

**ESTABLISHMENT OF A REAL ESTATE DEVELOPMENT ENTERPRISE**

According to the PRC Law on Administration of Urban Real Estate 《城市房地產管理法》 promulgated by the National People's Congress, effective in January 1995, amended in August 2007, a real estate developer is defined as an enterprise that engages in the development and operation of real estate for the purpose of making profits. Under the Regulations on Administration of Development of Urban Real Estate 《城市房地產開發經營管理條例》 promulgated by the State Council in July 1998, an enterprise that is to engage in development of real estate must satisfy the following requirements:

- its registered capital must be RMB 1 million or more; and
- it must have four or more full-time professional real estate/construction technicians and two or more full-time accounting officers, each of whom must hold the relevant qualification certificate.

The local government of a province, autonomous region or municipality directly under the PRC central government may, based on local circumstances, impose more stringent requirements on the registered capital and the professional personnel of a real estate developer.

To establish a real estate development enterprise, the developer must apply for registration with the administration for industry and commerce. The developer must also report its establishment to the real estate development authority in the location of its registration, within 30 days of the receipt of its business license. Where a foreign-invested enterprise is to be established to engage in the development and operation of real estate, it must also comply with the relevant requirements under the PRC laws and administrative regulations regarding foreign-invested enterprises and apply for approvals relating to foreign investments in China.

Under the Catalog of Guidance on Industries for Foreign Investment 《外商投資企業指導目錄》 promulgated by MOFCOM and NDRC in October 2007,

- the development of a whole land lot, namely primary preparation of a land site including infrastructure construction and utility installation, solely by foreign investors, falls within the category of industries in which foreign investment is prohibited,
- the joint development of a whole land lot with the PRC partners, as well as the construction and operation of high-end hotels, villas, premium office buildings and international conference centers fall within the category of industries in which foreign investment is subject to restrictions, and
- other real estate development falls within the category of industries in which foreign investment is permitted.

A foreign investor intending to engage in the development and sale of real estate in China may establish an equity joint venture, a cooperative joint venture or a wholly foreign owned enterprise by the foreign investor in accordance with the PRC laws and administrative regulations governing foreign-invested enterprises.

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 in April 2004, the portion of capital-account funding for real estate projects (excluding affordable housing projects) has been increased from 20% or above to 35% or above. However, pursuant to the Notice on Adjusting the Percentage of Capital Fund for Investment Projects in Fixed Assets 《關於調整固定資產投資項目資本金比例的通知》 issued by the State Council in May, 2009, the minimum portion of the capital funding for ordinary commodity housing projects and affordable housing projects has been reduced to 20%, while that for other real estate projects has been decreased to 30%.

In July 2006, the Ministry of Construction, MOFCOM, NDRC, PBOC, SAIC and SAFE jointly issued an Opinion on Standardizing the Admittance and Administration of Foreign Capital in the Real Estate Market 《關於規範房地產市場外資進入和管理的意見》, which provides, among other things, that an overseas entity or individual investing in real estate in China other than for self-use must apply for the establishment of a foreign invested real estate enterprise (“FIREE”) in accordance with applicable PRC laws and may only conduct operations within the authorized business scope. The joint opinion attempts to impose additional restrictions on the establishment and operation of FIREE by regulating the amount of registered capital as a percentage of total investment in certain circumstances, limiting the validity of approval certificates and business licenses to one year, restricting the ability to transfer equity interests of a FIREE or its projects and prohibiting the borrowing of money from domestic and foreign lenders where its registered capital is not paid up or the land use rights not obtained. In addition, the joint opinion also limits the ability of foreign individuals to purchase commodity residential properties in China.

In May 2007, MOFCOM and SAFE issued the Circular on Strengthening and Regulating the Examination and Approval and Supervision of Foreign Direct Investment in the Real Estate Sector 《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》 (“Circular 50”). Under Circular 50, prior to applying for establishment of real estate companies, foreign investors must first obtain land use rights and building ownership, or must have entered into pre-sale or pre-grant agreements with respect to the land use rights or building ownership. If foreign-invested enterprises in China engage in real estate development or operations or if FIREEs in China engage in new real estate project developments, they must first apply to the relevant PRC governmental authorities to expand their scope of business or scale of operations in accordance with the PRC laws and regulations related to foreign investments. In addition, the local PRC governmental authorities must file with MOFCOM for record their approvals of establishment of FIREEs, and must exercise due control over foreign investments in high-end properties. Foreign exchange authorities may not allow capital-account foreign exchange sales and settlements by FIREEs that have been established in contravention of these requirements.

In July 2007, SAFE issued a Notice on the Distribution of the List of the First Group of Foreign Invested Real Estate Projects Filed with MOFCOM 《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》 (“Notice 130”), together with a list of FIREEs that had effected their filings with MOFCOM. According to Notice 130, SAFE will no longer process foreign debt registrations or applications by FIREEs for permission to purchase foreign exchange to service their foreign debt if such FIREEs have not obtained their approval certificates from the

government before June 1, 2007. As a result of Notice 130, unless the approval certificate of an FIREE as of May 31, 2007 contained an aggregate investment amount, which includes its registered capital and foreign debt amount, sufficient to permit foreign currency to be injected into its operations in China, such FIREE effectively will no longer be able to borrow foreign debt including shareholder loans and overseas commercial loans to finance their operations in China. It can only use its capital contributions instead. SAFE further provided in its Notice 130 that it will not process any foreign exchange registration (or change of such registration) or application for settlement of foreign currency under capital account by any FIREE if it has obtained the relevant approval certificates from local government authorities on or after June 1, 2007 but has not completed its filing with MOFCOM.

In connection with the filing requirement, MOFCOM issued the Notice on the Proper Filings of Foreign Investment in the Real Estate Sector 《關於做好外商投資房地產業備案工作的通知》 in June 2008 to authorize the competent MOFCOM at the provincial level to verify and check the filing documents.

### QUALIFICATIONS OF A REAL ESTATE DEVELOPER

Under the Provisions on Administration of Qualifications of Real Estate Developers 《房地產開發企業資質管理規定》 (the “Provisions on Administration of Qualifications”) promulgated by the Ministry of Construction in March 2000, a real estate developer must apply for registration of its qualifications according to such Provisions on Administration of Qualifications. An enterprise may not engage in property development without a qualification classification certificate for real estate development. The Ministry of Construction oversees the qualifications of real estate developers with national operations, and local real estate development authorities at or above the county level oversee the qualifications of local real estate developers.

