Global Corporate Real Estate Guide - China

Real Estate Law

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# What is included in the term “real estate”?

The term “real estate” generally includes the following:

Land use rights (or land ownership in some cases)

Buildings or structures constructed on land

# What laws govern real estate transactions?

Real estate transactions in the People’s Republic of China (PRC) are governed by statutes enacted by national and local governmental authorities. The principal statutes at the national level include the following:

PRC Interim Regulations Concerning Assignment and Transfer of Urban Land Use Right (Revised in 2020)

PRC Urban Real Estate Administration Law (Revised in 2019)

PRC Land Administration Law (Revised in 2019)

Regulations on the Implementation of the PRC Land Administration Law (Revised in 2021)

PRC Civil Code (Enacted in 2020)

Provisions on the Administration of Urban Real Estate Transfer (Revised in 2001)

Administrative Measures for the Sale of Commodity Houses (Enacted in 2001)

Commercial Properties Leasing Measures (Enacted in 2010)

Interim Regulations on Real Estate Registration (Revised in 2019)

Detailed Implementing Rules of the Interim Regulations on Real Estate Registration (Revised in 2019)

While the national statutes set out the general legal framework, local regulations enacted at provincial and municipal levels often provide the detailed legal rules for local real estate transactions. For example, Shanghai has many local regulations, including the following:

Measures of the Shanghai Municipality on the Implementation of PRC Land Administration Law (Revised in 2018)

Measures of Shanghai Municipality on the Grant of Land Use Rights (Revised in 2008)

Measures of Shanghai Municipality on the Transfer of Real Properties (Revised in 2010)

Several Provisions of the Shanghai Municipality Regarding Real Estate Registration (Enacted in 2020)

Shanghai Houses Leasing Regulations (Enacted in 2022)

Shanghai Residential Properties Leasing Administrative Measures (Revised in 2021)

While China is not a “common law/case law jurisdiction,” the PRC Supreme People’s Court and the local courts do issue judicial interpretations to provide guidance on the laws and occasionally refer to precedent court cases when making judgments on real estate transactions.

# What is the land registration system?

China adopts what is basically the “Torrens system” where title to real estate is registered with and certified by the government.

Real estate title registration is achieved by registering the title details at the local real estate registry administered by the government, and the registry issues a title certificate to the registered owner.

The information contained in the title certificate issued and at the local real estate registry should be consistent with each other. However, if there are discrepancies, the information registered at the local real estate registry is conclusive unless there are manifest errors. The owner may sue the government for wrongful registration.

# Which authority manages the registration of titles?

At the national level, the Ministry of Natural Resources generally takes charge of real estate title registrations.

At the local level, real estate title registration for land and buildings has been combined and centralized at one registry in most cities by the end of 2017.

# What rights over real property are required to be registered?

The following types of real estate interests and transactions must be registered at the local title registry for them to be fully protected and enforceable against third parties:

Grant (creation) of land use rights by the government

Recognition (creation) of ownership of new buildings by the government

Transfer of land use rights and buildings

Mortgage of land use rights and buildings

A real estate lease is also required to be filed with the designated local authority; however, the lack of filing does not invalidate the duly executed lease.

As for easements, they are not required to be registered. An easement takes effect upon signing of the easement agreement. However, registering an easement will protect the holder of the easement right from bona fide third parties.

# What documents can landowners use to prove ownership over real property?

Depending on the location and the types of real estate interests involved, owners will normally use their “land use right certificates,” “building ownership certificate,” or “real estate title certificate” issued by the local title registry as proof of title.

# Can a title search be conducted online?

Meaningful online title search is not yet available in China. Many cities now have established portals to allow online title searches, but such searches are yet to become a meaningful tool for due diligence purpose as they can reveal very limited information only. According to the Detailed Implementing Rules of the Interim Regulations on Real Estate Registration effective from 1 January 2016 and revised on 24 July 2019, only owners, interested parties in real estate transactions, succession or litigations, persons authorized by the owners or interested parties, and courts, prosecutors, security bureaus, supervisory bureaus or other government authorities carrying on official affairs may conduct title search at the local registry.

# Can foreigners own real property? Are there nationality restrictions on land ownership?

Since July 2006, foreign companies and individuals are no longer permitted to directly acquire and hold PRC real estate for “investment purposes” (e.g., greenfield development projects and acquisition of buildings for investment holding and/or leasing). Real estate directly acquired by foreign companies and individuals for investment purposes prior to July 2006 are “grandfathered.” Today, foreign companies and individuals must obtain approval from the PRC foreign investment authority to set up a local company to carry out real estate investment.

