

## I. LEGAL SUPERVISION RELATING TO THE PROPERTY SECTOR IN THE PRC

### A. Establishment of a Property Development Enterprise

According to the Law of the People's Republic of China on the Administration of Urban Property (中華人民共和國城市房地產管理法) (the "Urban Property Law") promulgated by the Standing Committee of the National People's Congress on July 5, 1994 and revised in August 2007, a property developer is defined as an enterprise which engages in the development and sale of property for the purpose of making profits. Under the Regulations on Administration of Development of Urban Property (城市房地產開發經營管理條例) (the "Development Regulations") promulgated by the State Council on July 20, 1998, an enterprise which is to engage in development of property shall satisfy the following requirements: (1) its minimum registered capital shall be RMB1 million; and (2) it shall employ at least four full-time professional property/construction technicians and at least two full-time accounting officers, each of whom shall hold relevant qualification certificates. The Development Regulations also stipulate that the local government of a province, autonomous region or municipality directly under the central government may, based on local circumstances, impose more stringent requirements on the amount of registered capital and the qualifications of professionals of a property developer. According to the Regulations on Property Developments of Guangdong Province (廣東省房地產開發經營條例) revised by the Standing Committee of Guangdong Provincial People's Congress on September 22, 1997, the self-funded capital of a property developer in the Guangdong Province shall be at least RMB3 million, and property developers with different qualification classifications should comply with respective requirements for full-time professional technicians. Pursuant to the Circular in Respect of the Relevant Rules Governing the Administration of Industrial and Commercial Registration and Qualification of Property Development Entities (關於房地產開發企業工商登記與資質管理有關規定的通知) promulgated by the Construction Bureau of Sichuan Province on September 2, 2004, the minimum registered capital of a property development entity so established shall be RMB5 million. According to the Regulations on Property Development of Tianjin City (天津市房地產開發企業管理規定) promulgated by the Tianjin City People's Congress on September 12, 2001, the minimum registered capital of the property development enterprise should be RMB10 million. Pursuant to the Detailed Rules for the Implementation of the Provisions on Administrations of Qualification of Property Developers of Jiangsu Province (江蘇省實施《房地產開發企業資質管理規定》細則) promulgated by the Construction Bureau of Jiangsu Province on August 6, 2001, the minimum registered capital of property developers established in Yixing City shall be RMB4 million, and property developers with different qualification classifications should comply with respective requirements for full-time professional technicians.

Pursuant to the Development Regulations, a developer who aims to establish a property development enterprise should apply for registration with the Administration for Industry and Commerce. The property development enterprise must also report its establishment to the property development authority in the location of the registration authority, within 30 days upon the receipt of its Business License.

Under the Notice on Adjusting the Portion of Capital Fund for Fixed Assets Investment of Certain Industries (關於調整部分行業固定資產投資項目資本金比例的通知) issued by the State Council on April 26, 2004, the portion of capital funding for property projects (excluding economical housing projects) has been increased from 20% to 35%.

However, on May 25, 2009, the State Council issued the Notice on Adjusting the Minimum Capital Requirement for Fixed Assets Investment (關於調整固定資產投資項目資本金比例的通知) and lowered the minimum capital requirement for projects of affordable residential housing and regular commodity residential houses from 35% to 20% and, for other property projects, to 30%.

### B. Foreign-invested Property Enterprises

Under the Foreign Investment Industrial Guidance Catalogue (外商投資產業指導目錄) amended jointly by the Ministry of Commerce and the NDRC in October 2007 and with effect from December 1, 2007, the development of a whole land lot, the construction and operation of high end hotels, villas,

premium office buildings, international conference centers and large theme parks, transactions in the real estate secondary market and real estate intermediary or broker companies fall within the category of industries in which foreign investment is restricted, while foreign investment related to other kinds of real estate development falls within the category of industry in which foreign investment is permitted.

According to the Interim Provisions on Approving Foreign Investment Project (外商投資項目核准暫行管理辦法) promulgated by the NDRC in October 2004, the NDRC shall examine and approve foreign investment projects with total investment of US\$100 million or more within the category of industries in which foreign investment is encouraged or permitted and those with total investment of US\$50 million or more within the category of industries in which foreign investment is restricted as classified in the Foreign Investment Industrial Guidance Catalogue. While foreign investment projects with a total investment of US\$500 million or more within the category of industries in which foreign investment is encouraged or permitted and those with total investment of US\$100 million or more within the category of industries in which foreign investment is restricted as classified in the Foreign Investment Industrial Guidance Catalogue are subject to further approval of the State Council based on the examination and approval of the NDRC.

Foreign invested property enterprises can be established in the form of a Sino-foreign equity joint venture, a Sino-foreign cooperative joint venture or a wholly foreign-owned enterprise. Prior to its registration, the enterprise must be approved by the commerce authorities, upon which an Approval Certificate for a Foreign-Invested Enterprise will be issued.

On July 11, 2006, the MOC, MOFCOM, the NDRC, the PBOC, SAIC and SAFE jointly promulgated the Opinion on Regulating the Access and Management of Foreign Capital in the Property Market (關於規範房地產市場外資准入和管理的意見). According to this Opinion, the admittance and administration of foreign capital in the property market must comply with the following requirements:

- a) Foreign entities or individuals who buy property not for their own use in China must apply for the establishment of foreign-invested enterprises pursuant to the regulations of foreign investment in property. After obtaining the approvals from relevant authorities and upon completion of the relevant registrations, foreign entities and individuals can then carry on their business pursuant to their approved business scope.
- b) Where the total investment amount of a foreign-invested property development enterprise is US\$10 million or more, its registered capital shall not be less than 50 percent of the total investment amount; where the total investment amount is less than US\$10 million, its registered capital shall follow the requirements of the existing regulations.
- c) For the establishment of a foreign-invested property development enterprise, the commerce authorities and the Administration for Industry and Commerce take charge of the approval and registration of the foreign-invested property development enterprise and the issuance of the Approval Certificate for a Foreign-Invested Enterprise (which is only effective for one year) and the Business License. Upon full payment of the assignment price of land use rights, the foreign-invested property development enterprise should apply for the land use rights certificate. With such Certificate of Land-Use Rights, it can obtain a formal Approval Certificate for a Foreign-Invested Enterprise from the commerce authorities and an updated business license which will have the same approved business period with the formal Approval Certificate for Foreign-Invested Enterprise from the Administration of Industry and Commerce.
- d) Transfers of projects or shares in foreign-invested property development enterprises or acquisitions of domestic property development enterprises by foreign investors should strictly follow relevant laws, regulations and policies and obtain the relevant approvals. The investor should submit: (1) a written undertaking of fulfillment of the assignment contract for State-owned land use rights, construction land planning permit and construction works planning permit; (2) land use rights certificate; (3) documents evidencing the filing for modification with the construction authorities; and (4) documents evidencing the payment of tax from the relevant tax authorities.

- e) When acquiring domestic property development enterprises by way of shares transfer or otherwise, or purchasing shares from Chinese parties in Sino-foreign equity joint ventures, foreign investors should make proper arrangements for the employees, handle the debts of the banks and pay the consideration in one single payment with its own capital. Foreign investors with records showing that they have not complied with relevant employment laws, with unsound financial track records, or who have not fully satisfied any previous acquisition consideration shall not be allowed to undertake the aforementioned activities.

On August 14, 2006, The General Office of MOFCOM promulgated the Circular on the Thorough Implementation of the Opinions (關於貫徹落實〈關於規範房地產市場外資准入和管理的意見〉的通知) (the "Circular"). The Circular not only reiterates relevant provisions on foreign investment in the real estate industry as prescribed in the Opinions, but also sets forth the definition of Real Estate FIE as a foreign invested enterprise (FIE) which carries out the construction and operation of a variety of residences such as ordinary residences, apartments and villas, hotels (restaurants), resorts, office buildings, convention centers, commercial facilities, and theme parks, or, undertakes the development of land or a whole land lot in respect of the abovementioned projects.

On September 1, 2006, the MOC and the SAFE jointly issued the Opinions on Regulating the Foreign Exchange Administration of the Real Estate Market (關於規範房地產市場外匯管理有關問題的通知), providing regulations on real estate development enterprises mainly as follows:

- (i) For real estate development enterprises, the current account for foreign exchange shall not maintain property purchase payment remitted by residents of Hong Kong, Macau and Taiwan and overseas Chinese expatriates;
- (ii) Where the registered capital relating to a Real Estate FIE remains unpaid in its entirety, or the state-owned land use rights certificate is yet to be obtained, or the capital fund of development project has not reached 35 percent of the total amount of the project investment, such Real Estate FIE is not permitted to borrow foreign loans from overseas;
- (iii) Where foreign entities and individuals purport to merge and acquire domestic real estate enterprises by way of share transfer or any other means, acquire a Chinese party's shares within an equity joint venture, such foreign entities and individuals must be capable of making a one-time payment in relation to the transfer consideration, otherwise SAFE shall not process any foreign exchange registration relating to the foreign exchange transaction.

On May 23, 2007, MOFCOM and SAFE promulgated the Circular on Further Strengthening and Regulating the Approval and Supervision of Real Estate Industry with Direct Foreign Investment (關於進一步加強、規範外商直接投資房地產業審批和監管的通知), which stipulated that:

1. Strict control should be imposed on the acquisition of or investment in domestic real estate enterprises by way of return investment. Foreign investors shall not change the domestic effective controller for the purpose of circumventing the approval procedure related to Real Estate FIE;
2. In a Real Estate FIE, Chinese parties shall not, provide any warranties with regard to allocating fixed turns, express or disguised, to any party;
3. A Real Estate FIE incorporated upon approval by local approval bodies should be registered with MOFCOM on a timely basis; and
4. Foreign exchange administration bodies and designated foreign exchange banks shall not process sale and settlement of foreign exchange under capital items for Real Estate FIEs that fail to complete filing procedures with MOFCOM or to pass joint inspection for foreign-invested enterprises.

In addition, according to the Circular on Distribution of List of the First Group of Foreign-Invested Real Estate Projects Filed with the Ministry of Commerce (關於下發第一批通過商務部備案的外商投資房地產項目名單的通知) promulgated by the General Department

of SAFE on July 10, 2007, (1) local branches of SAFE shall not process any foreign debt registration application or conversion of foreign debt for any Real Estate FIE (including newly incorporated and injected by increased capital contribution) that obtained Certificate of Approval from local commerce authorities and completed the registration with a MOFCOM on or after June 1, 2007; (2) SAFE branches shall not process foreign exchange registration (or change registration), sale and settlement of foreign exchange under capital items, for any Real Estate FIE that has obtained a Certificate of Approval from local commerce authorities, yet has not registered with MOFCOM on or after June 1, 2007.

On July 1, 2008, MOFCOM implemented the Circular on Properly Handling the Record Filing for Foreign Investment in the Real Property Sector (關於做好外商投資房地產業備案工作的通知), delegating provincial-level commerce authorities the authority to register matters concerning foreign investment in real property projects after approving the legality, authenticity and accuracy of the project.

In accordance with a circular promulgated by the SAFE in August 2008 with respect to the administration of conversion of foreign exchange capital contribution of foreign invested enterprise into Renminbi (關於完善外商投資企業外匯資金支付結匯管理有關業務操作問題的通知), unless otherwise permitted by PRC laws or regulations, Renminbi capital converted from foreign exchange capital contribution can only be applied to the activities within the approved business scope of such foreign invested enterprise and cannot be used for domestic equity investment or acquisition.

### **C. Qualifications of a Property Developer**

#### ***(i) Classifications of a property enterprises' qualification***

Under the Development Regulations, a property developer must report its establishment to the governing property development authorities in the location of the registration authority within 30 days of receiving its Business License. The property development authorities shall examine applications for classification of a property developer's qualification by considering its assets, professional personnel and industrial achievements. A property enterprise shall only engage in property development projects in compliance with its approved qualification.

