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## Legal Updates

1. Record-filing and Review Management of Online Extracurricular Training Institutions Sees Gradual Progress
2. Rural Collective Commercial Land for Construction Reforms under the Amendments to the Land Administration Law

## 1. Record-filing and Review Management of Online Extracurricular Training Institutions Sees Gradual Progress

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On July 15, 2019, the Ministry of Education promulgated the *Implementing Opinions on Regulating Online Extracurricular Training* (Jiao Ji Han [2019] No. 8) (“**Circular 8**”). Circular 8 provides for the record-filing and review management of online extracurricular training activities targeting primary and middle school students which involve use of Internet technology (“**online extracurricular training**”), puts forward requirements for training institutions, training content and teachers of institutions applying for record-filing, and authorizes the provincial governments (autonomous regions, municipalities directly under the central government) to develop specific record-filing rules. In order to implement the requirements of Circular 8, the Ministry of Education promulgated on September 24, 2019 the *Announcement on the Work of Record-filing for Institutions Carrying out Subject-based Online Extracurricular Training through the National Online Extracurricular Training Management and Service Platform*, which requires the online extracurricular training institutions to make record-filings through the National Online Extracurricular Training Management and Service Platform<sup>1</sup> (the “**Management Platform**”), and requires online institutions that have already carried out training activities to register on the Management Platform as soon as possible and to complete and submit the relevant record-filing materials before October 31, 2019.

As of October 9, 2019, Guangdong, Beijing and Sichuan have successively promulgated detailed rules to implement online extracurricular training record-filing. Specifically, on September 25, 2019, the Guangdong Provincial Department of Education issued, for public comment until October 9, 2019, the *Guangdong Province Implementing Rules on Administration of Record-filing of Online Extracurricular Training (Guangdong Province Special Work Plan for Online Extracurricular Training) (Draft for Comment)* (the “**Guangdong Draft**”). On October 8, 2019, the Beijing Municipal Education Commission promulgated the *Beijing Municipal Rules for Implementation of Record-filing of Online Extracurricular Training (for Trial Implementation)* (the “**Beijing Rules**”), which sets forth requirements for the work of online extracurricular training record-filing. The Sichuan Provincial Department of Education and five other departments promulgated on September 30, 2019 the *Sichuan Provincial Plan for Implementing the Regulation of Online Extracurricular Training* and, on October 9, 2019, the *Circular on Fulfilling the Work of Record-filing and Review of Online Extracurricular Training* (the “**Sichuan Notice**”), which stipulates clear requirements for the record-filing and review of online extracurricular training and contains a list of materials required for the record-filing and review.

Considering that Circular 8 clearly requires institutions that have started online training activities to submit relevant record-filing materials by October 31, 2019, and requires the competent authorities to complete audits of online extracurricular training and training institutions nationwide by the end of December 2019, we expect that governments of other provinces (autonomous regions and municipalities directly under the Central Government) other than in Beijing, Guangdong and Sichuan will also successively promulgate detailed rules or relevant documents for record-filing and review of online extracurricular training activities. This article will analyze relevant content of the Guangdong Draft, the Beijing Rules and the Sichuan Notice.

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<sup>1</sup> <http://xspk.eduyun.cn>

## Specific record-filing requirements

Record-filing Requirements	Guangdong	Beijing	Sichuan
<b>Applicable Scope</b>	Applies to online extracurricular training institutions <b>domiciled</b> within the jurisdiction of Guangdong Province. The scope of “subject-based” curricula provided by online extracurricular training institutions includes Chinese, mathematics, English, physics, chemistry, politics, history, geography, and biology.	Applies to online extracurricular training institutions whose <b>business license registration address</b> or <b>ICP record-filing</b> is registered in Beijing. “Primary and middle school students” targeted by online extracurricular training institutions refer to students in all types of <b>publicly and privately-run compulsory education schools, regular senior middle schools, and secondary vocational schools</b> (excludes students at the kindergarten, post-secondary vocational, undergraduate levels and above). “Subject-based” curricula provided by online extracurricular training institutions include Chinese, mathematics, English, physics, chemistry, politics, history, geography, biology, etc.	Applies to online extracurricular training institutions whose <b>business license registration address</b> or <b>ICP record-filing</b> is registered in Sichuan. The Sichuan Notice does not define the scope of students or subjects provided by online extracurricular training institutions.
<b>Types of Training Platforms Subject to Record-Filing Management and Persons Responsible for applying for Record-filing</b>	<p>Training platforms subject to record-filing include the following two types:</p> <ul style="list-style-type: none"> <li>■ <b>Institution self-operated platforms:</b> refer to proprietary online training platforms operated by online extracurricular training institutions. These platforms are either acquired through technical procurement or are independently established. Online extracurricular training institutions shall voluntarily apply for review.</li> <li>■ <b>Integrated third-party service platforms:</b> The platform host builds the platform and then invites course suppliers to join the platform, the parties will jointly operate the platform. The platform host will apply for review.</li> </ul> <p>In addition, the record-filing of <b>online extracurricular training activities carried out by using artificial intelligence</b> shall be conducted by enterprises on voluntary basis, and shall be guided and regulated by the provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i>.</p>	<p>Online extracurricular training institutions subject to record-filing include the following two types:</p> <ol style="list-style-type: none"> <li>1. <b>Self-operated service platforms that institutions self-build or acquire</b> extracurricular training institutions shall apply for record-filing. Subject to rules substantially the same as those applicable “institution proprietary platforms” in the Guangdong Draft.</li> <li>2. <b>Integrated third-party service platforms:</b> Platform hosts apply record-filing. Essentially the same rules apply as those for “integrated third-party service platforms” under the Guangdong Draft, except it is emphasized that both the platform host and teaching services providers are responsible for the content and results of their record-filings.</li> <li>3. <b>Online extracurricular training platforms other than the above two categories:</b> The party which signs service contracts with the trainees applies for record-filing.</li> </ol>	No specific rules.

