

Understanding Chinese Real Estate: The property boom in perspective

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1. Introduction

Real estate property has been one of the most contested issues of China's transformation from a command economy to a market economy. It touches the very heart of China's socialist doctrine: the state/collective ownership of land. This chapter analyses the evolution of land and real estate property laws in contemporary China. Outcomes and implications for both foreign and local investors are examined against the backdrop of the privatisation of real estate property fixed on land. This has occurred during China's unprecedented process of urbanisation along with the much heralded economic reforms. Driven by the dual tropes of 'market economy' and 'urbanisation', China's government has made laws to 'marketise' real estate property for investment, ownership and transaction. These reforms have very different implications for the various social groupings. As Peerenboom (2011: 285) notes 'there are constantly new winners *and* losers.'

The drivers of and impediments to the property law reforms are identified including inherent policy paradoxes: state/collective ownership of land vs. market transaction of land use rights, and state ownership of land vs. private ownership of real estate property fixed on the land.

The chapter argues that these paradoxes spring from the hybrid nature of China's market economic reforms on the one hand and the socialist system of public ownership on the other hand. Such underlying paradoxes may challenge the legitimacy of the continuing rule of the Communist Party of China (CPC). For the moment, China has buoyant expectations of growth in its developing market economy. The unresolved paradoxes may hint at an element of pessimism, but it appears likely that China's further reforms to laws on land and real estate property will be consistent with 'socialism with Chinese characteristics'.

2. Law Reforms on Land and Real Estate Property

China's land and real estate markets have been developing concurrently since China's 'reform and opening up' (*gai ge kai fang*) in 1978. Strictly speaking, China's does not have a 'land market' in that constitutionally land ownership is vested in the state in urban areas and the collectives in rural areas. When people talk about China's land market, they are actually referring to China's 'land use right' market. China's land market and real estate market reforms are interlinked given that real estate property is fixed on land. However, these two concurrent (and bound) reforms have been proceeding along different tracks over the past three decades. For the land market, the overarching reformist theme has been *from* non-transferable land use right *to* transferable land use right. For the real estate property market, the theme has been *from* public provision and ownership *to* privatisation.

The importance of land in China's contemporary political and economic context cannot be overstated. Public ownership of land is one of the fundamental principles of the CPC. Historically, land reform was marked by the confiscation of private land for redistribution in rural areas. This appealed to peasants, playing a pivotal role in the CPC's victory over the Chinese Nationalists (*guo ming dang*) in the civil war before 1949. Based on the ideology of all land being common property, large-scale nationalisation was carried out after the establishment of the PRC. The PRC Land Reform Law was announced in June 1950 with a focus on land confiscation and redistribution - mainly in rural areas. In the same year, the Regulation on Urban and Urban Fringe Land Reform stipulated that urban land was to become state land and would be managed by city governments. This nationalised urban land system was in force from the early 1950s until the mid 1980s. During the period between the 1950s and the 1980s, China's urban land system was characterised by three features summarised by Li (1999) as follows:

- *The administrative allocation of land:* Land was allocated for purposes determined by the administrative authorities. Land users such as the state authorities, army, schools or state enterprises could lodge land use applications to the relevant levels of governments. Land was then granted when the land use application was approved.
- *Land use without charge and compensation:* When land was granted through the administrative allocation, no charge or compensation was made for land use. The period of land use was not specified either. Theoretically the users could occupy the land for an unlimited time unless future state construction was going to take place on the same site.
- *No transfer right:* Land users had no right to transfer the land through selling, leasing, mortgaging, donating, or exchanging. Constitutionally land could not be transferred in

any form. Land had to be returned back to the relevant levels of government agents if land users did not need any particular piece of land, though this seldom occurred.

