

Legal Commentary

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Rural Collective Commercial Land for Construction Reforms under the Amendments to the Land Administration Law

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On the morning of August 26, 2019, the Twelfth Meeting of the Standing Committee of the 13th National People's Congress adopted the Decision on Amending the Land Administration Law and the Law on Administration of Urban Real Estate (the "**Amendments**"). The Amendments improve several systems, including the market entry of rural collective commercial land for construction, rural land requisition and the homestead administration system, under the basic principle and key goal of the protecting the interests of farmers. The Amendments specifically comprise the following ten important aspects:

1. Break down legal barriers to the market entry of rural collective commercial land for construction.
2. Clarify the main procedures and requirements for the market entry of rural collective commercial land for construction.
3. Clearly define public interests in land requisition for the first time.
4. Standardize land requisition procedures.
5. Improve compensation for land requisition.
6. Add provisions on the principle of "guaranteeing a house for each household" on homesteads.
7. Devolve approval power for homesteads.
8. Allow withdrawal from homesteads on a voluntary basis for compensation.
9. References to "basic farmland" have been changed to "permanent basic farmland".
10. Specify the state land supervision system as the legal system for land administration.

Undoubtedly, the biggest highlight of the Amendments lies in providing market entry for rural collective commercial land for construction.

Reforms of rural collective commercial land for construction have undergone a long process

Land has always been a scarce resource and an important factor of production in China, a populous country. Land types can be divided into different categories based upon two major standards—purpose and ownership. Specifically, based on its purpose, land can be divided into three types: agricultural land, construction land and unused land. Based upon ownership, land can be divided into state-owned land and collectively-owned land. In this respect, land types can be divided into six categories: state-owned land for construction, state-owned land for agriculture, **state-owned unused land, rural collective land for construction, rural collective land for agriculture and rural collective unused land.**

I Collective land

Collective land refers to land collectively owned by farmers, including **rural collective land for construction, rural collective land for agriculture and rural collective unused land.** According to the Land Administration Law, farmers collectively own land in rural and urban suburbs, except for land owned by the state as stipulated by law; homesteads, family plots and hilly lands are collectively owned by farmers. Collective land for agriculture, designated for agricultural production purposes, includes cultivated land, garden land, forest land, pasture, etc. To convert collective land for agriculture into collective land for construction, it is necessary to undertake agricultural land usage conversion procedures.

II Rural collective commercial land for construction

Rural collective land for construction refers to rural collective land used to build buildings and structures. **According to different land functions, rural collective land for construction can be divided into three types: homesteads, commercial land for construction, land for public facilities and public welfare undertakings.**

1. Homesteads refer to collective land occupied or used by rural farmers or individuals on which a house has been built, is being built or is planned to be built.
2. Land for public facilities and public welfare undertakings refers to collective land for construction used for the development of public facilities and public welfare undertakings in townships (towns) and villages.
3. According to the Interim Measures for Administration of Mortgage Loans on the Right of Use of Rural Collective Commercial Land for Construction, **rural collective commercial land for construction refers to the part of rural collective land for construction whose purpose, as determined in overall land use plans and urban and rural plans, are for commercial purposes, such as industrial and mining warehousing, business services, etc.** The ratio of the collective commercial land for construction to overall collective land for construction may not exceed 10%.

Before adoption of the Amendments, collective land for construction could be used for construction purposes to a “limited” extent, including purposes for: supporting town and township enterprises,

construction of villager housing, construction of public facilities and public welfare undertakings in townships (towns) and villages. Once collective land for construction has been requisitioned as state-owned construction land, it may be transferred to units and individuals other than members of collective economic organizations and township enterprises.

III Development of rural collective commercial land for construction transfers

The Amendments are not the first reforms of rural collective commercial land for construction, especially for land transfers. In fact, these reforms began along with the reform of township enterprises in the 1990s and have evolved gradually since that time. 2008 was an important watershed for the reform of transfers of rural collective commercial land for construction, a year when many major policy documents were issued, marking the full launch of pilot work for transfers of rural collective commercial land for construction. Before 2008, the transfer of rural collective construction land had already started in Suzhou (Jiangsu), Wuhu (Anhui), and Shunde, Foshan, Dongguan (Guangdong).

