

为了规范网络预约出租车发展，交通运输部（以下简称“**交通部**”）公布了《关于深化改革进一步推进出租汽车行业健康发展的指导意见》（以下简称“《**出租汽车指导意见**》”）以及《网络预约出租车经营服务管理暂行办法》（以下简称“《**网络预约出租车管理办法**》”）的公开征求意见稿。国务院决定在部分地区试行市场准入负面清单制度。商务部发布了《关于修改部分规章和规范性文件的决定》，对注册资本登记制度改革涉及的29部规章和规范性文件予以修改。商务部、国家外汇管理局（以下简称“**外汇局**”）取消外商投资房地产企业商务部网站备案公示程序。中国人民银行（以下简称“**央行**”）和外汇局联合出台《内地与香港证券投资基金跨境发行销售资金管理操作指引》（以下简称“《**操作指引**》”），规范证券投资基金跨境发行销售资金的管理。国家工商行政管理总局（以下简称“**工商总局**”）拟将在中国境内从事生产经营活动的外国企业的登记主管机关由工商总局下放至省级工商行政管理部门。

一、交通部将规范网络预约出租车管理

交通部公布了《出租汽车指导意见》及《网络预约出租车管理办法》，并于2015年10月10日公开征求意见¹。《网络预约出租车管理办法》对于外商投资网络预约出租汽车经营作了严苛的准入要求，除了需要在中国大陆设置服务器、符合外商投资国家安全审查的相关规定外，还需要取得增值电

信业务经营许可证。

（一）背景

2014年7月以来，一些互联网企业陆续推出网络预约出租车服务，随之出现了主体责任不明确、接入非营运车辆、乘客安全和合法权益缺乏保障、对出租汽车市场造成不公平竞争等法律问题²。

2015年1月1日起施行的《出租汽车经营服务管理规定》对“预约出租汽车经营服务”作出规定：预约出租汽车经营服务是指以七座及以下乘用车通过预约方式承揽乘客，并按照乘客意愿行驶、提供驾驶劳务，根据行驶里程、时间或者约定计费的经营服务。从事预约出租汽车经营服务的，需取得注明预约出租汽车的《出租汽车经营行政许可决定书》、《道路运输经营许可证》、《道路运输证》，且预约出租汽车的车身颜色和标识应当有所区别。预约出租汽车驾驶员只能通过预约方式为乘客提供运营服务，在规定的地点待客，不得巡游揽客。

在此基础上，交通部拟进一步规范网络预约出租车经营服务，于2015年10月10日起就《网络预约出租车管理办法》公开征求意见。

（二）法律点评

《网络预约出租车管理办法》对于网络预约出租汽车经营者、网络预约出租汽车服务车辆和驾驶员、网络预约出租汽车经营行为、监督检查、法律

¹ http://www.moc.gov.cn/zfxgk/bnssj/dlyss/201510/t20151010_1886298.html

² <http://www.scio.gov.cn/xwfbh/gbwxwfbh/xwfbh/jtysb/Document/1451721/1451721.htm>

责任等作出详细规定。

网络预约出租汽车经营服务，是指以互联网技术为依托构建服务平台，接入符合条件的车辆和驾驶员，通过整合供需信息，提供非巡游的预约出租汽车服务的经营活动。

对于外商投资网络预约出租汽车经营，应当符合下列条件：

1. 具有企业法人资格；
2. 具有固定的营业场所和相应服务机构及服务能力；
3. 具备互联网平台和信息数据交互及处理能力，服务器设置在中国大陆；
4. 网络服务平台数据库应当接入服务所在地道路运输管理机构出租汽车监管平台；
5. 使用电子支付的，应与银行、非银行支付机构签订提供支付结算服务的协议；
6. 有健全的制度；
7. 符合外商投资国家安全审查的相关规定等。

外商投资网络预约出租汽车经营除了应取得网络预约出租汽车经营行政许可、经营范围为预约出租汽车的《道路运输经营许可证》外，还应取得增值电信业务经营许可证。

从事网络预约出租汽车经营的车辆应取得类型为预约出租汽车的《道路运输证》。网络预约出租汽车经营者不得接入其他营运车辆或非营运车辆。

从事网络预约出租汽车服务的驾驶员应取得类别为预约出租汽车的《道路运输从业人员从业资格

证》。

网络预约出租汽车经营者应当合理确定网络预约出租汽车运价，实行明码标价，但不得有以排挤竞争对手为目的，以低于成本的价格提供运营服务的不正当竞争行为。

（三）关注要点

《网络预约出租车管理办法》规定外商投资网络预约出租汽车经营除了应取得网络预约出租汽车经营行政许可、经营范围为预约出租汽车的《道路运输经营许可证》外，还应取得增值电信业务经营许可证。而根据 2015 年修订的《外商投资产业指导目录》，从事增值电信业务属于限制类外商投资项目，且外资比例不得超过 50%。交通部就《网络预约出租车管理办法》公开征求意见后引起了包括外国投资者在内广泛的社会关注，交通部是否会根据反馈的意见进行修订值得关注。

二、 国务院将开展市场准入负面清单试点

2015 年 10 月 19 日，国务院公布《国务院关于实行市场准入负面清单制度的意见》（以下简称“《市场准入负面清单制度意见》”），决定从 2015 年 12 月 1 日起至 2017 年 12 月 31 日，在部分地区试行市场准入负面清单制度，从 2018 年起正式实行全国统一的市场准入负面清单制度³。据报道，我国将在上海、广东、天津、福建四个自由贸易试验区（以下统称“四个自贸区”）及其所在省行政区先行开展市场准入负面清单制度改革试点⁴。