China's current land system is a result of a series of land law reforms commencing in the early 1980s, moving from allocating land use rights administratively to a hierarchical system of primary and secondary land use markets (Ho and Lin, 2003). The breakthrough in property law reform came in the form of the 1988 amendment to Article 10 of the Constitution adding that 'the right to use land may be transferred in accordance with the provisions of law'. This aimed to eliminate the constitutional binding on land use for private purposes such as foreign or private enterprises and private real estate development by separating 'ownership' and 'use rights' pertaining to urban land in order to establish a *land use right market* for private purposes (Hsing, 2006). Thus a 'dual track' land use system is in practice in China determined by the purposes of the land¹: Allocation (*hua bo*) is used to grant land use rights to state or non-profit users; Conveyance (*chu rang*) is used to transfer land use rights to commercial users for fixed terms (40 years for commercial land, 50 years for industrial land and 70 years for residential land). Major land reforms have been centred on defining and granting land use rights through the second track of conveyance with significant implications for investors which are explored below.

Land use right markets in China

There are two tiers of land use right markets in China. The allocation and conveyance of land use rights from the state form the 'primary market' (*yi ji shi chang*) of land use rights. Land use rights through allocation are obtained by paying an 'allocation price' consisting of three major parts: the expropriation fee of land (*zheng di fei*); stipulated land fees (*tu di gui fei*); and allocation fee (*hua bo fei*). Land use rights through conveyance are obtained by paying a

'conveyance price' consisting of three major parts too. The first two parts are identical to those in the allocation price. The third differentiating part is a conveyance fee (*chu rang jin*), which is the largest and most important portion of price paid to obtain land use rights through conveyance. The conveyance fee is supposed to be the market price of land use rights and can be determined by negotiation (*xie yi*), tender (*zhao biao*) or auction (*pai mai*). To curb corruption in determining the conveyance fee through negotiation between the government and the land users, the State Council promulgated in 2002 the Regulation of Granting State-Owned Land Use Rights by Tender, Auction and Quotation (the No. 11 Decree) seeking to end obtaining land use rights through negotiating the conveyance fee. An outcome has been that land use right holders who obtained land use rights through paying the conveyance fee in the primary market can transact or circulate (*liu zhuan*) their land use rights through transfer (*zhuan rang*), rent (*chu zu*) or collateral (*di ya*). This has the effect of forming a secondary market of land use rights. Circulating land use rights in the secondary market adds significant value to the land use rights. But land use rights obtained through allocation in the primary market cannot be circulated in the secondary market. As to whether the original intention of curbing corruption was fulfilled is a moot point.

Land market reforms

Land market reforms had an immediate impact on the formation and evolution of China's real estate market. The real estate market has also developed along two tracks, but with differences to the land market. One track has been developing in parallel with the land market evolution as described above. The commercialisation of land use rights was the first step to build a real estate market. The land use rights for real estate development can be obtained in both the primary land market and the secondary land market. Real estate developers can be public (state enterprises) or private (private investors from home or overseas).

The other track has been the process of privatisation and marketisation of housing. This track represented a transition from an administrative system to a market system under a 'top-down reform package' (Lee, 2000, Zhang, 2000). There was no housing market in China before the early 1980s. Housing was provided by the state as a social welfare through the work units (*dan wei*) for which individuals worked. The ownership of housing belonged to the state and could not be circulated or transacted. Public provision of housing proved to be a major barrier to alleviating financial burdens on the state or state enterprises and enhancing residents' living conditions. The solution was dual: on the one hand, the public owned housing were privatised; on the other hand, real estate development through multiple modes of investment was allowed and encouraged. This extensive housing privatisation was then supported by a system of urban housing property rights and growing mortgage financing (Stephens, 2010).

A dividing line in the evolution of China's real estate market came in 1998 with the State Council's Notice on Further Deepening Urban Housing Reform and Accelerating Housing Construction. This formally ceased all public provision of housing as a form of welfare from work units (including both government departments and state enterprises). The Notice marked a complete transition to market based housing (Ye et al., 2006). To purchase from the market from this point became the only source for obtaining housing. This provided an overwhelming impetus to the real estate market in China, sustaining a property boom for over two decades. Generally, this property boom mainly refers to housing development, but in some leading cities such as Beijing, Shanghai, Shenzhen, Guangzhou, and so on, it also includes commercial property development such as office, hotel and retail. The commercial property boom has to an extent reflected China's macro economic growth and need for expanded infrastructure and facilities for economic development.

3. Property Law Reform: Drivers and Impediments

China's land and real estate property law reforms were initially facilitated by economic drivers. Further reforms have been restricted by political considerations.

