

The following is a summary of the PRC laws and regulations relating to the various aspects of the property sector in China, including:

- Establishment of a property development enterprise
- Foreign-invested property enterprises
- Qualifications of a property developer
- Development of a property project
- Land for property development
- Sale of commodity properties
- Transfer of property
- Leasing of property
- Mortgage of property
- Major taxes applicable to property developers
- Property service
- Insurance of a property project
- Measures on stabilizing housing price
- Overseas listing
- Environmental protection
- Foreign exchange control

#### **ESTABLISHMENT OF A PROPERTY DEVELOPMENT ENTERPRISE**

According to the PRC Urban Real Estate Administration Law 《中華人民共和國城市房地產管理法》, or the Urban Real Estate Law, promulgated by the National People's Congress on July 5, 1994, effective January 1, 1995 and amended on August 30, 2007 and August 27, 2009, a property developer is defined as an enterprise which engages in the development and sale of properties for the purpose of making profits. Under the Regulations on Administration of Development of Urban Property 《城市房地產開發經營管理條例》, or the Development Regulations, promulgated and implemented by the State Council on July 20, 1998, a property developer must satisfy the following requirements:

- its registered capital must be Rmb 1.0 million or more; and
- it must have four or more full-time professional property/construction technicians and two or more full-time accounting officers, each of whom should hold relevant qualification certificates.

The Development Regulations also stipulate that the local government of a province, autonomous region or provincial-level municipality may, based on local circumstances, impose more stringent requirements in relation to the registered capital and the number of professional personnel of a property developer.

Pursuant to the Development Regulations, a property developer who aims to establish a property development enterprise must register with SAIC. The property developer must also report its establishment to the property development authority in the location of the registration authority within 30 days of the receipt of its business license.

Under the Notice on Adjusting the Portion of Capital Fund for Fixed Assets Investment of Certain Industries 《關於調整部分行業固定資產投資項目資本金比例的通知》 issued by the State Council on April 26, 2004, the portion of capital-account funding for real estate projects (excluding affordable housing projects) has been increased from 20% or above to 35% or above. However, pursuant to the Notice on Adjusting the Percentage of Capital Fund for Investment Projects in Fixed Assets 《國務院關於調整固定資產投資項目資本金比例的通知》 issued by the State Council on May 25, 2009, the minimum portion of the capital funding for ordinary commodity housing projects and affordable housing projects has been reduced to 20%, while that for other real estate projects has been decreased to 30%.

#### FOREIGN-INVESTED PROPERTY ENTERPRISES

According to the Foreign Investment Industrial Guidance Catalog (Revised in 2007) 《外商投資產業指導目錄》, or the Foreign Investment Catalog, promulgated by MOFCOM and NDRC on October 31, 2007, effective December 1, 2007,

- the development of a whole parcel of land (limited to equity joint ventures and cooperative joint ventures) as well as the construction and management of high-end hotels, villas, premium office buildings, international conference and exhibition centers fall within the category of industries in which foreign investment is subject to restrictions;
- the secondary market transactions in real estate sector and real estate intermediaries or agents fall under the category of industries that foreign investment is subject to restrictions; and
- other property developments fall within the category of industries in which foreign investment is permitted.

Subject to the approval by the relevant foreign investment regulatory authorities, a foreign investor intending to engage in the development and sale of real estate in China may establish an equity joint venture, a cooperative joint venture or a wholly foreign owned enterprise by the foreign investor in accordance with the PRC laws and regulations regarding foreign-invested enterprises.

On July 11, 2006, MOHURD, MOFCOM, NDRC, PBOC, SAIC and SAFE jointly promulgated the Circular on Standardizing the Admittance and Administration of Foreign Capital in the Property Market 《關於規範房地產市場外資准入和管理的意見》. According to this circular, the admittance and administration of foreign capital in the property market must comply with the following requirements:

- Foreign institutions or individuals who buy properties not for their own use in China must follow the principle of “commercial presence” and apply for the establishment of foreign-invested enterprises pursuant to the regulations of foreign investment in properties. After obtaining the approvals from the 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.
- Foreign investors may not carry out property development and business operations until they obtain the Approval Certificates for a Foreign-invested Enterprise and the business licenses from the relevant authorities.
- Where the total investment amount of a foreign-invested property enterprise is US\$10 million or more, its registered capital must be no less than 50% of the total investment amount; where the total investment amount is less than US\$10 million, its registered capital must follow the requirements of the existing regulations.
- For the establishment of a foreign-invested real estate enterprise, or FIREE, the MOFCOM authorities and the SAIC authorities will be responsible for the approval and registration of the FIREE and the issuance of a temporary Approval Certificate for a Foreign-invested Enterprise (which is effective for one year) and a temporary business license. Upon full payment of the land premium for the land use rights, the FIREE will need to apply for the land use rights certificate. With the land use rights certificate, the property developer can obtain a formal Approval Certificate for a Foreign-Invested Enterprise from the MOFCOM authorities and a formal business license with the same approved business term as the formal Approval Certificate for Foreign-Invested Enterprise.
- Transfers of projects or equity interests in FIREEs or acquisitions of domestic property enterprises by foreign investors must follow the relevant PRC laws, regulations and policies and obtain the relevant approvals. The investor will need to submit: (a) a written undertaking to fulfill the land grant contract, construction land planning permit and construction work planning permit; (b) land use rights certificate; (c) documents evidencing the filing for modification with MOHURD authorities; and (d) documents evidencing the payment of tax from the relevant tax authorities.
- When acquiring domestic property enterprises by way of share transfer or other means, or purchasing shares from Chinese parties in Sino-foreign equity joint ventures, the foreign investors must make proper arrangements for the employees, properly take care of the bank loans and pay the consideration in one single payment with their capital. Foreign investors with improper records, or who have not fully paid any previous acquisition consideration will not be allowed to undertake the aforementioned activities.

On August 14, 2006, MOFCOM issued a Notice on Relevant Issues Concerning the Carrying out the Circular on Standardizing the Admittance and Administration of Foreign Capital in the Property 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》, or the Notice on the Real Estate Market. According to the Notice on the Real Estate Market, if the total investment of a FIREE exceeds US\$3 million, the registered capital must not be less than 50% of the total investment amount; 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 amount. When a foreign investor merges with a domestic property development enterprise by transferring equity, by purchasing equity from other Chinese shareholders of a FIREE or through other means, proper arrangements must be made for the original employees of the merged companies, bank debts must be settled and the entire consideration for the transfer must be paid in full within three months after the date of the issue of the business license or the effective day of the equity transfer agreement.

On May 23, 2007, MOFCOM and SAFE jointly issued the Notice on Further Strengthening and Regulating the Approval and Supervision on Foreign Investment in 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 sets forth the following requirements for approving and supervising of foreign investment in real estate sector:

- foreign investment in the real estate sector in China relating to high-grade properties should be strictly controlled;
- before applying for the setup of FIREEs, (a) both the land use rights certificates and property ownership certificates should have been obtained or (b) contracts for obtaining land use rights and property ownership rights should be entered into;
- existing foreign invested enterprises need to obtain approval before expanding their business operations into the real estate sector and existing FIREEs need to obtain new approval in case they wish to expand their existing real estate business operations;
- acquisitions of domestic real estate entities and foreign investment in real estate sector through a round-trip investment channel should be strictly regulated. Foreign investors may not avoid approval procedures through changes in actual controlling persons;
- equityholders in real estate entities with foreign investment should not in any way guarantee a fixed investment return;
- registration must be immediately effected according to applicable laws with MOFCOM regarding the setup of FIREEs approved by local PRC government authorities;
- SAFE authorities and banks authorized to conduct foreign exchange business should not effect foreign exchange settlements or sales regarding capital account items to those entities failing to file with MOFCOM or failing to pass the annual reviews; and
- for FIREEs wrongfully approved by local authorities for their setups, (i) MOFCOM will carry out investigation, order punishment and corrections, and (ii) SAFE authorities may not carry out foreign exchange registrations for these entities.

On July 10, 2007, SAFE issued the Notice Regarding the Publication of the List of the First Batch of Property Development Projects with Foreign Investment that Have Property Registered with MOFCOM 《關於下發第一批通過商務部備案的外商投資房地產項目名單的通知》. This regulation restricts FIREEs from raising funds offshore to be injected into their subsidiary companies either through capital increase or by way of shareholder loans. The notice stipulates, among other things:

- that SAFE and its local branches will no longer process foreign debt registration or approval of exchange settlement of foreign debt for real estate enterprises with foreign investment that obtained Approval Certificate from and filed with MOFCOM on or after June 1, 2007; and
- that SAFE and its local branches will no longer process foreign exchange registration (or change of such registration) or application for sale and settlement of foreign exchange in respect of capital account for real estate enterprises with foreign investment that obtained approval certificates from local MOFCOM authorities on or after June 1, 2007 but have not submitted a filing with MOFCOM.

On June 18, 2008, MOFCOM issued the Notice on Properly Archiving the Filings for Foreign Investment in Real Estate Sector 《關於做好外商投資房地產業備案工作的通知》. According to the notice, since July 1, 2008, MOFCOM entrusts its provincial level branch to review the filing materials with respect to FIREEs and check and confirm the legality, authenticity and accuracy of the materials. MOFCOM will archive the filing after receiving the archival form duly completed and submitted by the provincial branches. The notice also requires that the establishment (including the increase of registered capital) of a FIREE must comply with the principle of one project company engaging in one approved real estate project only.

On August 29, 2008, SAFE issued the Notice on Improving the Operational Administration on the Conversion of Foreign Exchange Capital Contribution of Foreign-invested 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》, or Notice 142. Pursuant to Notice 142, unless otherwise permitted by PRC laws or regulations, renminbi converted from foreign exchange capital contribution can only be applied to the activities within the approved business scope of such foreign invested enterprise and cannot be used for domestic equity investment or acquisition.

