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Editorial Notes

In a recent published China Real Estate Investment Handbook from Deloitte, we find for the first time its outlook on the Chinese senior housing market. The report analyses the regulatory environment and business models very briefly. Actually, for those investors who have dedicated in the senior housing industry**,** viable business options can be more than the Development-centric Sales Model and the Medical and Nursing Service-centric Model. What we can expect is, during the next five years, different business models on senior housing will emerge, e.g. franchising, mutual-aid-style senior care and vacation-type retirement apartment, etc. Exciting moments for the industry is not only for vast business opportunities, but also embedded in an imaginable and spacious marketplace, thanks to the increasing population of senior consumers in China.

Hope you enjoy this May addition of our newsletter. Any comment can send to my email: quqin@co-effort.com

News Update

- **City Layout and Planning for Senior Care Facilities are Put in Place**

In order to balance scatter of senior care facility in the city, Beijing Municipal government is to promulgate its Special Planning on Senior Care Facilities. Aiming at introducing a guidance for overall planning in terms of location and bed equipment, the Special Planning will include a quota for constructing senior care facilities in residential districts and communities, in order to enable elderly people aging in nearby places.

As reported, upon introduction of the Special Planning, the Beijing Authority will accordingly supply land resource in compliance with the Plan. Meanwhile, Municipal Bureau of Civil Affaires will cooperate with local Land Resource Bureau in some pilot areas, in a way to provide private investors with land use right that subject to restraint selling price and construction conditions through list, auction or tendering procedure.

On the other hand, early this January, City of Chengdu implemented its City Layout and Planning of Senior Care Facilities (2011-2020). It sets up a target of providing totally 11,709 acres of areas for construction of senior care facilities in the next 10 years with specific locations.

According to the Chengdu Plan, by 2020, there will be totally 395 senior care facilities (including 159 existing facilities) consist of approximately 217,000 beds. Among those, large-scale and high-ending facilities, which contribute a large portion of new construction, will locate in second and third ring of the city; and some 83 new facilities with about 55,000 beds are planed to open in downtown of the city.

The Chengdu Plan also provides detailed requirement for construction areas of every bed and its amount in every single facility—bed amount usually be 50 to 500 in a facility for elderly's basic social benefit and average construction area for every bed be within 30 to 40 square meters. In addition, as a contribution to infrastructure facilities, the Plan requires a construction of facility of 1,000 to 12,00 square meters with at lease 10 senior care beds in every residential community.

Obviously, after implementation of the Five-year Plan on senior care industry by central government, many planning from municipal level have been drafted or updated, among others the abovementioned Beijing and Chengdu are two of the most typical cities. That being said, these planning are only for public senior care facilities mainly run by government, and rules for implementation on planning of private-owned facilities are still under discussion.

• "Academic-styled" Senior Living — a New Option for Elderly

...for most real estate developers, it is only a value-added selling point distinguished itself from the other senior living communities, seemly more profit is still counting on the property sales...

The Greentown Aged College, a familiar name in senior housing industry, has already expanded 12 aged-campuses in the cities of Hangzhou, Ningbo, Jinan, Qingdao, among others, since the grand open of the first aged-campus in Hangzhou Lanting Community on Feb. 28, 2011. As reported, the Greentown Senior College is an "academic-styled" senior living facility, and will be a distinguished way out for Greentown Group to explore its senior care business.

A recent study indicates that happiness from elderly people is determined by both psychological and mental satisfaction—the fitness of both can play a vital rule in healthy and longevity of people. The study further suggests academic study in college can be a best style of senior living. In developed countries, an average 8.6% of elderly people have participated in various types of training and education, e.g. in Japan the proportion is 6%. However, in China, the proportion is far more less than that in developed countries in spite of the fact that the scale of aged education in China has already reached as the biggest one in the world. Statistics also show as of July 2011, there are totally over 40,000 aged colleges or universities nation-wide with recruitment of 500 million aged students—only a proportion of 2.66% of participation by seniors. This can be mainly attributable to the lack of facilities for aged education. For those running colleges, scarcity of funds and teachers always makes the operation "overloaded".

As reported, Greentown's academic-styled senior living is categorized into three models—home-based model that enable elderly person to take part in daily class in campus and live at home after school; boarding-school model that aged people study and live in campus; and a blend of both home-based and boarding-school model.

