

According to Labor Law of the PRC (中華人民共和國勞動法), which was promulgated by the SCNPC on July 5, 1994, came into effect on January 1, 1995 and was amended on August 27, 2009 and December 29, 2018, an employer shall develop and improve its rules and regulations to safeguard the rights of its workers.

According to Labor Contract Law of the PRC (中華人民共和國勞動合同法), which was promulgated by the SCNPC on June 29, 2007, came into effect on January 1, 2008, and was amended on December 28, 2012, and the Implementation Regulations on Labor Contract Law of the PRC (中華人民共和國勞動合同法實施條例), which was promulgated and became effective on September 18, 2008, employers and employees shall enter into written labor contracts to establish their employment relationship. The labor contracts shall set forth the terms, duties, remunerations, disciplinary rules of

the employment and conditions to terminate the labor contracts. With respect to a circumstance where a labor relationship has already been established but no formal contract has been made, a written labor contracts shall be entered into within one month from the date when the employee begins to work.

According to Interim Provisions on Labor Dispatch (劳務派遣暫行規定), which was promulgated on January 24, 2014 and came into effect since March 1, 2014, employers may employ dispatched workers in temporary, auxiliary or substitutable positions only, and shall strictly control the number of dispatched workers which shall not exceed 10% of the total number of its workers.

According to Social Security Law of the PRC (中華人民共和國社會保險法), which was promulgated on October 28, 2010 and revised on December 29, 2018, and other relevant PRC laws and regulations such as the Interim Regulations on the Collection and Payment of Social Insurance Premiums (社會保險費徵繳暫行條例), Regulations on Work Injury Insurance (工傷保險條例), Regulations on Unemployment Insurance (失業保險條例) and Trial Measures on Employee Maternity Insurance of Enterprises (企業職工生育保險試行辦法), the employer shall register with the social insurance authorities and contribute to social insurance plans covering basic pensions insurance, basic medical insurance, maternity insurance, work injury insurance and unemployment insurance. Basic pension, medical and unemployment insurance contributions shall be paid by both employers and employees, while work injury insurance and maternity insurance contributions shall be paid only by employers, and employers who failed to promptly contribute social security premiums in full amount shall be ordered by the social security premium collection agency to make or supplement contributions within a stipulated period, and shall be subject to a late payment fine computed from the due date at the rate of 0.05% per day; where payment is not made within the stipulated period, the relevant administrative authorities shall impose a fine ranging from one to three times the amount of the amount in arrears.

According to Regulations on the Administration of Housing Provident Fund (住房公積金管理條例), which was promulgated and became effective on April 3, 1999, and was amended on March 24, 2002 and March 24, 2019, employers shall undertake registration at the competent administrative center of housing fund and then, upon the verification by such administrative center of housing fund, go to a commissioned bank to go through the formalities of opening housing provident fund accounts on behalf of its employees. The employer shall timely pay up and deposit housing provident fund contributions in full amount and late or insufficient payments shall be prohibited. The employer shall process housing provident fund payment and deposit registrations with the housing provident fund administration center. With respect to companies who violate the above regulations and fail to process housing provident fund payment and deposit registrations or open housing provident fund accounts for their employees, such companies shall be ordered by the housing provident fund administration center to complete such procedures within a prescribed time limit; where failing to do so at the expiration of the time limit, a fine of not less than CNY 10,000 nor more than CNY 50,000 shall be imposed. When an employer breach these regulations and fail to pay up housing provident fund contributions in full amount as due, the housing provident fund administration center shall order such it to pay up within a prescribed time limit; where the payment and deposit has not been made after the expiration of the time limit, an application may be made to a people's court for compulsory enforcement.

## REGULATIONS RELATING TO INTELLECTUAL PROPERTY

According to Trademark Law of the PRC (中華人民共和國商標法), which was promulgated on August 23, 1982, and amended on February 22, 1993, October 27, 2001, August 30, 2013, April 23,

2019, and Implementation Regulations on the Trademark Law of the PRC (中華人民共和國商標法實施條例) which was promulgated by the State Council on August 3, 2002 and amended on April 29, 2014, the trademark registrant may, by concluding a trademark licensing contract, authorize others to use the registered trademark. The licensor shall supervise the quality of the goods on which the licencee uses the licensor's registered trademark, and the licencee shall guarantee the quality of the goods on which the registered trademark is used. For licensed use of a registered trademark, the licensor shall file record of the licensing of the said trademark with the trademark bureau, while non-filing of the licensing of a trademark shall not be contested against a good faith third-party.

