LEHMAN LEE & XU

A PRC Licensed Law Firm

Briefing Paper

Real Estate

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Introduction:

As China continues to prosper economically, real estate investment has taken on a much more prominent role. In 2009 real estate investment made up over ten percent of China's GDP. By comparison, real estate investment has accounted for only three to five percent of the United States' GDP since 1998. Furthermore, real estate investment is the third largest sector of China's fixed assets, trailing only infrastructure and employment.

Despite the booming real estate market, transparency of laws and regulations and consistency in their enforcement is lacking. Lehman, Lee & Xu believes that improvement in this area would boost confidence and demand for both domestic and foreign investors and would also help stabilize the market.

Developments:

In 2009, China issued several important real estate policies at both the national and local levels. The Notice Concerning the Adjustment of Capital Fund Ration for Fixed Assets Investment Projects reduced minimum registered capital as a percentage of project funding in a real estate development project from thirty-five percent to twenty percent for both ordinary commodity housing and affordable housing development projects, and 30 percent in other real estate development projects. This policy helps lower the bar for market entry and will encourage investment throughout China.

A second major policy passed in 2009 was the Implementation Opinions on the Promotion of the Healthy Development of the Beijing Real Estate Market. This policy helps promote property consumption by giving both first and second time home buyers equal mortgage policies, thereby reducing taxes on second-hand housing purchases. Additionally, foreign investors are no longer required to have lived in Beijing for one-year prior to purchasing real estate and also now have the ability purchase multiple pieces of real estate. Unlike previous policies, all purchased real estate is no longer restricted to personal use. These new policies help encourage development and expansion in the Chinese real estate market.

Several amendments to the Insurance Law were also passed in 2009. These amendments allowed insurance firms to invest into Chinese real estate. This policy is believed to help stabilize the market and boost real estate values. Lehman, Lee & Xu advocates that these amendments be taken one step further, by opening similar investment opportunities to foreign corporate investors in order to further mature the market.

A final policy passed in 2009 was the revised Provisions on Encouraging Multinational Corporations to Locate Regional Headquarters in Beijing. These provisions lowered the required paid-in registered capital in China for foreign parent companies from US $30 million to US $10 million. The provisions also included rental subsidies for new and relocated regional headquarters, preferential policies and financial incentives for individuals working in regional headquarters. This policy helps encourage foreign firms to expand further into China which will increase the long-term sustainability of the Chinese real estate market.

Issues:

Despite the 2009 policies, several hurdles remain for foreign investors wishing to invest in Chinese real estate. Many regulatory and practical restrictions prevent foreign investors from competing in Chinese real estate. One major restriction is the Opinions on Regulating the Entry into and the Administration of Foreign Investment in the Real Estate Market. This policy imposes several restrictions on market entry by foreign investors. Mainly, Chinese branches of foreign firms may not purchase a property unless it is for personal use. Furthermore, the registered capital of a real estate FIE is required to be at least fifty percent of the total investment for projects over US $10 million. In most FIEs this minimum ration is generally between thirty and forty percent.

A second major issue facing China's real estate market is the lack of transparency in, and enforcement of property rights. Real estate regulations are enforced locally, which has created a multitude of differing policies. Furthermore, many rules are ignored by local authorities or enforced inconsistently. Corruption and abuse of power are widespread throughout China, which has lead to many arbitrary approvals or rejections of proposed property developments. As a result of the differing regulations, many property holders are unable to enforce their rights. Lehman, Lee & Xu advocates the creation of a national registry to help increase transparency and encourage consistent enforcement of real estate regulations.