Record-filing Requirements	Guangdong	Beijing	Sichuan
		In addition, <b>new types of platforms and new forms of teaching</b> that use artificial intelligence, teaching aids, tools, etc. may apply for record-filing on a voluntary basis.	
<b>Conditions for Record-filing</b>	<p>Aside from reaffirming requirements found in Circular 8, such as healthy content, appropriate time length, qualified teachers, information security, and standardized business operations, the Guangdong Draft further provides the following:</p> <ul style="list-style-type: none"> <li>■ <b>Artificial intelligence:</b> Online extracurricular training involving the use of artificial intelligence is subject to basic business operating principles in accordance with relevant rules and regulations; business shall be conducted in a manner that complies with laws and regulations, benefits society, promotes fairness, improves quality, protects privacy and avoids discrimination. Trainings are subject to comprehensive monitoring and the influence of artificial intelligence on students and their learning activities will be evaluated.</li> <li>■ <b>Teacher qualifications:</b> Each online extracurricular training institution <b>shall have no less than five full-time teachers. Subjects taught by full-time teachers at the institution shall be consistent with those specified</b> in their teacher qualification certificates. Teachers required to teach subjects other than those specified in their teacher certificates shall hold qualifications for and be capable of teaching multiple subjects. <b>The number of full-time teachers that teach subjects outside their teacher qualifications shall not exceed 15%</b> of total number of teachers holding teacher qualifications.</li> <li>■ <b>Foreign teachers:</b> (1) A foreign teacher who teaches online extracurricular language lessons <b>in China</b> shall, in principle, <b>teach his or her native language, hold a bachelor's degree or above and have more than two years of language teaching experience</b> (however, those</li> </ul>	No specific rules are provided.	No specific rules are provided.

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>who have obtained a bachelor's degree or above in education, language or from a teaching training school, or have obtained a teacher's qualification certificate from his or her own country or have obtained an international language teaching certificate may be exempt from the teaching experience requirement; (2) A foreign teacher who gives language lessons remotely to students located within mainland China from his or <b>her country of residence (a foreign country) shall obtain a teacher qualification certificate issued by his or her home country or obtain an international language teaching certificate</b> (TESOL/TEFL, etc.); (3) A foreign teacher who teaches <b>Chinese or history</b> shall provide a <b>full description of his or her life experiences</b> in China and <b>guarantee or promise</b> compliance with and recognition of the principles established by the Constitution of China.</p> <ul style="list-style-type: none"> <li>■ <b>Use of personal information:</b> No training platform may obtain privacy system privileges that are unrelated to study, nor collect or use personal information of students and parents that is not related to the functions of the training platform; the training platform host shall keep confidential user accounts, passwords, registered mobile phone numbers, etc. Platforms shall stop the collection and use of a user's personal information and shall assist the user in canceling his or her account after the user terminates use of the platform's services.</li> <li>■ <b>Internal control systems:</b> Online extracurricular training institutions shall establish systems including a sound internal audit system, financial risk control system, user complaint handling system, etc., and have human resources sufficient to implement internal audit and management requirements, and implement strict internal</li> </ul>		