Drivers of reform

Foreign investment

A main economic driver involves an interwoven process of non-state investment and urbanisation. Non-state investment refers to both foreign investment and domestic private investment. An important aim of the 'opening up and reform' policy in the early 1980s was to attract foreign investment (as well as so called 'advanced technology and management experience') to grow the Chinese economy - initially in the coastal cities. Foreign investment in China in the 1980s mainly came from Hong Kong, Taiwan, and Singapore which had traditional links with mainland China. From then, inbound investment came from other East Asian countries like Japan, South Korea, and other Southeast Asian countries, and then from North American and European countries. Foreign investment in China has not come without its problems, however, the first arising from the land use rights and real estate property rights. Early distinctions were made between enterprises that were completely foreign investment, and joint ventures between foreign investors with Chinese partners. A common practice in the early stages of reform for Chinese local governments to provide land use rights 'as contribution and share in the joint ventures with foreign investment' (Wu et al., 2007). This nexus was problematic and the need to urgently clarify and define the land use rights (as well as the real estate property on the land) in relation to foreign investment became apparent to the central government in the early 1980s. The reforms had significant implications not only for foreign investors but also for domestic private investment.

Domestic private investment

Domestic private investment in China constituted the other important part of China's non-state investment. In the 1980s, domestic private investment did not impose a strong push on law reforms on land and real estate property in China because it did not evolve into a power force in the politic-economic sphere in terms of scale or influence yet. Private investment was mostly made in the form of individual household business (*ge ti hu*) largely of vendor retailing or small scale manufacturing workshops. In the 1990s, especially after Deng Xiaoping's Southern Tour Talk² in 1992, private investment grew massively along with foreign investment. Two factors well justified the rapid growth of private investment in the 1990s. First is the favourable and encouraging investment policies carried out by all level of governments after Deng's pro-market 'theory of building a Socialist market system with Chinese characteristics' was enthroned as the CPC's ideological doctrines. Secondly, some individual household businesses which commenced and accumulated in the 1980s were able to improve their strength and scale at an accelerating speed in the 1990s. Coupled with those who could access power in the transition from a planned economy system to a market economy system to grasp their 'first bucket of gold' (*di yi tong jin*), the domestic private investors were able to invest in enterprises with scales which involved land use rights and real estate property, such as factories, farming, and real estate development projects. Thus domestic private investment joined the force requesting law reforms on land and real estate property.

Urbanisation

The other significant driver of China's law reforms on land and real estate property has, of course, been its massive urbanisation process. China's urbanisation rate was 45 per cent in

2008 growing from 20 per cent in 1980, while the central government's target was set to be 60 per cent in 2020 (Hu, 2008). The magnitude and speed of China's urbanisation were unprecedented and unparalleled in its 'ambition of urbanism' (Campanella, 2008). China's urbanisation is a concurrent dual process of urban population growth and urban construction growth. Urban population growth has been largely a result of rural population moving into cities for employment, education and residence under the context of macro economy boom. Urban construction growth has been more than a process of providing accommodation for the burgeoning urban population. It was first of all to provide spaces for production and business activities in factories, offices and commercial facilities of hotels, exhibition and conference centres, and etc, in addition to the infrastructures which support the urban systems. It then involved the massive urban housing construction to provide shelters for people who work and live in cities. For local governments, one important fiscal source has been from leasing land for urban housing development to fund the expanding public services since the 1980s (Tang et al., 2010). This is a factor of urban growth driven by local governments.

The massive and rapid process of urbanisation has imposed imperatives for property law reforms to land use and real estate properties in two senses. The first relates specifically to urban housing which was previously provided by the state as in-kind welfare *for workers*. Now it is privatised and commoditised. Private ownership and transferability of real estate properties required that relevant law reforms must be made. The second relates to the *private corporate subjects* that invested in urban properties for business purposes - including foreign or domestic investment. As corporate assets, real estate property (as well as the land invested in, occupied and used) these needed to be legally clarified and defined. Therefore, for individuals and/or corporate subjects in China's urbanisation process it has been essential for the government to reform land and real estate property laws to cater for the new economic

settings and actors that include state regulators, hybrid state/private developers and wealthy private entrepreneurs.

