

Introduction

The aim of this work is to provide a toolbox of sorts for legal professionals who are addressing issues related to real property transactions in China where the client is considered a foreign investor for People's Republic of China (PRC) law purposes. In considering writing this book, we found it necessary to address PRC real estate issues in a way that provided context and framework for approaching real property issues in China. In addition, we wanted to describe the intersection between real property laws and regulations with the corporate investment requirements that must be satisfied as a necessary precondition for a foreign party to transact or invest in real property transactions in China. Finally, we felt it important to give readers practical resources, such as guides, flowcharts, and forms for further reference and research.

For non-PRC trained lawyers, understanding China's unique real estate system can be challenging. Consequently, this work has been organized to provide an integrated view of how China's real property regime is organized, particularly as it relates to foreign investors in real property projects. This work is structured to offer the following tools for evaluating issues associated with foreign investment in PRC real property:

1. First, a general understanding of the **historical** development of the real property system in China is instructive in considering how deeply rooted concern about distribution of real property rights is in Chinese society.
2. Second, a **framework** for understanding how PRC law treats real property is important. Because real property law in China is distinctive and differs markedly from other countries, even those countries with shared socialist and civil law roots, an understanding of key concepts is vital.
3. With this context in mind, the reader can refer to various **case studies** that explain how specific issues are handled in light of applicable rules. The case studies synthesize the laws and regulations applicable to the following types of transactions:
 - (a) a foreign-invested company's intent to develop a project for its own use (i.e., not for rental for third parties);
 - (b) acquisition of land use rights from the government for development of a project where stores/spaces will be rented to third parties (i.e., where an investor is acting as a developer);

- (c) acquisition of a project company that already has secured land use rights from the government (again, the investor acts as a developer, but through a corporate acquisition rather than directly securing rights from the government); and
- (d) acquisition of residential property for one's own use.

These case studies reflect the commonality that all foreign investment in real estate currently requires establishment of a PRC entity or establishment of legal residence (in the case of a representative office or individual) before investment may be made. This means that investment can no longer be made from offshore. It also means that an investor that does not currently have an entity in China that is qualified to engage in the proposed transaction must carefully manage the timing needed to form (or transfer if acquiring a project company) the appropriate entity for the transaction. Thus, timing and coordination can be important practical considerations in effecting real property transactions.

This work offers a number of **research tools**. In preparing these tools, the assumption has been that non-China-based practitioners will typically be coordinating with China-based counsel to handle implementation of real property transactions. Thus, the aim is not to avoid the need for counsel on the ground in China, but rather to educate foreign counsel and investors on issues to be considered and anticipated in pursuing real property projects in China. The tools include (1) a flowchart of regulatory agencies with authority over real property transactions that shows the approval steps (both project- and corporate-based) for real estate-related transactions; (2) a guide to key national, provincial, and municipal regulatory agencies dealing with real estate and property; (3) a listing of Internet-based research sources on China real estate issues; (4) a digest of key laws and regulations; and (5) a selected bibliography.

The authors hope that the information—both substantively and the manner in which it is organized—will make this work a useful and practical reference for professionals wishing to understand how various kinds of real property transactions involving foreign investment in China are regulated and transacted.