

行到水穷处，坐看云起时——2023 年房地产行业及其法律服务的趋势展望

Every Cloud Has A Silver Lining ——Outlook of Real Estate Industry and Its Legal Services in 2023

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近年来，政府对于房地产行业的调控政策收紧与疫情防控之影响叠加，加上世界范围内的产业链重整，对住宅、办公、商业等传统房地产领域造成了广泛冲击，2022 年末，中国人民银行与中国银行保险监督管理委员会共同发布《关于做好当前金融支持房地产市场平稳健康发展工作的通知》（银发〔2022〕254 号），针对性地列举了 16 条协调和鼓励地方政府、金融机构等主体共同促进房地产市场稳定、良性发展的举措（下称“**金融十六条**”），重新肯定了房地产行业仍是稳经济、促发展的重要参与者。在这些宏观背景下，地产公司对危机的处理、对合规的强调、对政策的把握，让其与法律服务者建立起更加紧密的联结，律所可协助地产行业更好地迎接新时期的挑战。

Over the past few years, governments' tightened administration on the real estate sector combining with the impact of pandemic controls, and the global-wide restructure of industrial chains together have caused a widespread impact on the traditional real estate realms including residential, office, and commercial properties. At the end of 2022, the People's Bank of China and the China Banking and Insurance Regulatory Commission jointly issued *the Notice on Maintaining Current Financial Support for the Stable and Healthy Development of the Real Estate Market (the "Notice")*, listing 16 measures to coordinate and encourage local governments, financial institutions and other entities to promote the stable and healthy development of the real estate market, and reiterating the critical importance of the real estate sector as a major economy stabilizer and development booster. With this macro perspective, real estate developers are forging a stronger bond with legal professionals to handle the crises, enhance compliance, and grasp the opportunities in policies. Law firms can serve the real estate business to better manage the challenges of the new era.

首先，新的地产调控政策指引行业逐步进入新的发展阶段，对行业趋势的把握需基于对政策的学习和了解。

Firstly, the latest real estate administration policies have guided the real estate industry to gradually enter a new stage of development, and the grasp of the industry trends shall be based on the study and understanding of the policies.

I. 房地产政策调整

The Switch of Real Estate Administration Policies

相较于此前驱严的监管，2022 年地产金融监管政策总体以“纠偏”、“纾困”等为主。自 2022 年 3 月开始，各部委开始积极出台对市场有利的政策，推动房地产行业转变发展方式，鼓励金融机构稳妥有序开展并购贷款，重点支持优质房企兼并收购困难房企优质项目，促进房地产业良性循环和健康发展。同时，房地产融资政策渐进松绑，出台了并购贷不再计入“三道红线”、保租房贷款不纳入房地产贷款集中度管理等政策措施。

Compared with the previous tightened regulation, the real estate finance regulatory policies in 2022 generally focus on "rectification of deviation" and "bailout". Since March 2022, various ministries have started to actively introduce market-friendly policies to promote the transformation of the real estate industry, to encourage financial institutions to grant M&A loans in a steady and orderly manner, to focus on supporting high-quality real estate developers to merge and acquire high-quality projects of troubled real estate developers, and to promote the virtuous cycle and healthy development of the real estate industry. At the same time, real estate financing policies have been progressively loosened, with the introduction of policies such as M&A loans no longer being counted into the "three red lines" and affordable rental housing loans not being included in the administration of real estate loan concentrations.

进入 11 月，监管对房企融资的态度进一步转变，通过金融十六条的出台，纠偏过度紧缩的涉房信贷和金融管理政策，从保持房地产融资平稳有序、积极配合做好受困房地产企业风险处置、阶段性调整部分金融管理政策、加大住房租赁金融支持力度等六个方面详细阐述金融应如何帮助房地产实现“软着陆”。2022 年 12 月 15 日，国务院副总理刘鹤在公开场合上发表书面致辞，指出房地产是国民经济的支柱产业，针对当前出现的下行风险，已出台一些政策，正在考虑新的举措，努力改善行业的资产负债状况，引导市场预期和信心回暖。

Since November 2022, the regulatory attitude towards the financing of real estate developers has further changed. The introduction of the *Notice* rectified the over-tight housing-related credit and financial administration policies, elaborated in detail how the finance sector shall help real estate achieve a "soft landing" through six aspects including maintaining the stable and orderly real estate financing, assisting in the risk disposal of distressed real estate developers, phased adjusting of partial financial administration policies and strengthening financial support for housing rental industry. On 15 December 2022, the Vice Premier of the PRC Liu He delivered a written message in public, pointing out that real estate industry is a pillar industry of the national economy of China, and that in response to the downside risks that have emerged, several policies have been introduced and new initiatives are being considered to improve the balance sheet of the industry and to guide market expectations and confidence to rebound.

