PRC Laws Regarding Sino-foreign Cooperative Joint Ventures

Sino-foreign cooperative joint ventures are governed by the Sino-foreign Cooperative Joint Ventures Law of the PRC promulgated by the PRC National People's Congress on 13 April 1988 and amended on 31 October 2000 and the Implementation Rules of the Sino-foreign Cooperative Joint Ventures Law of the PRC promulgated by the Ministry of Foreign Trade and Economic Cooperation, the predecessor of the Ministry of Commerce, on 4 September 1995.

The establishment of a Sino-foreign cooperative joint venture

The establishment of a Sino-foreign cooperative joint venture requires the approval of the Ministry of Commerce or such departments and local governments as authorised by the State Council with certain requisite documents to be submitted for approvals. Within 30 days after the issue of the approval certificate by the Ministry of Commerce or such departments and local governments as authorised by the State Council, the applicant is required to apply to the State Administration for Industry & Commerce or its local branches for the issue of a business license. A Sino-foreign cooperative joint venture is formally established on the date its business license is issued.

A Sino-foreign cooperative joint venture may or may not be registered as an independent legal entity. If a Sino-foreign cooperative joint venture is registered as an independent legal person, it will take the form of a limited liability company.

Profits and losses of Sino-foreign cooperative joint ventures may be distributed to and shared by the joint venture partners in such manner as those partners may agree to. A Sino-foreign cooperative joint venture should set aside a portion of its profits after tax as certain reserve funds, and its dividends and other distributions/payments (no matter in foreign currencies or in RMB) representing the profit entitlement of its foreign investor can be legally remitted out of the PRC to its foreign investor through commercial banks without the need of obtaining any pre-approval or authorisation from the relevant foreign exchange bureau. In addition, where the cooperative joint venture contract provides for the reversion of all fixed assets of the Sino-foreign cooperative joint venture to the PRC joint venture partner for no consideration upon the expiry of the term of the joint venture agreed in the joint venture contract, the joint venture partners may agree in the joint venture contract that the foreign joint venture partner may have priority in recovering investment during the term of the joint venture, subject to the approvals of relevant authorities.

Management

The highest authority of a Sino-foreign cooperative joint venture is vested in its board of directors or joint management committee, which shall decide on all important matters of the joint venture. The powers and functions of the board of directors or joint management committee are generally governed by the provisions of the joint venture contract and the articles of association of the joint venture. Meetings of the board of directors or joint management committee are required to be held at least once every year. A number of specified important matters are to be decided upon unanimously by the directors present or the committee members present at a meeting, such as amending articles of association, change in registered capital, dissolution, mortgage of assets of the joint venture, merger, division or change in organisation structure, and other matters required to be decided unanimously as agreed by the joint venture partners. The board of directors or joint management committee should appoint a general manager in charge of the daily operation and management of the joint venture.

Assignment of joint venture interest

Any transfer of all or part of the interest in the Sino-foreign cooperative joint venture by one joint venture partner to other joint venture partners or the third parties is subject to the consent of other joint venture partners and approval of the relevant commerce authorities.

Termination

A Sino-foreign cooperative joint venture may be dissolved in the following situations:

(1) where its term of joint venture has expired;

(2) where the joint venture suffers heavy losses or suffers from serious damages incurred by force majeure, and is unable to continue operations;

(3) where one or many of the joint venture partners fail(s) to fulfil the obligations prescribed by the joint venture contract or articles of association, and the joint venture is unable to continue its operation;

(4) where other reasons for dissolution prescribed by the joint venture contract and articles of association occur; or

(5) where the joint venture was shut down by the relevant authorities due to its violation of laws or regulations.

In any of the circumstances described in (2) and (4) above, the board of directors or joint management committee shall submit an application for dissolution to the relevant commerce authorities for approval. In the circumstances described in (3) above, the party that has performed its obligations as stipulated in the joint venture contract shall make such application, and the party or parties that failed to fulfil the obligations stipulated in the joint venture contract or articles of association shall be liable for the losses thus caused.

Before the expiration of the joint venture term, the board of directors or joint management committee of a cooperative joint venture may decide to dissolve the joint venture upon unanimous approval by the directors present or the committee members present at the meeting held to approve this, which shall be subject to the approval from the relevant commerce authority, and the assets and properties of the cooperative joint venture shall be distributed between the joint venture partners according to the stipulations of the joint venture contract. In case the joint venture contract does not specify how to distribute the assets and properties of the cooperative joint venture between the joint venture partners, the joint venture partners may revise the joint venture contract and/or enter into an agreement to address such matters, and such revised joint venture contract and/or agreement shall be subject to the approval of the relevant commerce authority.

The Land and Property System of the PRC

The Land system

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 in a city or town is state-owned, and all land in the rural areas of a city or town and all rural land are, unless otherwise specified by law, collectively-owned. The State has the right to resume land in accordance with law if required for the benefit of the public. Although all land in the PRC is owned by the State or by collectives, private individuals, enterprises and other organisations are permitted to hold and develop land for which they are granted land use rights. Furthermore, those who obtain the State-owned land use rights by means of grant (出讓) or assignment (轉讓) can lease the aforementioned land use rights to a third party.

In April 1988, the Constitution of the PRC (the "**Constitution**") was amended by the PRC National People's Congress to allow for the transfer of land use rights for value. In December 1988, the Land

Administration Law (中華人民共和國土地管理法) of the PRC was amended to permit the transfer of land use rights for value. Under the Provisional Regulations of the PRC Concerning the Grant and Assignment 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) (the "**Urban Land Regulations**") promulgated in May 1990, local governments at or above county level have the power to grant land use rights for specific purposes and for 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, there are different maximum periods of grant for different uses of land. They are generally as follows:

Use of land	Maximum period (in years)
Commercial, tourism, entertainment	40
Residential	70
Industrial	50
Public utilities	50
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 State 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 State under special circumstances during the term of grant, compensation must be paid by the State. 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 State without compensation.

The National People's Congress adopted the PRC Property Rights Law (中華人民共和國物權法) in March 2007, which became effective on 1 October 2007. According to the Property Rights Law, when the term of the right to use construction land for residential (but not other) property purposes expires, it will be renewed automatically.

