

THE LEGAL FRAMEWORK FOR LAND TENURE IN CHINA

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I. The Land Tenure System in China

A. The Land Ownership and Land Tenure

All land in China is owned by the state or by collectives. After carrying out the opening policy in 1978, China has transformed its planned economy system into a socialist market economy system, and adopted a land use rights tenure system similar to the land leasehold tenure system in Western countries. Under China's Land Administration Law, which was firstly drafted in 1986 and amended in 1998, the State owns all urban land, while farmer collectives own all rural land. As the land tenure system was introduced in China only after 1986, land using before this time is all treated as allocated, the user may continue to use them on paying annual land use tax, or transfer the land use right (LUR) into "granted" by paying the land grant premium. The land ownership and land-use rights (LURs) may be separated, and the state remains the land ownership and local government may transfer the LURs by laws on behalf of the state.

It also states that land and buildings are regarded as two separate entities. Land users may use the land and own the buildings and improvements on it, but the sovereignty of the land remains in the hands of the State or farmer collectives. Given the characteristics of the Chinese land tenure system, private land ownership does not exist in China. As far as compulsory land acquisition is concerned, the acquiring authority actually acquires the LURs only.

B. Allocation and Granting of State-owned Land

In urban areas of cities, lands are state-owned, what can be assigned, sold and resold, leased or mortgaged is the right of using within a fixed term, for example, lots for residential use are usually assigned a use term of 70 years. There are two types of land-use rights in China: the "granted land use right" and the "allocated land use right." The difference is that granted LURs are limited in time, cost the holder an amount proportionate to the land's expected return and may be held by private individuals and entities, while allocated LURs are usually given without the exchange of consideration and without time limitations, but may not be held by private individuals and entities.

Local governments, who administer LURs for the state, may either allocate or grant state-owned LURs to a user according to the potential use of the land. For example, a project for public interests such as a public school invested by the government may obtain a proper piece of land without paying any thing. The most important features of allocated land are that the user has no right to transfer it and that the state may recover the land at any time when needed without paying compensation for the land allocated but for buildings on it. When land is granted, the user pays the local government a land grant premium for the right to use it for a stated period of years. This granted land use right is transferable by mortgage and lease, and may not be abrogated by the state except for compensation in the exercise of its right of eminent domain.

C. Contracting of Collective Land

Lands in rural areas and suburban areas of cities excluding those belonging to the state prescribed by law belong to peasants' collective ownership. House sites, land allotted for personal needs and hilly land allotted for private use belongs to peasants' collective ownership. As now in the countryside of China, agricultural production is proceeded in individual households other than in collective entities like communes. A land-contracting tenure system is employed, called '*chengbao*' in Chinese, according to Rural Land Contract Law promulgated in 2002.

Land collectively owned by farmers may be contracted out to run by members of the collective economic organizations for crop farming, forestry, animal husbandry and fisheries production under a term of 30 years. The contractees shall sign a contract with the correspondents' contractor to define each other's rights and obligations. The land use right of contracting was banned to transfer, but a reform on it is now under contemplation.

II. Legal and Policy Framework for Land Tenure Security in China

A. Main Law on Land Tenure

China pays high attention to the legislation on land and real estate, and more than 30 land laws and Regulation have been formulated and promulgated in the past 50 years. The land legislation in later 1980s' was to regularize various legal relationships of construction land use, enrich and consummate the legal system, bring into effect the nationalization of urban land. In 1990s', the key of land legislation lies in the reform of the system of the use of land, i.e., to establish and foster the land market and to strengthen the legislation on the management of land property.

In 1988, as part of the government's goal of establishing market transactions, China amended its Constitution and Land Administration Law (LAL) to permit the transfer of LURs to private persons and entities. And so the LURs may be assigned in accordance with the laws and regulations. In 1990, China enacted regulations allowing the conveyance of long-term LURs to businesses for the purpose of development. New land registration rules also were enacted. To further promote the development of a market for real estate, the National People's Congress promulgated additional laws for the administration of urban real estate in 1994. Since 1986, LAL's implementation in the next 10 years exposed a number of weaknesses that caused serious problems especially the excessive conversion of agricultural land for urban development. The Land Administration Law was revised in 1998.