在政策逐步放宽的影响下，有理由相信，市场表现将较过去一年有所回升。但是，房地产“高负债、高杠杆、高周转”的发展模式已难以为继，亟需转向以租赁、轻资产发展、盘活存量、产业地产等新发展模式。后续，这些领域或会得到政策的更多支持，房企应在这些领域寻找新机会，实现高质量发展。

With the gradual easing of policies, we believe that market performance will pick up compared to the past year. However, the development model of "high debt, high leverage and high turnover" in real estate industry is no longer sustainable, and it is urgent to shift to new development models such as leasing, asset-light development, inventory revitalization and industrial real estate. In the future, these sectors may receive more policy support, and real estate developers should seek new opportunities in these realms to achieve high-quality development.

地产行业调整周期中，传统地产增量不足，但对存量物业的盘活、更新、及纠纷解决成为重要主题，该等业务不仅要求律师拥有领先的专业研究能力，也对律师在地产行业的经验积累和洞察能力提出了更高的要求。具体而言：

In an economic adjustment cycle of the real estate sector, the traditional sectors witness an insufficient quantity of new builds, while the revitalization, renewal, and dispute resolution around the existing inventory properties are brought into the limelight, all of which demand from legal professionals a defter hand to carry out in-depth professional research and a far superior mind with rich sector-specific experience and insight. To be more specific:

II. 困境地产公司纾困

Bailout of Distressed Real Estate Developers

宏观政策、疫情影响及工业产业链转移等原因，导致房地产企业经营环境变化，让不少房企陷入经营困难，乃至包括恒大地产，融创地产等排名前列的大型房地产企业也频繁出现债务违约事件，中小房企的处境则更为艰难，即便近期政策转暖，但仍会有不少需要债务重组，乃至发生破产重整的情况。法律服务跟随市场形势的转变，由之前的助力地产投资、土地交易、收购项目，转向协助地产公司以各种途径获取融资、不良资产处置、破产重整，及服务有实力的公司选择并购困境中的地产企业及精选的地产项目。盘活陷入困境的公司与资产更需要复杂问题的解决能力，以协助各方尽力寻找多方获益的价值点；与增量市场较为流程化的业务不同，各个特殊机会投资中的特质差异万千，也更加需要操盘人和法律服务者基于以往的专业积累而具备的风险识别和应变能力。

Macroeconomic policies, COVID-19 pandemic, and industrial chain transfer have joined forces to transform the commercial atmosphere surrounding real estate developers, with a number of developers being sucked into operational hardship. Even top large real estate developers, including Evergrande and Sunac China, have frequently defaulted on their debts, while the small and medium-sized developers find themselves in more dire straits. Though with the recent policies turnaround, many of them would still require debt restructuring or even bankruptcy reorganization. In response to market changes, legal services have shifted from providing support for real estate investments, land transactions, and acquisition deals to assisting real estate developers in obtaining financing through multifarious channels, disposing of non-performing assets, undergoing bankruptcy, and restructuring as well as in providing services to robust developers in their purchase of troubled developers and select properties. The ability to combat complicated problems is needed more than ever to revitalize distressed companies and assets so as to help unlock values that benefit more than one party. Unlike the new builds market, where business practice is relatively standardized, distressed investment opportunity is peculiar and one of a kind, setting a higher bar for realty operators and legal professionals to identify and respond to risks based on their accumulated expertise.

III. 城市更新机遇

Urban Renewal Opportunities

“十四五”规划明确提出，“加快推进城市更新，改造提升老旧小区、老旧厂区、老旧街区和城中村等存量片区功能，推进老旧楼宇改造”，此后，北京、上海、重庆等地纷纷出台了配套的政策。国家统计局发布的数据显示，2022年末我国城镇化率水平为65.22%，根据住建部专家的观点，“十四五”期间我国城镇化率水平预计处于65%-70%区间，城镇化速度逐步递减，在此背景下，新时期的城市更新将有别于过去的“三旧改造”，不再是大拆大建大搬迁的模式，而是基于存量、强调以人为核心的“高质量发展”，诸如智慧城市、生态城市等领域都将是未来开启十万亿级投资规模的重点方向，也是法律服务将要支持的热点领域。

