LAWS AND REGULATIONS RELATING TO OUR BUSINESS

Singapore

Property development and management

We are subject to the relevant laws and regulations of Singapore relating to property development and management of property projects.

The Urban Redevelopment Authority ("URA") monitors and controls the use of land in Singapore. All development projects require a written permission ("WP") from the URA and the WP will outline the specific requirements or conditions for each individual development. In addition to obtaining the WP from the URA, we also need to apply for clearance from the various technical departments such as the Fire Safety & Shelter Department, Central Building Plan Unit (Pollution Control Department) and relevant departments in the Land Transport Authority, and subsequently obtain Building Plan Approval from the Building and Construction Authority. The development project shall then be built according to the WP and approved building plan and an approval will have to be sought if there are any deviations from the WP and approved building plan. A material change in the use of any building or land in Singapore will also require written permission from the URA.

REIT management

CMTML, the manager of CMT, and CRCTML, the manager of CRCT, each carry out the business of REIT management in Singapore to the extent that they manage real estate held by CMT and CRCT whether directly or via property holding entities.

On August 1, 2008, the Securities and Futures Act was amended to include REIT management as a regulated activity. The Securities and Futures (Licensing and Conduct of Business) Regulations and the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations have also been amended to set out the capital requirements and licence fees for REIT managers. The licensing framework and process for persons carrying out the business of REIT management is largely similar to that for persons conducting other regulated activities under the Securities and Futures Act. Unless exempted by the Authority, a person carrying out the business of REIT management is required to hold a capital markets services licence under Section 82 of the Securities and Futures Act. As the REIT Managers are corporations, their representatives (as defined in the Securities and Futures Act) would be required to hold representative licences under Section 83 of the Securities and Futures Act. CMTML and CRCTML have each obtained a capital markets services licence in respect of the management of CMT and CRCT, respectively.

In addition to the above, CMTML and CRCTML will have to comply with the applicable provisions of the Listing Manual, the Code on Collective Investment Schemes issued by the Authority (including the Property Fund Guidelines), the respective trust deeds, tax rulings and relevant contracts.

In respect of any new REITs we manage that are publicly listed, or available for investment by the general public, whether in Singapore or elsewhere, we expect that we will be required to be licensed in the relevant jurisdiction before we are able to manage the REIT.

Fund management

Each of CapitaMalls Japan Fund Management Pte. Ltd. ("CMJFM"), CapitaMalls India Fund Management Pte. Ltd. ("CMIFM") and CapitaMalls China Fund Management Pte. Ltd. ("CMCFM") carry on the business of fund management in Singapore pursuant to a licensing exemption under the Securities and Futures Act for providing fund management services to not more than 30 qualified investors (as defined in the Securities and Futures (Licensing and Conduct of Business) Regulations). For this purpose, CMJFM, CMIFM and CMCFM have each filed with the Authority a notification form prescribed by the

Authority to commence business as an exempt fund manager under the Securities and Futures Act. The MAS has confirmed that the exemptions apply to each of CMJFM, CMIFM and CMCFM, save that each of these entities must comply with the exemption criteria set out in the Securities and Futures (Licensing and Conduct of Business) Regulations at all times.

As exempt fund managers, CMJFM, CMIFM and CMCFM will have to file, on an ongoing basis, certain forms with the Authority. For example, each of these entities is required to submit to the Authority a notice in a prescribed form within 14 days of the date of change of particulars filed with the Authority, such as the appointment of a new director of the company. In addition, CMJFM, CMIFM and CMCFM will have to comply with certain regulations under the Securities and Futures Act including notices and guidelines issued by the Authority. These regulations essentially require CMJFM, CMIFM and CMCFM (i) to comply with applicable anti-money laundering legislation in Singapore, (ii) not to represent itself, or cause itself to be represented, as being licensed, regulated, supervised or registered by the Authority, whether verbally or in writing, and (iii) to comply with the Authority's Guidelines on Fit and Proper Criteria. Provided that CMJFM, CMIFM and CMCFM continue to meet the conditions for the exemptions, these exemptions will be valid until CMJFM, CMIFM and CMCFM file a notice of cessation of business under the Securities and Futures Act.

Singapore land system

Land in Singapore is divided into:

(i) land registered under the Registration of Deeds Act, Chapter 269 of Singapore (the "Registration of Deeds Act") (Common Law System) which is also called "unregistered land"; and

(ii) land registered under the Land Titles Act, Chapter 157 of Singapore (the "Land Titles Act") (Land Titles registration system or Torrens System) which is also called "registered land."

Both these systems of land registration are under the purview of the Singapore Land Authority, the statutory board which maintains the Register of Deeds under the Registration of Deeds Act and Land Register under the Land Titles Act.

Transfer of land under the Common Law system is governed by legal and equitable rules developed by the common law to deal with questions of priorities of interests. The Registration of Deeds Act provides that legal title to land passes when a deed is signed, sealed and delivered by the owner of the land. Registration under the Common Law system is not required for the valid transfer of title.

However, most deeds are registered as registration:

(i) confers priority according to the date of registration as between instruments which are registered or registrable; and

(ii) allows the deeds to be admissible in a court of law as evidence of title to land.

The Land Titles Registration system in Singapore is modeled after the Torrens system of Australia. Unlike the Common Law system, registration of dealings in land is compulsory under the Land Titles Act, as title to land is passed by registration. The Singapore Land Authority will issue a certificate of title to the owner of registered land, which will show, *inter alia*, the name of the owner (as the registered proprietor) and any encumbrances affecting the land.

In the last 20 years or so, the Singapore Land Authority has systematically been converting unregistered land into registered land. The majority of land in Singapore is today registered land.

It is customary for a purchaser or other parties interested in a property to conduct title searches with the Singapore Land Authority to trace the chain of ownership and to check whether the property is encumbered.

For unregistered land, the Conveyancing and Law of Property Act, Chapter 61 of Singapore, provides that for tracing of a good root of title, title must be deduced for at least 15 years prior to the date of tracing or the contract at hand.

For registered land, a search on the Land Register can be relied upon because of the following main characteristics of the effects of registration under the Land Titles Act:

(i) Registration of a dealing in an interest in land is necessary for validity of the dealing.

(ii) Once the title is registered, it is indefeasible except by other interests as provided in the Land Titles Act itself. The State guarantees the title. This guarantee goes not only to the title of the land but also to the actual physical area under that title.

(iii) Where dealings cannot be registered, caveats may be filed to notify third parties of interests in the land. All that an intending purchaser need do under the Land Titles Registration system is to check the land register. He will be bound by the interests which are found there, and he will not be affected by interests not found on the land register.

Land tenure in Singapore

All land in Singapore is ultimately derived from the State. The State has the right to alienate land vested in it. There are different estates by which land may be held:

(i) Estate in fee simple (commonly called Freehold estate);

(ii) Leasehold estate; and

(iii) Estate in perpetuity.

It is common for the State to alienate land by way of the issuance of State Leases. The President of the Republic of Singapore will grant to the lessee a leasehold estate for a fixed period of time, usually for a tenure of 30, 60 or 99 years. The State Lease contains various conditions and covenants, which the lessee is obliged to comply with. Common conditions and covenants include the payment of a land rent, the prohibition against subletting, assigning and mortgaging without the consent of the President of the Republic of Singapore and various restrictions on the use of land. The State, as the lessor under the State Lease, is entitled to exercise the right of re-entry if the lessee breaches or fails to perform any of the terms of the State Lease.

Administration of land in Singapore

The Singapore Land Authority is responsible for the management of State lands and buildings including the sale and leasing of State Land. Under the Government Land Sales programme, the Singapore Land Authority may appoint various land sales agents for the sale and leasing of State Land to meet demand arising from economic growth. These agents include statutory boards such as Jurong Town Corporation, the URA and the Housing & Development Board.

Strata subdivision

Where a property comprises a building developed on registered land, the units in the building can be subdivided and separate "strata title" may be allocated to the units under the Land Titles (Strata) Act, Chapter 158 of Singapore (the "Land Titles (Strata) Act"). Pursuant to the Land Titles (Strata) Act, a person can be the owner of a unit in the building. This is achieved by way of delineating areas of airspace in the building called "strata lots" pursuant to "strata title plans" approved by the Survey Department of the Ministry of Law. Separate subsidiary strata certificates of title in respect of the units in the building can be applied for and obtained from the Singapore Land Authority. The subsidiary strata certificates of title are then held by the owners or subsidiary proprietors of the units.

Apart from the units in the building, the strata title plans will also show various parts of the building and the land on which the building is constructed which do not form part of the strata lots (e.g. the common corridors, the lifts and the car parks) but which are used generally by all the owners of the units. These areas are called the "common property." Statutes such as the Land Titles (Strata) Act and the Building Maintenance and Strata Management Act, Chapter 30C of Singapore (the "Building Maintenance and Strata Management Act") provide for duties of maintenance of the common property by a body corporate called a "management corporation." This is a body constituted under the provisions of the Land Titles (Strata) Act and is collectively made up of all the registered subsidiary proprietors/owners of the units in a building. The Building Maintenance and Strata Management Act sets out rules that govern the management of the properties and building maintenance. Under this Act, the owner or subsidiary proprietor has to pay maintenance charges on a periodic basis towards maintenance of common property in the building.

Development of land

Every development project requires a grant of WP from the URA. The WP will outline the specific requirements or conditions for the individual development. In addition to obtaining the WP, there is a requirement to apply for and subject to meeting technical clearances from various government bodies or statutory boards, obtain a building plan approval from the Building and Construction Authority. A development project has to be built according to the WP and the approved building plan. Approval will have to be sought if there are any deviations from the WP and approved building plan. Upon completion of the development project, a temporary occupation permit or a certificate of statutory completion must be obtained from the Building & Construction Authority before a building may be occupied.

State's rights over land

In Singapore, pursuant to various statutes including the Land Acquisition Act, the State may compulsorily acquire land whenever any particular land is needed for any public purpose, by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister of Law, is of public benefit, public utility, or in the public interest; or for any residential, commercial or industrial purpose. However, compensation is payable upon the acquisition of such land.

The compensation awarded pursuant to compulsory acquisition would be based on, amongst other considerations, (i) the market value of the acquired land as of the date of the publication in the Government Gazette of the notification of the likely acquisition of the land (provided that within six months from the date of publication, a declaration of intention to acquire the said land is made by publication in the Government Gazette); and (ii) the market value of the acquired land as of the date of the publication in the Government Gazette of the declaration of intention to acquire the land.

Tenancies

The relationship between landlord and tenant is governed by common law. The tenant must be given exclusive possession for a definite period, the parties must intend to create a tenancy, and the tenancy must be made by deed in the English language. Subject to express provisions of the tenancy, the landlord is generally obliged to afford the tenant quiet enjoyment of the premises during the term of the tenancy while the tenant is obliged to pay rent and use the leased premises in a tenant-like manner and to yield up the premises at the end of the term to the landlord in a tenantable state and condition.

Stamp Duties Act, Chapter 312 of Singapore (the "Stamp Duties Act")

In Singapore, stamp duty *ad valorem* is payable on documents relating to land, stocks and/or shares mentioned in the First Schedule to the Stamp Duties Act. These documents include conveyances and instruments of transfers of land and tenancy agreements. Under the Stamp Duties Act, a document which

is not duly stamped is not admissible as evidence in court, and is as such unenforceable. Penalties are levied for the late payment of stamp duty. Unless there is an express provision to the contrary, a purchaser or tenant is liable for payment of stamp duty.

As part of measures to cool the residential property market in Singapore, the Government has imposed stamp duty on sellers of residential properties where the sellers acquired the properties:

(i) on or after 20 February 2010 and sold within a holding period of one year thereafter;

(ii) on or after 30 August 2010 and sold within a holding period of three years thereafter; or

(iii) on or after 14 January 2011 and sold within a holding period of four years thereafter.

Treasury Shares

Maximum holdings

Under the Singapore Companies Act, the number of Shares held as treasury Shares cannot at any time exceed ten per cent. (10%) of the total number of issued Shares.

Voting and other rights

Our Company cannot exercise any right in respect of treasury Shares. In particular, our Company cannot exercise any right to attend or vote at meetings and for the purposes of the Singapore Companies Act, our Company shall be treated as having no right to vote and the treasury Shares shall be treated as having no voting rights.

In addition, under the Singapore Companies Act, no dividend may be paid, and no other distribution of our Company's assets may be made, to our Company in respect of treasury Shares. However, the allotment of Shares as fully paid bonus Shares in respect of treasury Shares is allowed. Also, a subdivision or consolidation of any treasury Share into treasury Shares of a smaller or larger amount, as the case may be, is allowed so long as the total value of the treasury Shares after the subdivision or consolidation is the same as before.

Disposal and cancellation

Where Shares are held as treasury Shares, under the Singapore Companies Act, our Company may at any time:

(a) sell the treasury Shares for cash;

(b) transfer the treasury Shares for the purposes of or pursuant to an employees' share scheme;

(c) transfer the treasury Shares as consideration for the acquisition of shares in or assets of another company or assets of a person;

(d) cancel the treasury Shares; or

(e) sell, transfer or otherwise use the treasury Shares for such other purposes as may be prescribed by the Minister for Finance.

Effect of treasury Shares

Where Shares are repurchased by our Company and held as treasury Shares, among other things, the total number of Shares outstanding would be reduced by the number of Shares bought back by our Company, and the appropriate adjustments would have to be made for the purpose of computing the earnings per Share. The number of treasury Shares held should be deducted from the number of Shares in issue when determining the weighted average number of Shares outstanding for the purpose of calculating the basic and diluted earnings per Share. Treasury Shares are excluded in the calculation of market capitalisation of our Company under the SGX Listing Manual.

For the modifications to a number of HKEx Listing Rules which are necessary to enable our Company to hold our current and future treasury shares and are technical in nature, please see "Appendix II – Modifications of the HKEx Listing Rules" to this listing document.

Notifiable transactions and connected transactions

The Singapore and Hong Kong regulatory regimes on notifiable transactions and connected transactions are governed by similar general principles. The requirements relating to shareholders' approval and preparation of a circular under the SGX Listing Manual are similar but not identical to the requirements under the HKEx Listing Rules.

Notifiable transactions

The rules under Chapter 14 of the HKEx Listing Rules relating to notifiable transactions are intended to keep the shareholders of an issuer informed of the ongoing operations of the issuer so that they can assess the impact of a particular transaction and vote on significant transactions. In addition, these rules also reinforce the general disclosure principle of price-sensitive information to keep the public appraised of the position of listed issuers and to avoid the establishment of a false market in the listed issuers' securities. Similarly, Chapter 10 of the SGX Listing Manual contains rules relating to four categories of transactions, namely, non-discloseable transactions, discloseable transactions, major transactions and very substantial acquisitions or reverse takeovers. Under these rules, shareholders' approval would be required for certain categories of transactions, thereby ensuring that shareholders would be able to exercise their voting rights for significant transactions which affect the issuer's operations. The rules of Chapter 10 should be read together with the general principle of disclosure of material information which is necessary to avoid the establishment of a false market in the issuer's securities or would be likely to materially affect the price or value of its securities, as stated in Rule 703 of the SGX Listing Manual.

The following is a summary of the provisions of the SGX Listing Manual relating to notifiable transactions.

Thresholds

Transactions are classified into four categories, depending on the size of the relative figures computed on the following bases:

(a) The net asset value of the assets to be disposed of, compared with the group's net asset value. This basis is not applicable to an acquisition of assets.

(b) The net profits attributable to the assets acquired or disposed of, compared with the group's net profits.

(c) The aggregate value of the consideration given or received, compared with the issuer's market capitalisation based on the total number of issued shares excluding treasury shares.

(d) The number of equity securities issued by the issuer as consideration for an acquisition, compared with the number of equity securities previously in issue.

The four categories of transactions are non-discloseable transactions, discloseable transactions, major transactions and very substantial acquisitions or reverse takeovers. A non-discloseable transaction is one where the relative figures computed on the bases above amount to 5% or less. A discloseable transaction is one where the relative figures computed on the bases above exceeds 5% but does not exceed 20%. A major transaction is one where all the relative figures computed on the bases above exceed 20%. A very substantial acquisition or reverse takeover is one where all the relative figures computed on the bases above are 100% or more.

Shareholders' approval

Major transactions and very substantial acquisitions or reverse takeovers are subject to shareholders' approval. A circular containing the information in Rule 1010 of the SGX Listing Manual must be sent to all shareholders.

Circular requirements

Rule 1206 of the SGX Listing Manual states that any circular sent to shareholders must:

(1) contain all information necessary to allow shareholders to make a properly informed decision or, if no decision is required, to be properly informed;

(2) advise shareholders that if they are in any doubt as to any action they should take, they should consult independent advisers;

(3) state that the SGX-ST takes no responsibility for the accuracy of any statements or opinions made or reports contained in the circular;

(4) comply with specific circular requirements in the SGX Listing Manual; and

(5) include an appropriate statement if a person is required to abstain from voting on a proposal at a general meeting by a listing rule.

Rule 1010 of the SGX Listing Manual states the information which should be included in a circular to shareholders in relation to major transactions and very substantial acquisitions or reverse takeovers:

(1) Particulars of the assets acquired or disposed of, including the name of any company or business, where applicable;

(2) A description of the trade carried on, if any;

(3) The aggregate value of the consideration, stating the factors taken into account in arriving at it and how it will be satisfied, including the terms of payment;

(4) Whether there are any material conditions attaching to the transaction including a put, call or other option and details thereof;

(5) The value (book value, net tangible asset value and the latest available open market value) of the assets being acquired or disposed of, and in respect of the latest available valuation, the value placed on the assets, the party who commissioned the valuation and the basis and date of such valuation;

(6) In the case of a disposal, the excess or deficit of the proceeds over the book value, and the intended use of the sale proceeds. In the case of an acquisition, the source(s) of funds for the acquisition;

(7) The net profits attributable to the assets being acquired or disposed of. In the case of a disposal, the amount of any gain or loss on disposal;

(8) The effect of the transaction on the net tangible assets per share of the issuer for the most recently completed financial year, assuming that the transaction had been effected at the end of that financial year;

(9) The effect of the transaction on the earnings per share of the issuer for the most recently completed financial year, assuming that the transaction had been effected at the beginning of that financial year;

(10) The rationale for the transaction including the benefits which are expected to accrue to the issuer as a result of the transaction;

(11) Whether any director or controlling shareholder (as defined in the SGX Listing Manual) has any interest, direct or indirect, in the transaction and the nature of such interests;

(12) Details of any service contracts of the directors proposed to be appointed to the issuer in connection with the transaction; and

(13) The relative figures that were computed on the bases set out in Rule 1006.

Connected transactions

The connected transactions rules in Chapter 14A of the HKEx Listing Rules are intended to guard against the risk that connected persons could take advantage of their positions and influence the issuer to enter

into connected transactions which adversely affect the interests of a listed issuer or its shareholders. These concerns are dealt with in Singapore under Chapter 9 of the SGX Listing Manual relating to interested person transactions.

Definition

Under Chapter 9 of the SGX Listing Manual, an interested person transaction is broadly defined as any transaction between (i) the issuer, its non-listed subsidiary or its associated company (as defined in the SGX Listing Manual) over which the issuer has control, and (ii) an interested person. Interested persons are broadly defined as the director, chief executive officer or controlling shareholders (as defined in the SGX Listing Manual) (holding at least 15% of the total number of issued shares excluding treasury shares in the issuer or who in fact exercises control over the issuer) of the issuer and their associates.

Shareholders' approval

Rule 906 of the SGX Listing Manual states that an issuer must obtain shareholder approval for any interested person transaction of a value equal to, or more than

(i) 5% of the Group's latest audited net tangible assets, or

(ii) 5% of the Group's latest audited net tangible assets, when aggregated with other transactions entered into with the same interested person during the same financial year (save for transactions which have already been approved by shareholders).

Rule 906 of the SGX Listing Manual does not apply to any transaction below S$100,000.

Rule 918 of the SGX Listing Manual states that shareholders' approval must be obtained prior to the transaction being entered into or, if the transaction is expressed to be conditional on such approval, prior to the completion of the transaction. Rule 919 of the SGX Listing Manual states that in a meeting to obtain shareholder approval, the interested person and any associate of the interested person must not vote on the resolution.

Circular requirements

Rule 921 of the SGX Listing Manual states the information which should be included in a circular to shareholders in relation to interested person transactions:

(1) details of the interested person transacting with the entity at risk, and the nature of that person's interest in the transaction.

(2) details of the transaction (and all other transactions which are the subject of aggregation pursuant to Rule 906) including relevant terms of the transaction, and the bases on which the terms were arrived at.

(3) the rationale for, and benefit to, the entity at risk.

(4) (a) an opinion in a separate letter from an independent financial adviser who is acceptable to the SGX-ST stating whether the transaction (and all other transactions which are the subject of aggregation pursuant to Rule 906):

(i) is on normal commercial terms, and

(ii) is prejudicial to the interests of the issuer and its minority shareholders.

(b) however, the opinion from an independent financial adviser is not required for the following transactions. Instead, an opinion from the audit committee in the form required in Rule 917(4)(a) must be disclosed:

(i) the issue of shares pursuant to Part IV of Chapter 8, or the issue of other securities of a class that is already listed, for cash.

(ii) purchase or sale of any real property where:

- the consideration for the purchase or sale is in cash;
- an independent professional valuation has been obtained for the purpose of the purchase or sale of such property; and
- the valuation of such property is disclosed in the circular.

(5) an opinion from the audit committee, if it takes a different view to the independent financial adviser.

(6) all other information known to the issuer or any of its directors, that is material to shareholders in deciding whether it is in the interests of the issuer to approve the transaction. Such information includes, from an economic and commercial point of view, the true potential costs and detriments of, or resulting from, the transaction, including opportunity costs, taxation consequences, and benefits forgone by the entity at risk.

(7) a statement that the interested person will abstain, and has undertaken to ensure that its associates will abstain, from voting on the resolution approving the transaction.

(8) Where the issuer accepts a profit guarantee or a profit forecast (or any covenant which quantifies the anticipated level of future profits) from the vendor of businesses/assets, the information required in Rules 1013(1) and 1013(2), and a statement confirming that it will comply with Rule 1013(3).

Continuing obligations on disclosure of material information

Rule 703 of the Listing Manual

Rule 703 of the Listing Manual states that our Company must announce any information known to our Company concerning it or any of our subsidiaries or associated companies which:

(a) is necessary to avoid the establishment of a false market in our securities; or

(b) would be likely to materially affect the price or value of our securities.

Rule 703 does not apply to information which it would be a breach of law to disclose.

Rule 703 also does not apply to particular information while each of the following conditions applies.

Condition 1: a reasonable person would not expect the information to be disclosed;

Condition 2: the information is confidential; and

Condition 3: one or more of the following applies:

(i) the information concerns an incomplete proposal or negotiation;

(ii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;

(iii) the information is generated for the internal management purposes of the entity;

(iv) the information is a trade secret.

In complying with the disclosure requirements of the SGX-ST, our Company must (a) observe the Corporate Disclosure Policy set out in Appendix 7.1 of the SGX Listing Manual, and (b) ensure that its directors and executive officers are familiar with the SGX-ST's disclosure requirements and Corporate Disclosure Policy.

The SGX-ST will not waive any requirements under Rule 703.