Realizing that frequent land reallocation and abusive land requisition increasing spatial inequality threaten economic sustainability as well as social stability, the government has taken various actions to promote land tenure security and to protect farmers' interest in urbanization. The Rural Land Contract Law promulgated in 2002, which stipulates that farmer's land tenure security must be maintained for at least 30 years during which period no land reallocation are to be carried out.

B. Land Use and Compensation Policies

The Land Administration authority has taking control over the land policy reform, land allocation and acquisition, monitoring of land development, comprehensive land-use planning, and implementation of land laws. The Land Administration Law made it possible for private

organizations and individuals to lease and develop state-owned land, which catalyzed the development of the land market in China. With access to the land market, developers started to convert unused land or land for agricultural uses to construction land that supports industrial, energy, and transport projects, as well as city and real estate development plans.

Though the State may transfer LURs to private persons and entities, the right of ownership of the land remains vested in either the State or an Agricultural Collective. The LURs transferred may be granted LURs provided in exchange for value for specific terms of years to domestic or foreign corporations, enterprises, other entities, and individuals. Alternatively, the State may convey allocated LURs, which are rights to use and occupy land for designated public purposes without payment of value, other than a small annual tax or “land use fee.” The state may make expropriation or requisition on land according to law for public interests, but shall give compensations accordingly.

C. The Current Chinese Land Title System

Land registration is the process of recording information about land parcels for the purposes of property rights and land transactions. Various laws and regulations have clarified and accelerated land titling, and enhanced the protection of LURs and personal assets. The land title security provided by a nation’s public land title registration system may be sufficient to encourage mortgage loans from local banks and mortgage lenders. Thus, with the rule of law and a public registration system, the land title security has been enhanced for the risk reduction and promise of indemnification for China’s mortgage-backed debt in the securities markets.

In the 1980s, the current system for land and housing registration was re-established. It was intended to bring the records on property ownership status up to date, to confirm legal titles for property owners, to define the new private property rights introduced by the reforms, and provide the records of title deeds and related instruments for public examination. Land registration was tentatively introduced in 1987, and gradually extended nationally. The government can reduce title risks to purchasers, lenders, and investors by legislation and by improvements to China’s land registration system.

D. Multi-purpose Cadastral System

In China, the modern multi-purpose cadastre and land information system have gradually been established, and put into use since 1986. In the 1990s, a major cadastral survey and land registration activity was conducted in most regions of China. Its main objective was to obtain and record the basic data and attributes of every parcel, including land area, land-use classification, boundary, ownership, land use right, area of buildings and so on. As land ownership in China is state-owned in urban area and collection-owned in rural area, most cities have established their cadastral systems for state-owned land, but not so for collection-owned land. Although the concept of multi-purpose cadastral system is widely accepted, the main applications of such systems remain in land administration, the major users are governmental agents or public services.

III. Problems on Land Tenure System

Registration is required for the creation, release, or modification of a mortgage, a mortgage on a LUR is not effective without registration and will not be protected by law. In this case, land registration and titling system must include all rights and restrictions with regard to all lands in

the country. This means all state, municipal, private, customary, and forest land should be identified and registered in a consistent and complete cadastral system. Unfortunately, the situation is not so, but fortunately more and more people have realized the importance of property right registry, complete property registration could be reasonably envisaged.

The development of computer system for registration is nation-wide practiced in China, most cities now use information system to maintain register data. From the point of view of technology, Chinese registration system is quite advanced, but the availability of register data to public is still a problem, partly because of the cost of getting them, and partly because of the strict authorization to go through to get them.

Another problem is the status of multiple registry offices which must be improved. Under the current system, Land Administration Bureau (LAB) is in charge of the registration of land use rights. A second system exists for the registration of interests in buildings, including ownership, leasehold interests, mortgages, and other security interests. The Housing Administration is in charge of registration and certificate issuance for ownership of buildings and interests in buildings. A title risk exists if an owner registers ownership of a building, but fails to register simultaneously an ownership interest in the LUR to the land under and around the building. In some cities, such as Shanghai, Shenzhen, Beijing, Chongqing, and other business centers, the registration records for buildings and LURs are maintained together. In other locations, they are maintained in separate offices, creating additional inefficiency and difficulty in determining whether a purchaser, lender, or investor may acquire a right to the building.

Among the others, possibly the most important problem is the abusive expropriation of rural lands for urban expansion. These deeds in the name of development requirement, in fact, trespass severely farmer's interests and rights in rural areas. The Central Chinese Government has formulated a series of policies to encourage rural farmers to proceed agricultural production, to prohibit unauthorized illegal rural land expropriation, to raise the compensation standard of land expropriation for countryside farmers.