Impediments to further reform

Political factors

There are a few deeply-rooted impediments restricting further law reforms on land and real estate properties which are mostly political factors in China. The first impediment is the practice of the rule of party (the CPC) despite the rhetoric of the rule of law. People, including cadres and ordinary citizens in China, tend to attribute Chinese contemporary problems to so called 'systematic problem', which is essentially about the centralised governing system by one party. After attempts to begin liberalising the political system in the late 1980s, culminating in the Tiananmen Square 'Incident'³ in the spring of 1989, the CPC has tightened its political control throughout the 1990s. Some scholars assert this tightening has included enhanced economic control in recent years as evidenced by the strengthened, strategic position of state-owned enterprises in the Chinese economy (see Garrick's Introduction). Making law for building a market economy is a paramount goal of the government. But it is not the only goal as the CPC seeks to justify and sustain its rule. Thus, on the one hand Chinese politics is an obvious driver of reform; on the other hand it can also be an impediment by restricting further law reforms on land and real estate property in some arbitrary ways. Achieving transparency and accountability under an impartial rule of law system may be a future goal of China's market economy system. At the moment, lack of such an impartial rule of law system in China's land and real estate property market is an increasingly contentious and destabilising factor. In recent years, a series of incidents occurred in which the property owners committed self-burning in order to protect their properties from being barbarously demolished by the local governments or government-

backed developers. This is dubbed as ‘blood demolition’. It is pointed out that such conflicts between the haves and have-nots in China are reaching a revolutionary crisis point due to the lack of a clearly defined and effectively implemented legal system (Rui, 2010, Sydney Morning Herald, 2010).

Lingering ambiguity

The second category of impediment is ‘ambiguity’ in the interpretation and implementation of the rule of law in China. Ambiguity is related to the first impediment described above. There are some philosophical tensions for the CPC in that some socialist doctrines are now at an ideological crossroad between a forward vision and historically-based legitimacy. Every generation of CPC leadership has generated its own governing ‘concepts’ and ‘theories’ such as Mao Zedong Thought, the Deng Xiaoping Theory, the Three Represents Theory, and the Scientific Outlook on Development.⁴ Such variations in the party’s ideology have affected the rule of law development with Jiang Zeming in 2000, then as CPC Secretary General and China’s National President, expanding the rule of law (*yi fa zhi guo*) to incorporate the ‘rule of virtue’ (*yi de zhi guo*) - so as to ‘run the country by combining the rule of law with the rule of virtue’ (Xinhuanet, 2003). This statement was highly praised in the mainstream Chinese media, or propaganda mechanism. However, the intellectual circle challenged the call for ‘rule of virtue’ in private manner, such as blogs and conversations within small groups. It was pointed out that the ‘rule of virtue’ was problematic with its vague definition and arbitrary criteria. The core issue is whose virtue, that is, who defines, judges, and implements ‘the virtue’ to rule the country. An intrinsic presumption is that the CPC will turn to rule by the virtue of the CPC, which, essentially represents a reversal back to the ‘rule of man’ (*ren zhi*) during Mao Zedong’s era, or just a kind of euphemism of the ‘rule of party’ (*dang zhi*). The present generation of CPC leadership thus came into power in 2002 with some apparent

contradictions about the meaning for China of ‘rule of law’; the uncertainty affecting both pace and clarity of land and real estate property law reform. This ‘space’ has played into some hands more than others as the following section explains.

The power-wealth coalition

The third category of impediments relate to the so-called power-wealth coalition which has been developing in conjunction with China’s economic growth over the past three decades (Hu 2011; Garrick 2011). Vested interest groups in the power-wealth coalition have grown out of a number of sources. China’s popular media has frequently referred to corruption and ‘illegal power rent’ as elements of China’s transition from a planned economy to a market economy. Deng legitimised this as ‘groping for stones while China crosses the river’ of market reform. Together, a centralised power structure and liberalised market have, of course, enhanced the possibility and profitability of transactions between power and wealth. The formation of such a power-wealth coalition has been accelerating during the last decade since both parties had completed their primitive accumulation of power or wealth. Although both allusive and elusive, the power-wealth coalition has become a feature of contemporary China and for some time regarded as a significant barrier to further reform of China’s political, economic and legal structures (see Peerenboom 2011; Ling Li 2010: 196).