Share buybacks

Maximum number of shares

Under Section 76B of the Singapore Companies Act, our Company may purchase or otherwise acquire shares issued by it if it is expressly permitted to do so by our Articles of Association. Only Shares which

are issued and fully paid-up may be purchased or acquired by our Company. The total number of Shares which may be purchased or acquired by our Company shall not exceed 10% of the total number of issued Shares of our Company as at the date of the last annual general meeting of our Company held before any resolution passed pursuant to the Singapore Companies Act or as at the date of such resolution relating to the share buyback, whichever is the higher, unless (i) our Company has, at any time during the relevant period, reduced its share capital by a special resolution under the Singapore Companies Act or the Singapore courts have at any time during the relevant period, made an order under the Singapore Companies Act confirming the reduction of share capital of our Company, in which event the total number of Shares shall be taken to be the total number of Shares as altered by the special resolution of our Company or the order of the Singapore courts, as the case may be. Any Shares which are held as treasury shares will be disregarded for purposes of computing the 10% limit.

Duration of authority

Purchases or acquisitions of Shares may be made, at any time and from time to time, on and from the date of the extraordinary general meeting at which a share buyback mandate (the "Share Buyback Mandate") is approved, up to:

(a) the date on which the next annual general meeting is held or required by law to be held; or

(b) the date on which the authority conferred by the Share Buyback Mandate is revoked or varied by our Shareholders in a general meeting; or

(c) the date on which the purchases or acquisitions of Shares pursuant to the Share Buyback Mandate are carried out to the full extent mandated,

whichever is the earliest.

The authority conferred on our Directors by the Share Buyback Mandate to purchase Shares may be renewed by our Shareholders in any general meeting of our Company, such as at the next annual general meeting or at an extraordinary general meeting to be convened immediately after the conclusion or adjournment of the next annual general meeting. When seeking the approval of our Shareholders for the Share Buyback Mandate, our Company is required to disclose details pertaining to purchases or acquisitions of Shares pursuant to the proposed Share Buyback Mandate made during the previous 12 months, including the total number of Shares purchased, the purchase price per Share or the highest and lowest prices paid for such purchases of Shares, where relevant, and the total consideration paid for such purchases.

Manner of purchase

Our Company may purchase or acquire Shares by way of:

(a) on-market purchases ("Market Purchases"), transacted on the SGX-ST through the ready market, and which may be transacted through one or more duly licensed stock brokers appointed by the Company for the purpose; and/or

(b) off-market purchases ("Off-Market Purchases") effected pursuant to an equal access scheme.

Under the Singapore Companies Act, an Off-Market Purchase must, however, satisfy all of the following conditions:

(i) offers for the purchase or acquisition of Shares shall be made to every person who holds Shares to purchase or acquire the same percentage of their Shares;

(ii) all of the abovementioned persons shall be given a reasonable opportunity to accept the offers made to them; and

(iii) the terms of all the offers shall be the same, except that there shall be disregarded differences in consideration attributable to the fact that offers may relate to Shares with different accrued dividend

entitlements, differences in consideration attributable to the fact that offers relate to Shares with different amounts remaining unpaid (if applicable) and differences in the offers introduced solely to ensure that each person is left with a whole number of Shares.

Pursuant to the SGX Listing Manual, if the Company wishes to make an Off-Market Purchase in accordance with an equal access scheme, it will issue an offer document to all Shareholders containing at least the following information:

(1) the terms and conditions of the offer;

(2) the period and procedures for acceptances;

(3) the reasons for the proposed purchase or acquisition of Shares;

(4) the consequences, if any, of the purchases or acquisitions of Shares by the Company that will arise under the Singapore Takeovers Code or other applicable take-over rules;

(5) whether the purchases or acquisitions of Shares, if made, would have any effect on the listing of the Shares on the SGX-ST; and

(6) details of any purchases or acquisitions of Shares made by the Company in the previous 12 months (whether Market Purchases or Off-Market Purchases), giving the total number of shares purchased, the purchase price per Share or the highest and lowest prices paid for the purchases of Shares, where relevant, and the total consideration paid for the purchases.

Maximum purchase price

The purchase price (excluding brokerage, stamp duties, commission, applicable goods and services tax and other related expenses ("related expenses")) to be paid for a Share will be determined by our Directors.

However, the purchase price to be paid for the Shares pursuant to the purchases or acquisitions of the Shares in the case of a Market Purchase must not exceed 105% of the Average Closing Price (as defined hereinafter) excluding related expenses.

For the above purposes:

"Average Closing Price" means the average of the closing market prices of the Shares over the last five Market Days, on which transactions in the Shares were recorded, before the day on which the purchase or acquisition of Shares was made, or as the case may be, and deemed to be adjusted for any corporate action that occurs after the relevant five Market Days.

Status of purchased shares

A Share purchased or acquired by our Company is deemed cancelled immediately on purchase or acquisition (and all rights and privileges attached to the Share will expire on such cancellation) unless such Share is held by our Company as a treasury share. At the time of each purchase of Shares by our Company, our Directors will decide whether the Shares purchased will be cancelled or kept as treasury shares, or partly cancelled and partly kept as treasury shares, depending on the needs of our Company at that time. The total number of Shares will be diminished by the number of Shares purchased or acquired by our Company and which are not held as treasury shares. All Shares purchased or acquired by our Company (other than treasury shares held by the Company to the extent permitted under the Singapore Companies Act) will be automatically de-listed by the SGX-ST, and certificates (if any) in respect thereof will be cancelled and destroyed by the Company as soon as reasonably practicable following settlement of any such purchase or acquisition.

Summary of salient provisions of the laws of Singapore applicable to our shareholders

The following summarises the salient provisions of the laws of Singapore applicable to our shareholders as at the date of this listing document. The summaries below are for general guidance only and do not constitute legal advice, nor must they be used as a substitute for specific legal advice, on the corporate laws of Singapore. Additionally, prospective investors and/or our shareholders should also note that the laws applicable to our shareholders may change, whether as a result of proposed legislative reform to the laws of Singapore or otherwise. Prospective investors and/or our shareholders should consult their own legal advisers for specific legal advice concerning their legal obligations under the relevant laws.

Takeover obligations

Offences and Obligations Relating to Take-overs

Section 140 of the SFA

Section 140 of the SFA provides that a person shall not give notice or publicly announce that he intends to make a take-over offer if (a) he has no intention to make a take-over offer; or (b) he has no reasonable or probable grounds for believing that he will be able to perform his obligations if the take-over offer is accepted or approved, as the case may be. A person who contravenes section 140 of the SFA is guilty of an offence and shall be liable on conviction to a fine not exceeding S$250,000 or to imprisonment for a term not exceeding 7 years or to both.

Obligations under the Singapore Takeovers Code and the consequences of non-compliance

Obligations under the Singapore Takeovers Code

The Singapore Takeovers Code regulates the acquisition of ordinary shares of public companies and contains certain provisions that may delay, deter or prevent a future takeover or change in control of the Company. Any person acquiring an interest, either on his own or together with parties acting in concert with him, in 30.0% or more of our voting Shares, or, if such person holds, either on his own or together with parties acting in concert with him, between 30.0% and 50.0% (both inclusive) of our voting Shares, and if he (or parties acting in concert with him) acquires additional voting Shares representing more than 1.0% of our voting Shares in any six-month period, must, except with the consent of the Securities Industry Council in Singapore, extend a takeover offer for the remaining voting Shares in accordance with the provisions of the Singapore Takeovers Code.

"Parties acting in concert" comprise individuals or companies who, pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of Shares in a company, to obtain or consolidate effective control of that company. Certain persons are presumed (unless the presumption is rebutted) to be acting in concert with each other. They are as follows:

(a) a company and its related companies, the associated companies of any of the company and its related companies, companies whose associated companies include any of these companies and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the foregoing for the purchase of voting rights;

(b) a company and its directors (including their close relatives, related trusts and companies controlled by any of the directors, their close relatives and related trusts);

(c) a company and its pension funds and employee share schemes;

(d) a person with any investment company, unit trust or other fund whose investment such person manages on a discretionary basis;

(e) a financial or other professional advisers and its clients in respect of Shares held by the advisers and persons controlling, controlled by or under the same control as the advisers and all the funds managed by the advisers on a discretionary basis, where the shareholdings of the advisers and any of those funds in the client total 10.0% or more of the client's equity share capital;

(f) directors of a company (including their close relatives, related trusts and companies controlled by any of such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a bona fide offer for the company may be imminent;

(g) partners; and

(h) an individual and his close relatives, related trusts, any person who is accustomed to act in accordance with his instructions and companies controlled by the individual, his close relatives, his related trusts or any person who is accustomed to act in accordance with his instructions and any person who has provided financial assistance (other than a bank in the ordinary course of business) to any of the foregoing for the purchase of voting rights.

In the event that one of the abovementioned trigger-points is reached, the person acquiring an interest (the "Offeror") must make a public announcement stating the terms of the offer and its identity. The Offeror must post an offer document not earlier than 14 days and not later than 21 days from the date of the offer announcement. An offer must be kept open for at least 28 days after the date on which the offer document was posted.

The Offeror may vary the offer by offering more for the shares or by extending the period in which the offer remains open. If a variation is proposed, the Offeror is required to give a written notice to the offeree company and its shareholders, stating the modifications made to the matters set out in the offer document. The revised offer must be kept open for at least another 14 days. Where the consideration is varied, shareholders who agree to sell before the variation are also entitled to receive the increased consideration.

A mandatory offer must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or parties acting in concert with the offeror within the six months preceding the acquisition of Shares that triggered the mandatory offer obligation.

Under the Singapore Takeovers Code, where effective control of a company is acquired or consolidated by a person, or persons acting in concert, a general offer to all other shareholders is normally required. An offeror must treat all shareholders of the same class in an offeree company equally. A fundamental requirement is that shareholders in the company subject to the takeover offer must be given sufficient information, advice and time to consider and decide on the offer.

Consequences of non-compliance with the requirements under the Singapore Takeovers Code

The Singapore Takeovers Code is non-statutory in that it does not have the force of law. Therefore, as provided in section 139(8) of the SFA, a failure of any party concerned in a take-over offer or a matter connected therewith to observe any of the provisions of the Singapore Code shall not of itself render that party liable to criminal proceedings. However, the failure of any party to observe any of the provisions of the Singapore Takeovers Code may, in any civil or criminal proceedings, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

Section 139 further provides that where the Securities Industry Council has reason to believe that any party concerned in a take-over offer or a matter connected therewith is in breach of the provisions of the Singapore Takeovers Code or is otherwise believed to have committed acts of misconduct in relation to such take-over offer or matter, the Securities Industry Council has power to enquire into the suspected breach or misconduct. The Securities Industry Council may summon any person to give evidence on oath or affirmation, which it is thereby authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

Reporting obligations of directors

Section 164 of the Singapore Companies Act

A company is required to keep a register showing with respect to each director of the company particulars of the following interests (the "Interests"):

(a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

Sections 165 of the Singapore Companies Act

A director of a company is required to notify the company of (A) his Interests or (B) any changes to his Interests. In the case of (A), the notification to the company shall be given within **two business days** after the date he became a director or the date on which he became a registered holder of or acquired his Interest, and in the case of (B), within **two business days** after the date he became a director or the occurrence of the event giving rise to the change in his Interests.

Sections 166 of the Singapore Companies Act

Where a director of a company is required to notify the company of a matter under Section 165 of the Singapore Companies Act, and that matter relates to shares or debentures listed on a securities exchange (as defined in the SFA), the director is also required to notify the securities exchange of that matter within the same period.

Consequences of non-compliance under the Singapore Companies Act

Sections 165(9) and 166(2) of the Singapore Companies Act respectively provide for the consequences of non-compliance with sections 165 and 166 of the Singapore Companies Act and state that any director who fails to comply with the obligations under Sections 165 or 166 of the Singapore Companies Act, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$15,000 or to imprisonment for a term not exceeding three years and, in the case of a continuing offence, to a further fine of S$1,000 for every day during which the offence continues after conviction.

Reporting obligations of shareholders

Reporting obligations under the Singapore Companies Act

Section 81 of the Singapore Companies Act

A person has a substantial shareholding in a company if he has an "interest" in voting shares in the company, and the total votes attached to those shares is not less than 5.0% of the total votes attached to all the voting shares in the company.

Section 82 of the Singapore Companies Act

A substantial shareholder of a company (as defined under the Singapore Companies Act) is required to notify the company in writing of his name, address and full particulars of his "interests" in the voting shares in the company within **two business days** after becoming a substantial shareholder.

Sections 83 and 84 of the Singapore Companies Act

A substantial shareholder (as defined under the Singapore Companies Act) is required to notify the company in writing of changes in the "percentage level" of his shareholding or his ceasing to be a substantial shareholder within **two business days** after he is aware of such changes or within **two business days** after he ceases to be a substantial shareholder, as the case may be.

The reference to changes in "percentage level" means any changes in a substantial shareholder's interest in the company which results in his interest, following such change, increasing or decreasing to the next discrete 1.0% threshold. For example, an increase in interests in the company from 5.1% to 5.9% need not be notified, but an increase from 5.9% to 6.1% will have to be notified.

Consequences of non-compliance under the Singapore Companies Act

Section 89 of the Singapore Companies Act

Section 89 of the Singapore Companies Act provides for the consequences of non-compliance with sections 82, 83 and 84. Under section 89, a person who fails to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$5,000 and in the case of a continuing offence to a further fine of S$500 for every day during which the offence continues after conviction.

Section 90 of the Singapore Companies Act

Section 90 of the Singapore Companies Act provides for a defence to a prosecution for failing to comply with sections 82, 83 or 84. It is a defence if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that he was not so aware on the date of the summons; or he became so aware less than 7 days before the date of the summons. However, a person will conclusively be presumed to have been aware of a fact or occurrence at a particular time (a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or (b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

Powers of the court with respect to defaulting substantial shareholders

Section 91 of the Singapore Companies Act

Section 91 of the Singapore Companies Act provides that where a substantial shareholder fails to comply with sections 82, 83 or 84, the Court may, on the application of the Minister, whether or not the failure still continues, make one of the following orders:

(a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;

(b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;

(c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

(d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;

(e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;

(f) an order directing the company not to register the transfer or transmission of specified shares;

(g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded; or

(h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

Any order made under this section may include such ancillary or consequential provisions as the Court thinks just. The Court may not make an order other than an order restraining the exercise of voting rights, if it is satisfied (a) that the failure of the substantial shareholder to comply was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and (b) that in all the circumstances, the failure ought to be excused. Any person who contravenes or fails to comply with an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$5,000 and, in the case of a continuing offence, to a further fine of S$500 for every day during which the offence continues after conviction.

Reporting obligations under the SFA

Section 137(1) of the SFA

A substantial shareholder (as defined under the Singapore Companies Act) is also required to give the above notifications to the SGX-ST at the same time. A person has a substantial shareholding in a company if he has an interest or interests in one or more voting shares in the company, and the total votes attached to that share, or those shares, is not less than 5 per cent of the total votes attached to all the voting shares in the company.

The Securities and Futures (Amendment) Act 2009 (the "Amendment Act") was gazetted on February 23, 2009 and will, *inter alia*, migrate the substantial shareholder disclosure requirements to the Securities and Futures Act. The amendments affecting substantial shareholder disclosure requirements have yet to take effect.

Once these amendments take effect, a substantial shareholder of our Company (as defined under the Singapore Companies Act) will no longer be required to notify the SGX-ST of his interests, or changes in his interests, in voting Shares of our Company. Instead, a substantial shareholder (as defined under the Singapore Companies Act) need only give notice to our Company and our Company will in turn announce or otherwise disseminate the information stated in the notice to the SGX-ST as soon as practicable and in any case, no later than the end of the Singapore business day following the day on which our Company received the notice.

While the definition of an "interest" in our voting Shares for the purposes of substantial Shareholder disclosure requirements under the SFA is similar to that under the Singapore Companies Act, the SFA provides that a person who has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, a voting share is regarded as having an interest in such share, even if such authority is, or is capable of being made, subject to restraint or restriction in respect of particular voting Shares. In addition, the deadline for a substantial shareholder (as defined under the Singapore Companies Act) to make disclosure to our Company under the SFA will be changed to two Singapore business days after he becomes aware:

- that he is or (if he had ceased to be one) had been a substantial shareholder (as defined under the Singapore Companies Act);
- of any change in the percentage level in his interest; or
- that he had ceased to be a substantial shareholder (as defined under the Singapore Companies Act),

there being a conclusive presumption of a person being "aware" of a fact or occurrence at the time at which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware.

Consequences of non-compliance under the SFA

Section 137(2) of the SFA

Section 137(2) of the SFA provides for the consequences of non-compliance with section 137(1) of the SFA. Under 137(2), a person who fails to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$25,000 and in the case of a continuing offence, to a further fine of S$2,500 for every day or part thereof during which the offence continues after conviction.

The Amendment Act

Pursuant to section 42 of the Amendment Act, new penalty provisions will be introduced into the SFA, in respect of non-compliance with disclosures which will be required from directors, chief executive officers and substantial shareholders of corporations with a primary listing on the SGX-ST. Under the new penalty provisions, directors, chief executive officers and substantial shareholders of corporations with a primary listing on the SGX-ST if found to have (i) intentionally or recklessly contravened the disclosure requirements or intentionally or recklessly provided any information which he knows is false or misleading in a material particular, he could, upon conviction, be liable to a fine not exceeding S$250,000 or to imprisonment for a term not exceeding two years or both and in the case of a continuing offence, and to a further fine of S$25,000 for every day (or part thereof) during which the offence continues after conviction and (ii) contravened the disclosure requirements or provided any information which is false or misleading in a material particular, could, upon conviction, be liable to a fine not exceeding S$25,000, and in the case of a continuing offence, to a further fine of S$2,500 for every day (or part thereof) during which the offence continues after conviction. The new penalty provisions will also allow the Monetary Authority of Singapore, with the consent of the Public Prosecutor, to bring an action in court to seek an order for a civil penalty in lieu of proceedings in relation to the aforementioned penalties. If convicted, the court may order the person to pay a civil penalty of a sum not lesser than S$50,000 but not exceeding S$2 million.

Duty not to furnish false statements to securities exchange, futures exchange, designated clearing house and Securities Industry Council of Singapore

Section 330 of the SFA

Section 330 of the SFA provides that any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to a securities exchange, futures exchange, designated clearing house or any officers thereof relating to dealing in securities shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$50,000 or to imprisonment for a term not exceeding 2 years or to both. Section 330 further provides that any person who, with intent to deceive, makes or furnishes or knowingly and willfully authorises or permits the making or furnishing of, any false or misleading statement or report to the Securities Industry Council or any of its officers, relating to any matter or thing required by the Securities Industry Council in the exercise of its functions under the SFA shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$50,000 or to imprisonment for a term not exceeding 2 years or to both.

Obligation to disclose beneficial interest in the voting shares of the company

Section 92 of the Singapore Companies Act

Section 92 of the Singapore Companies Act provides that a company which has all of its shares listed on a stock exchange in Singapore may require any member to inform it whether the member holds the voting shares in the company as beneficial owner or trustee, and in the latter, who the beneficiaries are. If the member discloses that he is holding the shares on trust for another party, the company may additionally require the other party to inform it whether the other party holds the interests as beneficial owner or as trustee and if the latter, for whom. A listed company also has the right to require the member to inform it of any voting agreement that he may have in relation to the shares held by him.

Consequences of non-compliance

Section 92 of the Singapore Companies Act

Sections 92(6) and 92(7) of the Singapore Companies Act provide that the failure to comply with a notice requiring disclosure of information is an offence, unless it can be shown that the information was already in the possession of the company or that the requirement to give it was frivolous or vexatious. A person who deliberately or recklessly makes a statement that is false in a material particular in compliance to a request for information under section 92 is also guilty of an offence, and is likewise liable on conviction to a fine not exceeding S$10,000 or to imprisonment for a term not exceeding 2 years.

Prohibited conduct in relation to trading in the securities of the company

Prohibitions against false trading and market manipulation

Section 197 of the SFA

Section 197 of the SFA prohibits (i) the creation of a false or misleading appearance of active trading in any securities on a securities exchange; (ii) the creation of a false or misleading appearance with respect to the market for, or price of, any securities on a securities exchange; (iii) affecting the price of securities by way of purchases or sales which do not involve a change in the beneficial ownership of those securities; and (iv) affecting the price of securities by means of any fictitious transactions or devices.

Section 197(3) of the SFA provides that a person is deemed to have created a false or misleading appearance of active trading in securities on a securities market if he does any of the following acts:

(i) if he effects, takes part in, is concerned in or carries out, directly or indirectly, any transaction of purchase or sale of any securities, which does not involve any change in the beneficial ownership of the securities;

(ii) if he makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(iii) if he makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price, unless he establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities market.

Section 197(5) of the SFA provides that a purchase or sale of securities does not involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

Section 197(6) of the SFA provides a defence to proceedings against a person in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities. It is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

Prohibition against securities market manipulation

Section 198 of the SFA

Section 198(1) of the SFA provides that no person shall carry out directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or likely to have, the effect of raising, lowering, maintaining or stabilising the price of the securities with intent to induce other persons to purchase them. Section 198(2) of the SFA provides that transactions in securities of a corporation includes (i) the making of an offer to purchase or sell such securities of the corporation; and (ii) the making of an invitation, however expressed, that directly or indirectly invites a person to offer to purchase or sell such securities of the corporation.

Prohibition against the manipulation of the market price of securities by the dissemination of misleading information

Sections 199 and 202 of the SFA

Section 199 of the SFA prohibits the making of false or misleading statements. Under this provision, a person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely (a) to induce other persons to subscribe for securities; (b) to induce the sale or purchase of securities by other persons; or (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities, if, when he makes the statement or disseminates the information, he either does not care whether the statement or information is true or false, or knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Section 202 of the SFA prohibits the dissemination of information about illegal transactions. This provision prohibits the circulation or dissemination of any statement or information to the effect that the price of any securities of a corporation will rise, fall or be maintained by reason of transactions entered into in contravention of sections 197 to 201 of the SFA. This prohibition applies where the person who is circulating or disseminating the information or statements (i) is the person who entered into the illegal

transaction; or (ii) is associated with the person who entered into the illegal transaction; or (iii) is the person, or associated with the person, who has received or expects to receive (whether directly or indirectly) any consideration or benefit of circulating or disseminating the information or statements.

Prohibition against fraudulently inducing persons to deal in securities

Section 200 of the SFA

Section 200 of the SFA prohibits a person from inducing or attempting to induce another person to deal in securities, (a) by making or publishing any statement, promise or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive; (b) by any dishonest concealment of material facts; (c) by the reckless making or publishing of any statement, promise or forecast that is misleading, false or deceptive; or (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that he knows to be false or misleading in a material particular, unless it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

Prohibition against employment of manipulative and deceptive devices

Section 201 of the SFA

Section 201 of the SFA prohibits (i) the employment of any device, scheme or artifice to defraud; (ii) engaging in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person; and (iii) making any statement known to be false in a material particular or (iv) omitting to state a material fact necessary to make statements made not misleading, in connection with the subscription, purchase or sale of any securities.

Prohibition against the dissemination of information about illegal transactions

Section 202 of the SFA

Section 202 of the SFA prohibits the circulation or dissemination of any statement or information to the effect that the price of any securities of a corporation will rise, fall or be maintained by reason of any transaction entered into or to be entered into in contravention of sections 197 to 201 of the SFA. This prohibition applies where the person who is circulating or disseminating the information or statements (i) is the person who entered into the illegal transaction; or (ii) is associated with the person who entered into the illegal transaction; or (iii) is the person, or associated with the person, who has received or expects to receive (whether directly or indirectly) any consideration or benefit of circulating or disseminating the information or statements.

