Property tenure/ownership

While all land in China is still owned by the state, an amendment to Article 10 of the Constitution of the People’s Republic of China (PRC), made in April 1988, allows the transfer of land use rights for value (Land Use Rights).

The ownership of Land Use Rights is the main form of property ownership applicable to foreign investors. Land Use Rights can be transferred, assigned, leased and mortgaged. Land Use Rights can be acquired through a negotiated agreement, an auction or a tender. Previously, a majority of Land Use Rights were assigned through negotiation, but now, all rights for new developments are obtained through a public tender or an auction process. Though the purchase of land from private developers can be negotiated privately, the transaction information in Shanghai has to be posted on the public government website.

Land Use Rights for real estate developments are typically for terms of 40 to 70 years and are granted in consideration of an upfront premium. The national standard for maximum periods of Land Use Rights are:

<table>
<thead>
<tr>
<th>Usage</th>
<th>Use period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>70 years</td>
</tr>
<tr>
<td>Commercial, tourist, recreational</td>
<td>40 years</td>
</tr>
<tr>
<td>Industrial</td>
<td>50 years</td>
</tr>
<tr>
<td>Educational, scientific, cultural, public health, physical education</td>
<td>50 years</td>
</tr>
<tr>
<td>Mixed-use</td>
<td>50 years</td>
</tr>
</tbody>
</table>

Major property legislation

- PRC Law of Administration of Urban Real Estate (issued on August 30, 2007 and revised on August 27, 2009 and September 23, 2012)
- PRC Land Administration Law (revised and effective on August 28, 2004)
- Regulations on Administration of Development and Operations of Urban Real Estate (issued and effective on July 20, 1998, revised on January 8, 2011)
- Opinions for Regulating the Access by and Administration on Foreign Investment in the Real Estate Market (issued and effective on July 11, 2006)
- Provisional Regulations/Interim Regulations of the PRC concerning the Grant and Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas
- Urban Real Estate Management Law of PRC (revised in August 2007)
- Land Management Law of PRC (issued and effective on May 19, 1990 and revised on August 28, 2004)
- Measures on Administration of Foreign Investment on Development of Land (issued on May 19, 1990)

Specific legislation concerning the implementation of national law often exists at the provincial level.

In February 2003, the Ministry of Land and Resources PRC (MLR) announced restrictions on the sale of land zoned for villa use to developers countrywide. This was largely aimed at ensuring that banked land was developed. In addition, the MLR and the National Development and Reform Commission (NDRC) jointly issued the Catalog of Prohibited Uses of Land and the Catalog of Restricted Uses of Land on December 12, 2006. This completely prohibited the use of land for real property development of villas and golf courses. Such catalogs were supplemented by the MLR in 2009, showing the trend of more restrictions on land use.

In late 2003, floor area ratios were reduced in Shanghai to limit the buildable area of residential developments to 2.5 times of plot size and office developments to 4.0 times of plot area. Previous developments had been built at nearly double these ratios.

In 2004, the government banned the use of loans to purchase land, effectively requiring developers to purchase the land outright. In addition, the government limited borrowings by developers to 65% of the development cost. Individuals borrowing for residential property were also limited to 70% of the property value for second-hand transactions, and up to 80% for new developments. However, government policies toward bank loans to real properties have shown the trend of tightening in recent years.

In July 2006, several PRC authorities jointly announced a requirement for foreign investors making investments in the PRC real estate sector to establish a business presence in China and to invest via that entity. More stringent requirements with regard to obtaining offshore finance and paid-in registered capital were also put in place.

In May 2007, the Chinese Ministry of Commerce (MOFCOM) and the State Administration of Foreign Exchange (SAFE) jointly issued a new notice, requiring foreign investors to purchase land use rights or building ownership rights before applying to establish a foreign invested real estate enterprise in China. Effective on June 1, 2007, SAFE no longer processes foreign exchange registrations, currency conversions or debt.
registrations for foreign invested real estate enterprise business capital accounts (i.e. debt funding to purchase land use or building ownership rights can no longer come from overseas). In addition, any form of direct or indirect fixed return in favor of the foreign partner in a joint venture real estate enterprise is now prohibited. All foreign invested real estate projects approved at provincial level must be filed with the central MOFCOM. In June 2008, MOFCOM delegated its verification powers regarding the filing of foreign investment in real estate to provincial level commerce authorities, signaling an easing on the requirements for foreign investment in the real estate industry.