Record-filing Requirements	Guangdong	Beijing	Sichuan
	review and management of online extracurricular training activities.		
<b>Record-filing Process</b>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> Online extracurricular training institutions shall submit record-filing materials through the Management Platform and via email by October 31, 2019.</li> <li><b>Government review:</b> The Guangdong Provincial Department of Education, together with other departments, will review and verify submitted materials by December 31, 2019, and complete the record-filing within 60 days if the materials submitted fulfill the requirements.</li> </ol>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> The party responsible for the record-filing shall voluntarily submit the record-filing materials by October 31, 2019, with record-filing materials to be submitted through the Management Platform, and supporting materials to be submitted via email.</li> <li><b>Government review:</b> The Beijing Municipal Education Commission will, <b>together</b> with other departments, complete the review of record-filing materials by December 31, 2019. Applicants shall be required to re-submit record-filing materials if the submitted materials do not meet the requirements or are insufficient. The Beijing Municipal Education Commission shall complete the examination of re-submitted materials within 60 days from the date of receipt.</li> </ol>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> Record-filing materials are to be submitted through the Management Platform, and simultaneously submitted through the Sichuan Government Service Network<sup>2</sup> by October 31, 2019.</li> <li><b>Government review:</b> The Sichuan Provincial Department of Education will, together with the relevant departments, organize experts to review and verify the submitted record-filing materials, and make record-filings of online extracurricular training institutions that meet the requirements, and make an announcement through media including the Management Platform, the provincial official website, and the WeChat public account.</li> </ol>
<b>Supervision and Punishment Measures</b>	<ol style="list-style-type: none"> <li>Online extracurricular training platforms in violation of rules and regulations shall be gray-listed and be ordered to make rectification within specified time limit. Those</li> </ol>	<ol style="list-style-type: none"> <li>Subject-based online training platforms that teach lessons to primary and middle school students without completing record-filing shall be investigated and punished in accordance with law.</li> </ol>	No specific rules are provided.

<sup>2</sup> www.sczfw.gov.cn

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>platforms which refuse to rectify or fail to rectify within the specified time period shall be blacklisted.</p> <p>2. Training platform hosts which submit with subjective malice false or fraudulent record-filing materials or test samples, or extracurricular training platforms that are gray-listed upon receiving a yellow card warning violate provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i> again shall be blacklisted.</p> <p>3. From July 1, 2020, the government shall investigate and handle online extracurricular training institutions which have not completed rectification within the prescribed time limit or fail to complete rectification as required, and impose penalties based on the circumstances, including orders to suspend or stop business operations of the training platforms, remove training applications, shut down WeChat public accounts (applet) or imposing economic punishment, etc.</p>	<p>2. Platforms subject to the record-filing requirements that fail to complete the record-filing shall assume the following consequences: (1) be unable to be whitelisted on the Management Platform; (2) be investigated and punished by the relevant departments in accordance with laws and regulations.</p>	

## Record-filing materials

	Record-filing Materials
<p><b>National Online Extracurricular Training Management and Service Platform</b></p>	<p>According to the operating manual and “Q&amp;A” section displayed on the Management Platform, record-filing materials mainly include five aspects: institution information, service information, training personnel, training content and institution commitments.</p> <ol style="list-style-type: none"> <li><b>Institution information:</b> includes legal person information, the institution's registered and contact addresses, business license, contact person and contact information, etc.</li> <li><b>Service information:</b> includes basic information, ICP record-filing number and screenshots, telecommunications business license number and screenshots, user complaint report link and screenshots, and user service agreement record-filing. Basic information includes information on Party organization establishment, fund management methods, security conditions, service commitments, training platform technical support, etc.</li> <li><b>Training personnel:</b> includes name, gender, nationality, identification number and other basic information, as well as teacher qualification certificates, etc.</li> </ol>