Prohibition against insider trading

Sections 218 and 219 of the SFA

Sections 218 and 219 of the SFA prohibit persons from dealing in securities of a corporation if the person knows or reasonably ought to know that he is in possession of information that is not generally available, which is expected to have a material effect on the price or value of securities of that corporation. Such persons include substantial shareholders of a corporation or a related corporation, and persons who occupy a position reasonably expected to give him access to inside information by virtue of professional or business relationship by being an officer or a substantial shareholder of the corporation or a related corporation, or any other person in possession of inside information. For an alleged contravention of section 218 or 219, section 220 makes it clear that it is not necessary for the prosecution or plaintiff to prove that the accused person or defendant intended to use the information referred to in section 218(1)(a) or (1A)(a) or 219(1)(a) in contravention of section 218 or 219, as the case may be.

Section 216 of the SFA

Section 216 of the SFA provides that a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the first-mentioned securities.

Penalties

Section 232 of the SFA

Section 232 of the SFA provides that the Monetary Authority of Singapore may, with the consent of the Public Prosecutor, bring an action in a court against the offender to seek an order for a civil penalty in respect of any contravention. If the court is satisfied on the balance of probabilities that the contravention resulted in the gain of a profit or avoidance of a loss by the offender, the offender may have to pay a civil penalty of a sum (a) not exceeding 3 times the amount of the profit that the person gained; or the amount of the loss that he avoided, as a result of the contravention; or (b) equal to S$50,000 if the person is not a corporation, or S$100,000 if the person is a corporation, whichever is the greater. If the court is satisfied on a balance of probabilities that the contravention did not result in the gain of a profit or avoidance of a loss by the offender, the court may make an order against him for the payment of a civil penalty of a sum not less than S$50,000 and not more than S$2 million.

Section 204 of the SFA

Any person who contravenes sections 197, 198, 201 or 202 of the SFA is guilty of an offence and shall be liable on conviction to a fine not exceeding S$250,000 or to imprisonment for a term not exceeding 7 years or to both under section 204 of the SFA. Section 204 of the SFA further provides that no proceedings shall be instituted against a person for the offence after a court has made an order against him for the payment of a civil penalty under section 232 in respect of the contravention.

Section 221 of the SFA

Any person who contravenes section 218 or 219 of the SFA, is guilty of an offence and shall be liable on conviction to a fine not exceeding S$250,000 or to imprisonment for a term not exceeding 7 years or to both under section 221 of the SFA. Section 221 of the SFA further provides that no proceedings shall be instituted against a person for an offence in respect of a contravention of section 218 or 219 of the SFA after a court has made an order against him for the payment of a civil penalty under section 232 of the SFA in respect of that contravention.

China

The following discussion summarizes the principal laws, regulations, policies and administrative directives to which we are subject.

The PRC legal system

The PRC legal system is based on the PRC Constitution and is made up of written laws, regulations, directives and local laws, laws of Special Administrative Regions and laws resulting from international treaties entered into by the PRC government. Court verdicts do not constitute binding precedents. However, they are used for the purposes of judicial reference and guidance.

The National People's Congress of the PRC, or NPC, and the Standing Committee of the NPC are empowered by the PRC Constitution to exercise the legislative power of the State. The NPC has the power to amend the PRC Constitution and enact and amend basic laws governing State agencies and civil and criminal matters. The Standing Committee of the NPC is empowered to enact and amend all laws except for the laws that are required to be enacted and amended by the NPC.

The State Council is the highest organ of the State administration and has the power to enact administrative rules and regulations. The ministries and commissions under the State Council are also vested with the power to issue orders, directives and regulations within the jurisdiction of their respective departments. All administrative rules, regulations, directives and orders promulgated by the State Council and its ministries and commissions must be consistent with the PRC Constitution and the national laws enacted by the NPC. In the event that a conflict arises, the Standing Committee of the NPC has the power to annul administrative rules, regulations, directives and orders.

At the regional level, the provincial and municipal congresses and their respective standing committees may enact local rules and regulations and the people's governments may promulgate administrative rules and directives applicable to their own administrative areas. These local laws and regulations must be consistent with the PRC Constitution, the national laws and the administrative rules and regulations promulgated by the State Council.

The State Council, provincial and municipal governments may also enact or issue rules, regulations or directives in new areas of the law for experimental purposes. After gaining sufficient experience with experimental measures, the State Council may submit legislative proposals to be considered by the NPC or the Standing Committee of the NPC for enactment at the national level.

The PRC Constitution vests the power to interpret laws in the Standing Committee of the NPC. According to the Decision of the Standing Committee of the NPC Regarding the Strengthening of Interpretation of Laws passed in June 1981, the Supreme People's Court, in addition to its power to give general interpretation on the application of laws in judicial proceedings, also has the power to interpret specific cases. The State Council and its ministries and commissions are also vested with the power to interpret rules and regulations that they have promulgated. At the regional level, the power to interpret regional laws is vested in the regional legislative and administrative bodies which promulgate such laws.

The PRC judicial system

Under the PRC Constitution and the Law of Organization of the People's Courts, the judicial system is made up of the Supreme People's Court, the local courts, military courts and other special courts. The local courts are comprised of the basic courts, the intermediate courts and the higher courts. The basic courts are organized into civil, criminal, economic and administrative divisions. The intermediate courts are organized into divisions similar to those of the basic courts, and are further organized into other special divisions, such as the intellectual property division. The higher level courts supervise the basic and intermediate courts. The people's procuratorates also have the right to exercise legal supervision over the civil proceedings of courts of the same level and lower levels. The Supreme People's Court is the highest judicial body in China. It supervises the administration of justice by all other courts.

The courts employ a two-tier appellate system. A party may appeal against a judgment or order of a local court to the court at the next higher level. Second judgments or orders given at the same level and at the next higher level are final. First judgments or orders of the Supreme People's Court are also final. If, however, the Supreme People's Court or a court at a higher level finds an error in a judgment which has been given in any court at a lower level, or the presiding judge of a court finds an error in a judgment which has been given in the court over which he presides, the case my then be retried according to the judicial supervision procedures.

The Civil Procedure Law of the PRC adopted in April 1991 and amended on October 28, 2007 sets forth the criteria for instituting a civil action, the jurisdiction of the courts, the procedures to be followed for conducting a civil action and the procedures for enforcement of a civil judgment or order. All parties to a civil action conducted within the PRC must comply with the Civil Procedure Law. Generally, a civil case is initially heard by a local court of the municipality or province in which the defendant resides. The

parties to a contract may, by express agreement, select a jurisdiction where civil actions may be brought, provided that the jurisdiction is either the plaintiff's or the defendant's place of residence, the place of execution or implementation of the contract or the object of the action. However, such selection can not violate the stipulations of grade jurisdiction and exclusive jurisdiction in any case.

A foreign individual or enterprise generally has the same litigation rights and obligations as a citizen or legal person of the PRC. If a foreign country's judicial system limits the litigation rights of PRC citizens and enterprises, the PRC courts may apply the same limitations to the citizens and enterprises of that foreign country within the PRC. If any party to a civil action refuses to comply with a judgment or order made by a court or an award granted by an arbitration panel in the PRC, the aggrieved party may apply to the court to request for enforcement of the judgment, order or award. There are time limits (two years) imposed on the right to apply for such enforcement. If a person fails to satisfy a judgment made by the court within the stipulated time, the court will, upon application by either party, mandatorily enforce the judgment.

A party seeking to enforce a judgment or order of a court against a party who is not located within the PRC and does not own any property in the PRC may apply to a foreign court with proper jurisdiction for recognition and enforcement of the judgment or order. A foreign judgment or ruling may also be recognized and enforced by the court according to the PRC enforcement procedures if the PRC has entered into, or acceded to, an international treaty with the relevant foreign country, which provides for such recognition and enforcement, or if the judgment or ruling satisfies the court's examination according to the principal of reciprocity, unless the court finds that the recognition or enforcement of such judgment or ruling will result in a violation of the basic legal principles of the PRC, its sovereignty or security, or for reasons of social and public interests.

Establishment of a real estate development enterprise

According to the PRC Law on Administration of Urban Real Estate (城市房地產管理法), or Urban Real Estate Law, promulgated by the National People's Congress, effective in January 1995, amended in August 2007, a real estate developer is defined as an enterprise that engages in the development and operation of real estate for the purpose of making profits. Under the Regulations on Administration of Development of Urban Real Estate (城市房地產開發經營管理條例) promulgated by the State Council in July 1998, as amended in January 2011, an enterprise that is to engage in development of real estate must satisfy the following requirements:

- its registered capital must be RMB1 million or more; and
- it must have four or more full-time professional real estate/construction technicians and two or more full-time accounting officers, each of whom must hold the relevant qualification certificate.

The local government of a province, autonomous region or municipality directly under the PRC central government may, based on local circumstances, impose more stringent requirements on the registered capital and the professional personnel of a real estate developer.

To establish a real estate development enterprise, the developer must apply for registration with the administration for industry and commerce. The developer must also report its establishment to the real estate development authority in the location of its registration, within 30 days of the receipt of its business license. Where a foreign-invested enterprise is to be established to engage in the development and operation of real estate, it must also comply with the relevant requirements under the PRC laws and administrative regulations regarding foreign-invested enterprises and apply for approvals relating to foreign investments in China.

Under the Catalog of Guidance on Industries for Foreign Investment (外商投資產業指導目錄) promulgated by MOFCOM and NDRC in October 2007,

- the joint development of a whole land lot with the PRC partners, as well as the construction and operation of high-end hotels, villas, premium office buildings and international conference centers fall within the category of industries in which foreign investment is subject to restrictions, and
- other real estate development falls within the category of industries in which foreign investment is permitted.

A foreign investor intending to engage in the development and sale of real estate in China may establish an equity joint venture, a cooperative joint venture or a wholly foreign owned enterprise by the foreign investor in accordance with the PRC laws and administrative regulations governing foreign-invested enterprises.

Under the Notice on Adjusting the Portion of Capital Fund for Fixed Assets Investment of Certain Industries (關於調整部分行業固定資產投資項目資本金比例的通知) issued by the State Council in April 2004, the portion of capital-account funding for real estate projects (excluding affordable housing projects) has been increased from 20% or above to 35% or above. However, pursuant to the Notice on Adjusting the Percentage of Capital Fund for Investment Projects in Fixed Assets (關於調整固定資產投資項目資本金比例的通知) issued by the State Council in May 2009, the minimum portion of the capital funding for ordinary commodity housing projects and affordable housing projects has been reduced to 20%, while that for other real estate projects has been decreased to 30%.

In July 2006, MOHURD, MOFCOM, NDRC, PBOC, SAIC and SAFE jointly issued an Opinion on Standardizing the Admittance and Administration of Foreign Capital in the Real Estate Market (關於規範房地產市場外資准入和管理的意見). According to this Opinion, the admittance and administration of foreign capital in the property market must comply with the following requirements:

- Foreign institutions or individuals who buy property not for their own use in China should follow the principle of "commerce existence" and apply for the establishment of foreign-invested enterprises ("FIREEs") pursuant to the regulations of foreign investment in property. After obtaining the approvals from relevant authorities and upon completion of the relevant registrations, foreign institutions and individuals can then carry on their business pursuant to their approved business scope.
- Where the total investment amount of a foreign-invested property enterprise is US$10 million or more, its registered capital shall be no less than 50% of the total investment amount; where the total investment amount is less than US$10 million, its registered capital shall follow the requirements of the existing regulations.
- For establishment of a FIREE, the commerce authorities and the administration for industry and commerce shall be responsible of the approval and registration of the FIREE and the issuance of a temporary approval certificate for a foreign-invested enterprise (which is only effective for one year) and a temporary business license. Upon full payment of the land grant fee for the land-use rights, the foreign-invested property enterprise should apply for the "Certificate of Land-Use Rights." With such Certificate of Land-Use Rights, it can obtain a formal Approval Certificate for a Foreign-Invested Enterprise from the commerce authorities and a formal business license which the same approved business term as the formal Approval Certificate for Foreign-Invested Enterprise.
- Transfer of projects or equity interests in FIREEs or acquisitions of domestic property enterprises by foreign investors should strictly follow the relevant laws, regulations and policies and obtain the relevant approvals. The investor should submit: (a) a written undertaking of fulfillment of the "State-owned land-use rights Grant Contract", "Construction Land Planning Permit" and "Construction Work Planning Permit"; (b) "Certificate of Land-Use Rights"; (c) documents evidencing the filing for modification with the construction authorities; and d) documents evidencing the payment of tax from the relevant tax authorities.

- When acquiring domestic property enterprises by way of shares transfer or otherwise or purchasing shares from Chinese parties in Sino-foreign equity joint ventures, foreign investors should make proper arrangements for the employees, handle the debts of the banks and pay the consideration in one single payment with its own capital. Foreign investors with records showing that they have not complied with relevant employment laws, with unsound financial track records, or who have not fully satisfied any previous acquisition consideration shall not be allowed to undertake the aforementioned activities.

On August 14, 2006, the General Office of MOFCOM enacted the Notice on Relevant Issues Concerning the Carrying out Circular on Standardizing the Admittance and Administration of Foreign Capital in the Property Market (關於貫徹落實〈關於規範房地產市場外資准入和管理的意見〉有關問題的通知). According to the notice, if the total investment of a FIREE exceeds US$3 million, the registered capital must not be less than 50% of the total investment; if the total investment is less than or equal to US$3 million, the registered capital must not be less than 70% of the total investment. When a foreign investor who merges with or acquire a domestic property development enterprise by acquiring equity from other Chinese shareholders of a FIREE or by other means, the original employees of the merged companies must be arranged properly, bank debts must be settled and the entire consideration for the transfer must be paid off within three months after the earlier of the issuance of the business license or the effective date of the equity transfer agreement.

In May 2007, MOFCOM and SAFE issued the Circular on Strengthening and Regulating the Examination and Approval and Supervision of Foreign Direct Investment in the Real Estate Sector (關於進一步加強規範外商直接投資房地產業審批和監管的通知), or Circular 50, which made the following requirements for approval and supervision of foreign investment in real estate:

- foreign investment in the real estate sector in the PRC relating to high-grade properties should be strictly controlled;
- before obtaining approval for the setup of FIREEs, (i) both the land use right certificates and housing ownership right certificates should be obtained or, (ii) contracts for obtaining land use rights or housing ownership rights should be entered into;
- existing foreign invested enterprises need to obtain approval before they expand their business operations into the real estate sector and existing FIREEs need to obtain new approval in case they expand their real estate business operations;
- acquisitions of domestic real estate enterprises and foreign investment in real estate sector in a way of round trip investment should be strictly regulated. Foreign investors should not avoid approval procedures by changing actual controlling persons;
- parties to real estate enterprises with foreign investment should not in any way guarantee a fixed investment return;
- registration shall be immediately effected according to applicable laws with the MOFCOM regarding to the setup of FIREEs approved by local governmental authorities;
- foreign exchange administration authorities and banks authorized to conduct foreign exchange business should not effectuate foreign exchange settlements regarding capital account items to those which fail to file with the MOFCOM or fail to pass the annual reviews; and
- for those FIREEs, which are wrongfully approved by local authorities for their setups, (i) the MOFCOM should carry out investigation, order punishment and corrections, and (ii) foreign exchange administrative authorities should not carry out for them foreign exchange registrations.

In July 2007, SAFE issued a Notice on the Distribution of the List of the First Group of Foreign Invested Real Estate Projects Filed with MOFCOM (關於下發第一批通過商務部備案的外商投資房地產項目名單的通知), or Notice 130, together with a list of FIREEs that had effected their filings with MOFCOM.

According to Notice 130, SAFE will no longer process foreign debt registrations or applications by FIREEs for permission to purchase foreign exchange to service their foreign debt if such FIREEs have not obtained their approval certificates from the government before June 1, 2007. As a result of Notice 130, unless the approval certificate of an FIREE as of May 31, 2007 contained an aggregate investment amount, which includes its registered capital and foreign debt amount, sufficient to permit foreign currency to be injected into its operations in China, such FIREE effectively will no longer be able to borrow foreign debt including shareholder loans and overseas commercial loans to finance their operations in China. It can only use its capital contributions instead. SAFE further provided in its Notice 130 that it will not process any foreign exchange registration (or change of such registration) or application for settlement of foreign currency under capital account by any FIREE if it has obtained the relevant approval certificates from local government authorities on or after June 1, 2007 but has not completed its filing with MOFCOM.

In connection with the filing requirement, On June 18, 2008, the MOFCOM issued the Notice on Properly Archiving the Filings for Foreign Investment in Real Estate Sector (關於做好外商投資房地產業備案工作的通知). According to the notice, since July 1, 2008, the MOFCOM entrusts its provincial level branches to review the filing materials with respect to FIREEs and check and confirm the legality, authenticity and accuracy of the materials. The MOFCOM will archive the filing after receiving the archival form duly completed and submitted by the provincial level branches. The notice also requires that the establishment (including the increase of registered capital) of a FIREE shall comply with the project company principle of engaging in one approved real estate project only.

Moreover, in November 2010, MOFCOM promulgated the Notice on Strengthening Administration of the Approval and Registration of Foreign Investment into Real Estate Industry (關於加強外商投資房地產業審批備案管理的通知), which provides that, among other things, in the case that a real estate enterprise is established within the PRC with oversea capital, it is prohibited to purchase and/or sell real estate properties completed or under construction within the PRC for arbitrage purposes. The local MOFCOM authorities are not permitted to approve investment companies to engage in the real estate development and management.

According to the Several Opinions of the State Council on Further Strengthening the Utilization of Foreign Investment (國務院關於進一步做好利用外資工作的若干意見), promulgated by the State Council in April 2010, and the Notice on Delegation of Power of Approval for Foreign Investment Projects (關於做好外商投資項目下放核准權限工作的通知), promulgated by NDRC in May 2010, except where approval by the relevant departments under the State Council is required by the Investment Project Catalogue, foreign investment in encouraged and permitted industries with a total investment of less than US$300 million will be examined and approved by NDRC's branches at the provincial level. Pursuant to the Notice on Issues Related to Delegation of Powers of Examination and Approval of Foreign Investment to Authorities at Lower Levels (關於下放外商投資審批權限有關問題的通知), promulgated by MOFCOM in June 2010, MOFCOM's branch at the provincial level is responsible for the examination and approval of establishments and changes of foreign-invested enterprises in encouraged or permitted industries with a total investment of less than US$300 million and with a total investment of less than US$50 million in restricted industries.

Qualifications of a real estate developer

Under the Provisions on Administration of Qualifications of Real Estate Developers (房地產開發企業資質管理規定), or the Provisions on Administration of Qualifications, promulgated by MOHURD in March 2000, a real estate developer must apply for registration of its qualifications according to such Provisions on Administration of Qualifications. An enterprise may not engage in property development without a qualification classification certificate for real estate development. MOHURD oversees the qualifications of real estate developers with national operations, and local real estate development authorities at or above the county level oversee the qualifications of local real estate developers.

In accordance with the Provisions on Administration of Qualifications, real estate developers are classified into four classes.

- Class 1 qualifications are subject to preliminary examination by the construction authorities at the provincial level and final approval of MOHURD. A class 1 real estate developer is not restricted as to the scale of its real estate projects and may undertake a real estate development anywhere in the country.
- Class 2 or lower qualifications are regulated by the construction authorities at the provincial level subject to delegation to lower level government agencies. A real estate developer of class 2 or lower may undertake a project with a gross floor area of less than 250,000 square meters subject to confirmation by the construction authorities at the provincial level.

Under the relevant PRC laws and regulations, the real estate development authorities will examine applications for registration of qualifications submitted by real estate developers by considering the professional personnel in their employ, financial condition and operating results. A real estate developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. A developer of any qualification classification may only engage in the development and sale of real estate within its approved scope of business and may not engage in business which is limited to another classification.

For a newly established real estate developer, the real estate development authority will issue a provisional qualification certificate, if it is an eligible developer, within 30 days of receipt by the authority of the application. The provisional qualification certificate will be effective for one year from its date of issue and may be extended for not more than two additional years with the approval of the real estate development authority. The real estate developer must apply for qualification classification to the real estate development authority within one month before expiration of the provisional qualification certificate.

Pursuant to the Provisions on Administration of Qualifications, the qualification of a property developer should be subject to annual inspection. The construction authority under the State Council or the entrusted institution is responsible for carrying out the annual inspection of a class 1 real estate developer's qualification. Procedures for annual inspection of developers of a class 2 or lower qualification shall be formulated by the construction authority under the people's government of the relevant province, autonomous region or municipality.

Development of a real estate project

Under the Catalog for Guidance on Industries for Foreign Investment promulgated by MOFCOM and NDRC in October 2007, foreign investments are restricted in the development of a whole land lot and the construction and operation of high-end hotels, villas, premium office buildings and international conference centers in China; and foreign investments are permitted in other real estate developments. According to the Interim Provisions on Approving Foreign Investment Project (外商投資項目核准暫行管理辦法) promulgated by NDRC in October 2004, approval of NDRC is required for foreign investment projects with total investment of US$100 million or more within the category of encouraged or permitted foreign investments and those with total investment of US$50 million or more within the category of foreign investments subject to restrictions. Other foreign investments in China will require only local approval. Specifically, the local authorities may examine and approve foreign investment projects with total investment less than US$100 million within the category of encouraged or permitted foreign investments and those with total investment less than US$50 million within the category of foreign investments subject to restrictions. Furthermore, after examination by NDRC, approval of State Council is required for foreign investment projects with total investment of US$500 million or more within the category of encouraged or permitted foreign investments and those with total investment of US$100

million or more within the category of foreign investments subject to restrictions. In addition, the projects subject to restrictions should be approved by the development and reform authority at provincial level. In July 2008, NDRC issued the Notice on Further Reinforcing and Regulating the Administration of Foreign Investment Projects (關於進一步加強和規範外商投資項目管理的通知), which further requires that the capital-increase and reinvest projects of the foreign-invested enterprises shall get the approval from NDRC or its local counterpart.

Under the Interim Regulations of the People's Republic of China on Grant and Assignment of the Use Right of State-owned Urban Land (城鎮國有土地使用權出讓和轉讓暫行條例) promulgated by the State Council in May 1990, China adopted a system to grant and assign the right to use state-owned land. A land user must pay a land premium to the state as consideration for the grant of the right to use a land site within a specified period of time, and the land user may assign, lease out, mortgage or otherwise commercially exploit the land use rights within the term of use. Under the relevant PRC laws and regulations, the land administration authority at the city or county level may enter into a land grant contract with the land user to provide for the grant of land use rights. The land user must pay the land premium as provided by the land use rights grant contract. After payment in full of the land premium, the land user may register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights. The relevant PRC laws and regulations provide that land use rights for a site intended for real estate development must be obtained through grant except for land use rights which may be obtained through premium-free allocation by the PRC government pursuant to the PRC laws or the stipulations of the State Council. Government-allocated land is not allowed to be transferred unless the transfer is approved by the relevant PRC government authorities and the land premium as determined by the relevant PRC government authorities has been paid.

When carrying out the feasibility study for a construction project, the construction or the developer entity must make a preliminary application for construction on the relevant site to the relevant land administration authority in accordance with the Measures for Administration of Examination and Approval for Construction Sites (建設用地審查報批管理辦法) promulgated by the Ministry of Land and Resources in March 1999 which was further amended in November 2010, and the Measures for Administration of Preliminary Examination of Construction Project Sites (建設項目用地預審管理辦法) promulgated by the Ministry of Land and Resources in July 2001, as amended in October 2004 and November 2008. After receiving the preliminary application, the land administration authority will carry out preliminary examinations of various aspects of the construction project in compliance with the overall zoning plans and land supply policy of the government, and will issue a preliminary approval in respect of the project site if its examination proves satisfactory. The land administration authority at the relevant city or county will sign a land use rights grant contract with the land user and issue an approval for the construction site to the construction entity or the developer.