The Greentown's college is operated by a separate entity, namely Greentown Aged

Education Investment Management Co., Ltd. that established by Greentown Group, generally responsible for the curriculum establishment, staff training and faculty organization. Daily management of the college is conducted by property management company of the real estate project. Around 60% of teaching staff are residents with specialty from the community, leaving the other 40% outsourcing, in order to meet needs of the education. On the other hand, the Greentown College also cooperates with other colleges or academic institutions to get support in technology and policy consultation. By far some of the campuses are occupying community facilities, such as clubhouse, but in the future Greentown is planned to construct a standard facility tailored for aged-campus in the communities.

As a matter of fact, Greentown is not the first developer tapped into the community education for elderly. Hong Kong based developer Yihai Group, an early foreign entrant into China's real estate market, has already built a history of plus ten years in establishing the first community-based aged-campus in China in its Beijing project, namely Yihai Garden. The Yihai aged-college is a tunnel for the group to provide the aged residents with a happy and meaningful life after retirement. It is easy to find investment in community-based aged-college is not a well profitable business. For most real estate developers, it is only a value-added selling point distinguished itself from the other senior living communities, seemly more profit is still counting on the property sales. In the currently over-heated marketplace of senior housing, it is important for real estate developers to determine the way breakthrough.

• Japan Secom to Start Nursing Business in China

...for companies like Secom that specialize in medical device and equipment, bigger market lies ahead to the huge demand for advanced technology and equipment, thanks to the national strategy of aging-in-place...

Major security company Secom Co. said this month it will partner with a real estate developer in China to launch a luxury nursing home business. Secom Medical System Co., a Secom subsidiary, will set up a joint venture with Shanghai Lujiazui Finance & Trade Zone Development Co. and start the business in 2015 in Shanghai, and total investment volume is expect to be 1 billion Japanese Yen.

With a rapid economic growth and a growing senior citizen population, more business opportunities for luxury senior housing that targets to wealthy senior people are there for foreign investors. Secom seems to seize this opportunity to tap into the Chinese market, importing its mature concept and advanced technology, with its gardening equipment as well.

The joint venture will construct two buildings with a total floor space of 20,000 sq. meters in the Pudong New Area of Shanghai. The buildings will have 120 rooms, including eight nursing rooms. It will be Secom's first elderly care facility in China. The new company will in charge of daily operation and management of the facility, 70% of investment in which will be shouldered by Secom Medical System and the rest by the Shanghai-based partner. It is estimated the facility will generate an annually billing as much as 1 billion Japanese Yen.

As reported, Secom intends to open more than 10 senior care facilities in China, expanding the business to 18 cities, including Beijing, Guangzhou and Tianjin, where the company operates a security business for corporate clients. Utilizing Secom Medical System's knowhow for nursing care services and medical institution support, Secom plans to provide medical, nursing care and meal services at the luxury facility in Shanghai. It will also introduce a security system that is easy for the elderly to use.

For companies like Secom that specialize in medical device and equipment, bigger market lies ahead to the huge demand for advanced technology and equipment, thanks to the national strategy of aging-in-place. We find Secom is not the first entrant from Japan to invest in the senior care market, and as a matter of fact cities like Qingdao and Dalian have already for years welcomed Japanese investors to construct senior facility. The topic on how big is the market for Japanese investors and how much experience they can bring to China, among others, will be of our continuous concern in the coming issues of newsletters.

• A Picture on Aging in Distant Cities

...what worth noting is that other factors such as medical convenience, living environment, security, transportation, entertainment and sporting facilities are as important as location...

...environment for medical treatment is still the number one hurdle for the practice of aging in distance cities...for some seniors from foreign countries, quite a few options of treatment in high-end private hospitals are available in China, where abundant and reliable medical service can be found...

Generally speaking, due to development gap, the standards for commodity price are inconsistent in different cities within one country, not mention the gap exits among countries. Hence it has for years practiced in some developed countries that elderly people move to other places or cities where commodity price are lower, for their retirement living.

A report from a US leisure magazine illustrates ten destinations for US seniors to live after retirement, from which Ecuador, Panama and Mexico list from the top. There are 6 nations in the list locate in middle and south America, obviously due to their convenient availability in location. What worth noting is that other factors such as medical convenience, living environment, security, transportation, entertainment and sporting facilities are as important as location.