The power-wealth coalition is exclusive, protecting its elitist interests while its legitimacy is highly problematic and yet often relatively unchallenged. The nexus of wealth and power can be hidden. Members of the coalition may have high level connections with access to both finance and decision-makers. Example are now coming to public attention and even China’s media notes that some of the current CPC leaders are the offspring of the older generation of leaders.⁵ This group includes Xi Jinping, the current National Vice President (and someone

often touted as a potential successor to Hu Jintao as the CPC Secretary General and China's National President), Bo Xilai, the Party Secretary of the Chongqing Municipality, Wang Qishan, the Vice Premier, and Li Xiaopeng, the Vice Governor of the Shanxi Province, to name a few. They are referred to in China as *tai zi dang* (prince party or 'princelings') and are appointed to top political positions where they can guard their vested interests and those of their favoured connections. Under such political conditions it may not be so easy for China to deepen its law reforms on land and real estate property if the reforms risk impairing the interests of the most powerful and well connected.

4. Restrictions on Foreign Investment in Real Estate Property

Foreign investors can obtain land use rights to establish foreign enterprises in China through either an allocation from the government, or a transfer in the land market. The common practice is that foreign investors pay certain allocation fees and a land use fee to the government, or cooperate with Chinese partners who own the land use rights. However, policies on foreign investment in real estate property have been very restrictive since 2006.

The policies 2006 were developed as a package of reforms to tighten up management and finance in the real estate market. Both domestic and foreign investors were targeted. Intended to cool down a heated economy (as well as the real estate market) the restrictive tone lingers today with Premier Wen Jiabao (2010) reaffirming the government 'will rein in speculative housing purchases'.⁶ Aiming specifically at foreign investment, however, six ministerial departments including the Ministries of Construction, Commerce and the State Commission of Development and Reform co-issued the 'Opinion on Regulating the Entry and Management of Foreign Investment in Real Estate Market' (No. 171 Decree) in July 2006. The core theme of this Opinion was to apply an 'authorised system' and 'national treatment'

to foreign investment in real estate market, and apply strict approval and registration (with true names) of real estate purchases by foreign bodies or individuals. Decree 171 sets restrictive policies on the ownership, capital structure, and financing of real estate property by foreign investors in China stipulating that foreign investors cannot invest in Chinese real estate market by directly owning the property. First, they must register their businesses in China (or transact through a China-based investment agent). This blocks foreign investors from directly investing in Chinese real estate property in the form of equity investment. Second, only after having transferred all registered capital in the designated accounts and having obtained the state land use right certificate are foreign real estate developers eligible for bank loans. For a total foreign investment of more than US\$3 million in the real estate market, the amount of registered capital for the development company should not be less than 50 per cent of the total investment.

The Opinion was followed by a series of other related policies and regulations restricting foreign investment in the real estate market. For instance, in July 2007 further restrictions to foreign investment in the real estate market were announced by the State Bureau of Foreign Exchange Management with the 'Notice on the List of the First Group of Foreign Invested Real Estate Projects Approved and Recorded in the Ministry of Commerce' (No. 130 Decree). An important issue for foreign investors was whether they were listed in this Notice or not as it stipulates 'any foreign invested real estate company approved and recorded by the Ministry of Commerce or its delegated bodies *may not be registered to borrow foreign loan*'. This regulation means that new foreign invested real estate companies can no longer access overseas loans to invest in the Chinese real estate market.

Legally, 'foreign real estate investment' refers to forms of Sino-foreign joint investment, Sino-foreign cooperation, and foreign independent investment. It can include investment in residential units, apartments, houses, as well as commercial properties such as hotels, resorts, offices, conference and exhibition centres, retail and theme parks - as long as it is approved. Foreign investment can include *development* of land sites. Compared to other (non-land or real estate) businesses in China, the registration requirements for foreign capital investment in real estate development are high. Foreign real estate companies cannot borrow from overseas, but they are allowed to borrow RMB within China. Foreign real estate enterprises need to be registered in the form of a 'project company' for any one specific real estate development project. To register a real estate project company, the foreign investor thus needs to have already obtained the land use right, ownership right of the real estate property on the land (or the land/property transaction agreement) - signed between the foreign investor and the government land department, and land developer/real estate property owner and if loans are required these must be procured in China. Registration for foreigners has thus become significantly tougher since the 2006-7 reforms.

