



## PRC Real Estate Investment – Latest Legal Development

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### Agenda

- A Historical Overview
- Traditional Foreign Investment
- PRC Legal Framework
- Legal Restrictions in Past Few Years
- Primary Channels of Investment
- Strategies and Tactics
- Questions & Answers



## A Historical Overview

- Land
  - All land owned by either the State or the Collectives
  - Allocated (1949-), granted (1990-), leased (1998?)
- Residential properties
  - Residential units / apartments as part of work benefits in governments and SOEs (-1999), market-based (1999-)
- Office & other commercial properties
  - Owned by SOEs, governmental entities, military, private economy, FIEs, and foreign persons



## Traditional Foreign Investment

- Sino-foreign real estate joint ventures
  - land development, construction, ownership
- Properties owned by general FIEs
- Properties owned directly by foreign corporations / persons
- Property management FIEs
- Cross-border property management by foreign corporations



## PRC Legal Framework (I)

- Land development
  - Land conversion: Arable land to construction land
  - Land requisition: farmers (or collectively-owned) land to state-owned
- Land tract development
  - Usu by local state-owned land development company



## PRC Legal Framework (II)

- Construction-related licensing process
  - Project proposal approval (local DRC)
  - Land use approval
  - land grant contract (payment, land use certificate)
  - Construction planning and design opinions
  - Land planning permit
  - Construction project planning permit
  - Construction commencement permit
  - Construction completion filing procedure
  - Building ownership certificate



## PRC Legal Framework (III)

- Construction process
  - Construction contract
  - Construction supervisor (Jian Li)
  - Mandatory tendering requirement for construction projects in which state-owned funds are invested or which would have significant social effects.



## PRC Legal Framework (IV)

- Some key laws and regulations
  - Land Administration Law
  - Regulations on land granting and transferring (1990-)
  - Regulations on Administration of Urban Real Properties
  - Construction Law
  - 2006 Foreign M&A Rules
  - Market access rules
    - WTO accession agreement



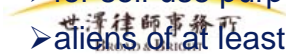
## Legal Restrictions in Past Few Years (I)

- Commercial presence requirement
  - Immediate, significant effect
- Increased capitalisation
  - Registered capital to total investment: 1:2
- One year limit for paying land grant fees
- Special requirements for share acquisitions
  - To pay price within 3 months after registration; to honour land grant contracts and permits; employee settlement; to satisfy creditors



## Legal Restrictions in Past Few Years (II)

- Conditions for debt financing
  - full contribution of registered capital
  - issuance of land use right certificate, and
  - availability of at least 35% of the total funds required by the project
- One project one company
  - Land use rights or buildings already obtained or intention agreement already signed
- Limits on purchasing powers of PRC branches of foreign companies and aliens in the PRC
  - for self use purposes only
  - aliens or at least one year stay



## Legal Restrictions in Past Few Years (III)

- “Recordal” (“Bei-An”) with MOFCOM
  - Implemented from 23 May 2007, but then delegated to local authorities starting from 1 July 2008
- No offshore loans can be taken
  - A temporary measure
- Updated Foreign Investment Industrial Guiding Catalogue (31 Oct 2007)



## Primary Channels of Investment (I)

- Land tract development
- Real property construction
  - How about a JV Structure?
- Acquiring, holding, operating and/or leasing existing properties
  - Restricted category: High-grade hotels, villas, office buildings, conference or exhibition centres
  - A share or assets deal?
  - Onshore or offshore structure?



## Primary Channels of Investment (II)

- Acquiring shares of public companies
  - Menu: A, B, H, red-chip shares
  - Direct strategic investment in A or B shares
  - Pre-IPO investments (PIPO)
  - Buying H shares or red-chip shares
- Property management business
- Real estate brokerage / agency business
- Other miscellaneous businesses



## Strategies and Tactics

- RMB loans
  - foreign banks in China?
- Multiple project companies
- Multiple capital increases
- Land auctions
- Proper due diligence (legal, financial, business, construction, etc.)
- Governmental relationships



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## Questions & Answers



Thank You!

