
APPENDIX VII

SUMMARY OF PRC LAWS RELATING TO THE PROPERTY SECTOR

I. LEGAL SUPERVISION RELATING TO PROPERTY SECTOR IN THE PRC

A. Establishment of a property development enterprise

Pursuant to the “Law of the People’s Republic of China on Administration of Urban Property” (the “Urban Property Law”) enacted by the Standing Committee of the National People’s Congress on 5 July 1994 enforced on 1 January 1995 and revised on 30 August 2007, a property developer is defined as “an enterprise which engages in the development and operation of property for the purposes of making profits”. Under the “Regulations on Administration of Development of Urban Property” (the “Development Regulations”) enacted by the State Council and enforced on 20 July 1998, a property development enterprise must satisfy the following requirements: (1) has a registered capital of not less than RMB1 million and (2) have four or more full-time professional property/construction technicians and two or more full-time accounting officers, each of whom shall hold the relevant qualifications. The Development Regulations also stipulated that people’s governments of the provinces, autonomous regions and/or municipalities directly under the central government may impose more stringent requirements regarding the registered capital and qualifications of professional personnel of a property development enterprise according to the local circumstances.

Pursuant to the Development Regulations, application for registration has to be submitted to the department of administration of industry and commerce above county level for the establishment of property development enterprise. The property development enterprise must file for record with the property development authority in the location of the registration authority, within 30 days of the receipt of its Business License.

Under the “Notice on Adjusting the Portion of Capital Fund for Fixed Assets Investment of Certain Industries” issued by the State Council on 26 April 2004, the portion of capital fund of property projects (excluding economically-affordable housing projects) has been increased from 20% or above to 35% or above.

B. Foreign-invested property development enterprises

Foreign-invested property development enterprises can be established in the form of sino-foreign equity joint venture, sino-foreign co-operative joint venture or wholly-owned foreign enterprise according to the Industrial Guidance Catalogue and other laws and administrative regulations relating to foreign investment enterprises. Prior to the application for registration to the department of administration of industry and commerce, the enterprise must be approved by the authorities of commerce and obtain an Approval Certificate for a Foreign Investment Enterprise.

On Oct 31 2007, China’s National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) promulgated the new Industrial Guidance Catalogue of Foreign Investments (2007 Revision) (“the 2007 Catalogue”). The 2007 Catalogue has taken effect on 1 December, 2007. The major changes on Real Estate industry in the 2007 Catalogue are the followings: (1) the development and construction of ordinary residential houses has been removed from the encouraged category; (2) the restricted category has been adjusted as the followings: (i) the development of a whole land lot which shall be operated only by sino-foreign equity joint venture or

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sino-foreign co-operate joint venture; (ii) the construction and operation of up-market hotels, villas, premium office buildings, international conference centres; (iii) housing agents, brokerages and the second-tier real estate market; (3) the construction and operation of large scale theme park has been removed from the Real Estate industry to the Culture, Sports and Entertainment Industries which is still in the restricted category. It means that the enterprise investing in such projects will not be regarded as a real estate development company; (4) the construction and operation of golf courts has been removed from the restricted category to the prohibited category.

On 11 July 2006, the PRC Ministry of Construction, the Ministry of Commerce, the National Development and Reform Commission, the People's Bank of China, the State Administration of Industry and Commerce and the State Administration for Foreign Exchange jointly enacted the "Circular on Standardising the Admittance and Administration of Foreign Capital in the Property Market" (Jianzhufang 2006 171). According to this Circular, the admittance and administration of the foreign capital in property market must comply with the following requirements:

- (a) Foreign institutions or individuals purchasing property in China not for their own use shall follow the principle of commercial existence and apply for establishment of foreign investment enterprises under the regulations of foreign investment in property. The foreign institutions and individuals can only carry on their business pursuant to the approved business scope after obtaining the approvals from the relevant authorities and upon completion of the relevant registrations.
- (b) If the total investment of a foreign-invested property development enterprise exceeds or equals to USD10 million, the registered capital must not be less than 50% of the total investment. If the total investment is less than USD10 million, the amount of the registered capital shall follow the existing regulations.
- (c) For the establishment of a foreign-invested property development enterprise, the commerce authorities and the department of administration of industry and commerce are in charge of granting approval for establishment and effecting registration of the foreign invested property development enterprise and issuing the Approval Certificate for a Foreign Investment Enterprise and the Business License which are only effective for one year. After settlement of the consideration of land use right, the enterprises should apply for the land use rights certificate by presenting the above-mentioned certificate and license. With the land use rights certificate, the enterprises will receive an official Approval Certificate for a Foreign Investment Enterprise from the commerce authorities, and shall replace the business license with one that has the same operation term as the formal Approval Certificate for Foreign Investment Enterprise in the department of administration of industry and commerce, and then it shall apply for tax registration with the tax authorities.
- (d) Transfers of projects of or shares in foreign-invested property development enterprises, and the acquisitions of domestic property development enterprises by foreign investors should follow strictly the relevant laws, regulations and policies to obtain the approvals. The investor should submit: (a) the guarantee letters for the performance of the State-owned Land Use Right Grant Contracts, Construction Land Planning Permit and Construction

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Work Planning Permit; (b) Certificate of Land Use Right; (c) the certification on alteration of archival files issued by construction authorities; d) the certification on the payment of tax issued by the relevant tax authorities.

- (e) While merging and acquiring domestic property development enterprises by way of share transfer or other means, or the purchase of shares from the Chinese party in a sino-foreign equity joint venture, the foreign investors shall properly settle the employees, settle the bank loans and pay all the consideration at a time with its internal fund. The foreign investors with unfavourable record shall not be allowed to conduct any of the aforesaid activities.

