

GENTA INC DE/
Form S-8
September 04, 2009

As filed with the Securities and Exchange Commission on September 4, 2009

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

GENTA INCORPORATED
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

33-0326866
(IRS Employer Identification No.)

200 Connell Drive
Berkeley Heights, NJ 07922
(Address of principal executive offices) (Zip Code)

GENTA INCORPORATED 2009 STOCK INCENTIVE PLAN
(Full title of the Plan(s))

Raymond P. Warrell, Jr., M.D.
Chairman and Chief Executive Officer
Genta Incorporated
200 Connell Drive
Berkeley Heights, NJ 07922
(Name and address of agent for service)

(908) 286-9800
(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 (do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Genta Incorporated 2009 Stock Incentive Plan	83,478,929			
Common Stock, \$0.001 par value	shares	\$0.38	\$31,721,993.02	\$1,775

(1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the Genta Incorporated 2009 Stock Incentive Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of Registrant's Common Stock.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) of the Securities Act of 1933, as amended, on the basis of the average of the high and low selling prices per share of Common Stock of Genta Incorporated on September 3, 2009, on the over-the-counter market, as reported by the Over the Counter Bulletin Board.

PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference

Genta Incorporated (the “Registrant”) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the “Commission”):

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as amended on Form 10-K/A, filed with the Commission on February 13, 2009 and April 6, 2009, respectively, and as updated by the Registrant’s Current Report on Form 8-K filed with the Commission on September 4, 2009;
- (b) The Registrant’s Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2009, filed with the Commission on August 14, 2009;
- (c) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), since the end of the fiscal year covered by the Registrant’s Annual report referred to in (a) above; and
- (d) The Registrant’s Registration Statement No. 000-19635 on Form 8-A filed with the Commission on September 27, 2005, pursuant to Section 12(g) of the Exchange Act, in which there is described the terms, rights and provisions applicable to the Registrant’s outstanding Common Stock, including any amendments or reports filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K under the Exchange Act shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Section 102(b)(7) of the Delaware General Corporation Law (the “DGCL”) permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions, or (iv) for any transaction from which the director derived an improper personal benefit.

Section 145 of the DGCL provides that a corporation may indemnify any person, including a director or officer, who is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or other enterprise against expenses (including attorney’s fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal actions or proceedings, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may provide similar indemnification in an action or suit by or in the right of the corporation, except that no indemnification is permitted if such person is adjudged to be liable to the corporation unless and to the extent the Court of Chancery or the court in which such action or suit was brought determines that such person is fairly and reasonably entitled to indemnity. Where a director or officer is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such director or officer actually and reasonably incurred.

Article VIII of the Registrant’s restated certificate of incorporation, as amended, provides indemnification of directors and officers of the Registrant to the fullest extent permitted by the DGCL.

The Registrant maintains liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of the Registrant.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit Number Exhibit

- | | |
|------|--|
| 4 | Instruments Defining the Rights of Stockholders. Reference is made to Registrant’s Registration Statement on Form 8-A, together with any exhibits thereto, which is incorporated herein by reference pursuant to Item 3(d) to this Registration Statement. |
| 5 | Opinion and consent of Morgan, Lewis & Bockius LLP. |
| 23.1 | Consent of Amper, Politziner & Mattia, LLP |
| 23.2 | Consent of Deloitte & Touche LLP |
| 23.3 | Consent of Morgan, Lewis & Bockius LLP is contained in Exhibit 5. |
| 24 | Power of Attorney. Reference is made to page II-4 of this Registration Statement. |
| 99.1 | Genta Incorporated 2009 Stock Incentive Plan. |

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act, (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the Registrant's 2009 Stock Incentive Plan.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8, and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Berkeley Heights, State of New Jersey, on September 3, 2009.