By far, seasonally moving to distant places has already become a fashion for some seniors. For example seniors from the North move to Hainan or Yunnan for winter and move back when spring comes. In the practice of business model, Cherish Yearn, a leading private senior service provider is planning to build a senior care club by means of creating a senior service network where Cherish Yearn’s projects or projects developed by others can be shared, so to provide senior members with options to live across the nation.

Actually Hong Kong has practiced its senior scheme in mainland for more than a decade. Hong Kong, a place with deteriorated increasing of aging population, is expected to have one fourth of elderly people in its population, triple the current amount of seniors above 85 years old by year 2031. There are three types of senior care facilities in Hong Kong, i.e. government supported, semi-government supported and private-owned. Public facilities usually need long waiting, so that private-owned facilities actually provide approximately 90% of senior care in the market. However, cost in private facilities are high, and unlike those private facilities in mainland, separate rooms in Hong Kong can seldom be provided. Early in 1997. Hong Kong has implemented stimulus policies for seniors to move to Guangdong and Fujian after retirement. This year the Hong Kong authority intents to promote a “Guangdong Plan” that the government will distribute subsidy to the qualified seniors who choose to live in Guangdong after retirement. There will be an estimated 30,000 people that entitled to enjoy an annual subsidy of RMB 13,000 once the plan is implemented in 2013.

That said, environment for medical treatment is still the number one hurdle for the practice of aging in distance cities. Due to wide difference in various cities in terms of medical standard and unfledged social insurance network, medical treatment and its costs are therefore of prime concerns for seniors. For some seniors from foreign countries, quite a few options of treatment in high-end private hospitals are available in China, where abundant and reliable medical service can be found. Therefore if foreign seniors can do advanced planning for retirement by means of taking part in commercial insurance, or, if they are entitled to enjoy a mainland social insurance policy (some have been working in China for a certain period of time before retirement), the option of aging in China seems more viable for them. It is worth mention that long-term care insurance is already in pilot in some cities, which in the future could provide more funds for the elderly people who will need care service.

• An In-depth Insight into the New Regulatory on Private Investment in Medical Institution

Recently, foreign investment in medical institution has reflected itself in four major trends: still very small margin among total investment in the industry of China's medical service; mostly locate in developed cities such as Shanghai and Guangdong; only have a targeted consumers of foreigner working or travelling in China or some wealthy people; and mainly as specialist clinics with small scale, investment and seemingly sound profit.

While the regulatory environment for foreign investment on medical institution is gradually loosening, with promising market prospective in both medical treatment and elderly care industries, enthusiasm from private investors is unprecedentedly increasing. We hope to in this article provide a systematic laws and policies for navigate foreign investors along their route ahead to the hospital business.

A gradual open market for foreign investment

Actually, as of a decade ago, foreign investors' first entry into the market of medical service, market entry policy have been developing from prohibiting to fully opening—the progress is as follows:

--Prior to year 2000, foreign investment in medical institution is prohibited.

--In July of year 2000, pursuant to commitment of Chinese government after entering into WTO, Ministry of Heath and former Ministry of Economic and Trade issued ***the Interim Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions,*** allowing a foreign share or equity up to 70% within a JV, but strictly prohibiting investment by means of Wholly Foreign-owned Enterprises (WFOE).

--In 2007, Chinese government promulgated a revised ***Foreign Investment Industrial Guidance Catalogue***, which further opened many industries for foreign capital. The Catalogue encouraged medical service for elderly and disabled in healthcare, sports and social welfare, allowed pharmaceutical manufacturing on

ordinary products, but still keep investment in medical service under control, even required a majority stake of domestic investor in a JV in some cases.

--In December of 2010, Opinions of the National Development and Reform Commission, the Ministry of Health and Other Ministries on ***Further Encouraging and Guiding the Establishment of Medical Institutions by Social Capital (Circular No. 58)*** specially opened the market for private capital, including six measures in detail. Circular No. 58 requires to further expand the opening-up of medical institutions and adjust the establishment of medical institutions by overseas capital as the permitted foreign investment projects; permit the establishment of medical institutions by overseas and domestic medical institutions, enterprises and other economic organizations in the form of joint venture or cooperative joint venture, and gradually cancel the restriction on the equity proportion of overseas capital; carry out the pilot establishment of foreign-funded medical institutions in China by qualified overseas capital and gradually relax restrictions. The Circular simplifies the procedure by requesting the establishment of Sino-foreign joint venture and cooperative joint venture medical institutions to be subject to the examination and approval of provincial health departments and commercial departments, and meanwhile the establishment of wholly foreign-funded medical institutions shall be subject to the examination and approval of the Ministry of Health and the Ministry of Commerce. Until then, investment in medical institution is fully open for foreign investors.