The registration process

Apart from foreign real estate investors, Chinese policies also restrict foreign *end users* with regard to purchasing real estate property whether a foreign enterprise or an individual. It is stipulated in the No. 130 Decree that two types of foreign entities and individuals can purchase commodity housing for self use or living according to 'actual need': 1) the branches or representative agencies of overseas bodies can purchase commodity office in where they are registered; 2) foreign individuals who have been working or living in China for more than one year can purchase one commodity unit per person. The registration and approval procedure is very strict. In order to purchase housing for non self use or living purpose, the

transaction must be made through a locally registered investment company. If a foreign company wants to transfer the profit from selling its housing in China to its home country, approval from the Chinese government must be obtained.

Foreign investment in the Chinese real estate market is thus very restricted when compared to the inverse situation of Chinese property investment in western countries. A point of difference is that great profits have accrued in China's overheated property markets over the past thirty years and the government's recent policy initiatives have sought to protect Chinese national interests. As to whether this represents a retreat from market forms is debatable but clearly there is an argument that it is. Foreign real estate developers have mostly come from areas with traditional ties to China such as Hong Kong, Singapore, Taiwan and Malaysia. Some are not 'authentic' foreign investors in that the developers might have originally come from China (later becoming overseas residents), and then returning to invest in their country of origin - as 'foreigners'. Alternatively, foreign funds may have originally been transferred from China to an overseas destination and then reinvested back in China as 'foreign' funds. Despite the restrictions mentioned above, many of these 'foreign' real estate investors had been 'localised' before the 2006-7 policies were promulgated. For investors from North America or Europe without traditional links with China, however, the Chinese real estate market is now very difficult to access. With foreign investment in real estate property accounting for only 3.8 per cent of the total real estate investment in China in 2004 (Shu, 2008) and with tightened policies since that date it can be unequivocally stated that for foreign investors, the Chinese real estate market is certainly not 'reformed and opened up'.

5. The Policy Paradoxes

For foreign investment, the restrictions on investing in Chinese real estate highlighted above can be interpreted as policies that seek to address cyclical economic ‘overheating’ rather than a stable legal or political mechanism designed to serve narrow local interests. The restrictive policies are linked to how the Chinese economy proceeds. If China’s economy turned stagnant, for instance, these restrictive policies are very likely to be adjusted to stimulate market growth. What is a concern for anyone wishing to invest in Chinese real estate property, foreign or domestic, are the paradoxes currently embedded in Chinese land and real estate property law outlined as follows.

The state/collective ownership of land

One paradox is the state/collective ownership of land and the transferability of land use rights in *the market*. As stated earlier, China does not have a land market but rather a land use right market. This is so as only land use rights within certain years can be transacted in the market - depending on the categories of land use. Current land occupiers do not actually *own* the lands, but rather the land use rights. Land occupiers rent the lands by paying land allocation fees and land use fees. The land use rights can be transferred in the primary land market involving transactions between the government and the land users and the secondary land market which, in turn, involves transactions between different land users. No matter how the land use right is transacted and who owns the land use right, land ownership remains with the state. The separation of land ownership and land use right is a fundamental legal problem in the Chinese land system. This problem is acknowledged by the government, however, it has not yet been confronted. Indeed, since China’s land reforms were commenced three decades ago, none of the land use right contracts has yet expired. The day of reckoning has not yet arrived on this point. When it does the questions of how to terminate or renew the land use right when terms expire are not legally defined. How to address the real estate property fixed

on the land when the land use terms expire is not clarified either leading to the second policy paradox.

