# Property Registration System in China: Theory, Practice and Future Challenges

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Part A. Introduction

In a mosaic of literature on law and development and related new institutional economics, scholars have sought to prove the correlation between economic development and enforceable property rights. Much of it focused on the role of institutions in safeguarding property rights and reducing transaction costs. If those having property rights even in a small flat have effective titles, they will have more incentives to invest and use their properties as collateral for credit. In economic terms, an effective system of property information is a public good. When property information is standardized and accessible, the system allows for effective planning that incorporates demographics, land use, and environmental-impact assessments. Because the benefits are so broadly dispersed and the costs of providing a standardized property system are so high, some form of state intervention is typically

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2 The early generation of law and development theory emphasized legislative reform and the passage or revision of laws based on foreign models. When that was declared to acquire the desired outcomes, the focus shifted to institutions in name of rule of law and good governance. For example, John Bruce, “Simple Solutions to Complex Problems: Land Formalisation as a ‘Silver Bullet’”, in *Fair Land Governance*, eds.Jan Michiel Otto and Andre’ Hoekema(Leiden: Leiden University Press, 2009), 31-56.


necessary to establish national systems for the registration of land information, particularly in terms of valuing rights and collecting consents. In China, the lack of efficient legal institutions that provide reliable property information for impersonal exchange has hampered sustained economic development. With the development of market economy and emergence of private property interests, creating functioning property institutions has been put on legislature’s agenda. In Verdery’s terms, land titles have become hallmarks of citizenship, person-hood and social justice. China must tone down public power and distribute more private interests, wealth and status to people. From government’s perspective, respecting property rights, holding policy accountability and maintaining

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5 ibid 23. (“[T]he benefits of well-defined and secure property rights and the advantages of public provision of such rights have, over history, led virtually all economically and politically advanced societies to establish state-managed systems for regulating land ownership and land transfers.”)


7 According to a joint World Bank (WB)—People’s Bank of China (PBOC) report, while 70% of small-business financing was secured by movable property in the U.S., the figure for China was less than 15%. See Secured Transactions Law Reform in China, Han Su Lin, July/August 2007


state intervention for good governance are indispensable for sustainable development.\textsuperscript{11}

The promulgation of 2007 Property Law ("PL") reflected state commitments and middle class’s appeals to clarify and demarcate private property rights.\textsuperscript{12} The PL was aimed to set up a legal and institutional framework that recognizes existing property rights, enforces them at low cost, and facilitates holders to exercise them easily in order to be socially beneficial.\textsuperscript{13} Being a legal mechanism to safeguard private property rights and to enable a reliable, quick and cost-effective transfer of interests of property, a property registration system has become essential for providing title security and boosting transaction efficiency. Without such a framework, property owners’ awareness of ‘my property, my destiny’ would become hollow and the state commitment would be in vain.

In the plenary session of the 2013 National People’s Congress (the “NPC”), the immediate former Premier Wen Jiabao announced in the government report that China will release uniform statute on property registration before the end of June 2014.\textsuperscript{14} This is commendable meanwhile it also implies that the current property


\textsuperscript{13} Thomas Merill& Henry Smith argue that property rights are good against the whole world, thus requiring rules that reduces the costs of information for a broad-ranging yet unspecified group of potential violators. Merrill, Thomas W., and Henry E. Smith. "Making Coasean property more Coasean." \textit{Journal of Law and Economics} 54, no. 4 (2011): S77-S104.

\textsuperscript{14} This policy aims to introduce and implement a unified system on property registration in 2014. According to a later issued government circular, the Ministry of Land and Resources, the Ministry of
system is not satisfactory. There are multiple government agencies with overlapping or even conflicting land administration roles in place.\textsuperscript{15} To coordinate or consolidate inconsistent agencies’ sectorial interests and local governments’ parochial interests is in dire need. Furthering Chinese market economy demands the reform of the land registration system in China. As the middle class grow and become more affluent, the government now acknowledges their desire for legal protection of private property.\textsuperscript{16} Additionally, the legal protection of property rights provides incentives for more efficient exploitation of resources.

Despite its paramount significance, there is a surprising dearth of study addressing the effectiveness of property registry in urban China. To the best knowledge of this author, the United Nations Doing Business project (“DB”) has made a preliminary assessment of China’s property registration system.\textsuperscript{17} This report concludes that “[t]he initial data is already promising and there’s reason to hope that future reforms will continue to modernize China’s secured lending framework.”\textsuperscript{18} This paper aims to build upon this DB report.