In accordance with the Provisions on Administration of Qualifications, real estate developers are classified into four classes.

- Class 1 qualifications are subject to preliminary examination by the construction authorities at the provincial level and final approval of the Ministry of Construction. A class 1 real estate developer is not restricted as to the scale of its real estate projects and may undertake a real estate development anywhere in the country.
- Class 2 or lower qualifications are regulated by the construction authorities at the provincial level subject to delegation to lower level government agencies. A real estate developer of class 2 or lower may undertake a project with a gross floor area of less than 250,000 square meters subject to confirmation by the construction authorities at the provincial level.

Under the relevant PRC laws and regulations, the real estate development authorities will examine applications for registration of qualifications submitted by real estate developers by considering the professional personnel in their employ, financial condition and operating results. A real estate developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. A developer of any

qualification classification may only engage in the development and sale of real estate within its approved scope of business and may not engage in business which is limited to another classification.

For a newly established real estate developer, the real estate development authority will issue a provisional qualification certificate, if it is an eligible developer, within 30 days of receipt by the authority of the application. The provisional qualification certificate will be effective for one year from its date of issue and may be extended for not more than two additional years with the approval of the real estate development authority. The real estate developer must apply for qualification classification to the real estate development authority within one month before expiration of the provisional qualification certificate.

### DEVELOPMENT OF A REAL ESTATE PROJECT

Under the Catalog for Guidance on Industries for Foreign Investment promulgated by MOFCOM and NDRC in October 2007, foreign investments are restricted in the development of a whole land lot and the construction and operation of high-end hotels, villas, premium office buildings and international conference centers in China; and foreign investments are permitted in other real estate developments. 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 NDRC in October 2004, approval of NDRC is required for foreign investment projects with total investment of US\$100 million or more within the category of encouraged or permitted foreign investments and those with total investment of US\$50 million or more within the category of foreign investments subject to restrictions. Other foreign investments in China will require only local approval. Specifically, the local authorities may examine and approve foreign investment projects with total investment less than US\$100 million within the category of encouraged or permitted foreign investments and those with total investment less than US\$50 million within the category of foreign investments subject to restrictions. Furthermore, after examination by NDRC, approval of State Council is required for foreign investment projects with total investment of US\$500 million or more within the category of encouraged or permitted foreign investments and those with total investment of US\$100 million or more within the category of foreign investments subject to restrictions. In addition, the projects subject to restrictions should be approved by the development and reform authority at provincial level. In July 2008, NDRC issued the Notice on Further Reinforcing and Regulating the Administration of Foreign Investment Projects 《關於進一步加強和規範外商投資項目管理的通知》，which further requires that the capital-increase and reinvest projects of the foreign-invested enterprises shall get the approval from NDRC or its local counterpart.

Under the Interim Regulations of the People's Republic of China on Grant and Assignment of the Use Right of State-owned Urban Land 《城鎮國有土地使用權出讓和轉讓暫行條例》 promulgated by the State Council in May 1990, China adopted a system to grant and assign the right to use state-owned land. A land user must pay a land premium to the state as consideration for the grant of the right to use a land site within a specified period of time, and the land user may assign, lease out, mortgage or otherwise commercially exploit the land use rights within the term of use. Under the relevant PRC laws and regulations, the land administration authority at the city or county level may enter into a land grant contract with the

land user to provide for the grant of land use rights. The land user must pay the land premium as provided by the land use rights grant contract. After payment in full of the land premium, the land user may register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights. The relevant PRC laws and regulations provide that land use rights for a site intended for real estate development must be obtained through grant except for land use rights which may be obtained through premium-free allocation by the PRC government pursuant to the PRC laws or the stipulations of the State Council. Government-allocated land is not allowed to be transferred unless the transfer is approved by the relevant PRC government authorities and the land premium as determined by the relevant PRC government authorities has been paid.

When carrying out the feasibility study for a construction project, the construction or the developer entity must make a preliminary application for construction on the relevant site to the relevant land administration authority in accordance with the Measures for Administration of Examination and Approval for Construction Sites 《建設用地審查報批管理辦法》 promulgated by the Ministry of Land and Resources in March 1999 and the Measures for Administration of Preliminary Examination of Construction Project Sites 《建設項目用地預審管理辦法》 promulgated by the Ministry of Land and Resources in July 2001, as amended in October 2004. After receiving the preliminary application, the land administration authority will carry out preliminary examinations of various aspects of the construction project in compliance with the overall zoning plans and land supply policy of the government, and will issue a preliminary approval in respect of the project site if its examination proves satisfactory. The land administration authority at the relevant city or county will sign a land use rights grant contract with the land user and issue an approval for the construction site to the construction entity or the developer.

Under the Measures for Control and Administration of Grant and Assignment of Right to Use Urban State-owned Land 《城鎮國有土地使用權出讓轉讓規劃管理辦法》 promulgated by the Ministry of Construction in December 1992, the grantee under a land grant contract, i.e. a real estate developer, must further apply for a permit for construction site planning from the relevant municipal planning authority. After obtaining such permit, a real estate developer will organize the necessary planning and design work. Planning and design proposals in respect of a real estate development project are again subject to relevant reporting and approval procedures required under the Law of the People's Republic of China on Urban and Rural Planning 《中華人民共和國城鄉規劃法》 promulgated by the National People's Congress in October 2007 and local statutes on municipal planning. Upon approval by the authorities, a permit for construction works planning will be issued by the relevant municipal planning authority.

In accordance with the Regulations for the Administration of Demolishment and Removal of Urban Housing 《城市房屋拆遷管理條例》 promulgated by the State Council in June 2001, if demolition of existing structures and removal of existing residents on the construction site need to be conducted before commencement of construction of the real estate project contemplated, the developer may apply to the local municipal, district or county level government in the place where the real estate is located for a permit for demolition and removal. Upon approval, the local government will issue a demolition and removal permit and post a demolition and removal notice to inform the inhabitants of the area subject to

demolishment. The designated demolition and removal party, either a local government entity or a developer, must implement the demolition and removal within the area and period specified in the demolition and removal permit. If the demolition and removal party fails to complete the demolition and removal works within the permitted period, it may, within 15 days prior to the expiration of the permit, apply to the original approval department in charge of demolition and removal for an extension.

