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Update: China's New Property Law

On March 16, 2007, the National People's Congress (NPC) of the People's Republic of China (PRC) enacted a comprehensive property rights law that provides a statutory framework for protecting real and movable property rights. The Property Law, as the new law is known, will take effect starting October 1 of this year.

Background

The Property Law is the culmination of years of property rights evolution in China. (*See* our previous memorandum, *China's New Property Law*, March 12, 2007.) Work on the statute began in 1993. In late 2002, a draft version underwent its first reading before the NPC. Thereafter, considerable effort was devoted to preparing it for further legislative review. In July 2005, an updated draft was submitted for public comment, resulting in a spirited and thoughtful nation-wide debate. The Property Law as passed by the NPC reflects this high degree of public input and is widely viewed as a legislative milestone.

The Property Law touches virtually all aspects of property relations in China. It provides protection of both state and privately owned property, and clear avenues for resolution of property disputes. We highlight some of the Property Law's key features below.

Highlights of the Property Law

1. Scope of Property Rights

The Property Law stipulates the basic principle that China is a socialist market economy. The law guarantees that both the public and non-public sectors shall have equal legal status, and expressly protects state, collective, and individual property rights from infringement.

- The Property Law clearly provides that owners have the right to the beneficial use of their property and to establish security interests. The state may appropriate property in the public interest, but shall pay compensation for doing so.

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- Parties whose property rights have been infringed may resort to settlement, mediation, arbitration, or the courts for resolution.

2. Registration of Real Property

The Property Law requires that ownership rights to real property – including changes, transfers or terminations of such rights – must be registered to have legal effect.

- The law stipulates the implementation of a uniform set of registration procedures. The authorities designated to process registrations will maintain a property registry.

- When processing registrations, the registration authorities will be expressly prohibited from requiring property assessments, duplicative registrations, or exceeding their administrative mandate. Registration fees may not be based on the size or price of the property.

- Interested parties may apply to inspect the property registry and bring challenges to property registrants in the courts. The law permits property registrants to seek damages if such challenges are found to be without merit.

3. Movable Property

The Property Law protects the rights of third party purchasers in good faith in situations where movable property is not registered.

4. State-Owned Assets

The Property Law stipulates that the PRC State Council exercises ownership rights on behalf of the nation with respect to state-owned assets.

- The law mandates that all state agencies must enhance their management and supervision of state-owned assets and promote the preservation and enhancement of the value of those assets. Personnel found responsible for causing losses to state-owned assets through abuse of power or neglect of duty will be held liable – such liability will attach to any personnel responsible for effecting below-value transfers of state assets.

5. Property Relations

The Property Law regulates relations among property owners and makes important additions to rules regarding land use rights.

- Owners of condominiums are permitted to set up owners' associations to monitor building management and maintenance.

- The law provides for automatic extension of residential land use periods.

- Property owners are permitted to create easements by contractual agreement.

- Farmers holding rural land use contracts will be allowed to extend the contracts.

6. Security Interests

The Property Law makes important additions to the rules governing security interests. In the event of conflict with the Guaranty Law of 1995, the Property Law will control.

- The Property Law permits parties to mortgage such property as: buildings; land use rights for construction; land use contracts for undeveloped land obtained in public auction; production equipment, raw materials, semi-finished goods, and finished goods; buildings, ships, and aircraft that are under construction; and, transportation equipment.

- The Property Law also permits parties to collateralize such assets as: bank drafts; bonds; certificates of deposit; warehouse vouchers; bills of lading; transferable stocks and fund shares; transferable patents, copyrights, and intellectual property; and, accounts receivable.

Impact of the Property Law

The Property Law is one of the most significant, and probably the most controversial, pieces of legislation passed in recent years in the PRC. Disputes over land are commonplace and have become the cause of many social disturbances in China. With China becoming the world's fourth largest economy, the business community will welcome this new legislation because it provides protection of both state and privately owned property, and clear avenues for resolution of property disputes. This will in turn boost the confidence of investors, both foreign and domestic.

In the PRC, national-level laws, however well drafted, are prone to be interpreted differently at the provincial levels. The biggest challenge to the PRC authorities is to ensure that the Property Law will be vigorously enforced and uniformly interpreted throughout the nation.

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