市场准入负面清单制度，是指国务院以清单方式明确列出在中华人民共和国境内禁止和限制投资经营的行业、领域、业务等，各级政府依法采取

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http://www.gov.cn/zhengce/content/2015-10/19/content_10247.htm

⁴

http://news.xinhuanet.com/mrdx/2015-10/20/c_134730260.htm

相应管理措施的一系列制度安排。市场准入负面清单以外的行业、领域、业务等，各类市场主体皆可依法平等进入。

市场准入负面清单包括禁止准入类和限制准入类，适用于初始投资、扩大投资、并购投资等投资经营行为及其他市场进入行为。对于涉及国家安全、重大生产力布局、战略性资源开发和重大公共利益等行业、领域，各级政府可以采取禁止进入或限制市场主体资质、股权比例、经营范围、经营业态、商业模式、空间布局、国土空间开发保护等管理措施。

负面清单主要包括市场准入负面清单和外商投资负面清单。市场准入负面清单是适用于境内外投资者的一致性管理措施，是对各类市场主体市场准入管理的统一要求；外商投资负面清单适用于境外投资者在华投资经营行为，是针对外商投资准入的特别管理措施。制定外商投资负面清单要与投资议题对外谈判统筹考虑，有关工作另行规定。我国签署的双多边协议（协定）另有规定的，按照相关协议（协定）的规定执行。

（一）法律点评

《市场准入负面清单制度意见》的最大亮点是首次将负面清单管理方式引入到国内市场管理，平等地适用于国有与非国有、内资和外资企业。

其次，依法可以采取的管理措施除了现有的禁止进入或限制市场主体资质、股权比例、经营范围外，《市场准入负面清单制度意见》还提出经营业态、商业模式、空间布局、国土空间开发保护等管理措施。其中“经营业态”、“商业模式”、“空间布局”的定义及具体的管理内容需待进一步明确。

最后，《市场准入负面清单制度意见》要求精简前置性审批事项，削减资质认定事项，凡是市场

主体基于自愿的投资经营行为，只要不属于法律、行政法规和国务院决定禁止和限制的领域，不得限制进入。

（二）关注要点

四个自贸区所在的省级人民政府将根据发展改革委、商务部牵头汇总、审查形成的市场准入负面清单草案（试行版），提出拟试行市场准入负面清单制度的方案，报国务院批准后实施。在四个自贸区实施的市场准入负面清单的内容值得关注。此外，与负面清单制度相配套的行政审批制度、监管制度的改革等同样值得关注。

三、**商务部修改规章和规范性文件有关注册资本等条款**

2015年10月28日，商务部公布《商务部关于修改部分规章和规范性文件的决定》，为配合注册资本制度改革，对29部规章和规范性文件中相关条款予以修改。

（一）背景

2013年12月28日修订的《公司法》，除法律、法规另有规定外，将注册资本实缴登记制改为认缴登记制，取消公司注册资本最低限额制度；取消有关首次出资比例、货币出资比例限制；将企业年检制度改为年度报告制度。

为了推进注册资本登记制度改革，国务院随后公布了《国务院关于印发注册资本登记制度改革方案的通知》、《国务院办公厅关于加快推进落实注册资本登记制度改革有关事项的通知》。

根据以上两个通知，商务部对注册资本登记制度改革涉及的规章和规范性文件进行了清理，决定对29部规章和规范性文件的部分条款予以修改。

（二）法律点评

《商务部关于修改部分规章和规范性文件的决定》对 29 部规章和规范性文件的修改主要体现在如下方面：

1. 取消公司注册资本最低限额

取消了外商投资股份有限公司的最低注册资本为人民币 3,000 万元、外商投资性公司的最低注册资本为 3,000 万美元的限制；同时，对外商投资部分行业，包括拍卖行、融资租赁公司、外资国际货运代理、成品油批发仓储、原油销售仓储、对外承包工程、物流、商业保理，均取消了原来设定的最低注册资本要求。

2. 取消缴纳注册资本期限的限制

删除了多个法规中关于注销资本缴资期限的要求，包括：外商投资股份有限公司发起人应自批准证书签发之日起 90 日内一次缴足其认购的股份、非法人制创投企业的投资者在 5 年内注入认缴出资、外国投资者在 5 年内缴清外商投资性公司注册资本等缴资期限要求。

3. 取消缴足注册资本为审批前置条件的限制

取消已批准设立的外商投资商业企业申请增设店铺需缴清注册资本；外商投资企业合并、分立前需缴清注册资本；外商投资企业境内再投资需缴清注册资本等限制；取消外商投资企业的注册资本未缴足的其股权不得用于出资的限制。

4. 外商投资企业联合年检不再作为审批前提

在原来的多个规范性文件中，均将外商投资企业通过企业联合年审作为获得批准的前提条件之一，现在则删除了该等要求，包括外商投资商业企业申请增设店铺、外商投资企业申请以股权出质、

外商投资房地产企业办理资本项目结售汇手续等，均不再以其通过上一年度外商投资企业联合年检作为获得批准的前提条件。

（三）关注要点

《商务部关于修改部分规章和规范性文件的决定》于 2015 年 10 月 28 日起施行后，各级商务部门能否及时调整其内部的审批要求使得该决定得以实施值得关注。

四、商务部、外汇局取消外商投资房地产企业的商务部网站备案公示程序

2015 年 11 月 6 日，商务部、外汇局公布《商务部、外汇局关于进一步改进外商投资房地产备案工作的通知》（以下简称“《进一步改进备案的通知》”），取消商务部网站备案公示程序。