Grant of land use rights

PRC law distinguishes between the ownership of land and the right to use land. Land use rights can be granted by the State to a person to entitle him to the exclusive use of a piece of land for a specified purpose within a specified term and on such other terms and conditions as may be prescribed. A premium is payable on the grant of land use rights. The maximum term that can be granted for the right to use a piece of land depends on the purpose for which the land is used. As described above, the maximum limits specified in the relevant regulations vary from 40 to 70 years depending on the purpose for which the land is used.

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

On 11 June 2003, the Ministry of Land and Resources promulgated the Regulation on Grant of State-owned Land Use Rights by Agreement (協議出讓國有土地使用權規定), which became effective on 1 August 2003. According to such regulation, if there is only one intended 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 agreement. The local land bureau, together with other relevant government departments including the city planning authority, will formulate the plan on grant of state-owned land use rights by agreement (協議出讓方案) concerning

issues including the specific location, boundary, purpose of use, area, term of grant, conditions of use, conditions for planning and designing, and submit such plan as well as the proposed minimum price of land premium, which is designated by the group decision based on the valuation result, to the relevant government for approval. The local land bureau and the intended user will negotiate the land premium which shall not be lower than the minimum price approved by the relevant government and enter into the grant contract based on such plan. If two or more entities are interested in the land use rights proposed to be granted, such land use rights shall be granted by way of tender, auction or putting up for bidding. Furthermore, according to the Rules Regarding the Grant of State-owned Land Use Rights by Way of Tender, Auction or Silent Auction (招標拍賣掛牌出讓國有土地使用權規定) (the "**Land Use Grant Rules**") which are effective from 1 July 2002, land use rights for properties for commercial use, tourism, entertainment and commodity residential purposes can only be granted through tender, auction or putting up for bidding.

Where land use rights are granted by way of tender, invitations to tender will be issued by the local land bureau. The invitation will 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 bureau to evaluate the tenders which have been submitted. The successful bidder will then be asked to sign the grant contract with the local land bureau and pay the relevant land premium within a prescribed period. The land bureau will consider the following factors: the successful bidder shall be either the bidder who can 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 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 bureau.

Where land use rights are granted by way of silent auction, a public notice will be issued by the local land 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 bureau.

Upon signing of the contract for the grant of land use rights, the grantee is required to pay the land premium pursuant to the terms of the contract and the contract is then submitted to the relevant local land bureau for the issue of the land use right certificate. Upon expiration of the term of grant, the grantee may apply for renewal of the term. Upon approval by the relevant local land bureau, a new contract shall be entered into to renew the grant, and a grant premium shall be paid.

In September 2007, the Ministry of Land and Resources further promulgated the Regulations on the Grant of State-owned Construction Land Use Rights Through Public Tender, Auction or Silent Auction (招標拍賣掛牌出讓國有建設用地使用權規定) to require that land for industrial use, except land for mining, must also be granted by public tender, auction or silent auction. Only after the grantee has paid the land premium in full under the land grant contract, can the grantee apply for the land registration and obtain the land use right certificates. Furthermore, land use right certificates may not be issued in proportion to the land premium paid under the land grant contract.

In November 2009, the Ministry of Land and Resources issued a Circular on the Distribution of the catalogue for Restricted Land Use Projects (Supplement to the 2006 Version) and the catalogue for Prohibited Land Use Projects (Supplement to the 2006 Version) (關於印發《限制用地專案目錄(2006年本增補本)》和《禁止用地專案目錄(2006年本增補本)》的通知) as a supplement to its 2006 version. In this Circular, the Ministry of Land and Resources has restricted the area of land that may be granted by

local governments for development of commodity residential properties to seven hectares for small cities and towns, 14 hectares for medium-sized cities and 20 hectares for large cities.

In November 2009, the Ministry of Finance, the Ministry of Land and Resources, the PBOC, the PRC Ministry of Supervision and the PRC National Audit Office jointly promulgated the Notice on Further Enhancing the Control Over the Revenue and Expenditure on Land Grant (關於進一步加强土地出讓收支管理的通知). The Notice raises the minimum downpayment for land premium to 50% and requires the land premium to be fully paid within one year after the signing of a land grant contract, subject to limited exceptions.

The Ministry of Land and Resources promulgated Notice on Problems Regarding Strengthening Control and Monitor of Real Estate Land Supply (關於加强房地產用地供應和監管有關問題的通知) (the "**Notice**") on 8 March 2010. According to the Notice, the land provision for affordable housing, redevelopment of shanty towns and small/medium residential units for occupier owner should be no less than 70% of total land supply, and the land supply for large residential units will be strictly controlled and land supply for villa projects will be banned. The Notice also requires that the lowest land grant price shall be no less than 70% of the basic land price in which the granted land is located and the real estate developers' bid deposit shall be no less than 20% of the lowest grant price. The land grant contract must be executed within 10 working days after the land transaction is confirmed. The minimum down payment of the land premium shall be 50% and must be paid within one month after the execution of the land grant agreement. The rest payment shall be paid in accordance with the contract, but no later than one year. If the land grant contract is not executed in accordance with the requirement above, the land shall not be handed over and the deposit will not be returned. If no grant premium is paid after the execution of the agreement, the land must be withdrawn.

In September 2010, the Ministry of Land and Resources and the Ministry of Housing and Urban-Rural Development jointly issued the Notice On Further Strengthening the Administration and Control of Real Estate Land and Construction (關於進一步加强房地產用地和建設管理調控的通知), which stipulates, among other things, that the planning and construction conditions and land use standards shall be specified when a parcel of land is to be granted, and the restrictions on the area of one parcel of land granted for commodity residential properties shall be strictly implemented. The development and construction of large low-density residential properties shall be strictly restricted, and the floor area ratio for residential land is required to be more than 1. In addition, a property developer and its shareholders will be prohibited from participating in land bidding before any illegal behaviours in which it engages, such as land idle for more than one year on its own reasons, have been completely rectified.

Transfer of land use rights

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, lease or mortgage such land use rights for a term not exceeding the term which has been granted by the State. The difference between a transfer and a lease is that a transfer involves the vesting of the land use rights by the transferor in the transferee during the term for which such land use rights are vested in the transferor. A lease, on the other hand, does not involve a transfer of such land use rights by the lessor to the lessee. Furthermore, a lease, unlike a transfer, does not usually involve the payment of a premium. Instead, a rent is payable during the term of the lease. Land use rights cannot be transferred, leased or mortgaged 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, leased or mortgaged.