According to the Patent Law of the PRC (中華人民共和國專利法) (No.11 Order of the President) which was issued by the SCNPC on March 12, 1984, came into effect on April 1, 1985, and amended on September 4, 1992, August 25, 2000 and December 27, 2008, the State Intellectual Property Office is responsible for managing patent work of the whole nation. The patent management departments of the people's governments of each province, autonomous region and municipality directly under the central government are responsible for the patent management in their respective administrative regions. Chinese patent system adopts the principle of "prior application", i.e. where two or more applicants file applications for patent for the identical invention or creation respectively, the patent right shall be granted to the applicant whose application was filed first. If one wishes to file application for patent for invention or utility models, the following three standards must be met: novelty, creativity and practicability. The validity period of a patent for invention is 20 years, while the validity period of utility models and design is 10 years. Others may use the patent after obtaining the permit or proper authorization of the patent holder, otherwise such behavior will constitute an infringing act of the patent right.

The Copyright Law of the PRC (中華人民共和國著作權法), which was issued by the SCNPC on September 7, 1990, came into effect on June 1, 1991 and amended on October 27, 2001 and February 26, 2010, specifies that works of Chinese citizens, legal persons or other organizations, including literature, art, natural sciences, social sciences, engineering technologies and computer software created in writing or oral or other forms, whether published or not, all enjoy the copyright. Copyright holder can enjoy multiple rights, including the right of publication, the right of authorship and the right of reproduction.

The Measures for the Registration of Computer Software Copyright (計算機軟件著作權登記辦法), which was issued by the National Copyright Administration on February 20, 2002, and came into effect on the same day, regulates the registration of software copyright, the exclusive licensing contract and transfer contracts of software copyright. The National Copyright Administration is mainly responsible for the registration and management of national software copyright and recognizes the China Copyright Protection Center as the software registration organization. The China Copyright Protection Center will grant certificates of registration to computer software copyright applicants in compliance with the regulations of the Measures for the Registration of Computer Software Copyright and the Regulations on Protection of Computers Software (計算機軟件保護條例) issued by the State Council on December 20, 2001, came into effect on January 1, 2002 and revised on January 8, 2011 and January 30, 2013.

According to the Administrative Measures for Internet Domain Names (互聯網域名管理辦法), which was issued by the Ministry of Industry and Information Technology on August 24, 2017 and came into effect on November 1, 2017, the Ministry of Industry and Information Technology is responsible for managing internet network domain names of China. The ". CN" and the ".zhongguo (in

Chinese character)" shall be China's national top level domains. The principle of "first-to-file" is adopted for domain name services. The applicant of domain name registration shall provide the agency of domain name registration with the true, accurate and complete information about the domain name holder's identity for the registration purpose, and sign the registration agreements. Upon the completion of the registration process, the applicant will become the holder of the relevant domain name.

## LEGAL REGULATIONS OVER TAX IN THE PRC

### *Income Tax*

According to the Corporate Income Tax Law of the PRC (中華人民共和國企業所得税法) (hereinafter referred to as the CIT Law) (promulgated by the National People's Congress on March 16, 2007 and came into effect on January 1, 2008 and revised on February 24, 2017 and on December 29, 2018) and the Implementation Regulations on the CIT Law (企業所得税法實施條例) (hereinafter referred to as Regulations on the Implementation of the CIT Law) (issued by the State Council on December 6, 2007 and was revised on April 23, 2019), the tax rate of 25% will be applied to the income related to all PRC enterprises, foreign-invested enterprises and foreign enterprises which have established production and operation facilities in the PRC. These enterprises are classified into as either resident enterprises or non-resident enterprises. Enterprises which are established in accordance with the law of the foreign country or region, but whose actual administration institutions (referring to the institutions conducting substantive and all-around management and control over the enterprises production, operation, personnel, accounting matters, finance, *etc.* ) are in PRC, are deemed as resident. Thus, the tax rate of 25% applies to their income from both inside and outside PRC.