（一）背景

2007 年 5 月 23 日，商务部、外汇局公布《商务部、国家外汇管理局关于进一步加强、规范外商直接投资房地产业审批和监管的通知》，首次提出地方审批部门批准设立外商投资房地产企业，应即时依法向商务部备案。

2007 年 7 月 10 日，外汇局公布《国家外汇管理局综合司关于下发第一批通过商务部备案的外商投资房地产项目名单的通知》，进一步提出，2007 年 6 月 1 日以后取得商务主管部门批准证书且通过商务部备案的外商投资房地产企业（包括新设和增资，下同），各分局不予办理外债登记和外债结汇核准手续；2007 年 6 月 1 日以后取得地方商务主管部门批准证书但未通过商务部备案的外商投资房地产企业，各分局不予办理外汇登记（或登记变更）及资本项目结售汇手续（该通知于 2013 年 5 月 13 日被外汇局废止）。

2008年，商务部先后公布了《商务部关于做好外商投资房地产业备案工作的通知》、《商务部关于简化外商投资房地产企业备案程序的通知》，简化外商投资房地产业备案程序。商务部委托省级商务主管部门对外商投资房地产业备案材料进行核对，省级商务部门完成房地产企业备案材料审核工作并在房地产备案表上加盖公章后，直接将备案表报商务部备案。同时，地方商务部门通过外资审批管理系统向商务部上传有关企业设立、变更等电子信息，商务部仍将通过备案的企业名单上网公告。

2014年6月24日，商务部、外汇局公布《商务部、外汇局关于改进外商投资房地产业备案工作的通知》进一步简化外商投资房地产业备案程序，商务部备案由纸质材料备案改为电子数据备案和事中共事后抽查。

2015年11月6日，商务部、外汇局公布《进一步改进备案的通知》最终取消商务部网站备案公示程序。

（二）法律点评

自从2015年修订的《外商投资产业指导目录》将房地产业从限制外商投资产业目录整体删除后，商务部等部门逐渐降低外资准入门槛。继商务部等六部委2015年8月19日对于《关于规范房地产市场外资准入和管理的意见》有关外商投资房地产企业和个人购房的规定进行调整，商务部公布《进一步改进备案的通知》虽只有简短的四条，却最终取消了实施八年的商务部网站备案公示程序，在外商投资中国房地产领域具有标志性意义。

（三）关注要点

根据《进一步改进备案的通知》规定取消商务部备案要求后，外商投资房地产企业(包括新设和增资)是否可以在“投注差”范围内举借外债，尚

待国家外汇管理局进一步明确。

五、 央行、外汇局出台操作指引规范证券投资基金跨境发行销售资金的管理

为了支持内地与香港公开募集证券投资基金互认（以下简称“**基金互认**”）工作，2015年11月6日，央行和外汇局联合发布《操作指引》。《操作指引》的主要内容包括：外汇局仅对基金互认总额度进行监控，不对单家机构的额度、单只产品的额度进行审批；基金跨境发行募集资金可以人民币或外汇形式进出，涉及货币兑换的，可由托管人或代理人直接在银行办理；鼓励跨境发行销售以人民币计价和跨境收付；实施信息报告制，互认基金信息报告手续下放至托管人（银行）或代理人（银行或基金公司）办理；建立系统化数据统计和报送程序，无需手工填报或重复报送报告主体信息、开立募集资金账户⁵。

（一）背景

中国证券监督管理委员会（以下简称“**中国证监会**”）于2015年5月14日公布了《香港互认基金管理暂行规定》，对互认基金的资格条件、申请程序、运作要求及监管安排做出规定，该规定于2015年7月1日起施行。

2015年5月22日，中国证监会和香港证券及期货事务监察委员会（以下简称“**香港证监会**”）发布联合公告《开展内地与香港公开募集证券投资基金互认工作》，宣布已就基金互认工作的实施原则、互认模式与操作方案达成共识。中国证监会与香港证监会通过对等设置互认条件，促使互认基金在两地市场互利发展和资金流出入基本均衡。基金互认的初始投资额度为资金进出各3,000亿元人民币

⁵
<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/2973781/index.html>

币，基金互认自 2015 年 7 月 1 日起正式施行。同日，香港证监会公布了《有关内地与香港基金互认的通函》。

2015 年 11 月 6 日，央行和外汇局联合发布《操作指引》。

（二）法律点评

经中国证监会注册的香港基金，其管理人应在该基金内地发行前，通过该基金内地代理人（以下简称“**代理人**”）在外汇局资本项目信息系统（以下简称“**系统**”）报告相关信息。已报告主体信息的香港基金，其管理人应凭在系统报告后生成的相关业务凭证，委托代理人在指定销售银行以香港基金管理人名义为每只香港基金开立募集资金专用账户（人民币或/和外汇账户，以下简称“**募集资金专户**”）。外汇募集资金专户与人民币募集资金专户内的资金可结汇、购汇后相互划转。

经香港证监会认可的内地基金，其内地管理人应在该基金香港发行前，通过该基金内地托管人（以下简称“**托管人**”）在系统报告相关信息。已报告主体信息的内地基金，其内地管理人应凭在系统报告信息后生成的相关业务凭证，在托管人处或托管人指定的开户银行为每只内地基金开立募集资金专户（人民币或/和外汇账户）。人民币募集资金专户与外汇募集资金专户内的资金可结汇、购汇后相互划转。