According to the Several Opinions of the State Council on Further Strengthening the Utilization of Foreign Investment 《關於進一步做好利用外資工作的若干意見》, promulgated by the State Council on April 6, 2010, and the Notice on Devolution of Authority for Foreign Investment Projects 《關於做好外商投資項目下放核准權限工作的通知》, promulgated by NDRC on May 4, 2010, except where approval by the relevant departments under the State Council is required by the Foreign Investment Catalog, foreign investment in encouraged and permitted industries with a total investment of US\$300 million or less must be examined and approved by NDRC branches at the provincial level. Pursuant to the Notice on Issues Related to Devolution of Authority of Examination and Approval of Foreign Investment 《關於下放外商投資審批權限有關問題的通知》, promulgated by MOFCOM on June 10, 2010, MOFCOM branches at the provincial level are responsible for the examination and approval of establishment and modifications of foreign-invested enterprises in encouraged or permitted industries with a total investment of less than US\$300 million and with a total investment of less than US\$50 million in restricted industries.

**QUALIFICATIONS OF A PROPERTY DEVELOPER**

Under the Provisions on Administration of Qualification of Real Estate Developers 《房地產開發企業資質管理規定》, or the Provisions on Administration of Qualifications, promulgated by MOHURD and implemented on March 29, 2000, a property developer must apply for registration of its qualification according to the Provisions on Administration of Qualifications. An enterprise may not engage in the development and sale of properties without a qualification classification certificate for property development. MOHURD oversees the qualifications of real estate developers with national operations, and local MOHURD authorities at or above the county level oversee the qualifications of local real estate developers.

In accordance with the Provisions on Administration of Qualifications, the qualification of a property enterprise is classified into four classes: class 1, class 2, class 3 and class 4. Different classes of qualification should be examined and approved by corresponding authorities.

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

Under the relevant PRC laws and regulations, MOHURD authorities will examine applications for registration of qualifications submitted by real estate developers by considering the professional personnel in their employment, financial condition and operating results. A developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. A developer within any specific qualification classification may only engage in the development and sale of real estate within its approved scope of business and may not engage in business permissible to a different classification.

For a newly established property developer, after it reports its establishment to the relevant MOHURD authorities, the latter will typically issue a provisional qualification certificate to the eligible developer within 30 days. The provisional qualification certificate will be effective for one year from its issuance, and MOHURD authorities may extend the validity to a period of no longer than 2 years considering the actual business situation of the enterprise. The property developer should apply to the relevant MOHURD authorities for qualification classification within one month before the expiry of its provisional qualification certificate.

Pursuant to the Provisions on Administration of Qualifications, the qualification of a property developer should be subject to annual inspection. MOHURD or its entrusted institution is responsible for carrying out the annual inspection of the qualification of class 1 real estate developers. Procedures for annual inspection of developers of class 2 or lower qualification may be formulated by MOHURD authorities at the level of a province, autonomous region or provincial-level municipality.

**DEVELOPMENT OF A PROPERTY PROJECT****Commencement of Development of a Property Project and Idle Land**

Under the Foreign Investment Catalog, foreign investments are restricted in the development of a whole land lot, construction, operation or transacting in the secondary real estate market, or acting as real estate intermediaries or agents of high-quality hotels, houses, premium office buildings, international conference centers and large theme parks in China; and foreign investments are permitted in other real estate developments. According to the Interim Provision on Approving Foreign Investment Project 《外商投資項目核准暫行管理辦法》 promulgated by NDRC in October 2004, approval of NDRC is required for foreign investment projects with total investment of US\$100 million or more within the category of encouraged or permitted foreign investments and those with total investment of US\$50 million or more within the category of foreign investments subject to restrictions. Other foreign investments in China will require only local approval. Specifically, the local authorities may examine and approve foreign investment projects with total investment less than US\$100 million within the category of encouraged or permitted foreign investments and those with total investment less than US\$50 million within the category of foreign investment subject to restrictions.

Under the Interim Regulations of the People's Republic of China on Grant and Assignment of the Use Right of State-owned Urban Land 《中華人民共和國城鎮國有土地使用權出讓和轉讓暫行條例》, or the Interim Regulations on Grant and Assignment, promulgated by the State Council in May 1990, China adopted a system to grant and assign the rights to use state-owned land. A land user must pay a land premium to the state as consideration for the grant of the right to use a land site within a specified period of time, and the land user may assign, lease out, mortgage or otherwise commercially exploit the land use rights within the terms of use. Under the Urban Real Estate Law and the Interim Regulations on Grant and Assignment, the land administration authority at the city or county level may enter into a land grant contract with the land user to provide for the grant of land use rights. The land user must pay the land premium as provided by the land grant contract. After payment in full of the land premium, the land user may register the land use rights for a site intended for real estate development. Land use rights may be obtained through grant, except for land intended for purposes subject to premium-free allocation by the PRC government pursuant to the PRC laws and regulations. Government-allocated land is not allowed to be transferred unless the transfer is approved by the relevant PRC Government authorities and the land premium as determined by the relevant PRC Government authorities has been paid.

When carrying out the feasibility study for a property project, the construction entity or the developer must make a preliminary application for construction on the relevant site to the relevant land administration authorities in accordance with the Measures for Administration of Examination and Approval for Construction Land 《建設用地審查報批管理辦法》 promulgated by the Ministry of Land and Resources in March 1999 and the Measures for Administration of Preliminary Examination of Construction Project Land 《建設項目用地預審管理辦法》 promulgated by the Ministry of Land and Resources in July 2001, as amended in October 2004 and November 2008. After receiving the preliminary application, the land administration authorities will carry out preliminary examinations of various aspects of the construction project in compliance with the overall zoning plans and land supply policy of the government, and will issue a preliminary approval in respect of the project site if its examination proves satisfactory. The land administration authorities at the relevant city or county will sign a land grant contract with the land user and issue an approval to the construction entity or the developer.

Under the Urban Real Estate Law, those who have obtained the land use rights by assignment must develop the land in accordance with the use and period of commencement as prescribed by the contract for the land-use right assignment. According to the Measures on the 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:

- 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 the originally approved the use of the land;
- the land grant contract or the approval for construction 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 land grant contract became effective or when the land authorities issued the approval letter;
- the development and construction of the land has begun, but the area developed and constructed 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, and development and construction has been continuously suspended for one year without approval; or
- other circumstances prescribed by laws and regulations.

County-level municipal administrative authorities may, with regard to an identified piece of idle land, give notice to the land user and issue a proposal on disposing the idle land, including, but not limited to, extending the time period for development and construction (provided that it is no longer than one year), changing the use of the land, arranging for temporary use and ascertaining the new land user by competitive bidding, public auction or listing-for-sale. The county-level land administrative authorities may, after the original review and approval authority has approved the proposal, arrange for the implementation of the proposal. With respect to any land obtained by assignment and within the scope of city planning, if the construction work has not yet started after one year from the granting of the relevant approvals, a fine for idle land at 20% of the assignment price may be imposed on the land user. If the construction work has not begun after two years have elapsed, the right to use the land can be taken back by the state without any compensation. However, the above sanctions may not apply if the delay in commencement of construction is caused by force majeure or acts of government or indispensable preliminary work before commencement of construction.

On 8 September 2007, the MLR promulgated the Notice on Strengthening the Handling of Idle Land 《關於加大閒置土地處置力度的通知》. This Notice provides the principles of dealing with idle land. The Grant of State-owned Land Use Right can only be transferred after the payment of compensation for land, settlement and completion of the land development at an earlier stage. The notice also prescribes that the State-owned Land Use Right Certificate shall not be issued before the land grant premium for acquisition of land has been paid in full, nor be issued separately according to the ratio of payment of land grant premium.

On January 3, 2008, the State Council issued a Notice on Promoting the Economic Use of Land 《關於促進節約集約用地的通知》 with respect to the collection of additional land premium,

establishment of a land utilization priority planning scheme and the formulation of a system for assessing the optimal use of land and other measures. The notice calls for the full and effective use of existing construction land and the preservation of farm land. The notice also emphasized the enforcement of the current rules on assessing idle land fees at a rate equal to 20% of the land premium for any land left idle for over one year but less than two years. The notice also establishes an additional land premium surcharges on idle land and authorizes the Ministry of Land and Resources to formulate regulations to implement such surcharges. The notice further urges financial institutions to exercise caution when they process loan applications from property developers that have failed to commence construction, to complete development of at least one-third of the land area or to invest at least 25% of the total investment within one year of the construction date provided in the land grant contract. The notice indicated that the relevant governmental authorities will formulate and issue additional rules and regulations on these matters.

The Ministry of Land and Resources issued a Notice on Restricting the Administration of Construction Land and Promoting the Use of Approved Land 《關於嚴格建設用地管理促進批而未用土地利用的通知》 in August 2009, which reiterates the above rules on idle land.

### **Planning for a Property Project**

On October 28, 2007, the National People's Congress promulgated the Urban and Suburban Planning Law of the People's Republic of China 《中華人民共和國城鄉規劃法》, effective as of January 1, 2008. According to this law, the construction entity must, after the developer has entered into the land grant contract, apply to the planning administration authorities at the municipal or county level for a construction land planning permit. Before the construction of buildings, structures, roads, pipelines and other construction projects, the construction entity must apply to the planning administration authorities at the municipal or county level for a construction works planning permit. If a construction project is proceed without obtaining the planning permit on construction project or by violating the provisions of the planning permit on construction project, the competent department of urban and rural planning of the local people's government at or above the county level shall order it to stop construction. If it is still possible for the construction entity or individual to take measures to eliminate the impact on the implementation of urban and rural planning, the department shall order it or him to correct within a certain time limit and impose a fine of not less than 5% the construction cost but not more than 10% the cost; if it is impossible to take measures to eliminate the impact, the department shall order the construction entity or individual to dismantle the building or structure within a certain time limit and confiscate the real objects or the relevant income, and may also impose a fine not more than 10% the construction cost.

### **Construction of a Property Project**

When the construction site has been properly prepared and is ready for the commencement of construction works, the property developer must apply for a construction permit from the construction authority within the local government at the county level or above according to the Measures for the Administration of Construction Permits for Construction Projects 《建築工程施工許可管理辦法》 promulgated by MOHURD on October 15, 1999, as amended, and implemented on July 4, 2001.

According to the Notice Regarding Strengthening and Regulating the Administration of Newly Commenced Projects 《關於加強和規範新開工項目管理的通知》 issued by the State Council on

November 17, 2007, before a project commences construction, it must have satisfied certain conditions including, among others, complying with national industrial policies, development plans, land supply policies and market access standards, complying with and obtaining all approvals and procedures, complying with zoning plans, completing proper land use procedures and obtaining proper environmental valuation approvals and construction permit or report.

