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投资中国

房地产法律实务指南

高忠智 著



# INVEST IN CHINA

## A PRACTICAL GUIDE T → REAL ESTATE LAW

By Zhongzhi GAO



法律出版社  
LAW PRESS · CHINA

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**Disclaimer:**

The information in this book is not legal advice.

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## Foreword

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Recent years have seen dramatic economic development in China, and the reform of China's land laws have accompanied this process of development. The expanding role of markets in the Chinese economy has required new laws on land. Legal reforms have created new incentives and promoted growth, and at the same time growth is creating needs for further reforms in law. The result has been a process of step-by-step legal reform, driven by practical needs. The experience with the reform of land law in China over the past two decades has been rich, and it is regarded internationally as both positive and deserving consideration by other countries transitioning from planned to market economies.

Why is land law essential to processes of economic and social development? It is land law that recognizes the property rights of individuals, groups and the state, and those property rights create incentives to conserve and produce. Land law sets out the circumstances in which and processes by which

rights in land can be transferred, permanently or temporarily, or used to secure loans. It also embodies some limitations imposed by the state on those rights, for instance zoning rules that limit land use, or rules prohibiting certain transfers of land. The rules of land law set out fundamental concepts about who should hold property in land, and so affect the incidence of poverty and prosperity. The rules for transactions will determine the efficiency of land use and influence emerging patterns of land distribution.

Reforms in land law are likely to continue for some time, as long as a rapid change in China's economy and society prevail. Further strengthening of rural property rights are needed, and with today's growing awareness of environmental problems, new conservation values need to be incorporated into land law. In time, recreational and other values will come to influence the development of land law to a greater extent than they do today.

This book is a timely and significant contribution to the broader understanding of this critical area of Chinese law. The author has brought to the writing his experience in local land administration, his exposure to land law in legal systems beyond that of China, and his experience as a practicing attorney in advising clients investing in China. The book fills a major gap: a manageable introduction to this key and

complex area of law. It should be of equal interest to lawyers, economists and investors.

John W. Bruce  
Senior Counsel (Land Law)  
The World Bank

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# Chapter 1

## Overview of the Chinese Land Tenure System

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1. *Land Ownership*
  2. *Land Use Rights*
  3. *Land Use Control*



The most distinctive feature of China's land tenure system is that land ownership is independent of land use right. Land ownership is divided into two categories: state-owned land ("state land") and collectively owned land ("collective land"). Only natural persons, legal persons or other organizations may acquire land use rights.

### **Land Ownership**

There are specific provisions on land ownership in the Constitution of the People's Republic of China ("Constitution") ("PRC"), the Land Administration Law of the PRC ("Land Administration Law"), and the Implementing Regulation of the Land Administration Law of the PRC ("Implementing Regulation of Land Administration Law").

Land ownership means the land owner has the right to occupy, use, benefit from and dispose of the land.

#### ***State Land***

Under the above laws and regulations, the land in urban area belongs to the state, and the State Council administers the state land on behalf of the state. More



specifically, state land includes:

- a. Land in urban areas;
- b. Rural and suburban land that has been confiscated, taken and purchased by the state in accordance with law;
- c. Land that has been requisitioned by the state in accordance with the law, i. e., land that is converted from collective land to state land;
- d. The following land that is not collective land in accordance with law: forest land, grassland, uncultivated land, shoals and other land;
- e. Land that originally belonged to rural collective economic organizations but whose members have now all been relocated from rural to urban areas; and
- f. Land that originally belonged to collective economic organizations but is no longer used by them because of the relocation of members by state request or as a result of natural disaster.

### *Collective Land*

Collective land includes:

- a. Land in rural areas and in suburban areas of cities, except for land owned by the state in accordance with the law; and