This paper utilizes institutional analysis and empirical method in assessing Chinese property registration system.\textsuperscript{19} It attempts to depict a general picture of the system by answering the following questions: whether Chinese property registration system is a

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\textsuperscript{19} The research method is inspired by Randall Peerenboom,‘What Have We Learned about Law and Development? Describing, Predicting and Assessing Legal Reforms in China’ (2006) 27 Mich J Int’l L 823 (given the geographical size and data poverty of China).
mandatory registration system or voluntary recordation system? What is its property transfer theory underpinning the system of land registration? How close it is related to Torrens system? The answers will be provided in Part B and C of this paper. In the remaining sections, a survey carried out in Qingdao on Qingdao’s registration system will be presented with the aim to illustrate the functionality of the property registration system in China.

Part B. Institutional Analysis of the Registration System

1. Why there was no functioning property registration system before? Historical and Legislative Background

When the PRC was founded in 1949, the law enacted in the Republican era in general, and PL in particular, was repealed without being replaced. All land was and still is either owned by the state in urban areas, or owned collectively in rural areas. Prior to 1988, the fundamental rule pertaining to all land in China was that there were no individual rights in land. The state had a monopoly to distribute this property to households mainly through the work units (工作单位), which enabled households to obtain accommodation at very low rents. Since there was only public landownership at that time, there was little need to introduce a full-fledged land registration system. In 1988, China embarked on a new economic policy allowing housing marketization. Under this policy, China amended its Constitution, allowing transferability of privatised land use rights (the “LURs”). The recognition of this

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22 In 1988 the State Council embarked on a staged housing reform by adopting a Scheme of National Housing Reform in Urban Areas. This stimulated the government’s initial efforts and provided a ten-year blueprint to expedite commercialize apartment property and reduce state subsidies of housing. See more detail at Lee, James. "From welfare housing to home ownership: the dilemma of China’s housing reform." *Housing Studies* 15, no. 1 (2000): 61-76.

23 The amended Constitution of 1988 states: ‘the right to use land may be transferred according to law’. Soon thereafter, it revised Article 2 of the Land Administration Law stipulating that ‘the right to use
LUR generated a building construction boom and an unprecedented level of commercial dealings in real estate and housing industry. \(^ {24} \) It was only in the 1980s that privatisation began to take place, initially in Yantai and Bengbu before spreading over nationwide. \(^ {25} \) The privatisation and commercialisation of the housing market have helped to relieve the government from responsibilities in maintaining and managing buildings that were originally built to accommodate state employees that was one of their major social benefits. \(^ {26} \) However, housing privatisation had posed a challenge to other related institutional frameworks, in particular, to the land registration system.

The first departmental rule (administrative regulation) concerning land registration was issued by the Ministry of Construction in 1982. \(^ {27} \) The State Council in 1983 promulgated the *Rules concerning Administration of the Private Households in the Urban Area*. \(^ {28} \) Article 6 of this State Council rule provided that owners of the private households in urban areas should apply for registration of household ownership, and then by completing the investigation and confirmation process, could obtain the certificate of household ownership (the Certificate of Title) in the local household administrative organ. In addition, when there was a transfer of ownership or a change

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26 The Decision on Furthering Housing Reform in Urban Areas, issued by the State Council. (1994)

27 *The Provisional Regulation concerning Urban Housing title management of 1982*.

28 *The Rules concerning Administration of the Private Households in the Urban Area*. A administrative regulation was issued by the State Council in 1983.
in the status of the household, the related parties should apply to register the transfer of ownership or the change of current status of the household in the local household administrative organ. After the Rules came into effect, all the owners of private households were required to submit registration applications to affirm their ownership, regardless of whether the household had previously been registered. In addition, since ownership can only be represented by the Certificate, any transfer or assignment of ownership can only be effective after registration. Changes in the physical formation, for example the size of the household also had to be registered. With the implementation of these rules, the household registration system was thus standardized. The next significant statute on real estate administration was the Urban Real Estate Administration Law, enacted by the National People’s Congress (the “NPC”) in 1994.\(^{29}\) Under this law, the effect of registration has been further clarified: only by completion of registration will the owners legally obtain ownership of the real estate, and that ownership can only be represented by Certificate of Title. In addition, the various laws and regulations have been promulgated subsequently in order to fine-tune the details in the mechanics of registration.\(^{30}\)

The PL (hereafter “PL”) has finally been introduced in 2007. As a key to strengthening property rights, the PL tackles the deficiencies in the immovable property registration system in a coordinated and structured manner by stipulating uniformity in registrar offices at the national level. The property registration system is substantially consolidated. In line with the PL, a more detailed Measures of Land Registration has also been introduced by the Ministry of Land and Resource and the Measures of Housing Registration by the Ministry of Housing and Urban-Rural Development in 2007 and 2008 respectively. Some details, such as identification of the immovable property, methods of recording and indexing, and powers of review by Registrar are provided. In the following sections, the salient features brought about by the PL will be explored.