During the demolition and removal period announced by the department in charge of demolition and removal, the demolition and removal party and the parties subject to demolition and removal will enter into a written agreement for compensation and resettlement in respect of the demolition and removal. If the demolition and removal party and the parties subject to demolition and removal cannot reach an agreement, any such party may apply to the original approval department in charge of the demolition and removal for a ruling. Such a ruling must be rendered within 30 days of the application. If any such party disagrees with the ruling, it may initiate proceedings in a People's Court in China. Pursuant to current PRC laws, if the demolition and removal party has provided proper monetary compensation or proper replacement housing to the parties subject to demolition and removal, the demolition and removal may not be stopped.

Compensation for demolition and removal may be effected by way of monetary compensation or exchange of property rights. If the monetary compensation method is used, the amount of compensation is assessed on the basis of the real property market price determined by the location, uses and the gross floor area of the housing to be demolished. If property exchange or replacement is used, the demolition and removal party and the parties subject to demolition and removal will, on the basis of the location, usage and the gross floor area of the housing to be demolished and the housing offered for exchange or replacement, calculate the amount of compensation for the housing to be demolished, the price of the housing to be exchanged or replaced for the housing to be demolished, and work out the difference between the two. In addition to paying the demolition and removal compensation, the demolition and removal party will also pay removal allowance to the parties subject to demolition and removal.

When the site has been properly prepared and is ready for the commencement of construction works, the developer must apply for a permit for commencement of works from the construction authorities at or above the county level according to the Measures for Administration of Granting Permission for Commencement of Construction Works 《建築工程施工許可管理辦法》 promulgated by the Ministry of Construction in October 1999, as amended in July 2001. According to the Notice Regarding Strengthening and Regulating the Administration of Newly-commenced Projects 《國務院辦公廳關於加強和規範新開工項目管理的通知》 issued by the General Office of the State Council on November 17, 2007, before commencement of construction, all kinds of projects shall fulfill certain conditions, including, among other things, compliance with national industrial policy, development plan, land supply policy and market access standard, completion of all approval and filing procedures, compliance with zoning plan in terms of site and planning, completion of proper land use procedures and obtaining proper environmental valuation approvals and construction permit or report.

The development of a real estate project must comply with various laws and legal requirements on construction quality, safety standards and technical guidance on architecture, design and construction work, as well as provisions of the relevant contracts. On January 30, 2000, the State Council promulgated and implemented the Regulation on the Quality Management of Construction Projects 《建設工程質量管理條例》, which sets the respective quality responsibilities and liabilities for developers, construction companies, reconnaissance companies, design companies and construction supervision companies. In August 2008, the State Council issued the Regulations on Energy Efficiency for Civil Buildings 《民用建築節能條例》, which reduces the energy consumption of civil buildings and improves the efficiency of the energy utilization. According to this regulation, the design and construction of new buildings must meet the mandatory criteria on energy efficiency for buildings, and failure to meet such criteria will result in no neither commencement of construction or acceptance upon completion. Among other things, this regulation sets forth additional requirements for property developers in the sale of commodity buildings in this respect. After completion of construction works for a project, the real estate developer must organize an acceptance examination by relevant government authorities and experts according to the Interim Provisions on Inspection Upon Completion of Buildings and Municipal Infrastructure promulgated by the Ministry of Construction in June 2000, and file with the construction authority at or above the county level where the project is located within 15 days after the construction is qualified for the acceptance examination according to the Provisional 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 Ministry of Construction in April 2000. The developer must also report details of the acceptance examination according to 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 Ministry of Construction in April 2000. A real estate development project may not be delivered until and unless it has satisfactorily passed the necessary acceptance examination. Where a property project is developed in phases, an acceptance examination may be carried out for each phase upon completion.

In China, there are two registers of property interests. Land registration is effected by the issue of land use right certificates by the relevant authorities to the land users. Land use rights may be assigned, mortgaged or leased. The building registration is effected by the issue of property ownership certificates to the property owners. Property or building ownership rights are only related to the building or improvements erected on the land. Under the PRC laws and regulations, all land use rights and property ownership rights that are duly registered are protected by law. Most cities in China maintain separate registries for the registration. However, Shenzhen, Shanghai, Guangzhou and some other major cities have a consolidated registry for both land use rights and the property ownership interests for the building erected on the relevant land.

**LAND FOR PROPERTY DEVELOPMENT**

In April 1988, the National People's Congress amended the PRC Constitution to permit the transfer of land use rights in accordance with the laws and regulations. In December 1988, the National People's Congress amended the Land Administration Law 《土地管理法》 to permit the transfer of land use rights in accordance with the laws and regulations.

Pursuant to the Measures on Disposal of Idle Land 《閑置土地處置辦法》 promulgated by the Ministry of Land and Resources on April 28, 1999, idle land fees may be imposed on land that has not been developed for one year from the contractual construction commencement date. Land use rights may be forfeited to the government without compensation to the developer if the land has not been developed for two years as required by the laws and regulations, and allotted for other purposes. Under current PRC laws and regulations on land administration, land for property development may be obtained only by grant except for land use rights obtained through allocation. Under the Regulations on the Grant of State-owned Land Use Rights Through Public Tender, Auction and Listing-for-Sale promulgated by the Ministry of Land and Resources 《招標拍賣掛牌出讓國有土地使用權規定》 in May 2002, land for commercial use, tourism, entertainment and commodity housing development must be granted by public tender, auction or listing-for-sale. Under these regulations, the relevant land administration authority at city or county level, or the grantor, is responsible for preparing the public tender or auction documents and must make an announcement 20 days prior to the day of public tender or auction with respect to the particulars of the land parcel and the time and venue of the public tender or auction. The grantor must also verify the qualification of the bidding and auction applicants, accept an open public auction to determine the winning tender or hold an auction to ascertain a winning bidder. The grantor and the winning tender or bidder will then enter into a confirmation followed by the execution of a contract for assignment of state-owned land use rights. Over the years, the Ministry of Land and Resources has promulgated further rules and regulations to define the various circumstances under which the state-owned land use rights may be granted by means of public tender, auction and listing-for-sale or by agreement.

