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RESEARCH ARTICLE

A Study on Issues Regarding Carrying the Spirit of Real Right Legislation through the Legislation on Registration of Immovable Property*

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Abstract

China's legislation on the Property Law of the People's Republic of China (hereinafter the Property Law) established a unified system for registration of immovable property, aiming to build a stable order for the disposition of real rights in immovable property based on the publicity principle, and to provide institutional support for the operation of the market economy and the protection of civil rights. Book Two Real Rights of the Civil Code of the People's Republic of China (hereinafter the Civil Code) establishes the institutional framework for registration of immovable property from the perspective of substantive law, representing a significant innovation to the previous registration system. In terms of institutional positioning, registration of immovable property should highlight its core attribute as registration of real rights in immovable property, distinct from mere natural resource ledger management; in terms of the model of legal effect, the substantive registration model should be adopted, in line with China's transaction practices and the legal doctrine distinguishing real rights from obligatory rights. Currently, in the discussion of legislation on registration of immovable property, there remain different understandings of its institutional positioning. Based on the practical needs of market economy development and rights protection, this paper explains the jurisprudential basis and institutional logic for implementing the spirit of real right legislation in registration of immovable property, clarifies the functional boundaries of the registration system, and consolidates the theoretical foundation for China's specialized legislation on registration of immovable property.

Keywords registration of immovable property; unified registration of immovable property; publicity principle; presumptive effect

I Introduction of the Issue

In a society governed by the rule of law, legislation on immovable property is uncontroversially significant as a fundamental legal system. Whether it be state governance, economic development or the protection of people's livelihoods, none of these can be achieved without

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the possession and use of immovable property. However, it must be clarified that in a society governed by the rule of law, immovable property must be possessed and used in accordance with the law—that is, in accordance with legislation on rights in immovable property and legislation on immovable property administration. Therefore, immovable property law can generally be divided into two major areas: legislation that provides for civil rights in immovable property (such as ownership and use rights over land, various buildings, structures and mineral deposits) and legislation on administrative management of immovable property. The reason is that administrative legislation on immovable property shall be formulated based on the civil rights in immovable property. The most important civil rights in immovable property are real rights in immovable property. Therefore, legislation on real rights in immovable property is the foundation of immovable property law.

From the perspective of real rights in immovable property, the legal system of immovable property includes two major aspects: first, the legal system providing for various substantive rights in immovable property, including ownership of immovable property, rights of usufruct, security interests, and possession—that is, the real right system of immovable property; second, the law on registration of immovable property, which is the legal system of legal procedures through which the State establishes real estate registers to manifest the existence of various rights over immovable property and to manifest the transfer or change of rights during legal transactions of immovable property. This manifestation is termed "publicity" in civil law. A small portion of the Property Law of the People's Republic of China (hereinafter the Property Law) enacted in 2007 was incorporated into Chapter V Civil-Law Rights, Book One General Part of the Civil Code, while the majority was incorporated into Book Two Real Rights of the Civil Code. In addition, China has enacted some special legislation on real rights in immovable property, such as the Law of the People's Republic of China on the Contracting of Rural Land. Apart from these typical civil legislations, China has also provided, in some resource management laws, the legal systems for the acquisition and exercise of special real rights in immovable property. Examples include: provisions on land rights in land legislation such as the Land Administration Law of the People's Republic of China (hereinafter the Land Administration Law); provisions on the exercise of rights over buildings such as houses in the Urban and Rural Planning Law of the People's Republic of China, and the Construction Law of the People's Republic of China; provisions on the acquisition and exercise of exploration and mining rights in the Mineral Resources Law of the People's Republic of China; provisions on forest rights in the Forest Law of the People's Republic of China (hereinafter the Forest Law); provisions on grassland ownership and contracting rights in the Grassland Law of the People's Republic of China (hereinafter the Grassland Law); and provisions on the sea-area use rights and contracted sea-area operation rights in the Fisheries Law of the People's Republic of China (hereinafter the Fisheries Law), and so forth. So far, China has basically developed a complete legal framework for real rights in immovable property.

However, China has not yet enacted a law on registration of immovable property, mainly due to differences in the theoretical and practical understanding of the system for registration

of immovable property. From the three perspectives of practical needs, jurisprudential foundations, and institutional logic, this paper discusses the institutional construction issue of how the law on registration of immovable property should implement the relevant provisions of China's real right legislation.