《操作指引》的最大亮点系外汇局对基金互认总额度进行监控。当所有香港基金内地发行募集资金净汇出规模达到等值 3,000 亿元人民币，或当所有内地基金香港发行募集资金净汇入规模达到等值 3,000 亿元人民币时，外汇局将在其官方网站发布公告，香港（内地）基金管理人应在公告之日起暂停内地（香港）基金注册（认可）以及跨境发行

销售相关工作，直至此后外汇局官方网站公布汇出（入）月度数据时，净汇出（净汇入）资金规模低于等值 3,000 亿元人民币为止。

（三）关注要点

基金互认的实施推动了人民币资本项目可兑换进程，也推动了境内外资本市场互联互通。2015 年 12 月 18 日，中国证监会正式注册了首批 3 只香港互认基金，香港证监会于同日正式注册了首批 4 只内地互认基金。⁶内地和香港基金互认的实施能否推进区域性资产管理平台的建设，吸引其他地区的投资者在该平台开展跨区域投资和资产管理业务值得关注⁷。

六、 工商总局修订《关于外国（地区）企业在中国境内从事生产经营活动登记管理办法》

工商总局对《关于外国（地区）企业在中国境内从事生产经营活动登记管理办法》进行修订，将在中国境内从事生产经营活动的外国企业的登记主管机关由工商总局下放至省级工商行政管理部门，并于 2015 年 11 月 17 日公布征求意见稿公开征求意见⁸。

（一）背景

1992 年 10 月 1 日起实施的《关于外国（地区）企业在中国境内从事生产经营活动登记管理办法》第二条规定，“根据国家有关法律、法规的规定，经国务院及国务院授权的主管机关(以下简称审批机关)批准，在中国境内从事生产经营活动的外国企业，应向国家工商行政管理局或其授权的地方工商

6

http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201512/t20151218_288314.html

7

<http://www.chinaforex.com.cn/index.php/cms/item-view-id-39016.shtml>

8

<http://www.chinalaw.gov.cn/article/cazjgg/201511/20151100479494.shtml>

行政管理局(以下简称登记主管机关)申请登记注册。外国企业经登记主管机关核准登记注册, 领取《中华人民共和国营业执照》(以下简称《营业执照》)后, 方可开展生产经营活动。未经审批机关批准和登记主管机关核准登记注册, 外国企业不得在中国境内从事生产经营活动。”

2013年5月15日, 国务院公布《国务院关于取消和下放一批行政审批项目等事项的决定》, 将外国(地区)企业在中国境内从事生产经营活动核准下放至省级工商行政管理部门。但是, 在过去两年多的时间里, 工商总局一直未采取措施根据国务院公布的前述决定对配套规章作出修订。

(二) 法律点评

根据国务院的决定, 工商总局对《关于外国(地区)企业在中国境内从事生产经营活动登记管理办法》进行修订, 将在中国境内从事生产经营活动的外国企业的登记主管机关由“国家工商行政管理局或其授权的地方工商行政管理局”改为“省级工商行政管理部门”, 其他条款未进行修订。征求意见稿通过后, 将方便外国企业办理在中国境内从事生产经营活动的登记注册手续。

(三) 关注要点

《关于外国(地区)企业在中国境内从事生产经营活动登记管理办法》之修订稿的征求意见稿截止时间为2015年12月1日, 预计将会在短期内公布实施。

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To regulate development of internet reservation taxis, the Ministry of Transportation (“**MOT**”) has issued the Guidance on Further Reform on Healthy Development of the Taxi Industry (“**Taxi Guidance**”) and Temporary Measures on Internet Taxi Reservation Operations and Services (“**Internet Reservation Taxi Measures**”), and is seeking public opinion on these matters. The State Council decided to launch pilot projects on the market access negative list. The Ministry of Commerce (“**MOFCOM**”) issued the Decision of the Ministry of Commerce to Revise Certain Rules and Regulatory Documents where provisions in 29 rules and regulatory documents relating to the reform of registration system of registered capital are revised. The MOFCOM and State Administration of Foreign Exchange (“**SAFE**”) have cancelled the filing and publication procedures of foreign investments in real estate on MOFCOM website. The People’s Bank of China (“**PBOC**”) and the SAFE has jointly issued the Operating Guidelines for the Administration of Cross-border Issuance and Sales of Securities Investment Funds between Mainland China and Hong Kong (“**Operating Guidelines**”) to regulate the administration of cross-border issuance and sales of securities

investment funds. The State Administration of Industry and Commerce (“**SAIC**”) contemplates to change the registration authority of foreign enterprises engaging in production and business within the territory of China from the SAIC to provincial level of administration of industry and commerce authorities.

1. Ministry of Transportation will regulate the management of internet taxi reservation

The MOT issued the Taxi Guidance and Internet Reservation Taxi Measures on 10 October 2015, and opened for public opinion on the matter.¹ The Internet Reservation Taxi Measures sets out stringent access requirements for foreign-funded internet taxi reservation operations and services. In addition to maintaining servers in mainland China and adherence to the relevant rules regarding national security review on foreign investments, foreign-funded operators are required to hold a value-added telecommunication business operating license.