Under the Regulation on Grant of State-owned Land Use Rights by Agreements 《協議出讓國有土地使用權規定》 promulgated by the Ministry of Land and Resources on June 11, 2003, except for the project that must be granted through tender, auction and listing as required by the relevant laws and regulations, land use right may be granted through transfer by agreement and the land premium for the transfer by agreement of the state-owned land use right shall not be lower than the benchmark land price.

The Urgent Notice on Further Governing and Rectifying Land Market and Strengthening Administration of Land 《關於深入開展土地市場治理整頓嚴格土地管理的緊急通知》 issued by the General Office of the State Council on April 29, 2004 restated the principle of strict administration of the approval process for the construction land and protection of the basic farmlands.



The Notice on Issues Relating to Strengthening the Land Control 《關於加強土地調控有關問題的通知》 promulgated by the State Council on August 31, 2006 sets forth the administration of the receipt and disbursement of the land premium, modifies the tax policies relating to the construction land, and builds up the system of publicity for the standards of the lowest price with respect to the granted state-owned land use right.

In March 2007, the National People's Congress adopted the PRC Property Rights Law 《中華人民共和國物權法》, which became effective on October 1, 2007. According to the Property Rights Law, when the term of the right to use construction land for residential (but not other) purposes expires, it will be renewed automatically. Unless it is otherwise prescribed by any law, the owner of construction land use rights has the right to transfer, exchange, and use such land use rights as equity contributions or collateral for financing. If the state takes the premises owned by entities or individuals, it must compensate the property owners in accordance with law and protect the lawful rights and interests of the property owners.

In September 2007, the Ministry of Land and Resources further promulgated the Regulations on the Grant of State-owned Construction Land Use Rights Through Public 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》 to require that land for industrial use, except land for mining, must also be granted by public tender, auction and listing-for-sale. Only after the grantee has paid the land premium in full under the land grant contract, can the grantee apply for the land registration and obtain the land use right certificates. Furthermore, land use rights certificates may not be issued in proportion to the land premium paid under the land grant contract.

On October 28, 2007, the Standing Committee of National People's Congress promulgated the PRC City and Countryside Planning Law 《中華人民共和國城鄉規劃法》, pursuant to which, a construction planning permit must be obtained from the relevant urban and rural planning government authorities for building any structure, fixture, road, pipeline or other engineering project within an urban or rural planning area.

On November 19, 2007, the Ministry of Land and Resources, the Ministry of Finance and PBOC jointly promulgated the Administration Measures on Land Reserve 《土地儲備管理辦法》, pursuant to which, local authorities should reasonably decide the scale of land reserve in accordance with the macro-control of the land market. Those idle, unoccupied, and low-efficient state-owned construction land inventory shall be used as land reserve in priority.

In December, 2007, the Ministry of Land and Resources promulgated the Rules on Land Registration 《土地登記辦法》, which further stresses payment in full of the land premium prior to the application for the registration of state-owned construction land use rights.

### **SALE OF COMMODITY HOUSES**

Under the Measures for Administration of Sale of Commodity Houses 《商品房銷售管理辦法》 promulgated by the Ministry of Construction in April 2001, sale of commodity houses can include both sales before the completion of the properties, or pre-sale, and sales after the completion of the properties.

Any pre-sale of commodity buildings must be conducted in accordance with the Measures for Administration of Pre-sale of Commodity Buildings in Urban Area promulgated by the Ministry of Construction in November 1994 《城市商品房預售管理辦法》, as amended in August 2001 and July 2004, and other related regulations. The pre-sale regulations provide that any pre-sale of commodity properties is subject to specified procedures. According to the current PRC laws and regulations, a pre-sale permit must be in place before a commodity building may be put to pre-sale. Specifically, a developer intending to sell a commodity building before its completion must apply to the real estate development authorities for a pre-sale permit. A commodity building may be sold before completion only if:

- the purchase price has been paid in full for the grant of the land use rights involved and a land use rights certificate has been properly obtained;
- a construction planning permit and a construction permit have been properly obtained;
- funds invested in the development of the commodity buildings for pre-sale represent 25% or more of the total investment in the project and the construction progress as well as the completion and delivery dates have been properly ascertained; and
- a pre-sale permit has been obtained.

The pre-sale proceeds of commodity buildings must be used to develop the relevant project so pre-sold.

Commodity buildings may be put to post-completion sale and delivery after they have passed the acceptance examination and otherwise satisfy the various preconditions for such sale. Before the post-completion sale of a commodity building, the developer must, among other things, submit a real estate development project manual and other documents relating to the project evidencing the satisfaction of the preconditions for post-completion sale to the real estate development authority for its record.

## **TRANSFER OF REAL ESTATE**

According to the PRC laws and the Provisions on Administration of Transfer of Urban Real Estate 《城市房地產轉讓管理規定》 promulgated by the Ministry of Construction in August 1995, as amended in August 2001, a real estate owner may sell, gift or otherwise legally transfer the property to another natural 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 together. The parties to a transfer must enter into a written real estate transfer contract and register the transfer with the real estate administration authority having jurisdiction over the location of the real estate within 90 days of the execution of the transfer contract.

Where the land use rights are originally obtained by grant, the real property may only be transferred on the condition that:

- the land premium has been paid in full for the granted land use rights as required by the land grant contract and a land use rights certificate has been properly obtained; 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; or
- in case of a whole land lot development project, construction works have been carried out as planned, water supply, sewerage, electricity supply, heat supply, access roads, telecommunications and other infrastructure or utilities have been made available, and the site has been leveled and made ready for industrial or other construction purposes.

If the land use rights are originally obtained by grant, the term of the land use rights after transfer of the real estate will be the remaining portion of the original term in the land grant contract. In the event that the assignee intends to change the use of the land provided in the land grant contract, consent must first be obtained from the original land use rights grantor and the planning administration authority at the relevant city or county and an agreement to amend the land grant contract or a new land grant contract must be signed in order to, *inter alia*, change the use of the land and adjust the land premium accordingly.