Under the Provisions on Administration of Qualifications of Property Developers (房地產開發企業資質管理規定) (the "Provisions on Administration of Qualifications") promulgated by the MOC and implemented on March 29, 2000, a property developer shall apply for registration of its qualifications. An enterprise may not engage in the development and sale of property without a qualification classification certificate for property development.

In accordance with the Provisions on Administration of Qualifications, qualifications of a property enterprise are classified into four classes: class 1, class 2, class 3 and class 4. Different classes of qualification should be examined and approved by corresponding authorities. The class 1 qualifications shall be subject to preliminary examination by the construction authority under the government of the relevant province, autonomous region or municipality directly under the central government and then final approval of the construction authority under the State Council. Procedures for approval of developers of class 2 or lower classes shall be formulated by the construction authority under the people's government of the relevant province, autonomous region or municipality directly under the central government. A developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. For a newly established property developer, after it reports its establishment to the property development authority, the latter shall issue a Provisional Qualification Certificate to the eligible developer within 30 days. The Provisional Qualification Certificate shall be effective for one year from its issuance while the property development authority may extend the validity to a period of no longer than 2 years considering the actual business situation of the enterprise. The property developer shall apply for qualification classification by the property development authority within one month before expiry of the Provisional Qualification Certificate.

**(ii) The business scope of a property developer**

Under the Provisions on Administration of Qualifications, a developer of any qualification classification may only engage in the development and sale of the property within its approved scope of business and may not engage in business which falls outside the approved scope of its qualification classification. A class 1 property developer may undertake a property development projects throughout the country without any limit on the scale of the project. A property developer of class 2 or lower may undertake a project with a gross floor area of less than 250,000 square meters and the specific scopes of business shall be as formulated by the construction authority under the people's government of the relevant province, autonomous region or municipality.

**(iii) The annual inspection of a property developer's qualification**

Pursuant to the Provisions on Administration of Qualifications, the qualification of a property developer shall be inspected annually. The construction authority under the State Council or its authorized institution is responsible for the annual inspection of a class 1 property developer's qualification. Procedures for annual qualification inspection with developers of class 2 or lower qualifications shall be formulated by the construction authority under the people's government of the relevant province, autonomous region or municipality.

**D. Development of a Property Project****(i) Land for property development**

Under the Provisional Regulations of the People's Republic of China on Grant and Transfer of the Land-Use Rights of State-owned Urban Land (中華人民共和國城鎮國有土地使用權出讓和轉讓暫行條例) (the "Provisional Regulations on Grant and Transfer") promulgated by the State Council on May 19, 1990, a system of assignment and transfer of the right to use State-owned land is adopted. A land user shall pay an assignment price to the State as consideration for the grant of the right to use a land site within a certain term, and the land user may transfer, lease out, mortgage or otherwise commercially exploit the land use rights within the term of use. Under the Provisional Regulations on Grant and Transfer and the Urban Property Law, the land administration authority under the local government of the relevant city or county shall enter into an assignment contract with the land user to provide for the grant of land use rights. The land user shall pay the assignment price as provided by the assignment contract. After full payment of the assignment price, the land user shall register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights. The Development Regulations provide that the land use right for a land parcel intended for property development shall be obtained through grant except for land use rights which may be obtained through appropriation pursuant to PRC laws or the stipulations of the State Council.

Under the Rules Regarding the Grant of State-Owned Land Use Rights by Way of Tender, Auction and Listing-for-sale (招標拍賣掛牌出讓國有土地使用權規定) promulgated by the MLR on May 9, 2002 and implemented on July 1, 2002, land for commercial use, tourism, entertainment and commodity housing development shall be granted by means of competitive bidding, public auction or listing-for-sale. Competitive bidding of land use rights means the relevant land administration authority (the "grantor") issues a bidding announcement inviting individuals, legal persons or other organizations (whether specified or otherwise) to participate in a tender for the land use rights of a particular parcel of land. The land user will be determined according to the results of the biddings. Auction for land use rights is where the grantor issues an auction announcement, and the bidders can at specified time and location openly bid for a parcel of land. Listing-for-sale is where the grantor issues a listing-for-sale announcement, and in accordance with the announcement, the land grant conditions will be listed in a specified land grant exchange within a specified period, bidders' payment applications will be listed and the land user will be granted according to the bidder's payment applications at the end of such listing period. The procedures are as follows:

- (a) The land authority under the government of the city and county (the "assignor") shall announce at least 20 days prior to the day of competitive bidding, public auction or



listing-for-sale. The announcement should include basic particulars of the land parcel, qualification requirement of the bidder and auction applicants, the methods and criterion to confirm the winning tender or winning bidder and conditions such as the deposit of the bid.

- (b) The assignor shall conduct a qualification verification of the bidding applicants and auction applicants and inform the applicants who satisfy the requirements of the announcement to attend the competitive bidding, public auction or listing-for-sale.
- (c) After determining the winning tender or the winning bidder by holding a competitive bidding, public auction or listing-for-sale, the assignor and the winning tender or winning bidder shall then enter into a confirmation. The assignor should refund the other applicants their deposits.
- (d) The assignor and the winning tender or winning bidder shall enter into a contract for State owned land use rights assignment at the time and venue set in the confirmation. The deposit of the bid paid by the winning tender or winning bidder will be deemed as part of the assignment price of the state-owned land use rights.
- (e) The winning tender or winning bidder should apply for the land registration after paying off the assignment price. The people's government of the municipality and county level or above should issue the land use rights certificate.

On June 11, 2003, the MLR promulgated the "Regulations on the Grant of State-owned Land Use Rights by Agreement" (協議出讓國有土地使用權規定). According to this regulation, if there is only one entity interested in using the land, the land use rights (excluding land use rights used for business purposes including commercial, tourism, entertainment and commodity residential properties) may be assigned by way of agreement. If two or more entities are interested in the land use rights to be assigned, such land use rights shall be granted by means of tender, auction or listing-for-sale.

According to the Notice of the Ministry of Land and Resources on Relevant Issues Concerning the Strengthening of Examination and Approval of Land Use in Urban Construction (關於加強城市建設用地審查報批工作有關問題的通知) promulgated by the MLR on September 4, 2003, from the day of issuance of the Notice, the grant of land use rights for luxurious commodity houses shall be stringently controlled, and applications of land use rights for villas are to be stopped. On May 30, 2006, the MLR issued the Urgent Notice on Ulteriorly Strengthening the Administration of Land (關於當前進一步從嚴土地管理的緊急通知). The Notice stated that land for property development must be granted by competitive bidding, public auction or listing-for-sale; the rules prohibiting development projects for villas should be strictly enforced; and land supply and relevant procedures of land use for villas ceased to have effect from the date of the Notice.

Under the Urgent Notice of Ulteriorly Strengthening the Administration of the Land, the land authority should rigidly execute the "Model Text of the State-owned Land-Use Rights Grant Contract" and "Model Text of the State-owned Land-Use Rights Grant Supplementary Agreement (for Trial Implementation)" jointly promulgated by the MLR and the SAIC. The documents of the land grant should ascertain the requirements of planning, construction and land use such as the restriction of the dwelling size, plot ratio, and the time limit for the commencement and completion of construction. All these should be set forth in the Land-Use Rights Grant Contract.

On December 12, 2006, the MLR and the NDRC issued the 2006 Catalogue of Restricted Uses of Land (限制用地專案目錄(2006年本)) and the 2006 Catalogue of Prohibited Uses of Land (禁止用地專案目錄(2006年本)). According to these Catalogues, land use applications for projects involving theme parks, low density housing complexes and oversized houses may only be processed by the relevant level of the MLR and the NDRC where such projects conform to certain restrictive requirements; while land use applications for projects involving villa-style developments, golf courses and horse racing tracks must not be processed at all.

On September 21, 2007 the Land Resources Department promulgated the Rules regarding the Grant of State-Owned Construction Land Use Rights by Way of Tender, Auction and Listing-for-sale (招標拍賣掛牌出讓國有建設用地使用權規定) which came into force on November 1, 2007. The rules stipulate the legal basis, principles, scope, procedures and legal liability arising from and in connection with the grant of State-owned land use rights by competitive bidding, public auction or listing for sale. The rules clearly state that the grant of land for industrial use must also be by means of competitive bidding, public auction or listing for sale.

The Measures on the Administration of Reserved Land (土地儲備管理辦法), promulgated by the MOF, the PBOC and the MLR on November 19, 2007, define “reserved land” and stipulate the administrative, regulatory and implementing procedures involved with the management, planning, allocation, use, development, capital expenditure and supply of reserved land. Moreover, this measures make it clear that land must be reserved in accordance with corresponding land programmes or plans, and that in determining land reserves priority must be given to land included in state inventories which is unused, unoccupied or under utilized.

## **(ii) Development of a property project**

### *(a) Commencement of development with respect to a property project and idle land*

Under the Urban Property Law, those who have obtained the land use rights by grant must develop the land in accordance with the use and period of commencement as prescribed by the land use rights grant contract. According to the Measures on Disposing Idle Land (閒置土地處置辦法) promulgated by the MLR on April 28, 1999, a parcel of land can be defined as idle land under any of the following circumstances:

- after obtaining the land use rights, the development and construction of the land has not begun within the time limit for commencement of the development as stipulated in the land use rights grant contracts without the consent of the people’s government that originally approved the use of the land;
- the “Contract on Lease of the Right to Use State-Owned Land” does not stipulate or the “Approval Letter on Land Used for Construction” does not prescribe the starting date of the development and construction, and the development and construction of the land has not begun at the expiry of one year from the day when the “Contract on Lease of the Right to Use State-owned Land” became effective or when the administrative department of land issued the “Approval Letter on Land Used for Construction”;
- the development and construction of the land has begun, but the area of the development and construction is less than one third of the total area to be developed and constructed, or the invested amount is less than 25% of the total amount of investment, and the development and construction has been continuously suspended for one year or more without approval; or
- other circumstances prescribed by laws and administrative regulations.

The municipality or county-level municipality administrative authority shall, with regard to an identified piece of idle land, give notice to the land user and draft a proposal on disposing the idle land, including but not limited to, extending the time period for development and construction (provided that it shall be no longer than one year), changing the use of the land, arranging for temporary use and ascertaining the new land user by means of competitive bidding, public auction or listing-for-sale. The administrative department of land under the people’s government of municipality or county level shall, after the people’s government that originally approved the use of the land approves the proposal on disposal, arrange for the implementation of the proposal. With respect to land which is obtained by grant and is within the scope of city planning, if the construction work has not yet started after one year from the granting of the relevant approvals, since the duration in which construction may be commenced has elapsed, a fine for idle land which

is equivalent to less than 20% of the assignment price may be imposed on the land user. If the construction work has not been begun after two years have elapsed, the right to use the land can be taken back by the State without any compensation. However, the above sanctions shall not apply when the delay in commencement of construction is caused by force majeure or acts of government or indispensable preliminary work before commencement of construction.