State ownership of land and private ownership of real estate property fixed on the land

The second paradox in the Chinese land system is the relationship between the state ownership of land and the private ownership of real estate property fixed on the land. A central theme of the Chinese housing reform over the past three decades has been 'privatisation' and how far it should go. Most housing provision today is privatised and belongs in private ownership and can be transacted in the market. However, as I have pointed out above housing owners do not actually 'own' the land where the property is fixed. They rent the land use right for a certain number of years. Again, the separation of ownership of the land and ownership of the real estate property on the land is legally problematic. For example, the land use right for residential land use is 70 years, but for a residential unit which is transacted in the 20th year, the new owner will only have a land use right for 50 years. Despite owning the residential unit they will argue they have been 'short-changed' by 20 years. The 2007 Property Law echoes the long standing principle in the Chinese Constitution that land belongs to the state or collectives (Wong and Arkel, 2007). It stipulates that the land use right for residential will automatically renew when the 70 year land use right term expires. But it leaves open the issue of land premiums for renewals (Howlett and Hong, 2007). How land use rights may be renewed and in what circumstances remain uncertain.

The selective desire for foreign investment

The above paradoxes directly impact on foreign investment coming into China and create an additional paradox. China has welcomed foreign investment since the opening up policy began. But investment in Chinese real estate is a special case. It is less welcome in this case

irrespective of propaganda to the contrary. Here it is necessary to differentiate foreign investments that originate in areas with traditional links to China such as Hong Kong, Taiwan and Singapore from investments that do not. It is the latter category of foreign investors who face restrictive barriers to Chinese land and property and the paradox is this: China welcomes foreign investment, but not *this type* of investment. Yet business investment is, of course, often interconnected with land and real estate property. The net outcome of such a discriminatory policy is that although there is some foreign (non-Chinese) commercial investment in Chinese real estate property (including in the form of real estate investment trusts) they are set up as short-term investments that aim at profits going overseas. The discriminatory policy in this way backfires as longer term, more stable investment is lost. Indeed, as I have outlined, this category of foreigner has very good reasons for being cautious of holding and owning real estate property in China as either long term lessees or end users.

6. Conclusion

To address the policy paradoxes this chapter has outlined, the government faces a range of powerful influences upon it. Some of the influences come from within the changing, hybrid nature of the CPC's own ideology (and the tensions accompanying this hybridism). Some individuals have become enormously wealthy from property development in China and some of these are themselves princelings. Herein lies another dilemma for China: How best to promote good governance and a transparent rule of law with respect to the privatisation of land and transferability of its ownership in the land market. The feasibility of privatising Chinese land has been an ongoing discussion amongst academics, but its practical application has not been as straight forward as some may have hoped. A source of difficulty has been that privatisation of land represents a fundamental contradiction for the CPC's ideological foundations. Land is pivotal to the public ownership system. Privatisation of the land will

mean the collapse of one of the ideological platforms upon which the CPC (and current central government) is based. The existence of this dilemma does not, however, exclude the possibility of land privatisation in China. Like housing privatisation and the constitutional recognition of private property ownership - unimaginable just 30 years ago - land privatisation may be possible in the longer term. This perspective is supported by two arguments. The first is that all stakeholders in the Chinese political-economic sphere are aware of this problem and are seeking constructive solutions, with land privatisation one of the principles in focus. The second is that the CPC has shown flexibility in adjusting its ideological doctrines. The market reforms are testimony to this and the CPC's continued legitimacy is now inextricably linked to its reform program. Building a 'socialist market economy' could certainly include 'privatisation of land ... with Chinese characteristics'.

China has already made significant property law reforms in just three decades centred on:

- privatisation of housing and real estate property ownership,
- transferability of real estate property and land use rights in the market.

Together these themes represent a giant step in liberalising the Chinese land market and real estate market. From a starting position of a planned economy with Stalinist governance, China's law reforms on land and real estate property have been a catalyst for rapid economic growth and social and political transformation. It is clear these law reforms are far from complete. As argued, fundamental paradoxes exist but as the reforms proceed the core contradictions of privatisation of land vs. the public ownership system may be addressed. Privatisation of land is likely to be required by an increasingly liberalised market economy. A return towards a more Stalinist form of governance is almost unthinkable now. Nonetheless, privatisation will not be an easy task for future Chinese land-law reformers. But there are strong grounds for optimism and such reform may well suit the purposes of the princelings.