If the land use rights are originally obtained by allocation, such allocated land use right may be changed to granted land use rights upon approval by the government vested with the necessary approval power as required by the State Council. After the government authorities vested with the necessary approval power approve such change, the grantee must complete the formalities for the grant of the land use rights and pay the land premium according to the relevant statutes. Assignment of Land for commercial use, tourism, entertainment and commodity housing development must be conducted through public tender, auction or listing-for-sale under the current PRC laws and regulations.

### **LEASES OF BUILDINGS**

Under the PRC laws and the Measures for Administration of Leases of Buildings in Urban Areas 《城市房屋租賃管理辦法》 promulgated by the Ministry of Construction in May 1995, parties to a lease of a building must enter into a lease contract in writing. China has adopted a system to register the leases of real properties. When a lease contract is signed, amended or terminated, the parties must register the details with the real estate administration authority at the city or county in which the building is situated.

### **MORTGAGES OF REAL ESTATE**

Under the PRC Urban Real Estate Administration Law 《中華人民共和國城市房地產管理法》 promulgated by the Standing Committee of the National People's Congress in July 1994, the PRC Security Law 《中華人民共和國擔保法》 promulgated by the National People's Congress in

June 1995, and the Measures for Administration of Mortgages of Urban Real Estate 《城市房地產抵押管理辦法》 promulgated by the Ministry of Construction in May 1997, as amended in August 2001, when mortgage is created on the ownership of a building legally obtained, such mortgage must be simultaneously created on the land use rights of the land on which the building is situated. The mortgagor and the mortgagee must sign a mortgage contract in writing. China has adopted a system to register mortgages of real estate. After a real estate mortgage contract has been signed, the parties to the mortgage must register the mortgage with the real estate administration authority at the location where the real estate is situated. A real estate mortgage contract will become effective on the date of registration of the mortgage. If a mortgage is created on the real estate in respect of which a property ownership certificate has been obtained legally, the registration authority will, when registering the mortgage, make an entry under “third party rights” on the original property 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 on works in progress, the registration authority will, when registering the mortgage, record the details on the mortgage contract. If construction of a real property is completed during the term of a mortgage, the parties involved will re-register the mortgage of the real property after issue of the certificates evidencing the rights and ownership to the real estate.

The PRC Property Rights Law promulgated in March 2007 that became effective in October 2007 further widens the scope of assets that can be mortgaged, allowing for any asset associated with property rights to be mortgaged as collateral unless a specific prohibition under another law or regulation applies.

According to the PBOC Notice on Regulating Home Financing Business 《關於規範住房金融業務的通知》 promulgated in June 2001, all banks must comply with the following requirements before granting residential development loans, individual home mortgage loans and individual commercial property mortgage loans:

- Property development loans from banks may only be granted to real estate developers with development qualification and credit ratings in the higher categories. Such loans may be offered to residential projects with good market potential. While the borrowing enterprise’s internal capital may not be less than 30% of the total investment required for the project, the project must have obtained the land use rights certificate, construction land planning permit, construction works planning permit and construction permit.
- In respect of the grant of individual home mortgage loans, the ratio between the loan amount and actual value of the collateral may never exceed 80%. Where an individual applies for a home 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-storey buildings and “two-thirds of the total investment completed” for high-rise apartment buildings.

- In respect of the grant of individual commercial use building mortgage loans, the mortgage ratio for commercial use building mortgage loans may not exceed 60% with a maximum loan period of 10 years and the subject commercial use building already completed.

The down-payment requirement was subsequently increased to 30% of the property price for residential units with a unit floor area of 90 square meters or more in May 2006. You may refer to “— Measures on Stabilizing Housing Price” below. The initial capital outlay requirement was subsequently increased to 35% by CBRC in August 2004 pursuant to its Guidance on Risk Management of Property Loans Granted by Commercial Banks 《商業銀行房地產貸款風險管理指引》.

In a Circular on Facilitating the Continuously Healthy Development of Property Market 《關於促進房地產市場持續健康發展的通知》 issued by the State Council in August 2003, a series of measures were adopted by the government to control the property market. They included, among others, strengthening the construction and management of low-cost affordable houses, increasing the supply of ordinary commodity houses and controlling the construction of high-end commodity houses. Besides, the government also staged a series of measures on the lending for residential development, including, among others, improving the loan evaluation and lending process, improving the guarantee mechanism of individual home loans and strengthening the monitoring over property loans. It is expected that the circular will have a positive effect on the development of the PRC property market in the long run by facilitating a continuously healthy growth of the property market in China.

In September 2007, PBOC and CBRC promulgated a Circular on Strengthening the Management of Commercial Real-estate Credit Loans 《關於加強商業性房地產信貸管理的通知》, with a supplement issued in December 2007. The circular aims to tighten the control over real-estate loans from commercial banks to prevent granting excessive credit. The measures include:

- for a first-time home owner, increasing the minimum amount of down payment to 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 square meters or more and the purchaser is buying the property as its own residence;
- for a second-time home buyer, increasing (i) the minimum amount of down payment to 40% of the purchase price of the underlying property and (ii) the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark one-year bank lending interest rate. If a member of a family (including the buyer, his/her spouse and their children under 18) has financed the purchase of a residential unit, any member of the family that buys another residential unit with bank loans will be regarded as a second-time home buyer;
- for a commercial property buyer, (i) requiring banks not to finance any purchase of pre-sold properties, (ii) increasing the minimum amount of down payment to 50% of the purchase price of the underlying property, (iii) increasing the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark one-year bank lending

interest rate, (iv) limiting the terms of such bank loans to no more than 10 years, although the commercial banks are given certain flexibility based on its risk assessment;

- for a buyer of commercial/residential dual-purpose properties, increasing the minimum amount of down payment to 45% of the purchase price of the underlying property, with the other terms to be decided by reference to commercial properties; and
- prohibiting commercial banks from providing loans to real-estate developers who have been found by relevant government authorities to be hoarding land and properties.

In addition, commercial banks are also banned from providing loans to the projects that have less than 35% of capital funds (proprietary interests), or fail to obtain land use right certificates, construction land planning permits, construction works planning permits or construction permits. Commercial banks are also prohibited from accepting commercial premises that have been vacant for more than three years as collateral for loans. In principle, real-estate development loans provided by commercial banks should only be used for the projects where the commercial banks are located. Commercial banks may not provide loans to property developers to finance the payment of land premium.

