

## REGULATORY OVERVIEW

This section sets out summaries of certain aspects of PRC laws and regulations, which are relevant to our Group’s operations and business. These include laws and regulations relating to land, real property development, foreign investment in property development, foreign exchange control and taxation. Such laws and regulations impact the PRC real estate industry as a whole. However, we believe that we have not been directly affected by them and are unable to quantify the impact of such laws and regulations on our performance.

### The Real Property System of the PRC

#### *Grant of Land Use Rights*

All land in the PRC is either State-owned or collectively-owned, depending on the location of the land. All land in the urban areas of a city or town is State-owned, and all land in the rural areas of a city or town and all rural land is, unless otherwise specified by law, collectively-owned. The State has right to resume land in accordance with law if required for the public interest. Although all land in the PRC is owned by the State or by collectives, private individuals, enterprises and other organizations are permitted to hold, lease and develop land for which they are granted land use rights in accordance with relevant PRC laws and regulations.

In April 1988, the PRC Constitution was amended by the National People’s Congress (全國人民代表大會) to allow the transfer of land use rights for value. In December 1998, the *PRC Land Administration Law* (《中華人民共和國土地管理法》) (the “**Land Administration Law**”) was amended to permit the transfer of land use rights for value.

Under the *Provisional Regulations of the PRC Concerning the Grant and Transfer of the Right to Use State-owned Land in Urban Areas* (《中華人民共和國城鎮國有土地使用權出讓和轉讓暫行條例》) (“**Urban Land Regulations**”) promulgated in May 1990 by the State Council, local governments at or above county level have the authorities to grant land use rights for specific purposes and a definite period to a land user pursuant to a contract for the grant of land use rights upon payment of a grant premium.

Under the Urban Land Regulations, the maximum term of a land grant ranges from 40 years to 70 years depending on the type and purposes of land use listed as follows:

<u>Use of land</u>	<u>Maximum period (in years)</u>
Commercial, tourism, entertainment . . . . .	40
Residential . . . . .	70
Industrial . . . . .	50
Education, science and technology, culture, health and sports . . . . .	50
Comprehensive and others . . . . .	50

Under the Urban Land Regulations, all local and foreign enterprises are permitted to acquire land use rights unless the law provides otherwise. The PRC Government may not resume possession of lawfully granted land use rights prior to expiration of the term of grant. If public interest requires the

resumption of possession by the PRC Government under special circumstances during the term of grant, compensation must be paid by the PRC Government. A land user may lawfully assign, mortgage or lease its land use rights to a third party for the remainder of the term of grant. Upon expiration of the term of grant, renewal is possible subject to the execution of a new contract for the grant of land use rights and payment of a premium. If the term of the grant is not renewed, the land use rights and ownership of any buildings thereon will revert to the PRC Government without compensation.

Under the Urban Land Regulations, there are three methods by which land use rights may be granted, namely by agreement, tender or auction.

In accordance with the *Rules on Grant of State-owned Land Use Rights by Way of Tender, Auction and Listing-for-sale* (《招標拍賣掛牌出讓國有土地使用權規定》) effective as at July 1, 2002, land use rights for the purposes of commercial use, tourism, entertainment and commodity residential properties shall only be granted through tender, auction or listing-for-sale. The rules provide that (i) such grant of land for commercial use is conducted openly and fairly, for instance, the local land bureau, when deciding on land use purpose of a certain piece of land, must take into account various social, economic and planning considerations, and its decision of land use designation is subject to approval by the city or provincial government; (ii) the announcement of tender, auction or listing-for-sale shall be made 20 days prior to the date of the beginning of the tender, auction or listing-for-sale; and (iii) for listing-for-sale, the time period of accepting bids shall not be less than ten days.

On August 31, 2006, the State Council promulgated 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》) (the “**Notice 31**”), which provides that the PRC Government shall, according to land status and regional land use policy, set forth the minimum price for the granting of land for industrial use, and make public announcement for such minimum price. Such minimum price shall not be lower than the sum of the original land acquisition cost, the cost for land pre-development and relevant statutory fees. Land for industrial use must be granted by way of tender, auction or listing-for-sale, and the granting price shall not be lower than the announced minimum price. The Notice 31 also provides that granting land at a price lower than the minimum price or providing any subsidy or refund for land grant shall be illegal. On April 4, 2007, the Ministry of Land and Resources and the Ministry of Supervision (監查部) jointly promulgated the *Notice Regarding Carrying out the Granting System for Industrial-used Land by way of Tender, Auction or Listing-for-sale* (《國土資源部、監察部關於落實工業用地 招標拍賣掛牌出讓制度有關問題的通知》), which provided that, if local government has, before the issuance date of the Notice 31, signed industrial project investment agreement, identified land scale and price, and if relevant approval procedures for converting such land from agricultural-used land to non-agricultural-used land and for expropriating such land have been completed, such land can be granted by way of agreement. The grant agreement shall be signed before June 30, 2007, otherwise, the land shall be granted by way of tender, auction or listing-for-sale.

On March 16, 2007, the National People’s Congress promulgated the *PRC Properties Rights Law* (the “**Properties Rights Law**”) (《中華人民共和國物權法》) effective on October 1, 2007, which stipulates that the construction land use rights may be created through grant or allocation. However,

creation of the construction land use rights by way of allocation shall be strictly restricted. Public bidding, such as invitation to tender and auction, shall be adopted for the assignment of the land (1) which is with operational uses such as industrial, commercial, tourism, entertainment and commercial housing, or (2) where there are two or more intending land users for the same parcel of land.

In accordance with the *Regulations on the Grant of State-owned Construction Land Use Rights through 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》) issued by the Ministry of Land and Resources on September 28, 2007 and effective as at November 1, 2007, land for industrial use, commercial use, tourism, entertainment, and commodity housing development shall be granted by means of tender, auction or listing-for-sale. No land use rights certificates shall be issued before all the land premium has been fully paid up pursuant to the land use rights grant contract and the land use rights certificates shall not be issued separately according to the proportion of the payment of the land premium.

Where land use rights are granted by way of tender, invitations to tender will be issued by the local land and resources bureau. The invitation shall set out the terms and conditions upon which the land use rights are proposed to be granted. A committee will be established by the relevant local land and resources bureau to consider tenders which have been submitted. The successful bidder will then be asked to sign the grant contract with the local land and resources bureau and pay the relevant land premium within a prescribed period. The land and resources bureau will consider the following factors: the successful bidder shall be either the bidder who can to the utmost extent satisfy the comprehensive evaluation criteria of the tender, or who can satisfy the substantial requirements of the tender and also offers the highest bid.

Where land use rights are granted by way of auction, a public auction will be held by the relevant local land and resources bureau. The land use rights are granted to the bidder with the highest bid. The successful bidder will be asked to enter into a grant contract with the local land and resources bureau.

Where land use rights are granted by way of listing-for-sale, a public notice will be issued by the local land and resources bureau to specify the location, area and purpose of use of land and the initial bidding price, period for receiving bidding and terms and conditions upon which the land use rights are proposed to be granted. The land use rights are granted to the bidder with the highest bid and which satisfies the terms and conditions. The successful bidder will then enter into a grant contract with the local land and resources bureau.

On June 11, 2003, the Ministry of Land and Resources promulgated 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》). According to such regulation, if there is only one potential land user on a piece of land, the land use rights (excluding land use rights used for business purposes, such as commercial, tourism, entertainment and commodity residential properties) may be granted by way of agreements. The local land and resources bureau, together with other relevant government authorities including the city planning authority, will formulate the plan concerning issues including the specific location, boundary, purpose of use, area, term of grant, conditions of use, conditions for planning and design as well as the proposed land

premium, which shall not be lower than the minimum price regulated by the State, and submit such plan to the relevant government for approval. The local land and resources bureau and the intending land user will negotiate and enter into the land use rights grant contract based on such plan. If there are two or more intending land users for the same parcel of land, the land use rights shall be granted by way of tender, auction or listing-for-sale.

### *Withdrawal of Land*

According to the *PRC Urban Real Estate Administration Law* (《中華人民共和國城市房地產管理法》) (the “**Urban Real Property Law**”) as promulgated and amended by the Standing Committee of the National People’s Congress on July 5, 1994 and August 30, 2007 respectively, where a real property development is carried out on land for which the land use rights are acquired by means of grant, the land must be developed in line with the specified use for the land and the deadline for commencement of development set out in the land use rights grant contract. Where the development does not commence within one year from the specified date set out in the land use rights grant contract, an idle land fee may be charged at a rate equivalent to not more than 20% of the relevant land premium. Where the development does not commence within two years from the specified date, the relevant land use rights may be withdrawn without compensation, except where the commencement of construction is delayed due to force majeure, an act of the government or relevant government departments, or delays in preliminary work necessary for the commencement of development. According to the *Measures on Disposal of Idle Land* (《閒置土地處置辦法》) promulgated by the Ministry of Land and Resources on April 28, 1999, a parcel of land can be defined as idle land under any of the following circumstances:

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

Where the land is deemed “idle land”, the Ministry of Land and Resources or its county level branches shall inform the land user and prepare a plan for the disposal of the idle land. Where the land is mortgaged, the mortgagee shall be informed to participate in the preparation of the disposal plan. The Ministry of Land and Resources and its county level branches are responsible for implementing

the disposal plan after such plan has been approved by the government which originally approved the use of the land.

The methods of disposal of idle land include, among others, the following:

- i. extending the development and construction period by no more than one year;
- ii. changing the use of the land, and continuing development and construction upon handling certain procedures; and
- iii. arranging for temporary use of the land and re-approving the development after the original project satisfies the construction conditions, where the land has appreciated in value, the government will increase the land premium in accordance with the appreciated value.

Where the land is idle due to acts of government or relevant government authorities and the land user has partly paid the compensation or requisition fee for the land, in addition to the methods provided above, the government may acknowledge the relevant land can be continuously used by the original land user for the part of land which the land user has paid the compensation or requisition fee; while the remaining part of the land will be withdrawn by the government.

### ***Termination of Land Use Rights***

A land use rights terminates upon the expiration of the term of the grant specified in the land use rights grant contract and the resumption of that right. Upon expiry, the land use rights and ownership of the related buildings erected thereon and other attachments may be acquired by the State without compensation. The land user will take steps to surrender the land use rights certificate and cancel the registration of the certificate in accordance with relevant regulations. A land user may apply for renewal of the land use rights and, if the application is granted, the land user is required to enter into a new land use rights grant contract, pay a premium and effect appropriate registration for the renewed right.