As is well known, the fundamental significance of real right legislation is to settle disputes by defining entitlements, that is, to establish a legal order for the control of immovable property.[1] It is in this sense that the law on registration of immovable property coordinates with the substantive legislation on real rights, providing official confirmation for real rights in immovable property through the entries in the register of immovable property. This support has two focal points. First, in circumstances involving no transactions, that is, when a person of the civil law possesses and uses immovable property on its own, registration of immovable property, through the state-established register, manifests the real rights in immovable property (ownership and other rights) of such subject, signifying the State's recognition of and support for its real rights, and establishes legal boundaries for the control relations among subjects, thereby creating the socially necessary order for the control of immovable property. Manifesting real rights in immovable property by means of registration of immovable property is consistent with both international practice and China's historical practice of land registration. The Fish-Scale Atlas system in Chinese history, which identified land parcel by parcel according to the scope of each owner's control and compiled entries thereof into an atlas resembling fish scales, was precisely a means of establishing a legally recognized order for land control.[2] From a jurisprudential perspective, the rights over immovable property are abstract, and thus need to be recorded and presented in written form through registration of immovable property, so that such abstract real rights in immovable property can gain legal recognition and protection. The point that registration of immovable property manifests the non-transaction state of the registered immovable property can be termed academically as the "static function" of registration. Second, in transactions involving real rights in immovable property, the registration entries of immovable property serve to manifest the creation,

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[1] The expression, settling disputes by defining entitlements, has several etymological sources in Chinese legal history. The most commonly cited source is the chapter "Defining Entitlements" of the *Book of Lord Shang*, in the 1974 edition published by Zhonghua Book Company, Beijing. The original text by Shang Yang reads, "That a hundred men will chase after a single hare that runs away, is not for the sake of one hundredth share of the hare, but because their legal entitlements are not definite. When the market is full of hare sellers, yet thieves dare not take any, it is because their legal entitlements are definite. Thus, if the legal entitlements are not definite, then even men like Yao, Shun, Yu, or Tang would all rush to chase after it, but if the legal entitlements are definite even a poor thief would not take it. When the legal entitlements are definite, the very crafty would become faithful and trustworthy, and the people would all become honest and guileless, each one restraining himself. For indeed, the defining of everybody's rights and duties is the road that leads to orderly government, but the not defining of everybody's rights and duties is the road that leads to disorder." What Shang Yang refers to as entitlements is the order of disposition over things established with ownership at its core. See GAO Heng (annot.), 商君书注释 (*Annotations to the Book of Lord Shang*), 中华书局 (Zhonghua Book Company), at 190 (1974).

[2] GONG Shuduo & LIU Delin (eds.), 话说中国历史系列：明 (*Chinese History: Ming*), 吉林出版集团有限责任公司 (Jilin Publishing Group Co., Ltd.), at 148–151 (2009).

alteration, alienation and extinguishment of real rights in immovable property—that is, to manifest the transactional process of real rights in immovable property—thereby determining the legal outcomes of such transactions. For example, when A alienates ownership of his house to B, they go through the procedure of registering the transfer of the house to manifest the transfer of ownership, thereby determining the result that B has acquired ownership of the house. This point can be termed academically as the "dynamic function" of registration. Precisely because of this, the law on registration of immovable property is a law that accompanies legislation on real rights in immovable property. Because the law on registration of immovable property mainly provides for the procedures of registration of immovable property, German civil law characterizes it as the procedural law for real rights in immovable property, while Japanese civil law refers to it as a special legislation under civil law.[3] In short, the law on registration of immovable property is closely connected with the legislation on real rights in immovable property. Article 209 of the Civil Code, as a general provision in Book Two Real Rights, provides that a system for registration of immovable property shall be established for real rights in immovable property. This provision establishes the legislative spirit that registration of immovable property is an integral component of the system of real rights in immovable property.

Based on the brief analysis above, it can be seen that the law on registration of immovable property is an indispensable and important part of the legal system of immovable property. In order to implement the requirement from the Property Law to the Civil Code that "the State shall formulate a unified law on registration of immovable property," the State Council of the People's Republic of China (hereinafter the State Council) formulated the Interim Regulation on Real Estate Registration (hereinafter the Regulation) in 2014, which for now serves to govern the registration of immovable property. However, more than ten years have passed since the "interim" Regulation was enacted, and there remains room for further improvement in both its legal effects and the completeness of its content.

Article 1 of the Regulation explicitly provides that "this Regulation is developed in accordance with the Property Law of the People's Republic of China." The meaning of the phrase "in accordance with the Property Law" is, first of all, that the Property Law set forth the requirement for the State to establish a unified system for registration of immovable property. However, the deeper meaning requires not only reflecting the spirit of real right legislation in promoting the development of China's market economic system and safeguarding people's rights, but also complying with the unique technical rules of real right legislation. In other words, as the embodiment of the publicity principle for real rights in immovable property, registration of immovable property is intended to perform its function of publicity, thereby giving effect to the distinctive legal logic by which the order governing