On January 3, 2008, the State Council promulgated the Circular on Conservation of Intensive Land Use (關於促進節約集約用地的通知) (Guo Fa (2008) No. 3), as summarized below,

1. Examine and adjust all ranges of site planning and land use standards in line with the principle of economic and intensive land use. Project designs, construction and approval of construction shall all be subject to stringent land use standards.
2. Urge all localities to enforce disposal policy of idle land. Where a piece of land has been idle for two full years and may be retrieved unconditionally as statutorily required, such land shall be retrieved and arranged for re-use; where a piece of land has been idle for one year but less than two years, a sum of land idle charge shall be levied at 20 percent of the land grant premium.
3. Vigorously guide the use of unused and abandoned land and encourage the development and utilization of aboveground and underground space.
4. Strictly implement the tender, auction and listing-for-sale regime for land intended for industrial and business purposes. Where the total land premium is not paid in full in compliance with contractual agreement, the land use certificate shall not be issued, nor shall it be issued in proportion to the ratio between the paid-up land premium and the total of land premium. Make reasonable arrangements on residential land and persist on banning land supply for real estate development projects for villas. Strictly prohibit unauthorized conversion of agricultural land into construction land.
5. Strengthen supervision and inspection; thoroughly implement intensive land use conservation accountabilities. Regarding enterprises whose real estate project commences at a date exceeding one year as compared with the project commencement date under the land grant contract, or whose land development area takes up less than 1/3 or whose investment is less than 1/4, financial institutions shall be prudent in terms of loans granting and financing approval and shall not grant loans or offer listing financing to projects involving illegal land use.

*(b) Planning of a property project*

According to the Measures for Control and Administration of Grant and Transfer of the Right to Use Urban State-owned Land (城市國有土地使用權出讓轉讓規劃管理辦法) promulgated by the MOC on December 4, 1992 and implemented on January 1, 1993 and the Notice of the Ministry of Construction on Strengthening the Planning Administration of Grant and Transfer of the Right to Use State-owned Land (建設部關於加強國有土地使用權出讓規劃管理工作的通知) promulgated by the MOC on December 26, 2002, after signing the assignment contract for the land use rights, a property developer shall apply for a Project Survey Paper and a construction land planning permit from the city planning authority. After obtaining a construction land planning permit, a property developer shall organize the necessary planning and design work in accordance with planning and design requirements and apply for a construction works planning permit from the city planning authority.

The Urban and Rural Planning Law (城鄉規劃法), promulgated by the Standing Committee of the National People's Congress in October 2007 which became effective in January 2008, provides regulations with respect to the formulation, implementation, modification, control, supervision and related legal liability of measures aimed at curbing problems that



may arise as a result of conflicts between city and rural construction developments. The scope of the measures includes the planning, layout and construction of cities, towns with administrative status, market towns and villages. In order to effectively contain construction that is in breach of rules and regulations, the Urban and Rural Planning Law (城鄉規劃法) stipulates that where any construction project is commenced without obtaining Construction Land Planning Permit, or where Construction Land Planning Permit has been obtained but construction has proceeded not in accordance with that permit, the Urban and Rural Planning Department at the county level or above may issue an order to cease construction. In the case that the construction can be remedied to conform to the relevant planning rules, an order can be made to rectify the construction in a prescribed period of time and a fine totaling between 5% to 10% of the total construction cost may be imposed. Where the construction cannot conform to relevant planning rules, an order for its demolition or, where demolition is not possible, the confiscation of the property and/or illegal income derived from the property will be issued and a fine totaling 10% or less of the construction cost will be imposed.

(c) *Construction of a property project*

After obtaining the construction works planning permit, a property developer shall apply for a construction works commencement permit from the construction authority under the local people's government at the county level or above according to the Measures for the Administration of Construction Permits for Construction Projects (建築工程施工許可管理辦法) promulgated by the MOC on October 15, 1999 and as amended and implemented on July 4, 2001. The "Notice about Strengthening and Regulating the Management of New Projects" (關於加強和規範新開工項目管理的通知), promulgated by the General Office of the State Council on November 17, 2007, strictly regulates the conditions of commencing investment projects, establishes the linkage mechanism of government departments regarding new projects, and strengthens the statistics and information management while intensifying the supervision and inspection of new projects.

(d) *Completion of a property project*

According to the Development Regulations, the Regulation on the Quality Management of Construction Projects (建設工程質量管理條例) promulgated by State Council on January 30, 2000, the Interim Measures for Reporting Details Regarding Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure (房屋建築工程和市政基礎設施工程竣工驗收備案管理暫行辦法) promulgated by the MOC in April 2000 and the Interim Provisions on Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure (房屋建築工程和市政基礎設施工程竣工驗收暫行規定) promulgated by the MOC on June 30, 2000, after completion of construction of a project, the property must undergo inspection and receive relevant approvals from local authorities including planning bureaus, fire safety authorities and environmental protection authorities. Thereafter, the property developer shall apply for the acceptance examination upon completion to the property development authority under the people's government at the county level or above and report details of the acceptance examination, upon which a Record of Acceptance Examination upon Project Completion 項目竣工驗收報告 will be issued.

According to the Notice on Further Strengthening the Quality Supervision and Management of Construction Projects (關於進一步加強建築工程質量監督管理的通知) promulgated by the MOC on April 14, 2009, the legal regulatory framework and the supervision system concerning quality supervision and completion acceptance examination shall be further improved.

## **E. Transfer and Sale of Property**

### **(i) Transfer of property**

According to the Urban Property Law and the “Provisions on Administration of Transfer of Urban Property” (城市房地產轉讓管理規定) promulgated by the MOC on August 7, 1995 and as amended on August 15, 2001, a property owner may sell, bequeath or otherwise legally transfer property to another person or legal entity. When transferring a building, the ownership of the building and the land use rights to the site on which the building is situated are transferred simultaneously. The parties to a transfer shall enter into a property transfer contract in writing and register the transfer with the property administration authority having jurisdiction over the location of the property within 90 days of the execution of the transfer contract.

Where the land use rights were originally obtained by grant, the real property may only be transferred on the condition that: a) the assignment price has been paid in full for the grant of the land use rights as provided by the grant contract and a land use rights certificate has been obtained; b) development has been carried out according to the grant contract and, in the case of a project in which buildings are being developed, development representing more than 25% of the total investment has been completed.

If the land use rights were originally obtained by grant, the term of the land use rights after transfer of the property shall be the remaining portion of the original term provided by the land use rights grant contract after deducting the time that has been used by the former land users. In the event that the transferee intends to change the use of the land provided in the original grant contract, consent shall first be obtained from the original grantor and the planning administration authority under the local government of the relevant city or county and an agreement to amend the land use rights grant contract or a new land use rights grant contract shall be signed in order to, inter alia, adjust the land use rights assignment price accordingly.

If the land use rights were originally obtained by allocation, transfer of the real property shall be subject to the approval of the government vested with the necessary approval power as required by the State Council. Upon such approval, the transferee shall complete the formalities for transfer of the land use rights, unless the relevant statutes require no transfer formalities, and pay the transfer price according to the relevant statutes.

### **(ii) Sale of commodity buildings**

Under the “Regulatory Measures on the Sale of Commodity Buildings” (商品房銷售管理辦法) promulgated by the MOC on April 4, 2001 and implemented on June 1, 2001, sale of commodity buildings can include both pre-completion sales (pre-sale) and post-completion sales.

#### **(a) Permit of Pre-sale of Commodity Buildings**

According to the Development Regulations and the Measures for Administration of Pre-sale of Commodity Buildings (城市商品房預售管理辦法) (the “Pre-sale Measures”) promulgated by the MOC on November 15, 1994 and as amended on August 15, 2001 and July 20, 2004 respectively, the pre-sale of commodity buildings shall be subject to a licensing system, and a property developer intending to sell a commodity building before its completion shall make the necessary pre-sale registration with the property development authority of the relevant city or county to obtain a pre-sale permit. A commodity building may be sold before completion only if: a) the assignment price has been paid in full for the grant of the land use rights involved and a land use rights certificate has been obtained; b) a construction works planning permit and construction works commencement permit have been obtained; c) the funds invested in the development of the commodity buildings put to pre-sale represent 25% or more of the total investment in the project and the progress of works and the completion and delivery dates

have been ascertained; and d) the pre-sale has been registered and a pre-sale permit has been obtained.

In addition, according to the Regulations on Administration of Pre-sale of Commodity Buildings of Guangdong Province (廣東省商品房預售管理條例) promulgated by the Standing Committee of Guangdong Provincial People's Congress on August 22, 1998 and as amended on October 14, 2000 and the Notice on Adjusting Conditions of Image and Progress for Commodity Building Pre-sale Project in Guangdong Province (廣東省關於調整商品房預售項目工程形象進度條件的通知) issued by Guangdong Provincial Construction Bureau in January 2001, the following conditions shall be fulfilled for pre-sale of commodity buildings in Guangdong: a) a real property development qualification certificate and a business license have been obtained; b) the construction quality and safety monitoring procedures have been performed; c) the structural construction and the topping-out have been completed in respect of properties of not more than seven stories (including seven stories), and at least two-thirds of the structural construction have been completed in respect of properties of more than seven stories; d) a special property pre-sale account with a commercial bank in the place where the project is located has been opened; and e) the properties pre-sale project and its land use rights are free from any third party rights.

According to the Rules for the Transfer of Real Estate in the Shenzhen Special Economic Zone (深圳經濟特區房地產轉讓條例) promulgated by the Standing Committee of the Shenzhen Municipal Congress in July 1993 and amended in June 1999, the following conditions shall be fulfilled for the pre-sale of commodity buildings: a) land use rights have been lawfully registered and a real property certificate obtained; b) a construction works planning permit and a construction works commencement permit have been obtained; c) the full assignment price of the land use rights and at least 25 percent of the total project investment of the construction development must have been paid and certified by an accountant; d) the property developer and the financier must have signed an agreement to supervise the receipt of funds from pre-sales; and e) the land use rights must have not been mortgaged or where a mortgage did exist it must have been discharged.

Pursuant to the Implementation Opinion in Respect of Enforcing the Administration of Presale of Urban Commodity Property (關於加強城市商品房預售管理的實施意見) promulgated by the Construction Commission of Sichuan Province on March 10, 2000, the pre-sale of commodity property in Sichuan Province shall comply with the following conditions: a) all premiums of the land use rights (other than land supplied by way of allocation in accordance with the State laws) must have been paid and the state owned land use rights certificate must have been obtained; b) a construction works planning permit must have been obtained; c) for a commodity property project with six storeys or less, the foundation and superstructure works must have been completed; for a non-residential project with six storey or less and a commodity property project with six storey or more, the foundation and the first storey of the superstructure works of a project with basement must have been completed; and the foundation and the first six storeys of the superstructure works of a project without a basement must have been completed; and d) the works schedule and date of completion delivery have been determined.

According to the Tianjin City Administration Rules for Commodity Housing (天津市商品房管理條例) promulgated on October 24, 2002 and effective from December 1, 2002, the sale of commodity housing includes both pre-sales and post-completion sales. Property development enterprises applying for a permit to sell commodity housing must comply with the following conditions: a) attainment of legal person status and the requisite class of qualifications for property development; b) possession of lawful rights to the use of state owned land; c) examination and approval of an investment plan for the construction of commodity housing, a construction engineering plan and a construction license; d) payment of fees for the completion of basic installations in accordance with relevant

laws; e) copies of property management plans for which registration has been completed or signed agreements for future property management arrangements; f) certification from government departments that the commodity housing building development has attained requisite image standards; g) provision of a timetable for the progress of construction and the completion date; and h) provision of a sales plan.

According to the Regulations on Administration of Sales of Urban Commodity Buildings in Jiangsu Province (江蘇省城市房地產交易管理條例) promulgated by the Standing Committee of Guangdong Provincial People's Congress on February 5, 2002, the following conditions shall be fulfilled for the pre-sale of commodity buildings: (i) the business license for an enterprise as a legal person and a real property development qualification certificate have been obtained; (ii) the assignment price for the relevant land use rights has been paid in full and a state-owned land use rights certificate has been obtained; (iii) a construction works planning permit and a construction works commencement permit have been obtained; (iv) the funds invested in the development of commodity buildings put to presale represent 25% or more of the total investment in the project and the works schedule and the completion and delivery dates have been determined.

