WHITE & CASE

Issues Affecting Foreign Investors

Real Estate Investments in China

Anna M. Han, Counsel

Nature of Investment

- For the Foreigner investor's own use-
  - China based foreign companies
  - Branches and representative of foreign companies
  - Individuals who have resided in China for work or study longer than 1 year.
- For investment only
  - Need a foreign investment real estate company

Policy: the purpose behind the new regulations

- Discourage foreign investment in real estate;
- Cool overheated real estate market, especially in major cities;
- Prevent round trip investments by domestic companies

2007 Changes

- Real estate investment in certain sectors will now require central approval or may only be joint ventures
- Under the Investment guidelines: certain real estate investments are considered restricted;
  - Land development (joint ventures only-no WFOE);
  - Luxury hotels, villas, high end office buildings and international conference and exhibition centers;
  - Companies that deal in secondary real estate transactions and real estate agencies and brokers; and
  - Residential housing development removed from encouraged category

MOFCOM and SAFE Notice of May 23, 2007 (Notice 50)

- Foreign investors in real estate must establish a foreign invested real estate enterprise ("FIREE");
- Must obtain land use rights, or building ownership rights pre establishment of the FIREE;
- No round tripping;
- Contracts may not guarantee any fixed returns to either party in a joint venture;
- New developments or expansions of projects require another approval;
- Local authorities must report approvals of FIREE to MOFCOM and foreign exchange authorities will not facilitate foreign exchange for FIREEs not reported;
- MOFCOM may "rectify" FIREEs not in compliance.

SAFE Circular of July 10, 2007 (130)

- SAFE will not make the foreign debt register and the foreign debt settlement for foreign investment real estate enterprises approved after June 1, 2007 by MOFCOM.

- Local foreign exchange administrations will similarly not make the register and settlement for locally approved foreign real estate enterprises approved by local auhtoities but failed to file with MOFCOM after June 1, 2007.

July 2006- Circular by six government offices

- Joint Circular by Ministry of Construction, MOFCOM, National Reform Development Commission, PBOC. SAIC and SAFE
  - First requiring all investment in real estate (not for own use) be done through the use of a FIREE.
  - For total investment over US$10million, registered capital must not be less than 50%.
  - After approval, a FIREE has the license for one year. A second license is issued after obtaining the land use right certificate.
  - Transfer of shares or interests in a foreign invested real estate enterprise require approval.

August 2006 Regulations on Acquisition of Domestic Enterprises

- Issued by six ministries, including MOFCOM, the CSRC and SAFE
- M and A of domestic Chinese companies using offshore entities require MOFCOM approval
- Offshore Special purpose vehicle formed for offshore listing and controlled directly or indirectly by PRC companies or individuals require CSRC approval prior to listing on an overseas exchange

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