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Golf Course Development in China Regulatory and Environmental Issues

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Today's Agenda:

- **Golf Course Development – Ongoing Situations**
- **Land Use in Golf Course Construction**
 - **Regulatory Framework Overview**
- **Summary of Environmental Issues in Golf Course Operations**
- **Q&A**

Golf Course Development – Ongoing Situations

- From 2004 to 2009, golf courses nationwide in China increased from approximately 170 to over 500 (for most of these, the area covered constitutes more than 500 Mu). Note: 1 mu is roughly equivalent to 660 square meters, or about 0.066 of a hectare.
 - Golf courses are located throughout China. For maps, you can review the following site, selecting the province in which you wish to view the golf course (the link below is to the Beijing golf course map, though you can change the location using the options at the site). <http://sports.sina.com.cn/golf/course/bj/>
- Most of the golf courses occupy previously cultivated land.
- *Ultra vires* (Latin, “Beyond the Powers”) approvals for construction of golf courses.

Golf Course Development – Ongoing Situations

- Three (3) golf course construction violation cases were recently announced and sanctioned by the Ministry of Land and Resources.
 - during December 2009 and September 2010, Sanxia Hongming Tourism Real Estate Development Company constructed a golf course and golf court without any approvals which was in violation of the entire land use plan and the Circular on Suspension of Newly Constructed Golf Courses.
 - in May 2009, Hunan Chenzhou Small Ancient Village Ecology Park Investment Development Co., Ltd., acquired cultivated land in the amount of 2,246 Mu by means of leasing to construct the golf course which violates the Circular on Suspension of Newly Constructed Golf Courses.
 - Xinjiang Silk Road Outdoor Sports Fitness Co., Ltd., violated the entire land use plan in Urumqi County by occupying grassland in the amount of 828Mu to construct a golf course which was in breach of the Circular on Suspension of Newly Constructed Golf Courses. Date not specified but this matter apparently arose during the 2009/2010 period.

Golf Course Construction – Land Use Regulatory Framework

The Land Administration Law [土地管理法] issued by the Standing Committee January 1, 2001 and amended August 28, 2008.

Chapter 5 of this Law sets out a legal framework for land use controls applicable to golf course construction. According to Article 45 of this Law, the expropriation of the following land shall be approved by the State Council: 1) basic farmland; 2) land exceeding 35 hectares beyond the basic farmland and 3) any land exceeding 70 hectares. In theory, the land use for golf course construction on basic farmland or any land exceeding 70 hectares in area shall be approved by the State Council.

http://www.gov.cn/banshi/2005-05/26/content_989.htm

Golf Course Construction – Land Use Regulatory Framework

Relevant Regulations /Norms

- Opinion on Strengthening Real Estate Market Macro Management and Improving Its Healthy and Sustainable Development [关于加强房地产市场宏观管理促进房地产业健康持续发展的意见] (jointly issued by the Ministry of Construction, the Ministry of Land and Resources, the State Administration for Industry and Commerce and the State Administration of Taxation August 10, 1993 and effective the same date). This Opinion clearly states that golf course projects, in principle, shall neither be approved nor granted planning permits, land use and loans.
- Circular on Further Strengthening Land Administration and Protecting Cultivated Land [关于进一步加强土地管理切实保护耕地的通知] (issued by the State Council May 18, 1997 and effective the same date). The Circular requires strict controls on cultivated land use and land-use right acquisition. The Circular specifies that it is prohibited to take cultivated land, forest land and waste land suitable for cultivation and sell the land use rights of abovementioned land for golf course construction projects. <http://www.cn21.com.cn/managetools/zcfg/nl/042125.htm>
- Circular on Further Implementing Measures to Protect the Cultivated Land System [关于进一步采取措施落实严格保护耕地制度的通知] (issued by the Ministry of Land and Resources November 17, 2003 and effective the same date). This Circular stresses that land use for construction purposes shall be strictly examined and approved and land use for golf course projects shall neither be applied for nor approved. <http://www.jincao.com/fa/law19.s43.htm>