China in the 14th Five-Year Plan has made plain its aim to "accelerate urban renewal by redeveloping and upgrading the functions of old residential areas, old factory areas, old neighborhoods, and urban villages, among other idle zones, and by promoting the renovation of old buildings". Beijing, Shanghai, Chongqing, and other cities have since lined up to introduce implementing policies. Figures released by the National Bureau of Statistics of the PRC indicate that the urbanization rate of China has stood at 65.22% at the end of 2022. According to the experts from the Ministry of Housing and Urban-Rural Development, the urbanization rate is projected to climb to the range of 65% to 70% during the 14th Five-Year Plan period but at a gradually reducing pace. As such, urban renewal in the new era, in contrast to the "Three-old Renovation" in the past, will be veering from large-scale demolition, construction, and relocation to "high-quality growth" focusing on the existing inventories with a human-oriented emphasis. In the years to come, smart cities, eco-cities, and the like will be a key destination for investments worth up to tens of trillions Renminbi, to be accompanied by an influx of legal services that support those investments.

IV. 地产相关的争议解决

Real Estate-Related Dispute Resolution

行业下行周期中，地产纠纷涌现，结合我们的业务经验并参考北京仲裁委员会的观察，近年来房地产争议主要有以下特点：一是由于房价下跌导致的买受人房贷断供、逾期的违约案件增多，法拍房数量激增；二是因房企降本增效导致的房屋质量问题和违规改造问题增加；三是由于市场下行，导致房企之间的合作开发争议案件增加；四是由于经济下行叠加过去疫情防控影响，商业地产领域的违约案件增加；五是受困流动性危机的房企不断增多，导致房企与施工企业、材料供应商、金融机构之间的纠纷也不断增多。为更好地回应增加的诉讼风险，地产企业需将应对措施提前，在业务开展时即应关注到潜在风险点，更积极地建立合规、风控屏障，才能有效控制后续诉讼成本。

In a downcycle of the sector, real estate-related disputes continue to spring up one after another. Combining our practical experiences and referring to the observations of the Beijing Arbitration Commission, the main features of real estate-related disputes in recent years are as follows. Firstly, as a result of the falling house price, there has been an increase in the number of default cases where buyers' mortgage payments are cut off or overdue, and the number of foreclosures has also surged. Secondly, the quality issues and illegal renovation issues of properties has deteriorated due to the cost reduction of real estate developers. Thirdly, the market downturn has exacerbated the disputes between real estate developers over their cooperation in project development. Fourthly, due to the economic downturn

overlaid with the previous pandemic prevention, the default cases in the commercial real estate sector have been more than ever. Fifthly, the number of real estate developers suffering from liquidity crises has been increasing, aggravating the disputes between real estate developers and construction companies, material suppliers and financial institutions. In an effort to better tackle escalating litigation risks, real estate developers ought to work out preventative measures beforehand, heeding the potential risks once the business is started, and establishing compliance and risk management programs in a more proactive manner to effectively mitigate the costs and expenses arising out of future lawsuits.

此外，新的经济增长点及新的监管趋势推动了新业务板块的形成和发展，包括互联网数据中心（IDC）在内的新基建以及反垄断监管收紧带来的合规业务是其中的代表。

Additionally, new areas of economic growth and new trends in government regulation are cultivating the formation and evolution of new businesses, exemplified by new infrastructure including internet data centers (IDC) and legal compliance following tighter antitrust enforcement.

V. 数字化转型背景下，互联网数据中心（IDC）持续成为风口

IDC Continually as a Windfall for Investment in the Context of Digital Transformation

过去三年的新冠疫情，使得智能手机和互联网的渗透率迅速提高，推动数字经济的快速增长，中国成为全球最大的数据圈之一，夯实了互联网数据中心在国内快速发展的基本面；围绕着强化数字转型的目标，国家发改委于2022年2月启动“东数西算”，成为继“南水北调”、“西电东送”、“西气东输”之后，又一个优化资源配置格局的国家工程；国家发改委在新闻发布会上称，预计“十四五”期间，大数据中心投资将以每年超过20%的速度增长，将带动各方面投资超过3万亿人民币。在市场、国家发展需求和政策利好带动下，互联网数据中心持续成为风口。互联网数据中心作为重资产与高技术的交叉行业，同时对传统的房地产、投融资、电信行业的业务能力，和新兴的数据安全、节能减碳、ESG等领域的专业知识提出较高要求，形成了一个相对专门的行业领域，也对其法律服务团队的专业知识的深度和广度设立了门槛。

