Regulation of real estate markets in China has failed to keep pace with the country’s real estate boom. However, the draft Property Law (the Law) currently being considered by the National People’s Congress (the NPC) includes several practical changes designed to increase the certainty of property rights and to improve the efficiency and transparency of market transactions.

One source of uncertainty with respect to land use rights has related to the question of what happens to the rights upon expiration of the initial use term. Under the Law, holders of residential land use rights will receive an automatic right of extension, while holders of use rights to industrial and commercial land may apply to extend their rights. However, it remains unclear how long the period of extension would be or could be.

The Law protects individual rights to own real estate in both the pre-acquisition and post-acquisition phases. Buyers of properties still under construction may register their rights to such properties either upon the written consent of the seller, or unilaterally after payment of more than 50% of the purchase price. Such “pre-sale” registration will prevent developers from selling the same property to more than one buyer, although buyers who have paid deposits of less than 50% will still be dependent on developers to achieve the benefits of registration. Owners’ rights to collectively own and manage common spaces within a building or development (such as greenbelts, roads, property management facilities and parking garages) are also expanded by the Law.

In an attempt to streamline transactions and reduce associated costs and risks, Article 10 of the Law calls for the nationwide establishment of a unified register of property rights in buildings and land (many Chinese cities still maintain separate registers for land and buildings). To fully realize the benefits of a unified register, the official registration record must be transparent and freely accessible to the public. Current provisions of the Law limiting access to undefined “interested parties” and allowing registration agencies to keep confidential any documents involving state secrets, trade secrets and individual privacy should be reconsidered.

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