

## **FLIA Insight Invitation**

### **Comparative Research Project: Legal Problems of Renewing the Term of the Right to Use Land for Construction of Dwellings**

As a NGO that intends to promote global scholarly communication and education, The Foundation for Law and International Affairs (FLIA) is accountable to this vision and committed to offering reliable comparative research through the network that FLIA members build. FLIA shares the network with passionate members from all over the world and we are able to overcome the barriers of knowledge and language to make meaningful contributions. We initiate academic comparative research projects on various interesting and important topics, in which we gather and summarize information on the same topic across the globe. We publicize the research reports under the FLIA Insight program. We hope these reports will lead academic thought and discourse on the topics, and promote communication between scholars and practitioners from different jurisdictions.

FLIA invites you to join the Comparative Research Project: Legal Problems of Renewing the Term of the Right to Use Land for Construction of Dwellings.

#### **Background**

The right to use land for construction of dwellings is a relatively new legal term in China. Recently, the legal problem of renewing the term of the right to use land for construction of dwellings after it expires has become a major concern for the public.

There are two legal grounds governing this issue. One is the Property Law, which was adopted at the 5th session of the Tenth National People's Congress on March 16, 2007 and promulgated for effect as of October 1, 2007. The other is the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas, which is promulgated in accordance by Decree No. 55 of the State Council of the People's Republic of China on May 19, 1990 and effective as of the date of promulgation.

In the Property Law of China, article 149 states that the term of the right to use land for construction of dwellings shall be automatically renewed upon expiration.

In Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas, Article 8 states: “The assignment of the right to the use of the land refers to the act of the State as the owner of the land who, within the term of a certain number of years, assigns the right to the use of the land to land users, who shall in turn pay fees for the assignment thereof to the State. An assignment contract shall be signed for assigning the right to the use of the land.”

Article 10 states: “The land administration departments under the people's governments at the municipal and county levels shall, in conjunction with the administrative departments for urban planning and construction and the housing administration departments, draw up a plan concerning the size and location, the purposes, the term, and other conditions with respect to the assigning of the right to the use of the land. The plan shall be submitted for approval in accordance with the limits of authority for approval as stipulated by the State Council and shall then be implemented by the land administration departments.”

Article 12 states: “The maximum term with respect to the assigned right to the use of the land shall be determined respectively in the light of the purposes listed below: (1) 70 years for residential purposes; .....

None of the articles mentions how to renew the term of the right to use land for construction of dwellings when it expires. This leads to a serious problem to today. The very first generation that was assigned the right to use the residential land has encountered the problem that the term of the right for 20 years is now expiring. As there is no law made by the Congress or regulation made by the central government explaining what to do with the expiration, the legal grounds to deal with this issues lie in local regulations. In the city of Wenzhou, the government decided that a homeowner has to pay hundreds of thousands or even millions to renew the assigned right to use the land. Meanwhile, in the city of Shenzhen, the government announced that homeowners can renew the right for 70 years for free.

Therefore, a huge debate is going on in China on what should be the legitimate and appropriate way to deal with this issue. This problem not only relates to vital interests of the people but also relates to how the legislators will solve the same problems with lands for industrial, commercial and other purposes. What more, it has serious implications for Chinese people and corporations, as well as foreign investors who must anticipate future costs.

Currently, there are two main opinions in China.

The first is that the right to use land for construction of dwellings should be renewed unconditionally. Hu Jihua (扈纪华), the inspector of the Civil Law Office of National People's Congress Standing Committee thinks that the so-called automatic renewal means unconditional renewal. The civil law expert Sun Xianzhong (孙宪忠) states that the idea of the right “be[ing] automatically renewed” was originally his proposal when he participated in drafting the Property Law, and the intention of the law is to renew the right unconditionally.

The second opinion is that there should be conditions to renew the assignment of the right to use land for construction. The proposed conditions can be subdivided into three types, according to different situations.

(1) Re-sign the contract. The very first case in China is that the Shenzhen government re-signed the contract with the Shenzhen International Commercial Building for the assignment of right to use land for construction in 2011. The amount that the user of the land paid was 35% of the announced benchmark land price. Some people believe that this case can be applied to the renewal of the term of the right to use land for construction of dwellings.

(2) Pay an annual fee. Professor Qiao Xinsheng (乔新生) of Zhongnan University of Economics and Law thinks that the land in the city is owned by the State, and therefore the users of the land should be charged annual fees.

(3) Pay a land tax. Professor Yang Lixin (杨立新) of Renmin University of China proposes that the fee for the right to use land should be changed to a tax on the right to use land.

## **Project Overview**

FLIA invites scholars, graduate students and practitioners with expertise in the field from different countries and Jurisdictions to join us in preparing a comparative research report on this issue. The report will include different parts written by different authors. The work from each author does not have to be original but has to fit the topic and be cited correctly if it is not from the author himself or herself. You may choose the following questions as your research topic or offer your own perspectives.

(1) If urban land in your country is owned by the State, can the right to use land be assigned? If so, how do the laws and policies govern the assignment of the right to use land, how is the term and fee accounted for, what are the conditions to renew the term, are the fees for the use of land

and taxes charged at the same time, and what is the difference between land for dwellings and other purposes in terms of fees?

(2) If urban land in your country is privately owned, how are residential property taxes assessed, what are their purposes, and are there any potential tax-exemptions?

(3) What is the policy regarding foreign investment and the right to use land in your country? If the term of the right to use land is limited, how do foreigners or foreign corporation renew the term? What would be your policy proposal on the conditions to renew the term of the right to use land in China for foreign investors?

**Format:**

The work should be submitted in Microsoft Word format in Times New Roman 12-point font with double spacing and one inch margins;

The work should be no less than 5 pages (there is no official maximum so long as the paper adequately addresses the issues).

**Participation:**

The finalized report will be submitted to relevant legal and administrative authorities in China and publicized globally. Outstanding contributors may also have opportunities to be invited to attend conferences on this topic in China. FLIA holds the copyright to the finalized research report and, but each author retains the rights associated with any original part of the report that he or she contributes.

We sincerely invite scholars who are interested in this issue to join this project. The deadline for submission is July 29<sup>th</sup>, but we will submit and publicize the work as soon as we receive it from the participants. For those who are not FLIA experts or members, please send a CV with a short bibliography stating your interest in the project and what jurisdiction you have addressed in your work to [contact@flia.org](mailto:contact@flia.org). Do not hesitate to contact us if you have any questions or concerns.