IV. Enhanced Tools for China Land Tenure Security

The Chinese government now makes effort to secure land tenure. The clarification and security of land rights, possibly involving land-tenure and ownership reforms, are central to the solution of such problems.

A. Consummating More Laws for Land Tenure Security

The Law of Property Right is one of the large numbers of drafting laws by legal institutions. This law will try to clarify some problems which remain unanswered such as the renewal rule of LUR when the land use term is due, what are rights of common for the owners of apartments in the same building. Without clear property rights, land transactions are restricted. The impact of unclear property rights is potentially very significant. There is clear evidence that titling programs have resulted in more mortgages for the loans.

Ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure, Governments at the appropriate levels and consistent with their legal authority employ mechanisms (for example, a body of law, a cadastre, rules for property valuation and others) for the clear definition of property rights, permit the exchange of land and housing without undue restriction, and apply procedures that will make property transactions transparent

and accountable in order to prevent corrupt practices. The governments is also promoting of secure land tenure conditions as a fundamental policy prerequisite for mobilizing a people-centered housing process.

B. Carrying out the Severe Land Use Governing System

In China, a series of complex administrative systems guide land use decisions. These include the Comprehensive Land Use Planning System, Annual Land Use Quota System, Urban Planning System, and Arable Land Protection System. The government establishes land use guidelines and procedures that customarily are carried out at the provincial or local level.

In large cities, independent zoning plans may be drafted for individual districts of the city. Cities also may include the surrounding suburbs in their land use plans. All these zoning plans govern the issuance of land use rights and building permits, as well as the regulation of land development. The land use plans determine the total amount of land that can be added to existing urbanized areas through an annual land supply quota. The construction of buildings and infrastructure on land use rights must comply with the Law on Administration of Urban Real Estate, as well as with the comprehensive land use plan, annual land use plan, annual real estate development plan, and urban zoning plan. Real estate development on a granted LUR also must correspond with the purpose stated in the granting contract.

In rural areas, the State carries out the policies to protect the cultivated land and strictly control the conversion of cultivated land into non-cultivated land. The State also fosters the system of basic farmland protection and compensations to cultivated land to be occupied. Comprehensive land use plans and regulations to preserve cultivated land further control the amount of land available for urban development. Land developments that occur on collectively owned rural land are considered illegal, and administrative efforts such as satellite remote sensing monitoring and inspecting have been implemented to eliminate these violations.

C. Restricting the Transfer of LURs by Agricultural Collectives

Since 1982, the State owns land in the cities, while agricultural collectives own land in rural and suburban areas, except for portions that belong to the State under other provisions of the law. Detailed regulations deal with the circumstance of urban areas expanding onto agricultural collective land. The State also can requisition land from agricultural collectives when the State determines that it needs the land for public non-agricultural purposes; when requisition occurs, the agricultural collective is merely permitted to apply for compensation and settlement fees. Agricultural land that has been put to use for various vital public projects also belongs to the State, regardless of whether the land would otherwise have belonged to an agricultural collective. As mentioned above, this requisition can easily be abused.

The Land Administration Law did clearly provide that it is not possible to lease, mortgage, or transfer ownership of agricultural collective land. Agricultural collectives have the power to create LURs only in members of the collective for residential and agricultural purposes. A 1998 Circular on Strengthening Management of Transfer of Land Use Rights and Strictly Banning Speculative Land Dealing, issued by the General Office of the State Council, instructed local governments to strengthen control over urban and rural land used for non-agricultural projects and to halt illegal occupancy of land by nonagricultural projects. Additionally, in 1999, the State Land Administration issued a Circular on Strengthening the Management of Orchard, Manor and Other Agricultural and Forestry Development Activities, instructing that “other

agricultural and forestry development” must comply with the comprehensive land use plan and be approved via the official application and approval process.

V. Summary

All land in China is owned by the state or by collectives. China has adopted a land use right (LUR) tenure system for the demand of socialist market economy system. By the Land Administration Law, Land users may use the land and own the buildings and improvements on it. The LURs may be assigned in accordance with the laws and regulations. The land-use rights have two types of allocated and granted LUR. The Law of Property Rights is under drafting. China has been carrying out the severe land use governing system for arable land protection and effective land use.

VI. References

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