The State generally will not withdraw a land use rights before the expiration of its term of grant and for special reasons (such as in the public interests). If the State needs to withdraw a land use rights for special reasons, it must offer proper compensation to the land user, having regard to the surrounding circumstances and the period for which the land use rights has been enjoyed by the user.

### ***Document of Title***

In the PRC, title registration consists of land registration and property registration. Land registration is achieved by the issuance of a land use rights certificate by the relevant authority to the land user. It is the evidence that the land user has obtained land use rights which can be transferred or mortgaged. The property registration is achieved by the issuance of a property ownership certificate (房屋所有權證) to the property owner. It is the evidence that the property owner has obtained property ownership rights in respect of the property erected on a piece of land. According to the Properties Rights Law, the *Land Registration Measures* (《土地登記辦法》) promulgated by the Ministry of Land and

Resources on December 30, 2007 and the Property Registration Measures (《房屋登記辦法》) promulgated by the Ministry of Construction on February 15, 2008, all land use rights and property ownership rights which are duly registered are protected by the law.

In most cities in the PRC, the above registration systems are separate systems. However, in Xiamen and some other cities where the major real estate projects are located, the two systems have been consolidated and a single composite real estate ownership certificate (房地產權証) will be issued evidencing both the land use rights and the ownership of the property erected thereon.

### *Transfer*

After land use rights relating to a particular area of land have been granted by the State, unless any restriction is imposed, the party to whom such land use rights are granted may transfer such land use rights for a term not exceeding the term which has been granted by the State. Land use rights cannot be transferred if the provisions of the grant contract, with respect to the prescribed period and conditions of investment, development and use of the land, have not been complied with. In addition, different areas in the PRC have different conditions which must be fulfilled before the respective land use rights can be transferred.

All transfers of land use rights must be evidenced by a written contract between the parties which must be registered with the relevant local land bureau at municipality or county level. Upon a transfer of land use rights, all rights and obligations contained in the contract pursuant to which the land use rights were originally granted by the State are deemed to be incorporated as part of the terms and conditions of such transfer, depending on the nature of the transaction.

Under the Urban Real Property Law, real property that has not been registered and of which a title certificate has not been obtained in accordance with the law may not be transferred. Also, under the Urban Real Property Law, if land use rights are acquired by means of grant, the real property shall not be transferred before the following conditions have been met: (i) the premium for the grant of land use rights must have been paid in full in accordance with the land use rights grant contract and a land use rights certificate must have been obtained; (ii) investment or development must have been made or carried out in accordance with terms of the land use rights grant contract; (iii) more than 25% of the total amount of investment or development must have been made or completed; and (iv) where the investment or development involves a large tract of land, conditions for use of the land for industrial or other construction purposes have been satisfied.

### *Mortgage*

The grant of mortgages in the PRC is governed by the *PRC Security Law* (《中華人民共和國擔保法》) (the “**Security Law**”) and the Properties Rights Law as well as relevant laws regulating real estate. Any mortgage contract must be in writing and must contain specified provisions including (i) the type and amount of the indebtedness secured; (ii) the period of the obligation by the debtor; (iii) the name, quantity, and ownership of the land use rights of the mortgaged property; and (iv) the scope of the mortgage. For mortgages of urban real properties, new buildings on a piece of land after a mortgage has been entered into will not be subject to the mortgage.

The validity of a mortgage depends on the validity of the mortgage contract, possession of the real estate certificate and/or land use rights certificate of the mortgagor and registration of the mortgage with authorities. If the loan in respect of which the mortgage was given is not duly repaid, the mortgagee may sell the property to settle the outstanding amount and return the balance of the proceeds from the sale or auction of the mortgaged property to the mortgagor.

### *Leasing*

Leasing of urban properties is governed by the *Measures for Administration of Leasing of Urban Properties* (《城市房屋租賃管理辦法》) (the “**Leasing Measures**”) promulgated by the Ministry of Construction on May 9, 1995 and effective as at June 1, 1995, which was formulated in accordance with the Urban Real Property Law. Under the Leasing Measures, property owners in the PRC are entitled to lease their properties, and landlord and tenants are required to enter into a written lease contract which must contain certain specified provisions. The contract has to be registered with the relevant property administrative authority at municipality or county level within 30 days after its execution. The term of such contract cannot be longer than the remainder of the term under the land use rights grant contract. The tenant may, upon obtaining consent from the landlord, sublease the premises.

According to the Urban Real Property Law, where the owner of the property erected on state owned land leases his/her property and that the land use rights were obtained through allocation for the purpose of profit making, any proceeds derived from the land in the form of rent must be paid to the State.

### *Measures on Adjusting Real Property Industry*

On August 12, 2003, the State Council published the *Notice by the State Council on Facilitating Sustained and Healthy Development of Real Estate Market* (《國務院關於促進房地產市場持續健康發展的通知》), which provides a series of measures to control the property market, including but not limited to increasing the supply of ordinary residential houses, controlling the construction of high-end commodity buildings, and strengthening the supervision of the real property administration. The purpose of the notice is to create a positive influence on the long-term development of the property market in China.

In order to stop illegal occupation and abusive use of land, prevent overheating in investment in fixed assets in some areas, and implement strict protection of cultivated land, the General Office of the State Council issued 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》) on April 29, 2004. The issues addressed in the notice including, (i) continuing the rectification of the land market by cooperation between the Ministry of Land and Resources and other authorities on problems existing in the grant of State-owned land use rights for business use by way of tender, auction or listing-for-sale; (ii) strictly administering approvals of construction land; (iii) protecting basic agricultural land; (iv) strictly implementing the general strategy and annual plan for land use, and the balance system for occupying and compensating cultivated land; and (v) actively promoting the reform of the administration system of land and resources. Also, according to the notice, the rectification of

the land market will take approximately half a year from the issuance of the notice. Approvals for converting agricultural land to non-agricultural construction land will be suspended throughout China during this period, except for certain major public infrastructure projects which shall be approved by the State Council.

On March 26, 2005, the General Office of the State Council promulgated the *Notice on Effectively Stabilizing House Prices* (《關於切實穩定住房價格的通知》) to restrain the excessive growth of house prices and promote the sound development of the property market. The notice provided that housing prices should be stabilized and the system governing housing supply should be vigorously adjusted and improved. In accordance with the notice, seven departments of the State Council issued the *Opinion on Duly Stabilizing the Prices of Residential Properties* (《關於做好穩定住房價格工作的意見》) on April 30, 2005. The opinion stated, among others, that: (i) 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 buildings at medium or low price range and economical buildings should be emphatically increased. Land supply for villa construction shall be continuously suspended, and land supply for high-end housing property construction shall be restricted; (ii) to curb any speculation in the property market, business taxes would be levied from June 1, 2005 on the total revenue arising from any transfer by individuals of houses within two years upon their purchase thereof or on the difference between the transfer price and the original price for any transfer of non-ordinary houses (非普通住宅) by individuals after two or more years upon their purchase thereof, while business taxes would be exempted for the transfer of an ordinary residential property as stipulated by relevant PRC laws after two years from date of purchase; and (iii) the property registration authorities will no longer register the transfer of apartment units which have been pre-sold but have not obtained the relevant property ownership certificates.

On May 24, 2006, the General Office of the State Council further issued the *Opinions on the Adjustment of Housing Supply Structure and Stabilization of Housing Prices* (《關於調整住房供應結構穩定住房價格意見的通知》). The opinions provided for six broad measures including but not limited to the following specific directives to (i) encourage mass-market residential developments and to curb the development of high-end residential properties; (ii) enforce the collection of business taxes on property sales (as at June 1, 2006, business taxes will be levied on the entire sale price of any property sold within five years, or on the profit arising from any non-ordinary property sold after five years); (iii) restrict housing mortgage loan to not more than 70% of the total property price (for houses purchased for self-residential purposes and with an area of less than 90 sq.m., the owners are still able to apply for housing mortgage up to an amount representing 80% of the total property price); (iv) halt land supply for villa projects and restrict land supply for high-end, low density residential projects; (v) moderate the progress and scale of demolition of old properties for redevelopment; (vi) local governments are also required to ensure that at least 70% of the total development and construction area must consist of units of less than 90 sq.m. in size (with any exceptions requiring the approval of the Ministry of Construction); and (vii) banks are not permitted to provide loans to a property developer whose total capital fund is less than 35% of the total investment amount in an intended development project. To the property developers with a large amount of idle land and vacant commodity buildings, commercial banks should restrict the grant or extension of

revolving credit facilities in any form pursuant to the prudence principle. Commodity buildings which are vacant for more than 3 years should not be accepted as an object of pledge by the commercial banks.

On May 30, 2006, the Ministry of Land and Resources published the *Urgent Notice on Further Tighten up Land Administration* (《關於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 requires the local governments to conduct thorough investigations of illegal land use and submit a report on such investigations to the Ministry of Land and Resources by the end of October 2006. The government authority should rigidly execute the “Form Text of the State-owned Land-Use Rights Grant Contract” (國有土地使用權出讓合同示範文本) and “Form Text of the State-owned Land-Use Rights Grant Supplementary Agreement (for Trial Implementation)” (國有土地使用權出讓合同補充協議示範文本 (試行)) jointly promulgated by the Ministry of Land and Resources and the SAIC. The documents of the land grant should ascertain the requirements of planning, construction and land use such as the restriction of the dwelling size, plot ratio, and the time limit for the commencement and completion of construction. All these should be set forth in the land use rights grant contract.

On July 6, 2006, the Ministry of Construction promulgated the *Certain Opinions Regarding the Implementation of the Ratio Requirement for the Structure of Newly Constructed Residential Units* (the “**Certain Opinions**”) (《關於落實新建住房結構比例要求的若干意見》). The Certain Opinions provide that as at June 1, 2006, as to the total area of the newly approved and newly commenced construction projects in each city including town and county in any given year, 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). In the case of residential property projects that were granted approvals before June 1, 2006 but without a permit for commencement of construction works by that date, the relevant local governments should ensure that the prescribed residential property size ratio requirement is complied with.

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 Macrocontrol 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》) to further enhance the control of land supply, which stipulates that the supply of the land to be developed for low-rent housing, economical housing and housing at low or medium price and of small or medium size shall be no less than 70% of the total land supply of the current year; the land resources authorities shall control the area of each parcel of land and increase the number of parcels of land to be supplied, in order to prevent the coemption of land by property developers. Property developers shall develop their land according to the terms of the relevant land use rights grant contract, and any violation thereof may restrict or prevent such property developers from participating in future land bidding. Generally, the development period of each parcel of land shall not exceed three years.

