

31st July 2014

New Circular to Relax the Filing Process *for Foreign-Invested Real Estate Enterprises*

SPEED READ

In June 2014, the Ministry of Commerce (“**MOFCOM**”) and the State Administration of Foreign Exchange (“**SAFE**”) jointly promulgated the Circular Concerning Improvement of Filing Process for Foreign Invested Real Estate Enterprises (“**Circular 340**”), which will take effect from 1 August 2014. It is expected that the MOFCOM filing process for Foreign-Invested Real Estate Enterprises (“**Real Estate FIEs**”) will be simplified and expedited in the near future.

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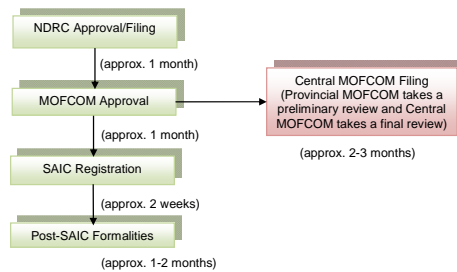
Current Regulatory Approval Regime

Under the current regime, in general, incorporation of a Real Estate FIE is subject to the following regulatory approval/filing procedures:

- (1) **NDRC Approval/Filing:** approval/filing of real estate property development projects by the National Development and Reform Commission (“**NDRC**”) (or its local counterparts), in consultation with other relevant regulators and authorities;
- (2) **MOFCOM Approval:** approval of incorporation of a Real Estate FIE by MOFCOM (or its local counterparts);
- (3) **Central MOFCOM Filing:** filing of a Real Estate FIE with central MOFCOM (“**Central MOFCOM**”) through the provincial counterparts of MOFCOM (“**Provincial MOFCOM**”) (“**Central MOFCOM Filing**”) in which case Provincial MOFCOM will take a preliminary review of the documents before they are submitted to Central MOFCOM for Central MOFCOM to take a final substantive review;
- (4) **SAIC Registration:** registration of incorporation of a Real Estate FIE with the State Administration of Industry and Commerce (“**SAIC**”) (or its local counterparts); and

- (5) **Post-SAIC Formalities:** completion of post-SAIC formalities with SAFE, tax authority, statistics bureau, etc.

Timing to complete the above regulatory approval/filing procedures has varied in the past depending on the general attitude and approach which the Chinese authorities have taken to foreign investment in Chinese real estate. We have seen the process take anything from five months to well over a year, and in some instances the Central MOFCOM Filing under step 3 has not been possible at all. The diagram below sets out the above general steps:

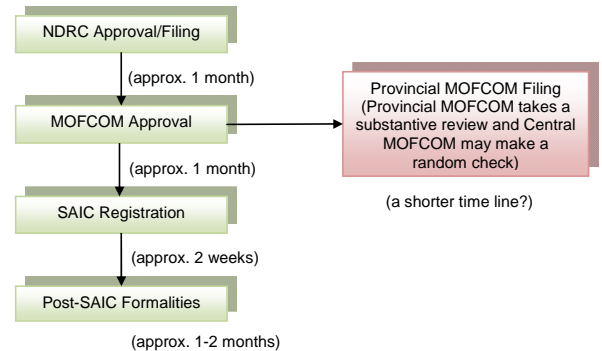


A capital increase (i.e. a subscription of registered capital) or transfer of an equity interest in a Real Estate FIE is also subject to a similar approval process as indicated above, except that the NDRC Approval /Filing may not be required.

Key Changes After Circular 340

Compared to the current Central MOFCOM Filing process as described in step 3 above, the process introduced by Circular 340 will be significantly simplified:

- **Central MOFCOM’s final review no longer required.** Before Circular 340, although the relevant Provincial MOFCOM was delegated as the authority to conduct a preliminary review before the Central MOFCOM Filing, Central MOFCOM’s substantive review and acceptance for filing was required as the final step. By contrast, under Circular 340, Central MOFCOM will directly complete the filing on its website without taking a final review so far as the relevant Provincial MOFCOM has reviewed and accepted the filing application. This should in theory significantly shorten the timeline by removing Central MOFCOM’s final review. However, as a means of supervision, Central MOFCOM may, on both a weekly and quarterly basis, perform random checks on Real Estate FIEs which have passed filings with the relevant Provincial MOFCOM. The diagram below sets out the simplified steps after Circular 340:



- **Provincial MOFCOM’s review should become a matter of formality.** Particularly, for those projects which have been approved by Provincial MOFCOM under step 2 above, we think that it is very unlikely that Provincial MOFCOM will thereafter reject the filing application. Consequently, filing of such projects may become merely a matter of administrative formality, rather than a substantive review. As a result, filing of those projects is expected to be expedited significantly.
- **Electronic data to be adopted.** Circular 340 introduces submission of electronic data to Central MOFCOM by the relevant Provincial MOFCOM via MOFCOM’s internal online system to replace currently used paper forms. This may also help shorten the approval time frame.

Conclusion

Circular 340 simplifies the Central MOFCOM Filing process, and should in theory shorten the lengthy timeline to complete the Central MOFCOM Filing process. It should also eliminate uncertainty once the approval of Provincial MOFCOM has been received. As Circular 340

will take effect from 1 August 2014, it remains to be seen how the new rules will be implemented in practice. We will continue to monitor how it develops in practice.

Contact information

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.

Richard Kim

China Real Estate Head and Managing Partner, PRC
Corporate - Shanghai

Tel +86 21 2036 7010
richard.kim@allenoverly.com

Ji Zou

Partner
Corporate - Shanghai

Tel +86 21 2036 7088
ji.zou@allenoverly.com

Victor Ho

Partner
Corporate - Beijing

Tel +86 10 6535 4381
victor.ho@allenoverly.com

Allen & Overy LLP, Beijing office

46th Floor China World Tower, No. 1 Jian Guo Men Wai Avenue, Beijing 100004 China

Tel +86 (0)10 6535 4188

Fax +86 (0)10 6535 4199

Allen & Overy LLP, Shanghai office

15th Floor, Phase II, Shanghai IFC, 8 Century Avenue, Pudong, Shanghai 200120 China

Tel +86 (0)21 2036 7000

Fax +86 (0)21 2036 7100

www.allenoverly.com

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