According to the CIT Law and the implementing regulations of the CIT Law, for dividends payable to investors that are non-resident enterprises (who do not have organizations or places of business in the PRC, or that have organizations and places of business in PRC but to whom the relevant income tax is not effectively connected), 10% of the PRC withholding tax shall be paid, unless there are any applicable tax treaties are reached between the jurisdictions of non-resident enterprises and the PRC which may reduce or provide exemption to the relevant tax. Similarly, any gain derived from the transfer of shares by such investor, if such gain is regarded as income derived from sources within the PRC, shall be subject to 10% PRC income tax rate (or a lower tax treaty rate (if applicable)).

According to the Arrangements between the PRC and Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (內地和香港特別行政區關於對所得避免雙重徵税和防止偷漏税的安排) (issued by State Administration of Taxation on August 21, 2006 and became effective on December 8, 2006), a company incorporated in Hong Kong will be subject to withholding a 25% interest or more in a PRC company, its dividend obtained from the company incorporated in the PRC shall be taxed with a lower tax rate of 5% as the withholding tax. According to the Announcement of the State Administration of Taxation on Issues Relating to "Beneficial Owner" in Tax Treaties (國家税務總局關於税收協定中"受益所有人"有關問題的公告), which was issued by State Administration of Taxation on February 3, 2018 and came into effect on April 1, 2018, a beneficial ownership analysis will be used based on a substance-over form principle to determine whether or not to grant tax treaty benefits.

According to the Announcement on Several Issues concerning the Enterprise Income Tax on Income from the Indirect Transfer of Assets by Non-Resident Enterprises (關於非居民企業間接轉讓財產企業所得税若干問題的公告) (issued by State Administration of Taxation on February 3, 2015 came

into effect on the same day, and revised on December 1, 2017 and December 29, 2017), where a non-resident enterprise indirectly transfers equities and other assets of a PRC resident enterprise to avoid the enterprise income tax payment obligation by making an arrangement with no reasonable business purpose, such indirect transfer shall be redefined and recognized as a direct transfer in accordance with the provisions of the Enterprise Income Tax Law.. Where the enterprise income tax on the income from the indirect transfer of real estate or equities shall be paid in accordance with the provisions of this Announcement, the entity or individual that directly assumes the obligation to make relevant payments to the transferor according to the provisions of the relevant laws or as agreed upon in the contract shall be the withholding agent. If the equity transferor fails to declare and pay tax payable of indirectly transferred taxable property income in the PRC on time and in full amount, and the withholding agent fails to withhold the tax, in addition to recovering the tax payable, the equity transferor should be charged with interest on a daily basis according to the provisions of the Regulations on the Implementation of the Enterprise Income Tax Law.

***Value-added Tax***

According to the Temporary Regulations on Value-Added Tax (中華人民共和國增值税暫行條例) (issued on December 13, 1993 by the State Council, came into effect on January 1, 1994 and amended on November 10, 2008 and February 6, 2016 and November 19, 2017) and the Detailed Rules for the Implementation of the Provisional Regulations of the PRC on Value Added Tax (中華人民共和國增值税暫行條例實施細則) (issued on December 25, 1993 by the MOF, and became effective on the same day and revised on December 15, 2008 and October 28, 2011) (collectively, the "VAT Law"), taxpayers who engaged in the sale of goods, the provision of processing, repairing and replacement services, leasing service of tangible movable property or import goods within the territory of the PRC must pay value-added tax. Other than those specified listed in the VAT law, tax rate for selling services or intangible assets is 6%.