Golf Course Construction – Land Use Regulatory Framework

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- Circular on Suspension of Newly Constructed Golf Courses [关于暂停新建高尔夫球场的通知] (issued by the General Office of the State Council January 10, 2004 and effective the same date). This Circular requires that local governments at different levels and departments under the State Council shall not approve any new construction of golf courses from the date of printing and distributing this Circular to the issuance of the relevant new policy or regulation. Further, the Circular clarifies that golf courses under construction shall be suspended or shall not start construction if: 1) such construction did not go through relevant approvals, e.g. land use, environmental impact assessment; or 2) the proposal and feasibility study for the golf course have been approved but the land use or construction commencement permit have not yet been attained; or 3) all the approvals have been obtained, but the project construction has not yet commenced. Moreover, the Circular requires local governments at different levels to implement effective measures to strengthen administration of current operating golf courses, to strictly control the consumption of the water resources, and to supervise the construction of environmental protection facilities. http://www.gov.cn/gongbao/content/2004/content_63138.htm
- Decision on Deepening Reform and Strictly Managing Land [关于深化改革严格土地管理的决定] (issued by the State Council December 24, 2004 and effective the same date). The Decision re-confirms the suspension of approvals of land use for golf courses. http://news3.xinhuanet.com/newscenter/2004-12/24/content_2377684.htm

Golf Course Construction – Land Use Regulatory Framework

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- Decision on Printing and Distributing the Provisional Regulations on Promoting Industrial Structure Adjustment [关于发布实施《促进产业结构调整暂行规定》的决定] (issued by the State Council December 2, 2005 and effective the same date) and Catalogue on Guiding Industrial Structure Adjustment (2005 Version) [产业结构调整指导目录（2005年本）] (issued by the National Development and Reform Commission December 2, 2005 and effective the same date). The Catalogue classifies golf course projects into the "Restricted Category". Pursuant to Article 18 of the Provisional Regulations, it is prohibited to invest in new projects in the restricted category. The investment management department shall not approve or record such projects, various financial institutions shall not provide loans to those projects; the departments of land management, city planning, construction, environmental protection, quality and inspection, fire protection, customs and industry and commerce shall not provide any services associated with the administration procedures for start up of such projects. The relevant entities and responsible persons shall be financially and otherwise liable for the construction of such projects in violation of these Provisional Regulations.

http://www.sdpc.gov.cn/zcfb/zcfbqt/zcfb2005/t20051222_54302.htm

http://www.ndrc.gov.cn/zcfb/zcfbl/zcfbl2005/t20051222_54304.htm

Golf Course Construction – Land Use Regulatory Framework

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- Circular Concerning Printing and Distributing the Catalogue on Projects under Restricted Land Use (2006 Version) (“Restricted Catalogue”) and Catalogue on Projects under Prohibited Land Use (2006 version) (“Prohibited Catalogue”) [关于发布实施《限制用地项目目录（2006年本）》和《禁止用地项目目录（2006年本）》的通知] (issued by the Ministry of Land and Resources December 22, 2006 and effective the same date). Golf course projects are included in the Prohibited Catalogue. In accordance with Article 3 of this Circular, land and resource departments at various levels and the investment management department shall not approve any of the projects listed in the Prohibited Catalogue. http://www.gov.cn/zwggk/2006-12/18/content_471717.htm
- Circular Concerning the National Land Use Plan for Year 2007 [2007年全国土地利用计划通知] (issued by the Ministry of Land and Resources April 27, 2007 and effective the same date). This Circular emphasizes the importance of implementation of the regulation concerning the Prohibited Catalogue and Restricted Catalogue and re-states that land use for golf course projects is strictly prohibited.
- In February 2009, the Ministry of Land and Resources outlines four principles for drafting the Management Measures for Transfers of Rural Land for Construction Purposes [农村建设用地流转管理办法], one of which is to prohibit use of rural collective land for construction of golf courses.

Golf Course Construction – Land Use Regulatory Framework

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- Circular Concerning Strictly Controlling Land Use for Construction Purposes and Improving the Utilization of Approved Land [关于严格建设用地管理促进批而未用土地利用的通知] (issued by the Ministry of Land and Resources August 11, 2009 and effective the same date) . This Circular requires the land and resource management departments at various levels to take serious actions to investigate and prosecute illegal construction of golf courses in violation of laws and regulations with regard to land management.
http://www.mlr.gov.cn/xwdt/zytz/200909/t20090901_124996.htm
- Circular Concerning Carrying out Investigations of Golf Course Construction [关于开展高尔夫球场建设情况调查的通知] (jointly issued by the General Offices of the National Development and Reform Commission, the Ministry of Land and Resources, the Ministry of Environmental Protection, the Ministry of Housing and Urban-Rural Development, the State Administration of Industry and Commerce, the General Administration of Sport and the National Tourism Administration September 22, 2009 and effective the same date). This Circular requires local governments and relevant authorities to strictly comply with the requirements indicated in the Circular on Suspension of Newly Constructed Golf Courses and continuously suspend approvals for construction of golf courses until the issuance of relevant new policies. Further, the Circular specifies that the golf courses constructed or under the construction with nine or more holes or area of over 500Mu are the targets for the investigation. The investigation summary report shall be submitted to abovementioned seven (7) authorities by November 30, 2009.
<http://www.lgy.cn/upload/200910201538188280.pdf>