¹ http://www.moc.gov.cn/zfxxgk/bnssj/dlyss/201510/t20151010_1886298.html

1.1 Background

Since July 2014, some internet enterprises began providing internet taxi reservation services, which subsequently caused legal issues to arise, including the unclear responsibilities of entities involved, involvement of non-operational vehicles, a lack of protection for passenger's safety, rights and interests, and unfair competition.²

Provisions in the Administration of Taxi Business Operations and Services, effective since 1 January 2015, regulates Taxi Reservation Operations and Services (“**TROAS**”): TROAS is defined as the business activities of passenger vehicles with no more than seven seats providing driving services through reservations and being driven at passengers' will, with fares calculated according to travelling mileage, time or other calculating mechanisms. TROAS providers are required to obtain Administrative License of Taxi Operations, Permit on Road Transportation Operations and Road Transportation Certificate which specify they are reservation taxis, and the colors and markings shall be distinguishable from regular taxis. Drivers of reservation taxis shall only provide operations and services through reservations, picking up passengers at a designated location, and are prohibited from soliciting passengers when driving around.

²
<http://www.scio.gov.cn/xwfbh/gbwxfbh/xwfbh/jtysb/Document/1451721/1451721.htm>

With these changes, MOT aims to further regulate internet taxi reservation operations and services, and opened for public opinion on the Internet Reservation Taxi Measures on 10 October 2015.

1.2 Legal Review

The Internet Reservation Taxi Measures establishes detailed rules for internet taxi reservation operation providers, cars and drivers providing internet reservation taxi services, operations of internet reservation taxis, supervision and inspection, and legal responsibilities.

“Internet reservation taxi operations and services” means business activities of providing reservation taxi operations and services (not driving around) through services platforms built by virtue of internet technology which contain information of qualified cars and drivers and match the supply with the demand.

Foreign-funded internet reservation taxi operations must meet the following requirements:

- a. Own legal personality;
- b. Possess a fixed place of business, relevant institutions and abilities to provide services;
- c. Own an internet platform and the ability to exchange and process information and data with servers located in mainland China;

- d. The internet service platform database shall be connected to the local road transportation administrative authority taxi surveillance platform at the location where services are provided;
- e. Those who use electronic payment systems shall enter into a payment and settlement service agreement with banking or non-banking payment institutions;
- f. Establish sound and adequate administration systems;
- g. Comply with relevant rules regarding national security review on foreign investments.

Foreign-funded internet reservation taxi operators shall obtain administrative license on internet reservation taxi operation, a permit on Road Transportation Operation with operation scope limited to reservation taxis, and besides, a value-added telecommunication business operating license.

Vehicles engaged in internet reservation taxi operation shall obtain a Road Transportation Certificate for reservation taxis. Internet reservation taxi operators shall not engage other operational or non-operational vehicles.

Drivers conducting internet reservation taxi services shall acquire a Qualification Certificate for Road Transportation Practitioners for reservation taxis.

Internet reservation taxi operators shall

reasonably fix transportation price for internet reservation taxis and state the price clearly and publicly, and shall not, for the purposes of excluding competitors, carry out unfair competition behaviors by providing operations and services at a price below cost.

1.3 Next Step

The Internet Reservation Taxi Measures requires that foreign-funded internet reservation taxi operators shall obtain administrative license on internet reservation taxi operation and a permit on Road Transportation Operation with operation scope limited to reservation taxis, and besides, a value-added telecommunication business operating license, In addition to licensing, the Catalogue of Industries for Guiding Foreign Investment revised in 2015 states that conducting value-added telecommunication services has been classified as a restricted industry for foreign investment, and as such, foreign ownership in such business shall not exceed 50%. Solicitation of comments by MOT on the Internet Reservation Taxi Measures has attracted wide attention from the public, including foreign investors. Whether MOT will amend the Measures according to the feedback is worthy of attention.

2. State Council will launch pilot projects on market access negative list

On 19 October 2015, the State Council issued the State Council's Opinion on Implementing Market Access Negative List System ("**Opinion on Market Access Negative List System**")

and decided to conduct trials on market access negative list system in certain regions from 1 December 2015 to 31 December 2017 and formally implement an unified national market access negative list system in 2018.³ According to news reports, China will conduct trials on market access negative list system in four free trade pilot zones in Shanghai, Guangdong, Tianjin and Fujian (“**Four Free Trade Zones**”) and their provincial administrative regions.⁴

The market access negative list system is a series of systemic arrangements where government authorities at all levels adopt administrative measures in accordance with a list issued by the State Council that designates the industries, sectors and businesses that are prohibited from investing and operating within the territory of People’s Republic of China. All market participants may access industries, sectors and businesses which are not listed on the market access negative list equally in accordance with the law.

The market access negative list includes access-prohibited categories and access-restricted categories, which comprises investment and operation activities such as initial investment, expansion investment, merger investment and other behaviors of accessing the market. For industries and sectors related to national security, national layout of major productive forces, strategic resources development and major public interests,

³
http://www.gov.cn/zhengce/content/2015-10/19/content_10247.htm

⁴
http://news.xinhuanet.com/mrdx/2015-10/20/c_134730260.htm

governments at all levels may adopt administrative measures such as prohibitions or restrictions on qualification of market players, equity ownership, business scope, operation types, business models, spatial layout and protection of national spatial development.

The negative list mainly includes both market access negative list and foreign investment negative list. The market access negative list is a control measure equally applicable to domestic and foreign investors and sets out same requirements of market access management for all types of market participants. The foreign investment negative list is applicable to foreign investors’ investment and operation activities within China and it is a special control measure targeting access of foreign investment. Developing the foreign investment negative list should be considered with investment issues in foreign negotiation, relevant working arrangements of which should be regulated otherwise by relevant laws. Where bilateral and multilateral agreements (treaty) signed by China state otherwise, provisions of the relevant agreements (treaty) shall prevail.

