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### Real Estate (1)

On the 24<sup>th</sup> July 2006, the Ministry of Construction, the Ministry of commerce (MOFCOM), the State Economic Development and Reform Commission, the Peoples' Bank of China, the State Administration of Industry and Commerce (SAIC), and the State Administration of Foreign Exchange (SAFE) jointly published "The Opinions on Regulating Market Access and Administration of Foreign Investment in the Real Estate Market (here-after referred to as the "Opinion")".

The main changes brought about by this regulation in the real estate investment market are as follows:

#### ☞ Purchasers' requirements

Only the following individuals or entities may buy property in China for their own use (office or residence), i) Subsidiaries, ii) foreign enterprises' representative offices established in China, iii) foreign individuals (under certain circumstances) (here-below referred to as Accredited Foreign Investors "AFI").

Foreign individuals wishing to purchase real estate for their own use, must have been a resident (student or employee) in

China for more than one year. This criteria, is however, not applicable to overseas Chinese and Hong Kong, Macao and Taiwan residents who may buy units of a "certain size", but there is no guideline on what that "certain size" means.

The term "own use" is defined as follows:

- \* A business entity can only purchase one property as an office and it must be located in the business entity's place of registration;
- \* An individual can only buy one property for its own use.

The purchase of a Chinese property by a foreign individual not established (or non resident) in China is not directly permitted. In order to buy Chinese real estate, the foreign investor must set up in China a Foreign Investment Real Estate Enterprise (FIREE). The FIREE can be set up in the form of a sino-foreign equity or cooperative joint venture or a wholly foreign owned enterprise.

#### ☞ An AFIs' Real Estate buying process

The AFI must purchase the real estate in its own name. The AFI must carry out the registration process with the Real Property Office by presenting:



\* in the case of a business entity, the official document issued by the Chinese government certifying its' legal registration in China;

or

\* in the case of an individual, documents certifying reasons for their presence in China (studying or employment) as well as length of stay.

☞ Conditions of setting-up an FIREE

In the case where the total investment is in excess of US\$10 million, the registered capital must not be less than US\$5 million. Where the total investment is less than US\$10 million, the registered capital must conform with the ratio applicable to all FIE's.

☞ Setting-up Process

The FIREE setting-up approval is issued by the Bureau of Commerce and the local AIC, which issues an approval certificate and a provisional business licence valid for one year.

It is clearly stated that as long as the FIREE has not obtained these two documents it cannot begin business.

Once the FIREE has fully paid up the land use right, it can be issued with the land use right certificate. It is only upon presentation of this certificate that the FIREE can obtain an approval certificate and permanent business licence.

☞ Obtaining a loan

The Opinions provide that the FIREE will not be able to borrow if :

\* its registered capital has not been fully paid up;

- \* the relevant land use right certificates have not been delivered
- \* The registered capital is less than 35% of the project total investment.

Thus, FIREE's benefit from the same borrowing conditions as 100% Chinese owned real estate companies.

☞ Special case of a foreign investor acquiring a wholly foreign owned real estate company or by taking a participation. The foreign investor is subject to stricter conditions than when creating a FIREE. The foreign investor must:

\* Submit a letter of guarantee in which he promises to comply with the regulations of the land use right transfer, and other obligations expected with the authorisations and various permits relating to the construction project.

\* Pay the transfer price in one lump sum

☞ Miscellaneous

It is strictly forbidden for an FIREE to include in its contract or articles of association or in any other document (share transfer agreement, etc.) a clause aiming at fixing the percentage of revenue on the investment to any one of the investors.

## REAL ESTATE (2)

On September 1st, 2006, following the promulgation of the Opinion, SAFE and the Ministry of Construction, jointly published a circular aiming at clarifying foreign investor currency control in the real





estate market.

- ☞ Purchase of real estate by an AFI (except investors from Hong Kong, Macao, Taiwan or overseas Chinese)

Whether the real estate purchase amount is transferred from abroad, or settled from the AFI's foreign currency account held in China, it is advisable to seek approval from the bank which will, after conversion into RMB, automatically transfer the purchase amount into the real estate project developers' account.

Documents required to obtain permission from the bank:

- Real estate purchase contract;
- The document certifying the recording of the purchase agreement with the real property authorities where the AFI is located;

And for a business entity:

- Documents certifying the business entity's registration in China (registration certificate, etc...);
- An affidavit stating the property is for personal use.

For an individual

- A passport;
- Employment contract or student certificate (lasting more than 1 year).

- ☞ Repatriation of RMB received upon the sale of real estate by an AFI

After checking the validity of the following documents, the local SAFE office authorises

the AFI to convert his RMB into foreign currency and to repatriate them abroad:

- A letter of request to purchase foreign currency;
- The property assignment contract;
- Tax discharges related to the assignment of the property.

For further information on the above or any other laws, regulations and investment issues, please contact

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