*(b) Supervision of pre-sale income of commodity buildings*

According to the Pre-sale Measures, the income of a property developer from the pre-sale of commodity buildings must be used for the construction of the relevant projects. The specific measures for the supervision of the income from the pre-sale of commodity buildings shall be formulated by the property administrative authorities.

*(c) Conditions of the sale of post-completion commodity buildings*

Under the Measures for Administration of Sale of Commodity Buildings, commodity buildings may be put to post-completion sale only when the following preconditions have been satisfied: a) the property development enterprise shall have a business license and a qualification certificate of a property developer; b) the enterprise shall obtain a land use rights certificate or other approval documents for land use; c) the enterprise shall have the construction works planning permit and construction works commencement permit; d) the building shall have been completed, inspected and accepted as qualified; e) the relocation of the original residents shall have been well completed; f) the supplementary essential facilities for supplying water, electricity, heating, gas, communication, etc. shall have been made ready for use, and other supplementary essential facilities and public facilities shall have been made ready for use, or the schedule of construction and delivery date shall have been specified; g) the property management plan shall have been completed.

Before the post-completion sale of a commodity building, a property developer shall submit the Property Development Project Manual and other documents evidencing the satisfaction of preconditions for post-completion sale to the property development authority.

*(d) Regulations on transactions of commodity buildings*

According to the Development Regulations and the Pre-sale Measures, for the pre-sale of commodity buildings, the developer shall sign a contract on the pre-sale of a commodity building with the purchaser. The developer shall, within 30 days after signing the contract, apply for registration and filing of the pre-sale commodity building to the relevant property administration authorities.

Pursuant to the Circular of the General Office of the State Council on Forwarding the Opinions of the Ministry of Construction and other Departments on Stabilizing House

Prices (國務院辦公廳轉發建設部等部門關於做好穩定住房價格工作意見的通知) issued on May 9, 2005:

- A buyer of a commodity building is prohibited from conducting any further transfer of a pre-sold commodity before completion of construction and obtaining the Property Ownership Certificate. If there is discrepancy in the name of the applicant for property ownership and the name of the advance buyer in the pre-sale contract, the registration organ of the property administration authorities shall not register the application of property ownership.
- A real name system is applied for each property purchase transaction and an immediate archival filing network system is in place for pre-sale contracts of commodity buildings.

On July 6, 2006, the MOC, the NDRC, and SAIC jointly promulgated the Notice on Reorganizing and Regulating Real Estate Transaction Procedures (關於進一步整頓規範房地產交易秩序的通知), the details of which are as follows:

- A developer may start to sell the commodity buildings within 10 days after receiving the pre-sale permit. Without this permit, the pre-sale of commodity buildings is prohibited, as well as subscription (including reservation, registration and number-selecting) and acceptance of any kind of pre-sale payments.
- The property administration authority should establish a networked network system for pre-sale contracts of commodity buildings and the system should include the location and basic information of the commodity building, the schedule of the sale and the rights status and at the locale of sale. The advance buyer of a commodity building is prohibited from conducting any further transfer of the advance sale of the commodity building that he has bought but which is still under construction.
- Without the pre-sale permit, no advertisement of the pre-sale of commodity buildings may be issued.
- The property developers with a record of serious irregularity or developers who do not satisfy the requirements of the pre-sale of commodity buildings are not allowed to take part in such sale activities.
- The property administration authorities should strictly carry out the regulations of the pre-sale registration and apply the real name system for house purchases.

### ***(iii) Mortgages of Property***

Under the Urban Property Law, the Guarantee Security Law of the People's Republic of China (中華人民共和國擔保法) promulgated by the Standing Committee of the National People's Congress on June 30, 1995 and implemented on October 1, 1995, and the Measures on the Administration of Mortgages of Property in Urban Areas (城市房地產抵押管理辦法) promulgated by the MOC in May 1997 and as amended on August 15, 2001, when a mortgage is created on a building legally obtained, a mortgage shall be simultaneously created on the land use rights of the land on which the building is situated. When the land use rights of State-owned land acquired through means of grant are being mortgaged, the buildings on the land shall also be mortgaged at the same time. The land use rights of town and village enterprises cannot be mortgaged. When buildings owned by town and village enterprises are mortgaged, the land use rights occupied by the buildings shall also be mortgaged at the same time. The mortgager and the mortgagee shall sign a mortgage contract in writing. Within 30 days after a property mortgage contract is signed, the parties to the mortgage shall register the mortgage with the property administration authorities at the location where the property is situated. A property mortgage contract shall become effective on the date of registration of the mortgage. If a mortgage is created on the property in respect of which a house ownership certificate has been



obtained, the registration authority shall make an entry under the “third party rights” item on the original house ownership certificate and then issue a Certificate of Third Party Rights to the mortgagee. If a mortgage is created on the commodity building put to pre-sale or under construction, the registration authority shall record the details on the mortgage contract. If construction of a real property is completed during the term of a mortgage, the parties involved shall re-register the mortgage of the real property after issuance of the certificates evidencing the ownership of the property.

#### **(iv) Leases of buildings**

Under the Urban Property Law and the Measures for Administration of Leases of Property in Urban Areas (城市房屋租賃管理辦法) promulgated by the MOC on May 9, 1995 and enforced on June 1, 1995, the parties to a lease of a building shall enter into a lease contract in writing. A system has been adopted to register the leases of buildings. When a lease contract is signed, amended or terminated, the parties shall register the details with the property administration authority under the local government of the city or county in which the building is situated.

### **F. Property Credit**

According to the Notice of the People’s Bank of China on Regulating House Financing Businesses (中國人民銀行關於規範住房金融業務的通知) promulgated by the PBOC on June 19, 2001, all banks must comply with the following requirements before granting residential development loans, individual house mortgage loans and individual commercial flat loans:

- (a) Housing development loans from banks shall only be granted to property development enterprises with approved development qualifications and high credit ratings. Such loans shall be offered to residential projects with good market potential. While the borrowing enterprise must have self-owned capital of no less than 30% of the total investment required of a project, the project itself must have been issued with a land use rights certificate, construction land planning permit, construction works planning permit and construction works commencement permit.
- (b) In respect of the grant of individual house mortgage loans, the ratio between the loan amount and actual value of the security (the “Mortgage Ratio”) shall never exceed 80%. Where an individual applies for a house purchase loan to buy a pre-sale property, the property must have achieved the stage of “topping-out of the main structure completed” for multi-story buildings or “two-thirds of the total investment completed” for high-rise buildings.
- (c) In respect of the grant of individual commercial flat loans, the Mortgage Ratio under the application for commercial flat loans shall not exceed 60% with a maximum loan period of 10 years and the subject commercial flat must have already been completed.

The PBOC issued the Circular on Further Strengthening the Management of Property Loans (關於進一步加強房地產信貸業務管理的通知) on June 5, 2003 to specify the requirements for banks to provide loans for the purposes of residential development, individual house mortgage and individual commodity buildings as follows:

- (a) Property loans by commercial banks to property enterprises shall be granted only in respect of a particular item of property development rather than a cash flow or other loan item. Loans of any kind must not be granted for projects which do not obtain a land use rights certificate, construction land planning permit, construction works planning permit and construction works commencement permit.
- (b) Commercial banks shall not grant loans to property developers to pay off land premiums.

- (c) Commercial banks may only provide housing loans to individual buyers when the main structural buildings have been topped out. When a borrower applies for an individual house loan for their first residential unit, the first installment remains to be 20%. In respect of a loan application for any additional purchase of a residential unit(s), the percentage of the first installment shall be increased.

Pursuant to the Guidance on Risk Management of Property Loans of Commercial Banks (商業銀行房地產貸款風險管理指引) issued by the China Banking Regulatory Commission on September 2, 2004, any property developer applying for property development loans shall have at least 35% of capital required for the development.

According to the Notice of the People's Bank of China on the Adjustment of Commercial Bank Housing Credit Policies and the Interest Rate of Excess Reserve Deposits (中國人民銀行關於調整商業銀行住房信貸政策和超額準備金存款利率的通知) promulgated by the PBOC on March 16, 2005, from March 17, 2005, in the cities and areas where there has been a rapid increase in house prices, the first installment of individual house loans increases from 20% to 30%. The commercial banks can independently determine the specific cities or areas under such adjustment according to special situations in different cities or areas.

On May 24, 2006, the State Council issued the Opinions of the Ministry of Construction and other Departments on Adjusting the Housing Supply Structure and Stabilizing Housing Prices (關於調整住房供應結構穩定住房價格的意見). The regulations relating to property credit are as follows:

- (a) Strictly impose credit conditions on property development. In order to suppress property development enterprises from storing up land and housing resources by use of bank loans, commercial banks shall not provide loans to those property enterprises that fail to meet loan conditions, for example, having a project capital less than 35%. For property development enterprises that have much idle land and vacant commodity buildings, the commercial banks shall, in light of the principle of prudential operations, be stricter in controlling the renewal of loans or any form of revolving credit. The commercial banks shall not accept any commodity building that has been idle for three or more years as collateral for loans.
- (b) From June 1, 2006, the proportion of initial payment of individual housing mortgage loans shall not be lower than 30%. However, considering the demands for housing by the medium and low-income population, the purchase of self-used housing with a gross floor area of no more than 90 square meters is still subject to the provision of the initial payment of 20%.

According to the Circular on Standardizing the Admittance and Administration of Foreign Capital in the Property Market, foreign-invested property enterprises which have not paid up their registered capital, or failed to obtain a land use rights certificate, or with less than 35% of the capital for the project, will be prohibited from obtaining a loan in or outside China, and SAFE shall not approve the registration of foreign loans from such enterprises.

On September 27, 2007, the PBOC and the CBRC issued the Notice on Strengthening the Management of Commercial Real Estate Credit and Loans (關於加強商業性房地產信貸管理的通知) (the "Notice"). The Notice puts forward requirements for the purposes of strengthening loan management in association with (i) real estate development, (ii) land reserves, (iii) housing consumption and (iv) purchase of commercial buildings, together with credit checks in real estate credit management, monitoring of real estate loans, risk management and so forth.

Pursuant to the Notice, Commercial banks shall not grant loans in any form, to (i) projects where the capital funds (owner's equity) constitutes less than 35%, or, projects without a land use rights certificate, construction land planning permit, construction works planning permit and construction works commencement permit; and (ii) real estate development enterprises that have been hoarding

land and housing resources, as detected and verified by land resources departments and construction authorities. Furthermore, commercial banks are not allowed to either accept commodity building with a vacancy exceeding three years as collateral or grant to real estate development enterprise any sums of loans to serve as land grant premium.

In respect of loans for individual housing consumption, commercial banks are only permitted to grant housing loans to individuals who purchase commodity buildings the construction of which have reached the “topping out of the main structure” stage. Where an individual purchases his or her first commodity apartment for self residence purpose, (i) of a construction area below 90 square meters, the initial payment ratio (the “Initial Ratio”) shall be fixed at no less than 20% (including RMB and foreign currency loans, *idem.* hereinafter); (ii) of a construction area above 90 square meters, the Initial Ratio shall be fixed at no less than 30%. Where an individual has purchased a commodity apartment by means of such loan and proceeds to purchase a second set (inclusive) or more, the Initial Ratio shall be no less than 40% and the interest rate shall not be under 110% of the benchmark interest rate as announced by the PBOC during same period and in same bracket. Further, the Initial Ratio and the interest rate shall both multiply substantially with the increase with the sets of purchase and the increase percentage shall be determined by commercial banks, at their own discretion, according to principles of loan risk management. However, the repayment expense for housing loan per month shall not exceed 50% of the individual borrower’s monthly income.