### Completion of a Property Project

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 the State Council on January 30, 2000, the Measures for Reporting Administration of Acceptance Examination Upon Completion of Housing Construction Projects and Municipal Infrastructure 《房屋建築和市政基礎設施竣工驗收備案管理辦法》 promulgated by MOHURD on October 19, 2009, and the Interim Provisions on Acceptance Examination Upon Completion of Housing Construction Projects and Municipal Infrastructure 《房屋建築工程和市政基礎設施竣工驗收暫行規定》 promulgated and enforced by MOHURD on June 30, 2000, upon completion of construction of a project, a property developer must apply for the acceptance examination 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" will be issued. A real estate development project may not be delivered until and unless it has satisfactorily passed the necessary acceptance examination. Where a property project is developed in phases, an acceptance examination may be carried out for each completed phase.

Where any construction project owner carry out the construction work in the event that it fails to obtain a construction license or that its construction start-up report has not been approved, it shall be ordered to stop the construction and to make corrections and shall be fined not less than 1% but not more than 2% of the contractual construction work costs.

In August 2008, the State Council issued the Regulations on Energy Efficiency for Civil Buildings 《民用建築節能條例》, which regulates energy consumption and utilization efficiency of civil buildings. According to this regulation, the design and construction of new buildings must meet the statutory criteria on energy efficiency for buildings. A project which fails to meet such criteria may not receive approval for commencement of construction or completion acceptance.

### LAND FOR PROPERTY DEVELOPMENT

In April 1988, the National People's Congress amended the PRC Constitution 《中華人民共和國憲法》 to permit the transfer of land use rights for value. And in December 1988, the National People's Congress amended the Land Administration Law 《土地管理法》 to permit the transfer of land use rights for value. The acquisition of state-owned land use rights from relevant government authorities is commonly referred to as the primary market, and the acquisition of land use rights from entities which hold land use rights granted by relevant government authorities is commonly referred to as the secondary market.

Under the Interim Regulations of the People's Republic of China on Grant and Transfer of the Land Use Rights of State-Owned Urban Land 《中華人民共和國城鎮國有土地使用權出讓和轉讓暫行條例》, or the Interim Regulations on Grant and Transfer, promulgated and implemented by the State Council on May 19, 1990, a system of

grant and transfer of the right to use state-owned land is adopted. A land user must pay land premium to the state as consideration for the grant of the right to use a land site within a certain term, and the land user may transfer, lease out, mortgage or otherwise commercially exploit the land use rights within the term of use. Under the Interim Regulations on Grant and Transfer, the land administration authority under the local government at the county level must enter into a land grant contract with the land user to provide for the assignment of land use rights. The land user must pay the land premium as provided by the land grant contract. After full payment of the land premium, the land user must register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights. The Development Regulations provide that the land use rights for a land parcel intended for property development must be obtained through grant except for land use rights which may be obtained through allocation pursuant to PRC laws or the stipulations of the State Council.

Under the Regulations on the Grant of State-Owned Land Use Right through Competitive Bidding, 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 May 9, 2002 and as amended, land for commercial use, tourism, entertainment and commodity housing development must be granted by way of competitive bidding, public auction or listing-for-sale. The procedures are as follows:

- The land authority under the government of the city and county, as the grantor, must make an announcement at least 20 days prior to the date of the proposed competitive bidding, public auction or listing-for-sale. The announcement must include basic particulars such as land parcel, qualification requirement of the bidder and auction applicants, methods and criteria on confirming the winning tender or winning bidder, and other conditions such as the deposit of the bid.
- The grantor must conduct a qualification verification of the bidding applicants and auction applicants, inform the applicants who satisfy the requirements set out in the announcement and invite them to attend the competitive bidding, public auction or listing-for-sale.
- After determining the winning tender or the winning bidder by the competitive bidding, public auction or listing-for-sale, the grantor and the winning tender or winning bidder must then enter into a confirmation. The grantor should return the bidding or tender deposit to other bidding or auction applicants.
- The grantor and the winning tender or winning bidder must enter into a land grant contract according to the time and venue set out in the confirmation. The deposit of the bid paid by the winning tender or winning bidder will be used to set off part of the land premium of the state-owned land use rights.
- The winning tender or winning bidder should apply for the land use rights registration after paying off the land premium in full under the land grant contract. The local governments at or above the county level will issue the land use rights certificates.

On June 11, 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 provided that, other than through public tender, auction and listing-for-sale, land use rights

may be granted via transfer agreements, and the land premium for the transfer agreements of the state-owned land use rights must not be lower than the benchmark land price.

In September 2003, the Ministry of Land and Resources promulgated the Notice on Strengthening the Land Supply Management and Promoting the Sustainable Sound Development of Real Estate Market 《關於加強土地供應管理促進房地產市場持續健康發展的通知》, which provides that land supply for luxury commodity housing must be strictly controlled. On May 30, 2006, the Ministry of Land and Resources promulgated an Urgent Notice on Currently Strengthening Further Strict Land Management 《關於當前進一步從嚴土地管理的緊急通知》, which provides that land grant for real estate development must be conducted via invitation for bids, auction and listing, and land supply for low to medium-priced and/or small to medium-sized ordinary commercial residential housing (including affordable housing) and for low-rental residential housing must be given priority, and land supply for low-density and/or large-sized residential housing must be strictly restricted. In addition, the notice provides that land supply for new villa project must be suspended.

On April 29, 2004, 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》, which restated the principle of farmland protection and the strict administration of the approval process for construction land.

On August 31, 2006, the State Council issued the Notice on Issues Relating to Strengthening of Land Control 《關於加強土地調控有關問題的通知》, which provides for the administration of receipt and disbursement of land premiums, tax policies modification relating to construction land, and establishment of a publicity system for price standards with respect to granted state-owned land use rights.

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

On September 30, 2007, the Ministry of Land and Resources issued Notice on Implementation of the State Council's Certain Opinions on Resolving Difficulties in Housing of Urban Low-Income Family and Further Strengthening the Macro-control of Land Supply 《關於認真貫徹〈國務院關於解決城市低收入家庭住房困難的若干意見〉進一步加強土地供應調控的通知》 to further enhance the control of land supply, which stipulates that the supply of the land to be developed for low-rent housing, economic housing and housing at low or medium price and of small or medium size must be no less than 70% of the total land supply of the current year; the land and resources authorities must control the area of each parcel of land and increase the number of parcels of land to be supplied, in order to prevent the hoarding of land by property developers. Property developers must develop their land according to the terms of the relevant land grant contracts, 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 may not exceed three years.

In order to control the land market and promote reasonable land utility, the Ministry of Land and Resources, Ministry of Finance and PBOC jointly promulgated the Administrative Measures on Land Reserve 《土地儲備管理辦法》 on November 19, 2007, which regulates the land development and reserve by land reserve entities and affiliates of the land authorities at city or county level, before the land authorities grant land use rights according to relevant laws and regulations. The enterprises must be selected through public tender to conduct the preliminary 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 November 18, 2009, the PRC Ministry of Finance, the Ministry of Land and Resources, PBOC, the Ministry of Supervision and the National Audit Office jointly issued the Notice on Further Strengthen the Management of Revenue and Expenditure from Land Granting 《關於進一步加強土地出讓收支管理的通知》 to require a minimum down payment of 50% of the land premium relating to land purchases from the PRC Government. The notice also provides that the installment period stipulated in the relevant land grant contracts may not exceed one year generally, provided that, for special projects, upon collective approval by the relevant government authorities, the installment period stipulated in the relevant land grant contracts can be two years. Developers will not be permitted to buy new land if they fail to pay such land premium in time in full. The new rules also forbid local governments from giving discounts to developers or allowing developers to delay payments except as stipulated by the State Council.

The Ministry of Land and Resources promulgated the Notice on Problems Regarding Strengthening Control and Monitor of Real Estate Land Supply 《關於加強房地產用地供應和監管有關問題的通知》 on March 8, 2010. According to this 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. This Notice also requires that the lowest land grant price should not be less than 70% of the benchmark land price in which the granted land is located and the real estate developers' bid deposit should not be 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 should be 50% and must be paid within one month after the execution of the land grant contract. The remaining payment must be paid in accordance with the land grant contract, but not later than one year. If the land grant contract is not executed in accordance with the requirement above, the land may not be delivered and the deposit may not be returned. If no land premium is paid after the execution of the land grant contract, the land must be withdrawn.

According to the Notice of Further Strengthening of Land Use and Construction Management Control of Real Estate (Guo Tu Zi Fa [2010] No.151) 《關於進一步加強房地產用地和建設管理調控的通知》 jointly issued by Ministry of Land and Resources and Ministry of Housing and Construction on September 21, 2010, if the construction unit can not commence the construction of the project because of its application of adjustment of planning construction conditions, the relevant land use right must be withdrawn and be granted through new bidding, auction or silent auction procedures. If the bidder attends the bidding, auction or silent auction procedure for granting land, except the provision of relevant identification documents and deposit, it must provide the confirmation letter which proves that the deposit does not come from the bank loan, shareholder loan, re-lending loan and fund-

raising. If the land was idle caused by the enterprise itself, the enterprise and its controlling shareholder shall be prohibited to join the bidding, auction or silent auction procedures for granting land. Enterprise shall commence construction for housing project within 1 year from the land delivering date stipulated on the land grant contract, and complete the construction within 3 years from the commencement date.

## SALE OF COMMODITY PROPERTIES

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

Any pre-sale of commodity buildings must be conducted in accordance with the Measures for Administration of Pre-sale of Urban Commodity Properties 《城市商品房預售管理辦法》, or the Urban Pre-sale Regulation, promulgated by MOHURD in November 1995, as amended in August 2001 and July 2004, and the other related regulations. The pre-sale regulations provide that any pre-sale of commodity properties is subject to specified procedures. According to the current PRC laws and regulations, a presale permit must be in place before a commodity building may be put to pre-sale. Specifically, a developer intending to sell a commodity building before its completion must apply to the real estate development authorities for a pre-sale permit. The pre-sale proceeds of commodity buildings must be used to develop the relevant project so pre-sold. A commodity building may be sold before completion only if:

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

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

According to the Regulations on Administration of Development of Urban Property 《城市房地產開發經營管理條例》 and the Urban Pre-sale Regulation, for the pre-sale of a commodity property, the developer must sign a contract on the pre-sale of the commodity property with the purchaser. The developer must, within 30 days of signing the contract, apply for registration and record of the contract for pre-sale of commodity property at the relevant departments of the county-level governments. Property administrative departments are

required to use network information technology to gradually implement a web-based registration of pre-sale contracts.