In order to control the land market and promote reasonable land utility, the Ministry of Land and Resources, the Ministry of Finance and the PBOC jointly promulgated the *Administration Measures on Land Reserve* (《土地儲備管理辦法》) on November 19, 2007, which regulates the earlier stage land development and land reserve by land reserve entities which are affiliates of the land resources authorities at city or county level, before the land resources authorities grant land according to relevant laws and regulations. The enterprises shall be elected through public tender to conduct the earlier stage land development involving road development, supply of water, power and gas, telecommunications, lighting, landscaping and land leveling etc. according to applicable laws and regulations.

On January 3, 2008, the State Council of China issued the Notice on Promoting the Saving and Intensification of Use of Land (the “**State Council Notice**”) (《國務院關於促進節約集約用地的通知》國發[2008]3號). The State Council Notice stipulates that the enforcement measures in respect of idle land must be implemented strictly. Pursuant to the State Council Notice, (i) for any idle land without commencement of construction for more than two years, the local government should, if required under PRC law, order forfeiture of such idle land without any compensation, or take other actions to fully utilize such idle land, and (ii) for any idle land without commencement of construction for no less than one year (but less than two years), the local government should levy certain idle land fees on idle land, especially in the case of land used for property development, the amount of which shall be equal to 20% of the land use rights grant premium paid for such idle land. Department of finance and taxation shall implement and perfect the tax policy of encouraging economical and intensive land use strictly. The Ministry of Land and Resources and concerned departments shall study and formulate specific measures for enactment and registration of the land space rights timely. In addition, the State Council Notice provides, among other things, the following: transfer of land use rights for operational use must be conducted through the public bidding and auction process; no provision of land for villa property development projects; regarding provision of land for residential property development projects, certain provisions must be inserted into land use rights grant contracts to ensure that no less than 70% of the total GFA of such granted land (for residential property development) be used for construction of economic lease housing (廉租房), economic use housing (經濟適用房), price-limit housing (限價房) and small and medium normal commercial housing (with each unit of no more than 90 sq.m.) (90平方米以下中小套型普通商品房). Moreover, financial institutions are urged (i) not to provide financing to illegal property development projects, and (ii) to take precautionary measures in determining whether to provide financing to those property development projects which, upon one year after such construction comment date as stipulated in relevant land use rights grant contracts, have only completed less than one-third of the approved land development area or have only invested less than one-fourth of the approved total investment.

On October 22, 2008, the Ministry of Finance and the State Administration of Taxation jointly issued the Notice on Adjusting the Taxation Policies with Regard to Real Estate Transactions (《關於調整房地產交易環節稅收政策的通知》), effective as at November 1, 2008, which aims to reduce the personal taxation obligations in housing transaction and encourages first-time buyers to purchase ordinary residential properties. The key taxation policies stipulated by the notice are as follows:

- (i) for first-time home buyers of ordinary residential property with a unit floor area of less than 90 sq.m., the deed tax has been lowered from the original tax rate (which varies from

province to province) to 1%, and the certification for the first home buying will be issued by the local housing and construction authorities at county or district level;

- (ii) the stamp duty is exempted for individual residential property purchases or sales; and
- (iii) Land Appreciation Tax is exempted for individual residential property sales.

On December 8, 2008, the State Council issued the Opinions on Finance to Boost the Economic Development (《國務院辦公廳關於當前金融促進經濟發展的若干意見》), which provides that relevant credit policies and measures shall be stipulated and performed to support first-time home buyers' purchases of ordinary residential properties and second-time home buyers' purchases of ordinary residential properties for improvement, experiments of real estate investment trusts may be carried out, and the financing channels for real estate developers shall be broadened.

On December 20, 2008, the General Office of the State Council promulgated the Several Opinions Concerning Boosting 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》). The opinions stated incentives to build more houses for low-income urban families, encourage purchasing of ordinary residential properties, support real estate developers to actively deal with the changing market, enhance the responsibility of local governments in stabilizing the real estate market, and improve surveillance on the real estate market. The relevant policies are as follows:

- (i) The government will allow people with smaller-than-average apartments to buy a second apartment using commercial loans on the same preferential terms as applied when they bought the first apartment;
- (ii) Business tax shall be exempted if the property owners of ordinary residential property sell the property after two years from the purchase. Previously, they had to wait at least five years before selling houses tax-free. If they sell their properties within two years from the purchase, owners only have to pay business taxes levied on the profit, not on the sales price. Same applies to property owners of non-ordinary residential property who sell the property after two years from the purchase, in which case they only have to pay business taxes levied on the profit, and not the sales price. Previously, this time limit was five years. The abovementioned policies are tentatively effective till December 31, 2009;
- (iii) The government will support developers' reasonable financing needs, and increase credit help for developers of low-price units catering to low-income groups; and
- (iv) The urban real estate tax will be abolished and the Provisional Regulations of the People's Republic of China on Real Estate Tax (《中華人民共和國房產稅暫行條例》) shall be applicable to all domestic enterprises, foreign-invested enterprises and individuals.

On May 25, 2009, the State Council issued the Circular of the State Council Concerning the Adjustment of Capital Ratio of Fixed Assets Investment Projects (《國務院關於調整固定資產投資項目資本金比例的通知》), decreasing the minimum capital ratio of social welfare residential properties and ordinary commodity residential properties from 35% to 20%. The minimum capital ratio of other real estate development projects is decreased from 35% to 30%.

## **PRC Properties Rights Law**

According to the Properties Rights Law, the property rights of the State, collective parties and private individuals as well as property rights of other rights holders, shall be protected by the law and shall not be infringed by any unit or individual. The State shall protect equal legal status and development rights of all market entities.

### **Property Rights**

According to the Properties Rights Law, when the term of the right to use construction land for residential property expires, it shall be renewed automatically. The Properties Rights Law leaves open the issue as to whether property owners need to pay land premium again at renewal. Unless it is otherwise prescribed by any law, the owner of construction land use rights has the right to transfer, exchange, use as equity contributions, endow or mortgage the construction land use rights.

According to the Properties Rights Law, collectively-owned land and properties and other real properties of units and individuals may be requisitioned pursuant to the authority and procedures stipulated by the law for the needs of public interest. The adequate amount of land compensation fee, relocation subsidy and compensation for attachments on the ground and young crops shall be paid for requisition of collectively-owned land, social security fees shall be arranged for farmers affected by the land requisition, the livelihood of farmers affected by the land requisition shall be assured and the legitimate rights and interests of farmers affected by the land requisition shall be safeguarded. Compensation for resettlement shall be made pursuant to the law for requisition of properties and other real properties of units and individuals, the legitimate rights and interests of the persons affected by the requisition shall be safeguarded; in the case of requisition of residential property of individuals, the living conditions of the individuals affected by the requisition shall be assured.

### **Registration of Real Property**

According to the Property Rights Law, registration of rental property shall be handled by the registration authority at the location of the real property. A uniform registration system over rent property shall be practiced by the State. The scope, authority and measures of uniform registration shall be specified by the related laws and administrative regulations.

At present, registration practice varies between localities. In many parts of the PRC, different government authorities are in charge of the registration of land and properties respectively. A uniform registration system nationwide would be highly desirable and offer better protection to property rights owners and their financiers.

A party who has entered into an agreement on sale and purchase of housing property or other property rights of other real property may, for the purpose of ensuring future realization of the property rights, may apply to the registration authority for pre-registration. Where, following the pre-registration, the real property is disposed of without the consent of the rights holder in the pre-registration, the property rights shall be invalid.

## Security

The Property Rights Law widens significantly the scope of assets that can be mortgaged, allowing for any asset that can be associated with property rights to be mortgaged unless otherwise prohibited by any other applicable laws or regulations.

In addition, the Property Rights Law also provides that enterprises, individual industrial and commercial households and farmers may mortgage certain types of movables (including production equipment, raw materials, semi-finished products or finished products) which they own at present or in the future.

## Establishment of a Real Estate Development Enterprise

According to the Urban Real Property Law, a real estate developer is defined as an enterprise which engages in the development and sale of real estate for the purpose of making profits. Under the *Regulations on Administration of Development of real estate* (the “**Development Regulations**”) (《城市房地產開發經營管理條例》) promulgated and implemented by the State Council on July 20, 1998, a real estate developer shall satisfy the following requirements: (i) its registered capital shall be RMB1 million or more; and (ii) it has four or more full-time professional property/construction technicians and two or more full-time accounting officers, each of whom shall hold the relevant qualification certificate. The Development Regulations also stipulate that the local government of a Province, autonomous region or municipality directly under the central government may, based on local circumstances, impose more stringent requirements on the registered capital and the professional personnel of a real estate developer. Pursuant to the Development Regulations, a developer who aims to establish a real estate development enterprise should apply for registration with the administration authority for industry and commerce. The real estate developer must also report its establishment to the real estate development authority in the location of the registration authority within 30 days of the receipt of its business license. The real estate development authorities shall examine applications for classification of a real estate developer’s qualification by considering its assets, professional personnel and industrial achievements. A real estate enterprise shall only engage in real estate development projects in compliance with its approved qualification.

Under the *Provisions on Administration of Qualifications of real estate Developers* (the “**Provisions on Administration of Qualifications**”) (《房地產開發企業資質管理規定》) promulgated by the Ministry of Construction on March 29, 2000, a real estate developer shall apply for registration of its qualifications according to such Provisions on Administration of Qualifications. An enterprise may not engage in the development and sale of real estate without a qualification classification certificate for real estate development.

A developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. For a newly established real estate developer, after it reports its establishment to the real estate development authority, the latter shall issue a Provisional Qualification Certificate (暫定資質證書) to the eligible developer within 30 days. The Provisional Qualification Certificate shall be effective for one year from its issuance while the real

estate development authority may extend the validity to a period of no longer than 2 years considering the actual business situation of the enterprise. The real estate developer shall apply for qualification classification by the real estate development authority within one month before expiry of the Provisional Qualification Certificate. The qualification of a real estate developer is subject to annual inspection

### Foreign Investment in Real Estate Development

According to the *Foreign Investment Industrial Guidance Catalogue* (《外商投資產業指導目錄》) (the “**Catalogue**”) promulgated by the MOC and the National Development and Reform Commission (the “**NDRC**”) on October 31, 2007 and effective on December 1, 2007, the real estate development business falls within the category of industry in which foreign investment is permitted, except that the development of a whole land lot which shall be operated only by Sino-foreign equity joint ventures or Sino-foreign cooperative joint ventures, the construction and operation of high-end hotels, villa premium office buildings and international conference centres, property transactions in secondary market and real estate intermediaries fall within the category of industries in which foreign investment is subject to restrictions. A foreign-invested real estate development enterprise can be established in the form of Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or wholly owned enterprise by foreign investors. Prior to its registration, the enterprise must be approved by the commerce authorities, upon which an Approval Certificate for a Foreign-Invested Enterprise (外商投資企業批准證書) will be issued.