According to the Notice on Extending the Downward Range of the Interest Rate for Commercial Personal Home Loans and Supporting the Residents in First-time Purchase of Ordinary Residential Homes 《擴大商業性個人住房貸款利率下浮幅度支持居民首次購買普通住房的通知》 issued by PBOC on October 22, 2008, the minimum amount of down payment has been adjusted to 20% since October 27, 2008.

## **REAL ESTATE MANAGEMENT**

Under the Measures for the Administration of Qualifications of Property Service Enterprises 《物業管理企業資質管理辦法》 promulgated by the Ministry of Construction in March 2004, as amended in November 2007, a property service enterprise must apply for assessment of its qualification by the relevant qualification approval authority. An enterprise which passes such a qualification assessment will be issued a qualification certificate. No enterprise may engage in property management without undertaking a qualification assessment conducted by the relevant authority and obtaining a qualification certificate.

## **INSURANCE**

There is no mandatory provision under the PRC laws, regulations and government rules which require a property developer to take out insurance policies for its real estate developments. According to the common practice of the property industry in China, construction companies are usually required to submit insurance proposals in the course of tendering and bidding for construction projects. Construction companies must pay for the insurance premium at their own costs and take out insurance to cover their liabilities, such as third party's liability risk, employer's liability risk, risk of non-performance of contract in the course of construction

and other kinds of risks associated with the construction and installation works throughout the construction period. The insurance coverage for all these risks will cease immediately after the completion and acceptance upon inspection of construction.

### MEASURES ON STABILIZING HOUSING PRICE

The General Office of the State Council promulgated a Circular on Stabilizing Housing Price 《關於切實穩定住房價格的通知》 in March 2005, introducing measures to be taken to restrain the housing price from increasing too fast and to promote a stable development of the real estate market. In April 2005, the Ministry of Construction, NDRC, the Ministry of Finance, the Ministry of Land and Resources, PBOC, the State Administration of Taxation and CBRC jointly issued an Opinions on Stabilizing Housing Prices 《關於做好穩定住房價格工作的意見》 containing the following guidance:

- Where the housing price is growing too fast, while the supply of ordinary commodity houses at medium or low prices and low-cost affordable houses is insufficient, the housing construction should mainly involve projects of ordinary commodity houses at medium or low prices and low-cost affordable houses. The construction of low-density, high-end houses should be strictly controlled. The relevant local government authorities are authorized to impose conditions on planning and design such as the building height, plot ratio and green space and to impose such requirements as the selling price, type and gross floor area as preconditions on land assignment. The local governments are also required to strengthen their supervision of real estate developments in their jurisdictions.
- Where the price of land for residential use and the price for residential housing are growing too fast, the proportion of land supply for residential use to the total land supply should be appropriately raised, and the land supply for the construction of ordinary commodity houses at medium or low prices and low-cost affordable houses should be especially increased. Land supply for villa construction should continue to be suspended, and land supply for high-end housing property construction should be strictly restricted.
- Idle land fee must be imposed on land that has not been developed for one year from the contractual construction commencement date. Land use rights of land that has not been developed for two years must be forfeited without compensation.
- Commencing from June 1, 2005, a business tax upon transfer of a residential house by an individual within two years from his/her purchase will be levied on the entire sales proceeds from such sale. For an individual to transfer an ordinary residential house after two years from his/her purchase, the business tax will be exempted. For an individual to transfer a property other than an ordinary residential house after two years from his/her purchase, the business tax will be levied on the difference between the price of such sale and the original purchase price.

- Ordinary residential houses with medium or small gross floor areas and at medium or low prices may be granted preferential treatment such as planning permits, land supply, credit and taxation. Houses enjoying these preferential policies must satisfy the following conditions in principle: the plot ratio is above 1.0, the gross floor area of one single unit is less than 120 square meters, and the actual transfer price is lower than 120% of the average transfer price of comparable houses at comparable locations. The local governments at the provincial level may, based on their actual local circumstances, formulate specific standards for ordinary residential houses that may enjoy the preferential policies.
- Transfer of unfinished commodity properties by any pre-sale purchaser is forbidden. In addition, purchasers are required to buy properties in their real names. Any commodity property pre-sale contract must also be filed with the relevant government agencies electronically immediately after its execution.

The Notice on Adjustment of the Housing Loan Policy and Deposit Rate of Excess Reserve for Commercial Banks 《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 PBOC on March 16, 2005, has made adjustment to individual housing loan policies of commercial banks as well as individual housing fund loan rate. Pursuant to this notice, the preferential mortgage loan interest rate was replaced by the commercial loan interest rate subject to certain restrictions on the lower limit on such interest rates. In the urban areas or cities with rapidly increased real estate prices, minimum down payment ratio for individual housing loans was adjusted from 20% to 30%. In May 2006, the Ministry of Construction, NDRC, PBOC and other relevant PRC government authorities jointly issued their Opinions on Housing Supply Structure and Stabilization of Property Prices 《關於調整住房供應結構穩定住房價格意見的通知》. Such opinions reiterated the existing measures and ushered additional measures that aim to further curb rapid increases in property prices in large cities and to promote healthy development of the PRC property market. These measures include:

- requiring that at least 70% of the land supply approved by a local government for residential property development for any given year must be used for developing low-to medium-cost and small-to medium-size units and low-cost rental properties;
- requiring that at least 70% of residential projects approved or constructed on or after June 1, 2006 must consist of units with a unit floor area of less than 90 square meters per unit and that projects which have received approvals prior to this date but have not obtained construction permits must adjust their planning in order to be in conformity with this new requirement, with the exception that municipalities under direct administration of the PRC central government, such as Beijing, Chongqing and Shanghai, provincial capitals and certain other cities may deviate from such ratio under special circumstances upon approval from the Ministry of Construction;
- increasing the minimum amount of down-payment from 20% to 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 square meters or more, effective from June 1, 2006;



- prohibiting commercial banks from lending to real estate developers with an internal capital ratio, calculated by dividing the internal funds by the total project capital required for the relevant projects, of less than 35%, restricting the grant or extension of revolving credit facilities to property developers holding a large amount of idle land and vacant commodity properties, and prohibiting commercial banks from accepting commodity properties which have been vacant for more than three years as security for their loans; and
- imposing a business tax levy on the entire sales proceeds from transfer of properties if the holding period is shorter than five years, effective from June 1, 2006, as opposed to two years when such levy was initially implemented in June 2005, and allowing such business tax to be levied on the difference between the price for such re-sale and the original purchase price in the event that an individual transfers a property other than an ordinary residential property after five years from his/her date of purchase.