All transfers, mortgages and leases 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

country 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 Law of Administration of Urban Real Property (2007 revision) (中華人民共和國城市房地產管理法(2007年修訂)) (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 assigned. Also, under the Urban Real Property Law, if land use rights are acquired by means of grant, the real property shall not be assigned 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 grant contract and a land use right certificate must have been obtained; (ii) investment or development must have been made or carried out in accordance with terms of the land grant contract; (iii) where the investment or development involves housing construction projects, more than 25% of the total amount of investment or development must have been made or completed; (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; (v) where the real property is assigned with a completed building, the building ownership certificate is needed as well.

Termination of land use rights and repossession of properties

A land use right terminates upon the expiration of the term of the grant specified in the land 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 shall be resumed 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 grant contract, pay a premium and effect appropriate registration for the renewed right.

The State generally will not resume land use right before the expiration of its term of grant unless for special reasons (such as in the public interests). Where the State resumes a land use right before the expiration of its term of grant, it must offer proper compensation to the land user, having regard to the surrounding circumstances and the period for which the land use right has been enjoyed by the user. In addition, according to the Urban Real Property Law, where a real property development is carried out on land for which the land use rights are acquired by means of grant and the development does not commence within two years from the date as set out in the land grant contract, the relevant land use rights may be resumed without compensation before the expiration of its term of grant, with limited exceptions as stipulated in relevant PRC laws and regulations.

Documents of title

In the PRC, there are two registers for property interests. Land registration is achieved by the issue of a land use right certificate by the relevant authority to the land user. It is evidence that the land user has obtained land use rights which can be assigned, mortgaged or leased. The building registration is the issue of a building ownership certificate (房屋所有權證) or a real estate ownership certificate (房地產權證) to the owner. It is evidence that the owner has obtained building ownership rights in respect of the building erected on a piece of land. According to the Land Registration Regulations (土地登記規則) (the "**Registration Regulations**") promulgated by the State Land Administration Bureau (國家土地管理局), the predecessor of the Ministry of Land and Resources, on 28 December 1995 and implemented on 1 February 1996, the Land Registration Measures (土地登記辦法) promulgated by the Ministry of Land and Resources on 30 December 2007 and effective on 1 February 2008, and the Building Registration Measures (房屋登記辦法) promulgated by the Ministry of Housing and Urban-Rural

Development on 15 February 2008 and effective on 1 July 2008, all land use rights and building ownership rights which are duly registered are protected by the law.

In connection with these registration systems, real estate and land registries have been established in the PRC. In most cities in the PRC, the above systems are separate systems. However, in Shenzhen, Shanghai, Guangzhou and some other major cities, the two systems have been consolidated and a single composite real estate ownership certificate (房地產權證) will be issued evidencing the ownerships of both land use rights and the building erected thereon.

Mortgage

The grant of mortgage in the PRC is governed by the Security Law of the PRC (中華人民共和國擔保法) (the "**Security Law**") promulgated by the Standing Committee of the National People's Congress in June 1995, the Measures for Administration of Mortgages of Urban Real Estate promulgated by the Ministry of Construction (城市房地產抵押管理辦法) in May 1997, as amended in August 2001, and the PRC Property Rights Law and by relevant laws regulating real estate. Under the Security Law, 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 right 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. If the proceeds from the sale of such property are not sufficient to cover the outstanding amount, the mortgagee may bring proceedings before a competent court or arbitration tribunal (where there is an agreement to recover the amount still outstanding through arbitration) in the PRC.

The Security Law also contains comprehensive provisions dealing with guarantees. Under the Security Law, guarantees may be in two forms: (i) guarantees whereby the guarantor bears the liability when the debtor fails to perform the payment obligation; and (ii) guarantees with joint and several liability whereby the guarantor and debtor are jointly and severally liable for the payment obligation. A guarantee contract must be in writing and unless agreed otherwise, the term of a guarantee shall be six months after the expiration of the term for performance of the principal obligation.

The Security Law further provides that where indebtedness is secured by both a guarantee and by mortgaged property, the guarantor's liability shall be limited to the extent of the indebtedness that is not secured by the mortgaged property.

Lease

Both the Urban Land Regulations and the Urban Real Property Law permit leasing of granted land use rights and buildings thereon. However, leasing of land use rights obtained by allocation (劃撥) and of buildings on such allocated land is regulated by the Urban Land Regulations.

Leasing of urban real properties is also governed by the Measures for Administration of Leasing of Urban Buildings (城市房屋租賃管理辦法) (the "**Measures**"), which was promulgated in accordance with the Urban Real Property Law. Under the Measures, owners of buildings in the PRC are entitled to lease their buildings, and landlords 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. A contract cannot be longer than the remainder of the term under the land 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 a house built 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.

According to the Notice on Strengthening Registrations of Building Leasing Agreements for Non-residence (關於加强非居住房屋租賃合同登記備案工作有關問題的通知) issued by Beijing Municipal Commission of Housing and Urban-Rural Development in May 2008 and effective from June 2008, the Administration Rules on Building Leasing of Beijing (北京市房屋租賃管理若干規定) issued by Beijing Municipal Government in November 2007 and effective as of January 2008, and the Measures, within Beijing, the building lease agreements for residence should be registered with the building lease service station (出租房屋服務站), and those for non-residence should be registered with the relevant property administrative authority at municipality or county level according to the Measures.

In December 2010, the Ministry of Housing and Urban-Rural Development issued the Administrative Measures for Leasing of Commodity Housing (商品房屋租賃管理辦法), which will supersede the Measures upon effectiveness as of 1 February 2011. According to the Administrative Measures for Leasing of Commodity Housing, the landlords and tenants are required to enter into lease contracts which must contain specified provisions, the floor area per tenant may not be less than the minimum living space stipulated by the local government where the building is located, no kitchens, lavatories, balconies or basement storerooms should be rented out as residence, and the lease contract should be registered with the relevant construction or property authorities at municipal or county level within 30 days after its conclusion. If the lease contract is extended or terminated or if there is any change to the registered items, the landlord and the tenant are required to effect alteration registration, extension of registration or deregistration with the relevant construction or property authorities within 30 days after the occurrence of the extension, termination or alteration.