\(^{29}\)The Urban Real Estate Administration Law of 1994.

\(^{30}\)For example, the Measure dealing with the Pre-sale of Urban Commodity Housing issued by the Ministry of Construction in 1994; the Measure concerning Urban Real Estate Mortgage issued by the Ministry of Construction in 1997.
2. Understanding the Current Registration System

2.1 Bifurcation of registering land use right and housing on the same apartment

In China, immovable property registration is provided by registrars of the local government level as a type of public service. According to the Measures of Land Registration and the Measures of Housing Registration, the registrations of land and housing are separate. For urban housing registration in China, the owner has to register with two separate authorities in order to obtain two different entitlement certificates, namely, a certificate of housing ownership with the housing authority and a certificate for a LUR with the state land administration authority. The LUR of state-owned land and collectively-owned land, as well as the mortgage over LUR, easement, and other property rights in the land, need to be registered in the land authority at local level. The transfer of housing and any other housing-related rights, however, need to be registered at the Housing Registrar. Nonetheless, recently a trend has developed in some place, notably in Shanghai, where the local housing authority and land authority have merged to issue a single certificate combining LUR and housing ownership. This is a desirable improvement, but whether other parts in the country would follow remains yet to be seen.

2.2 A hybrid system of mandatory and voluntary models

When PL was drafted, there was a debate on the choice of property registration model within the civilian system to emulate. The final decision was between the Germanic model\(^\text{34}\) and the French model,\(^\text{35}\) the difference between them being that the German-influenced ones makes registration a requirement to establish a right to land or buildings while in the French-inspired ones registration merely declares the existence.


\(^{32}\)The *Measures of Land Registration*, art.2(1)

\(^{33}\)The *Measures of Housing Registration*, art.2.

\(^{34}\)The German BürgerlichesGesetzbuch, (German Civil Code, BGB) art.873; the Swiss Civil Code, art.656 (1); and the Austrian Civil Code,arts.432, 451.

\(^{35}\)The French Civil Code,art.158; the Italian Civil Code,arts.922, 2643 (1), 2644; and the Portuguese Civil Code,arts. 1316,1317.
of rights that have already been created. The French model, also called the consensual or voluntary system, is characterised by the fact that the consent of parties shall in itself give effect to the sales contract in transferring land. The contract is valid from the moment when parties consent to its terms and conditions. The registration only makes the transaction effective against third parties but it does not give the creditor greater rights against third parties than against the person whose property is encumbered.\(^{36}\) In contrast, the Germanic model, sometimes called the mandatory or constitutive system, is far more rigid and supervisory than the French model, since without registration there is no property right.\(^{37}\) A civil-law notary is often required in the Germanic model, for a property right simply cannot exist without it being both notarised and registered.

In China, a hybrid registration system operates under the current laws. The prevailing provisions in the PL provide that “unless otherwise provided by the law, the establishment, modification, transfer and lapse of the right in real property shall only take effect upon registration pursuant to laws.”\(^{38}\) More tellingly, according to Article 14, failing to register causes no legal effect on the establishment, modification, transfer and lapse of right in real property.\(^{39}\)

From the above PL provisions, it appears \textit{prima facie} that the Chinese land registration system appears to adopt German’s constitutive system, as the Code stipulates that a change of certain property rights will only take effect when they are duly registered. It seems that, like the Germanic and Torrens systems, registration is of the essence for conveyance of a property interest in China. However, upon a closer look, one may discover the many exceptions in the same piece of legislation to this “no registration, no property right” norm. Exceptions refer to the declarative system that does not mandate registration to effectuate the property interest. The current land registration system can be said to be a mixed model. The LUR of the urban construction land, the ownership of real estate, and the mortgage right of real property


\(^{37}\) BGB Art.873 requires both deed/contract of sale and registration for validity.

\(^{38}\) The PL article 9.

\(^{39}\) The PL article 14.
will come into effect after registration.\textsuperscript{40} In contrast, the recordation of contractual management rights of rural land, the use right of rural housing site, the easement, and the floating charge, merely enables them to stand against third parties. Table 1 surveys the scope of application of two different models in China.