Genta Incorporated

By: /s/Raymond P. Warrell Jr., M.D.
Raymond P. Warrell, Jr., M.D.
Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of Genta Incorporated, a Delaware corporation, do hereby constitute and appoint Raymond P. Warrell, Jr., M.D., Chairman and Chief Executive Officer and Gary Siegel, Vice President, Finance, and each of them, the lawful attorneys-in-fact and agents with full power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, and any one of them, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/Raymond P. Warrell Jr., M.D. Raymond P. Warrell, Jr., M.D.	Chairman, Chief Executive Officer (Principal Executive Officer) and Director	September 3, 2009
/s/Gary Siegel Gary Siegel	Vice President, Finance (Principal Financial and Accounting Officer)	September 3, 2009

Signature	Title	Date
/s/Christopher P. Parios Christopher P. Parios	Director	September 3, 2009
/s/Daniel D. Von Hoff, M.D. Daniel D. Von Hoff, M.D.	Director	September 3, 2009
/s/Douglas G. Watson Douglas G. Watson	Director	September 3, 2009

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EXHIBIT INDEX

Exhibit Number	Exhibit
4	Instruments Defining the Rights of Stockholders. Reference is made to Registrant's Registration Statement on Form 8-A, together with any exhibits thereto, which is incorporated herein by reference pursuant to Item 3(d) to this Registration Statement.
5	Opinion and consent of Morgan, Lewis & Bockius LLP.
23.1	Consent of Amper, Politziner & Mattia, LLP
23.2	Consent of Deloitte & Touche LLP
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24	Power of Attorney. Reference is made to page II-4 of this Registration Statement.
99.1	Genta Incorporated 2009 Stock Incentive Plan.

174,745 24,239,499 (48,253,902) 13,144,146 262,020 84,599 (348,893)

Operating expenses

(15,478,312) (4,323,095) (8,654,887) (1,381,034) (3,767,369) (12,316,892) (45,921,589)

Operating income/(loss)

(5,303,567) 19,916,404 (56,908,789) 11,763,112 (3,505,349) (12,232,293) (46,270,482)

Interest income

1,104,243 168,571 527,180 45,944 167,398 1,478,456 3,491,792

Exchange gains

3,603,164 3,603,164

Income from change in fair value of warrant liability

16,422,000 16,422,000

Share of income/(loss) in an entity

10,229,475 (386,392) 9,843,083

Income/(loss) before income taxes

9,633,315 20,084,975 (56,381,609) 11,809,056 (3,337,951) 5,281,771 (12,910,443)

Income tax (expense)/benefit

(3,596,479) (5,320,316) 2,880,416 (2,797,717) 724,771 (2,620,183) (10,729,508)

Net income/(loss)

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6,036,836 14,764,659 (53,501,193) 9,011,339 (2,613,180) 2,661,588 (23,639,951)

Depreciation and amortization

979,784 300,262 241,733 42,084 194,700 636,388 2,394,951

Capital expenditure

395,549 1,920,232 6,460,196 9,029 78,403 140,146 9,003,555

Real estate property development completed

281,907 46,018 327,925

Real estate property under development (current)

79,586,295 26,144,986 323,611,183 229,045 76,171,064 14,753,333 520,495,906

Real estate property under development (non-current)

45,666,905 57,040,382 102,707,287

Real estate property held for lease

6,858,892 1,887,694 6,104,201 14,850,787

Total long-lived assets

75,752,988 2,174,833 18,177,885 129,463 59,060,708 2,857,285 158,153,162

Total assets

424,149,339 104,485,745 155,570,446 42,259,379 95,554,258 114,146,915 936,166,082

Table of Contents**XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(All amounts stated in US\$, except for number of shares data)