The Contract Law of the People's Republic of China (中華人民共和國合同法) promulgated by the National People's Congress in March 1999 and effective from October 1999 provides among others, that the lease agreement shall be in writing if its term is over six months, and the term of any lease agreement shall not exceed twenty years. During the lease term, any change of ownership to the leased property does not affect the validity of the lease contract. The tenant may sub-let the leased property if it is agreed by the landlord and the lease agreement between the landlord and the tenant is still valid and binding. When the landlord is to sell a leased housing under a lease agreement, it shall give the tenant a reasonable advance notice before the sale, and the tenant has the priority to buy such leased housing on equal conditions.

The tenant must pay rent on time in accordance with the lease contract. In the event of default of rental payment without reasonable cause, the landlord may ask the tenant to pay within a reasonable period of time, or otherwise terminate the lease with a default fine.

Except as mentioned below, if the landlord wishes to terminate the lease before its expiry date, prior consent shall be obtained from the tenants who are entitled to be indemnified for any resulting loss.

The landlord has the right to terminate the lease agreement if the tenant sub-lets the property without prior consent from the landlord, or causes loss to the leased properties resulting from its using the property not in compliance with the usage as stipulated in the lease agreement, or defaults in rental payment after the reasonable period as required by the landlord, or other circumstances occurs allowing the landlord terminate the lease agreement under relevant PRC laws and regulations.

Sale and transfer of property

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

Before the post-completion sale of a commodity building, a property development enterprise shall submit the property development project manual and other documents evidencing the satisfaction of preconditions for post-completion sale to the property development authority.

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

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

- the land premium has been paid in full for the grant of the land use rights as provided by the land grant contract and a land use rights certificate has been properly obtained;
- in the case of a project in which buildings are being developed, development representing more than 25% of the total investment has been completed;
- in case of a whole land lot development project, construction works have been carried out as planned, water supply, electricity supply, heat supply, access roads, telecommunications and other infrastructure or utilities have been made available, and the site has been leveled made ready for industrial or other construction purposes; and
- in case of where the real property has been completed in construction, the property ownership certificate shall been obtained.

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

If the land use rights were originally obtained by allocation, such allocation may be changed to land use rights grant if approved by the government vested with the necessary approval power as required by the State Council. After the government authorities vested with the necessary approval power approve such change, the grantee must complete the formalities for the grant of the land use rights

and pay the land premium according to the relevant statutes. Land for industry (including warehouse land, but excluding mining land), commercial use, tourism, entertainment and commodity housing development must be assigned by competitive bidding, public auction or listing-for-sale under the current PRC laws and regulations.

Property Management Rules in the PRC

According to the Regulation on Property Management (物業管理條例) enacted by the State Council on 8 June 2003 and enforced on 1 September 2003, as amended on 26 August 2007 and effective on 1 October 2007, the state implements a qualification scheme system in monitoring the property management enterprises and enterprises engaging in property management shall obtain relevant qualifications from competent authorities. According to the Measures for Administration of Qualifications of Property Service Enterprises (物業服務企業資質管理辦法) enacted by the Ministry of Housing and Urban-Rural Development on 17 March 2004, as amended on 30 October 2007, a property service enterprise shall be classified as either class one, class two or class three. The relevant construction authorities will issue the qualification certificates for property service enterprises according to relevant criteria, including but not limited to, the registered capital, the numbers of relevant technical personnel, the property service experience and the service administration systems of the property service enterprise. According to the Regulation on Property Management, owners may engage or dismiss a property management company with the consent of more than half of the owners who in the aggregate hold more than 50% of the total non-communal area of the building. If, before the formal employment of a property management by the owners or the general meeting, the construction unit is to employ a real estate management enterprise, it shall enter into a preparation stage property services contract in writing with the real estate management enterprise. In addition, under the Administrative Measures on Property Management of Beijing (北京市物業管理辦法) as promulgated by Beijing Municipal Government on 20 April 2010 and effective as of 1 October 2010, property service enterprises are required to submit the property service contract to relevant property administrative authority at county level for record within 15 days after the execution of the property service contract.

Comparison of Certain Aspects of PRC and Hong Kong Property Law

The following is a general comparison of the legal protection of proprietary rights over real estate conferred by the legal systems of PRC and Hong Kong:-

PRC	Hong Kong
General	General
Under the Urban Real Property Law, the legitimate rights and interests of the owners over real estate shall be protected by the law of PRC, on which no person may unlawfully infringe. In general, the legitimate rights and interests of the owners over real estate in PRC are protected under PRC law.	Following Hong Kong's reunification with the PRC on 1 July 1997, the Basic Law of Hong Kong Special Administrative Region becomes the constitution of Hong Kong. Article 6 of the Basic Law provides that the Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law. Under the concept of "one country, two systems", Hong Kong enjoys a high degree of autonomy and its legal system is separate from that of the PRC. The proprietary rights of land owners over landed properties in Hong Kong are protected under Hong Kong law, which consists of the English common law principles as well as the Hong Kong legislations.
Land System in the PRC	System of Land Holding in Hong Kong
PRC law distinguishes between the ownership of land and the right to use land. According to the Constitution, all land in the cities is owned by the State while land in the rural and suburban areas, unless otherwise specified by law, is owned by collectives. Houses sites (宅基地), privately farmed crop land (自留地) and hilly land (自留山) are also owned by collectives. The State may expropriate or take over land and pay compensation in accordance with law if such land is required for public benefit. Under the Urban Land Regulations, a system for the grant and transfer of state owned land in urban areas was implemented. Pursuant to this system, all local and foreign companies, enterprises and other organisations and individuals, unless the law provides otherwise, are permitted to acquire land use rights and to develop and operate properties in accordance with law. Under the Urban Land Regulations, local governments at or above county level have the power to grant land use rights for specific purposes and for a definite period to a land user pursuant to a contract for the grant of land use rights upon payment of a grant premium. There are different maximum periods of grant for different uses of land. They are generally as follows: • up to 70 years for residential use;	Land tenure in Hong Kong is essentially leasehold. Title to a landed property is derived from long-term Government lease or agreements and conditions for lease (as the case may be) granted by the Hong Kong Government. Owners of landed properties in Hong Kong are effectively long leaseholders. Due to historical reasons, the terms of the Government leases vary from short term leases to leases of up to 999 years. Article 120 of the Basic Law essentially provides that all Government leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extended beyond 30 June 1997, and all rights in relation to such Government leases, shall continue to be recognised and protected under the law of Hong Kong. Article 121 of the Basic Law provides that as regards all Government leases of land granted or renewed where the original Government leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the Government lessee is not required to pay any additional premium as from 1 July 1997, but an annual rent equivalent to 3% of the rateable value of the landed property concerned is payable to the Hong Kong Government.