On July 11, 2006, the Ministry of Construction, the MOC, the NDRC, the PBOC, the SAIC and the SAFE jointly promulgated the *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准入和管理的意見》). According to this opinion, the admittance and administration of foreign capital in the real estate market must comply with the following requirements:

- i. foreign institutions or individuals who buy property not for their own use in China should follow the principle of “commerce existence” and apply for the establishment of foreign-invested enterprises pursuant to the regulations of foreign investment in property. After obtaining the approvals from relevant authorities and upon completion of the relevant registrations, foreign institutions and individuals can then carry on their business pursuant to their approved business scope.
- ii. foreign investors may not carry out property development and operation business until they obtain the Approval Certificates for a Foreign-invested Enterprise and business licenses from relevant authorities.
- iii. where the total investment amount of a foreign-invested property enterprise is US\$10 million or more, its registered capital shall be no less than 50 percent of the total investment amount; where the total investment amount is less than US\$10 million, its registered capital shall follow the requirements of the existing regulations.
- iv. for establishment of a foreign-invested real estate enterprise, the commerce authorities and the administration for industry and commerce authorities shall be responsible for the

approval and registration of the foreign-invested real estate enterprise and the issuance of a temporary approval certificate for a foreign-invested enterprise (which is only effective for one year) and a temporary business license. Upon full payment of the land grant fee for the land-use rights, the foreign-invested real estate enterprise should apply for the land use rights certificates. With such land use rights certificates, it can obtain a formal Approval Certificate for a Foreign-Invested Enterprise from the commerce authorities and a formal business license with the same approved business term as the formal Approval Certificate for Foreign-Invested Enterprise.

- v. transfers of projects or equity interests in foreign-invested real estate enterprise (“FIREE”) or acquisitions of domestic real estate enterprises by foreign investors should strictly follow the relevant laws, regulations and policies and obtain the relevant approvals. The investor should submit: a) a written undertaking of fulfillment of the State-owned land use rights grant contract, planning permit for construction land and planning permit for construction works; b) land use rights certificates; c) documents evidencing the filing for modification with the construction authorities; and d) documents evidencing the payment of tax from the relevant tax authorities.
- vi. when acquiring domestic real estate enterprises by way of share transfer or otherwise or purchasing shares from Chinese parties in Sino-foreign equity joint ventures, foreign investors should make proper arrangements for the employees, handle the debts of the banks and pay the consideration in one single payment with its own capital. Foreign investors with unsound records shall not be allowed to undertake the aforementioned activities.
- vii. offshore entities without an onshore branch or representative agency, or foreign individuals who have studied or worked in the PRC for less than one year, are not allowed to purchase commercial properties and commercial properties.

On August 14, 2006, the General Office of MOC enacted the *Notice on Relevant Issues Concerning the Carrying out Circular on Standardizing the Admittance and Administration of Foreign Capital in the Real Estate Market* (《關於貫徹落實〈關於規範房地產市場外資准入和管理的意見〉有關問題的通知》). According to the notice, if the total investment of a foreign-invested real estate development enterprise exceeds US\$3 million, the registered capital must not be less than 50% of the total investment; if the total investment is less than or equal to US\$3 million, the registered capital must not be less than 70% of the total investment. When a foreign investor who merges with a domestic real estate development enterprise by way of, among others, transferring equity or purchasing equity from other Chinese shareholders of a foreign-invested real estate development enterprise, the original employees of the merged companies must be arranged properly, bank debts must be settled and the entire consideration for the transfer must be paid off within three months respectively after the earlier of the issue of the business license or the effective day of the equity transfer agreement.

On September 1, 2006, SAFE and the Ministry of Construction jointly issued the *Notice on Regulating Issues Relating to Administration of Foreign Exchange in Real Estate Market* (《關於規範房地產市場外匯管理有關問題的通知》). The notice provides: (i) where a foreign-invested real estate enterprise fails to pay the registered capital in full or to acquire a state-owned land use rights

certificate or to make its capital fund for a development project reach 35% of the total investment to the project, the foreign exchange bureau will not process its foreign debt registration or approve its settlement of foreign currencies; (ii) where a foreign institution or individual acquires a domestic property enterprise, if it (he) fails to pay the transfer price in a lump sum by its (his) own fund, the foreign exchange bureau will not process the registration of foreign exchange income derived from transfer of equities; (iii) the domestic and foreign investors of a foreign-invested real estate enterprise shall not reach an agreement containing any clause which promises a fixed return or fixed revenue in any disguised form to any party, otherwise the foreign exchange bureau will not process the foreign exchange registration or registration modification of foreign-invested enterprise; and (iv) the fund in the foreign exchange account exclusive for foreign investor opened by a foreign institution or individual in a domestic bank shall not be used for property development or operation. The notice also provides for foreign exchange working process related to branches of overseas institutions established within the PRC, overseas individuals, Hong Kong, Macao or Taiwan residents and overseas Chinese purchasing or selling commodity properties within the PRC.

On May 23, 2007 the MOC and the SAFE jointly issued the *Circular on Further Strengthening and Regulating the 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》) which made the following requirements for approval and supervision of foreign investment in real estate:

- i. foreign investment in the real estate sector in the PRC relating to high-end properties should be strictly controlled;
- ii. before obtaining approval for the setup of real estate entities with foreign investment, (a) both the land use rights certificates and housing ownership right certificates should be obtained or, (b) contracts for obtaining land use rights or housing ownership rights should be entered into;
- iii. entities which have been set up with foreign investment need to obtain approval before they expand their business operations into the real estate sector and entities which have been set up for real estate development operation need to obtain new approval in case they expand their real estate business operations;
- iv. acquisitions of real estate entities and foreign investment in real estate sector in a way of round trip investment should be strictly regulated. Foreign investors should not avoid approval procedures by changing actual controlling persons;
- v. parties to real estate entities with foreign investment should not in any way guarantee a fixed investment return;
- vi. registration shall be immediately effected according to applicable laws with the MOC regarding the setup of real estate entities with foreign investment approved by local PRC government authorities;
- vii. foreign exchange administration authorities and banks authorized to conduct foreign exchange business should not effectuate foreign exchange settlements regarding capital account items to those which fail to file with the MOC or fail to pass the annual reviews; and

- viii. for those real estate entities, which are wrongfully approved by local authorities for their setups, (a) the MOC should carry out investigation, order punishment and corrections, and (b) foreign exchange administrative authorities should not carry out foreign exchange registrations for these real estate entities.

On July 10, 2007, the SAFE issued the *Circular of the General Affairs Department of SAFE on the Distribution of the List of the First Batch of Foreign-Invested Real Estate Projects Filed with the Ministry of Commerce* (《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》). This new regulation restricts the ability of foreign-invested real estate companies to raise funds offshore and then inject funds into the companies either through capital increase or by way of shareholder loans. The notice stipulates that, among other things:

- i. the SAFE will no longer process foreign debt registration or foreign debt application for settlement of foreign exchange for real estate enterprises with foreign investment that obtained authorization certificate from and registered with the MOC on or after June 1, 2007; and
- ii. the SAFE will no longer process foreign exchange registration (or change of such registration) or application for settlement and sale of foreign exchange for real estate enterprises with foreign investment that obtained approval certificates from local government's commerce department on or after June 1, 2007 but have not registered with the MOC.

## Real Estate Development

### *Planning and Construction*

Once the real estate developer identifies a piece of land for development, it has to apply for a planning permit for construction land (建設用地規劃許可證) from the relevant planning authorities. Once this certificate is obtained, the real estate developer will have to submit a detailed plan for the design of buildings and construction in order to obtain planning permit for construction works and permit for commencement of construction works.

According to the *PRC City and Countryside Planning Law* (《中華人民共和國城鄉規劃法》), promulgated on October 28, 2007 and effective on January 1, 2008 by the Standing Committee of the National People's Congress, the competent planning authorities of a city or county shall, before granting state-owned land use rights in planning area, set down such planning requirements as location, usage, extent of development, which shall be included in the land use rights grant contracts. Land use rights shall not be granted if the planning requirements have not been set. After executing the state-owned land use rights grant contract, a real estate developer shall submit approval, verification or registration documents of a construction project to and apply for planning permit for construction land from competent planning authorities of a city or county. The competent planning authorities of a city or county shall not, at their discretion, alter the planning requirements which are included in the state-owned land use rights grant contract. If the planning requirements are not incorporated into a state-owned land use rights grant contract, such contract is invalid. If any land has been occupied, such land shall be returned promptly.

According to the *Notice Regarding Strengthening and Regulating the Administration of New Commencement of 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, the commencement of project construction shall satisfy the following requirements:

- i. the project is in accordance with state industry policy, development and construction plan, land supply policy and market entry standard.
- ii. relevant approval, verification or registration procedures for the project have been completed.
- iii. the location and layout of the project is in accordance with city/village planning, and relevant procedures for planning permit have been completed.
- iv. the project has legally completed land use approval procedures, and land use agreement has been signed or land allocation approval has been obtained. Industrial, commercial, tourist, entertainment and commodity property projects shall be granted land use rights by way of tender, auction or listing-for-sale lawfully.
- v. the approval for environmental impact evaluation has been duly obtained.
- vi. the energy conservation evaluation and inspection for the fixed assets investment project has been duly completed;
- vii. the construction entity has, before the commencement of the construction work and pursuant to relevant provisions in the Construction Law, obtained work commencement permit or work commencement report (開工報告), and has adopted specific measures to ensure the quality and safety of the construction project.
- viii. other relevant requirements as in accordance with laws and regulations.