December 31, 2009	Henan US\$	Shandong US\$	Jiangsu US\$	Anhui US\$	Sichuan US\$	Others US\$	Consolidated US\$
Net real estate sales	90,049,823	89,713,230	198,070,688	6,902,453	56,601,483		441,337,677
Real estate lease income	319,433	1,025					320,458
Other revenue	151,442	69,117	127,340	51,074	18,458	6,908,928	7,326,359
Total revenue	90,520,698	89,783,372	198,198,028	6,953,527	56,619,941	6,908,928	448,984,494
Cost of real estate sales	(72,590,799)	(75,362,270)	(151,343,773)	(4,335,579)	(47,803,636)		(351,436,057)
Cost of real estate lease income	(597,164)	(1,091)					(598,255)
Other costs	(155,419)	(99,955)	(1,886,234)	(20,104)	(14,748)	(5,528,508)	(7,704,968)
Total cost of revenue	(73,343,382)	(75,463,316)	(153,230,007)	(4,355,683)	(47,818,384)	(5,528,508)	(359,739,280)
Gross profit/(loss)	17,177,316	14,320,056	44,968,021	2,597,844	8,801,557	1,380,420	89,245,214
Operating expenses	(12,957,908)	(2,770,894)	(8,388,311)	(552,520)	(2,593,035)	(6,394,851)	(33,657,519)
Operating income/(loss)	4,219,408	11,549,162	36,579,710	2,045,324	6,208,522	(5,014,431)	55,587,695
Interest income	1,041,212	134,122	885,586	19,085	173,183	134,797	2,387,985
Exchange gains	79,638						79,638
Other operating expenses						(383,333)	(383,333)
Income from change in fair value of warrant liability						169,736	169,736
Share of income/(loss) in an entity	4,562,610					(160,512)	4,402,098
Income/(loss) before income taxes	9,902,868	11,683,284	37,465,296	2,064,409	6,381,705	(5,253,743)	62,243,819
Income tax expense	(2,398,908)	(3,758,223)	(10,259,748)	(878,126)	(1,702,352)	(827,434)	(19,824,791)
Net income/(loss)	7,503,960	7,925,061	27,205,548	1,186,283	4,679,353	(6,081,177)	42,419,028
Depreciation and amortization	1,137,425	352,662	175,078	24,828	123,714	359,571	2,173,278
Capital expenditure	353,113						353,113
Real estate property development completed	1,080,537	226,313					1,306,850
Real estate property under development (current)	241,231,627	3,485,125	224,648,684	180,252	91,044,731		560,590,419
Real estate property under development (non-current)							
Real estate property held for lease	5,622,713	1,824,828	8,883,795	945,250			17,276,586
Total long-lived assets	11,912,865	2,134,271	14,878,412	1,034,079	635,767	1,829,893	32,425,287
Total assets	483,746,910	57,035,256	200,266,970	15,942,909	83,305,122	41,485,282	881,782,449

19. Commitments and contingencies

The Group leases certain of its office properties under operating lease arrangements. Payments under operating leases are expensed on a straight-line basis over the periods of their respective leases, and the terms of the leases do not contain rent escalation, or contingent rent, renewal, or purchase options. There are no restrictions placed upon the Group by entering into these leases.

Commitments

As of December 31, 2009, the Group had lease payments under non-cancellable leases falling due as follows:

	Amount US\$
2010	1,446,526
2011	1,272,479
2012	1,269,184
2013	299,364
2014 and thereafter	481,735
 Total	 4,769,288

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Table of Contents**XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****(All amounts stated in US\$, except for number of shares data)**

As of December 31, 2009, the Group had outstanding commitments with respect to non-cancelable construction contracts for real estate development and land use rights purchases as follows:

	Amount US\$
Due within 1 year	376,260,325

Contingencies

The PRC subsidiaries have complied with the requirements of their local authority to accrue for retirement benefit contributions in respect of their employees (See Note 2 (r)). However payment of such accrued amount has not been sought by the regulatory bureau.

As at December 31, 2009, the Group provided guarantees of US\$509,230,617 (2008: US\$383,950,604), in favor of its customers in respect of mortgage loans granted by banks to such customers for their purchases of the Group's properties where the underlying real estate ownership certificates can only be provided to the banks on a time delay manner due to administrative procedures in the PRC. Pursuant to the terms of the guarantees, upon default in mortgage payments by these purchasers, the Group is responsible for repaying the outstanding mortgage principal together with the accrued interest and penalty owed by the defaulted purchasers to the bank and the Group is entitled to take over the legal titles and possession of the related properties. The Group's guarantee period starts from the dates of grant of the relevant mortgage loans and ends upon issuance of real estate ownership certificates which will generally be available within six to twelve months after the purchasers take possession of the relevant properties.