[3] SUN Xianzhong, 德国当代物权法 (*Contemporary Real Right Law of Germany*), 法律出版社 (Law Press · China), at 55 (1997); Kitagawa Zentaro, 日本民法体系 (*The System of Japanese Civil Law*), translated by LI Yiduo & QIU Jingchun, 科学出版社 (China Science Publishing & Media Ltd.), at 64 (1995).

rights over immovable property is established and safeguarded. The current draft of the law on registration of immovable property tends to focus on establishing a ledger of natural resources such as land from the perspective of "ascertaining the national resource inventory," and it has not yet fully realized the Civil Code's requirement to establish a unified system for registration of immovable property—a system whose primary purpose is to implement the publicity principle in the legal field of immovable property, establish an order of control of real rights, and safeguard transactions. It is precisely for this reason that we must return to issue-oriented research grounded in China's realities concerning the phrase "in accordance with the Property Law" and undertake a systematic reconsideration of the legislation on the registration of immovable property.

When China launched the legislative project for the Property Law in 1995,[4] although the legal community had proposed the enactment of a property law, the prevailing legislative view was to take the distinction between ownership of means of production and ownership of means of subsistence, as well as the distinction among State ownership, collective ownership, and private ownership, as the basic framework for real right legislation. Within this theoretical framework, there was no system of real rights in immovable property, let alone a system for registration of immovable property that carries significance to real right legislation. In 1995, I published several articles on real right law, explicitly distinguishing real rights into real rights in immovable property and real rights in movable property, and advocated taking this distinction as the main line of real right legislation. I emphasized the important position of real rights in immovable property in real right legislation, as well as the significance of the system for registration of immovable property in implementing the publicity principle for real rights in immovable property. On this basis, I proposed a systematic proposal to establish a unified system for registration of immovable property in China in accordance with the principles of real right legislation.[5] These ideas were realized during the enactment of the Property Law. The Property Law, after setting forth the publicity principle for real rights in its General Provisions, provided detailed provisions on the system for registration of immovable property from the perspective of real right law in Chapter II, titled "Creation, Change, Transfer and Elimination of Real Right." In particular, Article 10 expressly provides that the State shall establish a unified system for registration of immovable property.[6] This provision was reiterated in Book Two Real Rights of the Civil Code.

Although the unification of registration of immovable property has become a statutory goal

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[4] SUN Xianzhong, 我国物权立法贯彻科学性原则的问题研究——兼顾一段立法历史的回忆 (Study on the Problems of Implementing the Principle of Scientificity in China's Property Right Legislation: Considering the Memories of a Period of Legislative History), 1 政法论坛 (*Tribune of Political Science and Law*), 17 (2024).

[5] SUN Xianzhong, 论不动产物权登记 (On Registration of Real Rights in Immovable Property), 5 中国法学 (*China Legal Science*), 51–62 (1996).

[6] Paragraph 2, Article 10 of the Property Law provides, "The state applies a uniform registration system over real properties. The scope, organ and measures of uniform registration shall be stipulated by the relevant laws and administrative regulations."

under written law, the improvement of the system's implementation is a gradual process. The Regulation, as a transitional administrative regulation, assumed the function of regulating the practice of registration of immovable property. However, this Regulation is not a law enacted by the highest legislative organ of the State; its legislative effect is limited, making it difficult to serve fully as a basis for judicial adjudication, and its provisions are deficient in many respects. The word "interim" in its title indicates its transitional nature, and the institutional content therefore still has room for further improvement. To this day, how to truly implement the spirit of real right legislation remains an important issue that legislation on registration of immovable property must address. Based on the above historical and institutional background, the following section will, centering on the "Five Unifications" principle for registration of immovable property, explain the jurisprudential connotation of this system and the path for its legislative implementation.

II Proposal of the "Five Unifications" Principle for Registration of Immovable Property and Its Adoption into Legislation

In response to the various problems in the practical operation of registration of immovable property, I proposed a series of targeted improvement proposals. The core of these proposals was the "Five Unifications" principle for registration of immovable property.[7] The basic requirements of the "Five Unifications" principle were largely incorporated into the Property Law, the Civil Code and the Regulation. The "Five Unifications" principle includes the following aspects:

A Unifying the Legal Basis for Registration of Immovable Property

The establishment of a unified system for registration of immovable property first requires a law that unifies the registration of immovable property. Prior to the promulgation of the Property Law, various natural resource administrative departments, such as those responsible for land, housing, forest land, and sea areas, had each formulated their own registration rules

