

# Client Alert.

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## Measures to Cool Chinese Property Market Target Both Foreign and Local Purchasers

By Paul McKenzie, Gregory Tan, Charles Coker, and Catherine Rong

The last several weeks have seen efforts by regulators in China to cool the Chinese property market by restricting purchases by both foreigners and PRC nationals. These efforts follow other recent policy efforts aimed at reigning in the rapid rise of property prices, especially in the major cities where the lack of affordable housing has become an issue; such as the tightening of credit in the real estate sector.

The more highly publicized effort was the *Circular on Further Regularizing the Administration of Real Estate Purchases by Foreign Entities and Individuals* (“关于进一步规范境外机构和个人购房管理的通知”) (“Circular 186”), jointly issued on November 4, 2010 by the Ministry of Housing and Urban-Rural Development and the State Administration of Foreign Exchange, which targets foreigners. Circular 186 provides additional teeth in the enforcement of now long-standing restrictions on real estate purchases by foreign nationals and foreign companies.

However, the more remarkable efforts are those on the part of Beijing, Shanghai and other municipal governments to restrict the number of residential properties a PRC family may purchase.

### CIRCULAR 186

Those familiar with the Chinese property market will remember Circular 171, the July, 2006 document issued by six departments of the central government that so significantly changed the landscape for foreign investment in the Chinese real property market. Those who are not familiar with Circular 171 may consult Morrison & Foerster’s prior client alert, which includes a full text translation of Circular 171.<sup>1</sup>

One of the more significant changes wrought by Circular 171 was to limit purchases of real estate (1) by foreign nationals to those foreign nationals already resident in China for one year or more, and to a purchase of one residential property for that individual’s own use, and (2) by foreign companies to those foreign companies that have established a branch or representative office in China, and to the purchase of properties for its own use.

Various measures have been implemented since July, 2006 in order to clarify and enforce the general principles of Circular 171, including a number reported in our February, 2007 client alert.<sup>2</sup> Circular 186 is the latest such measure, doubtless reflecting renewed concerns about urban property prices. Circular 186 affirms the restrictions first set out in Circular 171 and requires a foreign national or foreign company buying Chinese real property to provide the following

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<sup>1</sup> See the *New Policies Affecting Investment in Chinese Real Estate*, July 2006, available at <http://www.mofo.com/news/updates/files/update02233.html>.

<sup>2</sup> See *After 171, An Update on Real Estate Regulations and Policies Since Issuance of Opinion 171*, February 2007, available at <http://www.mofo.com/china-real-estate-update-february-2007-02-28-2007/>.

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additional documentation in relation to the purchase:

- evidence of residency or the applicable incorporation certificate of the purchaser (as the case may be); and
- an undertaking that (a) in the case of a foreign national, he or she does not own any other PRC residential property in his or her name, and (b) in the case of a foreign company, the foreign company is purchasing the property for the office needs of its own branch or representative office in China.

Another of the more significant changes brought about by Circular 171 is to require that purchases by foreign companies and foreign individuals for other purposes be undertaken only through the establishment of a foreign invested subsidiary specifically licensed to engage in real estate business (also called foreign-invested real estate enterprises or “FIREEs”). There was initially some concern among industry players that Circular 186 further restricts the establishment procedures or permitted operations of FIREEs, but this does not appear to be the case.

## MUNICIPAL MEASURES

Since May of this year, approximately 20 Chinese cities, including Beijing, Shanghai, Tianjin, Dalian, Hangzhou, Nanjing, Wenzhou, Ningbo, Suzhou, Guangzhou, Shenzhen, Fuzhou and Lanzhou, have reportedly issued measures limiting households in the city to the purchase of only one residential property per household. These are the first regulations to be adopted restricting a PRC national’s ability to own residential property since China embarked on the return to private home ownership more than 10 years ago.

It is doubtful that this limitation will be maintained long-term. Some, like Shanghai’s, expressly identify themselves as temporary. Others, like Fuzhou’s, have an expiration date.<sup>3</sup> It would be reasonable to expect the authorities to lift or adjust the limitation depending on changes in the housing market.

Not all of the implementing regulations regarding the foregoing policies have been issued or made public, and we have yet to see how these regulations will be enforced in practice. However, we understand that certain cities are using the real estate transactions centers<sup>4</sup>, or banks if the purchase is being financed, to verify the holdings of the potential purchasers and to confirm that they comply with relevant restrictions.

Despite the purported temporary nature of some of these policies, the restrictions on purchases by PRC nationals, as well as foreign nationals and entities, demonstrate that the authorities are making a concerted effort to grapple with the issue of affordable residential housing in the PRC.

## Contact:

### Paul McKenzie

Beijing

(8610) 5909-3399

[pmckenzie@mofo.com](mailto:pmckenzie@mofo.com)

### Gregory Tan

Shanghai

(8621) 2322-5200

[gtan@mofo.com](mailto:gtan@mofo.com)

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<sup>3</sup> E.g., Fuzhou’s restriction are reportedly set to expire at the end of the year.

<sup>4</sup> E.g., Beijing, Shanghai and Tianjin.

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