The fair value of the guarantees is not significant and the management considers that in case of default in payments, the net realizable value of the related properties can cover the repayment of the outstanding mortgage principal together with the accrued interest and penalty and therefore no provision has been made for the guarantees.

Upon adoption of ASC 740-10 on January 1, 2007, the Group decreased deferred tax payable by US\$2,667,594 and increased unrecognized tax benefits by the same amount as ASC 740-10 specifies that tax positions for which the timing of the ultimate resolution is uncertain should be recognized as long-term liabilities. The Company also recognized additional unrecognized tax benefits of US\$ 820,040 and US\$11,945 for the year ended December 31, 2008 and 2009, respectively. At this time, the Company is unable to make a reasonably reliable estimate of the timing of payments in individual years beyond 12 months due to uncertainties in the timing of tax audit outcomes.

20. Concentration of risk

The Group's operations are conducted in the PRC. Accordingly, the Group's business, financial condition and results of operations may be influenced by the political, economic and legal environments in the PRC and by the general state of the PRC economy.

The Group's operations in the PRC are subject to special considerations and significant risks not typically associated with companies in North America and Western Europe. These include risks associated with, among others, the political, economic and legal environments and foreign currency exchange. The Group's results may be adversely affected by changes in the political and social conditions in the PRC, and by changes in governmental policies with respect to laws and regulations, anti-inflationary measures, currency conversion and remittance abroad, and rates and methods of taxation, among other things.

The Group transacts most of its business in RMB, which is not freely convertible into foreign currencies. All foreign exchange transactions take place either through the PBOC or other banks authorized to buy and sell foreign currencies at the exchange rates quoted by the PBOC. Approval of foreign currency payments by the PBOC or other institutions requires submitting a payment application form together with suppliers' invoices, shipping documents and signed contracts.

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On July 21, 2005, the PRC government changed its decade-old policy of pegging the value of the RMB to the US\$. Under the new policy, the RMB is permitted to fluctuate within a narrow and managed band against a basket of certain foreign currencies. This change in policy has resulted in a 17% appreciation of the RMB against the US\$ from July 21, 2005 to December 31, 2009.

Additionally, the value of the RMB is subject to changes in central government policies and to international economic and political developments affecting supply and demand in the PRC foreign exchange trading system market.

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XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(All amounts stated in US\$, except for number of shares data)

The Group's real estate projects are concentrated in Henan province. Any negative events such as a slowdown in the economy in Henan province might cause material loss to the Group and have a material adverse effect on the Group's financial condition and results of operations. The risk in this respect is mitigated by the Group by expanding its operations outside of Henan province.

The Group uses various suppliers and sells to a wide range of customers. No single supplier or customer accounted for more than 10% of revenue or project expenditures for the year ended December 31, 2007, 2008 and 2009.

21. Condensed financial information of the Company

The condensed financial statements of Xinyuan Real Estate Co., Ltd. (the Company) have been prepared in accordance with accounting principles generally accepted in the United States of America. Under the PRC laws and regulations, the Company's PRC subsidiaries are restricted in their ability to transfer certain of their net assets to the Company in the form of dividend payments, loans or advances. The amounts restricted include paid-in capital and statutory reserves, as determined pursuant to PRC generally accepted accounting principles, totaling US\$331,434,918 as of December 31, 2009 (2008:US\$320,167,418).

