

**Opinions of the Ministry of Construction, the Ministry of Commerce, National Development and Reform Commission, the People's Bank of China, the State Administration of Industry and Commerce and the State Administration of Foreign Exchange concerning Regulating the Access to and Administration of Foreign Investment in the Real Estate Market**

People's Governments of All Provinces, Autonomous Regions and Municipalities Directly Under the Central Government, All Ministries and Commissions under the State Council and All Agencies Directly Under the State Council:

Since this year, the foreign investment has got a relatively rapid growth in the real estate market of China and the overseas institutions and individuals have an active attitude towards real estate purchasing in China. For the purpose of a sound development of the real estate market and upon the consent of the State Council, suggestions are hereby put forward concerning the access to and administration of foreign investment in the real estate market:

**I. Regulating the Access of Foreign Investment into the Real Estate Market**

1. An overseas institution or individual, when purchasing the not-for-self-use real estates in China, shall follow the principles of commercial presence, and, according to relevant regulations in respect of foreign investment in real estate, apply for establishing a foreign investment enterprise. After ratified and registered by relevant departments, an overseas institution or individual may engage in the related business in accordance with the approved business scope.

2. Where a real estate enterprise established by foreign investment, if the investment amount is more than 10 million dollars (including 10 million dollars), its registered capital shall not be less than 50% of its investment amount. If the investment amount is less than 10 million dollars, its registered capital shall be carried out according to the present existing regulations.

3. With respect of the establishment of a foreign-funded real estate enterprise, the commercial administrative department and the industrial and commercial administrative organs shall grant an approval for establishment and handle the relevant formalities for registration pursuant to law, and issue a one-year Approval Certificate of Foreign-funded Enterprises and Business License. After this enterprises has paid the transfer fee of the right to use land sites, it can, on the strength of the said certificate and license, apply for a Certificate for Using State-owned Land in the department of land administrative and may, in accordance with the Certificate for Using State-owned Land, renew the formal Approval Certificate of Foreign-funded Enterprises in the department of commerce administrative and thereafter, renew the Business License with the same term as the Approval Certificate of Foreign-funded Enterprises and then make tax registration at the taxation office.

4. The competent department of commerce, and etc. shall, in strict accordance with the relevant

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laws and policies, verify and approve the transfer of equity and projects in foreign-funded real estate enterprises as well as the acquisition of domestic real estate enterprises by overseas investors. An investor shall submit the Guarantee Letters for implementation of the Contract for the Transfer of State-owned Land Use Right, the License for the Planning of Construction Land and the License for the Planning of Construction Projects and the Certificate for Using State-owned Land, certification on the alteration of archival files in the administrative department of construction (real estate) as well as the relevant certification documents of tax return issued by the taxation office.

5. An overseas investor which merges domestic real estate enterprise through equity transfer or any other ways, or acquires the equities of the Chinese party of a joint venture enterprise, shall make appropriate arrangements for the relevant employees, settle the bank debts and pay the money for transfer with its self owned capital in a one off manner. An overseas investor with any adverse record is not allowed to perform any of the said activities within China.

## II. Intensifying the Administration of Real Estate Development and management by Foreign-funded Enterprises

6. As to an overseas investor which has not obtained an Approval Certificate of Foreign-funded Enterprises or a Business License, it is not allowed to carry out any development or operation of real estate.

7. If a foreign-funded real estate enterprise fails to pay all the registered capital, to acquire a Certificate for Using State-owned Land, or to have its development project fund reach 35% of the total investments to the project, it shall not deal with any domestic or foreign loan, nor shall the foreign exchange administrative department approve the conversion of foreign exchange loans into RMB.

8. The Chinese party and the foreign party in a foreign-funded real estate enterprise shall not make any promised articles concerning fixed return or fixed return in disguised form to any party in any contract, articles, equity transfer agreement as well as any other document in any form.