--In July of 2011, Shanghai's first wholly foreign-owned (Taiwan) hospital, Landseed Hospital, opened its clinics officially. Usually approval for foreign investment in medical institution are subject to both Ministry of Health and Ministry of Commerce, which can lasts for as long as one year.

--In December of 2011, ***new Foreign Investment Industrial Guidance Catalogue (“New Catalogue”)*** was issued by National Development and Reform Commission (“NDRC”) and Ministry of Commerce. The New Catalogue removes the foreign investment in medical institution from restricted catalogue, which means it cancels the previous restriction on foreign equity of 70% in a JV and further allows WFOE model in medical institution. Furthermore, investors from Hong Kong and Macau, who has already enjoyed opening-up policy for a period of time, are allowed, as of April 1st 2012, to expand their business in all municipalities directly under the Central Government and cities of provincial capital instead of only in Shanghai, Chongqing, Guangdong, Fujian and Hainan as previously restricted, thanks to the implementation of CEPA.

Dormant Investment is Expected to Decrease

What worth mention is before the fully opening-up of foreign investment policy on medical institution, a lot of dormant or anonymous investment are taken place in order to circumvent the restriction. The dormant investment refers to a legal situation where the actual investor (the Dormant Investor) who makes capital contributions to the enterprise is not the one whose name is documented on the articles of association, the register of shareholders or other legal documents, but in the name of others (the Nominal Shareholder). In Practice, by means of certain arrangement, domestic shareholders in a JV become only nominal partners—foreign investors are the actual investors.

For foreigners who are the actual investors, biggest concerns are possible dispute that may arise with their domestic nominal shareholder(s). Pursuant to Provisions of the Supreme People's Court on ***Several Issues concerning the Trial of Disputes Involving Foreign-Funded Enterprises (I) (the "Provison")***, if the dormant investment satisfies the following three requirements concurrently, the court can recognize directly the status of a Dormant Investor as a shareholder along with its equities in the foreign invested enterprise (FIE): a) The Dormant Investor has actually made the investment in the FIE; b) Shareholders other than the Nominal Shareholder recognize the Dormant Investor's status as a shareholder; and c) The people's court or the parties concerned have obtained the consent of the FIE examination and approval authority for changing the Dormant Investor into a shareholder during the legal process. As such, as long as these requirements are satisfied, dormant investment can be legitimatized during the judicial proceeding in case legal dispute arise.

…for foreigners who are the actual investors, biggest concerns are possible dispute that may arise with their domestic nominal shareholder…

Given the fact China has fully opened-up the market for foreign investors on medical institution, according to the Provision, as long as the dormant investment contract reached by and between the dormant and nominal investors is wisely designed and valid, the rights of dormant shareholder under the contract can be protected. So to design and sign a contemplating dormant investment contract seems more necessary. Of course, we still recommend foreign investors under nominal arrangement to correct the dormant investment model in light of the opening up policy.

A series of regulations are expected to be published

With the current encouraging policy on private investment in medical institution, more regulations from Ministry of Heath (MOH), Civil Affaires Bureau and Ministry of Commerce, among other administrative authorities are expected to be issued in the near future. These new regulations will help foreign investors to better estimate the regulatory environment. Recently Chinese authorities have, for example, issued the following provisions:

On April 13th, MOH promulgated ***the Notice on Definition the Nature of Medical Institutions Run by Private Capital ("Circular 26")***. The Circular said that privately-run medical institutions could register as either for-profit or nonprofit, according to the nature of their business, by repealing a previous applied regulation that defined almost all medical institutions supported by non-public funds as for-profit hospitals. Requirement on transition between for-profit and nonprofit will be regulated in another circular.