The Foreign Investment Guiding Catalog (the Catalog) has been jointly revised and promulgated by the NDRC and MOFCOM on December 24, 2011, with the construction and operation of villas being moved from the category of “restricted” in the Catalog (then in force) to the category of “prohibited”, showing the trend of prohibition on certain types of foreign investment on real property.

The Ministry of Housing and Urban-Rural Development (MOHURD, the successor of MLR) issued the Administrative Measures for Floor Area Ratio of Construction Land on February 17, 2012 that stipulated more specific rules and stricter standards on floor area ratios to impose stricter control on development of real property.

The Catalog was further revised and promulgated again on April 10, 2015, with all items in relation to foreign investment in real estate industry under the category of “restricted” or “prohibited” being removed (which means foreign investment in real estate industry is “allowed” in the PRC again). However, it is worth noting that foreign-invested real estate enterprises shall still be subject to relevant regulatory requirements (e.g. business presence principle and relevant filing requirements).

The filing process of foreign investment in real estate industry was simplised by MOFCOM in 2014 and 2015, by replacing the previous hardcopy filing system with the online filing system. On August 19, 2015, several PRC authorities jointly announced the Notice of the Ministry of Housing and Urban-Rural Development and Other Departments on Amending the Policies Concerning Access by and Administration of Foreign Investment in the Real Estate Market. According to this notice, the foreign exchange registration procedures for the foreign-invested real estate enterprises were also simplified (i.e. the foreign-invested real estate enterprises may carry out relevant foreign exchange registrations directly with the commercial banks), and the requirement on applying for domestic or foreign loans (i.e. full payment of the registered capital) was lifted.

### Operational requirements for foreign corporations

#### Office

**Modes of entry**

- Foreign Investment Enterprises
  - Wholly foreign-owned enterprises (referred to as WFOE)
  - Equity joint ventures
  - Cooperative joint ventures
- Representative Offices
- Partnership

**Registration/Licensing Requirements**

1. **Foreign Investment Enterprises**
   - Initial approval of proposal, contract and articles of association – MOFCOM
   - Name registration – Municipal Administrative Bureau for Industry and Commerce (AIC)
   - Business registration – AIC

   The following documents should be presented:
   - application form
   - certificate of name registration
   - approval certificate
   - contract, articles of association and feasibility report and their approvals by MOFCOM
   - capital credit document
   - identification documents of the investor
   - appointment of general manager, vice-general manager and directors, and copies of valid identification documents
   - appointment of legal representative and copies of his/her valid identification documents
   - office premises lease contract and copy of deeds to property
   - power of attorney issued by the investor to the relevant attorney for the registration process
   - letter of authorisation regarding the delivery of legal documents signed by the investor and the person who is authorised to receive the legal documents on behalf of the investor.

2. **Representative Offices**
   - Initial approval certificate from MOFCOM
   - Business registration – AIC

   The following documents should be presented:
   - application signed by the chairman or president of the enterprise
   - articles of association of the enterprise
   - approval certificate
   - copies of a legitimate certificate for operation for at least two years issued by the relevant government authority of its host country
   - original capital credit certificate issued by the bank with which the enterprise does business
• appointment letter for the chief representative and representatives signed by the chairman of the board of directors or general manager of the enterprise, together with each of their resumes and copies of their identification cards
• office premises lease contract and copy of deeds to property.

3) Partnership
• Initial approval certificate from MOFCOM
• Business registration – AIC

The following documents should be presented:
• application signed by all partners
• partnership contract
• copies of identification documentation of all partners
• approval certificate
• office premises lease contract and copy of deeds to property
• power of attorney issued by all partners to the relevant attorney for the registration process
• statement regarding compliance with state investment policy
• contribution confirmation
• capital credit certificate issued by the bank with which the foreign partner does business
• Letter of authorisation regarding the delivery of legal documents signed by the foreign partner and the person who is authorised to receive the legal documents on behalf of the foreign partner.

Retail Trade
After entry into the World Trade Organisation (WTO) in December 2002, China has undertaken major commitments to reduce restrictions on business. Retailers are now allowed to set up independent entities and are no longer required to set up joint ventures.

The establishment of a wholly foreign-owned retail business requires any license application to be accompanied by a suitable retail premises lease agreement.