On May 9, 2005, the State Council issued the Circular on Forwarding the Opinion of MOHURD and Other Department on Doing Well on Stabilizing Residential Property Prices 《關於做好穩定住房價格工作的意見》, which provided the following with respect to commodity property pre-sales and sales:

- The purchaser of a pre-sold commodity property is prohibited from transferring such property that is still under construction. Before a pre-sold commodity property is completed and delivered and the purchaser obtains the individual property ownership certificate, the property administrative department must not give effect to any transfer of the commodity property. If there is discrepancy between the name of the applicant for property ownership and the name of the purchaser in the sales contract, the property ownership registration administration must not record the application of property ownership; and
- A real name identification system must be applied to house purchase and an immediate record filing network system for pre-sale contracts of commodity buildings must be established.

On April 13, 2010, MOHORD issued the Notice on Further Enhancing the Supervision of the Real Estate Market and Perfecting the Pre-sale System of Commodity Houses 《關於進一步加強房地產市場監管完善商品住房預售制度有關問題的通知》. Pursuant to the notice, without the pre-sale approval, the commodity properties are not permitted to be pre-sold and the real estate developer are not allowed to charge the buyer any deposit or pre-payment or payment of the similar nature. In addition, the notice urges local governments to enact regulations on sale of completed commodity properties in light of the local conditions, and encourages property developers to engage in the practice of selling completed commodity properties.

Pursuant to the Regulatory Measures on the Sale of Commercial Properties 《商品房銷售管理辦法》 promulgated by PRC Ministry of Construction (currently named as PRC Ministry of Housing and Urban-Rural Development of the People's Republic of China, "MOHURD") on April 4, 2001 which became effective on June 1, 2001, a property developer shall not sell uncompleted commercial properties through after-sale lease guarantee or by any such means in covert forms. After-sale lease guarantee stipulated in the aforementioned regulatory measures refers to that a property developer sells commodity houses by making commitment to lease back or assist buyers in renting out commercial properties within a certain period after sale. A property developer may not sell commercial properties by means of cost-returned sale or any such means in disguised forms. The cost-returned sale in these measures refers to an arrangement under which a property developer sells commercial properties and refunds periodically to the purchaser certain portions of the sales proceeds.

## TRANSFER OF PROPERTY

According to the Urban Real Estate Law and the "Provisions on Administration of Transfer of Urban Property" 《城市房地產轉讓管理規定》 promulgated by the MOHURD on August 7, 1995 and as amended on August 15, 2001, a property owner may sell, bequeath or otherwise legally transfer property to another person or legal entity. When transferring a building, the ownership of the building and the land use rights to the site on which the building is situated are transferred simultaneously. The parties to a transfer must enter into a property transfer

contract in writing and register the transfer with the property administration authority having jurisdiction over the location of the property within 90 days of the execution of the transfer contract.

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

- the land premium has been paid in full for the assignment of the land use rights as provided by the land grant contract and a land use rights certificate has been obtained;
- development has been carried out according to the land grant contract and in the case of a project in which buildings are being developed, development representing more than 25% of the total investment has been completed; or
- in case of a whole land lot development project, construction works have been carried out as planned, and water supply, sewerage, electricity supply, heat supply, access roads, telecommunications and other infrastructure or utilities have been made available, and the site has been leveled and made ready for industrial or other construction purposes.
- in case of where the real property has been completed in construction, the property ownership certificate must have 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 in the land grant contract. In the event that the assignee intends to change the use of the land provided in the land grant contract, consent must first be obtained from the original land use rights grantor and the planning administration authority at the relevant city or county and an agreement to amend the land grant contract or a new land grant contract must be signed in order to, inter alia, change the use of the land and adjust the land premium accordingly.

If the land use rights 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 laws and regulations. Land for commercial use, tourism, entertainment and commodity housing development must be assigned by public tender, auction or listing-for-sale under the current PRC laws and regulations.

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

On July 29, 2008, PBOC and CBRC jointly issued the Notice on Promoting Economic Use of Land through Finance 《關於金融促進節約集約用地的通知》. Commercial banks must provide financial support preferentially to the projects with economic use of land, such as the development of low-cost rental units, economically affordable units, price-limit units and units with a total GFA of less than 90 sq.m. The commercial banks are prohibited from granting loans to the property developers for payment of land premium. The Notice emphasizes tightening the policy requirements and management of loans to certain projects, including:

- the management of loans for construction projects. The commercial banks are prohibited from providing loans to (i) the projects which do not meet the relevant planning and control requirements, (ii) the projects which have illegal land use and (iii) the projects for which the relevant land falls into the catalog of banned land use projects. Where a loan has already been granted to such a project, it must be gradually recovered provided that necessary protection measures have been taken. A financial institution must exercise caution in granting a loan to projects falls into the catalog of restricted land use projects.
- the examination of loans for municipal infrastructures and industrial land use projects.
- the management of loans for rural collective construction land use projects. The commercial banks are prohibited from providing loans to the commercial projects for which the relevant land is supposed to be developed for rural collective construction land use.
- the management of credit for property development projects. The commercial banks are prohibited from granting loans to the property developers for payment of land premium. With respect to loans provided for land reservation in the form of mortgage, a legal land use right certificate must be obtained. In addition, the maximum mortgage ratio must not exceed 70% of the appraised value of the underlying collateral and, in principle, the term of loan must not exceed two years. When the relevant land and resource authority confirms that an enterprise has developed less than 1/3 of the site area of land or has invested less than 1/4 of the total investment for the project after one year from the date of construction commencement as stipulated in the land grant contract, the commercial bank must exercise caution in granting loans to the enterprise and strictly control extended loans or rolling credits to it.

## LEASING OF PROPERTY

Under the Urban Real Estate Law and the Measures for Administration of Lease of Property in Urban Areas 《城市房屋租賃管理辦法》 promulgated by MOHURD on May 9, 1995 and became invalid from February 1, 2011, the parties to a leasehold arrangement of a property must enter into a lease contract in writing. A system has been adopted to register the leases of properties. When a lease contract is signed, amended or terminated, the parties must register the details with the property administrative authorities under the local government at the county level in which the property is situated.

According to the Measures for Administration of Lease of Commodity Housing (商品房屋租賃管理辦法) promulgated by MOHURD on December 1, 2010 and effective on February 1, 2011, if the parties to a leasehold arrangement of a property do not register the

lease of properties with the competent authorities, and also fail to correct their behavior within a definite time, they will be subject to fine.

## MORTGAGE OF PROPERTY

Under the Urban Real Estate Law, the Guarantee Security Law of the People's Republic of China 《中華人民共和國擔保法》 promulgated by the NPC on June 30, 1995 and implemented on October 1, 1995, and the Measures on the Administration of Mortgages of Property in Urban Areas 《城市房地產抵押管理辦法》 promulgated by MOHURD in May 1997 and as amended on August 15, 2001, when a mortgage is created on a property legally obtained, a mortgage must be simultaneously created on the land use rights of the land on which the property is situated. The land use rights of state-owned lands acquired through means of grant, when being mortgaged, the properties on the land must also be mortgaged at the same time. The land use rights of the town and village enterprises cannot be mortgaged separately. When buildings of the town and village enterprises are mortgaged, the land use rights occupied by the buildings must also be mortgaged at the same time. The mortgager and the mortgagee must sign a mortgage contract in writing. Within 30 days after a property mortgage contract is signed, the parties to the mortgage must register the mortgage with the property administrative authority at the location where the property is situated. A property mortgage contract will become effective on the date of registration of the mortgage. If a mortgage is created on the property in respect of which a building ownership certificate has been obtained, the registration authority must make an entry under the "third party rights" item on the original building ownership certificate and then issue a certificate of third party rights to the mortgagee. If a mortgage is created on the commodity property put to pre-sale or under construction, the registration authority will record the details on the mortgage contract. If construction of a property is completed during the term of a mortgage, the parties involved must re-register the mortgage of the property after issuance of the certificates evidencing the ownership of the property.

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

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

- Property development loans from banks may only be granted to real estate developers with development qualification and credit ratings in the higher categories. Such loans may be offered to residential projects with good market potential. While the borrowing enterprise's internal capital may not be less than 30% of the total investment required for the project, the project itself must have been issued the land use rights certificate, construction land planning permit, construction works planning permit and construction permit.
- In respect of the grant of individual home mortgage loans, the ratio between the loan amount and actual value of the collateral may never exceed 80%. Where an individual applies for a home purchase loan to buy a pre-sale property, the property must have achieved the stage of "topping-out of the main structure completed" for multi-storey

buildings and “two-thirds of the total investment completed” for high-rise apartment buildings.

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

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

- The property loan by commercial banks to property enterprises must be granted only by the item of property development rather than cash flow loan item or other loan item. Any kind of loan cannot be granted for the projects which do not have land-use rights certificates, construction land planning permits, construction works planning permits and construction permits;
- Property loans may be granted to property enterprises who are qualified for property development, rank high in credibility and have no overdue payment for construction. Such loans must be given in full support of residential housing projects which conform to the purchasing capacity of families with medium-to-low income, and must be properly restricted where projects involve building properties of large size and/or cover large area, such as luxury commodity houses and villas. For property enterprises with commodity houses of high vacancy rate and debt ratio, strict approval procedures must be applied for their new property development loans and their activities must also be subject to close monitoring;
- Commercial banks may not grant loans to property developers to pay off land premium;
- Commercial banks may only provide housing loans to individual buyers when the main structural buildings have been topped out. When a borrower applies for individual home loans for his first residential unit, the first installment remains to be 20%. In respect of his loan application for additional purchase of residential unit(s), the percentage of the first installment must be increased; and
- When a borrower applies for a mortgage loan for an individual commercial use building, the mortgage ratio may not be more than 60%. In addition, the term of loan may not be more than 10 years and the commodity building must be duly completed and accepted after the relevant governmental inspection.

The first installment requirement was subsequently increased to 30% of the property price for residential units with a unit floor area of 90 sq.m. or more, effective on June 1, 2006. See “— Measures on Stabilizing Housing Price” below.

