Contents

Pre	eface	v
Tal	ble of Legislation	XV
Lis	st of Abbreviations x	xxiv
Ch	apter 1 Land and Property System	1
1.	Introduction	1
2.	Land Ownership and Land Use Rights	1
2.	2.1 State-owned Land	1
	2.2 Collectively-owned Land	4
	2.3 Land Ownership vs Land Use Rights	7
3.	Land Use System of PRC	9
	3.1 Traditional Land Use System (1949–1978)	9
2	3.2 Compensatory Land Use System (1979–1990)	11
$\bigcup_{i} \gamma_i$	3.3 New Land Grant System (1990-present)	19
4.	Conclusion	25
Ch	napter 2 Grant and Transfer of Land Use Rights	27
1.	Introduction	27
2.	Granting State-owned Land Use Rights	28
2.	2.1 Definition of Grant of Land Use Rights	28
	2.2 Definition of State-owned Urban Land	28
	2.3 Urban Planning	29
	2.4 Grantor and Grantee	31
	2.5 Land Grant Approval Authority	32
	2.6 Procedures for Land Grant	34
	2.7 Methods of Granting Land Use Rights	36
	2.8 Term of Grant	41
	2.9 Land Premium	41
	2.10 Termination of Land Use	48
	2.11 Land Grant Contract and Standard Form Contracts	49
	2.12 Registration of Land	51
3.	Transfer of State-owned Land Use Rights	51
	3.1 Transfer of Land Use Rights to Undeveloped Land	52
	3.2 Conditions for Transfer of Land Use Rights	52
	3.3 Procedures for Transfer	54
	3.4 Important Issues Relating to Transfers of	
	Prepared Plots	56
4.	Conclusion	58

Chapter 3 Establishing Real Property Foreign Investment Enterprises 59			4.2 Legal Procedures 92 4.3 Legal Responsibilities 93
1	Foreign Investment Enterprises (FIEs)	60	5 Design of Real Property Development Projects 93
1.	Foreign Investment Enterprises (FIEs)	60	5.1 Regulatory Framework 93
	1.1 Equity Joint Ventures		5.2 Appointment of Foreign and PRC Design Institutes 94
	1.2 Co-operative Joint Ventures	61	5.3 Preliminary Design 94
	1.3 Wholly Foreign-owned Enterprises	62	5 Construction Decidet
	1.4 Sino-foreign Joint Venture Companies Limited		6. Reporting of Construction Project 6.1 Regulatory Framework 96
_	by Shares	63	6.2 Time for Making Reports 96
2.	Establishment of Real Property FIEs	64	0.2 Time for Making Reports
	2.1 Documentation for EJV, CJV and WFOE	66	0.5 Contents of Report
	2.2 Capital Contribution of CJV, EJV and WFOE	69	0.4 Documents required for Submission
	2.3 Establishment and Capitalisation of Sino-foreign		0.5 Consequences of Fairlet to Tay
	Joint Venture Companies Limited by Shares	70	7. Issuance of Construction Project Part 1
	2.4 Approval and Registration Procedures	72	1.1 Importance of Construction 110just
	2.5 Special Requirements for Establishment of		1.2 Issuance of Constituetion Troject Times
	Real Property Development Enterprises	74	7.5 Validity of Constitution 110jour 1
	2.6 Registration of Real Property FIEs	75	Consequences of Violation 100
	2.7 Administration of Qualification of		8 Conclusion 101
	Real Property FIEs	78	100
3.	Scope of Business of Real Property FIEs	79	Chapter 5 Pre-construction and Construction Stages 103
4.	Term of Operation	80	1. Introduction
	4.1 MOFTEC Notice	80	1. Introduction
	4.2 Fixed Term	81	2. Demolition of Existing Buildings, Removal and Resettlement of Existing Occupiers 103
5.	Management Organisation	81	Resettlement of Existing Georgies
٥.	5.1 Board of Directors	81	2.1 Legal Framework 3. Connections of Infrastructure Facilities and Levelling
	5.2 Day-to-day Operation	82	
		82	of Site
6		83	5.1 Electricity
6.	Profit Distribution	0.3	5.2 Water of Superficient with the larger of the superficient of t
7.	Finance, Accounting, Auditing, Taxation and	0.4	J.J Meeds Roads
0	Foreign Exchange	84	5.4 Ectoming of Site
8.	Termination and Liquidation	84	3.5 Others 113
	8.1 Liquidation and Disposal of Assets	84	4. Construction and the best best of the second of the sec
	8.2 Cancellation of Registration	84	4.1 Selection of Contractors and Other Professionals 113
	monari food 19,5		4.2 Selection of General Contractors by Tender
Ch	apter 4 Planning, Design and Construction of		4.3 Construction Contracts
	Auxiliary Facilities	87	4.4 Project Managers and 126
1	Introduction	87	4.5 Application for and Obtaining Permit of
2.	Urban Plans	87	Commencement of Construction 128
4.		87	4.6 Construction Supervision 131
	2.1 Formulation and Approval of Master Urban Plan	89	4.7 Examination and Acceptance upon Completion
2	2.2 Formulation and Approval of Detailed Urban Plan		of Construction 134
3.	Land Grant and Urban Planning Administration	90	5. Conclusion Anoward I 137
4.	Applying for and Obtaining Construction Site	0.1	The second of th
	Planning Permit	91	Chapter 6 Sale and Purchase of Uncompleted and
	4.1 Regulatory Framework	91	Completed Commodity Buildings 139
			The familiary forming to be 184 and 18
			1. Introduction 139

