



English translation of the Six Ministry Opinions on Foreign Investment in Real Estate on July 12, 2006

Ministry of Construction
Ministry of Commerce
National Development and Reform Commission
People's Bank of China
State Administration for Industry and Commerce
State Administration of Foreign Exchange
Jianzhufang [2006] No. 171

In view of the rapid growth of foreign investment and the active pace of purchases by overseas institutions and individuals in the Chinese real estate market from the beginning of this year, these Opinions are hereby circulated with the approval of the State Council to regulate the market access by, and administration of, foreign investment in the real estate market.

ARTICLE 1: STANDARDIZATION OF MARKET ACCESS OF FOREIGN INVESTMENT IN THE AREA OF REAL ESTATE

Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market

- (1) An overseas entity or individual investing in the purchase of real estate in China other than for self-use shall, subject to the principle of commercial existence, apply for the establishment of a foreign invested enterprise pursuant to the rules relevant to foreign investment in real estate and conduct relevant operations within the authorized business scope only after obtaining approval of the relevant government departments and the relevant registrations.
- (2) The registered capital of a foreign invested real estate enterprise ("FIREE") with a total investment amount of USD 10 million or more shall not be less than 50% of the total investment

amount of the FIREE. In respect of an FIREE with a total investment amount of less than USD 10 million, the current rules on registered capital shall apply.

- (3) An equity transfer or a project transfer of an FIREE, as well as the acquisition of a local real estate enterprise by foreign investors, shall be approved by MOFCOM in strict compliance with relevant laws, regulations and policies. The investors shall submit a Letter of Guarantee pledging to abide by the “State-owned Land Use Right Grant Contract”, the “License for the Planning of Lands for the Purpose of Construction”, and the “License of the Planning of Construction Projects”. In addition to the Guarantee letter, they shall also submit the “State-owned Land Use Certificate”, a change of registration certificate issued by the relevant construction (real estate) administration department, and evidence of tax payment issued by the relevant taxation authority(ies).
- (4) Foreign investors acquiring a domestic real estate enterprise through equity transfer or in other ways, or acquiring the Chinese investors’ equity in an equity joint venture, shall make proper arrangement for the real estate enterprise’s employees and for the enterprise’s bank loans. The foreign investors shall pay the transfer price in a lump sum and with their own capital. Foreign investors with bad records are prohibited from involvement in such activities in the PRC.

ARTICLE 2: STRENGTHENING ADMINISTRATION OF REAL ESTATE DEVELOPMENT AND MANAGEMENT OPERATIONS BY FIREES

- (5) An FIREE is prohibited from conducting the business of real estate development and operations without first obtaining an Approval Certificate and a Business License.
- (6) If the registered capital of an FIREE is not fully paid up, if its “Land Use Certificate” has not been issued, or if the paid-in capital of the development

project is less than 35% of the total investment amount of the project, the FIREE is prohibited from borrowing from domestic or foreign lenders and the Administration of Foreign Exchange shall not approve the settlement of the foreign exchange proceeds of such loans.

- (7) Neither the Chinese nor the foreign investors in an FIREE shall in any manner stipulate a fixed return clause or its equivalent in the contract, articles of association, equity transfer agreement or other documents.
- (8) An FIREE shall obey relevant laws, regulations and policies applicable to real estate and shall strictly comply with the stipulations of the land-use-right grant contract and the time limit and conditions in planning permits and approvals. The authorities shall strengthen the supervision of FIREEs’ development, sales and other business operations and the authorities shall investigate and punish, pursuant to Guo Ban Fa [2006] No. 37 and other relevant regulations those activities violating the laws or regulations such as hoarding land or real estate and engaging in manipulation to drive up the property prices.

ARTICLE 3: TIGHTENING THE ADMINISTRATION OF THE PURCHASE OF REAL PROPERTY BY FOREIGN INSTITUTIONS AND INDIVIDUALS

- (9) A branch or representative office established by a foreign institution in China (other than an enterprise that has been approved to conduct real estate business), or a foreign individual who has been working or studying in China for more than one year, is permitted to purchase commodity premises only to the extent that the same are for self-use or self-residence purposes, based on its or his actual needs. A foreign institution that does not have a branch or representative office in China,

and a foreign individual who has been working or studying in China for less than one year, is prohibited from purchasing commodity premises in the PRC. Residents of Hong Kong, Macau and Taiwan and overseas Chinese may, based on their living requirements, purchase commodity premises in China of a stipulated floor area for self-residence.

- (10) A qualified foreign institution or individual shall purchase self-use or self-residence commodity premises under its or his true name and shall register with the relevant department for the administration of land and real estate for the land use rights and the real estate ownership of the commodity premises, submitting valid supporting documents (a foreign institution shall submit evidence of governmental approval for the establishment of its local entity in China, and a foreign individual shall submit evidence of governmental approval for his residence in China for the purpose of working or studying). The department responsible for registration of real property ownership shall carry out registration in strict compliance with the self-use or self-residence principle mentioned above and shall reject nonconforming applications.
- (11) The department for the administration of foreign exchange shall, in strict compliance with the relevant regulations and these Opinions, review and examine the remittance of funds into China for purchasing commodity premises and the settlement of such funds by foreign invested enterprises, foreign institutions and individuals. The remittance and settlement of such funds shall be permitted only if all the requirements are satisfied. Renminbi proceeds of the transfer of real property will be permitted to be converted into foreign currency and remitted abroad only after the completion of a compliance review and confirmation that tax and other formalities have been undertaken in accordance with relevant regulations.

ARTICLE 4: FURTHER STRENGTHENING AND PERFORMING SUPERVISION RESPONSIBILITIES

- (12) Local people's governments, especially in urban areas, shall firmly take responsibility for and vigilantly watch for potential problems that may result from the flow of foreign investment into the China real estate market and shall also strengthen their leadership role and fulfillment of their supervision responsibilities. Local governments shall not promulgate policies awarding preferential treatment to FIREEs without authorization. Any such policies issued before the effective date of these Opinions shall be reviewed and rectified accordingly. The Ministry of Construction, MOFCOM, the National Development and Reform Commission, the Ministry of Land and Resources, the People's Bank of China, the State Administration of Taxation, SAIC, the China Banking Regulatory Commission, the State Administration of Foreign Exchange and other relevant authorities shall promptly enact implementing rules hereof. They shall also enhance the guidance, review and supervision of local governments' enforcement of policies with respect to market access by and administration of foreign investors in the real estate market. In addition, they shall investigate and punish according to the law violations such as unauthorized lowering of the limits on the ratio between registered capital and project capital of an enterprise and other illegal activities due to insufficient administration. At the same time, more effort shall be exerted to strengthen investigation and punishment of illegal cross-border real estate transactions and the illegal remittance and conversion of foreign exchange.
- (13) Measures shall be taken to perfect the market supervision and analysis mechanism. The Ministry of Construction, MOFCOM, the State Bureau of Statistics, the Ministry of Land and Resources, the People's Bank of China, the State Administration

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of Taxation, SAIC, the State Administration of Foreign Exchange and other relevant governmental authorities shall establish and perfect an information supervisory mechanism monitoring access of foreign investment to the real estate market and shall perfect the information network for foreign investment in real estate. The relevant authorities shall strengthen coordination and cooperation to enhance supervision of cross-border capital flows and accomplish as soon as possible the sharing of statistical data on foreign investment in real estate. ■

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Secretary Section of the General Office of the Ministry of Construction

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