In respect of commercial building loans, commercial buildings purchased by loan shall be buildings that have satisfied procedural requirements of completion inspection and acceptance. For such purchase, the Initial Ratio shall be no less than 50%, the loan term shall not exceed ten years and the interest rate shall not be under 110% of the benchmark interest rate as announced by the PBOC during same period and in same bracket, while the Initial Ratio, the loan term and the interest rate shall be determined by commercial banks, at their own discretion, according to principles of loan risk management. Where a loan application is made in the name of a “commercial and residential building”, the Initial Ratio shall be no less than 45% and the loan term and the interest rate shall be arranged according to relevant regulations on loan management of commercial building.

The Supplemental Notice on Strengthening the Management of Commercial Real Estate Credit and Loans (關於加強商業性房地產信貸管理的補充通知) (the “Supplemental Notice”). As jointly issued by the PBOC and the CBRC and dated December 5, 2007, sets forth supplemental requirements in respect of strengthening housing consumption loan management, mainly including the following:

1. Assess number(s) of housing loan with the borrower’s family as the basic calculation unit.
2. Stipulate conditions under which housing loan policy for first home buyers shall serve as the referential basis for bank loans.
3. Where a family that has already purchased commodity apartment via housing provident fund makes a housing-loan application to commercial banks, procedures shall be duly satisfied in accordance with the Notice.

As stipulated in the Supplemental Notice, in the event an applicant is found to have presented false information and certifications, all commercial banks shall deem the loan application unacceptable.

The PRC government has implemented a series of policies intended to strengthen and improve the sound development of the real estate market since the second quarter of 2008.

On May 26, 2008, the CBRC issued the Notice on Further Strengthening Risk Management in the Provision of Credit to the Real Estate Market (Yin Jian Fa No.42 [2008]) (關於進一步加強房地產行業授信風險管理的通知). To combat property developers who (i) “falsify mortgages” by using forged property sale contracts; (ii) process “falsified down payments” from borrowers by accepting initial repayments in the pre-sale stage, paying for buyers in advance or by other means; or (iii) mislead banks about decisions over the provision of loans by forging their sale performances or

house prices as well as other problems arising in the real estate market, the Notice requires each commercial bank to:

- (a) strictly follow the policies and conditions related to the provision of loans to individuals;
- (b) improve the monitoring of the qualifications of borrowers;
- (c) rigorously examine the enterprise credit ratings of property developers; and
- (d) upon discovering that a property developer has “falsified mortgages”, “falsified down payments”, “forged house prices” or other such behavior, terminate the individual housing loans or development loans extended to such developer. Property developers suspected of committing such crimes shall be referred to the judicial organs for further investigation.

On October 22, 2008, the People’s Bank of China issued the Circular on the Expansion of the Downward Adjustment Range for Interest Rates of Commercial Individual Mortgage Loans and Related Issues (中國人民銀行關於擴大商業性個人住房貸款利率下浮幅度等有關問題的通知) which decreased the minimum amount of down payment for residential property purchasers to 20% and reduced the minimum mortgage loan rates for such purchases to 70% of the benchmark interest rate starting from October 27, 2008.

On December 20, 2008, the General Office of the State Council promulgated Several Opinions on Promoting the Sound Development of the Real Estate Market (關於促進房地產市場健康發展的若干意見), which provides the following regarding loans for property businesses:

1. The purchase of regular commodity houses for residential purposes is to be encouraged.

In addition to extending favourable interest rates and loan policies to first time buyers of apartments for self-residential purposes, individuals with an existing home in which the per-person floor area is smaller than the local average may buy a second apartment for self residential purposes under similar favourable loan terms to those that apply to first-time buyers. If individuals purchase a second apartment or more for any other purpose, the interest rate shall be determined according to potential risks by commercial banks based on the benchmark interest rate.

2. The proper financing requirements of real estate developers should be supported.

Commercial banks shall increase credit financing services available to ordinary commercial housing construction projects, provide financial support and other related services to real estate developers engaged in merger and restructuring activities, and support the approval of bond issuances by real estate developers.

The State Council issued the Notice on Adjusting the Minimum Capital Requirement for Capital Funding for Fixed Assets Investment (關於調整固定資產投資項目資本金比例的通知) on May 25, 2009, reducing the minimum capital requirement for affordable residential housing projects and regular commodity residential houses from 35% to 20%, and reducing the minimum capital requirement for other property projects to 30%. When providing credit finance support and services, financial institutions shall determine, at their own discretion, whether to grant a loan and the amount of the loan having regard to the minimum capital requirement as regulated by the state.

On June 19, 2009, the CBRC issued the Notice on Further Strengthening the Risk Management of Mortgage Loans (Yin Jian Fa No.59 [2009]) (關於進一步加強按揭貸款風險管理的通知). With regard to current problems in the real estate market, particularly in the area of mortgage loans such as “falsified mortgages”, “falsified down payments”, “forged house prices” and loosened criterion of “loans for a second house”, the Notice reiterates the following requirements:

- (a) banking institutions shall strictly carry out the pre-loan examinations and tighten the criterion for granting a loan in order to prevent occurrence of such behavior as “falsified mortgages”, “falsified down payments”, “forged house prices”;

- (b) banking institutions shall proceed to focus on supporting the purchase by individuals of their first commodity house for self-residence purposes and shall not circumvent relevant restrictions with regard to the provision of loans for a second (or more) house by claiming that a national network for credit information collection is not available and that cross-regional investigations into a house purchasing background is difficult; and
- (c) banking institutions are not entitled to decide the criterion of identifying “loans for a second house” or to lower the Initial Ratio indirectly by any means.

### **G. Insurance of a Property Project**

There are no mandatory provisions in PRC laws, regulations and government rules which require a property developer to take out insurance policies for its property projects. However, PRC commercial banks may require the real estate developer to purchase insurance if the commercial bank intends to grant a development loan to the real estate developer.

### **H. Environmental Protection**

Under the requirements of the relevant laws and regulations such as the Appraisal Measures for the Impact on the Environment of the PRC (中華人民共和國環境影響評價法) implemented by the Standing Committee of the National People’s Congress in September 2003, and the Regulations Governing Environmental Protection of Construction Projects (建設項目環境保護管理條例) implemented by the State Council in November 1998, enterprises engaging in property development and construction must carry out an appraisal of the impact the construction project will have on the environment. The relevant project shall not commence until approval is obtained from the supervisory body for environmental protection. While the project is in progress, the developer should also enforce the appraisal documents relating to the impact on the environment and implement the environmental protection measures suggested in the opinion of the supervisory body for environmental protection. Such measures must be incorporated into the design, construction and operation of the general construction. Upon completion of the project, the developer should apply to the supervisory body for environmental protection for the inspection and acceptance of the completed environmental protection facilities. Only those projects that have been inspected and accepted may go into operation or be available for use.

### **I. Construction Safety**

Under relevant laws and regulations such as the Laws for Safe Production in the PRC (中華人民共和國安全生產法) promulgated by the Standing Committee of the National People’s Congress in November 2002 and the Regulations of the Construction Safety of Shenzhen Special Economic Zone (深圳經濟特區建設工程施工安全) promulgated by the Standing Committee of the People’s Congress of Shenzhen in March, 2003 and amended on June 25, 2004, the developer should apply to the supervisory organ on safety for the registration of supervision for work safety in construction before the commencement of construction. Constructions without such registration will not be granted a construction works commencement permit by the supervisory body. Contractors for the construction should establish the objectives and measures for work safety and improve the working environment and conditions of workers in a planned and systematic way. A work safety protection scheme should also be set up to carry out the work safety job responsibility system. At the same time, contractors should adopt corresponding site work safety protective measures according to the work protection requirements in different construction stages and such measures shall comply with the labor safety and hygiene standards of the State.

Under the Construction Law of the People’s Republic of China (中華人民共和國建築法), the construction contractor assumes responsibility for the safety of the construction site. The main contractor will take overall responsibility for the site, and the subcontractors are required to comply with the protective measures adopted by the main contractor.



## J. Major Taxes Applicable to Property Developers

### (i) *Income tax*

According to the Income Tax Law of The People's Republic of China for Foreign-invested Enterprises and Foreign Enterprises (中華人民共和國外商投資企業和外國企業所得稅法) which was promulgated by National People's Congress on April 9, 1991 and implemented on July 1, 1991 and its detailed rules promulgated by State Council on June 30, 1991, the income tax on enterprises with foreign investment shall be computed on the taxable income at the rate of 30%, and local income tax shall be computed on the taxable income at the rate of 3%.

Pursuant to the Provisional Regulations of the People's Republic of China on Enterprise Income Tax (中華人民共和國企業所得稅暫行條例) issued by the State Council on December 13, 1993 and enforced on January 1, 1994 and the Detailed Implementation Rules on the Provisional Regulations of The People's Republic of China on Enterprise Income Tax (中華人民共和國企業所得稅暫行條例實施細則) issued by the MOF on February 4, 1994, the income tax rate applicable to Chinese enterprises other than foreign-invested enterprises and foreign enterprises is 33%.

According to the PRC Enterprise Income Tax Law (中華人民共和國企業所得稅法) enacted by the National People's Congress on March 16, 2007 and enforced from January 1, 2008 onwards, a unified income tax rate of 25% will be applied towards foreign investment and foreign enterprises which have set up institutions or facilities in the PRC as well as PRC enterprises. The Income Tax Law of The People's Republic of China for Foreign-invested Enterprises and Foreign Enterprises (中華人民共和國外商投資企業和外國企業所得稅法) and the Provisional Regulations of the People's Republic of China on Enterprise Income Tax (中華人民共和國企業所得稅暫行條例) were thereby annulled.

Under the EIT Law, enterprises established outside of China whose "de facto management bodies" are located in China are considered "resident enterprises" and will generally be subject to the unified 25% enterprise income tax rate as to their global income.

### (ii) *Business Tax*

Pursuant to the Interim Regulations of the People's Republic of China on Business Tax (中華人民共和國營業稅暫行條例) promulgated by the State Council on December 13, 1993, amended on November 5, 2008, and implemented on January 1, 2009, and the Detailed Implementation Rules on the Provisional Regulations of The People's Republic of China on Business Tax (中華人民共和國營業稅暫行條例實施細則) issued by the MOF on December 25, 1993 and amended and implemented on January 1, 2009, the tax rate applicable to the transfer of real properties, their superstructures and attachments is 5%.

In accordance with the Several Opinions on Promoting the Sound Development of the Real Estate Market (關於促進房地產市場健康發展的若干意見) promulgated by the General Office of the State Council on December 20, 2008, individuals who purchased their house for self-residential purposes prior to December 31, 2009 may, two or more years after the purchase, resell their house without paying business tax. Individuals that have owned their self-residential house for less than two years shall pay business tax on the net profit (the difference between the original price and the sales price). Individuals who have purchased their house for any purpose other than self-residential shall, if they have owned it for two years or more, pay business tax on the net profit or, if they have owned it for less than two years, on the full sale price.

### (iii) *Land Appreciation Tax*

According to the requirements of the Provisional Regulations of The People's Republic of China on Land Appreciation Tax (中華人民共和國土地增值稅暫行條例) (the "Land Appreciation Tax Provisional Regulations") which were promulgated on December 13, 1993 and effective from January 1, 1994, and the Detailed Implementation Rules on the Provisional Regulations of the People's Republic of China on

Land Appreciation Tax (中華人民共和國土地增值稅暫行條例實施細則) (the “Land Appreciation Tax Detailed Implementation Rules”) which were promulgated and came into effect on January 27, 1995, any capital-gain from a transfer of property shall be subject to land appreciation tax. Land appreciation tax shall be charged at four levels of progressive rates: 30% for the appreciation amount not exceeding 50% of the sum of deductible items; 40% for the appreciation amount exceeding 50% but not exceeding 100% of the sum of deductible items; 50% for the appreciation amount exceeding 100% but not exceeding 200% of the sum of deductible items; and 60% for the appreciation amount exceeding 200% of the sum of deductible items. The aforesaid deductible items include the following:

- amount paid for obtaining the land use rights;
- costs and expenses for the development of the land;
- costs and expenses of new buildings and ancillary facilities, or estimated prices of old buildings and constructions;
- related tax payable for the transfer of property; and
- other deductible items as specified by the MOF.