[7] This principle was proposed relatively early. See SUN Xianzhong, 物权法基本范畴及主要制度的反思（下）(Reflections on the Basic Categories and Main Institutions of Property Law [Part II]), 6 中国法学 (*China Legal Science*), 56–58 (1999). Based on these studies, I prepared a systematic legislative proposal entitled the Proposed General Provisions of Property Law, which was submitted by the research group of the Chinese Academy of Social Sciences to China's highest legislative authority in 1999. The legislative proposal was later published. See SUN Xianzhong, 物权法总则建议稿 (Proposed General Provisions of Property Law), in SUN Xianzhong, 争议与思考——物权立法笔记 (*Controversies and Reflections: Notes on Real Right Legislation*), 中国人民大学出版社 (China Renmin University Press), at 1–173 (2006). Some of the relevant proposals were adopted in the Property Law. Subsequently, I again advanced legislative proposals concerning the systematic design of the procedures for registration of immovable property. See SUN Xianzhong (ed.), 不动产登记条例草案建议稿 (*Proposed Draft of the Regulations on Registration of Immovable Property*), 中国社会科学出版社 (China Social Sciences Press), at 5–7 (2014). Many of these proposals were incorporated into the Interim Regulation on Real Estate Registration promulgated by the State Council in 2014.

to regulate registration within their respective authority, resulting in an inconsistent legal basis for registration of immovable property. Consequently, the rules formulated by various departments to govern registration of immovable property imposed inconsistent requirements upon parties, and the registration procedures differed considerably. Therefore, I proposed that, in the field of registration of immovable property, a law on unified registration of immovable property be enacted, thereby providing a uniform legal basis for such registrations. These ideas were, to a large extent, reflected in the Regulation.

B Unifying the Legal Effects of Registration of Immovable Property

The so-called legal effects of registration of immovable property refer to the role that registration of immovable property should play under the law, or, in other words, the institutional function that the system for registration of immovable property is designed to serve. There are two different views on this issue domestically. One view holds that registration of immovable property serves the institutional function of enabling the State to administer natural resources. The other maintains that it serves the institutional function of giving publicity to real rights in immovable property within the meaning of real right law. During the mid-to-late 1990s, the first view was more widely accepted by both civil law academia and legal practitioners. According to that view, registration of immovable property was a means of administering natural resources, and such administration embodied the values of state interests or the public interest; therefore, parties were required to register the acquisition and alterations of their real rights in immovable property, and failure to register would render such acquisition or changes ineffective. After the enactment of the Property Law, an increasing number of scholars and legal practitioners came to embrace the second view.

With regard to the effect of registration on the changes to real rights, different views were advanced during the drafting of the Property Law from the perspective of the publicity principle for real rights in immovable property. Owing to differences in legal education and academic background, some scholars argued that for its legislation, China should adopt the "registration antagonism" model established under French civil law and Japanese civil law in governing the relationship between changes to real rights in immovable property and registration. Other scholars maintained that for its legislation, China should instead adopt the "registration effectiveness" model established under German civil law.

I conducted considerable research on this issue,[8] analyzing, comparing, and summarizing these two different effects of registration. Under the so-called "registration antagonism"

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[8] See SUN Xianzhong, 论物权变动的原因及其结果的区分原则 (The Principle of Separation between the Reason and the Result of the Alteration of Property Rights), in SUN Xianzhong, 论物权法 (*On Property Law*), 法律出版社 (Law Press・China), at 36–51 (2008); SUN Xianzhong, 物权法总则建议稿 (Proposed General Provisions of Property Law), in SUN Xianzhong, 争议与思考——物权立法笔记 (*Controversies and Reflections: Notes on Real Right Legislation*), 中国人民大学出版社 (China Renmin University Press), at 1–173 (2006).

model, changes to real rights in immovable property take effect directly upon the effectiveness of the contract concerning the immovable property. Thus, once a contract for the sale of immovable property is concluded and becomes effective, the purchaser immediately acquires ownership of the immovable property. If a third party is involved, however, ownership of the immovable property that has not been registered cannot be asserted against the lawful rights of that third party. Because registration of immovable property does not determine changes to real rights in immovable property under this model, it is also referred to as the "formalistic registration" model. By contrast, "registration effectiveness" means that registration has a decisive effect on changes to real rights in immovable property. For example, where the parties enter into a contract for the sale of immovable property, the purchaser does not acquire ownership of the immovable property merely because the contract has been concluded and has become effective. The contract alone cannot establish that ownership has passed to the purchaser, because at the time of contracting the subject matter may not yet have come into existence, making it impossible for the purchaser to acquire ownership. Generally speaking, only after the registration procedures for the immovable property have been completed can the purchaser enjoy true ownership of the immovable property. Because the registration under this model plays a substantive and decisive role in changes to real rights in immovable property, it is known as the "substantive registration" model. In my view:

First, the legal effects of registration of immovable property under China's legislation must be unified. Primarily, they must be unified within the meaning of real right law, that is, they must be defined from the perspective of achieving publicity of real rights in immovable property rather than from the perspective of administrative management aimed at "ascertaining the national resource inventory." It is, of course, necessary to administer natural resources in order to ascertain the national resource inventory and facilitate their development and utilization. For that purpose, ledgers may be established to clearly record the status of natural resources such as land, grasslands, mineral deposits, forests and water resources. However, the institutional function of registration of immovable property extends far beyond merely establishing ledgers for natural resources and facilitating their administration. Moreover, a large number of buildings, structures, and other constructions within the scope of immovable property are man-made and do not constitute natural resources.