- In January 2008, the General Office of the State Council issued the Circular on Strictly Implementing Laws and Policies on Use of Rural Collective Land for Construction. In October, the Third Plenary Session of the 17th CPC Central Committee reviewed and approved the Decision on Major Issues Concerning Advancing Rural Reform and Development, and formulated a new strategic plan for rural reform and development.
- In January 2010, the General Office of the Shanghai Municipal People's Government forwarded the Several Opinions on the Pilot Work of Transfers of Rural Collective Land for Construction, promulgated by the Municipal Planning Land Resources Bureau and the Municipal Agriculture Committee, marking the official launch of pilot work on transfers of rural land for construction.
- In March 2012, the Hangzhou Municipal People's Government promulgated the Implementing Opinions on the Pilot Work of Transfers of Collective Land for Construction, to initiate the pilot work of rural collective construction land transfers within the rural reform pilot zones, including Tonglu, Fuyang, Lin'an and other counties (cities) and provinces.
- In March 2013, the Third Plenary Session of the 18th CPC Central Committee promulgated the Decision on Several Major Issues Concerning Comprehensively Deepening Reforms, to propose the establishment of a unified urban and rural market for construction land, and to clarify the direction, focus and direction of deepening reform of the rural land system.
- In December 2014, the General Office of the CPC Central Committee and the General Office of the State Council jointly promulgated the Opinions on the Pilot Work on Rural Land Requisition, Market Entry of Collective Commercial Land for Construction and Reform of the Homestead System, which described the overall design for rural land system reform.
- In February 2015, the Standing Committee of the National People's Congress adopted the Decision on Empowering the State Council to Temporarily Adjust the Enforcement of Some Provisions of Laws in the Administrative Areas of Daxing District of Beijing and Thirty-two Other Pilot Counties (Cities or Districts), to provide for the suspension of enforcement of the Land Administration Law and the Law

on Administration of Urban Real Estate in 33 pilot areas.

- In May 2017, the Ministry of Land and Resources announced the Draft of the Amendments to the Land Administration Law (Draft for Comment).
- In December 2018, the Seventh Session of the Standing Committee of the 13th National People's Congress first reviewed the Draft of the Amendments to the Land Administration Law and the Draft of the Amendments to the Law on Administration of Urban Real Estate for the purpose of dismantling the dual urban and rural systems and exploring new land and income distribution mechanisms.
- In January 2019, the public comment solicitation period commenced for the Draft of the Amendments to Land Administration Law and the Draft of the Amendments to the Law on Administration of Urban Real Estate.
- In May 2019, the Eighth Meeting of the Central Committee for Comprehensively Deepening Reform reviewed and approved the Guiding Opinions on Improving the Secondary Market for the Transfer, Lease and Mortgage of the Right to Use Land for Construction (the "**Secondary Market Opinions**").
- In June 2019, the 11th meeting of the Standing Committee of the 13th National People's Congress deliberated over the Draft Amendments to the Land Administration Law (Draft for the Second Deliberation) and the Law on Administration of Urban Real Estate (Draft for the Second Deliberation).
- In July 2019, the Draft Amendment to the Land Administration Law (Draft for the Second Deliberation) and the Law on Administration of Urban Real Estate (Draft for the Second Deliberation) started the public comment solicitation process; the General Office of the State Council promulgated the Secondary Market Opinions.
- In August 2019, the 12th Meeting of the Standing Committee of the 13th National People's Congress adopted the Decision on Amending the Land Administration Law and the Law on Administration of Urban Real Estate.

Specific content of the amendments on the reform of collective commercial land for construction

1. Deletes the provision that only allows state-owned construction land to enter the market to be used for various construction purposes, and permits collective commercial land for construction to be assigned to units or individuals through grant, lease, and other means. Notably, this amendment does not indicate that all collective commercial land for construction is allowed to enter the market through grant or lease. Rather, market entry is conditioned upon the following requirements:
 - A. The collective commercial land for construction is lawfully registered;
 - B. The collective commercial land for construction is limited to industrial or commercial purposes, as determined in overall plans and urban and rural plans;
 - C. A written contract should be signed if the collective commercial land for construction is transferred to a unit or individual for use by means of grant, lease, etc., which should specify the land boundary, areas, period of construction, period of use, land use purpose, planning conditions and other rights

and obligations of the parties involved;