According to the requirements of the Land Appreciation Tax Provisional Regulations, the Land Appreciation Tax Detailed Implementation Rules and the Notice on the Levy and Exemption of Land Appreciation Tax for Development and Transfer Contracts signed before January 1, 1994 (關於對1994年1月1日前簽訂開發及轉讓合同的房地產徵免土地增值稅的通知) issued by the MOF and the SAT on January 27, 1995, Land Appreciation Tax shall be exempted under any of the following circumstances:

- taxpayers construct ordinary standard residences for sale (i.e. the residences built in accordance with the local standards for residential properties. Deluxe apartments, villas, resorts etc. are not under the category of ordinary standard residences) and the appreciation amount does not exceed 20% of the sum of deductible items;
- property is taken back and repossessed according to laws due to the construction requirements of the State;
- due to redeployment of work or improvement of living standard, individuals transfer self used residential property, in which they have been living for 5 years or more, subject to tax authorities’ approval;
- transfers of real properties under property transfer contracts signed before January 1, 1994, regardless of when the properties are transferred;
- if the property development contracts were signed before January 1, 1994 or the project proposal has been approved and that capital was injected for development in accordance with the conditions agreed, the Land Appreciation Tax shall be exempted if the properties are transferred for the first time within 5 years after January 1, 1994. The date of signing the contract shall be the date of signing the Sale and Purchase Agreement. The tax-free period may be prolonged subject to the approval of the MOF and the SAT for particular property projects which are approved by the government for the development of the whole lot of land and long-term development and in which the properties are transferred for the first time after the 5-year tax-free period.

On December 24, 1999, the MOF and the SAT issued the Notice in respect of the extension of the period for the Land Appreciation Tax Exemption Policy (關於土地增值稅優惠政策延期的通知) which extended the period for the Land Appreciation Tax exemption policy as mentioned above to the end of 2000.

After the issuance of the Land Appreciation Tax Provisional Regulations and the Land Appreciation Tax Detailed Implementation Rules, due to the longer period for property development and transfer, many districts, while they were implementing the regulations and rules, did not force the property

development enterprises to declare and pay the Land Appreciation Tax. Therefore, the MOF, the SAT, the MOC and the MLR separately and jointly issued several notices to restate the following: after the assignments are signed, the taxpayers should declare the tax to the local tax authorities where the property is located, and pay Land Appreciation Tax in accordance with the amount as calculated by the tax authority and the time as required. For those who fail to acquire proof of payment or exemption from Land Appreciation Tax from the tax authorities, the property administration authority shall not process the relevant title change procedures, and shall not issue the property title certificate.

The SAT also issued the Notice on Serious Handling of Administration of the Collection of Land Appreciation Tax (關於認真做好土地增值稅徵收管理工作的通知) on July 10, 2002 to request local tax authorities to modify the management system of Land Appreciation Tax collection and operation details, to build up a sound taxpaying declaration system for Land Appreciation Tax, and to modify the methods of pre-levying for the pre-sale of properties. The Notice also pointed out that for property development contracts which were signed before January 1, 1994 or where the project proposal has been approved and capital was injected for development, the privilege policy for Land Appreciation Tax exemption for properties that are transferred for the first time has expired, such tax shall be levied again. This requirement is restated in the Notice on Strengthening of Administration of the Collection of Land Appreciation Tax (關於加強土地增值稅管理工作的通知) and Notice of State on Further Strengthening of Administration Work in relation to the Collection of Land Appreciation Tax and Land Use Tax in Cities and Towns (關於進一步加強城鎮土地使用稅和土地增值稅徵收管理工作的通知) issued separately on August 2, 2004 and August 5, 2004 by SAT. These two Notices also required that the system of tax declaration and tax sources registration in relation to the land appreciation tax should be further established and perfected.

On March 2, 2006, the MOF and the SAT issued the Notice on Several Points on Land Appreciation Tax (關於土地增值稅若干問題的通知) to clarify relevant issues regarding land appreciation tax as follows.

- (a) As to the tax collection and exemption in the sale of ordinary standard residential housing as built by taxpayers as well as in the transfer of ordinary residential houses by individual residents:

The notice sets out the standards for ordinary standard residential houses. Where any developer builds ordinary residential houses as well as other commercial houses, the appreciation amount of land shall be verified respectively. Before the day when this notice is publicized, as to any application for tax exemption for ordinary standard residential houses that has been filed to the tax authority at the locality of the property, especially any ordinary standard residential houses which have been given the treatment of exemption from land appreciation tax upon examination according to the standards for ordinary standard residential houses as determined by the people's government of a province, autonomous region or municipality directly under the Central Government, no adjustment shall be retroactively made.

- (b) As to the advance collection and settlement of land appreciation tax:

- All regions shall decide the advance collection rate in a scientific and reasonable manner, and adjust it at a proper time according to the value of the property as well as the market development level within the region and on the basis of the specific housing categories, namely, ordinary standard residential houses, non-ordinary standard residential houses and commercial houses. After a project is completed, the relevant settlement shall be handled in a timely manner, with any overpayment refunded or any underpayment being made up.
- As to any tax that fails to be collected in advance within the advance collection term, overdue fines shall be collected as of the day following the expiration of the prescribed advance collection term according to the relevant provisions of the Tax Collection and Administration Law as well as its detailed rules for implementation.

- As to any property project that has been completed and has gone through the acceptance procedure, where the floor area of the property as transferred makes up 85% or more of the saleable floor area, the tax authority may require the relevant taxpayer to conduct the settlement of land appreciation tax on the transferred property according to the matching principles regarding the proportion between the income as generated from the transfer of property and the amount under the item of deduction. The specific method of settlement shall be prescribed by the local tax authority of a province, autonomous region or municipality directly under the Central Government, or a city under separate state planning.
- As to any investment or association by using land (property) as payment for the purchase of shares, where an enterprise involved in the investment or association engages in property development or where any other property development enterprise makes investment or conducts association with the commercial houses it itself builds, it shall not be governed by the regulation of the interim exemption of land appreciation tax when the property (land) is transferred to the enterprise by means of investment or association.

On December 28, 2006, the SAT issued the Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises (國家稅務總局關於房地產開發企業土地增值稅清算管理有關問題的通知) which came into effect on February 1, 2007.

Pursuant to the Notice, a property developer shall settle and clear the LAT payment of its development projects that meet certain criteria with the tax authorities in accordance with the applicable LAT rates. The LAT shall be settled for projects approved by the competent authorities; and for projects developed in different stages, the LAT shall be settled in stages. LAT must be settled if (1) the property development project has been completed and fully sold; (2) the property developer transfers the whole uncompleted development project; or (3) the land use rights with respect to the project are transferred. In addition, the relevant tax authorities may require the developer to settle the LAT if either of the following criteria is met: (1) for completed property development projects, the transferred GFA represents more than 85% of total salable GFA, or the proportion represented is less than 85%, but the remaining salable GFA has been leased out or used by the developer; (2) the project has not been sold out for more than three years after obtaining the sale permit or pre-sale permit; (3) the developer applies for cancellation of the tax registration without having settled the relevant LAT; or (4) other conditions stipulated by the tax authorities.

The Notice also indicated that if a property developer satisfies any of the following circumstances, the tax authorities shall levy and collect LAT as per a levying rate no lower than the pre-payment rate with reference to the bearing rate of LAT of local enterprises with a similar development scale and income level: (i) failure to maintain account books required by law or administrative regulation; (ii) destroying account books without authorization or refusing to provide taxation information; (iii) the accounts are in a state of mess or cost materials, income vouchers and cost vouchers are damaged and incomplete, making it difficult to determine transferred income or the amount of deductible items; (iv) failure to go through LAT settlement within the prescribed period, and such failure is not cured within the period required by the relevant tax authorities; (v) the basis for tax calculation as submitted is obviously low without justifiable cause. Local provincial tax authorities can formulate their own implementation rules according to the notice and the local situation.

On May 12, 2009, the SAT issued the Administrative Rules for the Settlement of Land Appreciation Tax (土地增值稅清算管理規程) (the "Settlement Rules"), which became effective on June 1, 2009. The Settlement Rules reiterated the circumstances under which the LAT must be settled, the criteria that are to be met for relevant tax authorities to require the settlement of LAT and the circumstances under which the tax authorities shall levy and collect LAT as prescribed by the Notice. The Settlement Rules further stipulate detailed procedures for the examination and verification of settlement of LAT to be carried out by relevant tax authorities.

In accordance with the “Guangdong Regulations on the Levy and Collection of Land Appreciation Tax” (廣東省土地增值稅徵收管理辦法), property developers in Guangdong should calculate the amount of LAT on the basis of the initial capital costing of the project or the overall capital cost of the project. For pre-sales of commodity houses, it is permissible to pay LAT in advance based on a calculation of the price agreed between the parties (as evidenced in the pre-sale contract) and with reference to the construction size of the house. Once the project is completed, an additional payment towards or a partial refund of the original advance payment may be necessary once the amount of LAT is finally determined.

In accordance with the “Notice from the Shenzhen Local Taxation Bureau in respect of the Provisional Regulations regarding the Property Development Industry in Shenzhen and the Levy and Collection of Land Appreciation Tax (深圳市地方稅務局關於印發〈深圳市房地產開發企業土地增值稅徵收管理暫行辦法〉的通知), issued in Shenzhen on November 1, 2005, property development enterprises in Shenzhen that engage in the sale of developed real estate for profit must collect LAT. Because LAT is collected in advance and calculated as a percentage of the total income to be derived from the sale of a property, after the completion and sales of a project, an additional payment towards or a partial refund of the original advance payment may be necessary once the amount of LAT is finally determined. The deemed rate of LAT is 1% for villas, resorts and serviced apartments; and 0.5% for all other types of property developments. Where more than one type of property is included in the same development, the property developer should calculate the LAT in advance on the basis of the different property types. Where this is not possible, LAT should initially be paid at the higher rate. Thereafter, at the completion of the project and after verification by their accountant, the developer should immediately submit an “LAT Calculation Report” to the responsible taxation authority.

In Sichuan, the levy and collection of LAT is governed by the “Sichuan Local Tax Administration Provisional Regulations on the Levy and Collection of Land Appreciation Tax” (四川省地方稅務局土地增值稅徵收管理暫行規定). In accordance with the provisional regulations, a person who engages in the development and sale of property must pay LAT in advance. There are two main methods of determining the amount of LAT payable: (i) the first is relevant to enterprises involved in the construction and development of residential areas and the post completion installation of facilities therein. Property developers should withhold an amount for LAT based on the actual cost of the project or of the installation of the facilities; (ii) the second is relevant to pre-sales of commodity houses, in respect of which an advance payment of LAT will be calculated on the basis of the difference between the income to be received by the seller under the terms of the pre-sale contract entered into between it and the buyer and the forecast capital cost of the project. Within 10 days of settling accounts after the completion of project, property developers must submit an audit report to the taxation bureau. Upon verification by the taxation bureau of the amount of LAT already paid, a supplemental payment or a partial refund of LAT may be applicable.