Registration of immovable property is, in essence, registration of real rights in immovable property. Its legislative purpose is to establish the legal foundation for real rights in immovable property, rather than to create ledgers of natural resources. There is a clear distinction between the two. Registration of immovable property within the meaning of real right law must first record the natural condition of the immovable property, but the primary starting point should be real rights in immovable property, including land ownership. In addition, various rights to usufruct and security interests go far beyond simple natural resource registration, with mortgages serving as a typical example. Where a mortgage is created on a parcel of land, the registration thereof must record such matters as the category, amount, term, and interest of the secured claim. In any event, registration of immovable

property within the meaning of real right law is far broader in its content and significance than registration of natural resources. Therefore, taking the objective of "ascertaining the national resource inventory" in the administration of natural resources as the institutional starting point for registration of immovable property would deviate from the positioning of this system.

Second, the legal effects of registration of immovable property within the meaning of real right law must be unified under the substantive registration model rather than the formalistic registration model. French and Japanese formalistic registration model, when applied to China's institutional environment, would give rise to limitations at both the practical and jurisprudential levels. For example, in China, there are a large number of pre-sale housing transactions in which no house yet exists when the contract is concluded. Under such circumstances, it is entirely impossible to achieve the purpose of transferring ownership at the time the contract is concluded. Moreover, changes to real rights are intended to produce legal effects against third parties (mortgages, for instance, are established precisely for the purpose of being effective against third parties). Consequently, the rule that changes to real rights take effect upon the conclusion of the contract, yet cannot be asserted against third parties unless registered, contains an inherent contradiction. Accordingly, this registration model is not applicable to China's practice. In my view, the substantive registration model completely eliminates the inherent contradictions of the formalistic registration model. It not only conforms to China's market practice, but also is consistent with the civil law principle distinguishing real rights from creditors' rights. Most importantly, under the substantive registration system, the external manifestation of real rights in immovable property is unified, thereby providing full protection for the security of transactions involving immovable property.[9] Accordingly, China's legislation must expressly require the unification of the legal effects of registration of immovable property and fully give effect to the substantive principle of registration.

C Unifying the Procedures for Registration of Immovable Property

The purpose of unifying the procedures for registration of immovable property is to eliminate the problem of inconsistent registration procedures in the past. Academic discussions have demonstrated the importance of enacting a procedural law governing registration of immovable property.

From the perspective of registration of real rights in immovable property, the registration procedures for immovable property should include the following basic procedures: (1) General registration. This refers to the registration of land and all other immovable property within a particular area. The purpose of general registration is to establish a cadastral system for the area based on land ownership. Its objective is to ascertain the natural condition

[9] SUN Xianzhong, fn. 5 at 61.

of all immovable property within the area, although such natural condition is, of course, closely related to land ownership. In China's urban areas, although ownership of State-owned land need not be registered, a mechanism of general registration based on land use rights should nevertheless be established.[10] (2) Initial registration. This refers to the first registration of ownership of immovable property and other rights of a similar nature. For example, after commercial residential buildings in a gated urban residential development have been completed, the developer first registers the completed buildings in its own name. Additionally, in China, after the procedures for the grant of the right to use State-owned construction land in urban areas have been completed, the holder of the land rights must also register such fundamental rights in its own name. Such registration is initial registration. (3) Registration of alterations. This includes both registration of alterations in the right holder (in the case of the transfer of ownership to another person) and registration of alterations in the contents of rights (in the case of the creation of rights to usufruct, security interests including mortgages, and other legal encumbrances). (4) Rectification of the registration. This refers to the correction of erroneous registrations. It includes corrections made *ex officio* by the registration authority, as well as changes made upon application by a party after discovering an error. Where a party discovers an error in the registration and believes that the time required to complete the registration of change would be too long and might prejudice its lawful interests—for example, where a third party may acquire the right holder's immovable property by relying on the public credibility of registration of immovable property—the party may apply for registration of a demurrer.[11] (5) Deregistration. This refers to the registration by which a right is cancelled after it has been extinguished.

