



HAN KUN LAW OFFICES

Legal Commentary



CHINA PRACTICE • GLOBAL VISION

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Brief of the Notice of the General Office of the Ministry of Commerce on Strengthening Administration of the Approval and Filing of Foreign-Invested Real Estate Enterprises

To regulate the market access and administration of foreign capital in the real estate market, relevant departments under the State Council have issued a series of regulations and policies in the recent years, including the *Opinions on Regulating Market Access and Administration of Foreign Investment in the Real Estate Market* jointly issued by the former Ministry of Construction and five other relevant departments (Jian Zhu Fang [2006] No.171), the *Notice of the Ministry of Commerce and State Administration of Foreign Exchange on Further Strengthening and Regulating the Examination and Approval and Supervision and Administration of Foreign Direct Investment in the Real Estate Sector* (Shang Zi Han [2007] No.50) and the *Notice of the Ministry of Commerce on Improving Work Related to Filing of Foreign Investment in Real Estate Sector* (Shang Zi Han [2008] No.23). To ensure the achievement of the control policies on real estate sector on the course of implementation, the General Office of the Ministry of Commerce (the “**MOFCOM**”) issued the *Notice on Strengthening Administration of the Approval and Filing of Foreign-Invested Real Estate Enterprises* (Shang Ban Zi Han [2010] No.1542) (the “**Notice**”) on November 22, 2010. The Notice further clarifies certain regulation matters regarding the foreign investment in the real estate market as follows:

Strengthen Examination of the Filing Materials

Pursuant to the Notice, commerce departments at the provincial level shall verify the filing materials with the focus on the verification on the completeness of the materials in connection with the lands, including the state-owned land use right granting agreement concluded by and between the real estate developer submitting for filing and the land administration department, land use right certificate and other materials proofing the completion of the land use right granting. Where the relevant laws do not require competitive bidding, auction and listing-for-sale for the granting of land use right, the filing party shall submit the materials issued by the land

administration department proofing that the granting is in compliance with national laws and regulations regarding land administration. The MOFCOM will increase the frequency of random inspection on the aforesaid filing materials on the original basis.

Restrain Speculative Investment

The Notice provides that foreign-invested real estate enterprises are prohibited to purchase or sell domestic real estate properties completed or under construction for the purpose of arbitrage. The MOFCOM, in conjunction with the Ministry of Housing and Urban-Rural Development, the State Administration of Foreign Exchange and other relevant departments, will strictly examine the filing materials in respective of the aforesaid projects.

Restrict Investment Enterprises for Real Estate Business

The Notice provides that local commerce departments shall not approve foreign-invested investment enterprises engaging in real estate properties development business.

Strictly Control Real Estate Enterprises under Round-Trip Investment

In accordance with the Notice, local commerce departments, in conjunction with foreign exchange departments and other relevant departments, shall rigorously identify, examine and approve domestic real estate enterprises under round-trip investment and strictly control the establishment of domestic real estate enterprises by means of round-trip investment.

Strengthen Supervision of Specific Real Estate Projects

The Notice requires to further strengthen the approval, supervision and statistical examination on the establishment or capital increase of real estate projects through merger and acquisition or equity contribution. The MOFCOM, in conjunction with relevant departments, will conduct statistics, supervision and examination on the data in connection with actual utilization of foreign capital by the aforesaid means from time to time.

If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

Important Announcement

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