Table of Contents**XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(All amounts stated in US\$, except for number of shares data)

Balance Sheet

	Year ended December 31	
	2008	2009
	US\$	US\$
ASSETS		
Current assets		
Cash and cash equivalents	303,069	293,242
Other receivable	225	255
Other current assets		709,168
Due from a subsidiary	365,734,948	362,130,718
Total current assets	366,038,242	363,133,383
Other assets	2,785,351	1,236,868
Investments in subsidiaries	129,058,447	189,805,568
TOTAL ASSETS	497,882,040	554,175,819
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities		
PRC income tax payable	787,829	842,803
PRC other tax payable	379,366	703,830
Other payable and accrued liabilities	651,208	1,477,950
Other long-term debt due within one year	95,638,869	104,238,775
Total current liabilities	97,457,272	107,263,358
Derivative liabilities associated with long term debt and preferred shares	170,000	264
Total liabilities	97,627,272	107,263,622
Shareholders equity		
Common shares, \$0.0001 par value:		
Authorized 500,000,000 shares, issued and outstanding 151,480,932 shares for 2009 (2008: 151,017,040 shares)	15,102	15,148
Additional paid-in capital	499,154,814	503,020,794
Accumulated deficit	(98,915,148)	(56,123,745)
Total shareholders equity	400,254,768	446,912,197
TOTAL LIABILITIES AND SHAREHOLDERS EQUITY	497,882,040	554,175,819

Table of Contents**XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(All amounts stated in US\$, except for number of shares data)

Statement of Operations

	Year ended December 31		
	2007 US\$	2008 US\$	2009 US\$
Sales tax		(379,366)	(324,464)
Selling and distribution expenses	(115,129)		
General and administrative expenses	(2,787,506)	(9,951,902)	(5,081,517)
Operating loss	(2,902,635)	(10,331,268)	(5,405,981)
Interest expense	(1,516,070)	(6,682,929)	(11,526,711)
Interest income		1,437,688	13
Income/(loss) from change in fair value of warrant liability	(8,602,000)	16,422,000	169,736
Other expenses			(383,333)
Equity in profit/(loss) of subsidiaries, net	59,058,948	(23,697,613)	60,214,233
Income/(loss) from operations before income taxes	46,038,243	(22,852,122)	43,067,957
PRC income taxes	(375,087)	(787,829)	(648,929)
Net income/(loss)	45,663,156	(23,639,951)	42,419,028
Accretion of Series A convertible redeemable preference shares	(2,739,384)		
Deemed dividend	(182,228,622)		
Net income/(loss) attributable to ordinary shareholders	(139,304,850)	(23,639,951)	42,419,028

Table of Contents**XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(All amounts stated in US\$, except for number of shares data)

Statement of cash flows

	Year ended December 31		
	2007 US\$	2008 US\$	2009 US\$
Cash flows from operating activities			
Net income/(loss)	45,663,156	(23,639,951)	42,419,028
Adjustment to reconcile net income to net cash used in operating activities:			
Equity in profit/(loss) of subsidiaries, net	(59,058,948)	23,697,613	(60,214,233)
Depreciation and amortization	1,112,303	1,666,264	1,445,191
Accretion of long-term debt	1,715,721	4,228,588	4,217,034
Changes in fair value of warrants liabilities	8,602,000	(16,422,000)	(169,736)
Changes in fair value of embedded derivatives, net of amount capitalized	(3,531,817)		
Contingent put option expense			5,000,000
Stock based compensation expense	4,545,968	8,189,903	3,302,750
Changes in operating assets and liabilities:			
Other receivables		2,835,037	3,624
Other assets		(619,747)	(605,876)
Due from a subsidiary	(113,121,068)	(242,833,953)	3,604,230
Due to a subsidiary	5,133		
Income tax payable	375,087	412,742	54,973
Other tax payable		379,366	324,464
Other payable and accrued liabilities	300,000	(2,330,403)	826,742
Accrued interest	2,285,101	(360,626)	(617,128)
Compensation charge of IPO expense	(1,948,466)		
Net cash used in operating activities	(113,055,830)	(244,797,167)	(408,937)
Cash flows from financing activities			
Proceeds from issuance of common shares	262,882,355		
Issuance cost of debt	(4,944,170)		
Proceeds from other long-term debts	100,000,000		
Proceeds from issuance of common shares		217,881	399,110
Net cash provided by financing activities	357,938,185	217,881	399,110
Net increase/(decrease) in cash and cash equivalents	244,882,355	(244,579,286)	(9,827)
Cash and cash equivalents, at the beginning of the year		244,882,355	303,069
Cash and cash equivalents, at end of the period	244,882,355	303,069	293,242

(a) Basis of presentation

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In the Company-only financial statements, the Company's investment in subsidiaries is stated at cost plus its equity interest in undistributed earnings of subsidiaries since inception. The Company-only financial statements should be read in conjunction with the Company's consolidated financial statements.