According to the “Tianjin Taxation Bureau Notice regarding the Levy and Collection of Land Appreciation Tax” (天津市地方稅務局關於徵收土地增值稅問題的通知), the collection of LAT was introduced in Tianjin from October 1, 2005. In respect of pre-sales of commodity houses, LAT is calculated with reference to income generated from pre-sales (based on the volume of sales as indicated by the collection of sales tax). A rate of 0.5% applies to sales of regular houses, and a rate of 1% applies to sales of high-end houses, office buildings, condos, villas and holiday resorts. Property developers may wait until the full completion and sales of a whole project before completing transactions for the calculation and payment of LAT.

Pursuant to the Notice on Adjustment of Regulations on the Pre-levy of Land Appreciation Tax (江蘇省關於調整土地增值稅預征管理辦法的通知) promulgated by the Taxation Bureau of Jiangsu Province and with effect as of January 1, 2005, LAT is imposed on entities that engage in property development and construction in Yixing City. LAT is calculated on the basis of the income generated from the sales (including income produced by pre-sales) multiplied by the respective LAT rate. A rate of 3% applies to sales of high-end apartments, resorts and villas; a rate of 2% applies to sales of office buildings and business houses; and a rate of 1% applies to sales of regular houses. When more than one type of property is included in the same development, the LAT shall be, wherever possible, calculated



separately based on the different property types; otherwise the higher rate (2% or 3%) shall apply. After the completion of the project and a written application has been made by the developers, an additional payment towards or a partial refund of the original advance payment may be applicable upon verification by the taxation authority.

On October 22, 2008, the MOF and the SAT issued the Circular on Taxation Policy Adjustment Concerning Real Estate Trading (關於調整房地產交易環節稅收政策的通知) and temporarily exempted the LAT for individuals selling houses starting from November 1, 2008.

**(iv) Deed tax**

Pursuant to the Interim Regulations of the People's Republic of China on Deed Tax (中華人民共和國契稅暫行條例) promulgated by the State Council on July 7, 1997 and implemented on October 1, 1997, the transferee, whether an individual or otherwise, of the title to a land site or building in the PRC shall be subject to the payment of deed tax. The rate of deed tax is 3% to 5%. The governments of provinces, autonomous regions and municipalities directly under the central government may, within the aforesaid range, determine and report their effective tax rates to the MOF and the SAT for the record. Pursuant to the Implementation Provisions on Deed Tax in Guangdong Province (廣東省契稅實施辦法) promulgated by the People's Government of Guangdong on June 1, 1998, effective on October 1, 1997, the rate of deed tax within Guangdong is 3%. Pursuant to the Circular on the Adjustment of the Deed Tax Rate (關於調整契稅稅率的通告) promulgated by the Chengdu Financial Bureau and the Chengdu Local Tax Bureau on June 30, 1999, the deed tax rate for Chengdu is 3%. Pursuant to the Tianjin City Implementation Rules on Deed Tax (天津市契稅徵收實施辦法) promulgated by the Tianjin Municipal Government on October 1, 1997, the deed tax rate for Tianjin is 3%. Pursuant to the Implementation Rules of the Interim Regulations of the People's Republic of China on Deed Tax (江蘇省實施《中華人民共和國契稅暫行條例》辦法) promulgated by the People's Government of Jiangsu Province on November 20, 1998, the deed tax rate for Yixing City is 4%.

On October 22, 2008, the MOF and the SAT issued the Circular on Taxation Policy Adjustment Concerning Real Estate Trading (關於調整房地產交易環節稅收政策的通知) which announced that the deed tax for individuals buying their first regular commodity house with a floor area of less than 90 square meters shall be temporarily reduced to a unified rate of 1% starting from November 1, 2008.

**(v) Urban land use tax**

Pursuant to the Provisional Regulations of the People's Republic of China Governing Land Use Tax in Urban Areas (中華人民共和國城鎮土地使用稅暫行條例) promulgated by the State Council on September 27, 1988, implemented on November 1, 1988 and amended on December 31, 2006, land use tax in respect of urban land is levied according to the area of relevant land. The annual tax on every square meter of urban land shall be between RMB0.2 and RMB10 as determined by the local tax authority. According to the Notice on Land Use Tax Exemption of Foreign-Invested Enterprises and Institutions of Foreign Enterprises in China (關於中國外商投資企業和外國企業在華機構不徵收城鎮土地使用稅的通知) promulgated by the MOF on November 2, 1988 and the Approval on Land Use Tax Exemption of Foreign-Invested Enterprises (關於外商投資企業不徵收城鎮土地使用稅的批准書) issued by the SAT on March 27, 1997, land use fees should be collected instead of land use tax in respect of foreign-invested enterprises. However, in accordance with the Provisional Regulations of the People's Republic of China Governing Land Use Tax in Urban Areas revised by the State Council on December 31, 2006, as of January 1, 2007, land use tax shall be collected from foreign-invested enterprises and the annual tax on every square meter of urban land shall be between RMB0.6 and RMB30.0.

**(vi) Buildings tax**

Under the Interim Regulations of the People's Republic of China on Building Tax (中華人民共和國房產稅暫行條例) promulgated by the State Council on September 15, 1986 and

implemented on October 1, 1986, building tax shall be levied at 1.2% if it is calculated on the basis of the residual value of a building, and 12% if it is calculated on the basis of the rental.

According to the Circular Concerning Levy of Building Tax on Foreign Enterprises and Foreigners (關於對外資企業及外籍個人徵收房產稅有關問題的通知) promulgated by the Ministry of Finance on January 12, 2009, and the Circular Concerning the Implementation of Levy of Building Tax on Foreign-Invested Enterprise and Foreign Individuals (關於做好外資企業及外籍個人房產稅征管工作的通知) issued by the SAT on January 6, 2009, from January 1, 2009, domestic and foreign-invested enterprises and foreign individuals will all be subject to the Interim Regulations of the People's Republic of China on Building Tax.

#### **(vii) Stamp duty**

Under the Interim Regulations of the People's Republic of China on Stamp Duty (中華人民共和國印花稅暫行條例) promulgated by the State Council on August 6, 1988 and implemented on October 1, 1988, for property transfer instruments, including those in respect of property ownership transfer, the stamp duty rate shall be 0.05% of the amount stated therein; for permits and certificates relating to rights, including property title certificates and land use rights certificates, stamp duty shall be levied on an item basis of RMB5 per item.

On October 22, 2008, the MOF and the SAT issued the Circular on Taxation Policy Adjustment Concerning Real Estate Trading (關於調整房地產交易環節稅收政策的通知) and temporarily exempted the stamp duty for individuals selling or buying houses starting from November 1, 2008.

#### **(viii) Municipal maintenance tax**

Under the Interim Regulations of the People's Republic of China on Municipal Maintenance Tax (中華人民共和國城市維護建設稅暫行條例) promulgated by the State Council on February 8, 1985, any taxpayer, whether an individual or otherwise, of product tax, value-added tax or business tax shall be required to pay municipal maintenance tax. The tax rate shall be 7% for a taxpayer whose domicile is in an urban area, 5% for a taxpayer whose domicile is in a county or a town, and 1% for a taxpayer whose domicile is not in any urban area or county or town. Under the Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge for Foreign-invested Enterprises and Foreign Enterprises (關於外商投資企業和外國企業暫不徵收城市維護建設稅和教育費附加的通知) issued by the SAT on February 25, 1994, the municipal maintenance tax shall not be applicable to foreign invested enterprises with foreign investment for the time being, until further explicit stipulations are issued by the State Council.

#### **(ix) Education surcharge**

Under the Interim Provisions on the Imposition of the Education Surcharge (徵收教育費附加的暫行規定) promulgated by the State Council on April 28, 1986 and as amended on June 7, 1990 and August 20, 2005, a taxpayer, whether an individual or otherwise, of product tax, value-added tax or business tax shall pay an education surcharge, unless such obliged taxpayer is instead required to pay a rural area education surcharge as provided by the Notice of the State Council on Raising Funds for Schools in Rural Areas (國務院關於籌措農村學校辦學經費的通知). Under the Supplementary Notice Concerning Imposition of Education Surcharge (國務院關於教育費附加徵收問題的補充通知) issued by the State Council on October 12, 1994, the Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge for Foreign-invested Enterprises and Foreign Enterprises (關於外商投資企業和外國企業暫不徵收城市維護建設稅和教育費附加的通知) issued by the SAT on February 25, 1994, the education surcharge shall not be applicable to enterprises with foreign investment for the time being, until further explicit stipulations are issued by the State Council.

## **K. Measures on Stabilizing Housing Price**

The General Office of the State Council promulgated the Circular on Duly Stabilizing the Prices of Residential Properties (關於切實穩定住房價格的通知) on March 26, 2005, requiring measures to be taken to restrain housing prices from increasing too fast and to promote the healthy development of the property market. On May 9, 2005, the General Office of the State Council issued the Opinion of the Ministry of Construction and other Departments on Improving the Works on Stabilizing the Prices of Residential Properties (關於做好穩定住房價格工作的意見), which provides that:

### ***(i) Intensifying planning and control and improving the housing supply structure***

Where housing prices are in excessive growth and the supply of regular commodity houses at medium or low prices and economical houses is insufficient; housing construction should mainly involve projects of regular commodity houses with medium or low prices and economical houses. The construction of low-density, high-quality houses shall be strictly controlled. With respect to construction projects of medium-or-low-price regular commodity houses, before the supply of land, the municipal planning authority shall, according to controlling detailed planning, set forth conditions for planning and designing such as height of buildings, plot ratio and green space. The property authority shall, in collaboration with other relevant authorities, set forth such controlling requirements as sale price, type and area. Such conditions and requirements will be set up as preconditions of land assignment to ensure an effective supply of small or medium-sized houses at moderate and low prices. The local government must intensify the supervision of planning permit for property development projects. Housing projects that have not been commenced within two years must be re-examined, and those that turn out to be noncompliant with the planning permits will be revoked.

### ***(ii) Intensifying control over the supply of land and rigorously enforcing the administration of land***

Where the price of land for residential use grows too fast, the proportion of land for residential use to the total land supply should be raised, and the land supply for the construction of regular commodity housing at medium or low prices and economical housing should be increased. Land supply for villa construction shall be continuously suspended, and land supply for high-end housing property construction shall be restricted.

### ***(iii) Adjusting the policies of business tax on house transfers and strictly regulating the collection and administration of tax***

From June 1, 2005, business tax upon transferring a residential house by an individual within two years from purchasing will be levied on the full amount of the sale proceeds. For an individual having transferred an ordinary residence after two years from date of purchase, business tax will be exempted. For an individual having transferred a property other than ordinary residential house for two years or more from date of purchase, the business tax will be levied on the basis of the balance between the income from selling the residence and the purchase price.

### ***(iv) Rectifying and regulating the market order and seriously investigating and punishing any irregular and rule-breaking sales***

The buyer of a pre-sale commodity building is prohibited from conducting any transfer of such building if it is still under construction. A real name system for house purchases should be applied, and an immediate archival filing network system for pre-sale contracts of commodity buildings should be carried out.

On May 24, 2006, the General Office of the State Council issued the Opinion of the Ministry of Construction and other Departments on Adjusting Housing Supply Structure and Stabilization of

Housing Prices (關於調整住房供應結構穩定住房價格的意見). As to the adjustment of housing supply and stabilization of housing prices, the opinion provides that:

(a) *Adjustment to the housing supply structure*

- The construction of medium and small-sized regular commodity houses at medium or low prices should be especially developed to satisfy the demands of local residents.
- From June 1, 2006, for each and every commodity building newly examined and approved for the commencement of construction, the proportion of the area of housing (including economically affordable housing) with a unit floor area less than 90 square meters must reach 70% of the total development and construction area. In case of adjustment of the above-mentioned proportion, if required in special cases, the municipalities directly under the central government, separately planned cities and provincial capital cities must submit the special request for adjusting proportion to the MOC for approval. The projects that have been examined and approved but have not received a construction works commencement permit shall where necessary adjust the set style of housing according to the above-mentioned requirements.