2.1 Legal Review

The most prominent highlights of the Opinion on Market Access Negative List System is that it is the first negative list management method introduced to the management of domestic market, and the list equally applies to state-owned and non-state-owned, domestic and foreign-invested enterprises.

Secondly, the Opinion on Market Access Negative List System indicates that, in addition to existing measures such as prohibitions or restrictions on qualifications of market players, equity percentage and business scope, more administrative measures such as operation types, business models, spatial layout, and protection of national spatial development may be adopted according to the law. Definitions and specific contents of management of the terms “operation types”, “business model” and “spatial layout” are to be further clarified.

Lastly, the Opinion on Market Access Negative List System requires that pre-approval matters shall be streamlined and the evaluation of qualification matters shall be reduced. Market access will not be restricted for all investment and operation activities, so long as such investment and operation activities are conducted at the free will of market participants and the relevant industries are not in the prohibited or restricted sectors according to laws, regulations and the State Council’s decisions.

2.2 Next Step

The provincial People’s Governments of the Four Free Trade Zones will put forward plans for the proposed pilot market access negative list system pursuant to the draft market access negative list (trial version) which is to be initiated, developed and examined by the National Development and Reform Commission and MOFCOM. Such a list will be implemented upon approval by the State Council. The content of

the market access negative list of the Four Free Trade Zones as well as the reforms to the relevant administrative approval and supervision system of the negative list system is worthy of attention.

3. Ministry of Commerce has revised rules and regulatory documents containing provisions relating to registered capital

On 28 October 2015, MOFCOM issued the Decision of the Ministry of Commerce to Revise Certain Rules and Regulatory Documents revising 29 rules and regulatory documents in response to the reform to the registration system of registered capital.

3.1 Background

Following the revision to Company Law on 28 December 2013, and unless otherwise provided, the following changes have occurred: the system of registration of paid-up registered capital has been changed to the system of registration of subscribed registered capital; the system of minimum registered capital of enterprises has been cancelled; restrictions on proportion of initial contribution of the registered capital and on the proportion of monetary contribution had been cancelled; and the system of annual inspection of enterprise has been changed to annual reporting system.

To facilitate the reform of the registration system of registered capital, the State Council later issued the Notice of the State Council on Issuing the Plan for Reforming the Registration System

of Registered Capital and Notice of the General Office of the State Council on Issues Concerning Accelerating and Promoting the Implementation of the Reform of the Registration System of Registered Capital.

According to these two notices, MOFCOM has sorted out the rules and regulatory documents relating to the reform of the registration system of registered capital and decided to revise certain provisions in 29 rules and regulatory documents.

3.2 Legal Review

The Decision of the Ministry of Commerce to Revise Certain Rules and Regulatory Documents have the following effect on 29 rules and regulatory documents:

- a. Cancellation of requirements on minimum registered capital of enterprises

Requirements on minimum registered capital of RMB 30 million for foreign-funded stock limited companies and USD 30 million for foreign-funded companies, respectively, have been cancelled. Additionally, requirements on minimum registered capital of certain foreign-funded industries including auction houses, financial leasing companies, foreign-funded international freight agencies, wholesaling and warehousing of refined oil, sales and warehousing of crude oil, foreign contracted projects, logistics and commercial factoring have been cancelled.

- b. Cancellation of restrictions on time limit for payment of registered capital

Requirements regarding the time limit for payment of registered capital in several regulations have been removed, including requirements that initiators of foreign-funded stock limited companies shall pay in full its subscribed capital within 90 days of issuance of certificates of approval at one time; investors of startup investment enterprises that do not own legal personality shall pay their subscribed capital within 5 years, foreign investors shall pay in full registered capital of foreign-funded companies within 5 years and so on.

- c. Cancellation of restrictions on full payment of registered capital being a pre-condition of approvals

The following restrictions have been cancelled: full payment of registered capital by established and approved foreign-invested commercial enterprises when applying for additional outlets; full payment of registered capital before conducting mergers and spin-offs of foreign-funded enterprises; full payment of registered capital before re-investing in China of foreign-funded enterprises; full payment of registered capital before foreign-funded enterprises using shares as equity contribution.

- d. Joint annual inspection of foreign-funded enterprises is no longer a pre-condition for approval

Several previous regulatory documents stipulate that passing the joint annual inspection of enterprises is one of the pre-conditions for foreign-funded enterprises obtaining approval. Such inspections are no longer a pre-condition for approval, including on applications for additional stores by foreign-funded commercial enterprises, application for equity contribution by foreign-funded enterprises, and procedures for settlement and sale of foreign exchange in capital accounts by foreign-funded real estate enterprises.

3.3 Next Step

Whether commerce authorities at all levels are able to adjust internally to implement the changes imposed by the Decision of the Ministry of Commerce to Revise Certain Rules and Regulatory Documents on 28 October 2015 in a timely manner is worthy of attention.

4. MOFCOM and SAFE have cancelled the filing and publication procedures for foreign investments in real estate on the MOFCOM website

On 6 November 2015, MOFCOM and SAFE issued the Notice of MOFCOM and SAFE on Further Improving the Filing of Foreign Investment in Real Estate (“**Notice on Further**

Improving Filing”) which cancelled the filing and publication procedures on the MOFCOM website.

