# Chinese government restricts use of land resources

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**The Chinese Ministry of Land and Resources introduced a new circular aimed at avoiding waste and the overdevelopment of land resources. Effective as of 1 September 2014, this circular will change the current Chinese land use regime in various important aspects. The use of land in China for commercial purposes is likely to become more expensive and, at the same time, less secure. Companies for which real estate is important should keep track of these developments and engage with local authorities on this.**

Land in China can either be owned by the State or by farmers' collective organisations. The State-owned land plots can be developed and used by governmental agencies for the public interest, or by private parties for housing or commercial purposes based on land use rights ("**LUR**"). Land resources owned by farmers' collective organisations are for their farming or residential use only, and they are restricted from using the land for other commercial purposes.

The LUR granting regime was established by the Chinese central government around 30 years ago to meet the need for the private and foreign-investment development of land in China. Private parties can acquire LUR by participating in a statutory bidding process as organised by local governments. The highest bidder pays the LUR grant premium and can then develop and use the land for the designated purposes. LUR are granted for a statutorily determined maximum period.

Until recently, LUR were always granted for the statutorily determined maximum term: 70 years for residential purposes, 40 years for retail, sports, entertainment and tourism, and 50 years for industry, mixed-use or other purposes not specified by law. Upon the expiry of the term, local governments can require the payment of additional LUR grant premiums for the renewal of non-residential plots, or can organise a new bidding process. The law is unclear on how to proceed when the term of use for residential plots expires.

Although detailed implementing rules for the circular are yet to be published by the Ministry, the new circular encourages the local authorities to:

- first enter into a short-term lease with the potential LUR acquirer, and then consider whether to grant LUR, and then
- grant a tenure shorter than the statutory maximum period.

In fact, local authorities, for example in Shanghai and Guangdong, have already started employing this practice, by granting industrial LUR for a 20-year term only.

Taking into account that the land resources market in China has become more and more competitive in recent years, the new rules may force investors to pay more LUR grant premiums for a shorter land use period. In addition, that use may also turn out to be less secure if the local authorities are initially only prepared to grant LUR for a short-term lease. In the absence of detailed implementing rules, however, it is hard to estimate the consequences of the circular for investors. It is likely that the implementing rules will leave discretionary powers to the local authorities, and that the practical implications will vary from locality to locality.

Both Chinese and foreign investors, especially those engaged in businesses for which land and buildings are of vital interest, should keep track of these developments when considering future investments. Understanding the implications of the latest developments for specific investments will require close engagement with local authorities.