### Table 1 Operation of the Dual Registration Systems

<table>
<thead>
<tr>
<th>Type of System</th>
<th>For Registration of</th>
<th>Specification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory System</td>
<td>Property</td>
<td>Alienation and Mortgages of Flats, Buildings, and Fixtures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Creation of Mortgage of Uncompleted Buildings</td>
</tr>
<tr>
<td></td>
<td>Land Use Right</td>
<td>Transfer and Mortgage of Urban Land Use Right.</td>
</tr>
<tr>
<td>Voluntary System</td>
<td>Property</td>
<td>Creation, Alteration, Transfer or Extinction of Property Right of Vessels, Aircraft, Motor Vehicles (Art. 24)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mortgage of Movable Property (Art. 188).</td>
</tr>
<tr>
<td></td>
<td>Land Use Right</td>
<td>Exchange or Transfer of Right to Rural Land Contractual Management (Art. 129).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Transfer, Modification, and Cancellation of the Right to Homestead Use in Rural Land (Art. 40).</td>
</tr>
</tbody>
</table>

\textsuperscript{40}Donald Clarke, “China’s Stealth Urban Land Revolution”, unpublished working paper, (arguing that the nature of urban LURs in China is not significantly different from those land tenure systems commonly regarded as featuring private owners)
2.3 A belated Property transfer theory

A major manifestation of the distinction between the law of obligations and the law of property in civil law systems is the relationship between contract for sale and conveyance (property transfer). There are two major legal groups that deal with this relationship: consensual system vs. traditio system. As discussed above, the consensual system is used in the voluntary model. Under this system, a valid contract for sale is in itself sufficient to complete the property transfer. Nonetheless, the traditio system dictates that although a contract creates obligations, the transfer of property requires an additional element, delivery or act of conveyance in order to transfer a property right. Depending on whether the property transfer is determined by the invalidity of sale contract, the traditio approach is further divided into casual and abstract systems.

When a transfer of a property right depends on a valid underlying contract, it is said that the law adheres to the casual theory. On the contrary, abstract theory maintains that the invalidity of the preceding obligation-creating contract does not affect the validity of the property transfer, and that ownership can be transferred in the absence of a valid obligatory contract if there was a valid proprietary (real) contract, together with either delivery for movable property or registration for immovable property, as required in the traditiosystem.

When the PL was drafted, there was a heated debate on whether China needed to introduce the abstract system that has been in existence in Germany. A majority of Chinese legal scholars, although valuing its doctrinal refinement as advocated by von

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41 Please refer to Section 2.2 “Co-existence of declarative model and constitutive model”

42 Actually, such a debate can be traced back to the early 1980s when the General Principles of Civil Law (the GPCL) was drafted.
Savigny and his disciples, took a dim view of this theory. There were two primary reasons for their objections. First, it is not user-friendly. As it departs from the actual practice of real estate transactions, it goes beyond the common understanding of the people. This makes the legal relationship unnecessarily complex and obscure. Second, the function of the theory is to ensure the certainty and conclusiveness of registration by providing protection for a third party who is aware of the vitiating factors in the formation of contract. However, this function has been largely, if not completely substituted, by the principle of *bona fide* acquisition, which has already been entrenched in Chinese civil law for a long time.

The PL includes the principle of *bona fide* acquisition (acquisition in good faith). *Bona fide* acquisition occurs when a purchaser acquires the ownership of the property without leaving any room for the original owner to make a claim for its return. In summary, Chinese law has avoided dealing with the doctrinal distinction between casual and abstract theory. In any event, the additional requirement is linked to the contract somehow, because invalidity of the contract will affect the proprietary effects of conveyance. This, however, does not mean that Chinese law embraces casual theory absolutely. In practice, once registration is completed, if the purchaser challenges the transfer of title on the ground of an invalid contract, there is little need to discuss whether there should be a causal link or no link between the underlying contract and proprietary effect. Rather, the purchaser simply has to meet the *bona fide* acquisition criteria set out above.

### 2.4 Powers of Review and Public Access to Information

Since registration is the ultimate component to trigger the transfer of property interests, the scope of the Registrar’s authority to review documents deserves discussion. Generally, the Chinese Registrar’s powers of review are less than the German counterparts. In Germany, the Registrar’s powers of review extend not only to verify that the document complies with formal requirements, but also to examine

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44 Art 106 PL.
45 Exceptions do exist i.e. the application of the declarative system as illustrated above.
whether the documents reflect that the applicant has a genuine and substantive right to the property. In addition, the German Registrar also has a power to verify whether the description of property, such as location, size and boundary matches the reality. If the Registrar is suspicious of any fraud or mistake, a registration application may be suspended, pending further investigation.