According to the *Regulation on the Quality Management of Construction Projects* (《建設工程質量管理條例》) promulgated and implemented by State Council on January 30, 2000, 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 and the *Provisional Provisions on Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure* (《房屋建築工程和市政基礎設施工程竣工驗收暫行規定》) promulgated and enforced by the Ministry of Construction on June 30, 2000, after completion of construction of a project, a property developer shall apply for the acceptance examination upon completion to the property development authority under the people's government at the county level or above and report details of the acceptance examination, upon which a record of acceptance examination upon project completion (工程竣工驗收備案表) will be issued.

### ***Environmental Protection***

The laws and regulations governing the environmental requirements for property development in the PRC 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 *Administrative Regulations on Environmental Protection for Construction Projects* (《建設項目環境保護管理條例》). Pursuant to these laws and regulations, according to the impact of the project on the environment, an environmental impact study report, an environmental impact analysis table or an environmental impact registration form must be submitted by a developer before the relevant authorities will 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 standards and regulations before the property can be delivered to the purchasers.

### ***Pre-sale and Sale***

Pursuant to the Urban Real Property Law and the *Administrative Measures Governing the Pre-sale of Urban Commodity Buildings* (《城市商品房預售管理辦法》) (the “**Administrative Measures**”) promulgated by the Ministry of Construction on November 15, 1994 and as amended on August 15, 2001 and July 20, 2004, respectively, commodity buildings which have not been completed may be sold when certain conditions and/or requirements are satisfied.

Pre-sale of commodity buildings is regulated by an approval system. Developers who intend to pre-sell their commodity properties shall apply to the relevant real estate authority at city or county level and obtain a pre-sale permit.

When commodity properties are pre-sold, the following requirements shall be satisfied according to the Urban Real Property Law and the Administrative Measures:

- i. the land premium in respect of the land use rights must be paid in full and the land use rights certificate must have been obtained;
- ii. the planning permit for construction works and the permit for commencement of construction works must have been obtained;
- iii. funds contributed to the development of the project shall amount to at least 25% of the total amount of the project investment, and project progress and the date of completion of the project for use must have been ascertained; and
- iv. the pre-sale permit must have been obtained.

Under the *Regulations on Administration of Commodity Property Pre-sale in Xiamen* (《廈門市商品房預售管理規定》) issued by the People’s Government of Xiamen on September 30, 2001 and effective on January 1, 2002, other than the requirements mentioned above, real estate developers should also fulfill the following requirements before pre-selling commodity buildings: (a) for commodity property consisting of three storeys or less, the basic foundation work and the structural construction of the building must have been completed; (b) for commodity building consisting of four storeys or more with basement, the basic foundation work and at least the first floor of the structural construction must have been completed, and (c) for commodity building consisting of four storeys or more without basement, the basic foundation work and at least four storeys must have been completed.

The regulations also stipulate that proceeds from pre-sales of commercial properties must be deposited in designated bank account and property developers shall enter into pre-sale proceeds supervision agreement with the bank before applying pre-sale permit.

Pursuant to the Supervision Measures Regarding Proceeds from Commercial Property Pre-sale (《南京市商品房預售款監管辦法》) jointly issued by the Nanjing Property Administration Bureau and Nanjing Branch of People's Bank of China on September 9, 2007, proceeds from pre-sales of commercial properties must be deposited in designated bank account and property developers shall enter into pre-sale proceeds supervision agreement with the bank before applying pre-sale permit.

On July 6, 2006, the Ministry of Construction, NDRC and SAIC jointly enacted the *Notice on Reorganizing and Regulating Order in the Real Estate Transactions* (《關於進一步整頓規範房地產交易秩序的通知》), the details of which are as follows:

- i. the developer is required to start to sell the commodity buildings within 10 days after receiving pre-sale permit (預售許可証) (the “**Pre-sale Permit**”). Without this permit, the pre-sale of commodity buildings, as well as subscription (including reservation, registration and number-selecting) and acceptance of any kind of pre-sale payments, is forbidden.
- ii. 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, such as 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 transfer of a commodity building which is pre-sold and still under construction, is prohibited.
- iii. without the Pre-sale Permit, no advertisement of the pre-sale of commodity properties shall be allowed to publish.
- iv. real estate development enterprises with a record of serious irregularity or enterprises which do not satisfy the requirements of pre-sale of commodity properties is not allowed to take part in sale activities.
- v. the real estate administration authority is required to strictly carry out the system of the pre-sale contract registration and records and apply the real name system for property purchase.

Pursuant to the *Administrative Measures Governing the Sale of Commodity Buildings* (《商品房銷售管理辦法》) promulgated by the Ministry of Construction on April 4, 2001, the sale of commodity properties shall satisfy the following requirements:

- i. the real estate development enterprise shall have a business license and a qualification certificate of real estate exploitation;
- ii. the enterprise shall obtain certificates or approval documents of land use;
- iii. the enterprise shall have the planning permit for construction works and the permit for commencement of construction;

- iv. the commercial buildings shall have been completed and been inspected and accepted as qualified;
- v. the relocation of the original residents shall have been well settled;
- vi. the supplementary essential facilities for supplying water, electricity, heating, gas, communication, etc. shall have been made ready for use, and other supplementary essential facilities and public facilities shall have been made ready for use, or the schedule of construction and delivery date of which shall have been specified; and
- vii. the property management plan shall have been completed.

The real estate development enterprise shall deliver the qualified commodity properties to the purchaser on time pursuant to the property sale agreement. The real estate development enterprise shall take the liability if it fails to deliver the properties on time.

### ***Real Estate Loans***

According to the *Notice of the PBOC on Regulating Residential Property Financing Business* 《中國人民銀行關於規範住房金融業務的通知》 promulgated by the PBOC on June 19, 2001, all banks must comply with the following requirements before granting residential development loans, individual residential property mortgage loans and individual commercial flat loans:

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

On June 5, 2003, the PBOC promulgated the *Notice on Further Strengthening the Administration of Real Estate Loans* 《關於進一步加強房地產信貸業務管理的通知》. According to the notice, the commercial banks shall focus their business towards supporting real estate projects targeted at mid-to-low income households and appropriately restrict the granting of real estate loans to projects involving spacious apartments, luxurious apartments and villa. The notice strictly prohibits banks from advancing working capital loans to real estate developers. When applying for a real estate loan, the real

estate developer's own capital in any proposed real estate project should not be less than 30% of the total investment of the project. The notice also prohibits loans advanced for the payment of land premium for land use rights.

On August 30, 2004, the CBRC issued the *Guidelines for Commercial Banks of Risk Control of Real Estate Loans* (《商業銀行房地產貸款風險管理指引》). According to the guideline, no loan shall be granted to projects which have not obtained the land use rights certificate, planning permit for construction land, planning permit for construction works and permit for commencement of construction works. The guideline also stipulated that not less than 35% of the total investment in a real estate development project must come from the real estate developer's own capital for the project in order for banks to extend loans to the real estate developer. In addition, the guideline requires commercial banks to set up strict approval systems for loan grants.

On March 16, 2005, PBOC promulgated the *Notice on Adjusting the Housing Loan Policy and Deposit Rate of Excess Reserves 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》) which canceled the preferential mortgage lending interest rate for individuals and restricted the minimum mortgage loan rate at 0.9 times of the benchmark rate. The PBOC also increased the public housing fund rate (公積金貸款利率) by 0.18% and permitted commercial banks to decrease mortgage loan rate from 80% to 70% of the value of the property if it is located in a city where the property prices are increasing too rapidly.

The *Opinions on the Adjustment of Housing Supply Structure and Stabilization of Housing Price* (《關於調整住房供應結構穩定住房價格意見的通知》) sets forth the following provisions on property credit:

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

According to the *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准入和管理的意見》), FIREE which have not paid up their registered capital, or failed to obtain a land use rights certificate, or with less than 35% of the capital for the project, with be prohibited from obtaining a loan in or outside China, and SAFE must not approve the registration of foreign loans from such enterprises.

On July 22, 2006, the CBRC promulgated a Notice of the CBRC on Further Strengthening the Administration of Real Estate Credit (《中國銀行業監督管理委員會關於進一步加強房地產信貸管理的通知》). The notice requires (i) improving a credit risk classification system for all types of real estate loans; (ii) prohibiting financial institutions from providing loans to disqualified real estate developers whose own capital is less than 35% of the total capital required for the projects (not including affordable housing), or who have not obtained the “four certificates”; (iii) setting the loan term appropriately, and not allowing the provision of working capital loans in the name of real estate development loans; (iv) strictly restricting new loans for those developers who hoard land or housing and disturb market order; (v) preventing developers from obtaining loans by project split-up or rolling-ahead development strategies; and (vi) enhancing management after providing loans. All financial institutions shall provide loans strictly in accordance with the real estate project progress and strengthen overall supervision of the whole process of loan utilization by developers.

On September 27, 2007, PBOC and CBRC promulgated the *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》), which increases down payment requirement applicable to a purchaser acquiring his second residential property to at least 40.0% and the interests of these loans must not be less than 110.0% of the benchmark interest rate of the same kind and same period by PBOC. Under this circular, the PRC authorities have tightened control over commercial banks’ loans to property developers in order to prevent these banks from excessive credit granting. The circular emphasizes that commercial banks must not offer loans to real estate developers who have been verified by State land and resource and construction authorities to hoard land and buildings. In addition, commercial banks are also banned from offering loans to projects that have less than 35.0% of capital funds (proprietary interests), or that fail to obtain land use rights certificates, planning permits for construction land, planning permits for construction works and permits for commencement of construction works. Commercial banks are also prohibited from accepting commercial properties that have been vacant for more than three years as guaranties for loans. In principle, real estate development loans provided by commercial banks should only be used for the projects in the areas where the commercial banks are located. Otherwise, commercial banks should carry out effective risk control measures and make filings with PRC supervisory authorities before disbursement of the loans. Commercial banks are also prohibited from granting to real estate developers any loan that is to be used specifically for paying land use rights grant fees. Furthermore, commercial banks should only grant loans for payment of commercial properties that have passed the completion inspection and residential properties that have sealed the roofs of the main property structures.

On December 5, 2007, the PBOC and CBRC jointly issued the *Supplementary Notice of the PBOC and CBRC 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補充通知》), which clarifies that the number of times a purchaser has obtained property mortgage loans must be calculated on a family basis, including the borrowers and their spouse and minor children.