9. A foreign-funded real estate enterprise shall abide by the relevant laws, regulations and policies of real estate, strictly carry out the contract on land transfer as well as the term and conditions approved by the planning licenses. The relevant departments shall intensify the supervision over such business operation of development and sale by foreign-funded real estate enterprises, and seriously conduct investigations and settlement pursuant to the Document Guo Ban Fa (2006) No. 37 as well as other relevant provisions, where any violations of laws and regulations such as hoarding of land and real estate resources or driving up house prices have been found.

## III. Strictly Administrating the House Purchasing by Overseas Institutions and Individuals

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10. A branch or representative office, established in China by an overseas institution (except for an enterprise that has been approved to engage in real estate operation) or a foreign individual that has worked or studied in China for more than 1 year may purchase a commercial house according to his actual needs for self-use or self-accommodation, yet shall not purchase any commercial house not for self-use or self-accommodation. An overseas institution without any branch or representative office in China or a foreign individual that has not yet worked or studied for more than 1 year in China may not purchase any commercial house. A Hong Kong, Macao or Taiwan resident or an overseas Chinese may purchase a certain area of commercial house for self accommodation within China in line with his needs.

11. Overseas institutions and individuals that meet the relevant provisions shall adopt a real-name system for purchasing of commercial houses for self-use or self-accommodation, and, upon the effective certification (an overseas institution shall hold the certification issued by the relevant Chinese departments on the establishment of China-based branch, an foreign individual shall hold the relevant approval certification for his work and study in China issued by the Chinese party, similarly hereinafter), may make registration of land use right and house property right in administrative departments of land and real estate. The administrative department in charge of the registration of property right shall, in strict accordance with the principles of self-use and self-accommodation, handle the relevant registration of property right of the overseas institutions and individual and shall not register for any house that fails to meet the relevant conditions.

12. The foreign exchange administrative department shall, in strict accordance with the relevant provisions as well as the requirements of this Suggestions, verify and examine the remittance from abroad and settlement of foreign exchange by foreign-funded enterprises, overseas institutions and foreign individual, and shall permit the remittance for those that meet the relevant requirements and make foreign exchange settlement therefore. The relevant RMB capital obtained from real estate transfer shall be verified and examined in light of related regulations, and confirmed to have gone through the taxation procedure or other procedures in accordance with relevant provisions, and then may be used to purchase foreign exchange and then be remitted abroad.

#### IV. Further Intensifying and Implementing the Liabilities of Supervision and Control

13. All districts, especially municipal people's governments shall earnestly take their responsibilities, attach great importance to the potential problems that may arise from the access of foreign investment into the real estate market, further strengthen leadership and carry out the liabilities of supervision and control. All districts shall not promulgate any preferential policies for foreign-funded real estate enterprises without authorization. Any preferential policies promulgated without authorization shall be taken for the sorting out and consolidation. Such relevant departments as the Ministry of Construction, the Ministry of Commerce, National Development and Reform Commission, the Ministry of Land and Resources, the People's Bank, the State

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Administration of Taxation, the State Administration for Industry and Commerce, China Banking Regulatory Commission and the State Administration of Foreign Exchange shall formulate the relevant detail rules for operation in time, intensify the guidance and supervision of implementing the policies of regular access and administration of foreign investment into real estate market in any district and shall, as to an enterprise which has lowered the proportion of registered capital to the project capital, as well as other violations of laws or regulations arising from absent administrative, deal out punishment according to law. Meanwhile, it shall make a great effort to investigate and deal with the irregular cross-border business in real estate market and the illegal or irregular remittance and settlement of foreign exchange.

14. Improving the work mechanism of market supervision and analysis. Such relevant departments as the Ministry of Construction, the Ministry of Commerce, the State Statistics Bureau, the Ministry of Land and Resources, the People's Bank of China, the State Administration of Taxation, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange shall establish and improve a supervisory and analytic information system about the access of foreign investment into the real estate market and improve the information network of foreign-funded real estate. The relevant departments shall intensify their coordination and supervision of cross-border capital flow so as to realize the information sharing of statistical data of foreign investment in real estate as soon as possible.

The Ministry of Construction  
The Ministry of Commerce  
The National Development and Reform Commission  
The People's Bank of China  
The State Administration of Industry and Commerce  
The State Administration of Foreign Exchange  
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