

RESTRICTIONS IN LAND DEVELOPMENT

Only qualified property development companies can engage in land development and real property operations. A foreign property developer, in order to engage in China property development, may therefore form a cooperative venture or joint venture with a PRC enterprise, or find a China partner who is already qualified in property development and possesses a Construction Qualification Certificate which allows the land development company to be engaged in construction of commodity housing for overseas sales. A foreign property developer may also set up a wholly foreign-owned PRC company and apply for such a certificate.

*The law is as stated at January 2003.
The law relating to conveyancing in China is complex.
This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on the topics raised in this pamphlet you should consult a solicitor.*

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LAW GUIDE SERIES No. 13

Obtaining Land Use Rights in China

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INTRODUCTION

Land in the People's Republic of China (China) is either owned by the State or by rural collectives. Enterprises and individuals may only acquire rights to use land but not the ownership of the land.

In China, the transfer of land use rights by the State is called granting (出讓) while the transfer of land use rights and/or the right to use real property by the land development company (after obtaining the land use rights from the State) to the end user(s) is called assignment (轉讓).

Here we will discuss the granting of land use rights by the State.

OBTAINING LAND USE RIGHTS

1. By Payment of Premium

Land use rights in PRC are granted by the State Land Administration Bureau (國土局), normally by auction, tender or agreement. The grant by agreement is at present the most commonly adopted method.

The party interested in obtaining land use rights to certain land can also propose to the local government for the grant of that particular land.

For the grant of land use rights, the local State Land Administration Bureau will sign a land grant contract (土地出讓合同) [or sometimes called a compensatory land grant contract (有償土地出讓合同)] with the grantee which may contain the following terms, among others :-

- the amount of the grant premium (出讓金) and the payment terms;
- the term of the grant;
- the user of the land;
- the building specifications;
- the deadline for completion of the development.

2. Collectively Owned Land

Suburban or rural land is usually collectively owned. The grant of such land must be approved by the local government and the

land must first be requisitioned by the State before it can be granted.

3. Allocated Land

Local enterprises and institutions may obtain land use rights by an administrative method [called allocated land use rights (劃撥土地使用權)] without payment of grant premium or after payment of compensation and relocation costs, if required. However, the land is restricted to the use of the grantee and for the designated purpose only.

Allocated land use rights cannot be assigned, leased or mortgaged without the prior approval of the local State Land Administration Bureau. Moreover, allocated land use rights can be converted into land granted for a premium. The land user can find out from the local State Land Administration Bureau the total grant premium payable.

Allocated land is a good choice for foreign investors setting up factories or joint ventures in China by there is a risk that such land may be requisitioned by the State, together with any buildings on the land.

If allocated land use rights are transferred to a third party without approval, the local government may confiscate the illegal revenue and impose a fine on the grantee.

4. Paying Compensation

If the land granted has occupants or other land users, the grantee will usually be required to pay for the costs of compensation and relocation of the existing occupants in addition to any grant premium. The agreement for payment of compensation will usually be contained in a separate contract and it is a common practice the local district government to undertake the duty the demolition works and relocation of the existing occupants (動拆遷) in such second contract.

5. State Land Use Certificate

Upon the full payment of the grant premium, the local State Land Administration Bureau will issue a State Land Use Certificate (國有土地使用証) to the grantee.

THE GRANTING POWER

Local governments (usually through the local land administration authority) at or above country level may grant land use rights but there are special restrictions relating to the granting power, as determined by the provincial government. The following is a brief summary of the various granting powers at different levels of government, with special reference to Guangdong province :-

- provincial government may grant land use rights for a plot of land not exceeding 1000 mu (farmland) or 2000 mu (other land) [1 mu = 666.7 square metres];
- for plots exceeding the above limit, the grant must be approved by the State Council;
- The Shenzhen, Zhuhai and Shantou Special Economic Zones may grant land use rights with the same area as the provincial government;
- Guangzhou and Shenzhen (excluding the Special Economic Zone) may grant land use right up to 500 mu of farmland or 1000 mu of other land;
- development zones approved by the State Council may grant land use rights up to 100 mu of farmland or 200 mu of other land;
- municipal governments may grant land use rights up to 50 mu of farmland or 100 mu of other land;
- country governments may grant land use rights up to 3 mu of farmland or 10 mu of other land;
- township governments may only grant land for peasant housing.

TERM OF GRANT

The following are the maximum terms for various land uses:

- residential - 70 years;
- industrial - 50 years;
- educational, scientific, technological, cultural, health or sports - 50 years;
- commercial, tourism or recreational - 40 years; and
- comprehensive use or other purposes - 50 years.