PRC

- up to 50 years for industrial use or for public use;
- up to 40 years for commercial, tourism and entertainment uses; and
- up to 50 years for all other uses.

Upon expiration of the term of grant, it is possible for a land user to renew such term subject to the execution of a new land grant contract and payment of a land grant premium. If the term of the grant is not renewed, the land use rights of the land and ownership of any building thereon will revert to the State without compensation. According to the Property Rights Law, when the term of the right to use construction land for residential (but not other) property purposes expires, it will be renewed automatically.

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

According to the Land Use Grant Rules which are effective from 1 July 2002, land use rights for properties for commercial use, tourism, entertainment and commodity residential purposes can only be granted through tender, auction or putting up for bidding.

On 11 June 2003, the Ministry of Land and Resources promulgated the Regulation on Transfer of State-owned Land Use Rights by Agreement. According to this regulation, land use rights may be granted by way of agreement if it is not required under applicable laws and regulations that the land be granted by public auction, tender or bidding.

Upon signing of the contract for the grant of land use right, the grantee is required to pay the land grant premium in accordance with the terms of the contract. Once the land grant premium is paid in full, the contract may be submitted to the relevant local bureau for the issue of a land use rights certificate evidencing the grant of land use rights.

In September 2007, the Ministry of Land and Resources further promulgated the Regulations on the Grant of State-owned Construction Land Use Rights Through Public Tender, Auction and Listing for-sale to require that land for industrial use, except land for mining, must also be granted by public tender, auction and listing-for-sale. Only after the grantee has paid the land premium in full

Hong Kong

In general, the terms of the earlier Government grants are less restrictive. As society has become more sophisticated, extensive development requirements, obligations and restrictions are found in recent Government grants. Very often, the Government will provide a restriction on alienation in the Government grant - the grantee is required to comply with all the positive obligations in the Government grant, such compliance being evidenced by the issuance of a certificate of compliance by the Lands Department, before the grantee is in a position to sell/assign any individual unit of the development. If no such compliance has been issued, the grantee can only sell/assign the units unless it shall have obtained the relevant prior written consent from the Lands Department. Any non-compliance of the terms of the Government grant may render the Government exercising its rights of re-entry of the land.

Certain Government grants and certain legislations in Hong Kong contain Government's right of resumption of the land or any part thereof for public purposes before expiry of the terms granted. Compensation may be made payable to the affected owners.

Any individual or corporate legal entity, whether local or overseas, is entitled to own landed property in Hong Kong. Property transaction in Hong Kong attracts payment of ad valorem stamp duty in accordance with the Stamp Duty Ordinance (Cap.117, Laws of Hong Kong). On 19 November 2010, the Financial Secretary has announced that on top of the current ad valorem stamp duty, Special Stamp Duty would be introduced on disposal of residential properties. Any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of its place of incorporation), and resold within 24 months will be subject to the proposed Special Stamp Duty at different rates (up to 15% of the stated consideration or market value) for different holding periods (up to 24 months) of such property. The implementation of the new measures is subject to the enactment of the proposed legislative amendments.

PRC	Hong Kong
under the land grant contract, can the grantee apply for the land registration and obtain the land use rights certificates. Furthermore, land use rights certificates may not be issued in proportion to the land premium paid under the land grant contract.	
Subject to any restrictions imposed, the party to which the land use right is granted may transfer such land use rights. The transfer may be by way of sale, exchange or gift. The term of land use rights for the transferred land is the original term granted under the grant contract less the term which has already been enjoyed by the original grantee.	
A transfer of land use rights must be evidenced by a written contract. Upon such transfer, all rights and obligations contained in the original contract for the grant of land use rights by the State are deemed to be simultaneously transferred to the transferee, together with any buildings and other fixtures on the land. The transfer must be duly registered at the relevant local land bureau and a new certificate of land use rights will be issued and the original land use rights certificate will be suspended.	
Under the Urban Real Property Law, in relation to a transfer of land for which land use rights were acquired by way of grant, the following conditions must be met: • the land premium must have been paid in full in accordance with the land grant contract and a land use rights certificate must have been obtained; • investment in or development of such land must have been made or carried out in accordance with the terms of the land grant contract; • if the investment or development involves the construction of building on the land, more than 25% of the total amount of investment or development must have been made or completed; and • where the investment or development involves a large tract of land, conditions for the use of the land for industrial or other construction purposes must have been met.	
Property Owners' Committee	Strata Title Ownership
According to the Regulation on Property Management, owners may engage or dismiss a	Strata-title ownership is commonly found in Hong Kong's multi-storey buildings. The structure is

PRC	Hong Kong
property management company with the consent of more than half of the owners who in the aggregate hold more than 50% of the total non-communal area of the building. If, before the formal employment of a property management by the owners or the general meeting, the construction unit is to employ a real estate management enterprise, it shall enter into a preparation stage property services contract in writing with the real estate management enterprise.	derived from the concept that all owners of the units are holding the land and the development jointly as co-owners. Such piece of land and the development built thereon are notionally divided into a number of undivided shares. An owner of each unit holds a certain number of the allocated undivided shares, together with the exclusive right to hold use occupy and enjoy his unit. All owners of the development then share the use of such common part and common facilities of the development which are intended for common use. The allocation of the undivided shares is usually made by the architect of the development with reference to the gross floor area of each unit. Immediately after the first unit of a development is assigned, the developer, the first purchaser of a unit and the manager of the development will enter into a document known as the Deed of Mutual Covenant and Management Agreement ("the DMC"), which sets out the rights and obligations of the parties vis-à-vis each other relating to the co-ownership and management of the development. The system of building management in Hong Kong is mainly based upon private contractual arrangements between the owners of units in the development by virtue of a DMC. The governing legislation for building management is the Building Management Ordinance (Cap.123, Laws of Hong Kong), which also plays an important role in guarding against drafting in of unfair terms by the developer in the DMC and in setting out the framework for the mandatory terms to be contained in a DMC, to the intent that the rights and obligations of the owners and the manager of the development are regulated for the purpose of co-ownership and management of the development. The DMC is usually prepared in accordance with the guidelines laid down by the Government and the rules laid down by The Law Society of Hong Kong. It is commonly found in the newer Government grants that the terms of the DMC have to be approved by the Lands Department.
Documents of Title There are two types of title registrations in the PRC, namely land registration and building registration. Land registration is effected by the issue of land use rights certificate by the relevant authority to the land owner evidencing that the land owner has obtained land use rights which can be assigned, mortgaged or leased. The building	Land Registration The present land registration system in Hong Kong is a "deeds registration" system. The governing legislation is the Land Registration Ordinance (Cap.128, Laws of Hong Kong). Documents affecting landed properties in Hong Kong are lodged with the Land Registry for registration.