In addition to the typical procedures for registration of immovable property discussed above, when drafting the Proposed General Provisions of Property Law (hereinafter the Proposal), I, drawing upon the legislative experience of Germany, emphasized registration of a priority notice as a special type of registration. The purpose of this special type of registration is to protect the particular needs of certain purchasers of residential housing. Specifically, after a contract for the sale of a house has become effective, the purchaser may, upon application, register the purchaser's future right to acquire ownership of the house. This is because such purchasers are commonly referred to as rigid-demand homebuyers in China. In order to realize the objective that everyone has a place to live, it is necessary to establish this type of registration as a matter of law.[12] This proposed provision was likewise adopted in

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[10] Ever since the implementation of the Property Law, the right to use State-owned land in urban areas has been uniformly designated as the right to use State-owned construction land.

[11] Paragraph 2, Article 19 of the Property Law (Paragraph 2, Article 220 of the Civil Code). For the rationale underlying this provision, see SUN Xianzhong, 物权法总则建议稿 (Proposed General Provisions of Property Law), in SUN Xianzhong, 争议与思考——物权立法笔记 (*Controversies and Reflections: Notes on Real Right Legislation),* 中国人民大学出版社 (China Renmin University Press), at 1–173 (2006).

[12] SUN Xianzhong, fn. 11.

full in the legislation.[13]

In addition, in order to address the problem of improper procedures added by registration authorities, I proposed a highly targeted legislative provision, namely the three prohibited acts set forth in Article 13 of the Property Law, which provides that "no registration authority may conduct any of the following acts." This provision was also adopted in its entirety as Article 213 of the Civil Code.[14]

D Unifying the Registration Authority

The unification of the registration authority is the core requirement of the system for registration of immovable property. The purpose of unifying the registration authority is to resolve the practical problems arising from fragmented registration, such as multi-departmental registration and multi-level registration. As discussed above, the primary cause for the existence of multi-departmental and multi-level registration was the lack of a unified legal basis for real rights in immovable property, the result of which was conflict among the bases of rights. Only by establishing a unified registration authority and integrating personnel, finances, physical assets, archives, and information systems into a unified system can these problems be avoided.

How should a unified registration authority for immovable property be determined? My research indicates that, because registration of immovable property has procedural judicial significance, the registration authority in Germany is the court, while in Japan it is the Ministry of Justice (the judicial department).[15] In light of this, at the beginning of the drafting of the Property Law, I proposed that the people's court should serve as the authority for registration of immovable property or, as a second-best alternative, that a specialized judicial authority for registration of immovable property should be established.[16] However, this proposal could not be realized at a time when neither the basic principles of real right law nor the legal nature of registration of immovable property was generally understood. Taking China's actualities into consideration, when drafting the Proposal, I proposed that it would be sufficient to unify the registration authority for immovable property within a single department. Against this background, there were two possible choices for the authority for

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[13] Article 20 of the Property Law (Article 221 of the Civil Code).

[14] Article 213 of the Civil Code provides, "A registration authority may not engage in the following acts: (1) to require an appraisal of the immovable property; (2) to carry out repeated registration in the name of annual inspection, and the like; or (3) to engage in other acts that exceed the scope of its responsibilities for registration."

[15] It should be noted that Japan's Ministry of Justice is a governmental organ vested with certain judicial adjudicative powers, rather than being merely an administrative authority.

[16] SUN Xianzhong, fn. 11. The Proposal was submitted by the research group of the Chinese Academy of Social Sciences to China's highest legislative authority in 1999. For an earlier discussion of this issue, see SUN Xianzhong, 中国物权法关于不动产登记制度的基本考虑 (Basic Considerations on the System of Registration of Immovable Property under the Property Law), in SUN Xianzhong, 论物权法 (*On Property Law*), 法律出版社 (Law Press・China), at 482 (2001).

registration of immovable property: One was the urban real estate administration department, and the other was the land administration department. In the historical context of that time, it appeared more reasonable for the urban real estate administration department to assume responsibility for registration of immovable property. This was because, after China opened up its urban real estate market in 1988, urban real estate embodied enormous market value. At the same time, in order to maintain the security of the real estate market and protect the interests of homebuyers, the urban real estate administration department established such systems as the registration of housing purchase contracts, which played a highly significant and positive role. However, the registration of houses administered by the urban real estate administration department could not encompass the full scope of immovable property. By contrast, land registration, which forms the foundation of registration of immovable property, was of greater positive significance. This is because land includes not only urban land but also vast areas of land beyond cities, as well as various buildings, structures, natural objects, and other important immovable property beyond urban buildings. Accordingly, only by developing China's system for registration of immovable property on the basis of land registration can we establish a unified cadastral system for immovable property that conforms to the requirements of real right legislation (for the cadastral system for immovable property, see the discussion below on the principle of land-based registration). I therefore proposed that registration of immovable property should be administered by the land administration system.[17] The proposal that the land administration department should be designated as the authority for registration of immovable property was adopted in the Property Law.