In a Circular on Facilitating the Continuously Healthy Development of Property Market 《關於促進房地產市場持續健康發展的通知》 issued by the State Council in August 2003, a series of measures were adopted by the government to control the property market. They included, among others, strengthening the construction and management of low-cost affordable houses, increasing the supply of ordinary commodity houses and controlling the construction of high

quality commodity houses. Besides, the government also staged a series of measures on the lending for residential development. They included, among others, strengthen efforts in housing provident fund collection and the granting of loans, improving the guarantee mechanism of individual home loans and strengthening the monitoring over property loans. It is expected that the circular will have a positive effect on the development of the PRC property market in the long run by facilitating a continuously healthy growth of the property market in China.

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

According to the Circular on Standardizing the Admittance and Administration of Foreign Capital in the Property Market 《關於規範房地產市場外資准入和管理的意見》 effective on July 11, 2006, FIREEs which have not paid up their registered capital, or failed to obtain a land-use rights certificate, or with less than 35% of the capital for the project, will be prohibited from obtaining a loan in or outside China, and the SAFE may not approve the registration of foreign loans for such enterprises.

On July 10, 2007, SAFE issued a notice indicating that it would not process for FIREEs any foreign debt registration or conversion of foreign debt that was approved by the local MOFCOM authorities and filed with MOFCOM on or after June 1, 2007.

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

- for a commercial property buyer, (i) requiring banks not to finance any purchase of pre-sold properties, (ii) increasing the minimum amount of down payment to 50% of the purchase price of the underlying property, (iii) increasing the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark lending interest rate, (iv) limiting the terms of such bank loans to no more than 10 years, although the commercial banks are allowed flexibility based on its risk assessment;
- for a buyer of commercial/residential dual-purpose properties, increasing the minimum amount of down payment to 45% of the purchase price of the underlying property, with the other terms to be decided by reference to commercial properties;
- prohibiting commercial banks from providing loans to real-estate developers who have been found by relevant government authorities to be hoarding land and properties;
- prohibiting commercial banks from lending to property developers solely for the payment of land premiums; and
- commercial properties purchase by loans must have been completed and passed completion acceptance inspection.

On December 5, 2007, PBOC and CBRC jointly issued the Supplemental 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補充通知》, which clarifies that the times of property mortgage loans should be calculated on a family basis, including the borrower and his spouse and minor child.

According to the requirement under a POBC and CBRC Notice on Promoting Economical and Intensive Utilization of Land through Financing 《國務院關於促進節約集約用地的通知》 in July 2008, with respect to loans provided for land reservation in the form of mortgage, a land use right certificate must be obtained. In addition, the maximum amount of the mortgage offered by the financial institution should not be more than 70% of the assessed value of the collateral and the loan term should not exceed two years in principle.

On October 22, 2008, PBOC promulgated the Notice on Several Issues Regarding the Expansion of Downward Floating Interest Rate for Commercial Individual Housing Loans 《中國人民銀行關於擴大商業性個人住房貸款利率下浮幅度有關問題的通知》, which provides that, effective October 27, 2008, the float-down range for interest rate for individual mortgage loans is expanded and the ratio of down payments is adjusted. As a result, the minimum interest rate for individual mortgage loans is 70% of the benchmark loan interest rate and the minimum down payment ratio for the home buyers on their first house purchases is adjusted to 20%.

In December 2008, the State Council issued the Opinion on Promoting the Healthy Development of Real Estate Market 《關於促進房地產市場健康發展的若干意見》. The opinion provides that in order to expand domestic demand and encourage purchase of ordinary residential housing, residents who purchase ordinary self-occupied housing for the first-time by borrowing a mortgage loan must enjoy preferential policies in relation to loan interest rates and down payment. For residents who have already borrowed a mortgage loan and purchased self-occupied housing for the first time, if the GFA per person of that first housing is lower than the local average, such residents may still enjoy the preferential policies in relation to loan interest rates and down payment when they purchase a second self-occupied house. For any other application on mortgage loans for purchasing a second or subsequent housing unit, the interest rate must be determined by the commercial banks based on the benchmark interest rate and the banks' risk assessments.

According to an Opinion on Adjusting the Portion of Capital for Fixed Assets Investment 《關於調整固定資產投資項目資本金比例的通知》 issued by the State Council in May 2009, the capital ratio for protected housing projects and ordinary commodity housing projects is adjusted from 35% to 20%, and the capital ratio for other property is adjusted from 35% to 30%. Financial institutions must decide based on the capital ratio adjustments whether or not to issue loans to real estate companies.

## **MAJOR TAXES APPLICABLE TO PROPERTY DEVELOPERS**

### **Income Tax**

According to the EIT Law, a uniform income tax rate of 25% is currently applied to foreign invested and wholly foreign owned enterprises in China as well as PRC enterprises.

Furthermore, the EIT Law provides that an income tax rate of 20% will normally be applicable to dividends payable to non-PRC enterprise investors to the extent derived from sources within mainland China, unless there exists a tax treaty between China and the relevant jurisdictions in which such non-PRC enterprise shareholders reside, in which case the

relevant tax may be reduced or exempted pursuant to the tax treaty. However, pursuant to the Implementation Rules on the Enterprise Income Tax 《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 withholding tax rate of 10% will be applicable to any dividend payable by foreign-invested enterprises to their non-PRC enterprise investors. In addition, pursuant to the Arrangement between Mainland China and Hong Kong for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income 《內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排》 signed on August 21, 2006 and applicable in Hong Kong to income derived in any year of assessment commencing on or after April 1, 2007 and in mainland China to any year commencing on or after January 1, 2007, a company incorporated in Hong Kong will be subject to withholding income tax at a rate of 5% on dividends it receives from its PRC subsidiaries if it holds a 25% or more of equity interest in each such PRC subsidiary at the time of the distribution, or 10% if it holds less than a 25% equity interest in that subsidiary.

In addition, under the EIT Law, enterprises established under the laws of jurisdictions outside China with their “de facto management bodies” located within mainland China may be considered PRC resident enterprises and therefore subject to PRC enterprise income tax at the rate of 25% on their worldwide income. The EIT Law provides that “de facto management body” of an enterprise is the organization that exercises substantial and overall management and control over the production, employees, books of accounts and properties of the enterprise.

The EIT Law also provides a five-year transition period starting from its effective date of January 1, 2008 for those enterprises which were established before the promulgation date of the EIT Law and which were entitled to a preferential lower income tax rate under the previously effective tax laws or regulations. The income tax rate of such enterprises will gradually transit to the uniform tax rate of 25% within the transition period. On December 26, 2007, the State Council issued the Circular on Implementing the Transitional 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 enterprises established before March 16, 2007 and entitled to a preferential income tax rate of 15% under the effective tax laws or regulations prior to the promulgation date of the EIT Law, the transitional income tax rate should be 18%, 20%, 22%, 24% and 25% respectively in 2008, 2009, 2010, 2011 and 2012.

According to the Notice on the Prepayment of Enterprise Income Tax of the Real Estate Development Enterprises 《關於房地產開發企業所得稅預繳問題的通知》 issued by the State Administration of Taxation on April 11, 2008 and effective on January 1, 2008, where a real estate development enterprise prepays the corporate income tax by quarter (or month) according to the current actual profit, for the incomes generated from the advance sale prior to the completion of such development products as the dwelling houses, commercial houses and other buildings, fixtures, supporting establishments etc., which are developed and built by the real estate development enterprise, the tax prepayment thereof must be paid by calculating the estimated profit, which is calculated by quarter (or month) according to the preset estimated profit rate and incorporated into the total profit, and it must be readjusted according to the actual profit after the development products are completed and the tax costs are settled.

On March 6, 2009, State Administration of Taxation issued the Notice on the Measure Dealing with Income Tax of Enterprise Engaged in Real Estate Development 《房地產開發經營業務企業所得稅處理辦法》 effective on January 1, 2008, which specifically stipulates the rules regarding tax dealing cost of income, tax dealing of cost deduction, verification of

calculated tax cost and tax dealing on certain item with respect to the real estate development enterprise according to the EIT Law and its implementation rules.

On August 24, 2009, State Administration of Taxation issued the Notice Regarding the Publishing of the Administrative Measures for Non-residents to Enjoy the Treatment Under Taxation Treaties (Trial) 《關於印發〈非居民享受稅收協定待遇管理辦法（試行）〉的通知》，effective on October 1, 2009, and its supplemental regulation promulgated and effective on June 21 2010, which provide that prior approvals from the relevant local tax authorities are required before a non-resident taxpayer may enjoy any benefits under the relevant taxation treaties.

On May 12, 2010, State Administration of Taxation promulgated the Notice on the Confirmation of Completion Conditions for Development of Products by Property Development Enterprises 《關於房地產開發企業開發產品完工條件確認問題的通知》，which provides that a property will be deemed as completed when its delivery procedures (including move-in procedures) have commenced or when the property is in fact put in use. Property developers must conduct the settlement of cost in time and calculate the amount of corporate income tax for the current year.

### **Business Tax**

Pursuant to the Interim Regulations of the People's Republic of China on Business Tax 《中華人民共和國營業稅暫行條例》 promulgated by the State Council on November 10, 2008 and implemented on January 1, 2009 and the Detailed Rules for the Implementation of the Interim Regulation of the People's Republic of China on Business Tax 《中華人民共和國營業稅暫行條例實施細則》 jointly issued by the Ministry of Finance and State Administration of Taxation on December 15, 2008 and effective on January 1, 2009, services in China are subject to business tax. Taxable services include sale of real property in China. The business tax rate is from 3% to 20% depending on the type of services provided. Sale of real properties and other improvements on the land attract a business tax at the rate of 5% of the turnover of the selling enterprise payable to the relevant local tax authorities.

### **Land Appreciation Tax**

According to the requirements of the LAT Regulation, any appreciation gain from a transfer of property is subject to LAT. LAT must be charged at four levels of progressive rates: 30% for the appreciation amount not more than 50% of the sum of deductible items; 40% for the appreciation amount more than 50% but not more than 100% of the sum of deductible items; 50% for the appreciation amount more than 100% but not more than 200% of the sum of deductible items; and 60% for the appreciation amount more than 200% of the sum of deductible items. The related deductible items aforesaid include the following:

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

State Administration of Taxation issued the Notice on Improvement of the Administration of the Collection of Land Appreciation Tax 《關於認真做好土地增值稅徵收管理工作的通知》 on July 10,

2002 to require local tax authorities to modify their management system of LAT collection and operational details, to formulate and implement a sound taxpaying declaration system for LAT, to modify the methods of prepayment for the pre-sale of properties.