This is not the case in China, as firstly, China’s Registrars are part of a governmental agency rather than part of the judiciary. Administrative officers do not enjoy the wide powers and discretion vested in and exercised by a judicial officer. Secondly, China does not have a uniform constitutive or compulsory registration model, unlike Germany. For property rights which do not require registration to be effective, a strong power of review is unwarranted. Thirdly, since a right entails an obligation, having a strong power to verify denotes an obligation to make the registration entries reliable and conclusive, otherwise liability for compensation may arise. Under Chinese law, all entries on the land registry are deemed to or presumed to be correct unless there is evidence showing the mistake or defects of the Registrar. On the other hand, giving the Registrar a strong power of review should increase the accuracy of the records, given the Registrar’s superior power in ensuring the accuracy of the documents. Because Chinese law only presumes the correctness of the registry, but does not guarantee its accuracy, by implication, it appears that the Chinese Registrars should have weaker powers of review than their German counterparts. Fourthly, it is not viable for a municipal Registrar, with merely a few dozen staff, and having to deal with tens of thousands of applications every month, to be vested with the German-like strong power of review. At present, the Registrar’s staff are also not well-trained enough to exercise a strong power to review. In summary, the strong power of review is neither practical nor feasible in today’s China.

According to the PL, when an applicant submits documents for registration, he needs to provide documents such as proof of title, the location and the size of the immovable property for registration with the Registrar. The Registrar then performs the following duties: (1) check the proof of title and other documents provided by the

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46 PL, art.17.
47 PL, art 11.
applicant; (2) make enquires to the applicant; (3) record relevant items accurately and promptly; (4) fulfill other duties prescribed by law and regulations.\textsuperscript{48} Under the circumstances where a further investigation is necessary in order to ensure certainty, the Registrar may require the applicant to submit supplementary materials, or the Registrar may conduct a field survey of the immovable property.\textsuperscript{49} From these provisions one can say that while Chinese law does not follow the German style of strong power of review, the Registrar is, to some extent, vested with some verification powers to check the authenticity of the contract for sale.

Since the key function of land registration is to ensure transparency, public access to information in the registry is crucial. However, this leads to a number of practical questions, including the class of persons who are entitled to inspect the registry record, and whether the Registrar can operate an open-door policy allowing all persons to freely examine the land registration information. According to Article 18 of the PL, only those persons who can show that they have a legitimate interest in inspecting the land registry will be allowed access. In addition, the inspecting parties need to pay a fee for such a purpose. This is sensible, because otherwise the Registrar’s workload will unnecessarily increase exponentially. The detailed procedures to access the land registry have been fine-tuned in the Measures of Housing Registration and Measures of Land Registration.

### 2.5 Liability for mistakes and fraud

As a rule of thumb, the claimant for compensation shoulders the burden of showing that the preliminary notice was submitted without reasonable cause. According to the PL article 21, any party providing false application materials for registration and causing damages to any other person shall undertake the liability for compensation. But when a registration office causes damages to any other person because of its own mistake, the registration office shall undertake the liability for compensation.\textsuperscript{50}

In practice, it is more often than not to encounter three major causes of loss. First, the

\textsuperscript{48} PL, art 12(1).

\textsuperscript{49} PL, art 12(2).

\textsuperscript{50} Article 21 of the PL.
loss can be attributable to the negligence of the Registrar’s officers. Second, the discrepancy between records and true legal position may be due to fraud, forgery and/or mistake made by a transferee. Third, there may be a malicious conspiracy between Registrar’s officers and the party who provided forged documents. In the first instance, the party who suffers loss can rely on principles of tort liability and the institution’s vicarious liability for negligent or intentional wrongdoings of its officials. According to Article 21 of the PL, in this situation, the Registrar shall bear the responsibility for compensation and shall have the right of recourse against the person who is liable for such mistake. In the second situation, where the loss is caused by the person who committed fraud, under the fault-based liability regime, the fraudulent party is liable for the loss caused. This is to say, when the fraudulent party submitted a forged document and the Registrar’s staff exercised proper due diligence but did not discover the forgery, the fraudulent party should bear the liability to pay compensation.

Complications arise when there is connivance between the Registrar’s staff and fraudulent party. In this situation, who is liable to pay compensation? The Registrar? Or the fraudulent party? Or both, based on proportionate liability? Or just the party selected by the party who suffered loss? The PL does not address this issue, and it is thus left to a future special statute on land registration to determine the position.