In May 2006, the Ministry of Land and Resources published an Urgent Notice to Tighten Up Land Administration 《當前進一步從嚴土地管理的緊急通知》. In this notice, the Ministry of Land and Resources stressed that local governments must adhere to their annual overall land use planning and land supply plans and tighten up the control on land supply for non-agricultural use. The notice requires local governments to suspend the supply of land for new villa projects to ensure adequate supply of land for more affordable housing. In this notice, the Ministry of Land and Resources also required the local governments to conduct thorough investigations of illegal land use and submit a report on such investigations to the Ministry by the end of October 2006.

In July 2006, the Ministry of Construction, NDRC, the Ministry of Commerce, PBOC, the State Administration for Industry and Commerce, and SAFE jointly issued an Opinion on Regulating the Access and Management of Foreign Capital in the Real Estate Market 《關於規範房地產市場外資准入和管理的通知》(the “171 Opinion”). The 171 Opinion aims to tighten access by foreign capital to the PRC real estate market and to restrict property purchases in China by foreign institutions or individuals. It provides, among others, that a foreign institution or individual must establish a foreign-invested enterprise in order to purchase real property in China if the property is not intended for self use. The registered capital of such foreign-invested enterprise must amount to at least 50% of its total investments in PRC real properties if the amounts of such investments exceed US\$10 million. Branches and representative offices of foreign institutions in China and foreign individuals who work or study in China for more than one year may purchase real property for their own use but not for any other purposes. In addition, foreign institutions which have no branches or representative offices in China or foreign individuals who work or study in China for less than a year are prohibited from purchasing any real property in China. In September 2006, SAFE and the Ministry of Construction jointly issued a Notice in Respect of Foreign Exchange Issues in the Real Estate Market 《關於規範房地產市場外匯管理有關問題的通知》(the “47 Notice”) to implement the 171 Opinion. The 47 Notice provides specific procedures for purchasing real properties by foreign institutions and foreign individuals. The 47 Notice also forbids a foreign invested real estate enterprise to apply for

overseas loans if it has failed to pay its registered capital in full or failed to obtain the land use rights certificates, or its own capital funds do not reach 35% of the total investment for the project.

In July 2006, the Ministry of Construction, NDRC and the State Administration of Industry and Commerce jointly issued a Notice on Reorganizing and Regulating Orderly Real Estate Transactions 《關於進一步整頓規範房地產交易秩序的通知》 with the following requirements:

- The developer is required to commence the pre-sale of the commodity properties within 10 days after receiving pre-sale permits. Without pre-sale permits, the pre-sale of commodity properties as well as subscription (including reservation, registration and number-selecting) and acceptance of any kind of pre-sale payments are forbidden.
- The real estate administration authority is required to establish an immediate network system for pre-sales contracts of commodity properties and a system for the publication of real estate transaction information. The transaction information, including the basic information 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. Transfer of a commodity building which is pre-sold and still under construction is prohibited.
- Without the pre-sale permit, no advertisement of the pre-sale of commodity properties may be published.
- Real estate development enterprises with a record of serious irregularity or enterprises which do not satisfy the requirements of pre-sale of commodity properties are not allowed to take part in the sales activities.
- The real estate administration authority is required to strictly carry out the pre-sale contract registration and require purchasers to use their real names for property purchases.

On July 22, 2006, CBRC promulgated a Notice on Further Strengthening the Administration of Real Estate Credit 《關於進一步加強房地產信貸管理的通知》. The notice (i) prohibits providing loans to disqualified real estate developers including those whose own capital is less than 35% of the total capital required for the projects (not including affordable housing projects), or who have not obtained the relevant land use right certificates, construction land planning permits, construction work planning permits or construction work commencement permits; and (ii) prevents real estate developers from obtaining loans by project split-up or rolling-ahead development strategies.

On September 30, 2007, the Ministry of Land and Resources issued the Notice on Implementation of the State Council's Certain Opinions on Resolving Difficulties and Further Strengthening Macro-control of Land Supply 《關於認真貫徹國務院〈關於解決城市低收入家庭住房困難的若干意見〉進一步加強土地供應調控的通知》, pursuant to which, at least 70% of the

land supply arranged by the relevant land administration authority at city or county level for residential property development for any given year must be used for developing low- to medium-cost and small-to medium-size units, low-cost rental properties and affordable housing.

In November 2007, the PRC government revised its Catalog of Guidance on Industries for Foreign Investment by, among other things, removing the development of ordinary residences from the foreign-investment-encouraged category and adding the secondary market residential property trading and brokering into the foreign-investment-restricted category.

On July 29, 2008, PBOC and CBRC jointly issued the Notice on Financially Promoting the Saving and Intensification of Use of Land 《關於金融促進節約集約用地的通知》, requiring that relevant financial institutions to strengthen the administration of construction land project loans, including the administration of commercial real estate credit loan.

In October, 2008, PBOC issued the Notice on Extending the Downward Range of the Interest Rate for Commercial Personal Home Loans and Supporting the Residents in First-time Purchase of Ordinary Residential Homes 《擴大商業性個人住房貸款利率下浮幅度支持居民首次購買普通住房的通知》, pursuant to which, since October 27, 2008, the bottom limit of the interest rate applicable to the commercial personal home loans has been extended, the minimum amount of down payment has been adjusted to 20% and the interest rate applicable to personal home loans financed by provident fund has been also reduced.

On October 22, 2008, the Ministry of Finance and the State Administration of Taxation issued the Notice on the Adjustments to Taxation on Real Property Transactions 《關於調整房地產交易環節稅收政策的通知》, pursuant to which, since November 1, 2008, the rate of deed tax has been reduced to 1% for a first-time home buyer of an ordinary residence with a unit floor area less than 90 square meters, individuals who sell or purchase residential properties are temporarily exempted from stamp duty and who sell residential properties are temporarily exempted from land value-added tax.