2.	Sale of Uncompleted Commodity Buildings	139	6. Departments in Charge of Leasing 189
	2.1 Regulatory Framework	139	7. Building Lease Permit and Certificate 189
	2.2 Signing a Pre-sale Contract in Hong Kong	149	7.1 Building Lease Certificate 190
	2.3 Standard Pre-sale Contract	150	7.2 Building Lease Permit 190
	2.4 Transfer of Interest Under Pre-sale Contract	151	8. Title Search 191
	2.5 Legal Due Diligence and Title Search	153	8.1 Title Certificate 191
3.	Sale of Completed Buildings	155	8.2 Permitted Use of Land 192
	3.1 Regulatory Framework	155	8.3 Mortgage, Charge and Other Encumbrances 192
	3.2 Real Property Transfer Contract	159	9. Terms of Lease Agreement and Standard Form of
	3.3 Prohibited Transfers	160	Lease Agreement and Standard Torm of
	5.5 Homored Hanstels	100	9.1 Lease Agreement 192
~			10. Rent 193
Ch	apter 7 Financing	161	11. Rights and Obligations of Parties 194
1.	Introduction	161	11. 118
2.	Mortgage	161	12. Term 194 13. Renewal of Lease 194
	2.1 Legal Framework	161	
	2.2 Mortgage of Land Use Rights and Buildings	101	
	Constructed Thereon	165	
	2.3 Mortgage of Pre-sale Contracts	167	16. Registration of Lease 196
	0.0		16.1 Legal Requirement 196
		168	16.2 Registration Documentation 197
	2.5 Second Mortgage	168	16.3 Application for and Timing of Registration 197
	2.6 Documenting Relationship Between Parties	169	16.4 Appeal against Rejection of Registration
	2.7 Mortgage Contract	171	Application 198
	2.8 Notarisation and Legalisation	175	17. Subletting 198
	2.9 Valuation of Mortgaged Property	175	18. Legal Liability 198
	2.10 Possession of Mortgaged Property	176	19. Dispute Resolution 199
	2.11 Supervision by Mortgagee Bank	1177	20. Buildings Constructed on Allocated Land 200
	2.12 Disposal of Mortgaged Property	178	21. Pre-lease, Lease with Option to Purchase and
	2.13 Priority in Event of More than One Mortgage		Lease after Sale 200
	over the Same Piece of Property	179	21.1 Pre-lease 201
	2.14 Auction of New Buildings Added to Land after		21.2 Lease with Option to Purchase 202
	Entry into Real Property Mortgage Contract	180	21.3 Lease after Sale 204
	2.15 Auction of Allocated Land and Leased Property	180	22. Conclusion 205
	2.16 Amending, Cancelling and Terminating		TO SUPPLY AUTOMOSPHER CONTROL OF THE STATE O
	Mortgage Contract	181	Chapter 9 Real Property Intermediary Services 207
3.	Bao Xiao	182	RC services as a service of the serv
4.	Other Financing Options	183	1. Introduction 207
	4.1 Bilateral Borrowings	183	1.1 Recent Developments 207
	4.2 Stock Market Listings and Bonds	183	1.2 Legal Framework 208
	Control of the Contro		1.3 Departments in Charge 209
Ch	apter 8 Leasing of Land Use Rights and Buildings	105	1.4 Definitions 209
CII	apter o Leasing of Land Ose Rights and Buildings	185	2. Intermediary Service Companies 210
1.	Legal Framework	185	2.1 Basic Requirements 210
2.	Urban Area	186	2.2 Structure of FIE Intermediary Service Companies 210
3.	Leasing of Land Use Rights	187	2.3 Approval Procedures and Regulatory Supervision 211
4.	Leasing of Buildings	187	2.4 Contracting for Intermediary Services 211
	Buildings Permitted to be Let	188	2.5 Ethical Considerations 212