Under the Measures for Control and Administration of Grant and Assignment of Right to Use Urban State-owned Land (城市國有土地使用權出讓轉讓規劃管理辦法) promulgated by MOHURD in December 1992, the grantee under a land grant contract, i.e. a real estate developer, must further apply for a permit for construction site planning from the relevant municipal planning authority. After obtaining such permit, a real estate developer will organize the necessary planning and design work. Planning and design proposals in respect of a real estate development project are again subject to relevant reporting and approval procedures required under the Law of the People's Republic of China on Urban and Rural Planning (中華人民共和國城鄉規劃法) promulgated by the National People's Congress in October 2007 and local statutes on municipal planning. Upon approval by the authorities, a permit for construction works planning will be issued by the relevant municipal planning authority.

In accordance with the Regulations for the Expropriation of and Compensation for Housing on State-owned Land (國有土地上房屋徵收與補償條例) promulgated and came into effect in by the State Council in January of 2011, with regard to the expropriation of the housing of entities and individuals on the State-owned land, the owners of the housing being expropriated shall be offered a fair compensation for the need of pubic interest.

The compensation offered by the people's governments at municipal and county levels that make the housing expropriation decision to the parties with housing being expropriated includes: (1) compensation for the value of the housing being expropriated; (2) compensation for relocation and temporary settlement caused by expropriation of housing; and (3) compensation for the loss arising from the suspension of production and operation caused by expropriation of housing.

The amount of compensation for the value of the housing being expropriated shall not be less than the market price of the real estate similar to the housing being expropriated on the announcement date of the housing expropriation decision. The value of the housing being expropriated shall be appraised and determined by a real estate price appraisal institution with corresponding qualification according to the housing expropriation appraisal measures. A party that objects to the value of the housing being expropriated appraised and determined may apply to the real estate price appraisal institution for review of the appraisal. A party that objects to the review result may apply to the real estate price appraisal expert committee for authentication.

The parties with housing being expropriated may choose monetary compensation, or may choose to exchange the property right of the housing. If the parties with housing being expropriated choose to exchange the property right of the housing, the people's governments at municipal and county levels shall provide housing used for the exchange of property right, and calculate and settle the difference between the value of the housing being expropriated and the value of the housing used for the exchange of the property right. If the residential housing of an individual is expropriated due to the renovation of the old urban district and the individual chooses to exchange for the property right of the housing in the area being renovated, the people's governments at municipal and county levels that make the housing expropriation decision shall provide the housing in the area being renovated or the nearby area.

When the site has been properly prepared and is ready for the commencement of construction works, the developer must apply for a permit for commencement of works from the construction authorities at or above the county level according to the Measures for Administration of Granting Permission for Commencement of Construction Works (建築工程施工許可管理辦法) promulgated by MOHURD in October 1999, as amended in July 2001. According to the Notice Regarding Strengthening and Regulating the Administration of Newly-commenced Projects (國務院辦公廳關於加強和規範新開工項目管理的通知) issued by the General Office of the State Council on November 17, 2007, before commencement of construction, all kinds of projects shall fulfill certain conditions, including, among other things, compliance with national industrial policy, development plan, land supply policy and market access standard, completion of all approval and filing procedures, compliance with zoning plan in terms of site and planning, completion of proper land use procedures and obtaining proper environmental valuation approvals and construction permit or report.

The development of a real estate project must comply with various laws and legal requirements on construction quality, safety standards and technical guidance on architecture, design and construction work, as well as provisions of the relevant contracts. On January 30, 2000, the State Council promulgated and implemented the Regulation on the Quality Management of Construction Projects (建設工程質量管理條例), which sets the respective quality responsibilities and liabilities for developers, construction companies, reconnaissance companies, design companies and construction supervision companies. In August 2008, the State Council issued the Regulations on Energy Efficiency for Civil Buildings (民用建築節能條例), which reduces the energy consumption of civil buildings and improves the efficiency of the

energy utilization. According to this regulation, the design and construction of new buildings must meet the mandatory criteria on energy efficiency for buildings, and failure to meet such criteria will result in no neither commencement of construction or acceptance upon completion. Among other things, this regulation sets forth additional requirements for property developers in the sale of commodity buildings in this respect. After completion of construction works for a project, the real estate developer must organize an acceptance examination by relevant government authorities and experts according to the Interim Provisions on Inspection Upon Completion of Buildings and Municipal Infrastructure (房屋建築和市政基礎設施竣工驗收暫行規定) promulgated by MOHURD in June 2000, and file with the construction authority at or above the county level where the project is located within 15 days after the construction is qualified for the acceptance examination according to the Provisional Measures for Reporting Details Regarding Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure (房屋建築和市政基礎設施工程竣工驗收備案管理辦法) promulgated by MOHURD in April 2000, as amended in October 2009. The developer must also report details of the acceptance examination according to the Interim Measures for Reporting Details Regarding Acceptance Examination upon Completion of Buildings and Municipal Infrastructure (房屋建築和市政基礎設施工程竣工驗收備案管理辦法) promulgated by MOHURD in April 2000, as amended in October 2009. A real estate development project may not be delivered until and unless it has satisfactorily passed the necessary acceptance examination. Where a property project is developed in phases, an acceptance examination may be carried out for each phase upon completion.

In China, there are two registers of property interests. Land registration is effected by the issue of land use right certificates by the relevant authorities to the land users. Land use rights may be assigned, mortgaged or leased. The building registration is effected by the issue of property ownership certificates to the property owners. Property or building ownership rights are only related to the building or improvements erected on the land. Under the PRC laws and regulations, all land use rights and property ownership rights that are duly registered are protected by law. Most cities in China maintain separate registries for the registration. However, Shenzhen, Shanghai, Guangzhou and some other major cities have a consolidated registry for both land use rights and the property ownership interests for the building erected on the relevant land.

Land for property development

In April 1988, the National People's Congress amended the PRC Constitution to permit the transfer of land use rights in accordance with the laws and regulations. In December 1988, the National People's Congress amended the Land Administration Law (土地管理法) to permit the transfer of land use rights in accordance with the laws and regulations.

Under the Urban Real Estate Law, those who have obtained the land use rights by assignment must develop the land in accordance with the use and period of commencement as prescribed by the contract for the land-use right assignment. According to the Measures on the Disposal of Idle Land《閒置土地處置辦法》, promulgated by the Ministry of Land and Resources on April 28, 1999, a parcel of land can be defined as idle land under any of the following circumstances:

- after obtaining the land-use rights, the development and construction of the land has not begun within the time limit for commencement of the development as stipulated without the consent of the people's government the originally approved the use of the land;
- the land grant contract or the approval for construction does not prescribe the date of starting the development and construction, and the development and construction of the land has not begun at the expiry of one year from the day when the land grant contract became effective or when the land authorities issued the approval letter;
- the development and construction of the land has begun, but the area developed and constructed is less than one third of the total area to be developed and the invested amount is less than 25% of the total amount of investment, and development and construction has been continuously suspended for one year without approval; or

- other circumstances prescribed by laws and regulations.

County-level municipal administrative authorities may, with regard to an identified piece of idle land, give notice to the land user and issue a proposal on disposing the idle land, including, but not limited to, extending the time period for development and construction (provided that it is no longer than one year), changing the use of the land, arranging for temporary use and ascertaining the new land user by competitive bidding, public auction or listing-for-sale. The county-level land administrative authorities may, after the original review and approval authority has approved the proposal, arrange for the implementation of the proposal. With respect to any land obtained by assignment and within the scope of city planning, if the construction work has not yet started after one year from the granting of the relevant approvals, a fine for idle land at 20% of the assignment price may be imposed on the land user. If the construction work has not begun after two years have elapsed, the right to use the land can be taken back by the state without any compensation. However, the above sanctions may not apply if the delay in commencement of construction is caused by force majeure or acts of government or indispensable preliminary work before commencement of construction.

On January 3, 2008, the State Council issued a Notice on Promoting the Economic Use of Land 《關於促進節約集約用地的通知》 with respect to the collection of additional land premium, establishment of a land utilization priority planning scheme and the formulation of a system for assessing the optimal use of land and other measures. The notice calls for the full and effective use of existing construction land and the preservation of farm land. The notice also emphasized the enforcement of the current rules on assessing idle land fees at a rate equal to 20% of the land premium for any land left idle for over one year but less than two years. The notice also establishes additional land premium surcharges on idle land and authorizes the Ministry of Land and Resources to formulate regulations to implement such surcharges. The notice further urges financial institutions to exercise caution when they process loan applications from property developers that have failed to commence construction, to complete development of at least one-third of the land area or to invest at least 25% of the total investment within one year of the construction date provided in the land grant contract. The notice indicated that the relevant governmental authorities will formulate and issue additional rules and regulations on these matters.

The Ministry of Land and Resources issued a Notice on Restricting the Administration of Construction Land and Promoting the Use of Approved Land 《關於嚴格建設用地管理促批而未用土地利用的通知》 in August 2009, which reiterates the above rules on idle land.

Under current PRC laws and regulations on land administration, land for property development may be obtained only by grant except for land use rights obtained through allocation. Under the Regulations on the Grant of State-owned Land Use Rights Through Public Tender, Auction and Listing-for-Sale promulgated by the Ministry of Land and Resources (招標拍賣掛牌出讓國有土地使用權規定) in May 2002 and amended in September 2007, land for commercial use, tourism, entertainment and commodity housing development must be granted by public tender, auction or listing-for-sale. Under these regulations, the relevant land administration authority at city or county level, or the grantor, is responsible for preparing the public tender or auction documents and must make an announcement 20 days prior to the day of public tender or auction with respect to the particulars of the land parcel and the time and venue of the public tender or auction. The grantor must also verify the qualification of the bidding and auction applicants, accept an open public auction to determine the winning tender or hold an auction to ascertain a winning bidder. The grantor and the winning tender or bidder will then enter into a confirmation followed by the execution of a contract for assignment of state-owned land use rights. Over the years, the Ministry of Land and Resources has promulgated further rules and regulations to define the various circumstances under which the state-owned land use rights may be granted by means of public tender, auction and listing-for-sale or by agreement.

Under the Regulation on Grant of State-owned Land Use Rights by Agreements《協議出讓國有土地使用權規定》promulgated by the Ministry of Land and Resources on June 11, 2003, except for the project that must be granted through tender, auction and listing as required by the relevant laws and regulations, land use right may be granted through transfer by agreement and the land premium for the transfer by agreement of the state-owned land use right shall not be lower than the benchmark land price.

In September 2003, the Ministry of Land and Resources promulgated the Notice on Strengthening the Land Supply Management and Promoting the Sustainable Sound Development of Real Estate Market《關於加強土地供應管理促進房地產市場持續健康發展的通知》, which provides that land supply for luxury commodity housing must be strictly controlled. On May 30, 2006, the Ministry of Land and Resources promulgated an Urgent Notice on Currently Strengthening Further Strict Land Management《關於當前進一步從嚴土地管理的緊急通知》, which provides that land grant for real estate development must be conducted via invitation for bids, auction and listing, and land supply for low to medium-priced and/or small to medium-sized ordinary commercial residential housing (including affordable housing) and for low-rental residential housing must be given priority, and land supply for low-density and/or large-sized residential housing must be strictly restricted. In addition, the notice provides that land supply for new villa project must be suspended.

The Urgent Notice on Further Governing and Rectifying Land Market and Strengthening Administration of Land《關於深入開展土地市場治理整頓嚴格土地管理的緊急通知》issued by the General Office of the State Council on April 29, 2004 restated the principle of strict administration of the approval process for the construction land and protection of the basic farmlands.

The Notice on Issues Relating to Strengthening the Land Control《關於加強土地調控有關問題的通知》 promulgated by the State Council on August 31, 2006 sets forth the administration of the receipt and disbursement of the land premium, modifies the tax policies relating to the construction land, and builds up the system of publicity for the standards of the lowest price with respect to the granted state-owned land use right.

In March 2007, the National People's Congress adopted the PRC Property Rights Law《中華人民共和國物權法》, which became effective on October 1, 2007. According to the Property Rights Law, when the term of the right to use construction land for residential (but not other) purposes expires, it will be renewed automatically. Unless it is otherwise prescribed by any law, the owner of construction land use rights has the right to transfer, exchange, and use such land use rights as equity contributions or collateral for financing. If the state takes the premises owned by entities or individuals, it must compensate the property owners in accordance with law and protect the lawful rights and interests of the property owners.

In September 2007, the Ministry of Land and Resources further promulgated the Regulations on the Grant of State-owned Construction Land Use Rights Through Public Tender, Auction and Listing for-sale《招標拍賣掛牌出讓國有建設用地使用權規定》to require that land for industrial use, except land for mining, must also be granted by public tender, auction and listing-for-sale. Only after the grantee has paid the land premium in full under the land grant contract, can the grantee apply for the land registration and obtain the land use right certificates. Furthermore, land use rights certificates may not be issued in proportion to the land premium paid under the land grant contract.

In October 2007, the Standing Committee of National People's Congress promulgated the PRC City and Countryside Planning Law《中華人民共和國城鄉規劃法》, pursuant to which, a construction planning permit must be obtained from the relevant urban and rural planning government authorities for building any structure, fixture, road, pipeline or other engineering project within an urban or rural planning area.

In November 2007, the Ministry of Land and Resources, the Ministry of Finance and PBOC jointly promulgated the Administration Measures on Land Reserve《土地儲備管理辦法》, pursuant to which, local authorities should reasonably decide the scale of land reserve in accordance with the macro-control of the land market. Those idle, unoccupied, and low-efficient state-owned construction land inventory shall be used as land reserve in priority.

In December 2007, the Ministry of Land and Resources promulgated the Rules on Land Registration《土地登記辦法》, which further stresses payment in full of the land premium prior to the application for the registration of state-owned construction land use rights.

In November 2009, the Ministry of Land and Resources issued a Circular on the Distribution of the Catalog for Restricted Land Use Projects (2006 Version Supplement) and the Catalog for Prohibited Land Use Projects (2006 Version Supplement)《關於印發《限制用地項目目錄《2006年本增補本》》和《禁止用地項目目錄《2006年本增補本》》的通知》, as a supplement to its 2006 version. In this Circular, the Ministry of Land and Resources has set forth a ceiling for the land granted by local governments for development of commodity housing as follows: seven hectares for small cities and towns, 14 hectares for medium-sized cities and 20 hectares for large cities.

In November 2009, the Ministry of Finance, the Ministry of Land and Resources, PBOC, the PRC Ministry of Supervision and the PRC National Audit Office jointly promulgated the Notice on Further Enhancing the Revenue and Expenditure Control over Land Grant《關於進一步加強土地出讓收支管理的通知》. The notice raises the minimum down-payment for land premiums to 50% and requires the land premium to be fully paid within one year after the signing of a land grant contract, subject to limited exceptions.

In March 2010, the Ministry of Land and Resources promulgated the Notice on Issues Regarding Strengthening Control and Monitor of Real Estate Land Supply《關於加強房地產用地供應和監管有關問題的通知》. According to the notice, at least 70% of total land supply must be provisioned for affordable housing, redevelopment of shanty towns and small/medium residential units for self-use and the land supply for large residential units will be strictly controlled and while land supply for villa projects will be banned. The notice also requires that the lowest land grant price must be at least 70% of the basic land price in which the granted land is located and the real estate developers' bid deposit should be at least 20% of the lowest land grant price. The land grant contract must be executed within 10 working days after the land transaction is confirmed. The minimum down payment of the land premium will be 50% and must be paid within one month after the execution of the land grant contract. The remainder of the land grant payment must be paid in accordance with the agreement within one year. If the land grant contract is not executed in accordance with the requirement above, the land cannot be handed over and the deposit will not be returned. If no land grant premium is paid after the execution of the land grant contract, the land must be withdrawn.

In September 2010, the Ministry of Land and Resources and MOHURD jointly promulgated the Notice on Further Strengthening Control and Regulation of Land and Construction of Property Development《關於進一步加強房地產用地和建設管理調控的通知》, which stipulated, among other things, that: (i) at least 70% of land designated for construction of urban housing must be used for affordable housing, housing for resettlement of shanty towns and small to medium-sized ordinary commercial housing; in areas with high housing prices, the supply of land designated for small to medium-sized, price-capped housing must be increased; (ii) developers and their controlling shareholders (as defined under PRC laws) are prohibited from participating in land biddings before the rectification of certain misconduct, including (1) illegal transfer of land use rights; (2) failure to commence required construction within one year from the delivery of land under land grant contracts due to such developers' own reasons; (3) noncompliance with the land development requirements specified in land grant contracts; and (4) crimes such as swindling land by forging official documents and illegal land speculation; (iii) developers are required to commence construction within one year from the date of delivery of land under the relevant land grant contract and complete construction within three years of commencement; (iv) development and construction of projects of low-density and large-sized housing must be strictly limited and the plot ratio of the planned GFA to the total site area of residential projects must be more than 1:1; and (v) the grant of two or more bundled parcels of lands and undeveloped land is prohibited.

In December 2010, the Ministry of Land and Resources promulgated the Notice on Strict Implementation of Policies Regarding Regulation and Control of Real Property Land and Promotion of the Healthy Development of Land Markets《關於嚴格落實房地產用地調控政策促進土地市場健康發展有關問題的通知》, which provides, among other things, that: (i) cities and counties that have less than 70% of their land supply designated for affordable housing, housing for redevelopment of shanty towns or small/medium

residential units must not provide land for large-sized and high-end housing before the end of this year; (ii) land and resource authorities in local cities and counties will report to Ministry of Land and Resources and provincial land and resource authorities, respectively regarding land with a premium rate of more than 50%; (iii) land designated for affordable housing which is used for property development against relevant policies or involved illegal income will be confiscated and the relevant land use rights will be withdrawn. Moreover, changing the plot ratio without approval is strictly prohibited.

Transfer of real estate

According to the PRC laws and the Provisions on Administration of Transfer of Urban Real Estate《城市房地產轉讓管理規定》promulgated by MOHURD in August 1995, as amended in August 2001, a real estate owner may sell, gift or otherwise legally transfer the property to another natural person or legal entity. When transferring a building, the ownership of the building and the land use rights to the site on which the building is situated are transferred together. The parties to a transfer must enter into a written real estate transfer contract and register the transfer with the real estate administration authority having jurisdiction over the location of the real estate within 90 days of the execution of the transfer contract.

Where the land use rights are originally obtained by grant, the real property may only be transferred on the condition that:

- the land premium has been paid in full for the granted land use rights as required by the land grant contract and a land use rights certificate has been properly obtained; and
- in the case of a project in which buildings are being developed, development representing more than 25% of the total investment has been completed; or
- in case of a whole land lot development project, construction works have been carried out as planned, water supply, sewerage, electricity supply, heat supply, access roads, telecommunications and other infrastructure or utilities have been made available, and the site has been leveled and made ready for industrial or other construction purposes.

If the land use rights are originally obtained by grant, the term of the land use rights after transfer of the real estate will be the remaining portion of the original term in the land grant contract. In the event that the assignee intends to change the use of the land provided in the land grant contract, consent must first be obtained from the original land use rights grantor and the planning administration authority at the relevant city or county and an agreement to amend the land grant contract or a new land grant contract must be signed in order to, *inter alia*, change the use of the land and adjust the land premium accordingly.

If the land use rights are originally obtained by allocation, such allocated land use right may be changed to granted land use rights upon approval by the government vested with the necessary approval power as required by the State Council. After the government authorities vested with the necessary approval power approve such change, the grantee must complete the formalities for the grant of the land use rights and pay the land premium according to the relevant statutes. Assignment of Land for commercial use, tourism, entertainment and commodity housing development must be conducted through public tender, auction or listing-for-sale under the current PRC laws and regulations.

Leases of buildings

Under the PRC laws and the Measures for Administration of Leases of Buildings in Urban Areas《城市房屋租賃管理辦法》 promulgated by MOHURD in May 1995, parties to a lease of a building must enter into a lease contract in writing. China has adopted a system to register the leases of real properties. When a lease contract is signed, amended or terminated, the parties must register the details with the real estate administration authority at the city or county in which the building is situated.

The Measures for Administration of Leases of Buildings in Urban Areas《城市房屋租賃管理辦法》was abolished by MOHURD on February 1, 2011, and a new Measures for Administration of Leases of Commodity Houses《商品房屋租賃管理辦法》was promulgated on December 1, 2010, and effective on February 1, 2011. The system of mandatory registration of leases remains the same, with new punishment been adopted. According to the new Measures for Administration of Leases of Commodity Houses《商品房屋租賃管理辦法》requires the parties to register the leases within 30 days after entering into leasing contracts. Otherwise, competent authority may first ask the parties to register, and then fine up to RMB100,000 on entities and RMB1,000 for natural person.

Mortgages of real estate

Under the PRC Urban Real Estate Administration Law《中華人民和國城市房地產管理法》promulgated by the Standing Committee of the National People's Congress in July 1994 and amended in 2007, the PRC Security Law《中華人民共和國擔保法》promulgated by the National People's Congress in June 1995, and the Measures for Administration of Mortgages of Urban Real Estate《城市房地產抵押管理辦法》promulgated by MOHURD in May 1997, as amended in August 2001, when mortgage is created on the ownership of a building legally obtained, such mortgage must be simultaneously created on the land use rights of the land on which the building is situated. The mortgagor and the mortgagee must sign a mortgage contract in writing. China has adopted a system to register mortgages of real estate. After a real estate mortgage contract has been signed, the parties to the mortgage must register the mortgage with the real estate administration authority at the location where the real estate is situated. A real estate mortgage contract will become effective on the date of registration of the mortgage. If a mortgage is created on the real estate in respect of which a property ownership certificate has been obtained legally, the registration authority will, when registering the mortgage, make an entry under "third party rights" on the original property ownership certificate and then issue a certificate of third party rights to the mortgagee. If a mortgage is created on the commodity building put to pre-sale or on works in progress, the registration authority will, when registering the mortgage, record the details on the mortgage contract. If construction of a real property is completed during the term of a mortgage, the parties involved will re-register the mortgage of the real property after issue of the certificates evidencing the rights and ownership to the real estate.

The PRC Property Rights Law promulgated in March 2007 that became effective in October 2007 further widens the scope of assets that can be mortgaged, allowing for any asset associated with property rights to be mortgaged as collateral unless a specific prohibition under another law or regulation applies.

According to the PBOC Notice on Regulating Home Financing Business《關於規範住房金融業務的通知》promulgated in June 2001, all banks must comply with the following requirements before granting residential development loans, individual home mortgage loans and individual commercial property mortgage loans:

- Property development loans from banks may only be granted to real estate developers with development qualification and credit ratings in the higher categories. Such loans may be offered to residential projects with good market potential. While the borrowing enterprise's internal capital may not be less than 30% of the total investment required for the project, the project must have obtained the land use rights certificate, construction land planning permit, construction works planning permit and construction permit.
- In respect of the grant of individual home mortgage loans, the ratio between the loan amount and actual value of the collateral may never exceed 80%. Where an individual applies for a home purchase loan to buy a pre-sale property, the property must have achieved the stage of "topping-out of the main structure completed" for multi-storey buildings and "two-thirds of the total investment completed" for high-rise apartment buildings.
- In respect of the grant of individual commercial use building mortgage loans, the mortgage ratio for commercial use building mortgage loans may not exceed 60% with a maximum loan period of 10 years and the subject commercial use building already completed.

The down-payment requirement was subsequently increased to 30% of the property price for residential units with a unit floor area of 90 square meters or more in May 2006. The initial capital outlay requirement was subsequently increased to 35% by CBRC in August 2004 pursuant to its Guidance on Risk Management of Property Loans Granted by Commercial Banks《商業銀行房地產貸款風險管理指引》.