The Circular has encouraged private sector to invest in nonprofit medical institutions, which may escalate the investment from private funds into medical care regime. According to prevailing policy, nonprofit hospitals run by private capital can enjoy the same preferential policies on land usage, tax treatment, utility charges as public hospitals. However, nonprofit hospital shall implement strict pricing rules on medical service and medicine prescription as required by government. Earning from nonprofit hospital can only be used for development purpose instead of dividends payment to shareholders.

The Implementation Plan for Deepening the Reform on Medical and Healthcare System During the 12th Five-year Period was issued by the State Council on this March. The Plan intents to further loosen the entry policy for private funding, such as investment from enterprises, charity institutions funds and commercial insurance companies from home and abroad, and encourage qualified individual to open private clinic. It is aimed for non-public hospital to cover totally 20% of all requirement of medical treatment by 2015, and expand the reimbursement network of social insurance among those qualified non-public hospitals and pharmacies. According to MOH, 13,519 public hospitals and 8,864 privately-run hospitals are operating in China as of March.

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Meanwhile, MOH issued another ***Notice on Classifying the Level of Private-run Hospitals*** on May 17. It requires authority of MOH to classify level of all private-run hospitals (include JV hospitals) when grant establishment approval, according to the function and service perimeters of the new establishment.

Sino-foreign Joint Venture is Still Dominant

On April 13th, MOH revised ***Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions ("new Measure")*** for public review, which has not been promulgated yet. Compared with current prevailing Interim Measure, the new Measure indicates some changes as follows:

	current requirement	new revision
increase the minimum investment volume	no less than RMB 20 million	no less than RMB 100 million (no less than RMB 50 million in mid-western areas and other remote or poor areas)
restriction on foreign investment	no more than 70%	no more than 70% in principle, but can adjust the proportion at appropriate time and will gradually open-up for foreign investors to establish WFOE
Stipulation on nonprofit medical institution	not mentioned but JV is used to be regarded as for-profit hospitals	specifically stipulates nonprofit business can be an option
extend maximum business term	no more than 20 years	no more than 30 years
decentralize of qualification approval power	Ministry of Health	Provincial branch of MOH department
decrease of qualification approval time	within 45 working days	within 20 working days
decentralize foreign investment approval power	Ministry of Commerce (MOFCOM)	provincial branch of MOFCOM
decrease of foreign investment approval time	within 45 working days	within 20 working days

Actually the new Measure is to further implement the policies in Circular 58 and ***the Notice of MOH on Adjustment of Approval Power on Sino-foreign Joint Medical Institution***, among others. The regulator's intent to firstly focus on administration on JV medical institution reflects the voice from government that Sino-foreign Joint Medical Institution is still the prefer business model welcomed in China.

As a conclusion, privately-run hospitals used to be under government's supervision, during a time unregulated behavior on pricing or fraud to consumers always happens. Now the government has switched its function from supervision to guidance, in order to cater to its encouraging policies.

Reaction from the market is not that positive. Quite a few areas such as practice rule for physicians, qualification for hospitals to reimburse expense from social insurance are still in urge of reform to thoroughly implement the encouraging policies for private capital. Industry insider says the biggest hurdle for foreign investment is personnel and social insurance policy. As long as the current situation that physicians are locked in limited place for practice, and reimbursement qualification from social insurance is coupled with government-determined pricing mechanism remains unchanged, foreign investor may have less motivation to pace up, under a market environment that are seemly in lack of both physicians and patients. By limitation to the content of this article, we are going to discuss this later on.

If you need legal assistance with regard to the regulatory analysis in this article, please contact the author Michael Qu via email: quqin@co-effort.com

• An Introduction on China's Senior Pension Mechanism

While China's aging population rapidly grows in recent years, combining with raising expanse for living, more and more people are concerning about their retirement fund—how they can support themselves on medical expenses and elderly care? In this article, the author is trying to illustrate two financial sources people may resort to while seeking for financial support for elderly care and medical expense, which are welfare-financed and commercial-financed pension.

Welfare-financed fund

There are three pillars of social insurance with regard to employee pension: basic endowment insurance, enterprise annuity (supplementary pension) and personal deposit insurance.