On 23 May 2007, MOFCOM and SAFE jointly issued the "Notice Concerning Further Strengthening and Regulating the Examination, Approval and Supervision of Direct Foreign Investment in Real Estate" (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) (Shang Zi Han 2007 No. 50). The Notice provides stricter controlling measures including, among others:

- (a) Where the application is filed for establishment of a property company, the land use right, the ownership of the property should be obtained first, or the pre-assignment/ purchase agreement has already been concluded with the land administration authority, land developer/ owner of the property. If the above requirements have not been satisfied, the approval authority shall not approve the application.
- (b) Acquisition of or investment in domestic property enterprises by way of return investment (including the same actual controlling person) shall be strictly controlled. Oversea investors may not avoid approval for foreign investment in property by way of changing the actual controlling person of the domestic real estate enterprise. Once the foreign exchange authority has found the foreign-invested property enterprise established by way of deliberately avoiding and false representation, it shall take action against the enterprise's conduct of remittance of capital and interest accrued without approval, and the enterprise shall bear the liability for cheated purchase and evasion of foreign exchange.
- (c) Agreement as to any fixed return or of the same effect for either party of a foreign-invested real property enterprise is prohibited.
- (d) Local examination and approval authorities must make a filing with MOFCOM for recording their approvals of establishment of foreign-invested real estate enterprises.
- (e) Local SAFE administrative authorities and designated foreign exchange banks shall not conduct foreign exchange purchase and settlement process in respect of capital projects for any foreign-invested real property enterprises who fail to satisfy the MOFCOM for filing requirement or annual review procedure.

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On 10 July 2007, the SAFE promulgated “Notice of the list of first batch of foreign-invested real estate projects that have been filed with the MOFCOM” (國家外匯管理局綜合司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) (Hui Zhong Fa 2007 No. 130), ceasing to conduct any foreign debt registration and foreign debt settlement process filed subsequent to 1 June 2007 for all foreign-invested property enterprises. The Notice provides that:

- (a) For a foreign-invested property enterprise (both newly-established and through capital increase, same below) which has obtained the approval certificate from the competent authorities of the MOFCOM and filed with the MOFCOM after and including (same below) 1 June 2007, the branch institutes will not conduct the foreign debt registration and foreign debts settlement approval process.
- (b) For a foreign-invested property enterprise which has obtained the approval certificate from the local competent authorities of the MOFCOM but has not filed with the MOFCOM after and including 1 June 2007, the branch institutes will not conduct foreign exchange registration (or change the registration) and the purchase and settlement process for capital projects.

C. Qualifications of a property developer

(a) *Classifications and assessment of a property development enterprises’ qualification*

Under the “Regulations on Administration of Development of Urban Property”, a property developer must file for record of its establishment to the property development authority in the location of the registration authority within 30 days after receiving its business license. The property development authority shall assess the qualification classification of the property developer, which is filing for record by considering its assets, professional personnel and development and operation records. A property development enterprise shall only engage in property development projects in compliance with its approved qualification.

Under the “Provisions on Administration of Qualifications of Property Developers” (the “Provisions on Administration of Qualifications”) enacted by the Ministry of Construction and entered into force on 29 March 2000, a property developer shall apply for registration of its qualifications according to the Provisions on Administration of 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 development 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 the corresponding authorities. The class 1 qualification shall be subject to preliminary examination by the construction authority under the people’s government of the relevant province, autonomous region or municipality directly under the central government and final approval by the construction authority under the State Council. Procedures for assessing class 2 or lower qualifications developers shall be formulated by the construction authority under the people’s government of the relevant province, autonomous region or

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municipality directly under the central government. A developer, which passes the qualification examination will be issued with a qualification certificate of the relevant class by the qualification assessment authority. After a newly established property developer reports its establishment to the property development authority, the latter shall issue a provisional qualification certificate to the eligible developer within 30 days of receipt of the report. The provisional qualification certificate shall be effective for one year from the date of its issuance. The property development authority can extend the validity period for not more than two years after 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 the expiry of the provisional qualification certificate. Any enterprise engages in the operation of property development without obtaining a qualification certificate will be ordered by the property development authority to rectify the irregularity within a certain period of time, and will be imposed a fine between RMB50,000 and RMB100,000. A property development enterprise failing to rectify the irregularity within the required period of time will have its qualification certificate suspended and a proposal will be sent to the industrial and commercial administration authority for the suspension of business license of such property development enterprise.

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

Under the “Provisions on Administration of Qualifications”, a developer of any qualification classification may engage in the development and sale of property within its approved scope of business and is not allowed to engage in business which exceeded the approved scope of its qualification classification. A class 1 property developer may undertake a property development project anywhere in the country without any limit of the scale of property project. A property developer of class 2 or lower may undertake a project with a gross floor area of less than 250,000 sq.m. and the specific scope of business shall be determined by the construction authority under the people’s government of the relevant province, autonomous region or municipality.

(c) *The annual inspection of a property developer’s qualification*

Pursuant to “Provisions on Administration of Qualifications”, the qualification of a property developer should be annually inspected. The construction authority under the State Council or the entrusted institution is responsible for carrying out the annual inspection of class 1 property developer’s qualification. Procedures for annual inspection of 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. Any enterprise fails to comply with the qualification requirement or operation requirements will have its qualification classification down-graded or qualification certificate cancelled.

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D. Development of a property project

(a) *Land for property development*

Under the “Interim Regulations of the People’s Republic of China on Assignment and Transfer of the Right to Use State-owned Land in Urban Areas” (the “Interim Regulations on Assignment and Transfer”) promulgated and enforced by the State Council on 19 May 1990, a system of assignment and transfer of the right to use State-owned land is adopted. A land user shall pay a premium to the State as consideration for the assignment of the land use rights within certain terms, and a land user may transfer, lease, mortgage or otherwise commercially exploit the land use right within his terms of use. Under the Interim Regulations on Assignment 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 for an assignment of land use right. The land user shall pay the assignment price as stipulated in the assignment contract. After paying the assignment price in full, the land user shall register with the land administration authority and obtain a Land Use Right Certificate. The Certificate is an evidence of the acquisition of land use rights. The “Regulations on Administration of Development of Urban Property” provide that the land use rights for a site intended for property development shall be obtained by way of an assignment except for those land use rights, which may be obtained by way of allocation pursuant to the PRC laws or the stipulations of the State Council.