On July 29, 2008, PBOC and CBRC jointly promulgated a *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》). According to the notice, no loan shall be granted to the projects that violate the city planning or illegally use land. No loan shall be granted to real estate developers for the purpose of paying land premium. Loans must be prudently granted to those projects that, after one year as at the commencement date as set forth in the land use

rights grant contracts, the area of land construction is less than one third of the total area to be developed and the invested amount is less than 25% of the total amount of investment. In addition, the renewal of such loans or revolving credit line shall be strictly controlled. Neither real estate loan nor any other loan guaranteed by land mortgage shall be granted to those projects of which the land is idle for more than two years.

On October 22, 2008, the PBOC announced the Measures to Lower House Mortgage Rates and Encourage the First-time Purchase of Ordinary Residential Properties (《擴大商業性個人住房貸款利率下浮幅度、支援居民首次購買普通住房》). According to the measures, effective as at October 27, 2008, the minimum mortgage loan rates can be as low as 70% of the benchmark lending rates for house mortgage loans and the minimum down payment ratio is lowered from the original minimum down payment ratio (which varies according to first-time or second-time purchase and to size of property in terms of square meters) to 20%. Financial institutions shall determine the lending interest rates and the down payment ratios taking various factors into consideration including, without limitation to, whether the buyer is a first-time buyer, whether the property is to be self-used by the buyer, whether the property is ordinary residential property, the home buyer's credit records and repayment capability. For people buying their first self-use home of ordinary residential property or buying self-use ordinary residential property for improvement, financial institutions shall support the buyers' loan demands at the favorable lending interest rates and down payment ratios, and shall appropriately raise the standards of lending for purchase of properties not for self-use or those other than ordinary residential properties.

### Obtaining Loans outside of the PRC

Domestic PRC entities that borrow loans from foreign banks and other financial institutions must strictly comply with the requirements of the relevant laws, regulations and regulatory documents of the PRC, including, but not limited to, the *Provisional Foreign Debts Management Measures* (《外債管理暫行辦法》) issued by the State Development Planning Commission, the Ministry of Finance and SAFE on January 8, 2003, *Provisional Provisions on Statistics and Monitoring of Foreign Debts* (《外債統計監測暫行規定》) issued by SAFE on August 27, 1987, and their rules of implementation and other relevant regulatory documents. Pursuant to such regulatory documents, domestic PRC entities may borrow commercial loans from foreign banks and other financial institutions. However, the total amount of foreign debt of a foreign-invested enterprise (“FIE”), including the aggregate of any of its mid or long term foreign debts and the outstanding balance of its short term foreign debt, must not exceed the difference between the approved total investment and the registered capital of such FIE. The government implements a registration and administration system of foreign debts and borrowers are required to make registration in accordance with these requirements. After signing contract(s) for borrowing loans or granting guarantee, domestic entities must register these contracts with the foreign exchange administration authorities in accordance with the relevant procedures, and contracts in respect of international commercial loans or guarantees will only be effective after such registrations.

Domestic PRC entities may borrow commercial loans from foreign banks and other financial institutions, provided that: (i) the total amount of the foreign debt of an FIE, including the aggregate of any of its mid or long term foreign debt and the outstanding balance of its short term foreign debt, may not exceed the difference between the approved total investment and the registered capital of such FIE;

(ii) registration of foreign debts and guarantee in respect of foreign debts must be made in accordance with the relevant laws and regulations. In addition, subsidiaries of foreign invested real estate enterprises in the PRC are subject to the requirements of a series of administrative rules recently promulgated aiming at strengthening and standardizing foreign investment in the real estate sector. Such requirements include: (1) foreign invested real estate development enterprises established on or after June 1, 2007, or existing domestic real estate development enterprises that have increased their capital on or after June 1, 2007 are not allowed to make foreign debt registration or to apply for foreign exchange settlement, which means that they cannot take out foreign borrowings; and (2) a foreign invested real estate enterprise that has not fully paid its registered capital, not obtained the relevant State-owned land use rights certificate, or whose capital for project development is less than 35% of the total investment, is not allowed to take out foreign borrowings and the foreign exchange administration authority in charge will not approve its foreign debts registration or its application for foreign exchange settlement. Save as the restrictions described above, the domestic PRC subsidiaries of FIREE may borrow commercial loans from foreign banks and other financial institutions in accordance with PRC laws.

### **Legal Supervision Relating to Industrial Real Estate Development Sector in the PRC**

For the granting of industrial-used land by way of tender, auction and listing-for-sale, please refer to “Regulatory Overview — The Real Property System of the PRC Grant of Land Use Rights” of this Appendix.

The Ministry of Land and Resources issued the *Minimum Price for Grant of Industrial Land Use Rights* (《全國工業用地出讓最低價標準》) on January 1, 2007, which divided state-owned industrial land into 15 grades and set the minimum price for industrial land use rights. Pursuant to this regulation, any sale of industrial-used land, or any form of subsidy or return, at a price lower than the set minimum shall be deemed illegal. Local land and resource authorities shall strictly follow the minimum price requirements and shall not further lower the minimum price due to any reason such as different land sources or different land development status.

On January 31, 2008, the Ministry of Land and Resources issued the *Notice Regarding the Control Quota of Construction Land for Industrial Projects* (《關於發佈和實施〈工業項目建設用地控制指標〉的通知》), which stipulates that,

- i. the coefficient of building occupation (建築係數) for industrial projects shall not be lower than 30%.
- ii. the land area for administrative offices and service facilities shall not exceed 7% of the total land area of the industrial project. The construction of non-productive supporting facilities, such as residential building, hostels, and training centres are strictly forbidden within the space reserved for industrial projects.
- iii. in general, there shall be no planning of green space within industrial enterprises. However, in the case that green space must be arranged due to certain special production requirements, the coverage of green space shall not exceed 20%.

## Legal Supervision Relating to Hotel Sector in the PRC

### *Foreign-invested Hotel Project*

According to the Catalogue, construction and operation of high-end hotels fall within the category of restricted foreign investment industry. Construction and operation of common and economic hotels other than high-end hotels fall within the category of permitted foreign investment industry. A foreign investment enterprise investing in the hotel business can set up an enterprise in the form of sino-foreign equity joint venture, sino-foreign co-operative joint venture or wholly foreign-owned enterprise according to the Catalogue and the requirements of the relevant laws and the administrative regulations on foreign investment enterprises. The foreign investment enterprise in hotel business should apply for an approval with the relevant department of commerce, and obtain an Approval Certification for a Foreign Investment Enterprise before registering to the administration of industry and commerce.

### *Hotel Management*

The procedures involved in hotel construction in China including obtaining approval for land use, project planning and project construction shall also be subject to the aforementioned regulations relating to real estate development.

There is currently no special authority in China responsible for the daily management of hotel business. The supervision of daily management of hotel business belongs to different authorities in accordance with the respective business scopes of different hotels. The supervision mainly includes the following:

i. legal supervision on security and fire control

Pursuant to the *Measures for the Control of Security in the Hotel Industry* (《旅館業治安管理办法》) issued by the Ministry of Public Security of the People's Republic of China (中華人民共和國公安部) (the “**Ministry of Public Security**”) and effective on November 10, 1987, a hotel can operate only after obtaining an approval from the local public security bureau. The hotel enterprise should file to the local public security bureau and its branches in the county or city, if hotel enterprise has any change including closing, transferring or merging of business, changing place of business and name, etc. Pursuant to the *Provisions on the Administration of Fire Control Safety of State Organs, Organizations, Enterprises and Institutions* (《機關、團體、企業、事業單位消防安全管理規定》) enacted by the Ministry of Public Security on November 14, 2001 and enforced on May 1, 2002, hotels (or motel) are units which require special supervision on fire control and safety. When the hotels are under construction, renovation or re-construction, fire control examination procedure is required to carry out and when the construction, renovation or re-construction project is completed, the hotels can only open for business after passing a fire control inspection.

ii. supervision on public health

According to relevant regulations and rules in relation to public health, hotels fall in the scope of public health supervision. The operating enterprise should obtain the sanitation

license. The measures for granting and managing sanitation license are formulated by public health authority of Province, autonomous region, and municipality directly under the central government. Sanitation license is signed by public health administration above county level and its grant is taken charge of by public health and epidemic prevention institutions. The sanitation license should be reviewed once every two years.

iii. supervision on food hygiene

According to the relevant regulations and rules in relation to food hygiene supervision, hotels operating catering services should obtain food hygiene licenses. The food hygiene licenses are granted by food hygiene administrative bodies above county level. Purchase, reserve and processing of food, tableware, and service should meet relevant requirements and standards of food hygiene.

### Foreign Exchange Control

The lawful currency of the PRC is the Renminbi, which is subject to foreign exchange control and is not freely convertible into foreign exchange at this time. The SAFE is empowered with the functions of administering all matters relating to foreign exchange, including the enforcement of foreign exchange control regulations.

Prior to December 31, 1993, a quota system was used for the management of foreign currency. Any enterprise requiring foreign currency was required to obtain a quota from the local SAFE office before it could convert Renminbi into foreign currency through the Bank of China or other designated banks. Such conversion had to be effected at the official rate prescribed by SAFE on a daily basis. Renminbi could also be converted into foreign currency at swap centres. The exchange rates used by swap centres were largely determined by the demand for, and supply of, the foreign currency and the Renminbi requirements of enterprises in the PRC. Any enterprise that wished to buy or sell foreign currency at a swap centre had to obtain the prior approval of the SAFE.

On December 28, 1993, PBOC, under the authority of the State Council, promulgated the *Notice of the People's Bank of China Concerning Further Reform of the Foreign Currency Control System* (《中國人民銀行關於進一步改革外匯管理體制的公告》), effective from January 1, 1994. The notice announced the abolition of the foreign exchange quota system, the implementation of conditional convertibility of Renminbi in current account items, the establishment of the system of settlement and payment of foreign exchange by banks, and the unification of the official Renminbi exchange rate and the market rate for Renminbi established at swap centres. On March 26, 1994, the PBOC promulgated the *Provisional Regulations for the Administration of Settlement, Sale and Payment of Foreign Exchange* (《結匯、售匯及付匯管理暫行規定》), which set out detailed provisions regulating the trading of foreign exchange by enterprises, economic organizations and social organizations in the PRC.

On January 1, 1994, the former dual exchange rate system for Renminbi was abolished and replaced by a controlled floating exchange rate system, which is determined by demand and supply of Renminbi. Pursuant to such systems, the PBOC sets and publishes the daily Renminbi-US dollar

exchange rate. Such exchange rate is determined with reference to the transaction price for Renminbi-US dollar in the inter-bank foreign exchange market on the previous day. Also, the PBOC, with reference to exchange rates in the international foreign exchange market, announced the exchange rates of Renminbi against other major foreign currencies. In foreign exchange transactions, designated foreign exchange banks may, within a specified range, freely determine the applicable exchange rate in accordance with the rate announced by the PBOC.