In a Circular on Facilitating the Continuously Healthy Development of Property Market《關於促進房地產市場持續健康發展的通知》issued by the State Council in August 2003, a series of measures were adopted by the government to control the property market. They included, among others, strengthening the construction and management of low-cost affordable houses, increasing the supply of ordinary commodity houses and controlling the construction of high-end commodity houses. Besides, the government also staged a series of measures on the lending for residential development, including, among others, improving the loan evaluation and lending process, improving the guarantee mechanism of individual home loans and strengthening the monitoring over property loans. It is expected that the circular will have a positive effect on the development of the PRC property market in the long run by facilitating a continuously healthy growth of the property market in China.

In September 2007, PBOC and CBRC promulgated a Circular on Strengthening the Management of Commercial Real Estate Credit Loans《關於加強商業性房地產信貸管理的通知》, with a supplement issued in December 2007. The circular aims to tighten the control over real-estate loans from commercial banks to prevent granting excessive credit. The measures include:

- for a first-time home owner, increasing the minimum amount of down payment to 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 square meters or more and the purchaser is buying the property as its own residence;
- for a second-time home buyer, increasing (i) the minimum amount of down payment to 40% of the purchase price of the underlying property and (ii) the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark one-year bank lending interest rate. If a member of a family (including the buyer, his/her spouse and their children under 18) has financed the purchase of a residential unit, any member of the family that buys another residential unit with bank loans will be regarded as a second-time home buyer;
- for a commercial property buyer, (i) requiring banks not to finance any purchase of pre-sold properties, (ii) increasing the minimum amount of down payment to 50% of the purchase price of the underlying property, (iii) increasing the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark one-year bank lending interest rate, (iv) limiting the terms of such bank loans to no more than 10 years, although the commercial banks are given certain flexibility based on its risk assessment;
- for a buyer of commercial/residential dual-purpose properties, increasing the minimum amount of down payment to 45% of the purchase price of the underlying property, with the other terms to be decided by reference to commercial properties; and
- prohibiting commercial banks from providing loans to real-estate developers who have been found by relevant government authorities to be hoarding land and properties.

In addition, commercial banks are also banned from providing loans to the projects that have less than 35% of capital funds (proprietary interests), or fail to obtain land use right certificates, construction land planning permits, construction works planning permits or construction permits. Commercial banks are also prohibited from accepting commercial premises that have been vacant for more than three years as collateral for loans. In principle, real-estate development loans provided by commercial banks should only be used for the projects where the commercial banks are located. Commercial banks may not provide loans to property developers to finance the payment of land premium.

In September 2010, PBOC and the CBRC jointly issued the Notice on Relevant Issues Regarding the Improvement of Differential Mortgage Loan Policies《關於完善差別化住房信貸政策有關問題的通知》,

which provides, among other things, that all property companies with records of being involved in abuse of land, changing the use of land, postponing the construction commencement or completion date, hoarding properties or other non-compliance will be restricted from obtaining bank loans for new projects or extension of credit facilities.

Real estate management

According to the Regulation on Property Management 《物業管理條例》 enacted by the State Council on June 8, 2003, effective September 1, 2003, and as amended on August 26, 2007, the government implements a qualification scheme system in monitoring the property service enterprises. Under the Measures for the Administration of Qualifications of Property Service Enterprises 《物業服務企業資質管理辦法》 promulgated by MOHURT in March 2004 and amended in November 2007, a property service enterprise must apply for assessment of its qualification by the relevant qualification approval authorities. An enterprise which passes such a qualification assessment will be issued a qualification certificate. No enterprise may engage in property service without completion of such qualification assessment conducted by the relevant government authorities with a qualification certificate obtained.

According to the above MOHURT measures, the qualification of a property service enterprise is classified into three classes. Property service enterprises with class one qualification may undertake various real estate management projects. Property service enterprises with class two qualification may undertake the property management business of residential projects of less than 300,000 square meters and the non-residential projects of less than 80,000 square meters. Property service enterprises with class three qualifications may undertake the property management business of residential projects of less than 200,000 square meters and non-residential projects under 50,000 square meters. MOHURT is responsible for the issuance and administration of class one qualification certificates. The MOHURT authorities at provincial level governments are responsible for the issuance and administration of class two qualification certificates. Designated MOHURT or similar authorities at lower governments are charged with the issuance and administration of class three qualification certificates.

Qualifications of property service enterprises are subject to inspections on an annual basis. Such annual inspections on the property service enterprises of varied classes of qualifications are conducted by the corresponding MOHURT authorities with jurisdiction of initial qualification examination and approval.

In accordance with the above-mentioned Regulation on Property Management and the Property Rights Law, owners in a property project may engage or dismiss its property management company with the consent of more than half of the owners who in the aggregate hold more than 50% of the total non-communal area of the project.

Insurance

There is no mandatory provision under the PRC laws, regulations and government rules which require a property developer to take out insurance policies for its real estate developments. According to the common practice of the property industry in China, construction companies are usually required to submit insurance proposals in the course of tendering and bidding for construction projects. Construction companies must pay for the insurance premium at their own costs and take out insurance to cover their liabilities, such as third party's liability risk, employer's liability risk, risk of nonperformance of contract in the course of construction and other kinds of risks associated with the construction and installation works throughout the construction period. The insurance coverage for all these risks will cease immediately after the completion and acceptance upon inspection of construction.

Environmental protection

The laws and regulations governing the environmental protection requirements for real estate development in China include the PRC Environmental Protection Law《中華人民共和國環境保護法》, the PRC Prevention and Control of Noise Pollution Law《中華人民共和國環境噪聲污染防治法》, the PRC Environmental Impact Assessment Law《中華人民共和國環境影響評價法》and the PRC Administrative Regulations on Environmental Protection for Development Projects《中華人民共和國建設項目環境保護管理條例》. Pursuant to these laws and regulations, depending on the impact of the project on the environment, an environmental impact report, an environmental impact analysis table or an environmental impact registration form must be submitted by a developer before the relevant authorities grant approval for the commencement of construction of the property development. In addition, upon completion of the property development, the relevant environmental authorities will also inspect the property to ensure compliance with the applicable environmental protection standards and regulations before the property can be delivered to the purchasers.

Foreign exchange controls

Under the PRC Foreign Currency Administration Rules《中華人民共和國外匯管理條例》 promulgated in 1996 and revised in 1997 and as amended in 2008 and various regulations issued by SAFE and other relevant PRC government authorities, Renminbi is convertible into other currencies for the purpose of current account items, such as trade related receipts and payments and the payment interest and dividend. The conversion of Renminbi into other currencies and remittance of the converted foreign currency outside China for the purpose of capital account items, such as direct equity investments, loans and repatriation of investment, requires the prior approval from SAFE or its local office. Payments for transactions that take place within China must be made in Renminbi. Unless otherwise approved, PRC companies may repatriate foreign currency payments received from abroad or retain the same abroad. Foreign-invested enterprises may retain foreign exchange in accounts with designated foreign exchange banks subject to a cap set by SAFE or its local office. Foreign exchange proceeds under the current accounts may be either retained or sold to a financial institution engaging in settlement and sale of foreign exchange pursuant to relevant rules and regulations of the State. For foreign exchange proceeds under the capital accounts, approval from SAFE is required for its retention or sale to a financial institution engaging in settlement and sale of foreign exchange, except where such approval is not required under the rules and regulations of the State.

In October 2005, SAFE issued a Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Reverse Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies《關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知》. According to the notice, a special purpose company refers to an offshore company established or indirectly controlled by PRC residents for the special purpose of carrying out financing of their assets or equity interest in PRC domestic enterprises. Prior to establishing or assuming control of a special purpose company, each PRC resident, whether a natural or legal person, must complete the overseas investment foreign exchange registration procedures with the relevant local SAFE branch. The notice applies retroactively. These PRC residents must also amend the registration with the relevant SAFE branch in the following circumstances: (1) the PRC residents have completed the injection of equity investment or assets of a domestic company into the special purpose company; (2) the overseas funding of the special purpose company has been completed; (3) there is a material change in the capital of the special purpose company. Under the rules, failure to comply with the foreign exchange registration procedures may result in restrictions being imposed on the foreign exchange activities of the violator, including restrictions on the payment of dividends and other distributions to its offshore parent company, and may also subject the violators to penalties under the PRC foreign exchange administration regulations.

In August 29, 2008, SAFE issued the Circular on the Relevant Operating Issues Concerning the Improvement of the Administration of the Payment and Settlement of Foreign Currency Capital of Foreign-Invested Enterprises《關於完善外商投資企業外匯資本金支付結匯管理有關業務操作問題的通知》, or Circular No. 142. Pursuant to Circular No. 142, a foreign-invested enterprise's Renminbi fund received from the settlement of its foreign currency capital must be used within the business scope as approved by the government authority that approved the establishment of such foreign-invested enterprise, and such Renminbi fund cannot be used for domestic equity investment unless it is otherwise provided for.

Mainland China taxation

Because we are not incorporated in mainland China, your investment in our shares is largely exempt from PRC tax laws, except as disclosed in the section entitled "Risk Factors – Risks Relating to Our Business – Our non-China entities may be classified as a "China tax resident enterprise" for China Corporate Income Tax purposes, which could result in unfavourable tax consequences to us and our Shareholders." But because a large portion of our business operations are in mainland China and we carry out these business operations through operating subsidiaries and joint ventures organized under the PRC law, our PRC operations and our operating subsidiaries and joint ventures in mainland China are subject to PRC tax laws and regulations, which indirectly affect your investment in our shares.

Dividends from our PRC operations

Under the PRC tax laws effective prior to January 1, 2008, dividends paid by our PRC subsidiaries or joint ventures to us were exempt from PRC income tax. However, pursuant to the PRC Enterprise Income Tax Law and its implementation rules that became effective on January 1, 2008, dividends payable by foreign invested enterprises, such as subsidiaries and joint ventures in China, to their foreign investors are subject to a withholding tax at a rate of 10% unless any lower treaty rate is applicable.

Under the PRC Enterprise Income Tax Law and its implementation rules, enterprises established under the laws of foreign jurisdictions but whose "de facto management body" is located in China are treated as "resident enterprises" for PRC tax purposes, and will be subject to PRC income tax on their worldwide income. For such PRC tax purposes, dividends from PRC subsidiaries to their foreign shareholders are excluded from such taxable worldwide income. Under the implementation rules of the PRC Enterprise Income Tax Law, "de facto management bodies" is defined as the bodies that have material and overall management control over the business, personnel, accounts and properties of an enterprise. Because this tax law is new and its implementation rules are newly issued, there is uncertainty as to how this new law and its implementation rules will be interpreted or implemented by relevant tax bureaus.

Our operations in mainland China

Our subsidiaries and joint ventures through which we conduct our business operations in mainland China are subject to PRC tax laws and regulations.

Deed Tax. Under the PRC Interim Regulation on Deed Tax《中華人民共和國契稅暫行條例》, a deed tax is chargeable to transferees of land use rights and/or ownership in real properties within the territory of mainland China. These taxable transfers include:

- grant of use right of state-owned land;
- sale, gift and exchange of land use rights, other than transfer of right to manage rural collective land; and
- sale, gift and exchange of real properties.

Deed tax rate is between 3% to 5% subject to determination by local governments at the provincial level in light of the local conditions. In October 2008, the Ministry of Finance and the State Administration of Taxation issued the Notice on the Adjustments to Taxation on Real Property Transactions《關於調整房地產交易環節稅收政策的通知》, pursuant to which, since November 1, 2008, the rate of deed tax has been reduced to 1% for a first-time home buyer of an ordinary residence with a unit floor area less than 90 square meters; individuals who sell or purchase residential properties are temporarily exempted from stamp duty and who sell residential properties are temporarily exempted from land value-added tax. However, the aforesaid preferential policy regarding deed tax has been replaced by the Notice on Adjustment of Preferential Policies Regarding Deed Tax and Individual Income Tax Incurred in Transfer of Real Property《關於調整房地產交易環節契稅個人所得稅優惠政策的通知》jointly promulgated by Ministry of Finance, the State Administration of Taxation and MOHURD on September 29, 2010, pursuant to which, in the case that an individual purchases an ordinary house which is the only house for the family (including the purchaser, the spouse and minor children), deed tax is reduced by half; in the case that an individual purchases an ordinary house with an GFA of 90 square meters or below which is the only house for the family, deed tax is levied at a rate of 1%.

Enterprise Income Tax. Prior to the PRC Enterprise Income Tax Law, or the EIT Law, and its implementation rules that became effective on January 1, 2008, our PRC subsidiaries and joint ventures were generally subject to a 33% corporate income tax. Under the PRC Enterprise Income Tax Law, effective from January 1, 2008, a unified enterprise income tax rate is set at 25% for both domestic enterprises and foreign-invested enterprises. The PRC Enterprise Income Tax Law and its implementation rules provide certain relief to enterprises that were established prior to March 16, 2007, including (1) continuously enjoying the preferential income tax rate during a five-year transition period if such enterprises are entitled to preferential income tax rate before the effectiveness of the PRC Enterprise Income Tax Law; (2) continuously enjoying the preferential income tax rate until its expiry if such enterprises are entitled to tax holidays for a fixed period under the relevant laws and regulations. However, where the preferential tax treatment has not commenced due to losses or accumulated loss not being fully offset, such preferential tax treatment shall be deemed to commence from January 1, 2008 and expire on December 31, 2013. In addition, dividends from PRC subsidiaries to their foreign shareholders will be subject to a withholding tax at a rate of 10% unless any lower treaty rate is applicable. However, under the PRC Enterprise Income Tax Law and its implementation rules, enterprises established under the laws of foreign jurisdictions but whose "de facto management body" is located in China are treated as "resident enterprises" for PRC tax purposes, and will be subject to PRC income tax on their worldwide income. Dividends from PRC subsidiaries to their foreign shareholders are excluded from such taxable worldwide income. Under the implementation rules of the PRC Enterprise Income Tax Law, "de facto management bodies" is defined as the bodies that have material and overall management control over the business, personnel, accounts and properties of an enterprise. Because this tax law is new and its implementation rules are newly issued, there is uncertainty as to how this new law and its implementation rules will be interpreted or implemented by relevant tax bureaus.

According to the Notice on the Prepayment of Enterprise Income Tax of the Real Estate Development Enterprises《關於房地產開發企業所得稅預繳問題的通知》issued by the State Taxation Bureau on January 1, 2008 and effective on April 1, 2008, where a real estate development enterprise prepays the corporate income tax by quarter (or month) according to the current actual profit, for the incomes generated from the advance sale prior to the completion of such development products as the dwelling houses, commercial houses and other buildings, fixtures, supporting establishments etc., which are developed and built by the real estate development enterprise, the tax prepayment thereof must be paid by calculating the estimated profit, which is calculated by quarter (or month) according to the preset estimated profit rate and incorporated into the total profit, and it must be readjusted according to the actual profit after the development products are completed and the tax costs are settled.

On March 6, 2009, State Taxation Bureau issued the Notice on the Measure Dealing with Income Tax of Enterprise Engaged in Real Estate Development 《房地產開發經營業務企業所得稅處理辦法》 effective on January 1, 2008, which specifically stipulates the rules regarding tax dealing cost of income, tax dealing of cost deduction, verification of calculated tax cost and tax dealing on certain item with respect to the real estate development enterprise according to the EIT Law and its implementation rules.

On May 12, 2010, State Taxation Bureau promulgated the Notice on the Confirmation of Completion Conditions for Development of Products by Property Development Enterprises《關於房地產開發企業開發產品完工條件確認問題的通知》, which provides that a property will be deemed as completed when its delivery procedures (including move-in procedures) have commenced or when the property is in fact put in use. Property developers must conduct the settlement of cost in time and calculate the amount of corporate income tax for the current year.

Business Tax. Under the PRC Interim Regulation on Business Tax《中華人民共和國營業稅暫行條例》of 1994, as amended in 2008, services in mainland China are subject to business tax. Taxable services include sale of real property in mainland China. Business tax rate is between 3% to 20% depending on the type of services provided. Sale of real properties and other improvements on the land attract a business tax at the rate of 5% of the turnover of the selling enterprise payable to the relevant local tax authorities.

On May 30, 2006, the State Administration of Taxation issued the Notice on Relevant Issues of Strengthening Administration of Collection of Real Estate Business Tax《關於加強住房營業稅徵收管理有關問題的通知》. According to the notice, from June 1, 2006, business tax will be imposed on the full amount of the sale income, upon the transfer of a residential house by an individual within five years from the purchase date. In the case of a residence other than an ordinary residence, business tax will be imposed on the difference between the sale income and the purchase price, provided that the transfer occurs after five years from the purchase date.

Land Appreciation Tax. Under the PRC Interim Regulation on Land Appreciation Tax《中華人民共和國土地增值稅暫行條例》of 1994, as amended in January 2011, and its implementation rules of 1995, LAT applies to both domestic and foreign investors in real properties in mainland China, irrespective of whether they are corporate entities or individuals. The tax is payable by a taxpayer on the appreciation value derived from the transfer of land use rights, buildings or other facilities on such land, after deducting the deductible items that include the following:

- payments made to acquire land use rights;
- costs and charges incurred in connection with the land development;
- construction costs and charges in the case of newly constructed buildings and facilities;
- assessed value in the case of old buildings and facilities;
- taxes paid or payable in connection with the transfer of the land use rights, buildings or other facilities on such land; and
- other items allowed by the Ministry of Finance.

The tax rate is progressive and ranges from 30% to 60% of the appreciation value as compared to the "deductible items" as follows:

Appreciation value	LAT rate
Portion not exceeding 50% of deductible items	30%
Portion over 50% but not more than 100% of deductible items	40%
Portion over 100% but not more than 200% of deductible items	50%
Portion over 200% of deductible items	60%

Exemption from LAT is available to the following cases:

- Taxpayers constructing ordinary residential properties for sale (i.e. the residences built in accordance with the local standard for residential properties used by the general population, excluding deluxe apartments, villas, resorts and other high-end premises), where the appreciation amount does not exceed 20% of the sum of deductible items;
- Real estate taken over and repossessed according to laws due to the construction requirements of the state; and
- Due to redeployment of work or improvement of living standard, transfers by individuals of originally self-used residential properties, with five years or longer of self-used residence and with tax authorities' approval.

According to a notice issued by the Ministry of Finance in January 1995, the LAT regulation does not apply to the following transfers of land use rights:

- real estate transfer contracts executed before January 1, 1994; and
- first time transfers of land use rights and/or premises and buildings during the five years commencing on January 1, 1994 if the land grant contracts were executed or the development projects were approved before January 1, 1994 and the capital has been injected for the development in compliance with the relevant regulations.

After the enactment of the LAT regulations and the implementation rules in 1994 and 1995, respectively, due to the long period of time typically required for real estate developments and their transfers, many jurisdictions, while implementing these regulations and rules, did not require real estate development enterprises to declare and pay the LAT as they did other taxes. Therefore, in order to assist the local tax authorities in the collection of LAT, the Ministry of Finance, State Administration of Taxation, Ministry of Construction and State Land Administration Bureau separately and jointly issued several notices to reiterate that, after the assignments are signed, the taxpayers should declare the tax to the local tax authorities where the real estate is located, and pay the LAT in accordance with the amount as calculated by the tax authority and within the time period as required. For those who fail to acquire proof as regards the tax paid or the tax exemption from the tax authorities, the real estate administration authority will not process the relevant title change procedures, and will not issue the property ownership certificates.

The State Administration of Taxation issued a further notice in July 2002 to require local tax authorities to require prepayment of LAT on basis of proceeds from pre-sale of real estate.

In December 2006, the State Administration of Taxation issued a Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises《關於房地產開發企業土地增值稅清算管理有關問題的通知》, which came into effect on February 1, 2007. The notice required settlement of LAT liabilities by real estate developers. Provincial tax authorities are given authority to formulate their implementation rules according to the notice and their local situation.

To further strengthen LAT collection, in May 2009, the State Administration of Taxation released the Rules on the Administration of the Settlement of Land Appreciation Tax《土地增值稅清算管理規程》, which come into force in June 1, 2009.

In May 2010, the State Administration of Taxation issued the Circular on Settlement of Land Appreciation Tax《關於土地增值稅清算有關問題的通知》to strengthen the settlement of LAT. The circular clarifies certain issues with respect to the calculation and settlement of LAT, such as (i) the recognition of the revenue upon the settlement of LAT; and (ii) the deduction of fees incurred in connection with the property development.

In May 2010, the State Administration of Taxation issued the Notice on Strengthening the Collection of Land Appreciation Tax《關於加強土地增值稅徵管工作的通知》, which requires that the minimum LAT prepayment rate shall be 2% for provinces in the eastern region of China, 1.5% for provinces in the central and northeastern regions, and 1% for provinces in the western region. According to the notice, the local tax bureaus shall determine the applicable LAT prepayment rates based on the property type.

Urban Land Use Tax. Pursuant to the PRC Interim Regulations on Land Use Tax in respect of Urban Land《中華人民共和國城鎮土地使用稅暫行條例》promulgated by the State Council in September 1988, the land use tax in respect of urban land is levied according to the area of relevant land. The annual tax on urban land was between RMB0.2 and RMB10 per square meter. An amendment by the State Council in December 2006 changed the annual tax rate to between RMB0.6 and RMB30 per square meter of urban land.

Buildings Tax. Under the PRC Interim Regulations on Buildings Tax《中華人民共和國房產稅暫行條例》promulgated by the State Council in September 1986, buildings tax applicable to domestic enterprises is 1.2% if it is calculated on the basis of the residual value of a building and 12% if it is calculated on the basis of the rental.

And according to the Notice on Issues Relating to Assessment of Buildings Tax against Foreign-invested Enterprises and Foreign Individuals《關於對外資企業及外籍個人徵收房產稅有關問題的通知》, the foreign-invested enterprises, foreign enterprises and foreign individuals are to be levied the same as domestic enterprise.

Stamp Duty. Under the PRC Interim Regulations on Stamp Duty《中華人民共和國印花稅暫行條例》promulgated by the State Council in August 1988, as amended in January 2011, for property transfer instruments, including those in respect of property ownership transfers, the duty rate is 0.05% of the amount stated therein; for permits and certificates relating to rights, including property ownership certificates and land use rights certificates, stamp duty is levied on an item-by-item basis of RMB5 per item.

Municipal Maintenance Tax. Under the PRC Interim Regulations on Municipal Maintenance Tax《中華人民共和國城市維護建設稅暫行條例》promulgated by the State Council in 1985, taxpayer, whether an individual or otherwise, of product tax, value-added tax or business tax are required to pay municipal maintenance tax calculated on the basis of product tax, value-added tax and business tax. The tax rate is 7% for a taxpayer whose domicile is in an urban area, 5% for a taxpayer whose domicile is in a county or a town, and 1% for a taxpayer whose domicile is not in any urban area or county or town.

Under the Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment and Foreign Enterprises issued by the State Administration of Taxation in February 1994, the municipal maintenance tax is not applicable to foreign invested enterprises for the time being, until further explicit stipulations are issued by the State Council.

In October 2010, the State Council issued the Notice on Unification of the Application of Municipal Maintenance Tax and Education Surcharge by Domestic and Foreign Enterprises and Individuals《關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知》, pursuant to which, from December 1, 2010, municipal maintenance tax is applicable to both foreign-invested enterprises, foreign enterprises and foreign individuals as well as domestic enterprises and individuals.

