

Zhong Yin Lawyers, Shanghai Office, Suite H, 21/F, World Plaza, No.855, South Pudong Road, Shanghai, 200120, China
Jason Tian, attorney-at-law, www.doroto.com, E-mail: tianjie@zhongyinlawyer.com, Mobile Phone:(86) 138 1654 8421

Legal Issues on Allocated land

Jason Tian

China has a unique legal system on its land administration (for an overview of China land system, please refer to:

<http://www.sh148.org/English/11763.html> for more). In respect of foreign investment in

China, construction land is mostly concerned. Under current legal framework, there are basically two ways of obtaining construction land, namely, granting and allocation. Granted land is usually obtained through auction, tendering, listing or by agreement, and land user shall pay the land grant fee up front. Allocated land is obtained by land users without paying any consideration for using the land except for paying cost for certain demolition and relocation. While allocated land is now strictly restricted to limited usages prescribed by the State Land Administration Ministry (“SLAM”), in reality, there are vast allocated lands in use, a legacy of China’s old state planned economy, where most construction lands were allocated. Land has been frequently used as capital contribution in Sino-foreign equity or contractual joint ventures. Therefore, foreign investors shall be cautious if allocated land is involved therein. Based on our experience and research, we summarize current rules regarding the use of allocated land in terms of its utilization, transfer, pledge, leasing and expropriation.

1. Rights attaching to allocated land

Different from granted land whose users may transfer, pledge and lease or otherwise dispose of the land use right, allocated land users shall, strictly speaking, only be entitled to possess and use the land for approved purposes and benefit from such possession and usage. Under the 1990 Grant and Transfer Regulation on State-owned Land Use Right (the “Grant and Transfer Regulation”), still effective today, allocated land shall not be transferred, mortgaged or leased without prior approval of local governments.

2. How to transfer allocated land

As said, allocated land users shall have no right to transfer the land. In order to sell the structures (assuming the underlying land no longer falls into the prescribed allocation scope) over the land, seller shall have two options: converting the allocated land into granted land before sale, or apply for approval of his transfer of the land and leave the buyer to convert the same into the granted

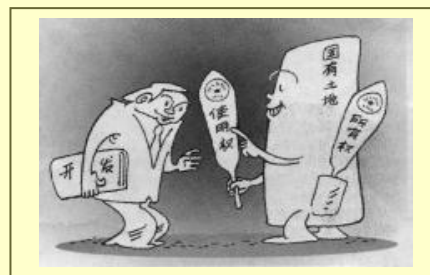
INSIDE THIS ISSUE

In this issue of **Real Estate**, we discuss the legal issues relating to allocated land, whose use right is given to the land possessor without charge. This kind of land is distinctly different from the granted land, which is obtained by paying a sum of grant fee. We hereby introduce the basic rules regarding the use, transfer, mortgage and leasing in respect of allocated land.

We are pleased to answer your enquiries about the subject matter.

land. Otherwise, without the government's approval, such sale of the superstructures is according to an interpretation by China supreme court illegal and shall be deemed void, unless approval is obtained before filing of the lawsuit.

Buyers or receivers (in the case of capital contribution in the form of land use right) shall be fully aware of what they are paying for or receiving.



Allocated land shall not be used for housing development unless converted into granted land.

3. **Mortgage of allocated land**

Initially, under the Grant and Transfer Regulation, mortgage of allocated land shall also be subject to government approval. Later, in response to market demand for collaterals, rules in this regard are relaxed to the extent that government's approval therefor is lifted, provided however that upon realization of the mortgage, mortgagee shall only be entitled to be paid in priority with proceeds of sale of the collateral minus an amount equal to the land grant fee for the allocated land. SLAM issued a circular in 2004 that the registration of the mortgage by the SLAM's local counterparts shall be viewed as the government's approval for mortgage of the allocated land, which stance was recognized by China supreme court.

While there is no worry about deals being voided, creditors or mortgagees shall be clear in mind that their collaterals are in a sense defective in term of their market values.

4. **Leasing of allocated land**

As with mortgage of allocated land, leasing of superstructures on allocated land was again subject to government's approval. Such requirement is now de factor abandoned provided that lessor shall pay an amount out of its leasing revenues to the government which amount is thought to be the interest accruing on the allocated land, a state interest.

5. **Compensation upon expropriation of allocated land**

Rules in this area are not crystal clear at this moment. While under Grant and Transfer Regulation it was explicitly provided that allocated land can be taken back without any compensation, later development in this area of law (mainly in SLAM's circulars) seems to recognize the right to compensation to certain extent.

We are pleased and ready to provide more detailed advice in respect of allocated land. Foreign investors engaged in manufacturing and production activities in China that require land utilization shall be particularly careful about issues associated with allocated land.

You may contact us for more at the following contacts as set out in the next page.

田杰 律师

Jason Tian
Attorney-at-law

电话(Tel):
(86) 13816548421
(86-21) 50383762

传真(Fax):
(86-21) 68869532
(86-21) 50383762

电子邮件(E-Mail):
tianjie@zhongyinlawyer.com;
doroto@163.com

We're on the Web!

我们的网址:

www.zhongyinlawyer.com

OR

www.doroto.com

田律师简介

江苏省徐州市人，法律硕士，毕业于华东政法大学研究生院。曾先后在英国高伟绅律师行上海代表处任高级法律翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于北京市中银律师事务所上海分所。

服务范围:

- (1) **房地产投资和收购:** 房屋和土地之买卖和租赁、房地产投资（大型商业、居住物业之项目收购，尽职调查、交易结构设计等）、商业地产经营、物业管理、劳动等；
- (2) **外商投资领域:** 外商投资企业（包括外商投资合伙企业）设立、增资和变更、公司治理结构、股权转让和并购，以及技术、商标许可/转让；外汇管理、外债等资本项目等；
- (3) **法律顾问:** 担任各类企业常年法律顾问，合同起草和审查、协助企业建立劳动、合同管理、公司治理、对外投资等规范和制度建设，对企业经营进行事先法律风险防范，促进企业依法经营等。

About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP and as an attorney-at-law at Zhonglun Law Firm. His **legal services** cover FDI, M&A, OEM, real estate (investment, sale, acquisition, purchase, leasing and property management of both residential, retail, commercial and industrial properties), corporate laws and trademark/technology licensing and transfer, and other general legal businesses such as employment, contract, tort etc.

如果您对上述内容有任何疑问，请致电、致信给我们！

If you have any questions about the above written contents, please do not hesitate to contact us!

中银律师事务所上海分所
上海市浦东南路 855 号世界
广场 21 层 H 座，邮编：
200120



ZHONG YIN LAWYERS
Suite H, 21/F, World
Plaza, No.855, South
Pudong Road, Shanghai,
200120, China