According to the *Regulations for the Control of Foreign Exchange* (《中華人民共和國外匯管理條例》) promulgated by the State Council on January 29, 1996 and as amended on January 14, 1997 and August 1, 2008, all international payments and transfers are classified into current account items and capital account items. Transactions under current account items are no longer subject to SAFE approval while transactions under capital account items still are.

On June 20, 1996, PBOC promulgated the *Regulations for Administration of Settlement, Sale and Payment of Foreign Exchange* (《結匯、付匯及售匯管理規定》) which became effective on July 1, 1996. The Settlement Regulations superseded the Provisional Regulations and abolished the remaining restrictions on convertibility of foreign exchange in respect of current account items while retaining the existing restrictions on foreign exchange transactions in respect of capital account items.

On July 21, 2005, the PBOC announced that, beginning from July 21, 2005, China will implement a regulated and managed floating exchange rate system based on market supply and demand and by reference to a basket of currencies. The Renminbi exchange rate is no longer pegged to the US dollar. The PBOC will announce the closing price of a foreign currency such as the US dollar traded against the Renminbi in the inter-bank foreign exchange market after the closing of the market on each business day, setting the central parity for trading of the Renminbi on the following business day.

Enterprises in China (including foreign-invested enterprises) which require foreign exchange for transactions relating to current account items, may, without the approval of SAFE, effect payment from their foreign exchange account or convert and pay at the designated foreign exchange banks, upon presentation of valid receipts and proof. Foreign-invested enterprises which need foreign currencies for the distribution of profits to their shareholders, and Chinese enterprises which, in accordance with regulations, are required to pay dividends to shareholders in foreign currencies, may with the approval of board resolutions on the distribution of profits, effect payment from their foreign exchange account or convert and pay at the designated foreign exchange banks.

Convertibility of foreign exchange in respect of capital account items, like direct investment and capital contribution, is still subject to restriction, and prior approval from SAFE or its competent branch.

In January and April 2005, SAFE issued two regulations that require PRC residents to register with and receive approvals from SAFE in connection with their offshore investment activities. SAFE also announced that the purpose of these regulations is to achieve the proper balance of foreign exchange and the standardization of all cross-border flows of funds.

On October 21, 2005, SAFE issued the *Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Round-trip Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies* (《國家外匯管理局關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知》) which became effective as at November 1, 2005. The notice replaced the two regulations issued by SAFE in January and April 2005 mentioned above. According to the notice, “**special purpose company**” refers to the offshore company established or indirectly controlled by the PRC residents for the special purpose of carrying out financing with their assets or equity interest in PRC domestic enterprise. Prior to the establishing or assuming control of such 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. As a result, PRC residents who have established or acquired control of such offshore companies that have made onshore investments in the PRC in the past are required to complete the relevant overseas investment foreign exchange registration procedures by March 31, 2006.

On August 29, 2008, the General Affairs Department of SAFE issued the *Notice on the Issues of Administration of Settlement of Foreign Currency Capital of Foreign Investment Enterprises* (《國家外匯管理局綜合司關於完善外商投資企業外匯資金支付結匯管理有關業務操作問題的通知》). This notice further regulates the administration of settlement of foreign currency capital of foreign investment enterprises within the PRC.

According to the notice, prior to applying for settlement of foreign currency capital with designated banks, foreign investment enterprises must undergo capital verification by an accountancy firm. The designated banks should not engage in settlement of foreign currency capital for enterprises that have not completed the process of capital verification. Furthermore, the total amount of foreign exchange settled by a designated bank for a foreign investment enterprise should not exceed the total capital audited. The designated banks must comply with the SAFE administration rules of settlement based on actual payment when engaging in foreign currency capital settlement with foreign investment enterprises.

Funds in Renminbi obtained by foreign investment enterprises through foreign currency capital settlement may only be used within the business scope approved by the government authorities. Furthermore, such funds shall not be used for equity investments within the PRC unless otherwise stipulated. Except for FIREE, foreign investment enterprises may not use funds in Renminbi obtained through foreign currency capital settlement to purchase real estate for any purposes other than its own occupancy. Should a foreign investment enterprise wish to use funds in Renminbi obtained through foreign currency capital settlement to purchase securities, it must act in compliance with the relevant PRC regulations. Any transfer of funds for the sake of equity investment in the PRC by foreign-invested investment enterprises approved by the MOC must first undergo examination and approval by the SAFE, or its local branches. Any profits obtained by PRC entities or individuals through the sale of equities or interests in PRC enterprises to foreign investors must be conducted through an account reserved exclusively for foreign exchange. The opening of such account, and any related transfer of funds, must undergo examination and approval by the local branches of SAFE as provided by the relevant regulations.

## Taxation in China

### *Income Tax*

According to the *PRC Income Tax Law for Foreign-invested Enterprises and Foreign Enterprises* (《中華人民共和國外商投資企業和外國企業所得稅法》) promulgated by the National People's Congress on April 9, 1991 and implemented on July 1, 1991 and its detailed rules promulgated by State Council on June 30, 1991, the income tax on enterprises with foreign investment should be accumulated on the taxable income at the rate of 30%, and local income tax should be computed on the taxable income at the rate of 3%, whereas foreign-invested productive enterprises established in special economic zones (including the Xiamen Economic Special Zone) should be applicable to a preferential income tax rate of 15%. Pursuant to the *Provisional Regulations of the People's Republic of China on Enterprise Income Tax* (《中華人民共和國企業所得稅暫行條例》) issued by the State Council on December 13, 1993 and enforced on January 1, 1994 and the *Detailed Implementation Rules on the Provisional Regulations of The People's Republic of China on Enterprise Income Tax* (《中華人民共和國企業所得稅暫行條例實施細則》) issued by the Ministry of Finance on February 4, 1994, the income tax rate applicable to Chinese enterprises other than foreign-invested enterprises and foreign enterprises was 33%.

Under the *Approval on Construction of Xiamen Economic Special Zone* (《對福建省關於建設廈門經濟特區的批復》), enterprises established within the Xiamen Economic Special Zone should be applicable to a preferential income tax rate of 15%.

According to the *New PRC Enterprise Income Tax Law* (《中華人民共和國企業所得稅法》) (the “**EIT Law**”), enacted by the National People's Congress on March 16, 2007 and effective since January 1, 2008, a uniform income tax rate of 25% should be applied to foreign investment and foreign enterprises which have set up institutions or facilities in the PRC as well as PRC enterprises. The EIT Law supersedes the *PRC Income Tax Law for Foreign-Invested Enterprises and Foreign Enterprises* (《中華人民共和國外商投資企業和外國企業所得稅法》) and the *PRC Provisional Regulation on Enterprise Income Tax* (《中華人民共和國企業所得稅暫行條例》). Furthermore, unlike the Income Tax Law of the People's Republic of China for Foreign-invested Enterprises and Foreign Enterprises, which specifically exempted withholding tax on any dividends payable to non-PRC enterprise investors, the EIT Law provides that an income tax rate of 20% will normally be applicable to dividends payable to non-PRC enterprise investors which are derived from sources within the PRC, unless there exists a tax treaty between the PRC and the relevant jurisdictions in which such non-PRC enterprise shareholders reside whereupon the relevant tax may be reduced or exempted. In accordance with the EIT Law and the *PRC Implementation Rules on the Enterprise Income Tax Law* (《中華人民共和國企業所得稅法實施條例》) promulgated by the State Council on December 6, 2007 and effective January 1, 2008, a reduced income tax rate of 10% shall be applicable to any dividends payable to non-PRC enterprise investors from foreign-invested enterprises.

The EIT Law also provides a five-year transition period starting from its effective date for those enterprises which were established before the promulgation date of the new tax law and which were entitled to a preferential lower income tax rate under the then effective tax laws or regulations. The income tax rate of such enterprises will gradually transit to the uniform tax rate within the transition

period in accordance with implementing rules issued by the State Council. On December 26, 2007, the State Council issued the *Circular to Implement the Transition Preferential Policies for the Enterprise Income Tax* (《關於實施企業所得稅過渡優惠政策的通知》), under which, for those enterprises then entitled to a preferential income tax rate of 15% and established before March 16, 2007, the transition income tax rate should be 18%, 20%, 22%, 24% and 25% respectively in 2008, 2009, 2010, 2011 and 2012.

### ***Business Tax***

Business tax is payable in respect of certain business activities in China as set out in the *Provisional Regulations on Business Tax* (《中華人民共和國營業稅暫行條例》) promulgated by the State Council on December 13, 1993 and implemented on January 1, 1994 and the *Detailed Implementation Rules on the Provisional Regulations on Business Tax* (《中華人民共和國營業稅暫行條例實施細則》) issued by the Ministry of Finance on December 25, 1993. The activities to which the business tax applies include construction, leases and sales of real estate properties in China. The tax is a turnover tax charged on gross revenue. No deduction of the tax incurred on purchased services or materials is allowed. However, deductions from gross revenue are allowed for subcontracting fees paid among the transportation, tourism and construction industries. The rate of business tax payable for property sale and leasing transactions is 5% of the proceeds from the sale or leasing of real estate/immovable properties in China.

### ***Land Appreciation Tax***

According to the requirements of the *Provisional Regulations of the People's Republic of China on Land Appreciation Tax* (the “**LAT Provisional Regulations**”) (《中華人民共和國土地增值稅暫行條例》) which was promulgated by the State Council on December 13, 1993 and effected on January 1, 1994, and the *Detailed Implementation Rules on the Provisional Regulations of the People's Republic of China on Land Appreciation Tax* (the “**LAT Detailed Implementation Rules**”) (《中華人民共和國土地增值稅暫行條例實施細則》) which was promulgated by the Ministry of Finance and came into effect on January 27, 1995, any appreciation gain from a transfer of property shall be subject to LAT. LAT shall be charged at four levels of progressive rates: 30% for the appreciation amount not exceeding 50% of the sum of deductible items; 40% for the appreciation amount exceeding 50% but not exceeding 100% of the sum of deductible items; 50% for the appreciation amount exceeding 100% but not exceeding 200% of the sum of deductible items; and 60% for the appreciation amount exceeding 200% of the sum of deductible items. The related deductible items aforesaid include the following:

- i. land acquisition costs;
- ii. costs related to the development of land, new buildings and related facilities;
- iii. expenses, including finance costs and selling and general administrative expenses, of the land development and project construction, the total of which is capped at 10% of the aggregate of (i) and (ii) above;
- iv. the appraised price of any existing buildings and structures above ground;

- v. taxes related to the transfer of the real property; and
- vi. for taxpayers that are real property developers, a further deduction which is equal to 20% of the aggregate of (i) and (ii) above.