4.1 Background

On 23 May 2007, MOFCOM and SAFE issued the Notice of MOFCOM and SAFE on Further Strengthening and Regulating the Approval and Supervision of Foreign Direct Investment in the Real Estate Industry, which required foreign-funded real estate enterprises approved for establishment by local approving authorities shall be timely recorded with MOFCOM pursuant to laws for the first time.

On 10 July 2007, SAFE issued the Notice of the General Affairs Department of SAFE on Issuing the List of the First Group of Foreign-Funded Real Estate Projects Having Passed the Filing Procedures with MOFCOM, which further indicated that, for foreign-funded real estate enterprises (including newly established enterprises and enterprises with a capital increase) that have obtained the approval certificates issued by the commerce authorities and passed MOFCOM’s filing procedures after 1 June 2007, their applications to register and settle foreign debts shall not be accepted by the branches; and for foreign-funded real estate enterprises that have obtained the approval certificates issued by local commerce authorities but not passed MOFCOM’s filing procedures after 1 June 2007, their applications to register (or change) foreign debts and to sell and settle foreign exchange in capital accounts shall not be accepted by the branches (such

Notice was abolished by SAFE on 13 May 2013).

In 2008, MOFCOM issued, one by one, the Notice of MOFCOM on Doing Well in Filing of Foreign Investments in the Real Estate Industry and the Notice of MOFCOM on Streamlining Procedures for Filing of Foreign Investments in Real Estate to streamline procedures for filing of foreign investments in real estate. MOFCOM has delegated to provincial commerce authorities the verification of filing materials of foreign investments in the real estate industry, and after provincial commerce authorities have completed reviewing such filing materials and affixed with their official seals on real estate filing forms, these forms will be directly filed with MOFCOM. Meanwhile, local commerce authorities will submit electronic information relating to establishment and changes or relevant enterprises to MOFCOM through the foreign investment examining and approving management system and MOFCOM will still publicize the list of enterprises which have passed the filing on the internet.

On 24 June 2014, MOFCOM and SAFE issued the Notice of MOFCOM and SAFE on Improving the Filing of Foreign Investments in Real Estate to further streamline filing procedures of foreign investments in real estate. MOFCOM's filing procedures were changed from paper filing to electronic data filing with interim and post filing random inspections.

On 6 November 2015, MOFCOM and SAFE issued the Notice on Further Improving Filing,

which finally cancelled the filing and publication procedures of foreign investments in real estate on MOFCOM's website.

4.2 Legal Review

Since the Catalogue of Industries for Guiding Foreign Investment (revised in 2015) has deleted the real estate industry from the restricted catalogue of industries for foreign investments as a whole, MOFCOM and other authorities have gradually lowered the access threshold for foreign investments. After adjustments to regulations relating to foreign investments and personal purchase of real estate in the Opinions Concerning Regulating the Access to and Administration of Foreign Investment in the Real Estate Market issued by MOFCOM and other five state departments on 19 August 2015, MOFCOM issued the Notice on Further Improving Filing. Although there are only four provisions in the Notice, it finally cancels the filing and publication procedures of foreign investments in real estate on the MOFCOM website which lasted eight years. This marks a turning point in foreign investments in China real estate sector.

4.3 Next Step

After cancelling the MOFCOM filing requirements pursuant to the Notice on Further Improving Filing, there is still a need for SAFE to further clarify whether foreign-funded real estate enterprises (including newly established enterprises and enterprises with a capital increase) are allowed to have foreign debts

within the scope of “difference between total investment and registered capital”.

5. PBOC and SAFE issued operating guidelines regulating administration of cross-border issuance and sales of securities investment funds

To support mutual recognition of publicly offered securities investment funds between mainland China and Hong Kong (“**Mutual Recognition of Funds**”), the PBOC and SAFE jointly issued Operating Guidelines on 6 November 2015. The main content of the Operating Guidelines includes: SAFE shall only monitor the total limit for Mutual Recognition of Funds, rather than examining and approving limits for individual products or a single institution; fund-raising for cross-border fund issuance may be imported and exported in RMB or foreign currency, and if such import and export involve currency exchanges, procedures may be directly dealt with by the trustees or agents with banks; sales of cross-border issuances is encouraged to be calculated in RMB and cross-border receipt and payment of funds are encouraged to be denominated in RMB; the information reporting system is to be implemented, and information reporting of mutually recognized funds shall be handled by trustees (banks) or agents (banks or fund management companies); systematic data statistics and reporting procedures are to be established, without the need to manually complete forms or to submit reporting entity information and to open fund-raising accounts

repeatedly.⁵

5.1 Background

On 14 May 2015, China Securities Regulatory Commission (“**CSRC**”) issued Interim Provisions on Administration of Recognized Hong Kong Funds to regulate qualifications, application procedures, operational requirements and regulatory arrangements of mutually recognized funds. These provisions were implemented on 1 July 2015.

On 22 May 2015, the CSRC and Hong Kong Securities and Futures Commission (“**SFC**”) jointly issued the Announcement to Develop the Mutual Recognition of Publicly Offered Securities Investment Funds between Mainland China and Hong Kong, and announced mutual agreements were achieved regarding the implementation principles, the mode and the operation scheme of the Mutual Recognition of Funds. The CSRC and SFC would, through setting reciprocal mutual recognition conditions, promote the development of the mutually recognized funds in both markets and achieve general balance of import and export of funds. The initial investment limit of the mutually recognized funds is set at RMB 300 billion for import and export of funds, respectively. Mutual Recognition of Funds would be formally implemented on 1 July 2015. On the same day, the SFC issued the Mutual Recognition of Funds between the Mainland and Hong Kong.