On March 2, 2006, the Ministry of Finance and State Administration of Taxation issued the Notice on Several Matters 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:

- Due to certain LAT exemption available to the sale of ordinary residential properties built by taxpayers and to the transfer of ordinary residential properties by individual owners, the notice sets out the standards for ordinary residential properties.
- The notice also provides that, where any developer develops ordinary residential properties as well as commercial properties, the land appreciation amount must be separately calculated and verified.
- As to the advance collection and settlement of LAT, the notice requires all local LAT collection departments to design their LAT prepayment rate in a scientific and reasonable manner, and to adjust it on a timely basis according to the appreciation of the property, the local market development and the specific property categories, such as ordinary residential properties, non-ordinary residential properties and commercial properties. The notice also require that LAT settlement be conducted upon the completion of a property project in a timely manner, with any overpayment refunded and underpayment made up;
- As to any LAT that has not been prepaid within the advance collection period, the overdue fines must be imposed and collected as of the day following the expiration of the prescribed advance collection period according to the relevant provisions of the LAT laws and regulations; and
- As to any property project that has been completed and in receipt of certificate of completion, and the saleable GFA of the project that has been transferred constitutes more than 85% of the total saleable GFA, the tax authorities may require the relevant taxpayer to complete the settlement of LAT on the transferred properties in proportion to the income generated from, and items of deduction relating to, the transferred properties, with the specific LAT settlement procedures to be provided by local tax authorities at provincial-level governments.

On December 28, 2006, State Administration of Taxation issued the Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises 《關於房地產開發企業土地增值稅清算管理有關問題的通知》, which came into effect on February 1, 2007. Pursuant to the notice, a property developer must settle the LAT payment in full with the relevant tax authorities at the applicable LAT rates with respect to its property projects that have come to meet the LAT settlement criteria. For projects developed in stages, LAT must also be settled in stages. LAT must be settled if (i) the property project has been completed and fully sold; or (ii) the property developer has transferred the whole incomplete property project to another party; or (iii) the underlying land use rights with respect to a property project has been transferred. In addition, the relevant tax authorities may require the developer to settle the LAT if any one of the following criteria is met: (i) for completed property projects, the sold GFA represents more than 85% of total saleable GFA or, if such proportion is less than 85%, the remaining saleable GFA is subject to leasing arrangements or is used by

the developer; (ii) the property project has not been completely sold for more than three years after obtaining the pre-sale permit or the certificate of completion; (iii) the developer is applying for cancellation of its tax registration without having settled the relevant LAT; and (iv) other situations stipulated by the local provincial tax authorities.

The notice also provides that, if a property developer has committed any of the following acts, the tax authorities are required to levy and collect LAT at a rate no lower than the LAT pre-payment rate of enterprises with a similar development scale and income level in the locality: (i) failure to maintain its accounting books required by the laws and regulations; (ii) destruction of its accounting books without authorization or failure to provide its tax information; (iii) its accounting books are not in proper order, with its supporting income and cost vouchers damaged and incomplete, so as to make it difficult to determine the sales revenue or the proper amount of deductible items; (iv) failure to complete the 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 lower than supportable. Local tax authorities at the provincial level may formulate their implementation rules according to the notice and local circumstances.

On May 12, 2009, State Administration of Taxation issued the Administrative Rules for the Settlement of Land Appreciation Tax 《土地增值稅清算管理規程》, which became effective on June 1, 2009. The rules reiterate the LAT settlement requirements, and further stipulate procedures for the examination and verification with respect to the LAT settlement to be followed by the tax authorities.

On May 19, 2010, State Administration of Taxation promulgated the Notice on Issues Regarding Land Appreciation Tax Settlement 《關於土地增值稅清算有關問題的通知》, which provides further clarifications and guidelines on LAT settlement, revenue recognition, deductible expenses, timing of assessment and other related issues.

On May 25, 2010, State Administration of Taxation issued the Notice on Strengthening the Collection Land Appreciation Tax 《關於加強土地增值稅徵管工作的通知》, which provides for a minimum LAT prepayment rate at 2% for provinces in eastern China region, 1.5% for provinces in the central and northeastern China regions, and 1% for provinces in the western China region. The notice also delegate to the local tax authorities to determine the applicable LAT prepayment rates based on the types of the properties in their respective regions.

### **Deed Tax**

Pursuant to the Interim Regulations of the People's Republic of China on Deed Tax 《中華人民共和國契稅暫行條例》 promulgated by the State Council on July 7, 1997 and implemented on October 1, 1997, a transferee, whether an individual or otherwise, of the title to a piece of land or a building in China is obligated to pay a deed tax. The rate of deed tax ranges from 3% to 5% to be determined by the governments at the provincial level and reported to the Ministry of Finance and State Administration of Taxation for the record.

### **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 location of relevant land. The annual tax on

each sq.m. of urban land is between Rmb 0.2 and Rmb 10 and is to be collected according to the tax rate determined by the local tax authorities. These provisional regulations, as amended, became applicable to foreign-invested enterprises since January 1, 2007, with the such annual land use tax on each sq.m. of urban land between Rmb 0.6 and Rmb 30 to be collected according to the tax rate determined by the local tax authorities.

### **Building Tax**

Under the Interim Regulations of the People's Republic of China on Real Property 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, real property tax is levied at 1.2% calculated on the basis of the residual value of a property and at 12% calculated on the basis of the rental income.

### **Stamp Duty**

Under the Interim Regulations of the People's Republic of China on Stamp Duty 《中華人民共和國印花稅暫行條例》 promulgated by the State Council on August 6, 1988 and implemented on October 1, 1988, for property transfer instruments, including those relating to property ownership transfers, a stamp duty is levied at 0.05% of the transfer price. For permits and certificates relating to rights, including property ownership certificates and land use rights certificates, a stamp duty is levied at Rmb 5 per item.

### **Municipal Maintenance Tax**

Under the PRC Interim Regulations 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, taxpayers, whether individuals or otherwise, of product tax, value-added tax or business tax are required to pay municipal maintenance tax calculated on the basis of their product tax, value-added tax and business tax liabilities. The municipal maintenance tax is levied at 7% for a taxpayer domiciled in an urban area, 5% for a taxpayer domiciled in a county or a town, and 1% for a taxpayer domiciled in any other area. Under the Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment 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 State Administration of Taxation on February 25, 1994, the municipal maintenance tax is currently not applicable to foreign-invested enterprises until further notice issued by the State Council.

According to the Circular Concerning Unification of Municipal Maintenance Tax and Education Surcharge for Foreign Investment and Domestic Enterprises and Individuals (關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知) (Guo Fa (2010)No.35) issued by State Council on October 18, 2010, the municipal maintenance tax will be applicable to FIEs from December 1, 2010.

### **Education Surcharge**

Under the Interim Provisions 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 amended on June 7, 1990 and on August 20, 2005, respectively, any taxpayer, whether an individual or otherwise, of value-added tax, business tax or consumption tax is liable for an education surcharge, unless such taxpayer is otherwise required to pay a rural education surcharge as

provided in 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和補充通知》 issued by the State Council on October 12, 1994, as well as under the above-mentioned Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment and Foreign Enterprises and the Approval on Exemption of Municipal Maintenance Tax and Education Surcharge in Foreign-invested Freightage Enterprises, the education surcharge is currently not applicable to foreign-invested enterprises until further notice issued by the State Council.

According to the Circular Concerning Unification of Municipal Maintenance Tax and Education Surcharge for Foreign Investment and Domestic Enterprises and Individuals 《關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知》 (Guo Fa (2010)No.35) issued by State Council on October 18, 2010, the education surcharge will be applicable to FIEs from December 1, 2010.

### PROPERTY SERVICE

According to the Regulation on Property Management 《物業管理條例》 enacted by the State Council on June 8, 2003, effective September 1, 2003, and as amended on August 26, 2007, the government implements a qualification scheme system in monitoring the property service enterprises. Under the Measures for the Administration of Qualifications of Property Service Enterprises 《物業服務企業資質管理辦法》 promulgated by MOHURD in March 2004 and amended in November 2007, a property service enterprise must apply for assessment of its qualification by the relevant qualification approval authorities. An enterprise which passes such a qualification assessment will be issued a qualification certificate. No enterprise may engage in property service without completion of such qualification assessment conducted by the relevant government authorities with a qualification certificate obtained.

According to the above MOHURD measures, the qualification of a property service enterprise is classified into three classes. Property service enterprises with class one qualification may undertake various real estate management projects. Property service enterprises with class two qualification may undertake the property management business of residential projects of less than 300,000 sq.m. and the non-residential projects of less than 80,000 sq.m. Property service enterprises with class three qualifications may undertake the property management business of residential projects of less than 200,000 sq.m. and non-residential projects under 50,000 sq.m. MOHURD is responsible for the issuance and administration of class one qualification certificates. The MOHURD authorities at provincial level governments are responsible for the issuance and administration of class two qualification certificates. Designated MOHURD or similar authorities at lower governments are charged with the issuance and administration of class three qualification certificates.

Qualifications of property service enterprises are subject to inspections on an annual basis. Such annual inspections on the property service enterprises of varied classes of qualifications are conducted by the corresponding MOHURD authorities with jurisdiction of initial qualification examination and approval.

In accordance with the above-mentioned Regulation on Property Management and the Property Rights Law, owners in a property project may engage or dismiss its 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 project.

**INSURANCE OF A PROPERTY PROJECT**

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

According to the common practice of the property industry in China, construction companies are usually required to submit insurance proposals in the course of tendering and bidding for construction projects. Construction companies are often required by the developers to pay for the insurance premium and take out insurance to cover their liabilities, including third party's liability risks, employer's liability risks, risks of nonperformance of contract in the course of construction and other risks associated with the construction and installation works throughout the construction period. The insurance coverage for all such risks will typically cease immediately upon the issuance of the certificate of completion for the relevant project.