Under the “Regulations on the Assignment of State-Owned Land Use Right through Competitive bidding, Auction and Listing-for-Sale” (“2002 Regulations”), as amended by the 2007 Regulations on 28 September 2007 enacted by the Ministry of Land and Resources on 9 May 2002 and enforced on 1 July 2002, land for commercial use, tourism, entertainment and commodity housing development shall be assigned by way of competitive bidding, public auction or listing-for-sale. The procedures are as follows:

- i. The land authority under the people’s government of the city and county (the “assignor”) shall make an announcement at least 20 days prior to the date of the proposed competitive bidding, public auction or listing-for-sale. The announcement should include basic particulars such as land parcel, qualification requirement of the bidder and auction applicants, methods and criteria on confirming the winning tender or winning bidder, and other conditions such as the deposit of the bid.
- ii. The assignor shall conduct a qualification verification of the bidding applicants and auction applicants, inform the applicants who satisfy the requirements set out in the announcement and invite them to attend the competitive bidding, public auction or listing-for-sale.
- iii. After determining the winning tender or the winning bidder by the 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 return the bidding or tender deposit to other bidding or auction applicants.

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- iv. The assignor and the winning tender or winning bidder shall enter into a contract for State-owned land use right assignment according to the time and venue set out in the confirmation. The deposit of the bid paid by the winning tender or winning bidder will be used to set off part of the assignment price of the state-owned land use rights.
- v. The winning tender or winning bidder should apply for the land registration after paying off the assignment price in accordance with the State-owned land use right assignment contract. The people’s government above the city and county level should issue the “Land Use Permit for State-Owned Land”.

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” enacted by the Ministry of Land and Resources on 4 September 2003 (the “Notice”). Commencing from the day of distribution of the Notice, land use for luxurious commodity houses shall be stringently controlled, and applications for land use for building villas shall be stopped. On 21 March 2004, the Ministry of Land and Resources together with the Ministry of Supervision promulgated the “Notice in Respect of Enforcing and Supervising The Transfer of Operative Land Use Rights Through Tenders, Bidding and Public Auction (關於繼續開展經營性土地使用權招標拍賣掛牌出讓情況執法監察工作的通知)”, which expressly required that after 31 August 2004, no land use rights transfer in the form of agreement by the excuse of historical difficulties will be allowed. On 30 May 2006, the Ministry of Land and Resources issued the “Urgent Notice of Further Strengthening the Administration of the Land”. It is expressly prescribed in this Notice that land for property development must be assigned by way of competitive bidding, public auction or Listing-for-sale; the rules of stopping the development project for villas should be strictly enforced; and all supply of land for such purpose and handling of related land use procedure will be ceased from the day of the Notice’s issuance.

Under the “Urgent Notice of Further Strengthening the Administration of the Land”, the land authority should rigidly execute the “Model Text of the State-owned Land Use Right Assignment Contract” and “Model Text of the State-owned Land Use Right Assignment Supplementary Agreement (for Trial Implementation)” jointly enacted by the Ministry of Land Resources and SAIC. The document of the land assignment should ascertain the requirement of planning, construction and land use such as the restriction of the dwelling size, plot ratio and the time limit of starting and completion. All these should be agreed in the Land Use Right Assignment Contract.

On 28 September 2007, the Ministry of Land Resources promulgated the Regulation on Bidding, Auction and Listing Required for Assignment of State Owned Construction Land (《招標拍賣掛牌出讓國有建設用地使用權規定》) (“this Regulation”) (“2007 Regulations”). This Regulation specifies that the assignee of state owned construction land use right shall fully pay up the premium for the land use right in accordance with the state owned land assignment agreement before it could proceed with the relevant procedures for land use right registration and apply for a state owned construction land use right certificate. No assignee could be granted a state owned construction land use right certificate for the land in proportion to the partial payment of the premium that the assignee has paid up. In 2007, it is provided in detail that operative lands for properties to be used for industrial, commercial, tourism, entertainment and commodity residential purposes as well as lands with two or more prospective users must be granted only through competitive bidding.

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On 2 January 2007, the National People’s Congress promulgated the “Laws on Urban and Rural Planning (城鄉規劃法)” which provided that for construction projects having obtained rights to use State-owned lands by way of grant, after the rights to use State-owned lands grant contract have been verified, the construction entity shall apply for a permit for construction site planning from the relevant municipal or county or city or rural planning authority.

(b) *Development of a property project*

i. *Commencement of a property project and the idle land*

Under the Urban Property Law, those who have obtained the land use right through an assignment must develop the land in accordance with the terms of use and within the period of commencement prescribed in the contract for the land use rights assignment. According to the “Measures on Disposing Idle Land” enacted and enforced by the Ministry of Land and Resources on 28 April 1999, the land can be defined as idle land under any of the following circumstances:

- development and construction of the land is not commenced within the prescribed time limit after obtaining the land use right without consent from the people’s government who approved the use of the land;
- where the “Contract on Paid Use of the Right to Use State-Owned Land” or the “Approval Letter on Land Used for Construction” has not prescribed the date of commencing the development and construction, the development and construction of the land is not commenced at the expiry of one year from the date when the “Contract on Paid Use 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 been commenced but the area of the development and construction that has been commenced 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 have been continuously suspended for one year or more without an approval; and
- other circumstances prescribed by the laws and the administrative regulations.

The municipality or county-level municipality administrative department shall, after a piece of land which has been ascertained as idle land, notify the concerned land user and draft a proposal on methods of disposal of the idle land including but not limited to extending the time period for development and construction (provided that the extension shall be no longer than one year), changing the use of the land, arranging for temporary use, ascertaining a new land user by competitive bidding, public auction. The administrative department of land under the people’s government of city or county level shall, after the proposal on disposal has been approved by the original people’s government who approved the use of the land, arrange for implementation of the proposal. To the land which is obtained by assignment and is within the scope of city

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planning, if the work has not been commenced after one year from the prescribed date of commencement, a surcharge on idle land equivalent to less than 20% of the assignment price may be levied; if the work has not been commenced after two years from the prescribed date of commencement, the land can be confiscated without any compensation. However, the preceding stipulations shall not apply if the delay is caused by force majeure; acts of government or acts of other relevant departments under the government; or by the indispensable preliminary work.