All geographic restrictions have been lifted, and there are no longer any restrictions on franchising other than the requirements of the “2+1” rule. This rule mandates franchisors to operate two company-owned stores (anywhere in the world) before commencing franchising activities in China. The previous requirement that the two stores be in China was removed in 2007, but, in practice, franchisors are usually required to provide additional information if they do not have a presence in China.

The retailing and distribution of chemical fertilizers, processed oil and crude oil are now allowed. In addition, foreign service suppliers are now permitted to engage in the retailing of all products, and foreign chain store operators will have the freedom of choice of any partner, legally established in China.

Industrial

Registration/Licensing Requirements
Please refer to the “Foreign Investment Enterprises” section under “Office”.

Foreign Investment Incentives
In China, there is a wide range of incentives for foreign investors depending on the industry type and location.

Foreign investment projects are divided into three types—encouraged, restricted or banned by the central government. Projects encouraged are typically production-oriented projects, especially high-technology and export-oriented production, as well as infrastructure projects. The categorisation of foreign investment projects is regularly reviewed. The latest updated Catalog, made effective from April 10, 2015, had made significant changes to the existing former versions. The latest revision demonstrates the trend for restrictions being lifted in certain industries and being imposed in a small number of cases.

Foreign investment incentives are more readily available and more wide-ranging in Free Trade Zones, China’s Special Economic Zones and open coastal cities, as well as in national-level high and new technology industrial zones.

Typical tax incentives for foreign investors have been canceled since the implementation of the new Corporation Income Tax Law in 2008, but foreign investors engaging in high-technology operations and investing in China’s western areas continue to enjoy tax incentives such as tax holidays and reduced corporate income tax.

To attract foreign investment, some local governments have now adopted incentive schemes. In Shanghai, some district governments return a portion of taxes paid to foreign investors.

Property development does not qualify as a production-oriented enterprise and, therefore, tax holidays are limited.

Restrictions on Foreign Property Ownership
Land ownership for all local and foreign users is limited to land rights granted by the state or assigned from a current land user.

There is no restriction against foreign investors purchasing property zoned for residential, commercial, tourist, entertainment or financial services in Shanghai and Beijing. Foreign investors are allowed to invest in local residential projects.

Foreign Exchange Controls
The Chinese currency, Renminbi (RMB), is not freely convertible at present, though free convertibility is expected in the midterm, according to the WTO schedule.

The State Administration of Exchange Control regulates the flow of foreign exchange in China and controls all foreign expenditure and outward remittances.
On December 1, 1996, the RMB became convertible under the current account, which includes trade, labor, tourism and short-term banking. Currency exchange relating to direct investment, international loans and securities trading is still restricted.

**Taxes on possession and operation of real estate**

**Real Estate Tax**

Real estate tax applies to the holders of property titles in China. Currently, in most of the cities around China, real estate tax is not levied upon real property owned by individuals for nonbusiness purposes.

Since 2011, both the Shanghai and Chongqing municipal governments have introduced new real estate taxes to curb speculation. These real estate taxes are levied on individual owners who have more than one property. Real estate tax is levied as follows:

- For owner-occupied properties in Shanghai, real estate tax rate is from 0.4% to 0.6% of 70% of the original value of the property. In Chongqing, real estate tax rate is from 0.5% to 1.2%
- For leased properties in Shanghai, real estate tax is levied at 12% of rent for both foreign and local companies
- For leased properties without rental income, real estate tax is levied at 1.2% of 70% to 90% of the original value of the property.

From January 1, 2009, real estate tax also applies to foreign-invested enterprises and foreign individuals.

**Land Use Tax**

Land use tax is levied on Land Use Right holders and is charged at rates ranging from RMB 1.50 (USD 0.25) per sqm per annum to RMB 30 (USD 4.93) per sqm per annum in Shanghai, depending on the location and use.

**Taxes on Leasing Income**

When taxing rental income in China, the government sometimes defines the taxes in three categories — property tax, business tax and income tax. Other times, the government lumps the taxes together and calls it a “comprehensive” tax. The taxes are applied in Beijing, Shanghai and Guangzhou, as follows:

**Residential property**

- **Beijing**
  - Leased by an individual landlord: 5% comprehensive.
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50-30.0 per sqm or USD 0.25 - 4.93) business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).

- **Shanghai**
  - Leased by an individual landlord: 5% comprehensive.
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50-30.0 per sqm or USD 0.25 - 4.93) business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).