**MEASUREMENTS ON PROPERTY PRICE STABILIZATION**

On May 24, 2006, the State Council issued the Opinions on Adjusting the Housing Supply Structures and Stabilizing Property Prices 《關於調整住房供應結構穩定住房價格的意見》. As to the adjustment of housing supply and stabilization of housing prices, the opinions provide that:

**Adjustment of the property supply structure**

- The construction of medium- and small-sized ordinary commodity houses at medium or low prices should be encouraged and promoted to satisfy the self-use demands of local residents; and
- Commencing from June 1, 2006, for each commodity property newly approved for commencement of construction, the proportion of land for affordable housing and properties with a unit floor area less than 90 sq.m. must be at least 70% of the total land area approved for development and construction. In case of any adjustment of this proportion, to the extent required due to special circumstances, the relevant local governments, generally at provincial capital level, must submit their special requests to MOHURD for approval.

**Adjustments to tax, credit and land policies**

- Commencing from June 1, 2006, the business tax upon the transfer of a residential property by an individual within five years from the date of purchase will be levied on the basis of the full amount of the sale proceeds. For an individual transferring an ordinary residential property five years or more from the date of purchase, the business tax will be exempted. For an individual transferring a house other than an ordinary residential house five years or more from the date of purchase, the business tax will be levied on the balance between the sale proceeds and the purchase price;
- In order to restrain property developers from purchasing land and buildings with bank credits, any developer applying for loans must have at least 35% of capital required for the project development. For developers with a large amount of idle land and vacant commodity properties, commercial banks must restrict the grant or extension of revolving credit facilities in any form pursuant to prudential principles. Commodity buildings vacant for more than three years should not be accepted as collateral by commercial banks;

- Commencing from June 1, 2006, the down-payment of individual home loans should be no less than 30%. When a borrower applies for individual home loans for a property for self use and the unit floor area is less than 90 sq.m., the down-payment remains at 20%;
- At least 70% of the land supply for residential property development must be used for developing low-to-medium-cost and small to medium-size units and low-cost rental properties. The development land use rights must be granted through public tender. Land supply for villas will continue to be suspended, and land supply for low-density and large-scale residential properties will be strictly controlled; and
- When construction has not started after one year from the date of the land grant contract, idle land fees must be charged toward the higher level as permitted; if construction has not started after two years, the land use right may be taken back without any refunding. Idle land includes parcels where, although development and construction has started on time, the developed GFA is less than one third of the total GFA to be developed and constructed, or the invested amount is less than 25% of the total amount of investment for the project, and the development and construction has been continuously suspended for no less than one year without approval.

#### Regulating the property market

- Any property project which, despite the issuance of the construction works planning permit, has not started its construction is subject to monitor, review and new approval. If the project is not in line with the requirements set forth in the land grant contract or the construction works planning permit, then the construction permit and the pre-sale permit should not be issued. If the design of the project has been altered without approval, or the construction has violated the requirements, the project may be disposed of or forfeited according to law; and
- The government authorities, including the SAIC authorities, must investigate any illegal trade conducts, including contractual fraud. Any illegal pre-sale of commodity properties without fulfilling the necessary conditions and requirements must be ordered to stop and punished. With respect to the property enterprises that hoard properties or maliciously manipulate property prices, the competent authorities will strictly and forcefully rectify and prevent. Severe violators will be punished by monetary fines or suspension of business licenses in accordance with applicable laws and regulations. Responsible perpetrators may be subject to investigation and prosecution.

On May 30, 2006, the Ministry of Land and Resources issued the Urgent Notice on Further Tightening of Land Administration 《國土資源部關於當前進一步從嚴土地管理的緊急通知》. The notice stressed that land for property development must be granted by public tender, auction or listing for-sale. It further stipulates that the rules suspending the development project for villas should be strictly enforced, with land supply for development of villas ceased from the date of the notice. Under the notice, the land administrative authorities must strictly follow the model land grant contracts jointly formulated by the Ministry of Land and Resources and SAIC. The land grant contracts are required to specify the requirements of planning, construction and land use, including the GFA, the plot ratio and the timing for commencement and completion of construction.

In July 2006, MOHURD, NDRC, MOFCOM, PBOC, SAIC and SAFE jointly issued a Circular on Standardizing the Admittance and Administration of Foreign Capital in Property Market 《關於規範房地產市場外資准入和管理的意見》, or the 171 Opinion. The 171 Opinion aims to tighten access of foreign capital into the PRC real estate market and to restrict property purchases in China by foreign institutions or individuals. It provides, among others, that a foreign institution or individual must establish a foreign-invested enterprise in order to purchase real estate in China if the property is not intended for self use. The registered capital of such foreign-invested enterprise must amount to at least 50% of its total investments in PRC real properties if the amounts of such investments exceed US\$10 million. Branches and representative offices of foreign institutions in China as well as foreign individuals who work or study in China for more than one year may purchase property for their own use but not for any other purpose; and foreign institutions which have no branches or representative offices in China or foreign individuals who work or study in China for less than a year are prohibited from purchasing any real property in China. In September 2006, SAFE and MOHURD jointly issued a Notice in Respect of Foreign Exchange Issues in the Real Estate Market 《關於規範房地產市場外匯管理有關問題的通知》, or the 47 Notice, to implement the 171 Opinion. The 47 Notice provides specific procedures for purchasing properties by foreign institutions and foreign individuals. The 47 Notice also forbids a FIREE to apply for overseas loans if it has failed to pay its registered capital in full or obtain the land use rights certificates, or its own capital funds do not reach 35% of the total investment for the relevant project.

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

- The developer is required to start to sell the commodity properties within 10 days after receiving pre-sale permits. Without pre-sale permits, the pre-sale of commodity properties as well as subscription (including reservation, registration and property unit selecting) and acceptance of any kind of pre-sale payments are not allowed.
- The real estate administration authorities are required to establish immediately a network system for pre-sales and purchase agreements of commodity properties and a system for the publication of real estate transaction information. The transaction information, such as the basic descriptions of the commodity building, the schedule of sale and rights status, should be properly and fully published in the network system at the place of the property. The transfer of any commodity building pre-sold but still under construction is prohibited.
- Without the pre-sale permit, no advertisement of the pre-sale of commodity properties may be published.
- Real estate development enterprises with a record of serious irregularity and enterprises that have failed to satisfy the pre-sale requirements for commodity properties are not allowed to take part in sale activities.
- The real estate administration authorities are also required to strictly carry out the pre-sale contract registration and require purchasers to use their real names for property purchases.

On September 30, 2007, the Ministry of Land and Resources issued the Notice on Implementation of the State Council Opinions on Resolving Difficulties in Housing of Urban

Low-Income Family and Further Strengthening the Macro-control of Land Supply 《關於認真貫徹〈國務院關於解決城市低收入家庭住房困難的若干意見〉進一步加強土地供應調控的通知》 to further enhance the control of land supply, which stipulates that the supply of the land to be developed for low-rent housing, economic housing and housing at low or medium price and of small or medium size must be no less than 70% of the total land supply of each current year.

On July 29, 2008, PBOC and CBRC jointly issued the Notice on Promoting Economic Use of Land through Finance 《關於金融促進節約集約用地的通知》. The notice emphasizes that the financial institutions should tighten their financing for construction projects, municipal infrastructures and industrial land use projects, rural collective construction land use projects, and commercial real estate projects. The commercial banks are prohibited from granting loans to property developers for payment of land premium and to the property projects such as the followings:

- construction projects that fall into the category of prohibited land use projects;
- property development projects on land earmarked for use as rural collective construction land; and
- property development projects where the relevant land has been idle for two years or more.

On December 22, 2009, the Ministry of Finance and State Administration of Taxation jointly issued the Notice on Adjusting the Business Tax Policies upon Transferring Residential Properties by Individuals 《關於調整個人住房轉讓營業稅政策的通知》. Pursuant to the notice, commencing from January 1, 2010, business tax will be levied upon the transfer of a non-ordinary residential property by an individual within five years from the date of purchase and the business tax to be levied will be calculated based on the full amount of the sale proceeds. For an individual transferring a non-ordinary residential property after five years from the date of purchase, or transferring an ordinary residential property within five years from the date of purchase, the business tax to be levied will be calculated based on the difference between the sale proceeds and the purchase price. An individual transferring an ordinary residential house after five years from the date of purchase will be exempt from the business tax.

In January 2010, the State Council issued a Circular on Facilitating the Stable and Healthy Development of Property Market 《關於促進房地產市場平穩健康發展的通知》, which adopted a series of measures to strengthen and improve the regulation of the property market, stabilize market expectation and facilitate the stable and healthy development of the property market. These include, among others, measures to increase the supply of affordable housing and ordinary commodity housing, provide guidance for the purchase of property, restrain speculation of properties, and strengthen risk prevention and market supervision. Additionally, it explicitly requires a family (including a borrower, his or her spouse and children under 18), who have already purchased a residence through mortgage financing and have applied to purchase a second or more residences through mortgage financing, to pay a minimum down payment of 40% of the purchase price.

On April 17, 2010, the State Council issued a Notice on Firmly Preventing Property Price from Increasing Too Fast in Certain Cities 《關於堅決遏制部分城市房價過快上漲的通知》 to adopt a

series of new measures to keep the property prices from rising too quickly in certain cities in China. The new measures include, among others:

#### **Higher minimum down payment requirements**

- First-time home buyers must make a down payment of at least 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 sq.m. or more;
- Second-time home buyers must make a down payment of at least 50% of the purchase price of the underlying property subject to a minimum mortgage loan interest rate at 110% of the relevant PBOC benchmark one-year lending interest rate; and
- Commercial banks should significantly increase the ratio of minimum down payment to the purchase price and the minimum mortgage loan interest rate, respectively, for buyers who purchase a third or additional properties through mortgage financing.

#### **Control over bank lending**

- In regions where property prices have been increasing too quickly, commercial banks may stop granting mortgage loans to home buyers who purchase a third or any additional properties;
- Commercial banks are required to stop granting mortgage loans to home buyers who are not local residents and cannot provide evidence of payment of tax or social insurance contribution in such local jurisdiction for more than one year; and
- The local governments may adopt interim measures to impose limits on the maximum number of units that one family may own.

#### **Punishment of speculative developers**

- Commercial banks are not allowed to lend to developers who hold idle land or manipulate land reserve or price; and
- CSRC may suspend review of applications from speculative developers for listing of shares, restructuring or refinancing.

#### **Disclosure of property ownership**

- Property developers who have filed with the local governments information of the completed properties to be sold or who have obtained the pre-sale permits are required to disclose to the public the properties for sale all at once and within a specified period of time and sell the properties they develop exactly at the price provided to the local governments.