The State Council promulgated the “Notice on Promoting the Saving and Intensification of Use of Land (Guo Fa No.2008) (關於促進節約集約用地的通知(國發2008 3號))” on 3 January 2008, which required that policy in respect of unused land shall be strictly implemented. If the land approved for development left idle for more than two years, it must be recovered for reused without any compensation by the government according to applicable laws and regulations. Even if the land may not be recovered according to relevant laws and regulations, the land shall be disposed of in time and used efficiently through altering usage of the land, equivalent exchange etc. For lands left unused for over one year but less than two years, an idle land fees shall be levied at a rate equal to 20% of the price for the land granted or allocated.

ii. *Planning of a property project*

According to the “Measures for Control and Administration of Assignment and Transfer of Right to Use Urban State-owned Land” enacted by the Ministry of Construction on 4 December 1992 and enforced on 1 January 1993 and the “Notice of the Ministry of Construction on Strengthening the Planning Administration of Assignment and Transferring Right to Use State-owned Land” enacted and enforced by the Ministry of Construction on 26 December 2002, after signing an assignment contract, a property developer shall apply for a Opinion on Construction Project’s Site Selection and a Permit for Construction Site Planning from the city and county planning authority with the assignment contract. After obtaining a Permit for Construction Site Planning, a property developer shall organise the necessary planning and the design work with regard to planning and design requirements; and apply for a Permit for Construction Work Planning from city planning authority with the relevant approval documents. On 30 June 2001, a permit for housing demolition and removal was obtained pursuant to the “Regulations for the Administration of Demolition and Removal in Urban Areas (城市房屋拆遷管理條例)”, and the “Notice on Controlling the Scale of Demolition and Removal and Strengthening Administration of Demolition and Removal (關於控制城鎮房屋拆遷規模嚴格拆遷管理的通知)” issued by the State Council on 6 June 2001.

iii. *Construction of a property project*

After obtaining the Permit for Construction Work Planning, a property developer shall apply for a Construction Permit from the construction authority under the local people’s government above the county level according to the “Measures for the Administration of Construction Permits for Construction Projects” enacted by the Ministry of Construction on 15 October 1999 and revised and enforced on 4 July 2001.

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iv. *Completion of a property project*

According to the “Regulations on Administration of Development of Urban Property”, the “Regulation on the Quality Management of Construction Projects” enacted and enforced by the State Council on 30 January 2000, the “Interim Measures for Reporting Details Regarding Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure” enacted by the Ministry of Construction in April 2000 and the “Interim Provisions on Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure” enacted and enforced by the Ministry of Construction on 30 June 2000, after completion of work for a project, a property developer shall apply for the acceptance examination upon completion to the property development authority under the people’s government on or above the county level and report details of the acceptance examination, upon which the “Record of acceptance examination upon project completion”. For a housing estate or other building complex project, an acceptance examination shall be conducted upon completion of the whole project and where such a project is developed in phases, separate acceptance examination may be carried out for each completed phase.

E. Property Construction

(a) *the Bid and Tender Law of the People’s Republic of China*

Under the Bid and Tender Law of the People’s Republic of China 《中華人民共和國招標投標法》 promulgated by the Standing Committee of the National People’s Congress dated 30 August 1999 and implemented on 1 January 2000, tender is compulsory with respect to construction projects within the territory of the PRC such as large-scale infrastructure and public utilities relating to social public interests or public security, including the investigation, design, construction, construction supervision thereof as well as procurements pertaining to important equipment and materials in connection with project construction. The tender is divided into open tender and invited tender. Any entity or individual shall not nullify related projects that must be offered to tender as statutory required or circumvent tender through any other means. The successful tenderer, on the basis of contractual covenant or upon the tenderee’s consent, may contract to others the non-principal non-critical works in the tender project. The individual accepting such contracting shall be equipped with appropriate qualifications and shall not subcontract his portion of works. The successful tenderer shall be accountable to the tenderee for the subcontracted project while the subcontractor shall bear joint liability for the same. To conduct bidding and tendering activities within the PRC territory, relevant entity or individual shall comply with the above regulation.

(b) *The Rules on the Shanghai Bidding of Construction Management Interim Procedures*

According to the rules on the Shanghai Bidding of Construction Management Interim Procedures 《上海市建設工程施工招標投標管理暫行辦法》 approved by Shanghai Government Order No. 54 amended and re-issued on 19th December 1997, where in Shanghai (including the Commission and the Office of the Council, the district and county) of the annual fixed assets investment plan construction projects should be carried out in accordance with this approach construction tender. The tender will be required to have legal personality is the building of a unit or the total project contractor. The

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bidding could be the city business license holders of the construction and installation enterprises, project contracting companies and other provinces and cities under the Shanghai Municipal Construction Enterprise Management sector of the construction. In the selection process, the selected bidding group is made up of the tender, the tender’s superior departments, the preparation of bidding price, the designer and so on. Through voting, score or the other ways, the final award will be decided by the selected bidding group. In addition, the process of decision should be supervised under the office of Shanghai Municipal Construction Enterprise Management or the Construction Management of district and county. Then, the bidding notice should be delivered to the successful bidder within 2 days after the decision of the selected bidding group. The tender should subscribe the Construction Contracting Contract with the successful bidder within 15 days from the date of delivery of the bidding notice.

F. Property Transactions

(a) *Transfer of property*

According to the “Urban Property Law” and the “Provisions on Administration of Transfer of Urban Property” enacted by the Ministry of Construction on 7 August 1995 and revised on 15 August 2001, a property owner may sell, give or otherwise legally transfer a property to another person or legal entity. When transferring a building, the ownership of the building and the land use rights attached 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 assignment, the real property may only be transferred on the condition that: (a) the assignment price has been paid in full for the assignment of the land use rights as provided by the assignment contract and a land use right certificate has been obtained; (b) the development has been carried out according to the assignment contract; and with respect to 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 assignment, 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 right assignment 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 assignment contract, consent shall first be obtained from the original assignor and the planning administration authority under the local government of the relevant city or county and an agreement to amend the land use right assignment contract or a new land use right assignment contract shall be signed in order to, inter alia, adjust the land use right assignment price accordingly.