On the other hand, foreign companies and individuals may still directly acquire PRC real estate for “self-use” or “self-residence” purposes in certain limited circumstances. For example, foreign individuals who work or study in China may purchase buildings for self-use or self-residence based on actual needs. However, some cities currently restrict non-local individuals who do not have local tax and social security registrations from purchasing residential properties.

Foreign companies may purchase a “reasonable quantity” of buildings for self-use for their representative offices or branches in China. Note, however, that foreign companies and individuals from countries without diplomatic relations with China could be restricted from acquiring PRC real estate even for self-use purposes.

# Can the government expropriate real property?

The government is empowered by law to expropriate land and buildings for public interest purposes, but the government must pay compensation to the owners in accordance with the law.

# How can real estate be held?

There is no private “freehold” land ownership in China. All urban land in China is owned by the Chinese government and is commonly referred to as “state-owned land.” All rural and suburban land is owned by rural collectives (i.e., local groups of farmers) and is commonly referred to as “collective land.”

The PRC government is permitted to grant, lease or allocate the right to use state-owned land, but PRC laws prohibit the transfer of ownership of state-owned land. Collective land in China is subject to stringent legal restrictions and investors should exercise caution when dealing with them. Nevertheless, the PRC Land Administration Law was revised on 26 August 2019 to allow rural collectives to grant or lease the right to use collective land for certain specific purposes on a limited basis.

For illustration purposes, an owner of a residential apartment located on a state-owned land in China obtains and holds his property title in the following manner:

The local government arranges a public bidding process to grant the land use rights of a residential site to a real estate developer for a term of 70 years (the maximum permissible land grant term for residential use)

The developer winning the bid signs a land grant contract with the local government and pays a substantial land grant fee to the local government. Effectively, the developer acquires a long-term, transferrable leasehold interest in the land

The developer constructs residential development on the granted land site

The developer sells the residential development on a strata-title basis to different buyers

Each buyer registers his/her real estate title at the local registry and obtains a real estate certificate (or a land use right certificate and a building ownership certificate in transactions closed before 1 March 2015) in respect of the residential property he/she purchased. The buyer will enjoy ownership of the residential property for the remaining term of the 70-year land grant. Under PRC law, the buyer’s title will be automatically renewed at the end of the 70-year initial land grant (although the legal procedures for title renewal have not yet been legislated)

# What are the usual structures used in investing in real estate?

The most common structure is for the investors to form a limited liability company in China as a special purpose project company to acquire, develop or operate real estate assets in China. Such project company is an independent legal entity separate from its investors. The project company would be required to have a registered capital, and its investors are obligated to contribute capital in accordance with the law and the company’s articles of association.

If one or more of the investors are foreign investors, the establishment of the project company is no longer subject to the approval of the PRC foreign investment authority. Instead, the established can be registered with the companies registry in a fashion similar to domestically invested companies. The project company will be established as either an “equity joint venture company” or a “wholly foreign-owned company.”

# How are real estate transactions usually funded?

Acquisition of real estate by companies are usually funded by a combination of paid-in (registered) capital, shareholder loans, bank loans and also sale proceeds from the project in some cases. There are corporate, investment and banking rules governing the capitalization and financing for real estate projects.

For real estate development projects without any foreign investors, at least 20–25% of the project investment must be funded by shareholders’ equity; whereas in the case of foreign-invested development projects, at least one third of the project investment must be funded by shareholders’ equity. Local banks are not permitted to provide loans to developers for the payment of land grant fees to the local government. Developers are allowed to “pre-sell” properties and use the pre-sale proceeds collected to fund the development, provided that the relevant government permits (including the pre-sale permit) have been obtained.

Depending on the nature of the property and the circumstances of the buyer concerned, it may be possible for the buyer to fund 50-80% of the purchase price by way of a bank loan.

# Who usually produces the documentation in real estate transactions?

For sale of properties in a development project, the legal documents are usually prepared by the developer and its legal counsel. For other types of transactions, there is no standard practice and the parties are free to negotiate and decide who shall prepare the legal documents.

# Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

If the property concerned is subject to certain real estate interests which existed prior to the transfer or occupation by the current owner or occupier (e.g., outstanding mortgage or pre-existing easement), the current owner or occupier could be exposed to these claims against the property.

Further, under the specific circumstances specified by the law, the current property owner could be liable for environmental contamination to the property caused by the previous owner.

# Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

It is possible for the buyer to claim against the seller for breach of statutory implied warranties or express contractual warranties with respect to matters which arose prior to the disposal of the property (e.g., breach of warranties in respect of good title, structural safety and no outstanding payment).

Further, the former owner or occupier is generally liable for environmental contamination committed by it even after he/she has disposed of or left the property.

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