PRC	Hong Kong
registration is the issue of a building ownership certificate or a real estate ownership certificate to the owner evidencing that the owner has obtained building ownership rights in respect of the building. According to the Land Registration Regulations, the Land Registration Measures and the Building Registration Measures, all land use rights and building ownership rights which are duly registered are protected by law.	The Land Registry maintains a public land register for recording interests in the landed property in Hong Kong. Registration does not serve as a proof that a person registered as the owner has good title to the property. The deeds registration system simply confers priority on registered documents and any registered document will become a public record. Legal advice on title checking should be sought if one would like to ascertain whether a person has good and marketable title to a particular property.
The two different systems are commonly maintained separately in many cities in the PRC. However, in Shenzhen, Guangzhou, Shanghai and some other major cities, the two system have been consolidated and a single composite real estate ownership certificate (房地產權證) will be issued to evidence the ownership of both land use rights and the buildings erected thereon.	Hong Kong has enacted the Land Title Ordinance in 2004. The new title registration system will transform the present system of deeds registration into a system to title registration. Under the new system, the title register will be conclusive evidence of title to the property. However, the date on which the new system will be implemented is yet to be ascertained.
	Proving Title to Property
	Before the title registration comes into actual operation, title of a property has to be proved by investigation of the original title deeds (if they relate exclusively to a particular property) or certified copies of the title deeds in order to ascertain the owner's title is properly derived from his pre-decessors in title and is not encumbered.
	The Conveyancing and Property Ordinance (Cap. 219, Laws of Hong Kong) is the governing legislation of the conveyance of landed property in Hong Kong. It was enacted in 1984. It has been adopted from the relevant English statutes and codified various common law principles in real estate conveyance aspects. Apart from this ordinance, the rulings in the judgments of the court cases play an important part in determining whether the title to a property is in order.
Leases/Tenancies in PRC	Leases/Tenancies in Hong Kong
Both the Urban Land Regulations and the Urban Real Property Law permit leasing of granted land use rights and buildings thereon.	The governing legislation of leasing and letting of landed property in Hong Kong is the Landlord and Tenant (Consolidation) Ordinance (Cap. 7, Laws of Hong Kong) ("LTCO"). Under the former regime before the amendment is made to the LTCO in 2004, a domestic tenant is entitled to statutory renewal of tenancy provided he is willing to pay the prevailing market rent. Only on certain statutory grounds of opposition stated in
Leasing of urban real properties is also governed by the Measures for Administration of Leasing of Urban Buildings (the "Measures"), which was promulgated in accordance with the Urban Real Property Law. Under the Measures, owners of	

PRC	Hong Kong
buildings in the PRC are entitled to lease their buildings, and landlords 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 country level within 30 days after its execution. A contract cannot be longer than the remainder of the term under the land grant contract. The tenant may, upon obtaining consent from the landlord, sublease the premises. According to the Notice on Strengthening Registrations of Building Leasing Agreements for Non-residence, the Administration Rules on Building Leasing of Beijing, and the Measures, within Beijing, the building lease agreements for residence should be registered with the building lease service station (出租房屋服務站), and those for non-residence should be registered with the relevant property administrative authority at municipality or country level according to the Measures. The Contract Law of the People's Republic of China provides among others, that the lease agreement shall be in writing if its term is over six months, and the term of any lease agreement shall not exceed twenty years. During the lease term, any change of ownership to the leased property does not affect the validity of the lease contract. The tenant may sub-let the leased property if it is agreed by the landlord and the lease agreement between the landlord and the tenant is still valid and binding. When the landlord is to sell a leased housing under a lease agreement, it shall give the tenant a reasonable advance notice before the sale, and the tenant has the priority to buy such leased housing on equal conditions. The tenant must pay rent on time in accordance with the lease contract. In the event of default of rental payment without reasonable cause, the and lord may ask the tenant to pay within a reasonable period of time, or otherwise terminate the lease with a default fine.	the pre-amended LTCO, namely self-occupation by the landlord, rebuilding by the landlord, use of property for an illegal purpose or illegal subletting etc, could the landlord refuse to renew the tenancy. This regime has been abolished by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (the "Amendment Ordinance") which came into effect on 9 July 2004. Further, under the Amendment Ordinance, the fixed term non-domestic tenancy will end upon the expiration of its contractual term and the landlord is no longer required to give a not less than 6-month statutory notice to quit to the tenant to end the tenancy. These changes have brought flexibility and free operation to landlords and tenants in view of the active leasing market in Hong Kong. After the implementation of the Amendment Ordinance, in general, the landlord and the tenant enjoy more freedom in their negotiation on the terms of the letting. It is common practice in Hong Kong for landlords, especially those who own the whole commercial developments or residential blocks to impose extensive obligations on the tenants, such as the covenant to pay rent, management fees and rates, and sometime promotion levy (particularly for large shopping arcades), to maintain the leased premises in a tenantable condition, not to underlet, compliance with DMC, the land grant, ordinances and other governmental regulations. The landlord's obligations will simply be confined to the giving of "quiet enjoyment" (in brief it means the non-interference with the tenant's rights under the tenancy agreement), payment of government rent and the obligation to repair the structural part of the premises. The landlord or the tenant may institute legal proceedings to enforce their rights under the tenancy. It should be noted that a tenancy with a term not exceeding three years is not required to be entered as a deed and registered in the Land Registry. However, if an option to renew the tenancy is granted to the tenant, common law cases laid down the ruling that the tenant should submit the tenancy agreement for registration in the Land Registry in order to obtain priority against third party interest even though the original term or the option term does not exceed three years.