If the land 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 under the regulations of the State Council. If the people’s government vested with the necessary approval

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power approves such a transfer, 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.

(b) *Sale of commodity properties*

Under the “Regulatory Measures on the Sale of Commodity Properties” enacted by the Ministry of Construction on 4 April 2001 and enforced on 1 June 2001, sale of commodity properties can include both pre-completion and post-completion sales.

i. *Permit of pre-completion sale of commodity properties*

According to the “Regulations on Administration of Development of Urban Property” and the “Measures for Administration of Pre-completion Sale of Commodity Properties” (the “Pre-completion Sale Measures”) enacted by the Ministry of Construction on 15 November 1994 and revised on 15 August 2001 and 20 July 2004 respectively, the pre-completion sale of commodity properties shall be subject to a permit system, under which a property developer intending to sell a commodity building before its completion shall make the necessary pre-completion sale registration with the property development authority of the relevant city or county to obtain a permit of pre-completion sale of commodity properties. A commodity building may only be sold before completion provided that: (a) the assignment price has been paid in full for the assignment of the concerned land use rights and a land use rights certificate has been issued; (b) a Permit for Construction Work Planning and a Permit for Construction of Work have been obtained; (c) the funds invested in the development of the commodity properties put to pre-completion sale represent 25% or more of the total investment in the project and the progress of work and the completion and delivery dates have been ascertained; and (d) the pre-completion sale has been registered and a Permit for Pre-completion Sale of Commodity Properties has been obtained.

In addition, according to the “Regulations on Administration of Pre-completion Sale of Commodity Properties of Guangdong Province” enacted by the Standing Committee of Guangdong Provincial People’s Congress on 22 August 1998 and revised on 14 October 2000, and the “Notice on Adjusting Conditions of Image and Progress for Commodity Building Pre-sale Project in Guangdong Province” issued by the Guangdong Provincial Construction Bureau in January 2001, the following conditions shall be fulfilled for pre-completion sale of commodity properties in Guangdong: (a) the property developer has obtained a real property development qualification certificate and a business license; (b) the construction quality and safety monitoring procedures have been performed; (c) the structural construction and the topping-out must have been completed in respect of properties of not more than seven stories (including seven stories), and at least two-third of the structural construction must have been completed in respect of properties of more than seven stories; (d) a special property pre-completion sale account with a commercial bank in the place where the project is located has been opened; and (e) the properties pre-completion sale project and its land use rights are free from any third party rights.

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ii. *Management of pre-completion sale proceeds of commodity properties*

According to the Pre-completion Sale Measures, the proceeds obtained by a property developer from the advance sale of commercial houses must be used for the construction of the relevant projects. The specific measures for the supervision on proceeds from the advance sale of commodity properties shall be formulated by the property administrative departments.

iii. *Conditions of the sale of post-completion commodity properties*

Under the “Measures for Administration of Sale of Commodity Properties”, commodity properties may be put to post-completion sale only when the following preconditions have been satisfied: (a) The property development enterprise offering to sell the post-completion properties shall have a enterprise legal person business license and a qualification certificate of a property developer; (b) The enterprise has obtained a land use right certificate or other approval documents of land use; (c) The enterprise has the permit for construction project planning and the permit for construction; (d) The commodity commodities have been completed and been inspected and accepted as qualified; (e) The relocation of the original residents has been well settled; (f) The supplementary essential facilities for supplying water, electricity, heating, gas, communication, etc. have been made ready for use, and other supplementary essential facilities and public facilities have been made ready for use, or the schedule of construction and delivery date of have been specified; (g) The property management plan has been completed.

Before the post-completion sale of a commodity building, a property developer shall submit the Property Development Project Manual and other documents showing that the preconditions for post-completion sale have been fulfilled to the property development authority for making a record.

iv. *Regulations on sale of commodity properties*

According to the “Regulations on Administration of Development of Urban Property” and the Pre-completion Sale Measures, for the pre-completion sale of a commodity building, the developer shall sign a contract on the pre-sale of the commodity building with the purchaser. The developer shall, within 30 days upon signing the contract, apply for registration and record of contract for pre-completion sale commodity building to the relevant administrative departments governing the property and land administration department of the city or country governments. Property administrative department shall take the initiative to apply network information technology to gradually implement web-based registration of pre-sale contracts.

Pursuant to the “Circular of the General Office of the State Council on Forwarding the Opinion of the Ministry of Construction and Other Department on Doing a Good Job of Stabilising House Prices” on 9 May 2005, there are several regulations concerning commodity properties sale:

- The buyer of a commodity building is prohibited from conducting any transfer of the pre-sale of the commodity building that he has bought but is still under construction.

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Before completion and delivery of an advance sale commodity building to the advance buyer, and before the advance buyer obtains the individual property ownership certificate, the administrative department of property shall not handle any transfer of the commodity building. If there is discrepancy in the name of the applicant for property ownership and the name of the advance buyer in the advance sales contract, the property ownership registration administration shall not records the application of property ownership;

- Apply a real name system for house purchase; carry out an immediate archival filing network system for pre-sale contracts of commodity properties.

On 6 July 2006, the Ministry of Construction, NDRC, and the SAIC jointly enacted a Notice on Reorganising and Regulating Order in the Property Transactions, the details of which are as follows:

- The developer should start to sell the commodity properties within 10 days after receiving "Permit for Pre-completion Sale of commodity properties". Without this permit, the pre-completion sale of commodity properties, as well as subscription (including reservation, registration and number-selecting) and acceptance of the any kind of pre-sale payments, is forbidden;
- The property administration authority should establish an immediate network system for advance sales contracts of commodity properties and a system for the publication of property transaction information. The basic situation of the commodity building, the schedule of the sale and the rights status should be duly, truly and fully published in the network system and on the locale of sale. The advance buyer of a commodity building is prohibited from conducting any transfer of the advance sale of the commodity building that he has bought but is still under construction;
- Without the "Permit for Pre-completion Sale of commodity properties", no advertisement of the pre-completion sale of commodity properties can be allowed to publish;
- Property development enterprises with a record of serious irregularity or enterprises which do not satisfy the requirements of pre-completion sale of commodity properties is not allowed to take part in sale activities;
- The property administration authority should strictly carry out the regulations of the pre-completion sale contract registration and records and apply the real name system for property purchase.

