



LEGAL UPDATE

Edition: December 2010

Insurance Companies Get Go-ahead to Invest in Real Estate

保险公司获准投资不动产

On 5th September 2010, the Interim Measures for the Investment of Insurance Funds in Real Properties (the “Measures”), passed by the China Insurance Regulatory Commission (the “CIRC”), came into effect. The Measures serve to provide greater guidance in implementing the Insurance Laws of the People’s Republic of China and they essentially permit “qualified” Chinese insurance companies to invest in real estate and to diversify their investment channels.

2010年9月5日，中国保险监督管理委员会（以下简称“中国保监会”）发布《保险资金投资不动产暂行办法》（以下简称“《办法》”），对保险资金投资不动产进行详细规范指导。《办法》允许符合条件的中外资保险公司投资不动产以扩充投资渠道。

“Qualified” Insurance Companies

In order for an insurance company to be permitted to invest in real estate and real estate financial products, it must be deemed to be “qualified”. To be qualified, an insurance company must fulfill a number of requirements including having been profitable in the last accounting year; having net assets valued at a minimum of RMB 100 million; having sufficient employees with adequate experience and having a solvency adequacy ratio at the end of both the last quarter and last accounting year of at least 150%.

“合格”的保险公司

根据《办法》规定，投资不动产的保险公司应当符合若干条件，包括上一会计年度盈利，净资产不低于一亿元人民币；拥有一定数量具有相关工作经验的专业人员；以及上一会计年度末及上季度末偿付能力充足率不低于 150%。

Restrictions on Type of Property

The type of property a Chinese insurance company may invest in includes commercial and office real estate, and projects which relate to the insurance business, for example hospitals and housing for the elderly, auto services, real estate projects for the insurance company’s own use and financial projects

Jade & Fountain is a leading full-service Chinese law firm with offices in Shanghai & Beijing. Our international outlook and native resources ensure we provide our clients with quality legal advice for all their business needs and objectives.

If you have any questions or comments regarding this article, please contact:

Jill Lee

Partner

Tel: 8621 6235 1823

jill.lee@jadefountain.com

Julia Kong

Partner

Tel: 8621 6235 1829

julia.kong@jadefountain.com

relating to the real estate industry. Insurance companies are however prohibited from investing in residential housing or development projects, establishing real estate development companies or investing in unlisted real estate companies (except for project companies). They are also forbidden from using their invested real estate projects as collateral or raising capital from lending to finance their investment.

投资不动产和投资行为限制

《办法》规定：保险公司可以投资的不动产，仅限于商业不动产、办公不动产、与保险业务相关的养老、医疗、汽车服务等不动产及自用性不动产。保险公司不得投资或销售商业住宅，不能直接从事房地产开发建设（含一级土地开发），不得投资设立房地产开发公司或投资未上市房地产企业股权（项目公司除外），不得以所投资的不动产提供抵押担保，不得运用借贷、发债、回购、拆借等方式筹措的资金投资不动产。

Restrictions on Investment Amounts

In addition to the restrictions regarding the types of investment, there are additional limitations on the amount which may be invested, and these are as follows:-

- the company can invest a maximum 10% of its total assets in real estate;
- the company can invest up to 3% of its total assets in real estate financial products; and
- the aggregate investment in real estate and real estate financial products is restricted to a maximum of 10% of the company's total assets.

投资额比例限制

除上述投资不动产和投资行为限制外，《办法》还对投资额比例作出如下限制：

- 公司投资不动产（不含自用性不动产）的账面余额，不高于其上季度末总资产的 10%；
- 公司投资不动产相关金融产品的账面余额，不高于其上季度末总资产的 3%；
- 公司投资不动产及不动产相关金融产品的账面余额，合计不高于其上季度末总资产的 10%。

Benefits

1. Property investment in the past few years has generally been confined to residential property due to it having a lower threshold for investment and the fact that it provides an easier environment to operate in. By contrast, commercial properties need much greater investment, offer comparatively low returns and require professional management skills to be a success and therefore rarely achieve substantial funding. By allowing insurance companies to invest in real estate, commercial and office buildings can receive greater funds.
2. In addition, due to the requirement that those investing in commercial properties must have professional management skills, there is potential for foreign institutions with the requisite experience to also thrive as many insurance companies will not have sufficient experience and may look for assistance in this regard.
3. Furthermore, insurance companies are also perceived as the ideal candidates for foreign funds within the commercial property industry as insurance companies' expectation on return is relatively low.

多方受益

1. 近几年来，房地产投资常常局限于住宅房地产领域，原因在于该领域的投资准入门槛较低，投资环境也更便利。与此相反的是商业房地产领域，投资需求非常大，投资回报却相对微薄，并且要求专业管理技术人员参与其中。因此，商业房地产领域极难吸引持续性资金投入。通过允许保险公司投资不动产，商业及办公楼宇将得以获得更多资金。
2. 此外，《办法》要求商业房地产领域的投资项目必须有专业管理技术人员参与，而许多保险公司却欠缺相关人员和经验，因而在此领域需要合作方。由此，对于拥有专业管理技术经验优势的外国机构而言，《办法》的出台同样提供了一个繁荣发展的绝佳契机。
3. 再者，鉴于保险公司对投资回报的要求相对较低，中国保险公司无疑是国外

投资基金的理想投资人。

Conclusion

The Measures reflect the requirements of the growing Chinese insurance sector and are very welcome as a means to ease the pressure on Chinese insurance companies to manage their increasing insurance capital by way of a broader range of channels whilst simultaneously benefiting the commercial property market by opening it up to bigger funds.

However, the thresholds for an insurance company to engage in real estate investment are quite high, and the investment ratio requirements are rather strict. Few insurance companies will be able to qualify despite the fact that some insurance companies have already completed property deals prior to the promulgation of the Measures. It remains to be seen how the Measures will affect the Chinese real estate market.

结论

《办法》顺应了中国保险行业快速增长所产生的需求。由于保险资金日益增加，中国保险公司苦于不知如何处理而压力重重。《办法》通过放宽投资渠道，既缓解了保险公司的重负，同时又帮助了商业房地产市场获取大量资金，实现双赢，因而受到广泛欢迎。

然而，我们也注意到保险公司投资不动产的门槛非常高，并且投资比例的要求也十分严格。这将导致只有极少数几家保险公司有资格参与投资不动产，尽管在《办法》颁布之前已有许多保险公司完成了房地产交易。《办法》如何影响中国房地产市场还有待时间的检验。

This publication is intended to keep our clients and friends apprised of industry, regulatory and legislative changes that may have an impact on the way business is conducted and operated in China. It is for general information only, and is not a substitute for legal consultation.