On September 29, 2010, the Ministry of Finance, State Administration of Taxation and MOHURD jointly issued the Notice on Adjustments to Deed Tax and Individual Income Tax on Real Estate Transactions 《關於調整房地產交易環節契稅個人所得稅優惠政策的通知》, according to which, the deed tax will be reduced to 50% on the purchase of an ordinary residence for a family (including the purchaser, his/her spouse and minor children) purchasing their first residence; in such a case, if the unit floor area is less than 90 sq.m., the deed tax will be at 1%. Purchaser of a residence within one year after his/her sale of former residence will not enjoy the same individual income tax exemption.

On September 29, 2010, PBOC and CBRC jointly issued the Notice on Relevant Issues Regarding the Improvement of Differential Mortgage Loan Policies 《關於完善差別化住房信貸政策有關問題的通知》, according to which, the minimum down-payment has been raised to 30% for all first home purchases, and commercial banks throughout China are required to suspend mortgage loans for purchases of a customer's third or additional residential property. For a mortgage on the second residential property, the down-payment must not be less than 50% of the purchase price and the interest rates must not be less than 1.1 times the base rate. All banks are prohibited from lending for the purposes of new development projects by property companies that have a record of speculating on idle land, changing the land use and nature, delaying development time, manipulating market prices or performing other non-compliant conducts.

According to the Notice on Further Standardization of Housing Purchase Administration of Offshore Institution and Individual (Jian Fang [2010] No.186) (關於進一步規範境外機構和個人購房管理的通知) issued by Ministry of Housing and Urban-Rural Development and State Administration of Foreign Exchange on November 4, 2010, the offshore individual is only permitted to purchase one set of house for self-residence in onshore China. The offshore institution which has branches or representative offices in onshore China is only permitted to purchase non-residence houses for office use in their respective registered cities.

On January 26, 2011, the State Council issued the "Notice on Further Strengthening Regulation and Control of Real Property Markets" (《關於進一步做好房地產市場調控工作有關問題的通知》) requiring, among other restrictive measures: (i) a minimum down payment of at least 60% of the total purchase price with a minimum mortgage lending interest rate of 110% of the benchmark rate published by PBOC for the purchase of a second residential property; and (ii) in municipalities directly under the central government, cities listed on state plans, provincial capitals, and cities where the housing prices are overly high or increasing at an excessively high rate (the "Specified Cities"), local residents (including their spouses and minor children) with two or more residential properties, non-local residents with one or more residential properties and non-local residents that are unable to provide documentation certifying payment of local tax or social security for a specified time period, are not permitted to purchase any (further) residential properties located in the Specified Cities.

Our PRC legal advisers, King & Wood, have advised that, given that the residential development is not our core business, the adverse impact of the aforesaid regulations on the property market on the Group is limited and the relevant risks are remote.

#### **REGULATIONS RELATING TO THE PRC LOGISTICS SERVICES INDUSTRY**

According to the Notice related to the Establishment of Foreign Investment Logistics Enterprises (the "Logistics Notice") (關於開展試點設立外商投資物流企業工作有關問題的通知) promulgated by Ministry of Foreign Trade and Economic Cooperation on June 20, 2002, foreign investors are permitted to conduct logistics businesses through equity or cooperative joint ventures.

Foreign-invested logistics enterprises may be approved to conduct part or all of the following types of logistics activities:

- international distribution services: importing and exporting and related services, including the importing and exporting cargo for the enterprise itself or as an agent; processing the importing and exporting of cargo as an agent; and providing international sea, air and land freight forwarding services; and

- third-party logistics services: transportation, storage, loading and unloading, packing, and distribution of common road-based freight; relevant information processing and consulting services; domestic freight agency; and management and operation of logistics business by means of computer network.

Foreign-invested logistics enterprises engaged in providing road transportation for general cargo services and computer network management and operations are subject to approval by relevant departments according to the applicable laws and regulations approved. According to the Notice Related to Work on Attract Foreign Investment in Logistics Industry (關於做好物流領域吸引外資工作的通知) promulgated by the Ministry of Commerce on April, 20 2006, foreign investors are permitted to establish foreign-invested logistics enterprises nationally, through equity or cooperative joint ventures or wholly-owned enterprises. Foreign-invested logistics enterprises that have obtained approval in accordance with the Logistics Notice may conduct some or all of the business set forth above, and are not subject to certain minimum registered capital requirements. However, their operations are required to comply with other relevant laws and regulations, such as the Regulations on the Administration of Foreign-invested Road Transport Service (外商投資道路運輸業管理規定).

On October 31, 2007, the NDRC and the Ministry of Commerce promulgated the Amended Catalog for the Guidance of Foreign Investment Industries (the “Guidance”) which became effective from on 1 December 2007, pursuant to which logistics services enterprises are categorized as “Encouraged Foreign Investment” enterprises.

On September 10, 2009, the State Council issued the Logistics Industry Restructuring and Revitalization Plan (物流業調整和振興規劃) (the “Logistics Plan”). The Logistics Plan sets forth policy measures relating to the logistics services industry, including the elimination of trade monopolies and regional barriers, the acceleration of the development of private logistics services enterprises and the promotion of international cooperation in logistics services industry.

## OVERSEAS LISTING

In August 2006, MOFCOM, State Assets Supervision and Administration Commission, State Administration of Taxation, SAIC, CSRC and SAFE jointly issued the Regulations on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (關於外國投資者並購境內企業的規定), or the New M&A Rule, which became effective on September 8, 2006. This New M&A Rule requires, among other things, that offshore special purpose vehicles, formed for overseas listing purposes through acquisitions of PRC domestic companies controlled by PRC companies or individuals, obtain the approval of CSRC prior to publicly listing their securities on an overseas stock exchange.

## ENVIRONMENTAL PROTECTION

The laws and regulations governing the environmental protection for real estate developments in China include the PRC Environmental Protection Law (《中華人民共和國環境保護法》), the PRC Prevention and Control of Noise Pollution Law (《中華人民共和國環境噪聲污染防治法》), the PRC Environmental Impact Assessment Law (《中華人民共和國環境影響評價法》) and the Administrative Regulations on Environmental Protection for Development Projects (《建設項目環境保護管理條例》). Pursuant to these laws and regulations, depending on the impact of the project on the environment, an environmental impact report, an environmental impact analysis table or an environmental impact registration form must be

submitted by a developer before the relevant authorities will grant approval for the commencement of construction of the property development. In addition, upon completion of the property development, the relevant environmental regulatory authorities will also inspect the property project to ensure compliance with the applicable environmental protection standards and regulations before the property project may be delivered to the purchasers.

## FOREIGN EXCHANGE CONTROL

Under the PRC Foreign Currency Administration Rules 《中華人民共和國外匯管理條例》 promulgated in 1996 and revised in 1997 and in 2008 and various regulations issued by SAFE and other relevant PRC government authorities, renminbi is convertible into other currencies for the purpose of current account items, such as trade related receipts and payments and the payment interest and dividend. The foreign currency payments received under current account may be retained pursuant to the relevant regulations. Payments of current-account items may be remitted in foreign currencies without prior approval from the relevant SAFE authorities by complying with certain procedural requirements. The foreign currency receipts and remittances under current account should have a genuine and legitimate basis, and financial institutions processing such transactions must verify the authenticity of the relevant transaction documents and their consistency with the foreign currency receipts or remittances. However, to keep or convert any foreign currency payment under capital account requires pre-approval from the relevant SAFE authorities, unless specifically exempted under applicable regulations. If a regulatory pre-approval is not specifically required, payment of capital-account items may be remitted in foreign currency directly to financial institutions, provided that valid documentation is presented. Foreign exchange transactions involving foreign direct investment, foreign debts and outbound investment in securities and derivatives are subject to limitations and require approvals from the relevant SAFE authorities.

In October 2005, SAFE issued a Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Reverse Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies 《關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知》, or Circular 75. According to Circular 75, a special purpose company refers to an offshore company established or indirectly controlled by PRC residents for the special purpose of carrying out financing of their assets or equity interest in PRC domestic enterprises. Prior to establishing or assuming control of a special purpose company overseas, each PRC resident, whether a natural or legal person, must complete the overseas investment foreign exchange registration procedures with the relevant local SAFE branch. The notice applies retroactively. These PRC residents must also amend the registration with the relevant SAFE branch in the following circumstances: (i) the PRC residents have completed the injection of equity investment or assets of a domestic company into the special purpose company; (ii) the overseas funding of the special purpose company has been completed; (iii) there is a material change in the capital of the special purpose company. Under Circular 75 and relevant rules and regulations, failure to comply with the foreign exchange registration procedures may result in restrictions being imposed on the foreign exchange activities of the violator, including restrictions on the payment of dividends and other distributions to its offshore parent company, and may also subject the violators to penalties under the PRC foreign exchange administration regulations.

The Notice on Regulating Issues Relevant 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》 jointly issued by SAFE and MOHURD On September 1, 2006, provides: (i) where a FIREE fails to pay the registered capital in full or

to acquire a land use rights certificate or to make its capital funding for a development project amounting to 35% of the total investment to the project, the SAFE authorities will not handle its foreign debt registration or approve its settlement of foreign exchange funds; (ii) where a foreign institution or individual acquires a domestic property enterprise, if such foreign institution or individual fails to pay the transfer price in a lump sum with its/his own fund, the SAFE authorities will not process the registration of foreign exchange proceeds from transfer of equities; (iii) the domestic and foreign investors of a FIREE may not enter into an agreement or undertaking that promises a fixed return in any form to any party, or the SAFE authorities will not process the foreign exchange registration or registration modification for the FIREE; and (iv) the funds in the foreign exchange account in the name of a foreign investor in a domestic bank may not be used for the property development or operations of the FIREE.

On August 29, 2008, SAFE issued the Circular on the Relevant Operating Issues Concerning the Improvement of the Administration of the Payment and Settlement of Foreign Currency Capital of Foreign-Investment Enterprises 《關於完善外商投資企業外匯資本金支付結匯管理有關業務操作問題的通知》. Pursuant to this circular, renminbi amounts converted by a foreign-invested enterprise from its foreign exchange capital contribution may only be used for the activities within the approved business scope of such foreign-invested enterprise and may not be used for domestic equity investment or acquisition unless otherwise allowed by PRC laws or regulations.