The legislative proposal to establish a unified registration authority was of central significance in the design of China's system for registration of immovable property. However, at the implementation level, it faced enormous difficulties. At that time, the two principal authorities for registration of immovable property—the land administration department and the urban real estate administration department—had each already established relatively complete registration systems within their own sectors. According to the investigations, each of these two departments employed more than 300,000 staff engaged in registration work. Against this background, merging them into one—whether through system consolidation or personnel integration—would entail trade-offs for both sides. In addition, other registration departments also faced considerable difficulties. However, following the policy direction of the Central Committee of the Communist Party of China and the State Council, these difficulties were basically overcome. Investigations show that, at present, in some large cities, especially first-tier cities, the government has established unified urban planning and registration centers that incorporate the registration functions formerly exercised separately by the land administration department and the urban real estate administration department. This registration model has achieved unified registration of immovable property within the relevant jurisdiction. Such an approach is also consistent with the requirements of real right

[17] SUN Xianzhong, fn. 11.

legislation.

E Unifying Immovable Property Registers and Unifying Real Property Ownership Certificates

The contents recorded in an immovable property register include not only the natural condition of the immovable property[18] but also ownership and other fundamental rights of the immovable property,[19] as well as various legal encumbrances upon such fundamental rights. These include both public law encumbrances, such as restrictions on the exercise of ownership imposed by urban planning, and private law encumbrances, such as rights to usufruct and security interests created over ownership by juridical acts. It is therefore evident that immovable property registers constitute the legal manifestation of real rights in immovable property. Their contents and structure are established in accordance with the order governing rights centered upon ownership of immovable property and other fundamental rights, and are also organized according to the need for publicity of rights. The establishment of unified registers is of vital importance to the development of the market economy and the protection of individual rights.[20] Once registration of immovable property is unified, many related problems can be readily resolved.

At the level of the legal system of immovable property, both historically and in contemporary practice, China has attached considerable importance to the issuance of certificates of title, namely, the official issuance of land certificates, real estate ownership certificates, and similar documents. Although such emphasis on the issuance of certificates of immovable property is well justified, it should be made clear that the immovable property register and the real right certificate do not constitute the same legal fact. Accordingly, their relationship must be clearly defined by law. I proposed that "the immovable property register is the legal basis of real rights in immovable property," that "the real right certificate issued by the registration authority to the right holder is evidence of the holder's rights," and that "where the contents of a real right certificate are inconsistent with those of the immovable

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[18] As discussed above, the natural condition of immovable property within the meaning of the law on registration of immovable property refers to the natural condition determined in accordance with territorial planning, including the functional classification of land, such as construction land, cultivated land, mining areas, and water areas.

[19] Fundamental rights over immovable property refer to the rights that constitute the legal basis for the possession and use of immovable property, the typical example being ownership of immovable property. However, because China adopts public ownership of land, ownership by the State of urban land is not subject to registration. Instead, the right to use State-owned construction land, as a fundamental right, must be registered. Similar foundational rights include mining rights, grassland rights, water surface rights, and the like.

[20] The Proposal was submitted by the research group of the Chinese Academy of Social Sciences to China's highest legislative authority in 1999. For further details concerning the Proposed General Provisions of Property Law, see SUN Xianzhong, fn. 11.

property register, the immovable property register shall prevail."[21] In response to the existence of multiple formats and different names for real right certificates of immovable property in China during the mid-to-late 1990s, I further proposed that the State establish a unified system of certificates of title to real rights in immovable property.

III Registration of Immovable Property as an Inherent Institution of Real Right Legislation

Registration of immovable property is an institution of real rights under civil law. I will further discuss the legislative basis, registration content, and legal effects of the system for registration of immovable property.

A Registration of Immovable Property Is Based on Real Right Legislation

The Regulation expressly provides that its legal basis is the Property Law.[22] The provisions of the Property Law referred to therein as the legal basis of the Regulation are,[23] first and foremost, Article 6, Chapter I, Part One General Provisions of the Property Law (Article 209 of the Civil Code), which provides. "The creation, alteration, alienation, or extinguishment of a real right in immovable property shall be effective upon registration in accordance with law." This provision is a general provision on the publicity principle of real rights. At the same time, Section 1 Registration of Real Property, Chapter II, Part One General Provisions of the Property Law contains a total of thirteen provisions establishing the legal rules governing changes to real rights in immovable property arising from juridical acts. Section 3 Other Provisions contains four additional provisions dealing with changes to real rights in immovable property that arise otherwise than from juridical acts. Article 31 of the Property Law (Article 232 of the Civil Code) provides, "As for a real right of real property enjoyed in accordance with the provisions of Articles 28 through 30 of this Law, any disposal of the real right shall produce no effect of real right if it is not registered as required by law." This provision establishes the general rule governing changes to real rights in immovable property that arise otherwise than from juridical acts.