⁵

<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/2973781/index.html>

On 6 November 2015, the PBOC and SAFE jointly issued the Operating Guidelines.

5.2 Legal Review

Before the issuance of Hong Kong funds registered with the CSRC in mainland China, the managers of such funds shall, through mainland agents of such funds (“**Agents**”), report relevant information via the capital accounts information system of SAFE (“**System**”). Where the entity information of Hong Kong funds has been reported, the managers shall engage the Agent to open fundraising-specific accounts (denominated in RMB and/or foreign currency, hereinafter referred to as “**fundraising-specific accounts**”) for each Hong Kong fund in the name of the Hong Kong fund manager in the designated sales bank by virtue of relevant business vouchers generated after information has been reported in the System. The funds in fundraising-specific accounts denominated in RMB and foreign currency may be transferred between both accounts after settlement and purchase of foreign exchange.

Before the issuance of mainland China funds recognized by SFC in Hong Kong, the mainland managers of such funds shall, through mainland trustees of such funds (“**Trustees**”), report relevant information via the System. Where the entity information of mainland funds has been reported, the mainland managers shall open fundraising-specific accounts (denominated in RMB and/or foreign currency) for each mainland fund with the trustee or the bank designated by

the trustee by virtue of relevant business vouchers generated after information has been reported in the System. The funds in fundraising-specific accounts denominated in RMB and foreign currency may be transferred between both accounts after settlement and purchase of foreign exchange.

The most prominent highlights of the Operating Guidelines is the supervision by SAFE on total limit of Mutual Recognition of Funds. When the net export of funds of the issuance of all Hong Kong funds in mainland market or the net import of funds of the issuance of all mainland funds in Hong Kong market reaches RMB 300 billion, SAFE will release a public announcement on its website. Accordingly, Hong Kong (mainland) fund managers shall cease registration (recognition) of mainland (Hong Kong) funds and cross-border issuance and sales of funds until it is indicated in the export (import) monthly data published on SAFE’s official website that the net export (import) of funds is below RMB 300 billion.

5.3 Next Step

Implementation of the Mutual Recognition of Funds promotes the progress of convertibility of RMB capital accounts, as well as interconnection between domestic and foreign capital markets. On 18 December 2015, the first group of three Hong Kong mutually recognized funds was formally registered with the CSRC, and on the same day, the first group of four mainland mutually recognized funds was

formally registered with the SFC.⁶ Whether implementation of the Mutual Recognition of Funds between mainland China and Hong Kong would promote the establishment of regional asset management platforms and attract investors from other areas to conduct regional investments and assets management services on these platforms is worthy of attention.⁷

6. SAIC revised Measures for the Administration of Registration of Enterprises from Foreign Countries (Regions) Engaging in Production and Business within the Territory of China

The SAIC revised Measures for the Administration of Registration of Enterprises from Foreign Countries (Regions) Engaging in Production and Business within the Territory of China, where the registration authority for foreign enterprises engaging in production and business within the territory of China has been changed from the SAIC to provincial level of administration of industry and commerce authorities, and issued consultation papers on 17 November 2015 for soliciting public opinion.⁸

6.1 Background

Under the Measures for the Administration of Registration of Enterprises from Foreign

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http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201512/t20151218_288314.html

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http://www.csrc.gov.cn/pub/newsite/zjhxwfb/xwdd/201512/t20151218_288314.html

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<http://www.chinalaw.gov.cn/article/cazjgg/201511/20151100479494.shtml>

Countries (or Regions) Engaging in Production and Business within the Territory of China, implemented on 1 October 1992, Article 2 states that “According to relevant laws and regulations, foreign enterprises, approved by the State Council and administrative authorities authorized by the State Council (hereinafter referred to as examination and approval authorities) and engaged in production and business with the territory of China, shall register with the SAIC or the local administrations for industry and commerce authorized by the SAIC (hereinafter referred to as the administrative authorities of registration). Foreign enterprises may commence operations once their applications for registration have been examined and approved by administrative authorities of registration and they have obtained a Business License of People Republic of China (hereinafter referred to as “**Business License**”). Foreign enterprises, who fail to be approved by the examination and approval authorities and whose applications for registration fail to be examined and approved by administrative authorities of registration, shall not operate in China”.

On 15 May 2013, the State Council issued the Decision of the State Council on Matters Concerning Cancellation of Administrative Approval Items and Delegation to Lower Levels where the authority to review the enterprises from foreign countries (or regions) engaging in production and business activities within China is delegated to provincial industry and commerce administrative departments.

However, the SAIC still has not adopted any measures to revise relevant regulations pursuant to the above-mentioned decision made by the State Council in more than two years' time.

6.2 Legal Review

According to the State Council's decision, the SAIC revised Measures for the Administration of Registration of Enterprises from Foreign Countries (Regions) Engaging in Production and Business within the Territory of China, where the registration authority for foreign enterprises engaging in production and business within the territory of China has changed from "the SAIC or authorized local administration of industry and commerce

authorities" to "provincial level of administration of industry and commerce authorities" while other provisions remain unchanged. Once the consultation papers have been passed, it will facilitate registration procedures of foreign enterprises engaging in production and business within the territory of China.

6.3 Next Step

The revised Measures for the Administration of Registration of Enterprises from Foreign Countries (Regions) Engaging in Production and Business within the Territory of China was open for public opinion until 1 December 2015 and is expected to be issued and implemented within a short period of time.

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