Furthermore, in accordance with the Notice on Fully Launch of the Pilot Scheme for the Conversion of Business Tax to Value-Added Tax (關於全面推開營業税改徵增值税試點的通知) (issued by the MOF and the State Administration of Taxation on March 23, 2016, came into effect on May 1, 2016, revised on July 1, 2017, January 1, 2018 and April 1, 2019), the state started to fully implement the pilot program from business tax to value-added tax on May 1, 2016. All taxpayers of business tax in construction industry, real estate industry, financial industry and living service industry have been included in the scope of the pilot and should pay value-added tax instead of business tax.

***City Maintenance and Construction Tax and Educational Surcharges***

According to the Notice on Unifying the System of Urban Maintenance and Construction Tax and Education Surcharge Paid by Domestic and Foreign-invested Enterprises and Individuals (關於統一內外資企業和個人城市維護建設税和教育費附加制度的通知) (issued by the State Council on October 18, 2010 and came into effect on December 1, 2010), since December 1, 2010, the Temporary Regulation on Urban Maintenance and Construction Tax of the PRC (中華人民共和國城市維護建設税暫行條例) issued in 1985 and the Temporary Provisions on the Collection of Educational Surcharges (徵收教育費附加的暫行規定) issued in 1986 and other rules and regulations issued by the State Council and other competent departments in charge of relevant financial and tax authorities shall apply to foreign-invested enterprises, foreign enterprises and foreign individuals.

According to the Temporary Regulation on Urban Maintenance and Construction Tax of the PRC (issued by the State Council on February 8, 1985, retroactive to January 1, 1985 and revised on

January 8, 2011), entities and individuals who pay consumption tax, value-added tax and business tax shall pay city maintenance and construction tax. The payment of city maintenance and construction tax is based on the actual amount of consumption tax, value-added tax and business tax paid by the entities and individuals and shall be paid at the same time along with the above taxes. If the location of the taxpayer is in city downtown area, the tax rate shall be 7%; if the location of the taxpayer is in a county or town, the tax rate shall be 5%; the tax rate shall be 1% for taxpayer located out of city downtown area, country or town.

According to the Temporary Provisions on the Collection of Educational Surcharges (issued by the State Council on April 28, 1986, came into effect on July 1, 1986 and revised on June 7, 1990, August 20, 2005 and January 8, 2011), the tax rate of education surcharges shall be 3% of the actual amount of consumption tax, value-added tax and business tax paid by the entities and individuals and paid at the same time along with the above taxes.

## REGULATIONS RELATING TO FOREIGN EXCHANGE

According to the PRC Foreign Currency Administration Rules (中華人民共和國外匯管理條例) (promulgated by the State Council on January 29, 1996, came into effect on April 1, 1996 and amended on January 14, 1997 and August 5, 2008), and various regulations issued by the State Administration of Foreign Exchange and other relevant PRC government authorities, foreign currency earnings of domestic entities or individuals can be transferred back to the PRC or deposited overseas and RMB is convertible into other currencies. The conditions and time limit of transferring back to the PRC or deposited overseas shall be specified by the State Administration of Foreign Exchange according to the international receipts and payments status and requirements of Administration of Foreign Exchange, such as the conversion of RMB into other currencies and remittance of the converted foreign currency outside the PRC for the purpose of capital account items, like direct equity investments, loans, requires the prior approval from the State Administration of Foreign Exchange or its local office. Foreign exchange receipts for current account transactions may be retained or sold to financial institutions engaged in the settlement or sale of foreign exchange according to the relevant provisions of the State. Domestic entities or individuals who directly make overseas investment or involve in distribution or trade of foreign securities or derivative products, shall go through the formalities for registration in accordance with the provisions of the foreign exchange administration department of the State Council. If the above entities or individuals shall be subjected to the approved of or record-filing with the competent department in advance as required by the state, they should submit related documents for inspection, approval and record-filing before foreign exchange registration. The exchange rate for RMB follows a managed floating exchange rate system based on market demand and supply.

According to the Regulations on Administration of Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯管理規定), which was promulgated by the People's Bank of China on June 20, 1996 and became effective on July 1, 1996, foreign exchange receipts under the current account of foreign-invested enterprises may be retained within the fullest extent approved by the Administration of Foreign Exchange and the exceeding part of such amount shall be sold to a designated foreign exchange bank or through a foreign exchange swap center.