- **Guangzhou**

**Nonresidential property**

- **Beijing**
  - Leased by an individual landlord:
    - Monthly rental < RMB 5,000 (USD 821): 12% comprehensive
    - Monthly rental ≥ RMB 5,000 (USD 821): 7% comprehensive
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50 - 30.0 per sqm or USD 0.25 - 4.93) + business tax (5% of rental income) + city maintenance and construction tax (7% of business tax) + education fee supplement (3% of business tax) + stamp tax (0.1% of rental income) + corporate income tax (25% of the income from property leasing).

- **Shanghai**
  - Leased by an individual landlord: real estate tax (12% of rental income) + urban and township land use tax + business tax (5% of rental income) + city maintenance and construction tax (1% to 7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + individual income tax (20% of the income from property leasing, deducted of certain amounts).
  - Leased by a corporate landlord: real estate tax (12% of rental income) + urban and township land use tax (RMB 1.50 - 30.0 per sqm or USD 0.25 - 4.93) business tax (5% of rental income) + city maintenance and construction tax (1 percent to 7% of business tax) + education fee supplement (5% of business tax) + stamp tax (0.1% of rental income) + individual income tax (20% of the income from property leasing, deducted of certain amounts).
rental income) + corporate income tax (25% of the income from property leasing)

• Guangzhou

<table>
<thead>
<tr>
<th>Monthly rental</th>
<th>Profit band</th>
<th>LAT rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; RMB 2,000 (USD 328)</td>
<td>On the portion of profit not exceeding 50% of deductible items</td>
<td>30%</td>
</tr>
<tr>
<td>RMB 2,000–30,000 (USD 328–4,918)</td>
<td>For the portion over 50%, but not exceeding 100%</td>
<td>40%</td>
</tr>
<tr>
<td>≥ RMB 30,000 (USD 4,918) (inclusive)</td>
<td>For the portion over 100%, but not exceeding 200%</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>For the portion exceeding 200%</td>
<td>60%</td>
</tr>
</tbody>
</table>

City Maintenance and Construction Tax
City maintenance and construction tax is levied at three levels, namely 1%, 5% and 7%, of business tax, depending on the location of the taxpayer. The highest rate is applicable to downtown locations. From December 1, 2010, foreign companies and foreign individuals are also subject to this tax at the same level as imposed to domestic companies and PRC nationals.

Land appreciation tax
The land appreciation tax (LAT) was introduced in January 1994. LAT applies to the sale of real estate and is levied at rates between 30 percent and 60 percent on profits from real estates sales:

Costs deductible for the calculation of profits include the original cost of Land Use Rights, land development costs, construction costs, interest, business tax, stamp duty, and the assessed value of old houses or buildings. A property developer may deduct 120 percent of the original cost of Land Use Rights, cost of land development and construction cost. Owner-occupiers who have used a property for at least five years will be exempted from this tax, which is aimed at curbing speculative development in particular.

Tax Depreciation
Depreciation of real property must be computed on a straight-line method over a 20-year period. Depreciation is normally at 4.5% of cost per year, leaving a 10 percent residual value. However, it is possible to negotiate an accelerated rate of tax depreciation if, for example, the venture has a life of less than 20 years.

Corporate Taxation
Under the corporate income tax law introduced in 2008, a flat rate of 25% is levied on all enterprises, including foreign investment enterprises.

As outlined under the section “Tax Incentives”, there are tax reductions and tax holidays available for enterprises, including foreign investment enterprises depending on the nature and industry of the enterprise and its location.
Personal taxation
The recently revised Individual Income Tax law of the PRC came into effect from September 1, 2011.
Individual Income Tax (IIT) is levied on Chinese residents on their worldwide income and, for nonresidents, on all income derived from within China.
Wages and salaries for both PRC citizens and expatriates are taxed at progressive rates ranging from 5 percent to 45 percent:

