

China Eases Rules on Foreign Investment in Real Estate

Notice of Adjusting Policies on the Market Entry and Administration of Foreign Investment in Real Estate Market (hereinafter referred to as the “**Notice**”) was jointly published on August 19, 2015 by six ministries and commissions, namely, Ministry of Housing and Urban-Rural Development, Ministry of Commerce, National Development and Reform Commission, People’s Bank of China, State Administration for Industry and Commerce, State Administration of Foreign Exchange. According to the Notice:

1. Branches or representative offices of foreign institutions (excluding those real estate development enterprises) and foreign individuals who work or study in China are qualified to purchase properties for self-use. The Notice cancels “one-year stay in China” restriction under the *Opinion on Regulating the Entry and Administration of Foreign Investment in the Real Property Market* (hereinafter referred to as the “**Opinion**”) published by Ministry of Housing and Urban-Rural Development in 2006.
2. The Notice further cancels the requirement of the Opinion that an foreign-invested real estate enterprise shall make full contribution to its registered capital before applying for domestic and overseas loans, or making settlement of exchange for its loan in foreign exchange. Such cancellation lowers the financing threshold of the foreign-invested real estate enterprise and will encourage foreign investment to enter China’s real estate market.
3. The Notice lowers the ratio between the registered capital and the total investment of foreign-invested real estate enterprise. The ratio is as follows: where the total investment is between \$US10 million and \$US30 million (\$US30 million inclusive), the registered capital shall be at least 40% of the total investment; where the total investment exceeds \$US30 million, the registered capital shall be at least one-third of the total investment. While according to the Opinion issued in 2006, where the total investment exceeds \$US10 million (\$US10 million inclusive), the registered capital shall be at least 50% of the total investment, which is much higher than the new ratio. It is one of Chinese government’s efforts to attract foreign investment in real estate markets.

中国放宽房地产外资准入

2015年8月19日，中国住房和城乡建设部、商务部、国家发展和改革委员会、人民银行、国家工商行政管理总局、国家外汇管理局等六部委联合发布了《关于调整房地产外资准入和管理有关政策的通知》（以下简称“《**通知**》”）。根据该《通知》：

1. 境外机构在中国境内设立的分支、代表机构（经批准从事经营房地产的企业除外）以及在中国境内工作、学习的境外个人，可以购买符合实际需要的自用、自住商品房。《通知》取消了2006年住房和城乡建设部发布的《关于规范房地产市场外资准入和管理的意见》（以下简称“《**意见**》”）中的“只有在境内工作、学习超过一年的境外个人可以在国内购房，一年以下的则不能购房”的限制性规定。
2. 《通知》还取消了《意见》中关于外商投资房地产企业办理境内贷款、境外贷款、外汇借款结汇，必须全部缴付注册资本金的要求。该调整降低了外商投资房地产企业的融资门槛，客观上鼓励了外资投资房地产业。
3. 外商投资房地产企业注册资本与投资总额比例，应依据中外合资经营企业的相关暂行规定执行。依据国家工商总局关于中外合资经营企业的相关暂行规定，中外合资经营企业的投资总额在1000万美元以上至3000万美元（包含本数）的，其注册资本至少应占投资总额的40%；投资总额在3000万美元以上的，其注册资本至少应占投资总额的1/3；中外合作经营企业和外资企业的注册资本与投资总额比例，参照该规定执行。而依据《意见》规定，外商投资房地产企业投资总额超过1000万美元（含1000万美元）的，其注册资本不得低于投资总额的50%。因此，《通知》明确降低了外商投资房地产企业的注册资本占投资总额的比例，对进一步吸引外商投资房地产业提供了良好的政策环境。

值得一提的是，《通知》虽然在国家层面上放宽了境外个人在华购房的相关限制性条件；然而，《通知》同时也强调，对于实施住房限购政策的城市，境外个人购房应当符合当地政策规定。以上海为例，上海严格执行2010年住房和城乡建设部、国家外汇管理局发布的《关于进一步规范境外机构和个人购房管理的通知》；在该政策下，境外个人如需在沪购房，需持有期限在一年以上的在职《劳务合同》和一年以上的《纳税证明》，并持有用人单位出具的《在职证明》及其本人出具的名下在中国境内无其它住房的《书面承诺》（即境外个人在境内只能购买一套用于自住的住房）。这意味着《通知》对境外个人在华购房政策的放宽并不会对仍在执行限购的一线城市产生实质性影响。

It is noteworthy that although the Notice eases the rules on foreign investment in China's real estate market, it respects real estate restrictions set by local government that were designed to cool down real estate bubble. Taking Shanghai as an example: if foreign individuals want to purchase properties in Shanghai, they will still be required to provide Service Contracts with a term of more than one year and tax returns for more than one year.

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