Another tricky question unanswered by the PL is the legal nature of the Registrar’s liability. Is this a governmental liability or a simple civil liability? Despite a recent eye-catching case dealing with the governmental liability of the Registrar’s mistake, which involved a successful compensation claim of RMB 8.7 million, the majority of academics hold the view that the institutional liability to pay compensation should not be a governmental liability but an ordinary civil liability. This is mainly because first, without the creation of a public indemnity fund, the financial resources of the Registrar cannot meet the demands of compensatory claims. Second, with a comparative glance, more often than not, the government liability for Registrar’s

wrongdoings is applicable in those jurisdictions where the Registrar enjoys a wide range of powers to verify the transaction. As discussed above, Chinese Registrars are not vested with such strong powers of review. Third, the Supreme People’s Court recently categorized the Registrar’s compensatory liability for mistake into the group of civil disputes via property rights disputes in its Cause of Action of Civil Cases Circular in 2011.\textsuperscript{52} This reflects the judicial attitude to treat such cases as civil claims.

If the view is taken that the Registrar should be liable for compensation for its own mistakes, the Registrar must have deep pockets in order to satisfy all those seeking recovery of losses. Common sense dictates that one would not wish that the public funding pool be hampered by clerical errors or even fraud. Inspired by the Torrens jurisdictions, maintaining an insurance fund to remedy the Registrar’s mistakes has been seriously advocated by both Chinese legislators and legal scholars. The details on the creation and administration of such indemnity fund need to be fleshed out in future legislation. However, two recommendations are provided here. First, the coverage provided by the proposed insurance fund cannot be overly comprehensive. For example, the compensation provisions should deny compensation for errors, omissions and mis-description resulting from the failure of an agency to notify the Registrar of the creation, amendment or termination of registrable rights. In such a case, the notifying agencies should be liable instead. Second, while the indemnity fund is in dire need to be set up, internally, disciplinary rules for malpractice by Registrar staff are needed in order to improve the quality of land registration. In summary, persons who have lost property interest through the operation of land registration practice should be entitled to compensation rights. Such rights fall into two types: the right to recover the loss from the person who caused the loss; and the right to recover from registration insurance fund.

**Part C. Empirical Evaluation of the Registration System**

1. **Methodology**

\textsuperscript{52} The Supreme People Court’s Circular on Docketing Civil Cases based on Cause of Actions, [2011] Fafa (法发) No. 41.
Choosing Qingdao as the place of study

For this purpose, the city of Qingdao is selected for this study. There are two principal reasons for this choice. Firstly, Qingdao is a major sub-provincial city in the east Coast of China with a strong economy. The high property price and big property transaction volume justify the selection. Secondly, there is a practical reason as the author has personally been to the Qingdao Real Estate Transaction Exchange (the QRETE, Property Registry) a few times conducting field research. By this the author has established strong contacts with Registrar’s staff and agents. This obviously helped to make this study possible. The author acknowledges that this study’s limitation lies within its narrow geographic focus.

Specifically, the Eastern Chinese city of Qingdao is selected to conduct the case study. A sub-provincial city (计划单列市) of about 9 million inhabitants, Qingdao’s economy ranks first in Shandong Province and its GDP stably ranks among the top ten cities in PRC. Five of county-level cities ranked among China’s top 100 counties in terms of overall economic strength.\(^{53}\) In 2006, Qingdao was ranked one of six "golden cities" by the World Bank, out of 120 Chinese cities assessed on factors including investment climate and government effectiveness.\(^{54}\) Living standards in Qingdao are among the highest of leading Chinese cities due to the strong export economy and relatively high family wages. Property prices in Qingdao, although lower than Beijing and Shanghai, have remained high and resilient despite China’s efforts to curb property prices. As an important trading port, Qingdao flourishes with foreign investment and international trade, particularly from South Korea and Japan. And many South Korean and Japanese businessmen have purchased condominiums there. As such, the assumption is that the local property registration rules in Qingdao have not only dealt with municipal real estate transactions but have provided foreign homebuyers and investors with sufficient security for them to develop projects and invest in property market in Qingdao.


1.2 The design of the Survey and Interviews

The design of the survey was based on the European Bank for Reconstruction and Development (EBRD) concept of “legal efficiency” as the criteria.\(^{55}\) It is clear that for any property registration system, its basic function is an economic one, as it facilitates access to the secured credit markets. Nussbaumer and Dahan (2009)\(^{56}\) suggest that legal efficiency should be analysed “by looking at the degree to which the legal framework enables secured transactions, first to achieve their basic function, and secondly, to operate in a way which maximizes economic benefit”, and further break down the second criterion into five categories, namely “simplicity, cost, speed, certainty and fit-to-context”.\(^{57}\) Surveys and interviews were to be given to property buyers (end users), agents, banking staff, and registration officers and even judges dealing with court enforcement of security interests are conducted. The data collected were to be served as an indicator of the extent and quality of black-letter rules’ implementation. This methodology was inspired by Kaufmann and Kraay’s assessment categorization of rule-based indicators and outcome-based indicators.\(^{58}\) Rule-based indicators assess whether those institutions and legal measures are on paper and can be easily found and identified by a user. Yet, having black-letter rules often cannot tell the whole story about the extent and quality of their practical application. Outcome-based indicators are therefore needed. They focus on either broad user’s perceptions or other actors view such as expert opinion on the de facto implementation of rules. In essence, outcome-based indicators hinges upon users’ perception of user-friendliness.