Foreign Exchange Controls

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

Prior to 31 December 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 branch of the State Administration of Foreign Exchange (the "**SAFE**") before it could convert RMB into foreign currency through the Bank of China (中國銀行) or other designated banks. Such conversion had to be effected at the official rate prescribed by SAFE on a daily basis. RMB 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 RMB 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 28 December 1993, PBOC, under the authority of the State Council, promulgated the Notice of the PBOC 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 1 January 1994. The notice announced the abolition of the foreign exchange quota system, the implementation of conditional convertibility of RMB in current account items, the establishment of the system of settlement and payment of foreign exchange by designated banks, and the unification of the official RMB exchange rate and the market rate for RMB established at swap centres. On 26 March 1994, the PBOC promulgated the Provisional Regulations for the Administration of Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯暫行管理規定) (the "**Provisional Regulations**"), which set out detailed provisions regulating the trading of foreign exchange by enterprises, economic organisations and social organisations in the PRC.

On 1 January 1994, the former dual exchange rate system for RMB was abolished and replaced by a controlled floating exchange rate system, which is determined by demand and supply of RMB. Pursuant to such systems, the PBOC sets and publishes the daily RMB-US dollar exchange rate. Such exchange rate is determined with reference to the transaction price for RMB-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 RMB against other major foreign currencies. In foreign exchange transactions, designated foreign exchange banks shall, within a specified range, freely determine the applicable exchange rate in accordance with the rate announced by the PBOC.

On 29 January 1996, the State Council promulgated Regulations for the control of Foreign Exchange (中華人民共和國外匯管理條例) (the "**Control of Foreign Exchange Regulations**") which became effective from 1 April 1996. The Control of Foreign Exchange Regulations classifies all international payments and transfers into current account items and capital account items. Current account items are no longer subject to SAFE approval while capital account items still are. The Control of Foreign Exchange Regulations was subsequently amended on 14 January 1997 and on 5 August 2008. Such amendment affirms that the State shall not restrict international current account payments and transfers.

On 20 June 1996, PBOC promulgated the Regulations for Administration of Settlement, Sale and Payment of Foreign Exchange (結匯、售匯及付匯管理規定) (the "**Settlement Regulations**") which became effective on 1 July 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 the basis of the Settlement Regulations, the PBOC published the Announcement on the Implementation of Foreign Exchange Settlement and Sale Banks by Foreign

invested Enterprises (外商投資企業實行銀行結售匯工作實施方案). The announcement permits foreign-invested enterprises to open, on the basis of their needs, foreign exchange settlement accounts for current account receipts and payments of foreign exchange, and specialised accounts for capital account receipts and payments at designated foreign exchange banks.

On 25 October 1998, PBOC and SAFE promulgated the Notice Concerning the Discontinuance of Foreign Exchange Swap Business (關於停辦外匯調劑業務的通知) pursuant to which and with effect from 1 December 1998, all foreign exchange swap business in the PRC for foreign-invested enterprises shall be discontinued, while the trading of foreign exchange by foreign invested enterprises shall be regulated under the system for the settlement and sale of foreign exchange applicable to banks.

On 21 July 2005, the PBOC announced that, beginning from 21 July 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 RMB 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 RMB in the inter-bank foreign exchange market after the closing of the market on each business day, setting the central parity rate for trading of the RMB on the following business day.

Save for foreign invested enterprises or other enterprises which are specially exempted by relevant regulations, all entities in China (except for foreign trading companies and production enterprises having import and export rights, which are entitled to retain part of foreign exchange income generated from their current account transactions and to make payments using such retained foreign exchanges in their current account transactions or approved capital account transactions) must sell their foreign exchange income to designated foreign exchange banks. Foreign exchange income from loans issued by organisations outside the territory or from the issuance of bonds and shares is not required to be sold to designated banks, but may be deposited in foreign exchange accounts with designated banks.

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 standardisation of all cross-border flows of funds. On 21 October 2005, SAFE issued the Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Reverse Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies (關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知) which became effective as at 1 November 2005. The notice replaced the two regulations issued by SAFE in January and April 2005 mentioned above. According to the notice, "special purpose company" (特殊目的公司) refers to the offshore company established or indirectly controlled by the PRC residents (both PRC domestic legal person and natural person) for the special purpose of carrying out equity financing with their assets or 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. The notice

applies retroactively. 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 31 March 2006.

On 11 July 2006, the PBOC, SAFE and other authorities jointly promulgated the Opinions on Foreign Investment in Real Estate (關於規範房地產市場外資准入和管理的意見), which states that: (i) an overseas entity or individual investing in real estate in China other than for self-use, shall apply for the establishment of a foreign invested real estate enterprise in accordance with applicable PRC laws and shall only conduct operations within the authorised business scope after obtaining the relevant approvals from and registering with the relevant governmental authorities; (ii) the registered capital of a foreign invested real estate enterprise with a total investment of US$10 million or more shall not be less than 50% of its total investment amount, whereas for foreign invested real estate enterprise with a total investment of less than US$10 million, the current rules on registered capital shall apply; (iii) a newly established foreign invested real estate enterprise will first obtain an approval certificate and business license which are valid for one year. The formal approval certificate and business license can be obtained by submitting the land use right certificate to the relevant government departments after the land grant premium for the land has been paid; (iv) an equity transfer of a foreign invested real estate enterprise or the transfer of its projects, as well as the acquisition of a domestic real estate enterprise by foreign investors, must first be approved by the commerce authorities. The investor shall submit a letter of guarantee to the commerce authorities confirming that it will abide with the land grant contract, the construction land planning permit and the construction works planning permit. In addition, the investor shall also submit the land use right certificate, the evidence of alteration filing by construction authorities and evidence from the tax authorities confirming the tax payment situation; (v) foreign investors acquiring a domestic real estate enterprise through an equity transfer, acquiring the Chinese investors' equity interest in an equity joint venture or through any other methods shall pay the purchase funds in a lump sum and with its own capital and shall ensure the proper treatment for enterprise's employees and bank loans in accordance with applicable PRC laws; (vi) if the registered capital of a foreign invested real estate enterprise is not fully paid up, its land use right certificate has not been obtained or the capital-fund in respect of development project is less than 35% of the total investment amount of the project, the foreign invested real estate enterprise is prohibited from borrowing from any domestic or foreign lenders and SAFE shall not approve the settlement of any foreign loans; (vii) neither the domestic investors nor the foreign investors in a foreign invested real estate enterprise shall not in any manner stipulate a fixed return clause or equivalent clause in contract, articles of association, equity transfer agreement or in any other documents; (viii) a branch or representative office established by a foreign investor in China (other than a foreign invested real estate enterprise), or a foreign individual working or studying in the PRC for more than one year, is permitted to purchase commodity residential properties located in the PRC only for the purpose of self-residence. Residents of Hong Kong, Macau and Taiwan and overseas Chinese may purchase commodity residential properties of a stipulated floor area based on their living requirements in the PRC for self-residence purposes.