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(c) *Mortgages of Property*

Under the “Real Rights Law of the People’s Republic of China” enacted by the National People’s Congress on 16 March 2007 and enforced on 1 October 2007, the “Urban Property Law” and the “The Security Law of the People’s Republic of China” enacted by the Standing Committee of the National People’s Congress on 30 June 1995 and enforced on 1 October 1995, and the “Measures on the Administration of Mortgage of Buildings in Urban Areas” enacted by the Ministry of Construction in May 1997 and revised on 15 August 2001, mortgage refers to the act of a debtor, or a third party, who, without transferring the occupancy of the properties, charge those properties as security for the creditor’s rights; when the debtor fails to pay his debt, the creditor has a right to obtain compensation, in accordance with the stipulations of this law, by converting the properties into money or seek preferential payments from the proceeds from the auction or sale of the concerned properties. The creditor’s rights that the mortgagor mortgaged shall not exceed the value of the properties mortgaged. After being mortgaged, the balance of value of the properties that exceeded the creditor’s rights can be mortgaged for a second time, but the sum of the mortgage shall not exceed the value of the balance. When a mortgage is created on the ownership of a building on state-owned land legally obtained, a mortgage shall be simultaneously created on the land use right of the land on which the building is erected. When the land use rights of State-owned lands acquired through means of assignment is 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 individually. When the buildings of the 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 has been signed, the parties to the mortgage shall register the mortgage with the property administration authority 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 property ownership certificate has been obtained legally, the registration authority shall make an entry under the “third party rights” item on the original property ownership certificate and then issue a Certificate of Third Party Rights to Property to the mortgagee. If a mortgage is created on the commodity building put to pre-completion 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.

(d) *Lease of buildings*

Under the “Urban Property Law” and the “Measures for Administration of Leases of Buildings in Urban Areas” enacted by the Ministry of Construction on 28 April 1995 and enforced on 1 June 1995, the parties to a lease of a building shall enter into a lease contract in writing which shall be effective upon signing by both parties. A system which has been adopted for registering 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. The term of a leased building and the related land shall not be more than 20 years.

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G. Property financing

According to the "Notice of the People's Bank of China on Regulating Home Financing Business" enacted by the People's Bank of China (the "PBOC") on 19 June 2001, all banks must comply with the following requirements before granting residential development loans, individual home 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 an amount of own capital no less than 30% of the total investment required of the project, the project itself must have been issued with a Land Use Rights Certificates, Construction Land Planning Permit, Construction Work Planning Permit and Permit of Construction Work.
- (b) In respect of the grant of individual home 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 home purchase loan to buy a pre-completion house, the said 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 properties have already been completed.

The PBOC issued the Circular on Further Strengthening the Management of Loans for Property Business on 5 June 2003 to specify the requirements for banks to provide loans for the purposes of property development and individual home mortgage as follows:

- (a) The property loan by commercial banks to property development enterprises shall be granted only under the title of property development loan and it is strictly forbidden to extent such loans as current capital loan for property development project or other loan item. No lending of any type shall be granted for projects which have not obtained the Land Use Right Certificates, Construction Land Permit, Construction Planning Permit and Construction Work Permit.
- (b) Commercial banks shall not grant loans to property developers to pay off land premium. and
- (c) Commercial banks may only provide mortgage loans to individual buyers when the main structural buildings have been topped out. When a borrower applies for individual home loans for his first residential unit, the down payment remains to be 20%. In respect of his loan application for additional purchase of residential unit(s), the percentage of the first instalment shall be increased.

Pursuant to the Guidance on Risk Management of Property Loans of Commercial Banks issued by China Banking Regulatory Commission on 2 September 2004, any property developer applying for property development loans shall have at least 35% of capital funds required for the development.

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According to the “Notice of the People’s Bank of China on the Adjustment of Commercial Bank Housing Loan Policies and the Interest Rate of Excess Reserve Deposit”, enacted by PBOC on 16 March 2005, starting from 17 March 2005, the down payment of individual home increased from 20% to 30% in cities and areas where property prices grow too quickly. The commercial banks can independently determine scope of such property price rise according to specific situations in different cities or areas.

On 24 May 2006, the State Council forwarded the “Opinion of the Ministry of Construction and Other Departments on Adjusting the Housing Supply Control Structure and Stabilising the Property Prices. The regulations provide the following:

- (a) Tightening the control of advancing loan facilities. The commercial banks are not allowed to advance their loan facilities to property developers who do not have the required 35% or more of the total capital for the construction projects. The commercial banks should be prudent in granting loan facilities and/or revolving credit facilities in any form to the property developers who have a large number of idle lands and unsold commodity properties. The commercial banks shall not accept mortgages of commodity properties remaining unsold for three years or longer, and the commercial banks shall not accept such commodity building as collateral for loans.
- (b) From 1 June 2006 and onward, purchasers need to pay a minimum of 30% of the purchase price as down payment. However, if purchasers purchase apartments with a floor area of 90 sq.m. or less for residential purposes, the existing requirement of 20% of the purchase price as down payment remains unchanged.

According to “Circular on Standardising the Admittance and Administration of Foreign Capital in Property Market” enforced on 11 July 2006, foreign-invested property development enterprises which have not paid up their registered capital fully, or failed to obtain a Land Use Right Certificate, or with under 35% of the capital for the project, will not be allowed to obtain a loan in or outside China, and foreign exchange administration departments shall not approve any settlement of foreign loans by such enterprises.