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

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

On December 24, 1999, the Ministry of Finance and the SAT issued the *Notice in respect of the Extension of the Period for the Land Appreciation Tax Exemption Policy* (《關於土地增值稅優惠政策延期的通知》) that extended the period for the LAT exemption policy as mentioned in paragraph (v) above to the end of 2000.

After the issuance of the LAT Provisional Regulations and the LAT Detailed Implementation Rules, due to the longer period for property development and transfer, many districts, while they were implementing the regulations and rules, did not force the property development enterprises to declare and pay the LAT. Therefore, the Ministry of Finance, the SAT, the Ministry of Construction and the

Ministry of Land and Resources had separately and jointly issued several notices to restate the following: after the property transfer contracts are signed, the taxpayers shall declare the tax to the local tax authorities where the properties are located, and pay LAT in accordance with the amount as calculated by the tax authority and the time as required. For those who fail to acquire proof of payment or exemption from LAT from the tax authorities, the property administration authority shall not process the relevant title change procedures, and shall not issue the property title certificate.

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

On March 2, 2006, the Ministry of Finance and SAT issued the *Notice on Several Points on Land Appreciation Tax* (《關於土地增值稅若干問題的通知》) to clarify the relevant issues regarding LAT as follows:

- i. as to the tax collection and exemption in the sale of ordinary standard residential housing built by taxpayers as well as in the transfer of ordinary residential houses by individual residents

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

- ii. As to the advance collection and settlement of LAT
  - i) all regions shall decide the advance collection rate in a scientific and reasonable manner, and adjust it at a proper time according to the value addition level of the property as well as the market development level within the region and on the basis of the specific housing categories, namely, ordinary residential houses, non-ordinary

residential houses and commercial houses. After a project is completed, the relevant settlement shall be handled in a timely manner, with any overpayment refunded or any underpayment being made up;

- ii) as to any tax that fails to be collected in advance within the advance collection term, the overdue fines shall be collected as at the day following the expiration of the prescribed advance collection term according to the relevant provisions of the Tax Collection and Administration Law as well as its detailed rules for implementation;
  - iii) as to any property project that has been completed and has gone through the acceptance procedure, where the floor area of the property as transferred makes up 85% or more of the saleable floor area, the tax authority may require the relevant taxpayer to conduct the settlement of LAT on the transferred property according to the matching principles regarding the proportion between the income as generated from the transfer of property and the amount under the item of deduction. The specific method of settlement shall be prescribed by the local tax authority of a Province, autonomous region or municipality directly under the Central Government, or a city under separate state planning; and
- iii. as to the tax collection and exemption for investment or association by means of the property. As to any investment or association by using land (property) as payment for the purchase of shares, where an enterprise involved in the investment or association engages in the property development or where any other property development enterprise makes investment or conducts association with the commercial houses it builds itself, it shall not be governed by the regulation of the interim exemption of LAT when the property (land) is transferred to the enterprise by means of investment or association.

On December 28, 2006, the SAT issued the *Notice on the Relevant Issues on the Settlement Management of Land Appreciation Tax on Real Estate Enterprise* (《關於房地產開發企業土地增值稅清算管理有關問題的通知》) which came into effect on February 1, 2007. Pursuant to the circular, a property developer shall settle and clear the LAT payment of its development projects under certain circumstances with the tax authorities in accordance with the applicable LAT tax rates. The LAT shall be settled for projects approved by the competent authorities; and for projects developed in different stages, the LAT shall be settled in stages. LAT must be settled if (i) the property development project has been completed and fully sold; (ii) the property developer transfers the whole incomplete development project; or (iii) the land-use rights with respect to the project is transferred. In addition, the relevant tax authorities may require the developer to settle the LAT if one of the following events occurs: (i) for completed property development projects, the transferred GFA represents more than 85% of total saleable GFA, or where the proportion represented is less than 85%, the remaining saleable GFA has been leased out or used by the developer; (ii) sales have not been completed for more than three years after a sale or pre-sale permit has been granted; (iii) the developer applies for cancellation of the tax registration without having settled the relevant LAT; or (iv) other conditions stipulated by the tax authorities at provincial levels.

This notice also indicated that, under any of the following circumstances, the tax authorities shall levy and collect LAT upon a property developer as per the levying rate no lower than the pre-payment rate with reference to the bearing rate of LAT of local enterprises with a similar

development scale and income level: (i) failure to maintain account book required by law or administrative regulation; (ii) destroying the account book without authorization or refusing to provide taxation information; (iii) the accounts are in a state of mess or cost materials, income vouchers and cost vouchers are damaged and incomplete, making it difficult to determine transferred income or amount of deductible items; (iv) failure to go through LAT settlement within the prescribed period, and such failure is not cured within the period required by the relevant tax authorities; or (v) the basis for tax calculation as submitted is obviously low without justifiable cause. Local provincial tax authorities at provincial levels can formulate their own implementation rules according to the notice and local situation.

On December 18, 2005, the *People's Government of Xiamen issued the Approval on Starting Imposing Land Appreciation Tax of Xiamen* (《廈門市人民政府關於開徵我市土地增值稅的批復》) under which LAT shall be applicable to any entity or individual engaging in development, sale and transfer of properties to gain appreciation in Xiamen as at January 1, 2006 in accordance with the LAT Provisional Regulations. According to this Approval, a prepaid LAT rate of 0.5% shall be applicable to the gains from the sale of ordinary standard residences, and a rate of 1% shall apply to the gains from the sale of properties other than ordinary standard residences. Pursuant to the *Notice on Adjusting the Prepaid Land Appreciation Tax Rate of Xiamen* (《關於調整我市土地增值稅預征率的通知》) issued by the local taxation bureau of Xiamen on April 15, 2008, for property projects conducted on the land acquired by means other than public tender, auction, or listing-for-sale, prepaid LAT rate of 3% and 5% shall be applicable to residential properties and villa respectively, while commercial business housings, office buildings, and other property projects shall be subject to the rate of 4% since April 1, 2008; for property projects of which 85% or more of the total saleable GFA has been sold before January 1, 2006, prepaid LAT rate of 3%, 4% and 5% shall be applicable to the remaining residential, commercial and villa part respectively, and the settlement of LAT may not be required; for property projects of which sold GFA before January 1, 2006 is less than 85% of the total saleable GFA, the gains from the sale of the remaining part shall be settled in accordance with the Circular on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises.

### ***Real Estate Tax***

Under the Provisional Regulations of the *People's Republic of China on Real Estate Tax* (《中華人民共和國房產稅暫行條例》) promulgated by the State Council on September 15, 1986 and implemented on October 1, 1986, urban real estate tax shall be 1.2% if it is calculated on the basis of the residual value of a building, and 12% if it is calculated on the basis of the rental income.

### ***Deed Tax***

Pursuant to the *Provisional regulations of the People's Republic of China on Deed Tax* (《中華人民共和國契稅暫行條例》) enacted by the State Council on July 7, 1997 and enforced on October 1, 1997, the transferee, whether an entity or individual, of the title to a land site or building in the PRC shall have to pay deed tax. The rate of deed tax is 3%-5%. The governments of Provinces, autonomous regions and municipalities directly under the central government may, within the foresaid range, determine and report their effective tax rates to the Ministry of Finance and the SAT for the record.

### ***Stamp Duty***

Persons who have executed or received dutiable documents within China are subject to stamp tax according to the *Provisional Regulations of the People's Republic of China on Stamp Duty* (《中華人民共和國印花稅暫行條例》) promulgated by the State Council on August 6, 1988 and implemented on October 1, 1988. Dutiable documents include contracts or documents of a contractual nature for the sale of goods, the undertaking of processing work, the contracting of construction and engineering projects, the leasing of property and technology, as well as transfer of property. Stamp tax shall be paid at the rate of 0.05% in respect of transfer of properties based on the contractual price and at the rate of 0.1% of the total rent amount in respect of the leasing of properties.

### ***Urban land use tax***

Pursuant to the *Provisional Regulations of the People's Republic of China Governing Land Use Tax in Urban Areas* (《中華人民共和國城鎮土地使用稅暫行條例》) promulgated by the State Council on September 27, 1988 and implemented on November 1, 1988, the land use tax in respect of urban land is levied according to the area of relevant land. The annual tax on every square meter of urban land shall be between RMB0.2 and RMB10 and be collected according to the tax rate determined by the local tax authority. According to the *Notice on Land Use Tax Exemption of Foreign-Invested Enterprises and Institutions of Foreign Enterprises in China* (《關於對外商投資企業和外國企業在華機構的用地不徵收土地使用稅的通知》) promulgated by the Ministry of Finance on November 2, 1988 and the *Approval on Land Use Tax Exemption of Foreign-Invested Enterprises* (《關於外商投資企業征免土地使用稅問題的批復》) issued by the SAT on March 27, 1997, land use fees should be collected instead of land use tax in a foreign-invested enterprise.

However, the *Provisional Regulations of the People's Republic of China Governing Land Use Tax in Urban Areas* were revised by the State Council on December 31, 2006. As at January 1, 2007, land use tax shall be paid by foreign-invested enterprises. The annual tax on every square meter of urban land shall be between RMB0.6 and RMB30.0.

### ***Municipal maintenance tax***

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

***Education surcharge***

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

**Overseas listing**

On August 8, 2006, six PRC regulatory agencies, including the CSRC, promulgated the *Regulation on the Acquisitions of Domestic Enterprises by Foreign Investors* (《關於外國投資者並購境內企業的規定》), which became effective on September 8, 2006. This new regulation, among other things, has certain provisions that purport to require offshore SPVs formed for the purpose of acquiring PRC domestic companies and controlled directly or indirectly by PRC individuals or companies, to obtain the approval of the CSRC prior to listing their securities on an overseas stock exchange. The application of this new PRC regulation remains unclear with no consensus currently existing among the leading PRC law firms regarding the scope and applicability of the CSRC approval requirement. On September 21, 2006, the CSRC published on its official website a notice specifying the documents and materials that are required to be submitted for obtaining CSRC approval.