Golf Course Operation – Examples of Environmental Impacts

- Water Resources

- high water consumption (one China media source indicated levels at 11 times average daily water consumption per capita)
- negative impacts on the water quality of ground and surface water caused by the use of fertilizers and pesticides
- increased waste water discharge (sewage from the golf clubs, hotels and other supporting facilities)

- Air

- Air pollution caused by the volatilization of various pesticides used on the golf course

- Noise

- noise from irrigation pumping stations

Golf Course Operation – Examples of Key Environmental Laws

Examples of Applicable Laws and Regulations

- Law on Environmental Impact Assessment [环境影响评价法] issued by the Standing Committee of the People's Congress October 28, 2010 and effective September 1, 2003 and Catalogue of Classification Management of Environmental Impact Assessment for Construction Projects [建设项目环境影响评价分类管理名录] issued by the Ministry of Environmental Protection September 2, 2008 and effective October 1, 2008. According to these laws, proponents of golf course construction projects must submit environmental impact assessment statements (most stringent level of environmental impact documentation) which shall include, among other things, an analysis, prediction and assessment of environmental impacts that may be caused by the golf course, a description of planned measures for protecting the environment and their technical and economical demonstration, and environmental monitoring recommendations, etc.

<http://www.miit.gov.cn/n11293472/n11294912/n11296092/11904873.html>

http://www.gov.cn/gongbao/content/2009/content_1265996.htm

Golf Course Operation – Examples of Key Environmental Laws

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- Environmental Protection Law [环境保护法] issued by the Standing Committee December 26, 1989 and effective the same date. This Law requires that the governments at different levels strengthen the agricultural environment protection by promoting a rational application of chemical fertilizers, pesticides and plant growth hormones and installations for the prevention and control of pollution at a construction project (e.g., a golf course) must be designed, built and put into operation together with the principal part of the project.
http://zfs.mep.gov.cn/fl/198912/t19891226_75912.htm
- Law on the Prevention and Control of Water Pollution [水污染防治法] issued by the Standing Committee May 11, 1984, amended February 28, 2008 and effective June 1, 2008 and its Implementing Regulations [水污染防治法实施细则] issued by the State Council March 20, 2000 and effective the same date. Those rules require that use of pesticides must be in line with the provisions and norms on safe use of pesticides and the governments shall guide the use fertilizers and pesticides in a scientific and reasonable way and control the overdose of fertilizers and pesticides so as to prevent water pollution. Moreover, discharge of waste water shall be within the State or local standards for the discharge of waste water and indicators for the total discharge control of major water pollutants. It is prohibited to build, renovate or enlarge in a drinking water source reserve any construction project irrelevant to water supply facilities and the work of water source protection.

http://www.gov.cn/flfg/2008-02/28/content_905050.htm

http://www.gov.cn/flfg/2005-08/06/content_21045.htm

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Golf Course Operation – Examples of Key Environmental Laws

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- Regulations on the Nature Protection Zones [自然保护区条例] issued by the State Council October 9, 1994 and effective December 1, 1994. These Regulations prohibit any tourism and production/construction activities in buffer areas associated with Nature Protection Zones. http://www.gov.cn/flfg/2005-09/27/content_70636.htm
- Regulations on Pesticides Management [农药管理条例] issued by the State Council May 8, 1997, amended November 29, 2001 and effective the same date and its Implementing Measures [农药管理实施办法] issued by the Ministry of Agriculture December 8, 2007 as amended and effective January 8, 2008. Those Rules require the governments at different levels to guide the reasonable use of the pesticides and the use of the pesticides shall comply with the safety measures as prescribed by various regulations and standards.

<http://www.china.com.cn/chinese/PI-c/84694.htm>

<http://www.foodmate.net/law/shipin/163411.html>

Thank You!
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