The pandemic in the past three years has led the smartphone and internet penetration rate to experience a meteoric rise, which fueled the galloping growth of the digital economy. China is set to become one of the world's largest data hubs, further firming up the foundations for the high-speed buildout of IDC across the country. In February 2022, the National Development and Reform Commission of the PRC (NDRC), as a step toward the goal of reinforcing digital transformation, unveiled the "Eastern Data and Western Computing" project, another national endeavor to optimize resource allocation in addition to "South-to-North Water Diversion", "West-to-East Power Transmission", and "West-to-East Gas Transmission". The NDRC forecasted in a press release that, during the 14th Five-Year Plan period, there would be a surge in big data center investment at an annual rate exceeding 20%, which would stimulate investments across various industries and sectors beyond three trillion Renminbi in worth. Riding the tailwinds created by market developments, national needs, and encouraging policies, IDC will continue to be a

windfall for investment. Sitting at the intersection of asset-heavy businesses and high-tech industries, IDC forms a relatively specialized sector which imposes stricter requirements for both capabilities in the traditional areas such as real estate, investment and financing, and telecom, as well as expertise in the emerging realms of data security, energy conservation and carbon reduction, ESG etc. Those requirements set the bar for the depth and breadth of expertise of IDC's legal services teams.

VI. 产业园区需求上升

Increasing Demand for Industrial Parks

随着时代发展，不少老旧厂房和传统工业园区逐渐不能达到产出目标也无法满足新产业发展的需求，亟待盘活再利用。同时，为优化城市空间布局，推动产业集聚发展与转型升级，工业企业将逐步退城进园。因此，老旧工业园区的改造和新型产业园区的新建项目增加，特别是在东部地区和长江经济带，为培育先进制造业集群，当地新产业园区需求呈现量质齐升之态。对旧工业园区的改造有赖于对原有项目的妥善处理、对土地利用条件的评估、以及对新产业全生命周期的管理，法律服务者也紧密配合新的需求，提供相应法律服务。

As the world changes, many old factory buildings and traditional industrial parks are in urgent need of revitalization due to their inability to achieve their output targets and meet the demands of the new industries. Meanwhile, for the purpose of optimizing the urban spatial layout, promoting the concentrated development and transformation and upgrading of industries, the industrial enterprises will gradually relocate from urban areas to suburban industrial parks. Hence, there is an increase in the renovation of old industrial parks and construction of new type industrial parks, especially in the eastern region and the Yangtze River Economic Zone, where in the cause of cultivating advanced manufacturing clusters, the demand for new type industrial parks is increasing in both quantity and quality. The renovation of old industrial parks depends on the proper handling of the original projects, the evaluation of the land use conditions and the management of the whole life cycle of the new industries. Legal professionals should also closely adapt to the new demands and act in response to such changes with the upgraded legal services.

VII. 反垄断法的修订对地产投资法律业务的影响

Impact of the Amendment to the Anti-Monopoly Law on Legal Practice in Real Estate Investment

房地产行业是竞争较为充分的行业，市场份额分散，长期以来并不被认为是反垄断监管的重点领域，在房地产行业过往层出不穷的并购案件中，向反垄断局提交经营者集中申报的项目并不多，因未申报而受到处罚的案例亦不多见。但随着《反垄断法修正案》于2022年8月1日的正式实施，不正当竞争的违法责任大幅增加，极大加强《反垄断法》的威慑力，且在新法之下，竞争政策对市场经济建设的重要性被强调到了新的高度，达到申报标准的地产项目若仍惯性地不进行申报，将暴露在更大的被纠察的可能性、以及更巨额的处罚风险之中。另一方面，如果房企依据法律要求进行申报，鉴于地产项目被认定为垄断的可能不大，更有可能通过快速的审查流程、并以相对较小

的成本排除交易中受到监管处罚隐患，增加交易的确定性。因而，协助地产项目进行反垄断申报的法律服务业务预计也将有显著增加。

The real estate sector is generally deemed as an industry with relatively adequate competition and distributed market shares, and therefore not considered as the focus of anti-monopoly supervision for long. Among the numerous M&A transactions in the real estate sector in the past, only a few were declared to the Anti-monopoly Bureau for concentration of undertakings review, while cases where parties were penalized for unfulfillment of the duty to declare were rare. However, with the implementation of the *Amendment to the Anti-Monopoly Law* on August 1, 2022, the legal liability for violation of laws or regulation of unfair competition is aggravated significantly, greatly strengthening the deterrence of the *Anti-Monopoly Law*. The newly promulgated law has raised the importance of competition policy to a new level for the construction of the market economy. For a proposed M&A transaction in the real estate sector that falls into the scope of declaration under the new law, if the parties habitually fail to declare, such proposed transaction will be possibly exposed to greater risk of investigation than before and subject to a heavier fine. On the other hand, if the parties file a declaration in accordance with the law, it is more likely to eliminate the hidden risks of regulatory punishment in the transaction through a speedy investigation process with relatively lower costs meanwhile increasing the certainty of the transaction, given the small possibility of a real estate transaction being identified as monopolistic practice. Therefore, the legal services in assisting real estate enterprises in antitrust filings are expected to increase significantly.

