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## **Introduction to the relevant policies regarding foreign investment in China's real estate market**

**By Qiu Guangli**

In accordance with the current policies regulating foreign investment in China's real estate market, and combined with Decree No.34 issued on March 8 2010 by the PRC Ministry of Land and Resources (*Circular on the strengthening and monitoring of land supply for real estate-related issues*), foreign investors are advised to pay attention to the following issues when investing in China's real estate market.

### **1. Fundamental principles**

#### **a. Establishment of project company**

Any foreign investor intending to invest in Chinese real estate development or operation must establish foreign-invested real estate enterprises ('FIREs') - also referred to as "project companies". Before applying to set up a project company, foreign investors are required to acquire land-use rights or real estate building ownership. At the least, they must sign transfer property reservation/purchase agreements to transfer of land-use rights or building property rights with the land management department, land developer or real estate building owner. In addition, a project company can manage/operate only one project, which is strictly regulated.

b. Filing with the PRC Ministry of Commerce ("MOFCOM")

Foreign investors should apply to MOFCOM for filing of FIREs, after examination and approval from the relevant Commerce Department. When filing is approved, FIREs can subsequently apply for the registration of foreign exchange.

c. Limits of authority for examining and approving the establishment of FIREs

On 13 April 2010, the State Council issued a new policy, *Several opinions on further improving the work of foreign capital utilization*. It stipulates that a project with a total investment amount of less than \$300m, falling into the encouraged or permitted category specified in the *Catalogue for the Guidance of Foreign Investment Industries*, shall be subject to local authorities' examination and approval. In this regard, if a FIRE has a total investment in its project worth less than \$300m, it should apply to the local authorities for examination and approval. Otherwise MOFCOM is in charge of examining and approving the FIRE if its overall investment is above this level.

When it comes to a foreign real estate M&A project, the amount of consideration is the criterion to determine the examination and approval authority.

## **2. Matters to be noted if foreign investors obtain the land-use right by ways of bidding, auction and listing**

Once a transaction for the transfer of land-use rights is dealt, the transfer contract must be signed within 10 working days. However, in consideration of the time needed for foreign investors to incorporate a FIRE after successfully competing/bidding on the acquisition of land-use rights, the transferor will usually sign a deal conclusion letter/purchase confirmation with foreign investor and fix a period of time. This is usually more than 10 working days allowing for the signing of transfer contract within the said period.

Foreign investor should carefully budget the time to get the approval from the relevant Commerce Department, file with MOFCOM, complete business

registration and sign the transfer contract with the transferor within a fixed period.

50% of the total as a down payment should be paid within 1 month from the signing of the transfer contract. The balance should be paid in an agreed period set by the transfer contract but shall not exceed one year.



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