(b) *Adjustment to tax, credit and land policies*

- Commencing June 1, 2006, business tax applicable to the transfer of a residential property by an individual within five years from the date of purchase will be levied on the basis of the full amount of the sale proceeds. For an individual transferring an ordinary residential property five years or more from the date of purchase, business tax will be exempted. For an individual transferring a house other than an ordinary residential house for five years or more from purchasing, the business tax will be levied on the basis of the balance between the income from selling the house and the purchase price;
- In order to restrain property developers from purchasing land and buildings with bank credits, any developer applying for loans shall have at least 35% of capital required for the project development. To the developers with a large amount of idle land and vacant commodity buildings, commercial banks should restrict the grant or extension of revolving credit facilities in any form pursuant to the prudence principle. Commodity buildings which are vacant for more than 3 years should not be accepted as a guarantee by the commercial banks;
- From June 1, 2006, the first installment of individual house loans should be no less than 30%. When a borrower applies for individual house loans for his own use and the floor area of the unit is less than 90 square meters, the first installment remains at 20%;
- At least 70% of the land supply for residential property developments must be used for low-to-medium-cost and small to medium-size units and low-cost rental properties. On the basis of the restriction of price and housing style, the land supply shall adopt the method of competitive bidding of land price and housing price to determine the property developer. Land supply for villa construction shall continue to be suspended, and land supply for low-density and large-area housing property construction shall be strictly prohibited;

When construction has not yet started one year after the construction commencement date agreed in the land use rights assignment contract has elapsed, charges for idle land should be collected at a higher level; when the construction has not started two years after the construction commencement date agreed in the land use rights assignment contract have elapsed, the right to use land can be taken back without compensation. The land will be regarded as idle land if: the development and construction of the land has started on time, but the developed area is less than one third of the total area to be developed and constructed, or the invested amount is less

than 25% of the total amount of investment, and the development and construction has been continuously suspended for no less than one year without approval.

(c) *Further rectifying and regulating the property market*

- Any project with a Construction Land Planning Permit which has not started construction should be re-evaluated. If the project is not in accordance with the controlling requirements of the plan, especially the requirements of the set style structure, the construction works planning permit, the construction works commencement permit and the pre-sale permit should not be issued. Projects which have been altered or the construction of which have exceeded the provisions shall be disposed of or confiscated according to law.
- The property administration authority and the administration of industry and commerce should investigate any illegal conduct such as contract fraud. Illegal conduct involving commodity building pre-completion sales without the necessary conditions should be ordered to stop and punished. With respect to the property enterprises that store up housing source from sale and maliciously manipulate and raise housing prices, the competent authorities shall seek prosecution, including by enforcing monetary punishment according to laws and regulations, the suspension of business licenses, and the responsible persons concerned shall be investigated and prosecuted.

To implement the Opinions on Adjusting the Housing Supply Structure and Stabilizing Housing Prices, the MOC promulgated Certain Opinions Regarding the Implementation of the Ratio Requirement for the Structure of Newly Constructed Residential Units (關於落實新建住房結構比例要求若干意見) on July 6, 2006 and made supplemental requirements on the proportion of newly built housing structure as follows:

- (a) From June 1, 2006, in any city (including counties), the floor area of the housing which is less than 90 square meters should reach 70% of the total floor area of commercial commodity buildings newly approved or constructed.
- (b) According to the above requirements, the governments should guarantee the conditions of planning and design of newly-built commodity buildings to be reached and confirm the requirements of structure proportion. Any digression from the above-mentioned requirements without authorization is forbidden. construction works planning permit should not be issued by municipal planning and authorities. If there is any noncompliance with the planning permit; construction works commencement permit should not issued by the construction authority and for pre-sale of commodity buildings should not be issued by property development authority.
- (c) To projects which are approved before June 1, 2006 but have not obtained the construction works commencement permit, the governments of cities should ascertain the which specific project needs to adjust the set structure according to the proportion requirement of the newly-built commodity buildings in that year.

On December 20, 2008, the General Office of the State Council issued Several Opinions on Promoting the Sound Development of the Real Estate Market (關於促進房地產市場健康發展的若幹意見), which:

- (a) *Promotes the construction of affordable residential housing*
- (b) *Encourages the purchase of regular commodity houses for residential purposes*

In addition to extending favourable interest rates and loan policies to first time buyers of apartments for self-residential purposes, individuals with an existing home in which the per-person floor area is smaller than the local average may buy a second apartment for self residence purposes under similar favourable loan terms to those that apply to first-time buyers. If individuals purchase a second apartment or more for any other purpose,



the interest rate shall be determined according to potential risks by commercial banks based on the benchmark interest rate.

Individuals who purchased their house for self-residential purposes prior to December 31, 2009 may, two or more years after the purchase, resell their house without paying business tax. This two year threshold was reduced from five years as applicable under previous provisions. Individuals that have owned their self-residential house for less than two years shall pay business tax on the net profit (the difference between the original price and the sales price). Individuals who have purchased their house for any purpose other than self-residential shall, if they have owned it for two years or more, pay business tax on the net profit or, if they have owned it for less than two years, on the full sale price. This two year threshold was also reduced from five years as prescribed in previous provision.

(c) *Supports real estate developers in dealing with the changing market*

Increased credit financing services to “low-to-medium-level price” or “small-to-medium-sized” regular commodity housing projects shall be provided, particularly those under construction; financial support and other related services to real estate developers engaged in merger and restructuring; approvals for bond issues by real estate developers with good credit ratings and sound financial credentials shall be supported and the building tax is unified, thereafter domestic and foreign-funded enterprises and individuals will all be subject to the Interim Regulations of the People’s Republic of China on Building Tax.

According to Several Opinions of the General Office of the State Council on Providing Financial Support for Economic Development (No.126 [2008])(國務院辦公廳關於當前金融促進經濟發展的若干意見), issued by General Office of the State Council on December 8, 2008, the State Council (1) implemented and promulgated relevant credit policies and measures to support people’s purchase of their first ordinary home or improved ordinary home; (2) provided more credit support for the construction of low-rent houses and economically affordable houses and the reconstruction of shed areas for low-income urban residents; and (3) initiated the pilot operation of real estate trust investment funds and diversify the financing channels of real estate enterprises.

## **II. LEGAL SUPERVISION RELATING TO THE PROPERTY MANAGEMENT SECTOR IN THE PRC**

### **A. Foreign-invested Property Management Enterprises**

According to the Foreign Investment Industrial Guidance Catalogue, property management falls within the category of industries in which foreign investment is permitted. Foreign invested property management enterprises can be set up as a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or wholly foreign owned enterprise according to the Catalogue and the relevant requirements of the laws and administrative regulations regarding foreign-invested enterprises. Foreign invested property management enterprises should obtain approval from the commercial authority and obtain a Approval Certification for a foreign-invested enterprise before registering with the Administration for Industry and Commerce.

### **B. The Qualification of a Property Management Enterprise**

According to the Regulation on Property Management (物業管理條例) enacted by the State Council on June 8, 2003, implemented on September 1, 2003 and amended on August 26, 2007, a qualification system for enterprises engaging in property management activities is adopted. According to the Measures for the Administration on Qualifications of Property Management Enterprises (物業管理企業資質管理辦法) enacted by the MOC on March 17, 2004, implemented on May 1, 2004 and amended on November 26, 2007, a newly established property management enterprise shall, within 30 days from the date of receiving its business license, apply for qualifications to the competent property departments of the people’s governments of the municipalities directly under the central government and cities divided into districts at the place of industry and commerce registration. The departments of

qualification examination and approval shall check and issue property management qualification certificates to the enterprises meeting the corresponding qualification class conditions.

According to the Measures for the Administration on Qualifications of Property Management Enterprises, the qualifications of a property management enterprise shall be classified as the first, second and third classes. The competent construction department of the State Council shall be responsible for issuance and administration of the qualification certificate of the first class property management enterprises. The competent construction departments of the people's governments of provinces and autonomous regions shall be responsible for issuance and administration of the qualification certificate of the second class property management enterprises, and the competent property administration departments of the people's governments of municipalities directly under the central government shall be responsible for issuance and administration of the qualification certificate of the second and third class property management enterprises. The competent realty departments of the people's governments of the cities divided into districts shall be responsible for the issuance and administration of the qualification certificate of the third class property management enterprises.

The property management enterprises with the first class qualification may undertake any realty management projects. The property management enterprises with the second class qualification may undertake the realty management business of residence projects of under 300,000 square meters and the non-residence projects of under 80,000 square meters. The property management enterprises with the third class qualification may undertake the realty management business of residence projects under 200,000 square meters and non-residence projects under 50,000 square meters. An annual inspection system on the qualifications of property management enterprises is adopted.

### **C. Appointment of a Property Management Enterprise**

According to the Regulation on Property Management, the general meeting of owners in a property can appoint and dismiss the property management enterprise with affirmative votes of owners holding more than 2/3 of the voting rights. Before the formal appointment of a property management enterprise by the general meeting of the owners, a written temporary service contract should be signed by the construction institutions (for example, a developer) and a property management enterprise.

## **III. LEGAL SUPERVISION RELATING TO REAL ESTATE INTERMEDIATE SERVICES IN THE PRC**

### **A. Foreign Investment in the Real Estate Intermediate Services Sector**

Under the Foreign Investment Industry Guidance Catalogue amended jointly by MOFCOM and the NDRC in October 2007 and with effect from December 1, 2007, transactions in the real estate secondary market and the real estate intermediary or broker companies falls within the category of industries in which foreign investment is subject to restrictions.

The Regulations on Guiding the Orientation of Foreign Investment (指導外商投資方向規定) promulgated by the State Council on February 21, 2002 and effective from April 1, 2002, stipulate that projects with foreign investment under the limit for restricted projects with foreign investment shall be subject to the examination and approval of the corresponding competent departments of the people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and municipalities. At the time of examination and approval, the project must also be reported to the competent departments and administrative authorities at the next highest level. The power to conduct examination and approval for this kind of project may not be granted to any lower level authority.

### **B. QUALIFICATIONS FOR THE REAL ESTATE INTERMEDIARY SERVICES SECTOR**

The Provisions on the Administration of Urban Real Estate Intermediary Services (城市房地產中介服務管理規定) promulgated by the MOC on January 8, 1996 and amended on August 15,

2001 define real estate intermediary services as including consulting, price evaluation and brokerage services that relate to real estate. A person wishing to provide real estate intermediary services must attain appropriate qualifications.

The conduct of real estate intermediary services should only be carried out by an organization that meets the following criteria: a) it must have its own name and organizational structure; b) it must have a fixed place of business; c) it must have a stipulated amount of assets and funds; and d) (i) in the case that it provides real estate consultancy services, a minimum of fifty percent of its personnel must have intermediate level or above specialist qualifications relevant to the real estate sector, or elementary level specialist qualifications in the area of technology; (ii) in the case that it provides real estate evaluation services, it must have a stipulated amount of qualified evaluation personnel; and (iii) in the case that it provides real estate brokerage services, it must have a stipulated amount of qualified brokers.

Organizations that provide real estate intermediary services in more than one province, autonomous regions and municipalities directly under the Central Government should register with the relevant administrative departments in charge of construction of the people's government of the province and the autonomous regions, or the administrative departments in charge of real estate administration of the people's government of the municipalities directly under the Central Government where the operations are to be carried out. Application for the establishment of the enterprise must be made with the local branch of the SAIC. Within one month of receiving a business license, the enterprise must register with the real estate administration department of the same local government at the county level or above.