D. Grant or lease of collective commercial land for construction requires the consent of (i) two-thirds (2/3) or more members attending a villagers meeting of the collective economic organization, or (ii) two-thirds (2/3) or more of the village representatives;

E. Arrangements required to be made in the annual land use plan.

2. Use rights of collective commercial land for construction obtained by grant and other means may be transferred, exchanged, contributed, donated or mortgaged, unless otherwise provided by laws, administrative regulations or written contracts.
3. The lease of collective commercial land for construction, and the grant, the maximum years of grant, transfer, exchange, contribution, donation, mortgage, etc. of use rights of collective commercial land for construction, shall be implemented by reference to state-owned land for construction of the same type.
4. Collective land for construction shall be used strictly in accordance with the purpose determined in the overall land use plan and the urban and rural plan.
5. Except as otherwise provided by laws and administrative regulations, the withdrawal of use rights of collective commercial land for construction shall be consistent with written contracts.

The impact of reform of collective commercial land for construction

I. Mortgage and transfer of collective commercial land for construction

According to the Amendments, the lease of collective commercial land for construction, and the grant, maximum years of grant, transfer, exchange, contribution, donation, mortgage, etc. of use rights of collective commercial land for construction will be implemented with reference to state-owned construction land of the same type. Through this reform, collective commercial land for construction now has the same functions as state-owned land for construction within the scope of the law, which breaks the previous restrictions on financing of collective land for construction.

II. Potential advantages for industrial storage projects

The market entry of collective commercial land for construction presents real estate developers the option of obtaining land from rural collective organizations in addition to obtaining state-owned land from the government. Rural collective commercial land for construction represents an alternative to the same type of state-owned construction land, and could have advantages such as relatively lower prices. Therefore, the market entry of eligible rural collective commercial land for construction is expected to alleviate land shortages in plant construction and warehouse logistics areas. While it is uncertain to what extent land shortages would be alleviated, this at least provides the market with one more option.

III. Ransfer prohibited of residential housing with limited property rights

Residential housing with limited property rights refers to real estate built on collective land which is for

residential purposes, owned by villagers, and cannot be transferred in the same manner as commercial housing. Residential housing with limited property rights cannot be directly traded on the market in the same manner as commercial housing due to lack of a real property rights certificate, which can be obtained only after real estate registration is completed (this procedure is not open to residential houses with limited rights). It has become a hot topic as to whether adoption of the Amendments presents an opportunity for residential housing with limited properties to enter the market. We have noticed that collective commercial land for construction needs to meet certain conditions to achieve market entry through grant, lease, etc., including that the usage of the land is within the industrial or commercial purposes determined in the overall land use plan and the urban and rural plan. Therefore, it appears that the future remains far away where residential housing with limited property rights can be traded on the market.

IV. Collective rental housing pilot program remains to be observed

On September 29, 2018, the Circular of Shanghai Municipality on the Grant of the Right of Use of Rural Collective Commercial Land for Construction [Hu Ji Gao Zi (2018) No. 001] was released, which was the first announcement in Shanghai regarding the grant of collective commercial land for construction. The announcement clearly limits the land use purposes to construction of “rental houses (R4)”. Previously, in 2017, the Ministry of Land and Resources and the Ministry of Housing and Urban-Rural Development promulgated the Pilot Program for the Construction of Rental Housing on Collective Land for Construction, to initiate pilot programs for the construction of rental housing on collective land for construction in 13 cities including Beijing and Shanghai.

The Amendments specify that market entry of collective land for construction is conditioned on the whether the land is purposed for industrial or commercial use as determined in the overall plan and the urban and rural plan. Relevant issues regarding the grant of collective commercial land for construction and construction of rental housing thereon await clarification in specific implementing rules and supporting measures. However, we have reason to believe that the policy of using collective land for construction to build rental housing for lease will not change in the near term.

Summary

Market entry of collective commercial land for construction is a highlight of the reforms introduced by the Amendments and has important system innovations. Market entry not only removes legal and institutional obstacles for the development of urban-rural integration, but will also have a major impact on mortgages and transfer of collective commercial land for construction, industrial warehousing projects, market entry of residential housing with limited property rights and the collective rental housing pilot program, among others. We will keep an eye on and observe the follow-up impacts of these reforms.

Important Announcement

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