On 27 September 2007, the PBOC, CBRC jointly issued the “Notice on Strengthening the Administration of Commercial Real Estate Credit Loans” (《關於加強商業性房地產信貸管理的通知》), which further stipulates stringent requirements to the grant of loans in respect to the second and subsequent purchases of housing by individuals. For those who has used credit loans to purchase a housing and applied for purchasing the second (inclusive) or more housing, the down payment shall not be less than 40% of the total purchase price, while the interest rate of such loan shall not be lower than 1.1 times of the benchmark interest rate of the same grade for the same period as announced by the PBOC. Moreover, the ratio of the down payment and the level of the interest rate of the loan shall be substantially adjusted upwards according to the number of purchases. The specific increase range will be determined by commercial banks at their own discretion based on the relevant principles of credit risk management.

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H. Insurance of a property project

There are no mandatory provisions in the PRC laws, regulations and government rules which require a property developer to take out insurance policies for its property projects.

In light of the “Construction Law of the People’s Republic of China” enacted by the Standing Committee of the National People’s Congress on 1 November 1997 and enforced on 1 March 1998, construction enterprises must take out accident and casualty insurance for workers engaged in dangerous operations and pay insurance premium. In the “Opinions of the Ministry of Construction on Strengthening the Insurance of Accidental Injury in the Construction Work” by the Ministry of Construction on 23 May 2003, the Ministry of Construction further emphasises the importance of the insurance of accidental injury in the construction work and put forward the detailed opinions of guidance. The “Guidance on the Insurance of Accidental Injury in the Construction Work of Guangdong Province” enacted by construction department of Guangdong Province on 8 September 2004 prescribes the scope, object, term, coverage, amount and premium of insurance for accidental injury. Besides, the Guidance especially emphasises that the persons who have been already insured of work-related injury insurances still need to be insured of accidental injury insurance when he or she takes part in the on-site construction work. According to the common practice of the property industry in Guangdong, except for the accidental injury insurance, construction companies are usually required to submit insurance proposals in the course of tendering and bidding for construction projects. Construction companies shall pay for the insurance premium at their own costs and take out various types of insurance to cover their liabilities, such as property risks, third party’s liability risk, performance guarantee in the course of construction and all-risks associated with the construction and installation work throughout the construction period. The insurance cover for all the aforementioned risks shall cease immediately after the completion and acceptance upon inspection of construction.

I. Measures on Adjusting the Structure of Housing Supply and Stabilising Housing Price

The General Office of the State Council enacted the “Circular on Stabilising Housing Price” on 26 March 2005, requiring measures to be taken to restrain the housing price from increasing too fast and to promote the healthy development of the property market. On 9 May 2005, the General Office of the State Council issued the Opinion of the Ministry of Construction and other Departments on Doing a Good Job of Stabilising House Prices, the opinion provides that:

(a) *Intensifying the planning and control and improving the supply structure of houses*

Where the housing price is in excessive growth and where the supply of ordinary commodity houses with medium or low price and economical houses is insufficient, construction of residential properties should mainly involve projects of ordinary commodity houses with medium or low price and economical houses. The construction of low-density, upmarket houses shall be strictly controlled. With respect to construction projects of medium-or low-price ordinary commodity houses, before any grant of land, the municipal planning authority shall, according to the level of control required, set out conditions for planning and design 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 apartment sizes. Such conditions and requirements will be set out

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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 examined again, and those that turn out to be not in compliance with the planning permits will be revoked.

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

Where the price of land for residential use and residential properties grows too fast, the proportion of land for residential use to the total land supply should be appropriately raised, and the land supply for the construction of ordinary commodity houses with medium or low price and economical house should be emphatically increased. Land supply for villa construction shall continue to be suspended, and land supply for up-market housing property construction shall be strictly restricted.

(c) *Adjusting the policies of business tax on residential property house transfer and strictly regulating the collection and administration of tax*

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

(d) *Strictly Rectifying and Regulating the Market Order and Seriously Investigating into and Punishing Any Irregular and Rule-breaking Sales*

The buyer of a pre-completion commodity property is prohibited from conducting any transfer of the pre-sale commodity property that he has bought but is still under construction. A real name system for property purchase should be applied, and an immediate archival filing network system for advance sales contracts of commodity properties should be carried out.

On 24 May 2006, the State Council forwarded the “Opinion on Adjusting the Housing Supply Structure and Stabilising Property Prices (《關於調整住房供應結構穩定住房價格的意見》) (the “Opinion”) of the Ministry of Construction and other relevant government authorities. The Opinion provides the following:

i. *Adjusting the Housing Supply Structure*

- Developers must focus on providing small to medium sized ordinary commodity properties at low to mid-level prices to cater to the demands of local residents;

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- As of 1 June 2006, newly approved and newly commenced building construction projects must have at least 70% of the total construction work area designated for small apartments with floor areas of 90 sq.m. or below (including economically affordable apartments). If municipalities directly under the Central Government, cities listed on state plans (省會城市) and provincial capital cities (計劃單列市) have special reasons to adjust such prescribed ratio, they must obtain special approval from the Ministry of Construction. Construction projects that have been approved but have not yet obtained a construction permit must follow the prescribed ratio.
- ii. *Further adjustments by tax, loan and land policies*
- From 1 June 2006, business tax will be levied on the full amount of the sale proceeds on conveyance of residential properties within a period of five years from the date of purchase. If an individual sells his ordinary standard apartment after five or more years from the date of purchase, business tax will normally be exempted. If an individual sells his non-ordinary apartment after five or more years from the date of purchase, business tax will be levied on the balance between the selling price and the purchase price;
 - Commercial banks are not allowed to advance loan facilities to property developers who do not have the required 35% or more of the total capital for the construction projects. The commercial banks should be prudent in granting loan facilities and/or revolving credit facilities in any form to the property developers who have a large number of idle lands and unsold commodity apartments. Banks shall not accept mortgages of commodity apartments remaining unsold for three years or more;
 - From 1 June 2006 and onward, purchasers need to pay a minimum of 30% of the purchase price as down payment. However, if purchasers buy apartments of 90 sq.m. or less for residential purposes, the existing requirement of 20% of the purchase price as down payment remains unchanged;
 - At least 70% of the total land supply for residential property development must be used for developing small-to-medium-sized low-cost public housing. Based on the restrictions of residential property size ratio and residential property price, land supply will be granted by way of auction to the property developer who offers the highest bid. 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 restricted;
 - The relevant authorities will levy a higher surcharge against those property developers who have not commenced the construction work for longer than one year from the commencement date stipulated in the construction contract and will order them to set a date for commencing the construction work and a date of completion. The relevant authorities will confiscate without compensation the land from those property developers who have not commenced the construction work beyond two years from