On 1 September 2006, the Ministry of Construction and SAFE promulgated the Circular on the Issues Concerning the Regulation of Foreign Exchange Administration of the Real Estate Market (關於規範房地產市場外匯管理有關問題的通知). This circular states that: (i) where foreign exchange is remitted for a real estate purchase, the foreign purchaser shall be subject to examination by the designated foreign exchange bank. The remitted funds shall be directly remitted by the bank to the RMB account of the real estate development enterprise and no payment remitted from abroad by the purchasers shall be kept in the foreign exchange account of current account of the real estate development enterprises; (ii) where the commercial house transaction fails to complete and the foreign purchaser intends to remit the purchase funds in RMB back to foreign currencies, the foreign purchaser shall be subject to examination by the designated foreign exchange bank; (iii) when selling real estates in China and the purchase price received in RMB is remitted to foreign currencies, the

foreign purchaser shall be subject to examination by the local branch of SAFE; and (iv) if the registered capital of a foreign invested real estate enterprise is not fully paid up, its land use right certificate has not been obtained or the capital-fund in respect of development project is less than 35% of the total investment amount of the project, the foreign invested real estate enterprise is prohibited from borrowing from any foreign lenders and SAFE shall not process the foreign debt registration or examination and approval regarding the settlement of foreign debt.

In July 2007, SAFE issued a Notice on the Distribution of the List of the First Group of Foreign Invested Real Estate Projects Filed with the Ministry of Commerce (關於下發第一批通過商務部備案的外商投資房地產項目名單的通知). The notice stipulates, among other things, (i) that SAFE will no longer process foreign debt registrations or examination and approval regarding the settlement of foreign debt for foreign invested real estate enterprises which obtain authorisation certificates from and file with the Ministry of Commerce on or after 1 June 2007 and (ii) that SAFE will no longer process foreign exchange registrations (or alteration of such registrations) or settlement and sale of foreign exchange under capital account for foreign invested real estate enterprises which obtain approval certificates from local government commerce authorities but do not file with the Ministry of Commerce on or after 1 June 2007.

The Control of Foreign Exchange Regulations was amended by the State Council on 1 August 2008 and came effective on 5 August 2008. Under the revised Control of Foreign Exchange Regulations, the compulsory settlement of foreign exchange is dropped. As long as the capital inflow and outflow under the current accounts are based upon real and legal transactions, individuals and entities may keep their income in foreign currencies inside or outside China according to the provisions and terms to be set forth by the SAFE. The foreign exchange income generated from current account transactions may be retained or sold to financial institutions engaging in the settlement and sale of foreign exchange. Whether to retain or sell the foreign exchange income generated from capital account transactions to financial institutions is subject to approvals from the SAFE or its branches, except for otherwise stipulated by the State. Foreign exchange or settled fund of foreign exchange of capital account must be used in the way as approved by the competent authorities and SAFE or its branches, and the SAFE or its branches are empowered to supervise the utilisation of the foreign exchange or settled fund of foreign exchange of capital account and the alterations of the capital accounts. The RMB follows a managed floating exchange rate system in line with the market demand and supply. A domestic individual or entity who conducts the overseas direct investment or overseas issue and transaction of negotiable securities and derivative financial products shall undergo registration formalities with foreign exchange administrative authorities of the State. Furthermore, such individual or entity shall apply for the approval or filing on such investment, issue or transaction form relevant authorities prior to the approval or filing if otherwise required by relevant PRC laws and regulations.

On 29 August 2008, the General Affairs Department of SAFE issued a Notice with Regard to the Issue 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本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 invested 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 foreign invested 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 when engaging in foreign currency capital settlement with foreign investment enterprises.

Funds in RMB 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 foreign invested real estate enterprises, foreign investment enterprises may not use funds in RMB 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 RMB obtained through foreign currency capital settlement to purchase securities, it must act incompliance 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 commerce authorities must first undergo examination and approval by the SAFE. The receipt and settlement in respect of profits obtained by PRC entities or individuals through the sale of shares or interests in PRC enterprises to foreign investors must be conducted through a foreign exchange account exclusively for assets realisation. The opening of such account, and any related transferral of funds, must undergo examination and approval by the local branches of SAFE as provided by the relevant regulations.

On 1 July 2009, the PBOC, the Ministry of Finance, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation and the China Banking Regulatory Commission jointly promulgated the Measures for the Administration of Pilot RMB Settlement in Cross-border Trade (跨境貿易人民幣結算試點管理辦法), under which, eligible enterprises as designated by relevant authorities located in the cities or provinces which have been chosen by the State Council to execute the pilot RMB trade settlement scheme, are allowed to settle the cross-border trade transactions in RMB. On 17 June 2010, the PBOC, the Ministry of Finance, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation and the China Banking Regulatory Commission jointly promulgated the Circular on Issues Regarding the Extension of Pilot RMB Settlement in Cross-border Trade (關於擴大跨境貿易人民幣結算試點有關問題的通知), which extended the pilot scheme to cover more than 20 provinces and cities, including Beijing, and to make RMB trade and other current account item settlement available in all countries worldwide.

On 25 February 2011, the Ministry of Commerce issued the Notice on Relevant Issues regarding the Administration of Foreign Investment (商務部關於外商投資管理工作有關問題的通知), under which, if a foreign investor intends to make investment in the PRC, including establishing new foreign invested enterprises, increasing capital to or acquiring existing PRC enterprises, and providing loans, with its RMB proceeds through settlement of cross-border trades or obtained lawfully through other means outside the PRC, it shall apply to the relevant commerce authority for approval. Upon receiving such application, the relevant provincial commerce authority shall report to the Ministry of Commerce for its consent. Only with the consent of the Ministry of Commerce, may the provincial commerce authority process with the relevant approval procedures.