1 Basic endowment insurance is statutory as a preliminary pension scheme in China. It is made up of payment from the employing entities, individuals and government subsidies. The basic pension premium for retirees is made up of the coordinated pension and the pension in the personal account. It is determined based on factors such as the individual's cumulative premium payment period, the wage from which premium payment is made, the average wage of the local workers, the amount in the personal account and the average life expectancy of the urban population. Nowadays, after 7 consecutive years of adjustment, national monthly basic pension premium has reached to an average of RMB 1,531 for every retiree.

2 An enterprise annuity is a form of supplemental retirement savings program that is voluntary. China has introduced enterprise annuities from 2004, allows Chinese companies to set up retirement benefit plans for individuals. The Chinese enterprise annuity system is adopted in a mode of defined contribution plan (DC Plan), which refers to employers and employees on a regular basis in accordance with a certain percentage of premiums paid to the staff personal accounts, where employee pension level depends on the scales of capital accumulation and its investment earnings. While the design of such program is flexible, there are some restrictions such as maximums on employer and employee contributions. In practice, enterprise payment cannot exceed one twelfth of its payroll of last year; employee's payment cannot exceed one twelfth of his/her total wage of last year.

3 Personal deposit insurance is also voluntary for adoption. It is paid to individual account of employee according to his or her wage similar to the nature of deposit and monitored by social insurance institutions. Currently, some places have issued personal deposit insurance, but there is no national unified policy in this regard.

Commercial-financed fund

1 Annuities insurance

It is a long-term pension insurance participated by customers and insurance companies, and it is also a supplementary of endowment pension. Currently, most commercial products for annuities insurance are fixed annuities, i.e., people pay regularly for a sum of money and get retirement pension in exchange for a certain period of time.

2 Long term care insurance

Long term care (LTC) is custodial assistance or skilled medical attention that required by people who are unable to take care of themselves fully for an extended period of time. LTC is still under pilot within a very limited scope in China. Given the high cost of commercial insurance premium that makes it impossible for LTC insurance to have a full coverage within seniors, some experts suggest to placing LTC insurance as a part of social insurance, that can be paid together with endowment and medical insurance.

Meanwhile, a critical issue to be solved now in order to attract more people or employers to participate in commercial pension insurance, or even enterprise annuity, is to introduce individual income tax incentives. In November 2011, Shanghai and Beijing municipal government separately announced plans to roll out pilot scheme of individual income tax-deferred pension plan (IIT-deferred pension plan).

3 House-for-pension scheme or reverse mortgage

You may find in China, only a very few people are fortunate to have enough employee pension who will have a steady income to afford retirement life in private senior houses or facilities, and for most seniors, the situation is they have capital locked up in property with no steady income, so their only real option would have been to remortgage their flat or to sell it to raise capital. So, as a viable option, house-for-pension scheme or reverse mortgage program seems to be able to solve the problem. In a house-for-pension scheme, homeowners usually sell their homes, whether to service providers or buyers in the fair market, in the first place; while in a reverse mortgage the property is still held by homeowner until he or she passes away or chooses an early termination in some cases. Both are in exchange for a life-time stay in senior facilities or a sustained pension supply.

As a conclusion, we think both sources for senior's retirement fund as above discussed are insufficient for seniors and it is time for the government and financial companies to promote more pension programs to increase the premiums of aged people.

• Legal Analysis on Development of Vacation-type Property for Elderly

A new model for senior care that combine with tourism is recently being explored by many real estate developers, and senior housing projects that provide elderly people with option of aging in distant cities are popular in China. What worth noting, however, is tourism real estate here is a market in lack of regulatory governance, hence adding quite a lot of difficulty for supervision while it is marketed in a label of "senior care". In this article, we will discuss legal issues on development of vacation-type property for seniors.

Legal environment for development of Condo-hotel

Condo-hotel (or property hotel) has been developed in China for decades. Different from those in foreign countries, most condo hotel projects in China were constructed for sell, ignoring its essence of hotel management. Over years, the Chinese government realized the necessity to regulate this market and issued a couple of rules, from which the following two areas are of most concern:

a. Requirement for selling condo-hotels

There was a time condo-hotels were remodeled from old buildings or half-baked buildings, so usage zoning or design specification of these buildings are inconsistent with the requirement of constructing hotels, even sometimes after alterations. A problem then always rises on whether zoning and construction authorities can approve a transition of a building from its previous purpose to the hotel purpose. If developer cannot obtain such approval from relevant authorities, the completion procedure of the construction will then not be able to proceed, and at the end of the day, buyers will be at risk failing to acquire real estate certificate of the purchased condo-hotels.