References

- CAMPANELLA, T. (2008) *The Concrete Dragon: China's Urban Revolution and What It Means for the World*, New York, Princeton Architectural Press.
- HO, S. & LIN, G. (2003) Emerging Land Markets in Rural and Urban China: Policies and Practices. *The China Quarterly*, 681-707.
- HOWLETT, A. & HONG, L. (2007) The New Property Law in the People's Republic of China. *The Real Estate Finance Journal*, 1-3.
- HSING, Y. (2006) Land and Territorial Politics in Urban China. *The China Quarterly*, 575-591.
- HU, R. (2008) China's Urban Age. IN JOHNSON, C., HU, R. & ABEDIN, S. (Eds.). Sydney, Metropolis Congress 2008.
- LEE, J. (2000) From Welfare Housing to Home Ownership: The Dilemma of China's Housing Reform. *Housing Studies*, 15, 61-76.
- LI, L. H. (1999) *Urban Land Reform in China*, London, Macmillan Press.
- RUI, R. (2010) Tens of Thousands in Standoff with Police in Eastern China Over Land Grabs by Officials.
- SHU, M. (2008) Report on FDI in Chinese Real Estate (*wai zi tou zi zhong guo fang di chan bao gao*).
- STEPHENS, M. (2010) Locating Chinese Urban Housing Policy in an International Context. *Urban Studies*, 1-18.
- SYDNEY MORNING HERALD (2010) China's Land Disputes at Crisis Point as Revolutionary Turmoil Beckons, Says Professor of Disenfranchised.
- TANG, B., WONG, S. & LIU, S. (2010) Institutions, Property Taxation and Local Government Finance in China. *Urban Studies*, 1-29.
- WONG, H. & ARKEL, A. (2007) China's New Property Law: Practical Issues. *China Law & Practice*. London.
- WU, F., XU, J. & YEH, A. (2007) *Urban Development in Post-reform China: State, Market, and Space*, London & New York, Routledge.
- XINHUANET (2003) The Proposition of "Rule of Virtue" (*yi de zhi guo li nian ti chu*). Xinhuanet.
- YE, J., WU, D. & WU, J. (2006) A Study on the Chinese Housing Policy during Social Transition: Practice and Development. *Housing Finance International*, 20, 50-58.
- ZHANG, X. Q. (2000) Privatization and the Chinese Housing Model. *International Planning Studies*, 5, 191-204.

Notes

¹ The 'dual track' land system is also called 'plan' track and 'market' track. The 'plan' track is a legacy of the land system in practice from the 1950s to the 1980s. The 'market' track resulted from the marketisation of land use rights for market purposes.

² Deng Xiaoping was dissatisfied with the stagnant economic growth in 1989-1992 under the governance of the conservative central leaders after the Tiananmen Incident in 1989. Deng had a series of pro-reform talks on a tour in Southern China provinces, which is collectively called Southern Tour Talk, and triggered a new round of economic reform and growth in China.

³ The Tiananmen Square Incident refers to the pro-democracy movement in Beijing in the spring of 1989. It was triggered by the university students' protests in the streets calling for government's actions to address corruption and democratisation, but resulted in killing of some students by the army when the CPC felt its statehood was threatened.

⁴ Deng Xiaoping first proposed the concepts of 'generation of CPC leaders' that Mao Zedong headed the first generation, Deng Xiaoping headed the second generation, and Jiang Zeming headed the third generation. Following this logic of classifying leaders by generations, the current generation of CPC is the fourth lead by Hu

Jintao. Each generation of CPC leaders came up with respective governing concepts or theories as summarised by the propaganda mechanism which are interrelated as well as distinctive (see Chan 2011).

⁵ The nepotism that the offspring of the ex-generation of CPC leaders came into power as top leaders is an impressive phenomenon in the current generation of CPC leaders since 2002. There are two explanations for this phenomenon. One is that they are in the right age of 50s and 60s to become top leaders. It was realised by the vested interest groups that they should have representatives to safeguard their interests, mostly economic interests gained in the 1980s and 1990s, in the political sphere so as to establish a firm power-wealth coalition.

⁶ Wen Jiabao (March 2010) Report on the Work of the Government delivered at the Third Session of the Eleventh National People's Congress.