Applying this approach, respondents were asked questions relating to the two criteria of “basic legal function” and “maximizing economic benefit”, including the 5 sub-categories of simplicity, cost, speed, certainty, and fit-to-context.


\(^{56}\) Ibid.

\(^{57}\) Ibid at pp. 33-37

Hinging upon these five indicators, a survey was carried out between April 8 and 19, 2013 in QRETE, the local property registry, which focused on the following questions:

(a) Does the property registration system increase tenure security over residential properties?
(b) What are the legal costs and fees involved in the property registration process? What is the proportion of the legal fees and costs compared to the total purchase price?
(c) Is the property registration process simple and straightforward? Are there any onerous requirements?
(d) What is the average amount of time required to complete the property registration process? Is the amount of time acceptable?
(e) Do you feel that your property rights are securely protected by law after the property registration process is completed? What will be legal effect if the property transaction is not registered? What led you register your titles?
(f) Does Qingdao have any local statute dealing with property registration? Has the property registration process been affected by the Purchase Restriction Order (i.e. “限购令”)? If so, what are the changes?

Furthermore, interviews were conducted with selected industry participants, including the registration officers to obtain a better understanding of the operational issues involved in registering real property in Qingdao. To identify some of the social, economic political and legal preconditions necessary for the formal regime to function effectively in relation to the adoption of a Torrens-style system for urban LURs, this paper draws on the diversity of indicators and exploit complementarities among them that have made the transition to a systematic system,

2. Results & Discussions

Of all the surveys handed out, only 128 feedbacks were received. Among these 128 answers, 92 were dealt with by agents, 9 by lawyers, and 27 by purchaser themselves. A summary of the responses to the questions posted is as follows:
1) **Basic legal function**: Does the property registration system allow the creation of property rights and security rights over residential properties? Only 6 out of 128 feedbacks are not sure. All others answer in the affirmative. This clearly indicates that if the transaction is not registered, it will have no legal effect.

2) **Simplicity**: is the property registration process simple and straightforward? Are there any onerous requirements? 108 answers it is relatively complicated, 5 is not sure and 15 regard quite simple and straightforward. Then an interview with the Registrar's officer was conducted. According to the local provision dealing with property registration in Qingdao, namely, Measures of Real Property Registration of Qingdao Municipal Resources & Housing Administration⁵⁹, the process of registering a property in Qingdao is specified in the following flowchart.

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**Figure 1 Working flow Chart of Property Registration in Qingdao**

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⁵⁹This statute was issued by the Qingdao Municipal Resources & Housing Administration taking effects from July 1, 2011 until December 31, 2015.
Contrary to what were reflected in the feedbacks to the surveys, the registration process can be considered as simple and straightforward, especially considering that documents required are standard documents and there are no other special onerous requirements. The reason why so many considered the system to be complicated could be because of their unfamiliarity with the system as first-time buyer. It is interesting to note that after the introduction of the Purchase Restriction Order (限购令), the purchaser’s registered place of residence under the “hukou” (户口) system will have to be verified to be Qingdao before the registration can be completed. This is a pre-condition to the property transfer, and is not an additional onerous requirement.

3) **Speed:** What is the average amount of time required to complete the property registration process? Is the amount of time acceptable? For property sales in a secondary market, including sale of titled apartment, housing donation and property inheritance, the average amount of time required to complete the registration is around 10 days. 97 respondents find this duration acceptable and the rest thinks it cannot shortened further. In fact, the actual practice is the certificate can be issued within 5 working days.