On December 20, 2008, the General Office of the State Council issued the Several Opinions on Facilitating the Healthy 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 aims to, among other things, encourage the consumption of the ordinary residence and support the real estate developer to handle the market change. Pursuant to this opinion, in order to encourage the consumption of the ordinary residence, from January 1, 2009 to December 31, 2009, business tax is imposed on the full amount of the sale income, upon the transfer a non-ordinary residence by an individual within two years from the purchase date. For the transfer of non-ordinary residence which is more than two years from the purchase date and ordinary residence which is within two years from the purchase date, the business tax is to be levied on the difference between the sale income and the purchase price. In the case of a ordinary residence, the business tax is exempted if that transfer occurs after two years from the purchase date. Furthermore, individuals with an existing ordinary residence that is smaller than the average size for their locality may buy a second ordinary residence under favorable loan terms similar to first-time buyers. In addition, support for real estate developers to deal with the changing market is to be provided by increasing credit financing services to “low-to-medium-

level price” or “small-to-medium-sized” ordinary commercial housing projects, particularly those under construction, and providing financial support and other related services to real estate developers with good credit standing for merger and acquisition activities.

On December 29, 2008, the Ministry of Finance and the State Administration of Taxation issued the Notice on the Policy of Business Tax on Re-sale of Personal Residential Properties 《關於個人住房轉讓營業稅政策的通知》, which reiterates the measures set forth in the above Several Opinions on Facilitating the Healthy Development of the Real Estate Market regarding the business tax.

### **OVERSEAS LISTING**

In August 2006, MOFCOM, the State Assets Supervision and Administration Commission, the State Administration of Taxation, the State Administration of Industry and Commerce, the China Securities Regulatory Commission, and SAFE jointly adopted the Regulations on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors 《關於外國投資者併購境內企業的規定》, as amended on June 22, 2009, or the New M&A Rule, which became effective on September 8, 2006. This New M&A Rule requires, among other things, that offshore special purpose vehicles, formed for overseas listing purposes through acquisitions of PRC domestic companies controlled by PRC companies or individuals, obtain the approval of the China Securities Regulatory Commission prior to publicly listing their securities on an overseas stock exchange. In September 2006, China Securities Regulatory Commission published a notice on its official website specifying documents and materials required to be submitted to it by special purpose vehicles seeking China Securities Regulatory Commission approval of their overseas listings.

### **ENVIRONMENTAL PROTECTION**

The laws and regulations governing the environmental protection requirements for real estate development in China include the PRC Environmental Protection Law 《中華人民共和國環境保護法》, the PRC Prevention and Control of Noise Pollution Law 《中華人民共和國環境噪聲污染防治法》, the PRC Environmental Impact Assessment Law 《中華人民共和國環境影響評價法》 and the PRC Administrative Regulations on Environmental Protection for Development Projects 《中華人民共和國建設項目環境保護管理條例》. Pursuant to these laws and regulations, depending on the impact of the project on the environment, an environmental impact report, an environmental impact analysis table or an environmental impact registration form must be submitted by a developer before the relevant authorities grant approval for the commencement of construction of the property development. In addition, upon completion of the property development, the relevant environmental authorities will also inspect the property to ensure compliance with the applicable environmental protection standards and regulations before the property can be delivered to the purchasers.

### **FOREIGN EXCHANGE CONTROLS**

Under the PRC Foreign Currency Administration Rules 《中華人民共和國外匯管理條例》 promulgated in 1996 and revised in 1997 and as amended in 2008 and various regulations issued by SAFE and other relevant PRC government authorities, Renminbi is convertible into

other currencies for the purpose of current account items, such as trade related receipts and payments and the payment interest and dividend. The conversion of Renminbi into other currencies and remittance of the converted foreign currency outside China for the purpose of capital account items, such as direct equity investments, loans and repatriation of investment, requires the prior approval from SAFE or its local office. Payments for transactions that take place within China must be made in Renminbi. Unless otherwise approved, PRC companies may repatriate foreign currency payments received from abroad or retain the same abroad. Foreign-invested enterprises may retain foreign exchange in accounts with designated foreign exchange banks subject to a cap set by SAFE or its local office. Foreign exchange proceeds under the current accounts may be either retained or sold to a financial institution engaging in settlement and sale of foreign exchange pursuant to relevant rules and regulations of the State. For foreign exchange proceeds under the capital accounts, approval from SAFE is required for its retention or sale to a financial institution engaging in settlement and sale of foreign exchange, except where such approval is not required under the rules and regulations of the State.

In October 2005, SAFE issued a Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Reverse Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies 《關於境內居民通過境外特殊目的公司境外融資及返程投資外匯管理有關問題的通知》. According to the notice, a special purpose company refers to an offshore company established or indirectly controlled by PRC residents for the special purpose of carrying out financing of their assets or equity interest in PRC domestic enterprises. Prior to establishing or assuming control of a special purpose company, each PRC resident, whether a natural or legal person, must complete the overseas investment foreign exchange registration procedures with the relevant local SAFE branch. The notice applies retroactively. These PRC residents must also amend the registration with the relevant SAFE branch in the following circumstances: (1) the PRC residents have completed the injection of equity investment or assets of a domestic company into the special purpose company; (2) the overseas funding of the special purpose company has been completed; (3) there is a material change in the capital of the special purpose company. Under the rules, failure to comply with the foreign exchange registration procedures may result in restrictions being imposed on the foreign exchange activities of the violator, including restrictions on the payment of dividends and other distributions to its offshore parent company, and may also subject the violators to penalties under the PRC foreign exchange administration regulations.

In August 29, 2008, SAFE issued the Circular on the Relevant Operating Issues Concerning the Improvement of the Administration of the Payment and Settlement of Foreign Currency Capital of Foreign-Invested Enterprises 《關於完善外商投資企業外匯資本金支付結匯管理有關業務操作問題的通知》, or Circular No. 142. Pursuant to Circular No. 142, a foreign-invested enterprise's Renminbi fund received from the settlement of its foreign currency capital must be used within the business scope as approved by the government authority that approved the establishment of such foreign-invested enterprise, and such Renminbi fund cannot be used for domestic equity investment unless it is otherwise provided for.