The Company records its investment in its subsidiaries under the equity method of accounting as prescribed in APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, as codified in ASC 323 *Investment-Equity Method and Joint Ventures* (ASC 323). Such investment is presented on the balance sheet as *Investment in subsidiaries* and share of the subsidiaries' profit or loss as *Equity in profit (loss) of subsidiary company*, net on the statements of operations.

The subsidiaries and equity investee did not pay any dividends to the Company for the periods presented.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles have been condensed or omitted.

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XINYUAN REAL ESTATE CO., LTD. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(All amounts stated in US\$, except for number of shares data)

(b) Related party transactions

For the year ended December 31, 2008, related party transactions were mainly composed of US\$235 million, transferred to Xinyuan Real Estate Ltd for investment in additional subsidiaries in the PRC and an amount of US\$7.5 million for interest in bond (see Note 10) transferred to subsidiary. The amounts were non-interest bearing and have no fixed repayment date.

(c) Commitments

The Company does not have significant commitments or long-term obligations as of the period end presented.

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Table of Contents**EXHIBIT INDEX**

Exhibit Number	Description of Document
1.1	Amended and Restated Memorandum and Articles of Association (incorporated by reference to Exhibit 3.1 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
1.2	Amendment to Amended and Restated Articles of Association (incorporated by reference to Exhibit 99.5 from our Form 6-K (File No. 001-33863) filed with the SEC on December 10, 2009)
2.1	Indenture regarding the guaranteed senior secured floating rate notes due 2010, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd and the Hong Kong and Shanghai Banking Corporation Limited as Trustee (incorporated by reference to Exhibit 10.4 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
2.2	Indenture Supplement No. 1, dated August 21, 2009, to Indenture regarding the guaranteed senior secured floating rate notes due 2010, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd and the Hong Kong and Shanghai Banking Corporation Limited as Trustee (incorporated by reference to Exhibit 2.2 from Amendment No. 1. to our annual report (File No. 001-33863), as amended, initially filed with the SEC on September 29, 2009)
2.3	Indenture regarding the 2% guaranteed convertible subordinate notes due 2012, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd and the Hong Kong and Shanghai Banking Corporation Limited as Trustee (incorporated by reference to Exhibit 10.6 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
2.4	Indenture Supplement No. 1, dated August 21, 2009, to Indenture regarding 2% guaranteed convertible subordinate notes due 2012, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd and the Hong Kong and Shanghai Banking Corporation Limited as Trustee (incorporated by reference to Exhibit 2.4 from Amendment No. 1. to our annual report (File No. 001-33863), as amended, initially filed with the SEC on September 29, 2009)
2.5	Deposit Agreement, dated as of December 11, 2007, among Xinyuan Real Estate Co., Ltd., JPMorgan Chase Bank, N.A., as depository, and holders of American Depositary Shares (incorporated by reference to Exhibit 2.5 from Amendment No. 1. to our annual report (File No. 001-33863), as amended, initially filed with the SEC on September 29, 2009)
4.1	2007 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.2	2007 Long Term Incentive Plan (incorporated by reference to Exhibit 10.2 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.3	Form of securities purchase agreement, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd and purchaser (incorporated by reference to Exhibit 10.3 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.4	Warrant agreement, dated as of April 13, 2007, between Xinyuan Real Estate Co., Ltd. and the Hong Kong and Shanghai Banking Corporation Limited (incorporated by reference to Exhibit 10.5 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.5	Equity registration right agreement, dated as of April 13, 2007, by and among Xinyuan Real Estate Co., Ltd., each of the holders of the Warrants and each of the holders of the Convertible Notes (incorporated by reference to Exhibit 10.7 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.6	Voting agreement, dated as of April 13, 2007, by and among Xinyuan Real Estate Co., Ltd., Drawbridge Global Macro Master Fund Ltd. and Mr. Yong Zhang and Ms. Yuyan Yang (incorporated by reference to Exhibit 10.8 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the Commission on November 16, 2007)
4.7	Share exchange and assumption agreement, dated as of April 9, 2007, among Blue Ridge China Partners, L.P., EI Fund II China, LLC, Yong Zhang, Yuyan Yang, Xinyuan Real Estate, Ltd. and Xinyuan Real Estate Co., Ltd. (incorporated by reference to Exhibit 10.9 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
4.8	Amended and Restated shareholders agreement, dated as of October 31, 2007, among Blue Ridge China Partners, L.P., EI Fund II China, LLC, Yong Zhang, Yuyan Yang, Xinyuan Real Estate, Ltd., Xinyuan Real Estate Co., Ltd. and, to the extent set forth herein, Burnham Securities Inc. and Joel B. Gardner (incorporated by reference to Exhibit 10.10 from our F-1 registration statement (File