4) **Cost:** What are the legal costs and fees involved in the property registration process? What is the proportion of the legal fees and costs compared to the total purchase price? For registering a newly built house, the aggregate taxes and fees paid (including property deed tax, transaction fee, registration fee, and stamp duty as well as property maintenance fund) can amount to 4% to the total purchase price. To be specific, the property deed tax is 3% if the house bought is not the first one registered under the owner. If the house is the first property for the registering owner, he or she pays property deed tax at 1% of the total purchase price if the floor area of the property is below 90 square meters and 1.5% of the total purchase price for the floor area between 90 and 144 square meters. The owner need to pay 3% of total purchase price as property deed tax if the floor area of the property is above 144 square meters even if the house is the first property for the owner. If an owner intends to sell the property within 5 years of transaction, he or she needs to pay 5.5% of the total purchase price as property business tax in addition to the property deed tax and fees.
mentioned above. Therefore, only 11 out of 128 respondents think the registration cost is reasonable and all others complain the high cost.

5) Certainty (1): Do you think that a notary or a conveyancing lawyer should be involved in, and advise on, the property registration process? Although it was not strictly necessary in Qingdao to engage the services of conveyancing lawyers, it soon became apparent from the respondents’ feedback (21 out of 128) that they were uncertain about the details of the property registration system in Qingdao, and that both banks and purchasers engaged the services of property agents, who served the function of “quasi-conveyancers” in Qingdao. Therefore, it is observed that in most cases, it is not necessary for a notary or a conveyancing lawyer to be involved. The purchasers and banks usually appoint property agents to assist in the property registration process, and the agents’ fees are in the range of RMB 1,000 – 2,000.

6) Certainty (2): If a mistake in registration occurs, due solely to the fault of the Housing Registrar, will the Housing Registrar rectify its own mistakes? Will you take legal action to obtain compensation? The Registrar’s staff is reluctant to answer this question and therefore we replicate this question in the Questionnaire. All respondents have not met with similar problems before, but 110 of them have indicated that they will take legal action to obtain compensation from the registration office under the PL.

7) Fit-to-Context: Has the property registration process been affected by the Purchase Restriction Order (i.e. “限购令”)? If so, what are the changes? This question was answered by the Registrar’s staff only. The Staff replied that the process has not been affected. However, as purchasers are not allowed to take bank loans to acquire their third (or subsequent) unit of residential property, the property registration must be checked for the purchaser’s previous property acquisitions before mortgages can be registered. As mentioned previously, the purchaser’s registered place of residence under the “hukou” (户口) system will have to be verified to be Qingdao before the registration can be completed.
The survey findings present a mixed finding. Applying the United Nations Doing Business report as a benchmark, this study indicates that the property registration system in Qingdao can be considered “very efficient” in the category of Basic Legal Function and sub-categories of Simplicity, Speed and Fit-to-Context, while it can be considered “efficient” for the sub-categories of Cost and Certainty. Owners’ property interests need to be protected to facilitate and encourage investment. This dovetails the ranking result of the World Bank Doing Business report of 2013 on Registering Property. Despite the criticisms leveled on this ranking, China outperformed many business-friendly countries such as United Kingdom and Canada and was ranked no. 44. However, some problems persist. When asked of liability for mistake, the Registrar’s staff declined to answer this question. Perhaps the best explanation for this refusal is one, this is a tough question to check the quality control of their services and people tend to resist liabilities if there is no built system; second, the assurance fund compensation scheme has not been set up internally or has not been given sharp teeth even it has been crudely put on paper.

Part D. Concluding remarks
Drawing on the case study, the article concludes that China takes pride in its quite recent efforts in building and developing land registration system with its relatively efficient in certain aspects. However, it is highlighted that, in spite of some two decades of steady progress in building property registry in urban areas, significant efforts still need to be made to clearly define and properly document individual legal rights to land. In view of regulatory overlaps in provisions, striving for a uniform registration system at the national scale is indispensable for simplifying land transactions, using land as collateral for credit, and enabling land administration. Three research findings are summarized as follows:

First, China has outperformed other regions in terms of property registry efficiency on the same World Bank good governance indicators, suggesting that the property registration system in China is well-functioning and relatively efficient despite of

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some shortcomings such as uniformity issue, electronic networking and level of liability for mistake. Functional property registry is valuable market facilitator.

Second, China adopts a compulsory registration system for urban property transactions, sale or mortgage. The massive volume of real estate transactions in urban areas propels government’s intervention to build strong local public registries. The stronger the public registries are, the less palliative services provided by private producers, such as agents and notaries. In China, through the lens of Qingdao case study, notary does not play a significant role as in France or Germany in property transactions.

Third, there are quite a few challenges facing the property registry still. Of the most important is the liability for registry’s mistake or fault in executing or performing functions or duties. Another perceived problem is the high cost paid in each and every transaction, particularly in the secondary property market. This may due to the policy change given the real estate market control. Therefore, there is a need to monitor, assess, and improve strategies and reforms.