



JONES DAY
COMMENTARY

FURTHER RESTRICTIONS FOR FOREIGN INVESTORS IN CHINA'S REAL ESTATE MARKET

On July 10, 2007, the State Administration of Foreign Exchange ("SAFE") of the People's Republic of China ("PRC" or "China") issued an internal document entitled *Circular of the General Affairs Department of SAFE on the Distribution of the List of the First Group of Foreign Invested Real Estate Projects which has Filed with the Ministry of Commerce* (Hui Zong Fa [2007] No. 130) ("Circular 130"). It appears that Circular 130 has been circulated to each branch and administrative office of SAFE but has not yet been officially published. Technically speaking, this is not a regulation, but it will be implemented by the administrative office of SAFE and its branches. It will have the same impact on a market participant as any regulation in practice. Below is a summary of the key points of Circular 130.

HIGHLIGHTS OF CIRCULAR 130

1. SAFE will not register any foreign debt of a foreign-invested real estate enterprise ("FIRE") if the

FIRE obtained approval from the local Bureau of Commerce ("COFCOM") and filed with the Ministry of Commerce ("MOFCOM") after June 1, 2007. This also applies to FIREs that are established and approved before June 1, 2007, where such FIREs wish to increase their registered capital after June 1, 2007. Accordingly, after June 1, 2007, shareholders in FIREs may only invest by way of equity, and registration of foreign debt (including third-party loans and shareholder loans) will not be allowed.

2. SAFE will not process any foreign exchange registration (or amendment of registration) or foreign exchange settlement for capital account items (i.e., any increase or decrease in registered capital or payment or repayment of foreign debt, including third-party loans and shareholder loans) for a FIRE that has been approved by the relevant COFCOM after June 1, 2007, but has not been filed with MOFCOM.

3. The date a FIRE is deemed to have obtained its approval certificate is the date stated on the approval certificate.
4. SAFE will regularly publish and maintain an online database of FIREs that have been filed with MOFCOM, for reference by the branches of SAFE as well as banks that are designated to handle foreign exchange matters.

IMPLICATIONS

Circular 130 should be read in conjunction with the *Notice Concerning Further Strengthening and Regulation of Examination, Approval and Supervision of Direct Foreign Investment in Real Estate Sector*, jointly issued by MOFCOM and SAFE on May 23, 2007 (“Circular 50”), which provides that all new FIREs would need to be approved for filing by MOFCOM. If a FIRE intends to engage in the development and operation of new real estate projects, it has to apply to the relevant COFCOM for approval in respect of the expansion of its operation scale and, assuming that it requires additional registered capital for such new real estate projects, any increase of registered capital. After the approval of the relevant COFCOM is obtained, the filing procedures with MOFCOM need to be completed. Depending on whether such filing procedures with MOFCOM are completed or not, restrictions on foreign debt registration or foreign exchange registration and settlement for capital account transactions referred to above may apply.

Although FIREs will not be restricted from obtaining financing from onshore sources, those FIREs with total investment amounts equal to or more than US\$10 million will still be

restricted from borrowing more than 50 percent of the total investment amount based on Circular 171, which was issued on July 11, 2006.

Obviously, Circular 130 is another restrictive measure of the Chinese government to cool down foreign investment in its real estate market, and its implications are very significant. Foreign investors may lose the ability to invest in new projects or claim ahead of other creditors of the onshore company to the extent that loans must now be injected as equity. Investors may also lose an important means for remittance of funds offshore in ways other than as dividends out of earnings and surplus, as any reductions in registered capital now require the consent of MOFCOM.

FIREs that are established before June 1, 2007, and that do not increase their registered capital after June 1, 2007, will not be affected by Circular 130.

This Commentary was prepared with assistance from Anna Wong and Li Hong, associates in the Beijing Office.

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