Amendments to Policies on Foreign Investment in the Chinese Real Estate Market

On August 19, 2015, the Ministry of Housing and Urban-Rural Development, the Ministry of Commerce, the National Development and Reform Commission, the People's Bank of China, the State Administration for Industry and Commerce, and the State Administration of Foreign Exchange jointly released *the Amendments to Policies Concerning Access by and Administration of Foreign Investment in the Real Estate Market* (Jian Fang [2015] No.122, the "New Policies"). The New Policies have modified the former *Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market* (Jian Zhu Fang [2006] No.171, the "Former Policies") to relax the restrictions on foreign investment in the Chinese real estate market. Detailed information is as follows:

General Descriptions of the New Policies	Articles and Interpretations	Comparison with the Former Policies
1. Requirements on self-owned foreign capital for investment are reduced (1) by lowering the ratio of the registered capital of foreign-invested real estate enterprises to the total investment, and (2) by lifting the requirement of full payment of the registered capital before financing. 2. Hui Zong Fa [2007] No.130, supporting policies of the Former Policies, provided that foreign-invested real estate enterprises established after June 1, 2007 were not allowed to borrow external	**Article:** The ratio of registered capital to total investment of foreign-invested real estate enterprises shall be governed by the relevant provisions of the Interim Provisions of the State Administration for Industry and Commerce on the Ratio of the Registered Capital to the Total Investment of a Sino-Foreign Equity Joint Venture Enterprise (Gong Shang	**Former Article:** Where the total investment of a foreign-invested real estate enterprise is USD 10 million or more, its registered capital shall not be less than 50% of its total investment. **Interpretation:** The Former Policies set the request far higher than Gong Shang Qi Zi [1987] No.38 on the ratio of registered capital to total investment. Some local regulations, such as the ones in the City of Dalian, even required the registered capital and total investment to be fully consistent.

debts[1]. The New Policies do not lift the restriction on external debts for foreign-invested real estate enterprises established after June 1, 2007. However, they relax the external debt restriction for enterprises established before June 1, 2007. Under the New Policies, external debts are allowed as long an enterprise meets the following requirements: (1) The Certificate for Use of State Land has been obtained; (2) The project development capital is at least 35% of the amount of the total project investment; and (3) There is a gap between actual investment and registered investment. These three conditions in effect abolished the requirement to pay the registered capital in full under the Former Policies.	Qi Zi [1987] No.38)[2] **Interpretation:** The requirement on the ratio of registered capital to total investment of the foreign investment real estate enterprises is consistent with those of other industries and enterprises.	
	Article: The requirement on full payment of the registered capital of foreign-invested real estate enterprises before applying for domestic or foreign loans or foreign exchange loan settlement is lifted.	**Former Article:** Where it fails to pay its registered capital in full, a foreign-invested real estate enterprise shall not be permitted to apply for loans in or outside of China, and the relevant foreign exchange control authority shall not grant approval to the enterprise for the settlement of foreign exchange loans. **Interpretation:** Foreign-invested real estate enterprises were not allowed to conduct any financing activities before full payment of its registered capital.
Under the New Policies, foreign-invested real estate enterprises no longer need to complete any pre-filing procedures with the Ministry of Commerce before processing foreign exchange registrations.	**Article:** Foreign-invested real estate enterprises may process foreign exchange registrations directly with the banks according to relevant foreign	**Former Article:** Although not directly provided in the Former Policies, the supporting documents, such as Shang Zi Han [2007] No.50 and Hui Zong Fa [2007] No.130, all provided that where the establishment of a foreign-invested

[1] Although Hui Zong Fa [2007] No.130 was abolished by Hui Fa [2013] No.21 in 2013, the *Guidelines on the Administration of Registration of Foreign Debts* released in the same year reaffirmed the provision that foreign investment real estate enterprises established after June 1, 2007 were not allowed to borrow external debts.

[2] Depending on the total amount of investment, the registered capital has been divided into four levels in Gong Shang Qi Zi [1987] No.38, as follows:
(1) Where the total investment is USD 3 million or less, the registered capital shall be at least seven tenths of the total investment;
(2) Where the total investment is more than USD 3 million and not exceeding USD 10 million, the registered capital shall be at least one half of the total investment, provided that the registered capital shall be no less than USD 2.1 million if the total investment is less than USD 4.2 million;
(3) Where the total investment is more than USD10 million and not exceeding USD 30 million, the registered capital shall be at least two fifths of the total investment, provided that the registered capital shall be no less than USD 5 million if the total investment is less than USD 12.5 million;
(4) Where the total investment is more than USD 30 million, the registered capital shall be at least one third of the total investment, provided that the registered capital shall be no less than USD 12 million if the total investment is less than USD 36 million.

This may accelerate the speed of capital flows, but how the rules will apply in practice remains to be tested.	exchange regulations in the same manner as other foreign direct investments.	real estate enterprise is examined and approved by the competent local authority, the authority shall file with the Ministry of Commerce for the record. Further, foreign exchange authorities and designated foreign exchange banks were not permitted to handle procedures of exchange, settlement, or sale of capital items for the foreign-invested real estate enterprises which have not completed the filing procedures with the Ministry of Commerce. **Interpretation:** the Former Policies required pre-filing with the Ministry of Commerce before a foreign-invested real estate enterprise may process foreign exchange registrations.
The requirement that a foreign individual must have lived in China for more than one year in order to purchase real property is lifted. Foreigners may now purchase real estate in China as long as they work or study in China.	**Article:** Foreign individuals studying or working in China are allowed to purchase real estate commercial properties for self-use or self-residence according to their actual needs.	**Former Article:** A foreign individual who has worked or studied for more than one year in China, is permitted, based on his or her actual needs, to purchase real property only as his or her primary residence. Foreign individuals are not permitted to purchase real property in China unless such property is used as the foreigner's primary residence in China. A foreign individual who has worked or studied in China for less than one year is not permitted to purchase any real property.

The information in the table above may appear somewhat abstract to international real estate investors and developers. The following example analyzes the rule changes using the case of a foreign investment of USD $400 million in the development of a residential district in China.

Under the Former Policies, the foreign investor would have been required to inject at least 50% of the registered capital of a project company. For a project company with a registered capital of USD $400 million, the investor would have needed to inject at least USD $200 in full before it might borrow loans from a bank. Once the establishment of the project company was approved, the investor still needed to complete the pre-filing procedures with the Ministry of Commerce. Until then, the company was not allowed to conduct basic business activities such as foreign exchange registrations, currency exchanges and settlements, or sales of capital items.

Under the New Policies, the registered capital of a project company founded by a foreign investor for developing the residential district needs only to be one-third of its total investment. That is, USD $120 million. The project company may borrow money from banks as long as it obtains the Certificate for Use of State Land and ensures that the project development capital reaches 35% of the amount of the total project investment. This means that the project company no longer needs to pay the registered capital of USD $200 million before it obtains loans from banks, which reduces the waiting period before financing. After the approval of its establishment, the project company may process relevant foreign exchange registrations directly with the banks without pre-filing procedures with the Ministry of Commerce, which saves the company at least 2 to 3 weeks of time.

In 2006, the Chinese government restricted foreign capital from entering the real estate market to control the influx of “hot money” in the appreciation period of the RMB, so as to prevent a sudden crush of the Chinese financial system caused by a large amount of “hot money” outflow in the depreciation period of the RMB. This legislative background of the Former Policies no longer exists in 2015 when the RMB continues to depreciate. That is one of the reasons behind the New Policies. Exactly how much of an increase in the foreign investment in the Chinese real estate market the New Policies will be able to attract is yet to be seen.