Pursuant to the Notice on Relevant Issues of Imposition of Municipal Maintenance and Education Surcharge on Foreign-invested Enterprises《關於對外資企業徵收城市維護建設稅和教育費附加有關問題的通知》promulgated by the Ministry of Finance and the State Administration of Taxation in November 2010, foreign-invested enterprises must pay municipal maintenance tax on any value-added tax, consumption tax and business tax incurred on or after December 1, 2010. However, foreign-invested enterprises will be exempted from municipal maintenance tax on any value-added tax, consumption tax and business tax incurred before December 1, 2010.

Education Surcharge. Under the Interim Provisions on Imposition of Education Surcharge《徵收教育費附加的暫行稅條例》promulgated by the State Council in April 1986 and amended in 1990 and in August 2005, any taxpayer, whether an individual or otherwise, of value-added tax, business tax or consumption tax is liable for an education surcharge, unless such taxpayer is required to pay a rural area education surcharge as provided by the Notice of the State Council on Raising Funds for Schools in Rural Areas. The Education Surcharge rate is 3% calculated on the basis of consumption tax, value-added tax and business tax. Under the Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment and Foreign Enterprises issued by the State Administration of Taxation in February 1994 and the Supplementary Circular Concerning Imposition of Education Surcharge issued by the State Council in October 1994, the education surcharge is not applicable to foreign invested enterprises the time being.

Pursuant to the aforesaid Unification of Application of Municipal Maintenance Tax and Education Surcharge by Domestic and Foreign Enterprises and Individuals《關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知》, from December 1, 2010 an education surcharge is applicable to both foreign-invested enterprises, foreign enterprises and foreign individuals as well as domestic enterprises and individuals.

Pursuant to the aforesaid Notice on Relevant Issues of Imposition of Municipal Maintenance and Education Surcharge on Foreign-invested Enterprises《關於對外資企業徵收城市維護建設稅和教育費附加有關問題的通知》, foreign-invested enterprises must pay an education surcharge on any value-added tax, consumption tax and business tax incurred on or after December 1, 2010. However, foreign-invested enterprises will be exempted from paying an education surcharge on any value-added tax, consumption tax and business tax incurred before December 1, 2010.

Malaysia

The Malaysian land system

Land law in Malaysia is premised on the Torrens system of South Australia (also known as the System of Titles and Interests by Registration). However, the deed system still governs some lands in the state of Penang and Malacca. The National Land (Penang and Malacca Titles) Act 1963 was enacted to govern such lands and to convert the deed system in Penang and Malacca to the Torrens system used under the National Land Code 1965 ("NLC"). Land matters generally lie within the jurisdiction of state governments as provided for in the Federal Constitution (" Constitution")_but the Constitution specifically provides for federal legislation in such matters for the purposes of ensuring uniformity of law and policy in various aspects of land matters. Such powers of the Federal Constitution are not exercisable with regard to the States of Sabah and Sarawak. There are currently four primary pieces of legislation governing land law in Malaysia, namely:

(a) the NLC;

(b) the National Land Code (Penang & Malacca Titles) 1963;

(c) Sarawak Land Code (Cap 81); and

(d) Sabah Land Ordinance (Cap 68).

The operation of these statutes is supplemented by the various subsidiary legislation such as the various state land enactments and ordinances in force in the respective States in Malaysia.

The National Land Code (Penang & Malacca Titles) Act 1963 makes provisions for the conversion of the system of registration of deeds (as opposed to the Torrens system of registration) practiced prior to 1966 to the Torrens system as provided for in the NLC. The structure of land in Sabah and Sarawak is similar to that provided for in the NLC.

Under the Sarawak Land Code, land is classified into:

(a) mixed zone land;

(b) native area land;

(c) interior area land;

(d) native customary land; and

(e) reserved land.

Under the Sabah Land Ordinance, land is divided into:

(a) crown land (consisting of Town and Country lands); and

(b) native land.

The NLC provides that such Code shall not (except where it is expressly provided to the contrary) affect the provisions of more specific statutes such as:

(a) any law relating to Malay reservations or Malay holdings;

(b) the Land (Group Settlement Areas) Act 1960;

(c) any law relating to mining;

(d) any law relating to sultanate lands;

(e) any law relating to wakaf (relating to the endowment of property for religious and/or other public purposes in accordance with Islamic teachings) or bait-ul-mal (an Islamic non-profit financial organization providing benefits to community members and organizations);

(f) any law relating to customary tenure;

(g) the Terengganu Settlement Enactment 1356;

(h) the Padi Cultivators (Control Rent and Security of Tenure) Ordinance 1955; and

(i) the Kelantan Land Settlement Ordinance 1955.

Powers of the State Authority

The State Authority is vested with the entire property in all State lands.

The State Authority refers to the Ruler or Governor of the State, as the case may be and “state land” refers to all land in the state other than land that has already been alienated or reserved (whether as forest or otherwise) or mining land.

In relation to State land, the State has the power to:

(a) alienate land;

(b) grant leases of reserve land for a specific purpose not exceeding 21 years;

(c) permit temporary occupation of land;

(d) permit the extraction and removal of rock material from land;

(e) permit the use of air space on or above land; and

(f) dispose of underground land.

Of the various methods of disposal of land, the power to alienate is the most common.

According to the NLC, the State has power to alienate land for either:

(a) a term not exceeding 99 years (commonly referred to as leasehold); or

(b) in perpetuity (commonly referred to as freehold).

The alienation of land by the State is subject to certain conditions such as:

(a) payment of annual rent;

(b) payment of premium (this is subject to exemption by the State Authority);

(c) category of land use; and

(d) restrictions in interest which may be imposed by the State Authority.

Alienated land that is subject to leasehold interests shall upon the expiry of the lease revert to the State. However, it is possible to extend the leasehold interest by applying for an extension of the leasehold period and paying a premium to the State.

Land use

Land use under the Malaysian Torrens system may be subject to restrictions and conditions imposed by the State Authority. These conditions serve as a means for control of land use. Specific conditions may relate to the categories of land use. Land in Malaysia is divided into three general categories of land use, namely agricultural, industrial and building. Each category of land use is subject to implied conditions. Failure to comply with express or implied conditions of land use may result in the forfeiture of land by the State. Where lands are alienated pursuant to the NLC, such category of land use shall be endorsed on the document of title when any land is alienated by the State Authority. However, the State Authority may, on approving the alienation of any land, direct that no category of land use be endorsed on the document of title if the State Authority is satisfied that the use thereof could be more appropriately controlled by imposition of express conditions. The proprietor of any alienated land may apply to the State Authority for the alteration of any category of land use to which the land is for the time being subject, or where it is not so subject, for the imposition of any category. In addition to general categories of land use, titles to land may also specify specific uses of the land. In the case of agricultural land, the land titles may specify that the land is to be cultivated with a particular crop. Non-compliance with conditions of title may result in the forfeiture of land.

Dealings in land

Lands alienated by the State may be transferred, leased and charged. Easements (commonly known as "rights of way") may also be created on such lands. However, restrictions on transfers may be imposed, such as in cases where the transfer involves estate land to two or more persons without the prior approval of the Estate Land Board. The rationale for this is to discourage the fragmentation of estate lands. The NLC governs the dealings in land and interest in land (which in the context of the NLC includes a registered lease, charge or easement as well as a statutory lien or a tenancy exempt from registration created in respect thereof).

Dealings under the NLC may be divided into:

- dealings capable of registration which are transfers, charges, leases and easements; and
- dealings not capable of registration which are tenancies exempt from registration and statutory liens which are protected by way of an endorsement and the entry of a lien-holder's caveat.

Under the NLC, no instrument effecting any dealing with respect to alienated lands and interests will be effective to transfer the title or interest to any person until it has been duly registered. Under Malaysian laws, a person is only deemed a legal owner of a real property when the title or interest in the real property is duly registered in his/her name.

Indefeasibility of Title

Upon registration, the party in whose favor the registration has been effected will obtain an indefeasible title to or interest in the land (Section 340(1) of the NLC), that is, a title or interest which is free of all adverse claims or encumbrances that is not noted on the register. Section 340(1) of the NLC provides immunity to a legal owner against any adverse claim to his/her land where his/her title or interest is duly registered.

Such immunity against adverse claim, however, not absolute, and can be defeated under certain circumstances including. fraud or forgery, or where the registered title or interest is obtained by the use of an insufficient or void instrument or where the title or interest is unlawfully acquired. If any of the exceptions to the right to immunity exists, a registered title or interest may be set aside or defeated by one with a superior claim.

Leases and tenancies

The NLC distinguishes tenancies from leases. Tenancies may be granted for terms not exceeding three years. There is no registration requirement for tenancies under the NLC. Interests of a tenant under a tenancy exempt from registration can be protected by way of an endorsement on the document of title to the land. The proprietor of any alienated land (whether freehold or leasehold) may grant leases of the whole or any part thereof. A lease granted must be more than three years and

- up to 99 years if it relates to the whole of the land; or
- up to 30 years if it relates to a part only thereof.

The lease granted is required to be registered with the relevant Land Registry/Office in order to vest in the lessee the lease. Any lease which is not registered will not be able to vest in the lessee any interest in respect of the lease.

Restraints on dealings

There may be restraints on dealings where the land in question involves Malay reserved land, customary land or native land. The Malay Reservation Enactments of the respective states seek to secure the Malays' interest in such land by generally prohibiting the disposition of such land by the State and prohibiting private dealings in Malay reserved land. Any disposal, dealing or attempt to dispose of or deal in Malay reserved land in contravention of the respective enactments will be rendered null and void and no action for breach of contract shall be maintained in respect of such disposal or dealing. The prohibition imposed by the Malay Reserve Enactments of the respective states can be classified as a prohibition against disposition by the States and against private dealings.

The present Malay Reservation legislation in the Malay states (namely, Kedah, Perlis, Kelantan, Terengganu and Johor) has adopted the policy of providing for exceptions to the prohibition by permitting alienation and dealings in favor of certain specified persons and bodies with the approval of the Ruler of the State in Council of the respective states. In the same manner, customary land (in the state of Malacca) shall only be transferred, charged, leased or transmitted to a Malay. With regard to native land in Sabah and Sarawak, dealings in respect of the same are prohibited except in the circumstances provided for in the Sabah Land Ordinance and the Sarawak Land Code.

Restrictions in interest

Restrictions in interest are limitations expressly endorsed on the document of title to the property which limits the powers of the property owner to deal with the property. An example of a restriction is such as

the property owner is not being permitted to sell, transfer and charge the property in favor of any third party without consent of the State Authority of the relevant state. Restrictions in interest imposed on the document of title will run with the property. This means that the restrictions bind not only the present owner but also all future owners of the property. In the case of a strata title property, where the restriction in interest has been endorsed on the master title, the restrictions apply to the beneficial owner as well, even though the strata title may not have been issued.

Private caveats

Under the NLC, where a person has a claim to a title or any registrable interest in any alienated land, he may lodge a private caveat to protect his interest. Once a private caveat is lodged, the registered proprietor may not register or endorse any dealing on his title without first removing the private caveat or first obtaining the consent in writing of the person who lodged the caveat. A proprietor (or any aggrieved person or body) may apply to the Registrar of Titles/Land Administrator or the courts for the removal of the private caveat. A private caveat, if not earlier withdrawn or removed by the Registrar of Titles/Land Administrator or the court, will expire six years from the time of entry. A non-citizen or foreign company is required to obtain the prior approval of the State Authority before lodging a private caveat. However, the private caveat will not be able to prevent the registration or endorsement of a dealing by the registered proprietor if the application for registration/endorsement of the dealing was made before entry of the private caveat.

Charge over land

In Malaysia, it is common for financiers to take a security (such as a charge) over properties (including land) of the borrower for the financing provided. A charge over land takes effect upon registration so as to render the land or lease in question liable as security. A chargee is required to comply with the NLC when enforcing the charge. Where the chargee enforces the charge by way of sale of the land or lease, the chargee is required, amongst others, to serve a default notice in the form as prescribed by the NLC and apply to the court (for registry titles) or the Land Administrator (for land office titles) for an order for sale.

Buying and selling of real property

In practice, in Malaysia, real property may be sold or purchased with or without separate documents of title. The transfer of property with separate documents of title is effected by registration of an instrument of transfer in a format prescribed under the NLC at the relevant Land Registry/Office. In the case of property without separate documents of title, transfer of the property is made by way of a legal assignment of all the rights, interest and title in respect of the property under the principal sale and purchase agreement (made between the original proprietor and/or the developer (as the seller) and the first purchaser) in favor of a new purchaser.

Strata Property

Sub-division of land

The Strata Titles Act [1985] ("STA") governs the sub-division of land and buildings into parcels and the disposition of titles in relation to the same. Under the STA, it is compulsory for an owner of a building which has sold or agreed to sell any parcel comprised in his building to any person, to apply for individual strata title to the parcel within the certain period stipulated in the STA.

Management Corporation

Under Section 39 of the STA, a management corporation is established upon issuance of the strata titles. The management corporation is an artificially controlled by all parcel owners. Upon its establishment, the management corporation is responsible for the maintenance and management of common areas such as

open spaces, lifts, corridors and communities facilities other than the lot comprised in any parcels or units. A management corporation may only act or make decisions:

- through its members at a general meeting;
- through its council members; or
- by appointing and delegating to an administrator the power to make decisions on various matters.

In the latter two cases, the decisions when made will be binding on the management corporation as if passed by valid resolution at a general meeting.

The STA provides for meetings to be held periodically. There are three types of meeting provided under the STA, namely, the first annual general meeting, the annual general meetings and the extraordinary general meetings. The first annual general meeting is for the purpose of, among other things, to confirm or vary the amounts of contributions to the management fund, to determine the members of the council, to elect the council and to decide whether to amend the additional by-laws in force immediately before the holding of the meeting. Annual general meetings are required to be held by a management corporation annually for the consideration of accounts, election of council members and the transaction of such other business as may arise whereas extra ordinary meetings are held by the council of the management corporation upon request by the parcel owners or commissioner of buildings or when the council deems appropriate.

At general meetings, each parcel owner will have one vote on a show of hands and on a poll will have such number of votes as that corresponding with the number of share units attached to his parcel. A co-proprietor may vote by means of a jointly appointed proxy. Purchasers of parcels who have paid the full purchase price but whose titles to their respective parcels are still registered in the name of their vendors, have no voting rights.

The STA provides that every parcel will have a share value approved by the relevant authority and expressed in whole numbers to be known as share units. Generally, the share units are allotted to the parcels based on the areas at the parcels. The share units of a parcel owner are of considerable importance as they determine, among other things, the following:

(a) voting rights of the parcel owner on a poll;

(b) the quantum of the undivided share of each parcel owner in the common areas;

(c) the proportion of the contribution payable by each parcel owner to the management fund;

(d) a parcel owner's liability for the discharge of debts of the management corporation lawfully incurred in the exercise of it power or the carrying out of its duties or obligations.

By regulating the voting rights of a parcel owner, the share units essentially determine the part played by a parcel in the administration of the strata scheme. The voting rights can be material in matters requiring a special resolution and where a poll is demanded.

The fact that a parcel owner's undivided share in the common areas is determined by the share units may not have much significance in relation to the use and enjoyment of the common areas but it will be relevant when profits resulting from transactions involving the common areas are distributed, such as where part of the common areas are leased. It will also determine a parcel owner's undivided share in the land or in the proceeds of a sale of the land as well as his share in any surplus funds of the management corporation on termination of the strata scheme.

In practice, the most significant function of the share units is that it determines a parcel owner's contribution to maintenance and administrative expenses and his proportional debts of the management corporation.

Joint Management Body

Prior to the establishment of the management corporation, a joint management body must be established under the Building and Common Property (Maintenance and Management) Act 2007 ("BCPA") to maintain and manage the common areas. The joint management body, which consists of the developer and parcel owners, must be formed upon the convening of the first meeting no later than 12 months from the date of delivery of vacant possession of the parcels to the owners. The joint management body is required to elect a joint management committee at a general meeting to perform the duties of the joint management body and to exercise the powers of the joint management body under the BCPA. The joint management committee consists of one representative of the developer and not less than five but not more than 12 owners. As in the case of the management corporation, there are three types of meetings namely, the first annual general meeting, the annual general meetings and the extraordinary general meetings. At the first general meeting, each purchaser of a parcel who has paid his maintenance charges to a building management account is entitled to vote by show of hands. The joint purchasers will only be entitled to vote by appointing a proxy. The BCPA does not provide for voting on poll. Therefore, each parcel owner is only entitled to one vote regardless of the share units allotted to his parcel. Except for the first general meeting, there is no provision in the BCPA which governs the manner in which the parcel owners and developer exercise their voting rights in the subsequent annual general meetings and the extraordinary general meetings. As such, all the parcel owners and the developer will have to mutually agree on their voting rights in the said meetings. Such uncertainty, in turn, may result in certain parcel owners not being able to exercise control in respect of their contribution to maintenance and administrative expenses despite their parcels being allotted with higher share units. The joint management body will be deemed to be dissolved three months from the date of the first meeting of the management corporation.

Acquisition of property by a non-Malaysian citizen or a foreign company

The NLC

Under Section 433B of the NLC, a non-Malaysian citizen or foreign company is not allowed to acquire any land (other than industrial land) in Peninsular Malaysia except Sabah and Sarawak unless prior approval of the state authority has been obtained. Under the NLC, a foreign company means:

(a) a company, corporation, society, association, or other body incorporated outside Malaysia;

(b) an unincorporated society, association, or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia;

(c) a company incorporated under the Act with 50.0% or more of its voting shares held by a non-Malaysian citizen, or by a foreign company referred to in paragraph (a), or by both, at the time of the proposed acquisition of any land or any interest in land or at the time of the execution of the instrument or deed in respect of any alienated land or any interest therein, as the case may be; or

(d) a company incorporated under the Act with 50.0% or more of its voting shares held by a company referred to in paragraph (b), or by a company referred to in paragraph (a), at the time of the proposed acquisition of any land or any interest in land or at the time of the execution of the instrument or deed in respect of any alienated land or any interest therein, as the case may be.

Guidelines on acquisition of properties

Before June 30, 2009, acquisition of real properties (e.g. land, land with building, commercial unit or residential unit) in Malaysia by a non-Malaysian citizen or foreign company is subject to the Guidelines on the Acquisition of Properties by Local and Foreign Interest issued by the Economic Planning Unit, Prime Minister's Department ("FIC Guideline") and requires the approval of the Foreign Investment Committee of the Prime Minister's Department ("FIC"), although some exemptions may apply. Under the

FIC Guideline, foreign persons and entities are allowed to acquire industrial property, e.g. industrial land, factory or factory lot, without any price limit but this must be registered under a locally incorporated company subject to equity conditions on the company. The usual condition imposed by the FIC is that the company must have at least 30% Bumiputera[24] equity participation.

The FIC Guideline has been repealed on June 30, 2009 following the announcement made by YAB Prime Minister of Malaysia. Following the repeal of the FIC Guideline, the 30% Bumiputera equity condition imposed in the FIC Guideline is no longer applicable. The condition imposed earlier on by FIC pursuant to any approval granted is deemed waived automatically upon the announcement by YAB Prime Minister.

The abolishment of the 30% Bumiputera equity condition pertains to the ownership at the company level but does not apply to transactions involving Bumiputera interests[25] and/or Government agencies in the ownership of real properties or companies that hold real properties. The new policy of the Malaysian Government is now enshrined in the Guideline on Acquisition of Properties ("New Guideline") issued by the Economic Planning Unit of the Prime Minister Department ("EPU"). Under the New Guideline, the following property acquisition transactions, except for residential units, shall require approval of EPU:

(1) direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or government agency; and

(2) indirect acquisition of property by other than Bumiputera interest through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or government agency, having property more than 50 percent of its total assets, and the said property is valued more than RM20 million.

Japan

The land system

The Civil Code of Japan governs real property rights. Japanese law recognizes a number of interests in land. In particular, Japanese law allows for separate ownership (Shoyuuken) of a piece of land and the building thereon. The Chijou-ken (Superficies) is an interest in land that permits the holder to use all or a part of another person's land to build structures, underground installations, or plant trees. In general, the Chinshaku-ken (Leasehold) is a contractual interest that permits the holder to use the leased asset in return for payment of rent. A leasehold interest that qualifies for mandatory statutory protection under the Land Lease and Building Lease Law, however, gains legal rights that are similar to in rem interests. By way of such statutory protection, a substantial part of the tenants of a leased building and the owners of a building on leased land may perfect leasehold interest against a third party. The Chieki-ken (Easement) is an in rem interest that permits the holder of the land to use another person's land for the benefit of the holder, such as a right to access the land.

Documents of title

Title to real estate in Japan, whether title to land, a building, or a unit interest in a condominium unit, is evidenced by registration in the real estate register maintained by the regional Legal Affairs Bureau, subordinate to the Ministry of Justice. The register is publicly available for inspection and includes the

[24] "Bumiputera" means persons of Malay race or from the aboriginal or indigenous tribes in Malaysia as defined in the Constitution of Malaysia.

[25] "Bumiputera interest" means any interest, associated group of interest or parties acting in concert, which comprises:

(i) Bumiputera individual; and/or

(ii) Bumiputera institution and trust agency; and/or

(iii) Local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50.0% of the voting rights in that local company or local institution.

aforementioned interest in land. Registration is neither conclusive evidence of title, nor is it compulsory to possess and occupy the land, but registration is required to perfect the title to real estate against third parties. For each parcel of real estate, the public register sets out a description of the property and its ownership, including the name of the owner, the date acquired, the cause of acquisition and information on previous registered title owners. If any attachment or injunction has been issued regarding a parcel of real estate, such information is also recorded.

Transfer of ownership in properties

Transfer of ownership in real estate becomes legally binding upon the valid acceptance of an offer for sale. Unless otherwise agreed upon, the sale is legally binding upon execution of the sale contract, although, in usual commercial real estate transactions, certain closing conditions and the closing date are provided in the sale contract. While registration is not a condition to the transfer of title, registration is required to perfect the transfer of title. Additionally, in order to reduce transaction tax costs, it is common in commercial real estate transactions for a seller to entrust the subject real property and to, thereafter, transfer the rights to the same in the form of a trust beneficiary interest to a purchaser. A written consent from a trustee of the trust (usually a licensed trust bank) with a certified date stamp from a public notary is required in order to transfer the trust beneficiary interest and to perfect the transfer.

Mortgage of properties

Mortgages on land or buildings are governed by the Civil Code of Japan, and a mortgagee may execute a mortgage if a debtor defaults on his repayment of the loan. Mortgage registration operates in a manner similar to other real estate interests, in that the mortgage must be reflected on the real estate register maintained by the local Legal Affairs Bureau as a registered mortgage in order for the security interest to be asserted against third parties. Where a transaction is accomplished by way of an acquisition of real estate trust beneficiary interests instead of the underlying real property itself, a pledge is created over the real estate trust beneficiary interests for the benefit of secured lenders, and such pledge is perfected by way of written consent of the trustee (with a certified date stamp from a public notary) and such pledge is not registered on the real estate register.

Leasing and management of properties

Japanese rental of buildings, in general, is governed by the Civil Code of Japan. Furthermore, the Land Lease and Building Lease Law provides exceptional rules to protect lessees. Lease agreements usually prohibit the tenant from assigning the lease or sub-leasing without the consent of the landlord. However, lease agreements usually do not prohibit the change of control of the tenant or the lessor. There are two types of building leases under these rules:

Futsu Shakuya (Standard Building Lease)

The standard building lease contains no restriction as to the lease term, but any lease term of less than one year is deemed to have been entered into for an indefinite term. The most important aspect of a standard building lease is that it is automatically renewed, or deemed renewed on continuous use following expiry automatically, unless the landlord objects in a timely manner and is able to show "justifiable reason" for non-renewal, a standard difficult to satisfy.