	<p>4. <b>Raining content:</b> includes basic information such as course titles, subjects, course content, teaching methods, tutors, class schedules, class lengths and other relevant information, as well as relevant certification materials (including whether foreign courses have been undertaken, screenshots of public information of teachers, screenshots of fee-based programs, fee standards and refund methods, screenshots and links of course user complaints, etc.)</p> <p>5. <b>Institution commitments:</b> includes the institution's commitment to compliance with relevant laws and regulations; automatically generated by the Management Platform.</p>
<b>Guangdong</b>	<p>In addition to the requirements of the Management Platform, the Guangdong Draft stipulates the following detailed requirements for the record-filing materials to be submitted by extracurricular training institutions in Guangdong province:</p> <ol style="list-style-type: none"> <li>1. As for two different types of platforms, i.e. training websites/online schools and training apps, requiring them to fill out two different application forms.</li> <li>2. As for basic information of online extracurricular training institutions, requiring to further disclose the basic information of online extracurricular training institutions, including information of decision-making institutions and training services (including purposes of training courses, business scope, basic personnel information and management systems, decision-making mechanisms, fee agreements, security conditions and service commitments, etc. If foreign courses are introduced, relevant certificates or commitments shall be provided in accordance with relevant regulations, such as a commitment to comply with relevant Chinese laws and regulations and ideological management requirements), technical protection instructions for training platforms (including business system data interaction and processing capability certification, personal information protection system, network security management system, security protection technology measures, etc.)</li> <li>3. Extracurricular training institutions are required to submit a Standardized Business Operation Commitment, to commit that the institutions have credibility or ability to provide long-term services for schools, teachers and students, and are in compliance with other conditions specified in relevant laws and regulations and other documents promulgated by State Council, the Ministry of Education, and the Guangdong Provincial Department of Education.</li> <li>4. Institutions are required to submit a specialized system for "Institutions (Enterprises) Implementing the Guangdong Province Special Work Plan for Online Extracurricular Training", which describes the institution's emphasis on internal reviews, review processes, reviewers and internal review statements of the contents released on online extracurricular training platforms.</li> </ol>
<b>Beijing</b>	<p>Compared to the Guangdong Draft, the Beijing Rules only require online extracurricular training institutions to submit basic record-filing materials through the Management Platform, and recommend the institutions to submit other certifying materials to prove the platform's risk prevention and teaching capabilities, including award certificates, information on social welfare activities, etc.</p>
<b>Sichuan</b>	<p>Consistent with the Management Platform, the Sichuan Notice requires institutions to submit basic information about training institutions, teachers and training content.</p>

## **Our observations**

### **I. Issues ambiguous under Circular 8 await clarification in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools***

Circular 8 and the corresponding local supervision rules reflect the regulatory trends of the education administration at all levels toward regulation of online extracurricular training activities, but skip certain issues including the boundary between subject-based trainings and quality-based trainings and whether online extracurricular training institutions are required to obtain a school-running license. Those issues remain to be clarified in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*.

### **II. Record-filing and review practices to differ among provinces**

The Guangdong Draft, which has completed its public comment period but has not yet been officially promulgated, puts forward more detailed and stringent requirements for record-filing of online extracurricular training institutions compared to the Beijing Rules and the Sichuan Notice, based on certain basic requirements shared by all three documents. With respect to the record-filing application materials, the Guangdong Draft puts forward more detailed requirements for materials and certification documents to be submitted for record-filing. In light of the review requirements, the Guangdong Draft stipulates more stringent requirements for the qualifications of full-time teachers (including the number of full-time teachers, requirements for cross-subjects teaching, etc.), the qualifications of foreign teachers, the protection and use of personal information, the construction of internal management systems for online extracurricular training institutions. Going forward, we expect to see differences in record-filing practices among provinces following their promulgation of detailed implementation rules.

### **III. Online extracurricular training conducted with use of artificial intelligence enters the view of regulators, but record-filing thereof is still not a compulsory requirement**

Online extracurricular training conducted with the use of artificial intelligence, although untouched in Circular 8, are referenced in both the Guangdong Draft and the Beijing Rules. Under these two departmental rules, record-filing of artificial intelligence-based online training activities is not compulsory, and is only to be conducted voluntarily or at the institutions own initiative. The qualifications of teachers remain the regulatory focus of the Circular 8, the Guangdong Draft and the Beijing Rules, considering teachers currently carry out most online extracurricular training activities. However, it is undeniable that the application of artificial intelligence has become common in the education and training fields, which is a trend that has drawn the attention of education regulators but has yet to become a regulatory focus, as indicated by the relevant requirements of the Guangdong Draft and the Beijing Rules. In the future, we expect relevant normative documents to be formulated by the education administration if the application of artificial intelligence becomes more widespread in the field of education and training.

### **IV. Local supervision rules emphasize the principle of dynamic supervision, online extracurricular training activities should continuously meet regulatory requirements**

Both the Guangdong Draft and the Beijing Rules clearly stipulate that being “whitelisted” following review and approval merely indicates that an online extracurricular training platform satisfies the relevant filing requirements at the time of record-filing. In fact, in addition to the requirements for record-filing, Circular 8 also puts forward requirements for daily supervision of online extracurricular training institutions in terms of training content, course length, faculty, fees and information security, and requires the establishment of a daily inspection and spot-check system. So, online extracurricular training institutions that have passed the preliminary review and have been whitelisted should remain vigilant. In practice, some whitelisted enterprises can still be gray-listed or even blacklisted by the local regulatory authorities because of failure to meet the relevant regulatory requirements. In daily operations, online extracurricular training institutions still need to continuously track and ensure compliance with the national and local regulatory requirements that may be updated by the education administrations from time to time.

## 2. 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. Transfer 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***

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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