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M e m o r a n d u m



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## China's New Property Law

After years of preparation, the National People's Congress (NPC) of the People's Republic of China (PRC) is poised to enact a comprehensive property rights law before the end of its current session. The Property Law, as the new law will be known, will provide a statutory framework for the protection of real and movable property rights and is widely expected to mark a significant step forward in China's legal and economic development.

### **Background**

Over the past twenty years, property rights in China have undergone a remarkable evolution. In Chairman Mao Zedong's era (1949-76), privately held land was collectivized on a massive scale, Soviet-style central planning controlled the economy, and the ideological environment rendered the very concept of private ownership problematic. Individual property rights were gradually re-introduced into the legal framework in meaningful fashion during the market reform era that began after the rise of Deng Xiaoping. For example, in 1986, the NPC passed the General Principles of Civil Law, which articulated basic protections for citizens' property. That same year, the NPC passed the Land Management Law to address ownership and regulation of land use rights. In 1995, passage of the Secured Interests Law (also known as the Guaranty Law) created a framework for protecting credit and secured transactions. In 1999, the Contract Law was enacted to provide a basic framework for contractual relations.

Work on the Property Law 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 nationwide debate. The current draft version before the NPC reflects this high degree of public input and is widely viewed as a legislative milestone.

### **Key Features of the Property Law**

The drafters of the Property Law have taken their guidance from several over-arching goals, in particular: promoting China's post-reform era development objectives while also adhering to a socialist economic structure; implementing a legal mechanism for the equal protection of state, collective, and individual property; addressing concerns regarding the loss or improper disposition of state-owned assets;

strengthening protections for the interests of rural residents; and, providing a framework for resolving property disputes. In tandem with these goals, published reports indicate that, when the Property Law is enacted, observers should expect that it will:

- re-affirm the principle that in China public ownership is the dominant form of ownership, and that the non-public sector of the economy is supported and guided by the state;
- clearly provide that state, collective, and individual property rights, and the property rights of other obligees, are protected under law;
- stipulate that the nation's natural resources, infrastructure and state-sponsored entities are state property;
- articulate the PRC State Council's role as the chief managerial body for state-owned assets;
- set forth liability provisions for individuals who cause below-value or other improper transfers of state property to be effected;
- permit farmers to renew the terms of their land use contracts; and
- address compensation for rural and township dwellers whose land and residences are expropriated for state purposes.

The Property Law is also expected to:

- implement a uniform registration system for real property;
- regulate common-use facilities in condominiums and among adjoining properties;
- regulate land use in construction;
- provide procedures for the establishment of easements; and,
- contain regulations regarding mortgaging and collateralization of property.

### **Impact of the New Legislation**

The Property Law will be 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 will provide certainty of property ownership and protection of privately owned assets. 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 Property Law will almost certainly be passed in the NPC's current session. The

biggest challenge to the PRC authorities is to ensure that the Property Law will be vigorously enforced and uniformly interpreted throughout the nation.

We will provide an update to this memorandum once the Property Law has been passed and released in its final form.

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