Teiki Shakuya (Fixed-term Building lease)

A fixed-term lease is a relatively new type of lease (enacted in 2000) that is distinct in that automatic renewal will not apply if all the following factors are met: (i) the lease is in writing; (ii) the lease provides for a definite term; (iii) the lease provides that there is no renewal; and (iv) the tenant has received prior written explanation of non-renewal before executing the lease. The lease subsequently terminates upon notice of termination given at least six months before, but no more than one year before, the expiry date. If notice is given following such notice period, the lease terminates on the lapse of six-months from such notice.

Vehicle for property ownership

Tokutei Mokuteki Kaisha

Various legal entities are used in real property transactions in Japan. Incorporated entities, such as kabushiki kaisha, godo kaisha and tokutei mokuteki kaisha ("TMK"), all of which provide limited liability to their shareholders, are common. TMK, a special purpose company established under the Law concerning Asset Liquidation, is entitled to reduced tax rates (upon acquisition of a real property) provided certain criteria are met. TMK can also constitute a tax pass-through entity (although only with respect to profits), if certain criteria are satisfied. The TMK arrangement is preferred by foreign investors because it is believed that the Japanese tax authorities are less likely to challenge the legitimacy of the TMK's pass-through tax treatment, compared with a tokumei kumiai scheme, another typical tax pass-through investment scheme in Japan. Incorporation of a TMK is not difficult and is not materially different from the incorporation of the more standard forms of companies. However, in the case of a TMK, an asset liquidation plan must be submitted to the relevant Local Finance Bureau of the Financial Services Agency. Shares in a TMK are equity interests in such TMK, and therefore, once the value of real properties owned by the TMK is decreased or damaged, it is possible that shareholders of the TMK will not receive dividend on their shares or return of their original capital investments from the TMK. Additionally, in a non-recourse loan transaction, a lender usually requests shareholders or other ultimate equity inventor(s) of a TMK, as a sponsor to the TMK, submit a sponsor letter to the lender. Typically, in case of knowing misrepresentation, fraud, or such other "bad boy acts" of the TMK, the sponsor is required to indemnify the lender against damage caused by such acts, although the scope and coverage of a sponsor's indemnification under a sponsor letter depends on the deal.

Regulatory issues

Financial Instruments and Exchange Law

With certain provisions of the Financial Instruments and Exchange Law (a new securities law, "FIEL") regulating asset managers of real estate investments, asset managers are subject to various regulations under FIEL (e.g. fiduciary duty, duty of care, prohibition from indemnifying client's loss, asset managers must submit explanatory letters to their non-professional (ippan toshika) clients before, and at the time of, the execution of asset management agreements). Such asset managers are now required to register as financial instrument transaction operators. Asset managers providing asset management services for real estate securitization transactions will typically obtain (i) either a (a) discretionary investment management (toshi un-yo gyo) registration or (b) a non-discretionary investment advisory (toshi jogen gyo) registration, and (ii) if its customer (i.e. a special purpose company holding a real property) purchases and sells real property in the form of a trust beneficiary interest, a second class financial instruments transaction operator (dai nishu kin-yu shohin torihiki gyo) registration.

Real Estate Brokerage Business Act

The mere leasing of real properties by itself will not trigger any licensing requirements. However, sales or purchases of real properties, or brokerages of sales, purchases or leases of real properties, as a business, will trigger licensing requirements under the Real Estate Brokerage Business Act. The master leasing business (i.e. the leasing of properties directly or indirectly through a trustee owner entrusted from specified purpose companies and sub-leasing the same properties to tenants) is generally considered not to trigger such licensing requirements, although there are another interpretations.

Money Lending Business Act

The mere making of a loan in Japan will not trigger any licensing requirements. However, a lender who repeatedly makes loans to residents of Japan or an asset manager who repeatedly makes loan arrangements for special purpose companies may be found to be engaging in the business of money-lending and, thus, would be required to register as a money-lending business operator. Although it is relatively rare for a regulatory office to penalize an asset manager who solely conducts loan arrangements for its own special purpose companies for lack of registration, an asset manager without such registration potentially faces the risk of breaching the Money Lending Business Law.

India

There are a series of Central and State laws that govern real estate in India. The principal Central statute governing real estate transactions is the Transfer of Property Act, 1882, as amended from time to time (the "TP Act"), which (subject to state adoptions) deals with transfer, conveyance, gifts, mortgage, leases, etc. of property. However, under the Constitution of India, states have the legislative and administrative jurisdiction in respect of lands falling within their jurisdictions. State legislation vary from state to state and there are differing laws relating to such matters as land ownership, land categories such as agricultural lands and non-agricultural lands, urban, municipal, industrial, residential, commercial and others, tenureship, land ceiling, land use, stamp duties, land revenue and consolidation of holdings. For example, the acquisition of land by a private entity is regulated by state land revenue codes and laws which prescribe limits up to which an entity may acquire agricultural land and similarly there are laws governing urban land ceiling as well (though urban land ceiling exists presently in a few states only). The transfer of agricultural land is subject to laws enacted by the appropriate state legislatures. Municipal authorities, town planning and zoning regulatory authorities also have jurisdiction over lands. Such authorities designate for the purposes of development, lands falling in their jurisdiction into various uses such as residential, industrial, commercial and others. These authorities also prescribe and control development norms, building plans and by-laws and the provision of infrastructure facilities for development. Lately, environmental issues and environment linked permissions, licenses and sanctions have become extremely important necessary preconditions to large-scale developments.

Provided below is a brief overview of the principal modes of acquiring rights, title and interest in respect of immovable property in India and the significant laws and regulations which govern real estate development in India.

Applicable laws and regulations may change, as can the interpretation of such laws and regulations by governmental authorities and courts. Although the laws and regulations governing our activities have been liberalized in recent years, there can be no assurance that the trend will continue or that laws and regulations will be interpreted in a manner favorable to foreign direct investment in Indian real estate.

Law relating to transfer of property

Indian laws classify property into movable and immovable. Immovable property is normally understood to include, among other things, land, buildings and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. Unless stated otherwise, references below to property are references to "immovable property."

Transfer of Property Act 1882 (the "TP Act")

The TP Act provides general principles of real estate, such as identifying categories of property that are capable of being transferred, persons competent to transfer property, the validity of restrictions and conditions on the creation of contingent and vested interest in the property, sale, exchange, mortgage, lease and gift of property, part-performance and *lis pendens*. The TP Act is based on the essential premise that a person who has invested in immovable property or has any share or interest in the property is presumed to have notice of the title above any other person in residence. The TP Act recognises, amongst others, the following forms in which an interest in an immovable property may be transferred

- Sales: the transfer of ownership in property for a price, paid or promised to be paid or part-paid and part-promised, as the case may be.
- Mortgages: the transfer of an interest in property for the purpose of securing the payment of a loan, existing or future debt, or performance of an engagement which gives rise to a pecuniary liability. The TP Act recognises several forms of mortgages over a property.
- Charges: transactions including the creation of security over property for payment of money to another which are not classifiable as a mortgage. Charges can be created either by an operation of law, for example, a decree of the court attaching specified immovable property, or by acts of the parties.
- Leases: the transfer of a right to enjoy property for a certain time period, expressly or implicitly, or for perpetuity for consideration paid or rendered periodically or on specified occasions. A detailed discussion on leases is provided below.

In addition to the above, the owner of property is entitled to enjoy or transfer the right to use or derive benefit from that property (the "usufruct"). A lessee of property may also enjoy the benefits arising out of land. The owner of immovable property may also create a right over the usufruct of that property by creation of a usufructory mortgage. Further, it may be noted that with regards to transfer of any interest in the property, the transferor transfers such interest, including any incidents, in the property, which he is capable of passing and under law, he cannot transfer a better title than what he possesses.

Co-ownership & joint ownership

The TP Act recognises co-ownership and joint ownership of property. One of the co-owners of a property may transfer its interest in the property and the transferee in such a case acquires the transferor's right to joint possession or other common or part enjoyment of the property. The transferee in such a case also acquires the right to enforce the partition of the property. If a co-owner's share in the property is ascertainable, it would be termed as co-ownership, in absence of which it will be termed as joint ownership. Further, the law also recognises joint possession by lessors.

Leasehold rights

As noted above, a lease creates a right in favour of the lessee to enjoy property that is subject to a lease. The term of the lease and the mode of termination of the lease can be determined by the parties.

Under the lease of a property, the lessee has a right of enjoyment of the property without interruption for a certain period or in perpetuity, provided that the lessee continues to pay the rent reserved by the lease agreement and performs other terms and conditions that are binding on the lessee. The reversionary rights are however vested in the owners.

Sub-leases or transfers of the interests or any part of such interests thereof held by a lessee to another person through various ways, such as mortgages of such interests are usually regulated by the terms of the underlying lease. Further, the TP Act stipulates that a lessee shall not erect any permanent structure on leased property without the consent of the lessor, except where such fixture is for an agricultural purpose.

The lessee is also bound to maintain the leasehold property in good condition, and use such property such as a person of ordinary prudence would use such property as his own.

The leasehold pattern of rights and interest in immovable property are also prevalent in respect of agricultural land holdings. In several state jurisdictions, the state government are owners of lands and private entities are lease holders, albeit in perpetuity.

Easements

The law relating to easements and licences in property is governed by the Indian Easements Act, 1882, as amended from time to time (the "Easements Act"). An easement is a right which the owner or occupier of land possesses over the land of another for beneficial enjoyment of his land. Such a right may allow the owner of the land to do and continue to do something or to prevent and continue to prevent something being done, in or upon land which is not his own. Easementary rights may be acquired or created by (i) an express grant; or (ii) a grant or reservation implied from a certain transfer of property; or (iii) by prescription, on account of long use, for a period of twenty years; or (iv) local custom.

Licences

Licences over property are governed principally by the Easements Act. Under the Easements Act, a licence is defined as an expressed or implied right to use property without any interest or easement created in favour of the licencee as opposed to a lease, which creates an interest in favour of the lessee. Therefore, a licencee does not have any juridical possession of the property but only an occupation. Unlike a lessee, a licencee does not have any interest in the property. The period and incident upon which a licence may be revoked may be provided in the licence agreement entered into between the licensor and the licencee.

Registration Act, 1908

The Indian Registration Act, 1908 (the "Registration Act") has been enacted with the object of providing public notice of the execution of documents affecting a transfer of interest in property. The purpose of the Registration Act is the conservation of evidence, assurances and title, as well as the publication of documents and prevention of fraud. The Registration Act identifies documents for which registration is compulsory and includes, among others, any non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish, whether presents or in the future, any right, title or interest, whether vested or contingent, in property of the value of ₹100.0 or more, and a lease of property for any term exceeding one year or reserving a yearly rent. A document will not affect the property comprised in it, nor be treated as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part performance under the TP Act or as collateral), unless it has been registered. Evidence of the registration is normally available through an inspection of the relevant land records, which usually contain details of the registered property. However, the mere registration of a document does not guarantee title to land.

Indian Stamp Act, 1899

Stamp duty is payable on instruments evidencing a transfer or creation or extinguishment of any right, title or interest in immovable property. The Indian Stamp Act, 1899, as amended from time to time ("Stamp Act") provides for the imposition of stamp duty at the specified rates on instruments listed in Schedule I of the Stamp Act. However, states have the power to prescribe the stamp duty rates for various instruments (leases, sale deed, mortgage deed, etc). Instruments chargeable to duty under the Stamp Act which are not duly stamped are incapable of being admitted in court as evidence of the transaction contained therein. The Stamp Act also provides for impounding of instruments and imposition of penalties, for instruments which are not sufficiently stamped or not stamped at all. Unduly stamped instruments can be validated by paying a penalty of up to 10 times of the total unpaid duty payable on such instruments.

Urban Land (Ceiling and Regulation) Act 1976

The Urban Land (Ceiling and Regulation) Act, 1976, as amended from time to time ("Land Ceiling Act") prescribes the limits up to which urban land may be acquired by individuals. Under this legislation, excess vacant land is required to be surrendered to a "Competent Authority" for a minimum level of compensation. Alternatively, the "Competent Authority" was empowered to allow the land to be developed for permitted purposes. The Government of India repealed this Act in relation to most areas with effect from January 11, 1999 by enacting the Urban Land (Ceiling and Regulation) Repeal Act, 1999. However, it is still in force in certain states including Assam, Bihar, Jharkhand and West Bengal. In states where the urban land ceiling law is still operative, there are restrictions on the purchase of lands in urban areas beyond the permissible limit.

Land Acquisition Act, 1894

The Government of India is empowered to acquire and take possession of any property upon the observance of the Land Acquisition Act, 1894, as amended from time to time (the "Land Acquisition Act"). Under the provisions of the Land Acquisition Act, land in any locality can be acquired compulsorily by the government whenever it appears to the government that it is needed or is likely to be needed for any public purpose or for use by a corporate body. The term "public purpose" in this regard has been defined to include, among other things, the provision of village sites, or the extension, planned development or improvement of existing village sites, the provision of land for town or rural planning, the provision of land for its planned development from public funds in pursuance of any scheme or policy of government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned, the provision of land for any other scheme of development sponsored by government, or, with the prior approval of the appropriate government, by a local authority and the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.

The Land Acquisition Act lays down the procedures which are required to be compulsorily followed by the Government of India or any of the state governments, during the process of acquisition of land under the Land Acquisition Act. The procedure for acquisition, as referred to in the Land Acquisition Act, can be summarised as follows:

- identification of land;
- notification of land;
- declaration of land;
- acquisition of land; and
- payment of compensation and ownership of land.

The Land Acquisition Act provides for vesting of the lands in the Government of India at the very first instance of notification when urgent provisions of the Land Acquisition Act are invoked.

Any person having an interest in such land has the right to object and the right to receive compensation. The value of compensation for the property acquired depends on several factors, which, among other things, include the market value of the land and damage sustained by the person in terms of loss of profits. An aggrieved person has the right to approach the courts in relation to the amount of compensation paid to him in lieu of any acquisition of his land by the Government of India until the point of time the declaration under the Land Acquisition Act is notified in the official Gazette.

Laws for classification of land user

Usually, land is publicly classified by the governmental authority under one or more categories, such as residential, commercial, agricultural, industrial and institutional etc. Land classified under a specified category is permitted to be used only for such purpose. In order to use land for any other purpose, the classification of the land may need to be changed in the appropriate land records by making an application to the relevant municipal or land revenue authorities.

In addition, some states in India have imposed various restrictions, which vary from state to state, on ownership and on the transfer of property within such states. Such restrictions provide for tenureship instead of absolute ownership, restrictions on the transfer of property, including among other things, a prohibition on the transfer of agricultural land to non-agriculturalists, a prohibition on the transfer of land to a person not domiciled in the concerned state and restrictions on the transfer of land in favour of a person not belonging to a certain tribe.

There are several authorities which have jurisdiction to regulate land use planning and real estate development activities in each Indian state. Though a single window mechanism is a preferred mode, there exist multiple windows and levels of such approving authorities which can result in delays in approvals.

Various enactments, rules and regulations have been made by the Government of India, concerned state governments and other authorised agencies and bodies such as the Ministry of Urban Development, State Land Development and/or Planning Boards, local municipal or village authorities, which deal with the acquisition, ownership, possession, development, zoning, planning, management and taxation of land and real estate. All relevant applicable laws, rules and regulations have to be taken into consideration by any person or entity proposing to enter into any real estate development or construction activity in this sector in India.

Development laws

The laws for the development of land may differ in each state. A license or approval for developing the land may be required as per the relevant local jurisdictional laws.

While granting licences for development of townships, the authorities generally levy development or other external development charges for the provision of peripheral services. Such licences require approvals of layout plans and building plans for construction and development activities. The licences are governed by relevant statues.

Urban land

State legislations provide for the planned development of urban areas and the establishment of regional and local development authorities charged with the responsibility of planning and development of urban areas within their jurisdiction. Real estate projects have to be planned and developed in conformity with the norms established by these laws and the regulations made thereunder and require sanctions from the government departments and developmental authorities at various stages. Building plans are required to be approved for each building within the project area. Clearances with respect to other aspects of development such as fire, civil aviation and pollution control are required from appropriate authorities, depending on the nature, size and height of the projects. The approvals granted by the authorities generally prescribe a time limit for completion of the projects. These time limits are renewable upon payment of a prescribed fee. The regulations provide for obtaining a completion/occupancy certificate upon completion of the project.

Agricultural land

The acquisition of land is regulated by state land reform and land revenue laws and code which prescribe limits up to which an entity may acquire agricultural land. Any transfer of land which results in the aggregate land holdings of the transferor or the acquirer in the state to exceed this ceiling is void, and the surplus land is deemed, from the date of the transfer, to have been vested in the state government free of all encumbrances.

The agricultural lands may be acquired by different entities for development. A conversion certificate may be obtained from the appropriate authority with respect to a change in use of the land from agricultural to non-agricultural. After and once a conversion certificate from the appropriate authority is obtained, with respect to a change in use of the land from agricultural to non-agricultural, the ceilings referred to above will not be applicable. The conversion of land from agricultural to non-agricultural is affected upon payment of conversion charges and other charges, which may vary from state to state and location to location. The transfer of agricultural land is subject to laws enacted by the appropriate state legislature.

Environment (Protection) Act, 1986

The real estate sector is subject to many central, state and local regulations designed to protect the environment. Among other things, these laws regulate the environmental impact of construction and development activities, emission of air pollutants and discharge of chemicals into surrounding water bodies. These various environmental laws give primary environmental oversight authority to the Ministry of Environment and Forest ("MoEF"), the Central Pollution Control Board ("CPCB") and the respective State Pollution Control Boards ("SPCB"). The MoEF is the key national regulatory agency responsible for policy formulation, planning and co-ordination of all issues related to environmental protection. The CPCB is the law enforcing body at the national level. It enforces environmental legislation, coordinates the activities of 'State Pollution Control Committees', establishes environmental standards and plans and executes a nationwide programme for the prevention, control and abatement of pollution.

With respect to forest conservation, the Forest (Conservation) Act, 1980, as amended from time to time, prevents state governments from making any order directing that any forest land be used for a non-forest purpose or that any forest land is assigned through lease or otherwise to any private person or corporation not owned or controlled by the government without the approval of the central government.

The MoEF mandates that "Environment Impact Assessments" ("EIA") must be conducted for projects. In the process, the MoEF receives proposals for the setting up of projects and assesses their impact on the environment before granting clearances to the projects. The Environment Impact Assessment Notification S.O. 1533, issued on September 14, 2006, as amended from time to time, (the "EIA Notification") under the provisions of Environment (Protection) Act 1986, as amended from time to time, prescribes the nature of projects which require prior Environmental Impact Assessment Clearance ("EIAC") from the State Level Environment Impact Assessment Authority ("SEIAA") based on recommendations of the State Environmental Appraisal Committee ("SEAC"). The schedule to the EIA Notification lays down the various activities and their threshold level for which the prior environmental clearance will be required.

The environmental clearance must be obtained from the SEIAA according to the procedure specified in the EIA Notification. No construction work, preliminary or other, relating to the setting up of a project can be undertaken until such clearance is obtained.

Under the EIA Notification, the environmental clearance process for new construction projects consists of two stages – screening and appraisal. The screening stage is done for determining whether or not the project or activity requires further environmental studies for preparation of an EIA for its appraisal. Appraisal means the detailed scrutiny by the SEAC of the application and other documents like the Final EIA Report and outcome of the public consultations including public hearing proceedings submitted by the applicant to the regulatory authority concerned with the grant of environmental clearance. This appraisal is made by SEAC which is required to give its decision within 105 days of the receipt of the Final EIA Report.

The EIA Notification also provides for the validity period of the EIAC depending upon the nature of the construction project. The project developer/manager concerned is required to submit a half yearly report to the Impact Assessment Agency to enable it to effectively monitor the implementation of the recommendations and conditions subject to which the environmental clearance has been given.

Building consents

Each state and city has its own set of laws, by-laws, master plans/zonal plans, which govern planned development and rules for construction (such as limits in relation to floor area ratio or floor space index ("FSI")). The various authorities that govern building activities in states include, *inter alia*, the "Town and Country Planning Department," municipal corporations and the "Urban Arts Commission." Any application for undertaking any construction or development activity has to be made to the Town and Country Planning Department, which is a state level department engaged in the physical planning of urban centres and rural areas in the state. Authorities such as the 'Town and Country Planning Department' prepare the schemes and projects of various different agencies so as to improve living and working environments and to provide planned and developed sites for residential, commercial and industrial purposes.

The municipal corporations regulate building development and construction norms. For example, building plans are required to be approved by the relevant municipal authority. The Urban Arts Commission advises the Government of India in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design in some states and also provides advice and guidance to any local body with respect to building or engineering operations or any development proposal which affects or is likely to affect the skyline or the aesthetic quality of the surroundings or any public amenity provided therein. Under certain state laws, the local body, before it accords its approval for building operations, engineering operations or development proposals, is obliged to refer all such operations to the "Urban Arts Commission" and seek its approval for the project.

Besides the above, certain consents and no objections may also be required from various other departments, such as the "Fire Department," the "Airport Authority of India," the "Archaeological Survey of India," the "Land Revenue Departments," "Forest Departments" etc. Obtaining all these approvals can be time consuming. Sometimes, there can be intervention by third parties through court action against land use change.

Modes of acquisition of interest and development rights in property

Due to the constraints under the laws prescribing a ceiling on the acquisition of land, a real estate development company ("REDC") may enter into a range of agreements in order to acquire interests in land. Brief details of the most common arrangements are provided below:

Agreements for acquisition of land

REDCs usually enter into agreements with third parties, which may be in the form of an agreement to sell or a memorandum of understanding, for the acquisition of land and pooling of land resources, for the purpose of the development of specified projects such as integrated townships. In case of memorandums of understandings as well as agreements to sell are expected to be followed by the execution of definitive agreements, such as sale and lease deeds. Under such agreements, the contracting parties agree to acquire land in certain areas selected by the REDC, which agrees to provide an interest-free fund to such contracting parties for meeting the costs of the acquisitions. Further, the contracting parties are required to pool the acquired land with the land owned by the REDC and deliver possession of the same to the REDC, for the purpose of developing the project. Typically, an REDC is free to develop the land at its absolute discretion and is also authorised to develop, market and sell the project at its own cost, risk and expense. Furthermore, at the time of execution of such agreements, an RECD is required to make a

payment of a portion of the total consideration of the land and final sale/ lease deeds are executed pursuant to the conduct of satisfactory due diligence and the obtainment of other relevant approvals and licenses and the payment of the balance consideration by the RECD.

Joint development agreements

Another mode of acquiring land used by REDCs is to enter into Joint Development Agreements ("JDAs") with the title holders of land (on which the real estate projects have been envisaged) for joint development or development by the REDCs, of the real estate projects. The JDAs may be in the form of a memorandum of understanding or a joint venture agreement (wherein the parties agree to undertake joint development of the project and their rights inter-se will be determined by the JDA). Typically, under the terms of a JDA, REDCs may be authorised to develop, construct, finance and market the project on the relevant land. The amounts to be paid for change of land use, other approvals, taxes and other statutory payments are usually equally shared by both parties. REDCs are generally entitled to an agreed share of the built up area, together with proportionate rights in the underlying land and common areas and facilities. In case either party does not propose to undertake the development of its portion of the land, the other party has a right to purchase such land upon payment of consideration to be mutually agreed by the parties.For the purpose of development and construction of the project, REDCs are required to comply with approved, building plans in relation to the project.