3.	Real Property Valuation	213	4.3 Use, Management and Maintenance of	
	3.1 General Issues	213	Residential Complexes 244	4
	3.2 Governing Laws and Regulations	213	4.4 Designated Public Facility Fund and	
	3.3 Scope of Services	214	Designated Office for Property Management 24:	15
	3.4 Examination and Qualification	214	5. Hong Kong Property Management Mode 24	18
	3.5 Registration of Property Valuers	216	5.1 Potential Purchasers' Reliance on Quality	
	3.6 Procedures for Conducting Valuation	216	Management Services 24	18
	3.7 Contents of Valuation Report	217	5.2 Hong Kong Management Mode 24	
	3.8 Objections to Valuation Report	218	5.2 Hong Kong Management Mode 5.3 Application of Hong Kong Mode in PRC 24	
	3.9 Fees	218	J.J 11pphround 21	
4.	Real Property Agency	218	5.4 Ownership Shares and Management Shares 6. Property Management of Commercial and Industrial	
	4.1 Legal Framework	218		50
	4.2 Definitions	219	Troperties	
	4.3 Department in Charge	219	7. Conclusion 25	
	4.4 Qualifications	219	Chapter 11 Tayation 25	53
	4.5 Practice Certificate	222	Chapter 11	
	4.6 Annual Review	222	1. Invoduction 25	
	4.7 Registration	222	2. PRC Domestic Tax Legislation 25	
		223	2.1 Sale of Real Property by FIE Property Developers 25	53
	4.8 Prohibited Activities 4.9 Standards for Fees	223	2.2 Sale of Real Property by Owners 26	50
5.	Real Property Consultancy	224	2.3 Sub-sale by Purchasers 26	54
J.		224	2.4 Lease 26	54
	5.1 Legal Framework	224	2.5 Purchase of Real Property 26	56
	5.2 Definition of Real Property Consultancy	225	2.6 Owning Real Property 26	57
	5.3 Real Property Consultancy Contracts		3. Tax Treaties 26	58
Α	5.4 Fees william I laged	225	4. Tax Planning 26	58
	pendix I	226	T. Tun I Immig	
Ap	pendix II	226	Chapter 12 Property Dispute Resolution 26	69
	The last self of the control of the control of the		A Company of the control of the cont	cn
Ch	apter 10 Property Management	227	1. Introduction 26	
	X V	227	2. Parties and Disputes 27	
	Introduction Sentence and Marie Sentence	227	2.1 Nature of Disputes	
2.	Legal Framework	228	3. Applicable Law 27	
	2.1 Governing Laws and Regulations	228	4. Types of Disputes 27	
0	2.2 Supervisory Authority	229	4.1 Transfer of Land Use Rights 27	
3.	Property Management Mechanism for Small		4.2 Demolition and Resettlement 27	
	Residential Complexes	229	4.3 Pre-sale and Sale of Property 27	
	3.1 Definition of 'Property Management'	229		75
	3.2 Owners' General Meeting	230		75
	3.3 Management Committee	232	J. Dispute Settlement	76
	3.4 Property Management Companies	234	5.1 Foreign-related Disputes 27	76
	3.5 Appointment of Property Management Companies	238	5.2 Domestic Disputes 27	77
	3.6 Termination of Appointment of Property		6. Negotiation 27	78
	Management Company	241	7. Mediation and Conciliation 27	79
4.	Mutual Covenant	242	8. Arbitration 27	79
	4.1 Contents of Mutual Covenant	242	8.1 Basis for Arbitration 27	79
	4.2 Administration of Mutual Covenant for Small			80
	Residential Complexes	244	8.3 Independence 28	80

xiv Contents

	8.4	Finality of Awards	281
	8.5	Arbitration Commissions	281
	8.6	Arbitration Agreements	281
	8.7	Arbitration Proceedings	282
	8.8	Awards	287
	8.9	Enforcement	289
	8.10	Arbitration Outside China	290
9.	Litig	ation in China	290
	9.1	Jurisdiction	291
	9.2	Application	291
	9.3	Representatives	291
	9.4	Organisation of Trials	292
	9.5	Procedures	292
	9.6	Appeals	293
	9.7	Execution	294
Ind	ex		295

Table of Legislation

Arbitration Law of the People's Republic of China	(中華人民共和國仲裁法)	279
Arbitration Rules of the China International Economic and Trade Arbitration Commission	(中國國際經濟貿易仲裁 委員會仲裁規則)	271
Beijing Urban Planning Regulations	(北京市城市規劃條例)	88
Circular of the Supreme People's Court on the Handling of Problems Regarding Foreign Related Arbitration and Foreign	(最高人民法院關於人民 法院處理與涉外仲裁及外 國仲裁事項有關問題的通	290
Aubitration Matters by People's Courts	知)	
Civil Procedure Law of the People's Republic of China	(中華人民共和國民事訴訟法)	276
Company Law of the People's Republic of China	(中華人民共和國公司法)	60
Detailed Rules of Beijing Municipality for the Implementation of the	(北京實施城市房屋拆遷 管理條例細則)	104
Regulations Regarding the Administration of Demolition and Removal in Urban Areas		
Detailed Rules of Guangzhou Municipality Regarding Demolition, Removal and Resettlement of Occupiers in Urban Areas	(廣州城市房屋拆遷安置細則)	105
Economic Contract Law of the People's Republic of China	(中華人民共和國經濟合 同法)	270
Foreign Economic Contract Law of the People's Republic of China	(中華人民共和國涉外經濟合同法)	270
General Principles of the Civil Law of the People's Republic of China	(中華人民共和國民法通 則)	161
Guidance of Shanghai Municipality for the Notarisation in Respect of Commodity Buildings for Overseas Sale	(上海市外銷商品房公証 指南)	