Pursuant to Notice of the SAFE on Relevant Issues Relating to Foreign Exchange Control on Offshore Investment, Financing and Round-trip Investments by Domestic Residents through Special Purpose Vehicles (國家外匯管理局關於境內居民通過特殊目的公司境外投融資及返程投資外匯管理有關

問題的通知), which was promulgated on July 4, 2014 and implemented on the same date, domestic residents establishing or taking control of a special purpose company abroad which makes round-trip investments in the PRC are required to effect foreign exchange registration with the local foreign exchange bureau. Foreign-invested enterprises established through round-tripping investments are prohibited from paying profits overseas, making settlement, transferring shares, making capital reduction, recovering in advance investment and the principal and interest of shareholder loans and other funds (including the use of profits paid overseas in domestic reinvestment, capital increase, *etc.*) if domestic legal or natural person residents fail to make the offshore investment-related foreign exchange registration as required.

According to the Circular on Further Simplifying and Improving the Direct Investment-related Foreign Exchange Administration Policies (關於進一步簡化和改進直接投資外匯管理政策的通知) (Hui Fa [2015] No.13) which was promulgated on February 13, 2015 and revised on December 30, 2019, the above mentioned registration will be handled directly by the bank that has obtained the financial institution identification codes issued by the foreign exchange regulatory authorities and has opened the capital account information system at the foreign exchange regulatory authorities in the place where it is located and the foreign exchange regulatory authorities shall perform indirect regulation over the direct investment-related foreign exchange registration via banks.

According to the Notice of the State Administration of Foreign Exchange on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts (國家外匯管理局關於改革和規範資本項目結匯管理政策的通知) (issued by the State Administration of Foreign Exchange on June 9, 2016 and came into effect on the same day). According to this notice, the settlement of foreign exchange receipts under the capital account (including but not limited to foreign currency capital and foreign debts) may convert from foreign currency into RMB on self-discretionary basis. The RMB funds obtained by a domestic entity from its discretionary settlement of foreign exchange receipts under the capital account shall be included in the account pending for foreign exchange settlement and payment. The Notice No 16 reiterates the principle that RMB converted from foreign currency capital may not directly or indirectly used for purpose beyond its business scope and investments in securities with the exception of bank financial products that guarantee the relevant PRC regulations. The ratio of the discretionary exchange rate of foreign exchange receipts under domestic capital account is tentatively set at 100%. The State Administration of Foreign Exchange may adjust the above ratio in due time according to the balance of payment status.

## REGULATION RELATING TO M&A RULES AND OVERSEAS LISTING

According to the Provisions Regarding Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (關於外國投資者併購境內企業的規定) (the "M&A Rule"), which was promulgated on August 8, 2006 and became effective on September 8, 2006, and was later amended on June 22, 2009, a foreign investor is required to obtain necessary approvals when (i) a foreign investor acquires equity in a domestic non-foreign invested enterprise thereby converting it into a foreign-invested enterprise, or subscribes for new equity in a domestic enterprise via an increase of registered capital thereby converting it into a foreign-invested enterprise; or (ii) a foreign investor establishes a foreign-invested enterprise which purchases and operates the assets of a domestic enterprise, or which purchases the assets of a domestic enterprise and injects those assets to establish a foreign-invested enterprise. According to Article 11 of the M&A Rules, where a domestic company, domestic enterprise, or a domestic natural person, through an overseas company established or controlled by it/him/her, acquires a domestic company which is affiliated with it/him/her, an approval from the MOFCOM is required.

In addition, according to the Interim Administrative Measures, where a non-foreign-invested enterprise changes into a foreign-invested enterprise due to acquisition, consolidation by merger or otherwise, which is subject to record-filing as stipulated in the Measures, it shall complete the record-filing formalities for incorporation and submit the Incorporation Application in accordance with the Measures.

Since January 1, 2020, Interim Administrative Measures was replaced by the Measures for the Reporting of Foreign Investment Information (《外商投資信息報告辦法》), in accordance with which, for foreign investors carrying out investment activities directly or indirectly in China, the foreign investors or foreign-invested enterprises shall submit investment information to the commerce authorities.