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the commencement date stipulated in the construction contract without proper reasons. The relevant authorities will dispose of the idle land of those property developers who have suspended the construction work consecutively for one year without an approval, have invested less than one-fourth of the total proposed investment and have developed less than one-third of the total proposed construction area.

iii. *Reasonably Monitoring the Scope and Progress of Demolition of Urban Housing*

The management and reasonable control of the scope and progress of the demolition of urban housing should be strengthened to halter the excessive property growth triggered by passive means.

iv. *Further Rectifying and Regulating the Order of Property Properties Market*

- In order to ensure that the prescribed ratio regarding types and sizes is followed, the relevant authorities will need to re-examine the approval of those construction projects which have been granted planning permit but have not been commenced. The relevant authorities will ensure that no Planning Permit (規劃許可證), Construction Permit (施工許可證) or Permit for Pre-Sale of Commodity Properties (商品房預售許可證) is issued to those construction projects which do not satisfy the controlling requirements, in particular, the prescribed ratio requirement. If the property developers, without an approval, alter the architectural design, the construction items, and exceed the prescribed ratio, the relevant authorities have the power to dispose of the property and to confiscate the property in accordance with the law;
- The property administration authority and the administration of industry and commerce will investigate illegal dealings such as contract fraud cases in accordance with the law. The illegal conduct of pre-completion sale of commodity apartments without satisfying all the conditions will be ordered to stop and be imposed a proper administrative penalty in accordance with the law. For those property developers who maliciously manipulate the supply of commodity housing, the relevant authorities will imposed a proper administrative penalty including revoking the business licenses of those serious offenders and will pursue personal liability for those concerned.

v. *Gradually relieving the housing demands for low-income families*

To expedite the establishment of low-cost public housing supply system in various cities and counties; to monitor and regulate the construction of economically affordable apartments; to aggressively develop the second-hand property market and property rental market.

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vi. *Improving information disclosure system and system for collecting property statistics*

On 6 July 2006, the Ministry of Construction promulgated a supplemental Opinion on Carrying Out the Residential Property Size Ratio in Newly-Built Residential Buildings (Jianzhufang 2006 No. 165) (《關於落實新建住房結構比例要求的若干意見》) (“the Supplemental Opinion”). The Supplemental Opinion provides the following:

- As of 1 June 2006, of the newly approved and newly commenced construction projects in different cities including town and counties (from 1 June 2006 and onward), at least 70% of the total construction area must be used for building small apartments with unit floor area of 90 sq.m. or below (including economically affordable apartments);
- The relevant authorities in different localities must strictly follow the prescribed ratio requirement in their respective locality. The relevant authorities must ensure the conditions of newly built commodity apartments including the planning and the design, and must ensure that the property size ratio is adhered to. If a property developer has not followed the ratio requirement without providing proper reasons, the town planning authorities will not issue a Planning Permit. If the property developer has not followed the requirements of the Planning Permit, the relevant authority censoring the planning documents will not issue a certification, the construction authority will not issue a Construction Permit, and the property authority will not issue a Permit for pre-completion sale of the commodity apartments.

In the case of construction projects that were granted approval before 1 June 2006 but that were not granted a construction work permit by that date, the relevant local governments in different localities should ascertain the details of the projects and ensure that the prescribed residential property size ratio requirement is complied with.

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

A. Foreign-invested property service enterprises

According to the “Foreign Investment Industrial Guidance Catalogue”, property management falls within the Category of Permitted Foreign Investment Industries. According to the “Foreign Investment Industrial Guidance Catalogue” and the relevant requirements set out under the laws and the administrative regulations on foreign investment enterprises, a foreign invested property service enterprise can be set up in the form of Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or wholly foreign owned enterprise. Before the administration of Industry and Commerce registers a foreign investment enterprise as a foreign-invested property service enterprise, the foreign-invested property service enterprise should obtain an approval from the relevant department of commerce and receive a “foreign investment enterprise approval certificate”.

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B. Qualifications of a property service enterprise

According to the “Regulation on Property Management” enacted by the State Council on 8 June 2003, enforced on 1 September 2003 and revised on 26 August 2007, the state implements a qualification scheme system in monitoring the property service enterprises. According to the “Measures for Administration of Qualifications of Property Service Enterprises” enacted by the Ministry of Construction on 17 March 2004, enforced on 1 May 2004 and revised on 26 November 2007, a newly established property service enterprise shall, within 30 days from the date of receiving its business license, apply to the relevant local bureau in charge of the property management under the local government or to the municipalities directly under the Central Government for a grading assessment. The departments of qualification examination and approval will check and issue a “property management qualification certificate” corresponding to their grading assessment results.

According to the “Measures for the Administration on Qualifications of Property Service Enterprises”, and revised on 26 November, 2007 the qualifications of a property service enterprise shall be classified as class one, class two and class three. The competent construction department of the State Council shall be responsible for issuance and administration of the qualification certificate of the class one property service 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 class two property service enterprises, and the competent realty 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 classes two and three property service 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 class three property service enterprises.

The property service enterprises with the class one qualification may undertake various property management projects. The property service enterprises with the class two qualification may undertake the property management business of residential management projects of less than 300,000 sq.m. and the non-residential management projects of less than 80,000 sq.m. The property service enterprises with the class three qualification may undertake the property management business of residence projects of less than 200,000 sq.m. and non-residence projects under 50,000 sq.m.

C. Employment of a property service enterprise

According to the “Regulation on Property Management”, the general meeting of owners can select and dismiss the property service enterprises if the consent of both the owners holding 1/2 or more of the private building area out of the total building area and 1/2 or more of the relevant property owners has been obtained. If, before the formal employment of a property management by the owners or the general meeting, the construction unit is to employ a property service enterprise, it shall enter into a preparation stage property services contract in writing with the property service enterprise.