Therefore, Beijing municipal government has in May of 2010 promulgated a regulation that prohibit hotel-designed project from being sold by unit or by floor, hence basically eliminate new projects of condo-hotel in the city. On the other hand, however, Municipal government of Haikou issued a Provisional Regulation on Management of Property-style Hotel, which provided positive guidance to the development and management of condo-hotels. The Regulation of Haikou places the development of Condo-hotel into the pre-sale system of commodity apartment, and requires it being sold and registered by inner-space area, rather than gross floor area.

b. Issues on operation of hotels.

We often see different lawsuits arising from property-style hotel, most of which are in connection with sell-leaseback models. According to Regulatory Measures on the Sell of Commercial Houses, it is prohibited for real estate developers from selling commercial houses in a way of cost-refundable sale or selling uncompleted commercial houses in a way of after-sale lease. However, a very common approach for developers is to entrust a third party management company to conclude a management contract and this company will guarantee a fixed amount of investment return. This seems like circumvention to the regulation, but in essence, it might be deemed as misrepresentation to consumers. People might finally find under a lot of circumstances promised return are hardly to be cashed in as financial status are under the control of such management company, and individual investors can hardly acknowledge the operation details, or even the reasonability of returns as alleged by management company. Prevailing laws are still silent on such operation issues on property-style hotel. In practice, we find some developers introduce a pledge mechanism to ensure returns for investors, which turn out to be helpful for sale and management of such project.

Timeshare products

Due to the abovementioned legal and market environment that encumbers development of property-style hotel, some developers are encouraged to introduce timeshare products. Timeshare products are typically used in shared usage right of a vacation or resort property in an arrangement that allocate usage rights based on time (e.g. divide into 51 weeks annually). In other words, only one purchaser will be allowed to use a particular home or apartment at a particular time (e.g. one week). The concept of timeshare is derived from France in 1960s and evolved rapidly since then as a worldwide lifestyle for tourist. A typical structure of timeshare system will include five kinds of legal relations between four parties, which are real estate developers, realtors, club members and Resort Condominiums International (RIC).

Legal system in China on timeshare is currently in vacancy. It is unclear whether consumer is buying usage right of the property (same as most practice in Europe) or ownership (practice such as fractional ownership in the US) under a timeshare, and definition of co-ownership in China Real Property Law that allow registration of the right cannot be applied here. As such, timeshare arrangement can only be achieved thought contract, leaving regulatory and supervision of the industry in blank. As a consequence, since its introduction to China in late 1990s, the concept and product of timeshare is usually coupled with fraud and illegal fund raising—shadowing the timeshare market over time.

Until resent years, we've seen some developers are trying to tap into the development of timeshare product, among those are BRC from Sichuan and Antaeus Group from Hainan. In order to avoid the "bad reputation" that plants in consumers' concept, those developers are trying new definition of their products, but still seemingly more like timeshare. Actually, as derive places of timeshare, Europe Union has applied a lot of practice in its Timeshare Contract Law, such as cancelling right, "grace period" system and disclose responsibility for seller, which can definitely been referred to when China is about to establish and foster a timeshare market.

Viable Model for Elderly-care Hotel

An elderly-care condo-hotel is designed for investors (usually also ultimate consumer) who will buy the property for live after retirement. Investor will usually entrust property management company to operate such property before his/her retirement, and obtain some profits in return. In most cases, the developer or management company will buy-back or resell the property after resident is dead, and profit of such is enjoyed by heirs of the investor. Different from ordinary condo-hotel, elderly-care style hotel is usually operated by elderly care service provider, where profession and experience of elderly care are mostly of importance.

A second option is timeshare model for vocation-style senior living, a blend of real estate, resort, tourism and senior care business. It is also a unique model that introduces an economic concept of space and time, in a way to share, integrate and make use of different resource.