<table>
<thead>
<tr>
<th>Monthly taxable income *</th>
<th>IIT rate</th>
<th>Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to RMB 1,500 (USD 246)</td>
<td>3%</td>
<td>-</td>
</tr>
<tr>
<td>RMB 1,501–4,500 (USD 246–739)</td>
<td>10%</td>
<td>RMB 105 (USD 17)</td>
</tr>
<tr>
<td>RMB 4,501–9,000 (USD 739–1,479)</td>
<td>20%</td>
<td>RMB 555 (USD 91)</td>
</tr>
<tr>
<td>RMB 9,000–35,000 (USD 739–5,751)</td>
<td>25%</td>
<td>RMB 1,005 (USD 165)</td>
</tr>
<tr>
<td>RMB 35,000–55,000 (USD 5,751–9,037)</td>
<td>30%</td>
<td>RMB 2,755 (USD 452)</td>
</tr>
<tr>
<td>RMB 55,001–80,000 (USD 9,037–13,145)</td>
<td>35%</td>
<td>RMB 5,505 (USD 904)</td>
</tr>
<tr>
<td>Over RMB 80,000 (USD 13,145)</td>
<td>45%</td>
<td>RMB 13,505 (USD 2,219)</td>
</tr>
</tbody>
</table>

* PRC citizens have a standard tax-free allowance of RMB 3,500 (USD 575) per month. For expatriates, this allowance is RMB 4,800 (USD 788) per month. The monthly taxable income refers to the amount remaining after deducting the standard tax-free allowance.

Tax treaties: Avoidance of double taxation
Treaties in existence:
- Brunei
- Bulgaria
- Canada
- Croatia
- Cuba
- Cyprus
- Czech
- Denmark
- Egypt
- Estonia
- Ethiopia
- Finland
- France
- Georgia
- Germany
- Greece
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Katar
- Kazakhstan
- Korea
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lithuania
- Luxembourg
- Macedonia
- Malaysia
- Malta
- Mauritius
- Mexico
- Moldova
- Mongolia
- Montenegro
- Morocco
- Nepal
- Netherlands
- New Zealand
- Nigeria
- Norway
- Oman
- Pakistan
- Papua New Guinea
- Philippines
- Poland
- Portugal
- Romania
- Russia
- Saudi Arabia
- Seychelles
- Singapore
- Slovakia
- South Africa
- Spain
- Sri Lanka
- Sudan
- Sweden
- Switzerland
- Syria
- Tajikistan
- Thailand
- Trinidad and Tobago
- Tunis
- Turkey
- Turkmenistan
- UK
- Ukraine
- United Arab Emirates
- USA
- Uzbekistan
- Venezuela
- Vietnam
- Yugoslavia
- Zambia

Real estate investment trusts
Real estate investment trusts (REITs) have not been established in mainland China. The China Securities Regulatory Commission is currently drafting the China Investment Fund Management Law, but there is no approval from the People's Congress so far.
# Common Terms of Lease for Tenancy Agreements

## Unit of measurement

| Unit of measurement                      | Square Meters |

## Rental payments

| Rents                                      | Shanghai: RMB per sqm of gross space per day |

| Typical lease term                        | Generally minimum 2 years (usually with an option for the tenant to renew for an additional 2 or 3 year term at market rates). Standard lease is normally 3-5 years |

| Frequency of rent payable (in advance)     | Monthly |

| Typical rent deposit (expressed as x months rent) | 3 months of rent and management fees payable in cash or check. Bank guarantee/letter of credit is not accepted by most of the property due to the local banking environment. |

| Security of tenure                        | Only for the duration of the tenancy, no guarantee beyond the original lease term |

| Does tenant have statutory rights to renewal | Yes but it is a common practice to stipulate an option to renew if tenants require |

| Basis of rent increases or rent review     | Open market rental value. Renewed rental cap to be negotiated |

| Frequency of rent increases or rent review | Generally at lease renewal, but if an agreed lease is over 5 years, rent is normally reviewed every 3 or 5 years |

## Service charges, operating costs, repairs and insurance

| Responsibility for utilities | Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges |

| Car parking                  | Allocated parking is very limited. Where parking is available, it is held under a separate monthly lease for an additional rent, charged at a fixed monthly cost. |

| Responsibility for internal repairs | Tenant |

| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord responsible, but costs sometimes charged back to tenant via service charge |

| Responsibility for external/structural repairs | Usually landlord responsible, but costs sometimes charged back to tenant via service charge |

| Responsibility for building insurance | Usually landlord |

## Disposal of leases

| Tenant subleasing & assignment rights     | Generally accepted to tenant’s affiliated companies and not to unrelated third parties (subject to the landlords approval) |

| Tenant early termination rights          | Only by break clause, usually subject to penalty |

| Tenant’s building reinstatement responsibilities at lease end | Original condition, allowing for wear and tear |

Source: JLL
JLL offices

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