最后，为拓宽社会投资渠道，基础设施 REITs 将加速扩募，外商投资亦有放宽的呼声，充裕的资金助力地产业筑底并逐步走上稳定良性发展的轨道。

Lastly, in order to expand channels for private investors in the market, infrastructure REITs will accelerate the expansion of fundraising. The market also calls for easing the policies on foreign investors. With abundant funds, the real estate market will bottom out and gradually embark on the track of stable and sound development.

VIII. REITs 进一步扩募

Expanded Offering in REITs

基础设施领域不动产投资信托基金（REITs）在 2022 年出台了扩募规则，明确将进一步提高项目推荐、审核效率，鼓励更多符合条件的基础设施 REITs 项目的发行上市，并将保障性租赁住房、生态环保、产业园区、仓储物流、新型基础设施等资产列为基础设施 REITs 发展的重点领域。2022 年 12 月，中共中央、国务院印发了《扩大内需战略规划纲要（2022—2035 年）》，进一步要求有序推动基础设施 REITs 健康发展。可以预见，在政策的推动和市场的需求的促进下，基础设施 REITs 将加速发展，以有效盘活存量资产，并促进形成存量资产和新增投资的良性循环。在这一过程中，法律服务者将为基础设施 REITs 的发展保驾护航。

The rules for expanded offering in infrastructure-backed real estate investment trusts (REITs) have been issued in 2022, which make clear that the efficiency of project recommendation and review will be improved to encourage more qualified infrastructure REITs projects to be listed in the market. The rules further specify

affordable rental housing, ecological and environmental protection, industrial parks, warehousing and logistics, new infrastructure project, and other assets as the key areas for development of the infrastructure REITs. In December 2022, the Central Committee of the Chinese Communist Party and the State Council issued the *Outline of the Strategic Planning for Expanding Domestic Demand (2022-2035)*, further requiring the orderly promotion of the healthy development of infrastructure REITs. It is foreseeable that driven by the policy and market demand, the accelerated development of infrastructure REITs will effectively revitalize the existing assets and promote the virtuous cycle of existing assets and new investments. Throughout this process, legal professionals will shepherd the development of infrastructure REITs.

IX. 外商房地产投资的新机会

New Opportunities for Foreign Investors in Real Estate Investment

外商投资房地产的政策已逐步放宽，房地产行业现未被列在市场准入的负面清单，可享受国民待遇；更新后的房地产开发资质申办条件对外资十分友好，即便没有开发项目也能申请开发资质；虽然房地产企业借外债还存在限制，但亦有越来越多声音呼吁放开，希望给外商房地产投资带来更多利好。同时，在新经济形势下，顺应以人为中心、提升城市化水平的需求，外资地产投资者可采用更加灵活的轻资产投资方式，通过提供高水平的运营管理服务、品牌价值等，增加投资的灵活性及提高投资的回报率。转型过程中，法律服务者可以协助外商地产投资者更好地把控新业务的合规要点，制定更加完善的投资策略。

The previous strict policies applicable to foreign investors in real estate have been gradually eased. The real estate sector is not named on China's Negative List for Foreign Investment Access and foreign real estate investors are entitled to national treatment. The updated criteria of the application for developer qualification are very friendly to foreign investors, which allows the investors with no project in process to file the application. Although there are still restrictions on real estate enterprises in foreign debts borrowing, the voices calling for opening-up are getting stronger with the hope of bringing more benefits to foreign real estate investors. At the same time, in the new economic climate, in line with the idea of human-oriented development and the need to enhance the level of urbanization, foreign real estate investors can adopt a more flexible, asset-light investment strategy by providing high-caliber operation management services and brand value, etc., to increase the flexibility in and to improve the return on their investments. In the process of such transition, legal professionals can assist foreign real estate investors to effectively grasp the key compliance issues of the new businesses and formulate more sophisticated investment strategies.

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