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No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

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- 4.9 Amended and restated warrant, dated as of August 28, 2007, between Xinyuan Real Estate Co., Ltd. and EI Fund II China, LLC (incorporated by reference to Exhibit 10.11 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.10 Amended and restated warrant, dated as of August 28, 2007, between Xinyuan Real Estate Co., Ltd. and Blue Ridge China Partners, L.P. (incorporated by reference to Exhibit 10.12 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.11 Burnham warrants holders letter agreement, dated April 9, 2007, among Xinyuan Real Estate Co., Ltd., Xinyuan Real Estate, Ltd., Burnham Securities Inc. and Joel B. Gardner (incorporated by reference to Exhibit 10.13 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.12 Credit agreement, dated as of December 7, 2006, among Blue Ridge China Partners, L.P., EI Fund II China, LLC, and Xinyuan Real Estate, Ltd. (incorporated by reference to Exhibit 10.14 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.13 Share purchase agreement, dated as of November 18, 2006, among Blue Ridge China Partners, L.P., EI Fund II China, LLC, Yong Zhang, Yuyan Yang and Xinyuan Real Estate, Ltd. (incorporated by reference to Exhibit 10.15 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.14 Securities purchase agreement, dated as of August 22, 2006, among Blue Ridge China Partners, L.P., EI Fund II China, LLC, Yong Zhang, Yuyan Yang and Xinyuan Real Estate, Ltd. (incorporated by reference to Exhibit 10.16 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.15 Form of Indemnification Agreement (incorporated by reference to Exhibit 10.17 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.16 Form of employment agreement between the registrant and senior executives (incorporated by reference to Exhibit 10.18 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.17 Form of confidentiality and non-competition agreement between the registrant and senior executives (incorporated by reference to Exhibit 10.19 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.18 English translation of the joint venture contract of Zhengzhou Jiantou Xinyuan Real Estate Co., Ltd., dated August 20, 2005, among Henan Xinyuan Real Estate Co., Ltd., Zhengzhou General Construction Investment Company and Zhengzhou Jiantou Project Consulting Co., Ltd. (incorporated by reference to Exhibit 10.21 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.19 English translation of financial consulting services agreement, dated December 27, 2006, between Henan Xinyuan Real Estate Co., Ltd. and Beijing Runzheng Investment Consulting Co., Ltd. (incorporated by reference to Exhibit 10.22 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.20 (a) English translation of the share transfer agreement regarding Zhengzhou Mingyuan Landscape Engineering Co., Ltd., dated September 1, 2006, among Yong Zhang, Henan Xinyuan Real Estate Co., Ltd. and Zhengzhou Mingyuan Landscape Engineering Co., Ltd. (incorporated by reference to Exhibit 10.23 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- (b) English translation of the share transfer agreement regarding Zhengzhou Mingyuan Landscape Engineering Co., Ltd., dated September 1, 2006, among Yuyan Yang, Henan Xinyuan Real Estate Co., Ltd. and Zhengzhou Mingyuan Landscape Engineering Co., Ltd. (incorporated by reference to Exhibit 10.23 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- 4.21 (a) English translation of the share transfer agreement regarding Zhengzhou Xinyuan Computer Network Engineering Co., Ltd., dated September 1, 2006, among Yong Zhang, Henan Xinyuan Real Estate Co., Ltd. and Zhengzhou Xinyuan Computer Network Engineering Co., Ltd. (incorporated by reference to Exhibit 10.24 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)
- (b) English translation of the share transfer agreement regarding Zhengzhou Xinyuan Computer Network Engineering Co., Ltd., dated September 1, 2006, among Yuyan Yang, Henan Xinyuan Real Estate Co., Ltd. and Zhengzhou Xinyuan Computer Network Engineering Co., Ltd. (incorporated by reference to Exhibit 10.24 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