Under the current regulatory environment, we advise developers who engage in the senior-living oriented hotel to carefully consider the following three aspects of legal risks:

--Be aware of the possible unclearness of management right of the senior-living hotel. Given the fact both hospitality and senior care are special lines of service industry that may under administration of different government authorities, such as Industry and Commerce Bureau, Civil Affaires Bureau, Tourism Bureau, Police Office and Ministry of Health. Generally there can only be one integrated management body to operate a senior-living hotel. However, given the mixed nature of senior-living hotel, in practice, the property management party and the senior care service operator are totally different entities, with different qualification and business scope in granted license. So it is more important to describe corresponding rights and liabilities of these parties through contractual agreement to avoid ambiguity or overlapping. On the other hand, from the property owners' perspective, their property rights are in restraint, due to management right on their own in lack. As a result, many investors will consider their exit right of such property —a mechanism developers should consider in the first place.

...given the mixed nature of senior-living hotel, in practice, the property management party and the senior care service operator are totally different entities, with different qualification and business scope in granted license. So it is more important to describe corresponding rights and liabilities of these parties through contractual agreement to avoid ambiguity or overlapping...

--Wisely design membership card products. As a variation of property interests, membership card model is popular in the marketplace. Investment from consumers can be paid off by means of re-sale or redemption. In practice, membership cards are

sold out prior to construction completion of senior-living hotel in order to facilitate project finance, or in other cases, developer will use the sales capital in other of its projects. There are always disputes arise from the unclearness agreement on the interests of such membership, or unfair and arbitrary provisions that violate legitimate right of consumers. So putting a fair and viable entry agreement or article of membership association in place can save a lot of troubles in the days to come.

...from the current government voice, operational liberty for developers on membership card products is still there. But from the abovementioned Haikou's regulation on condo-hotel, local government intents to include the sales of hotel-style product into presale regime...

From the current government voice, operational liberty for developers on membership card products is still there. But as stipulations in the abovementioned Haikou's regulation on condo-hotel, local government intents to include the sales of hotel-style product into presale regime that can be monitored, and therefore keep the financial status of developer under control. As such, developers shall be aware of the possibility that in the future regulators may prohibit or restrain sales of membership card on hotel-style property, if they are trying to prevent consumers from losing money under a systematic crisis of over-heated real estate market. For now, we advice developers to take control of their financial capability, to sell membership card until construction is almost completed and allocate a percentage of capital for the upcoming opening and operation of senior-living hotel.

--With regard to timeshare project, it is important for developers or realtors to pay attention to the legitimacy of their behavior, especially avoid being regarded as illegal fund-raising. In China, illegal fund-raising that conducted by any individual or enterprise without adequate approval can cause a serious criminal charge, and for timeshare product, it is always under the radar of authorities to distinguish illegal behavior of fund-raising from sound timeshare business—the direction in which sales fund flows also plays a critical role by judging the legality of the business. Actually, China has established legal system of trust for years, which can provide legal basis for creating a viable mechanism to protect interests of timeshare participants. By learning successful experience from western countries, investment of timeshare products can be established on a trust product basis, giving more security to the investors' interests.

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As a conclusion, development of senior-living hotel is a profound project that not only requires comfortable living environment for seniors to living, but also awaits for a series of service in place, such as elderly insurance, reverse-mortgage and senior housing realtor, etc. No matter from a market or a regulatory point of view, it is nevertheless a long journey ahead for the senior-living hotel business.

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We can assist with senior housing developers and service providers in:

-- Advice on structuring business models
-- Conduct legal due diligence on project acquisition
-- Establish legal entities and negotiate with joint venture partner
-- Draft and standardize documents on （a）construction, operation and business transaction; （b）third-party agreements and vendor’s contracts; （c）policies and procedure for residency
-- Advice on finance, tax and government relation
-- Deal with issues on intellectual property, licensing, general liabilities and employment.

We are commercial real estate lawyers. Our core practice areas are commercial leasing, acquisition, development, construction and land use, complement with expertise in the areas of litigation and corporate affairs.

In particular, we provide assistance to clients in the fields of commercial real estate development, retail, hotel & leisure, senior housing & care and private equity investment.

Our commercial real estate service include

Commercial leasing (Retail / Industrial / Office / Mixed use)

Commercial Development (Mergers and acquisitions / Selling and leasing / Land use right grant and transfer / Construction)

Finance and investment (Lending / Foreign investment / Borrowing / Private equity)

Corporate and business affairs (Commercial agreements / Corporate governance / Tax / Partnerships and joint ventures)

Litigation (Business litigation / Real estate litigation)