Public auctions and Government allotment

Various State governments undertake large real estate development projects, for the purposes of which bids satisfying certain eligibility criteria (such as technical and financial criteria) are invited. After evaluation of the bids submitted by the REDCs, the government through the various regional bodies and local development authorities, selects the most eligible REDC for the development of the project and undertakes to grant, certain rights for the purposes of a project such as a perpetual lease of the project land in favour of the REDC, subject to satisfaction of certain conditions. In the ordinary course, the governmental authority may grant such an undertaking in the form of a reservation-cum-allotment letter, the salient terms of which usually include among other things, the nature of allotment (lease, conveyance, etc.), the period of grant, the consideration for allotment and the payment schedule.

Foreign investment in Indian property

FDI in India

Foreign direct investment ("FDI") in India is governed by laws including the Foreign Exchange Management Act, 1999 ("FEMA") read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 and amendments thereto ("FEMA Regulations") and the regulations made by the Reserve Bank of India under the FEMA. Additionally, Circular 2 of 2010 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India ("DIPP") with effect from April 1, 2011, contains the consolidated policy for foreign direct investment in India ("Consolidated FDI Circular"). The Government of India proposes to update the Consolidated FDI Circular every six months, and, therefore, the Consolidated FDI Circular will be valid until an updated circular is issued on September 30, 2011. The Consolidated FDI Circular imposes certain conditions on investment in development of townships, housing, built-up infrastructure and construction development projects.

FDI is permitted (except in the prohibited sectors) in Indian companies either through the automatic route or the approval route, depending upon the sector in which FDI is sought to be made.

Under the automatic route, no prior Government of India approval is required for the issue of securities by Indian companies/acquisition of securities of Indian companies, subject to the sectoral caps and other

prescribed conditions. Such securities should be either equity instruments or instruments which are fully and mandatorily convertible into equity instruments within a specified time (such as compulsorily fully convertible debentures and fully compulsorily convertible preference shares). Further, foreign investments in the form of compulsorily convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed. Investors are required to file the required documentation with the Reserve Bank of India within 30 days of such issue/acquisition of securities.

However, if the foreign investor has any previous joint venture/tie-up or a technology transfer/trademark agreement in the "same field" in India as on January 12, 2005, prior approval from the Foreign Investment Promotion Board ("FIPB") is required even if that activity falls under the automatic route, except as otherwise provided.

Under the approval route, prior approval from the FIPB/RBI is required. FDI for the items/activities that cannot be brought in under the automatic route may be brought in through the approval route. Approvals are accorded on the recommendation of the FIPB, which is chaired by the Secretary, DIPP, with the Union Finance Secretary, Commerce Secretary and other key Secretaries of the Government of India as its members.

Acquisition of real estate by foreign nationals and the Immovable Property Regulations

Under section 6 (3) (i) of FEMA read with the applicable regulations promulgated under FEMA Regulations, the RBI may, by regulations, prohibit, restrict or regulate the acquisition or transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident outside India.

In pursuance of the above stated, the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 dated May 3, 2000 (as amended from time to time) ("Immovable Property Regulations") regulates the acquisition and transfer of immovable property in India.

Under the Immovable Property Regulations, no person resident outside India can acquire or transfer any immovable property in India, without the prior approval of the RBI, unless the same has been permitted under the FEMA or the Immovable Property Regulations. The Immovable Property Regulations provide certain restrictions on acquisition or transfer of immovable property by persons resident outside India. Acquisition or transfer of immovable properties not specifically permitted by the Immovable Property Regulations requires the prior permission of the RBI. The RBI may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.

FDI in real estate – Press Note 2 (2005)

Subsequent to March 3, 2005, foreign investment in development of townships, housing, built-up infrastructure and construction development projects including, among other things, commercial premises, hotels, resorts, hospitals and city and regional level infrastructure up to 100%, is permitted under the automatic route, where no approval of the FIPB is required, subject to certain conditions and policy guidelines notified through Press Note 2 (2005 Series) dated March 2, 2005 issued by the DIPP ("Press Note 2 (2005)"), which in summary are:

- a minimum area to be developed on land measuring 10.0 hectares in the case of serviced housing plots and 50,000 sq m in the case of construction development projects. Where the development is a combination of the two, the minimum area can be either 10.0 hectares or 50,000 sq m;
- a minimum capitalization of US$10.0 million for wholly owned subsidiaries and US$5.0 million for a joint venture with an Indian partner. The funds would have to be brought in within six months of commencement of business of the company;

- the original investment is not permitted to be repatriated before three years from completion of the minimum capitalization except with prior approval from the FIPB;
- at least 50.0% of the project is required to be developed within five years of obtaining all statutory clearances and the responsibility for obtaining such clearances rests with the foreign investor;
- further, the sale of undeveloped plots is prohibited. "Undeveloped plots" is defined as those plots where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It is necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body or service agency before he is allowed to dispose of serviced housing plots; and
- the project shall have to conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government municipal/ local body concerned.

It may be noted that the Government of India, through Press Note 2 (2006 Series) dated January 16, 2006 has clarified that the provisions of Press Note 2 (2005) as discussed aforesaid, shall not apply to establishment and operation of hotels and hospitals, which shall continue to be governed by Press Note 4 (2001 Series) dated May 21, 2001 and Press Note 2 (2000 Series) dated February 11, 2000, respectively.

Investment by FIIs

Foreign Institutional Investors ("FIIs") including institutions such as pension funds, mutual funds, investment trusts, insurance and reinsurance companies, international or multilateral organizations or their agencies, foreign governmental agencies, sovereign wealth funds, foreign central banks, asset management companies, investment managers or advisors, banks, trustees, endowment funds, university funds, foundation or charitable trusts or societies and institutional portfolio managers can invest in all the securities traded on the primary and secondary markets in India.

FIIs are required to obtain an initial registration from the Securities and Exchange Board of India ("SEBI") and a general permission from the RBI to engage in transactions regulated under the FEMA. FIIs must also comply with the provisions of the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, as amended from time to time ("FII Regulations"). The initial registration and the RBI's general permission together enable the registered FII to buy (subject to the ownership restrictions discussed below) and sell freely, securities issued by Indian companies, to realize capital gains or investments made through the initial amount invested in India, to subscribe or renounce rights issues for shares, to appoint a domestic custodian for custody of investments held and to repatriate the capital, capital gains, dividends, income received by way of interest and any compensation received towards sale or renunciation of rights issues of shares.

FIIs are permitted to purchase shares of an Indian company through public/private placement under:

(i) Regulation 5 (1) of the FEMA Regulations, subject to terms and conditions specified under Schedule 1 of the FEMA Regulations ("FDI Route").

(ii) Regulation 5 (2) of the FEMA Regulations, subject to terms and conditions specified under Schedule 2 of the FEMA Regulations ("PIS Route") and subject to the ceiling specified herein, provided that, in the case of a public offering, the price of the shares to be issued is not less than the price at which they are issued to Indian residents.

In case of investments under FDI Route, investments are made either directly to the company account, or through a foreign currency denominated account maintained by the FII with an authorised dealer, wherein Form FC-GPR is required to be filed by the company. Form FC-GPR is a filing requirement essentially for investments made by non-residents under the 'automatic route' or 'approval route' falling under Schedule 1 of the FEMA Regulations.

In case of investments under the PIS Route, investments are made through special non-resident Rupee account, wherein Form LEC (FII) is required to be filed by the designated bank of the FII concerned. Form LEC (FII) is essentially a filing requirement for FII investment (both in the primary as well as the secondary market) made through the PIS Route. The ceiling under the PIS Route is as follows: the total holding of each FII/SEBI approved sub-account of FII shall not exceed 10% of the total paid-up equity capital or 10% of the paid-up value of each series of convertible debentures issued by an Indian company and the total holding of all FII/sub-accounts of FIIs combined shall not exceed 24% of the paid-up equity share capital or paid up value of each series of convertible debentures. Pursuant to the RBI Master Circular on Foreign Investment dated July 1, 2011, any increase over the 24.00% limit requires the approval of the shareholders of the company as well as the RBI.

Foreign investment under the FDI Route is restricted/prohibited in sectors provided in part A and part B of Annexure A to Schedule 1 of the FEMA Regulations.

Ownership Restrictions of FIIs

The issue of securities to a single FII under the PIS Route should not exceed 10.0% of the issued and paid-up capital of the company. In respect of an FII investing in securities on behalf of its sub-accounts, the investment on behalf of each sub-account shall not exceed 10.0% of the total issued and paid-up capital. The aggregate FII holding in a company cannot exceed 24.0% of its total paid-up capital.

The said 24.0% limit can be increased up to sectoral cap/statutory ceiling applicable to the company by passing of a resolution by the board of directors followed by passing of a special resolution to that effect by the shareholders of the company. Subject to compliance with all applicable Indian laws, rules, regulations guidelines and approvals in terms of Regulation 15A(1) of the FII Regulations, an FII may issue, deal or hold, offshore derivative instruments such as "Participatory Notes," equity-linked notes or any other similar instruments against underlying securities listed or proposed to be listed on any stock exchange in India only in favour of those entities which are regulated by any relevant regulatory authorities in the countries of their incorporation or establishment subject to compliance of "know your client" requirements. An FII or their Sub-Account shall also ensure that no further downstream issue or transfer of any instrument referred to hereinabove is made to any person other than a regulated entity. FIIs and their Sub-Accounts are not allowed to issue offshore derivative instruments with underlying derivatives.

Calculation of Total Foreign Investment in Indian Companies

Pursuant to Press Note 2 (2009 Series), effective from February 13, 2009, issued by the DIPP ("Press Note 2") read with the clarificatory guidelines for downstream investment under Press Note 4 (2009 Series) dated February 25, 2009 issued by the DIPP ("Press Note 4," collectively with Press Note 2, the "Press Notes of 2009"), all investments made directly by a non-resident into an Indian company would be considered as foreign investment. The provisions of Press Notes of 2009 have been incorporated in the Consolidated FDI Policy.

Such foreign investments into an Indian company which is undertaking operations in various economic activities and sectors ("Operating Company") would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps. Foreign investments into an Indian company, being an Operating Company and making investments through equity, preference or compulsory convertible debentures in another Indian company ("Operating cum Investing Company") would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which such company is operating. Foreign investment into an Indian company making investments through equity, preference or compulsory convertible debentures in another Indian company ("Investing Company") will require the prior approval of the FIPB, regardless of the amount or extent of foreign investment. Further, foreign investment in an Indian company without any downstream investment and operations requires FIPB approval regardless of the amount or extent of foreign investment.

The Press Notes of 2009 further provide that foreign investment in an Investing Company would not be considered as 'foreign investment' if such Investing Company is 'owned and controlled' by resident Indian citizens and Indian companies, which are 'owned and controlled' by resident Indian citizens.

An Indian company would be considered to be 'owned' by resident Indian citizens and Indian companies, which are 'owned and controlled' by resident Indian citizens if more than 50.0% of the equity interest in it is beneficially owned by resident Indian citizens and Indian companies, which are owned and controlled ultimately by resident Indian citizens. Further, an Indian company would be considered to be "controlled" by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens if the power to appoint a majority of its directors vests with the resident Indian citizens and Indian companies, which are "owned and controlled' by resident Indian citizens.

Downstream investment by such Indian companies would not be considered towards indirect foreign investment, regardless of whether such companies are Operating Companies, Operating cum Investing companies, Investing Companies or Indian companies without any operations.

In case of Investing Companies which are either 'owned or controlled' by Non-Resident entities, only such investment made by such Investing Company would be considered as indirect foreign investment and not foreign investment in the Investing Company. However, if the Investing Company continues to be beneficially 'owned and controlled' by resident Indian citizens and Indian companies, which are 'owned and controlled' by resident Indian citizens, any further foreign investment by such Investing Company would not be considered as indirect foreign direct investment in the subject Indian company and would be outside the purview of Press Note 2.

As per applicable laws, a member of a company, whose name is entered in the register of members, is entitled to all beneficial interests in the shares of the said company. However, beneficial ownership would also mean holding of a beneficial interest in the shares of a company, while the shares are registered in someone else's name. In such cases, where beneficial ownership lies with someone else, the same can further be evidenced by Form 22B which needs to be filed with the Registrar of Companies by the company (upon receipt of declaration by the registered and beneficial owner regarding transfer of beneficial interest).

Press Note 4 clarifies that downstream investments by Indian companies are required to follow the same norms as a "direct" foreign investment as detailed below:

- In case of Operating cum Investing Companies, the subject Indian companies into which downstream investments are made are required to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- Similarly, in case of Investing Companies, the subject Indian companies into which downstream investments are made, are required to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
- In case of Indian companies without any downstream investment and operations, as and when such companies make any downstream investments and/or commence business, they must comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Press Note 4 further provides that foreign investment in an Indian company that does not have (i) any operations, and (ii) any downstream investments, will require the prior approval of the FIPB.

It may, however, be noted that in case of Indian companies which are wholly owned subsidiaries of Operating cum Investing Companies/Investing Companies, the entire foreign investment in the Operating cum Investment Companies/Investing Companies will be considered as indirect foreign investment.

Domestic lending to real estate developers

Although there are no restrictions on the real estate companies ability to undertake debt obligations from domestic institutions, the RBI has, in its circular dated March 1, 2006 (RBI/2005-06/310 DBOD.BP.BC. 65 /08.12.01/2005-06) cautioned all scheduled commercial banks to curb excessively risky lending to the real estate sector by exercising selectivity and strengthening the loan approval process. In view of the above, the RBI has advised the scheduled commercial banks in India ("SCBs") that while appraising loan proposals involving real estate, SCBs should ensure that the borrowers should have obtained prior permission from government, local governments or other statutory authorities for the relevant project, wherever required and that disbursements of such loans should be made only after such borrower has obtained such requisite permissions from the government, local governments or other statutory authorities for the relevant project, as the case may be.

Overseas lending to real estate developers

there are certain restrictions. External commercial borrowings ("ECB") are governed by the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations 2000, dated May 3, 2000, as amended from time to time and the guidelines issued by the RBI from time to time (collectively "ECB Guidelines"). The current ECB guidelines have been consolidated within the Master Circular dated July 1, 2010 (RBI/2010-11/8 Master Circular No. 08/2010-11). The ECB Guidelines refer to "commercial loans," in the form of bank loans, buyers' credit, suppliers' credit, securitised instruments (e.g. floating rate notes and fixed rate bonds) availed of from non-resident lenders with a minimum average maturity of three years.

In terms of the ECB Guidelines, end-utilisation of ECB proceeds is not permitted in the real estate sector. In furtherance of the RBI/2008-09/343 A.P. (DIR Series) Circular No. 46 dated January 2, 2009 issued by the RBI, the term 'real estate' excludes the development of integrated townships (as defined under Press Note 3 (2002 Series) dated January 4, 2002). For the purposes of the ECB Guidelines, "integrated township" includes housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and the manufacture of building materials. Development of land and providing allied infrastructure forms an integrated part of the township's development. The minimum area to be developed should be 100.0 acres for which norms and standards are to be followed as per local bylaws and rules. In the absence of such bylaws and rules, a minimum of 2,000 dwelling units per approximately 10,000 of population will need to be developed. Further, the investing foreign company should achieve clear milestones once its proposal has been approved, and the minimum capitalisation norm shall be US$10 million for a wholly owned subsidiary and US$5 million for joint ventures with Indian partner/s subject to the funds being brought in upfront.

Declaration of dividends

Under the provisions of the (Indian) Companies Act, 1956, as amended from time to time ("Indian Companies Act") a company pays dividends upon recommendation by its board of directors and approval by a majority of the shareholders at the general meeting of shareholders. Dividends are generally declared as a percentage of the par value. The dividend recommended by the board of directors and approved by the shareholders at a general meeting is distributed and paid to shareholders as on the record date in proportion to the paid-up value of their shares on such record date. In addition, the board of directors may declare and pay interim dividends for any part of a financial year.

A company may declare dividends for any financial year out of the profits of the company arrived at after providing for depreciation in accordance with the Indian Companies Act or out of profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the Indian Companies Act and remaining undistributed; or out of both.

In case the company has incurred any loss in any previous financial year or years, then the amount of loss or an amount which is equal to the amount provided for depreciation in that year or those years of loss, whichever is less shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years arrived at in both cases after providing for depreciation in accordance with the provisions of the Indian Companies Act. The aforesaid provisions apply to declaration or payment of interim dividends as well.

The Central government may also, if it deems necessary in public interest, allow any company to declare or pay any dividends for any financial year out of the profits of such company for that year or any previous financial year, or years without providing for depreciation.

Under the Companies (Transfer of Profits to Reserves) Rules, 1975, the board of directors of a company must, before declaring or paying any dividend for any financial year, must compulsorily transfer a certain percentage of profits of the company to the reserves as provided herein below:

Percentage of proposed dividend as a percentage of paid-up share capital	Amount to be transferred to reserve
Up to 10.0%	NIL
More than 10.0% but up to 12.5%	2.5% of the current profits
More than 12.5% but up to 15.0%	5.0% of the current profits
More than 15.0% but up to 20.0%	7.5% of the current profits
More than 20.0%	10.0% of the current profits

It may be noted that the rate of proposed dividend includes dividend declared both on equity as well as on preference shares. However, the equity shareholders can be paid dividend, only after paying off the dividends to the preference shareholder(s), if any. Further, a company may, in any financial year, voluntarily transfer more than 10.0% of its current profits to reserves. The requirement of transfer to the reserves applies equally to the declaration/payment of any interim dividend. In such a case, the board of directors has to estimate the "current profits" for the year in which the interim dividend is declared in order to transfer the stipulated percentage of profits to the reserves.

Further, under the Companies (Declaration of Dividend out of Reserves) Rules, 1975, as amended from time to time, in case of inadequacy or absence of profits in any year, declaration of dividends for that year out of accumulated profits earned by the company in previous years and transferred by the Company to the reserves would have to satisfy the following conditions: (i) the rate of dividend to be declared may not exceed the lesser of the average of the rates at which dividends were declared in the five years immediately preceding the year, or 10.0% of paid-up capital, whichever amount is lesser; (ii) the total amount to be drawn from the accumulated profits from previous years may not exceed an amount equivalent to 10.0% of paid-up capital and reserves and the amount so drawn is first to be used to set off the losses incurred in the financial year before any dividends in respect of preference or equity shares; and (iii) the balance of reserves after the withdrawal must not be below 15.0% of paid-up capital.

The term "reserve" has not been defined under the Indian Companies Act. However, the expression has been defined in the "Guidance Note on Terms used in Financial Statements" issued by the Institute of Chartered Accountants of India as the portion of earnings, receipts or other surplus of an enterprise (whether capital or revenue) appropriated by the management for a general or specific purpose other than a provision for depreciation or diminution in the value of assets or for a known liability.

The expression "revenue reserve" has been defined as any reserve other than a capital reserve. Revenue reserves constitute profits made in the course of normal business operations and retained in the business. It is that portion of net worth or total equity of an enterprise representing retained earnings available for withdrawal by the proprietors as dividends.

As opposed to a revenue reserve, a capital reserve is a reserve which is not available for distribution as dividends. It is a reserve which constitutes a profit or gain retained in the business, but which has not arisen out of the profit from the normal business operations of the company. Though it forms part of shareholders' funds, it is not available for distribution as dividends.

Buyback of shares of unlisted Indian companies under Indian law

Subject to provisions of Section 77A and other applicable provisions of the Indian Companies Act, a company may purchase its own shares ("Buy-Back"). The Buy-Back by unlisted Indian companies is also governed by the Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999 (the "Buy-Back Rules") issued by the Ministry of Company Affairs, Government of India, as amended from time to time.

Before initiating steps to undertake a Buy-Back, a company needs to ensure that it has not failed to: (i) file its Annual Returns within 60 days of the Annual General Meeting; or (ii) distribute dividends within 30 days from their declaration; or (iii) prepare the balance-sheet and profit and loss account at the end of the financial year in the form as specified by the Government of India.

The Buy-Back is required to be offered to all the existing security holders on a proportionate basis through private offers. A company can undertake the Buy-Back out of:

(a) the free reserves; or

(b) the securities premium account; or

(c) the proceeds of any shares or other specified securities.

The Buy-Back should be authorised by the articles of association of the company. The Buy-Back has to be approved either by:

(a) a special resolution passed in a general meeting of the shareholders, in which case the Buy-Back is limited to (i) 25.0% of the total paid-up capital and free reserves of the company; or (ii) in case of Buy-Back of equity shares in a financial year, 25.0% of the total paid-up equity capital of the company in that financial year; or

(b) a board resolution passed in a meeting of the board of directors of the company, in which case the Buy-Back is limited to 10.0% of the total paid-up equity capital and free reserves of the company. In case the Buy-Back is by way of a board resolution, as opposed to one which is pursuant to a special resolution passed in a general meeting, no further offer of Buy-Back can be made within 365 days reckoned from the date of the preceding offer of Buy-Back, if any.

In the event that the Buy-Back takes place through a special resolution, the notice of the general meeting must be accompanied by an Explanatory Statement in accordance with the Indian Companies Act and such Explanatory Statement should state all material facts including the necessity for the Buy-Back, the nature and extent of the security intended to be purchased, amount to be invested under the Buy-Back and the time limit for completing the Buy-Back. The Buy-Back must be completed within 12 months of passing of the special resolution or the board resolution, as the case may be.

Further, all the shares or other specified securities for Buy-Back are required to be fully paid-up. The ratio of the debt owed by the company should not be more than twice the capital and its free reserves after the Buy-Back. Government of India may, however, prescribe a higher ratio.

A draft letter of offer containing certain specified particulars, are required to be filed by the company with the respective registrar of companies ("ROC") along with the declaration of solvency in the prescribed format in order to exhibit that it can meet its liabilities and subsisting obligations during the post Buy-Back period. The company is not permitted to issue any shares including by way of bonus, till the date of the closure of the offer.

Indian law also imposes a restriction on the issue of allotment of shares of the same kind as are bought back for a period of six months from the completion of the Buy-Back. The issue of bonus shares and discharge of subsisting obligations, such as conversion of share warrants and stock options, are excluded from such restriction.

The letter of offer should be dispatched within 21 days from its filing with ROC. The offer for Buy-Back should remain open to the shareholders for a minimum of 15 days and maximum of 30 days from the date of despatch of the letter of offer. The shareholders would be required, within the period when the offer is open, to offer their shares for sale to the company. In case the number of shares offered by the shareholders is more than the total number of shares to be bought back by the company, the acceptance per shareholder is required to be on proportionate basis. The company is required to complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares lodged shall be deemed to be accepted, unless the company makes a communication of rejection within 21 days from the closure of the offer.

The company shall, immediately after the date of closure of the offer, open a special bank account and deposit the entire sum due and payable as a consideration for the Buy-Back in such bank account. Within 28 days of the closure of the offer, the company is required to make payment of the consideration in cash or bank draft/pay order to those shareholders whose offer has been accepted.

After the completion of the Buy-Back, the company is required to file a return with the ROC in the specified form. The company is required to extinguish and physically destroy the share certificates so bought back in accordance with the prescribed procedure within seven days from the date of acceptance of the shares bought back and furnish the requisite certificates to the ROC. The company should also maintain a record of share certificates which have been cancelled and destroyed.

Further, under the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998, as amended, a buy-back may be (a) from the existing security holders on a proportionate basis through a tender offer; (b) from the open market through (i) book-building process, or (ii) the stock exchange; (c) from odd-lot holders or (d) by purchasing the securities issued to employees pursuant to a scheme of stock option or sweat equity. Buy-backs through negotiated deals, whether on a stock exchange or through spot transactions or through any other private arrangement, are not permitted.