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4.22 English translation of the share transfer agreement regarding Henan Xinyuan Real Estate Agency Co., Ltd., dated September 1, 2006, among Yuyan Yang, Henan Xinyuan Real Estate Co., Ltd. and Henan Xinyuan Real Estate Agency Co., Ltd. (incorporated by reference to Exhibit 10.25 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

4.23 (a) English translation of the share transfer agreement regarding Henan Xinyuan Property Management Co., Ltd., dated September 1, 2006, among Yong Zhang, Henan Xinyuan Real Estate Co., Ltd. and Henan Xinyuan Property Management Co., Ltd. (incorporated by reference to Exhibit 10.26 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

(b) English translation of the share transfer agreement regarding Henan Xinyuan Property Management Co., Ltd., dated September 1, 2006, among Yuyan Yang, Henan Xinyuan Real Estate Co., Ltd. and Henan Xinyuan Property Management Co., Ltd. (incorporated by reference to Exhibit 10.26 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

4.24 (a) English translation of the share transfer agreement regarding Henan Xinyuan Real Estate Co., Ltd., dated August 7, 2006, among Yong Zhang, Xinyuan (China) Real Estate, Ltd. and Henan Xinyuan Real Estate Co., Ltd. (incorporated by reference to Exhibit 10.27 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

(b) English translation of the share transfer agreement regarding Henan Xinyuan Real Estate Co., Ltd., dated August 7, 2006, among Yuyan Yang, Xinyuan (China) Real Estate, Ltd. and Henan Xinyuan Real Estate Co., Ltd. (incorporated by reference to Exhibit 10.27 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

4.25 English translation of the share transfer agreement regarding Henan Wanzhong Real Estate Co., Ltd., dated March 16, 2006, among Yuyan Yang, Henan Xinyuan Real Estate Co., Ltd. and Henan Wanzhong Real Estate Co., Ltd. (incorporated by reference to Exhibit 10.28 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

4.26 Equity Transfer and Profit Distribution Agreement among Zhengzhou General Construction Investment Company, Zhengzhou Jiantou Project Consulting Co., Ltd., Henan Xinyuan Real Estate Co., Ltd. and Zhengzhou Jiantou Xinyuan Real Estate Co., Ltd. (incorporated by reference to Exhibit 99.2 from our Form 6-K (File No. 001-33863) filed with the SEC on September 30, 2009)

8.1* Subsidiaries of Xinyuan Real Estate Co., Ltd.

11.1 Code of Business Conduct and Ethics of the Registrant (incorporated by reference to Exhibit 99.1 from our F-1 registration statement (File No. 333-147477), as amended, initially filed with the SEC on November 16, 2007)

12.1* CEO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

12.2* CFO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

13.1* CEO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

13.2* CFO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

23.1* Consent of Ernst & Young Hua Ming

* Filed with this Annual Report on Form 20-F