In addition to these general provisions, the Civil Code also contains a number of special provisions concerning registration of immovable property in other Books and Chapters. Examples include the provisions governing registration of ownership of residential units

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[21] These views were incorporated into Articles 16 and 17 of the Property Law. For the specific text of the Proposed General Provisions of Property Law, see SUN Xianzhong, fn. 11.

[22] Article 1 of the Regulation provides, "To integrate real estate registration responsibilities, regulate registration, facilitate the people's application for registration, and protect the lawful rights and interests of right holders, this Regulation is developed in accordance with the Property Law of the People's Republic of China and other relevant laws."

[23] Although the Civil Code has absorbed the entire contents of the Property Law, this section nonetheless continues to cite the chapter and article numbers of the Property Law where necessary for purposes of discussion.

under Chapter VI Ownership of a Building's Units; the provisions governing the relationship between acquisition in good faith and registration of immovable property under the rules on special methods of acquiring ownership; the provisions governing the creation of the right to contractual management of land under Part Three Rights of Usufruct; and the provisions governing registration for the creation of special types of mortgage under Chapter XVII Mortgage.

As discussed above, under Article 9 of the Property Law, where changes to real rights in immovable property arise from juridical acts, registration is required for the creation, alteration, alienation, or extinguishment of such rights, and these changes do not take legal effect in the absence of registration. The core of this provision is that registration constitutes the requirement for the effectiveness of changes to real rights, a doctrine commonly referred to in legal scholarship as the "registration effectiveness" principle. Under this model, registration is not merely a procedural matter but also a legal fact under substantive law. Once the relevant entry has been made in the register of immovable property, the change in rights is complete, and third parties are entitled to rely on the contents of the register. For example, where John Doe sells a house to Richard Roe, the true purpose of the transaction is for John Doe to transfer ownership of the house to Richard Roe. Although the house itself is visible, ownership is an abstract legal concept and cannot be perceived directly. From a legal perspective, what Richard Roe purchases is precisely the ownership of the house. The central issue that must be resolved for such a transaction, therefore, is how the ownership of this abstract right, and any changes thereto, should be manifested. Under traditional civil law, possession long served as the means of manifesting ownership. However, in the course of the historical development of the law, it became clear that possession could not serve as an adequate manifestation of ownership of immovable property, because land and other immovable property cannot, as a practical matter, be subject to continuous possession. As for houses, because they may be occupied by borrowers, tenants or other persons, the possessor is not necessarily the owner. Consequently, regarding possession as a manifestation of ownership would inevitably prejudice the true owner. For this very reason, it was recognized very early on that ownership of land, houses, and other immovable property could be manifested only through registration of immovable property. Accordingly, registration of immovable property has long been an inherent institution of real right legislation.

In ancient China, the legal means of manifesting ownership of immovable property was official title deeds, including land deeds and house deeds. However, this method was incapable of representing the complex legal relations between ownership of immovable property and rights to usufruct over immovable property, or between ownership of immovable property and mortgages of immovable property. Modern civil law generally relies upon the system for registration of immovable property to meet these practical needs. Under Chinese law, ownership of immovable property is transferred through delivery together with registration of the immovable property. Thus, the legislative model adopted in China is registration effectiveness.

Unlike China's registration effectiveness model, Japanese civil law, following the French civil law model, adopts the "consensualism + antagonism requirement" model.[24] Article 176 of the Japanese Civil Code provides, "The creation and transfer of a real right becomes effective solely by the manifestations of intention of the relevant parties." Article 177 further provides, "Acquisitions of, losses of and changes in real rights on immovables may not be duly asserted against any third parties, unless the same are registered." Under Japanese law, the conclusion of a contract for the sale of a house is sufficient to effect the transfer of ownership. Registration serves only as a requirement for asserting the right against third parties, rather than as a requirement for the acquisition of the right. This legislative model suffers from inherent defects. The Property Law adopts the registration effectiveness model.

From the perspective of real right legislation, the status of registration of immovable property constitutes a legal fact and therefore belongs to the domain of substantive law. From the perspective of the law on registration of immovable property, however, registration refers to the procedural process by which real rights in immovable property are entered into the register, including acceptance of the application, examination and recording, and therefore belongs to the domain of procedural law. The two are two sides of the same coin.[25] In terms of value objectives and means of realization, the status of registration of immovable property and the registration process together constitute an integrated legal institution, each representing one aspect of the other. The real right law answers the question "What legal effect does registration produce?" whereas the law on registration of immovable property answers the question "How is registration to be completed?" Only by viewing these two bodies of law within a unified analytical framework can one fully understand the structure of China's system governing changes to real rights in immovable property.

B Entries in Registration of Immovable Property Are Centered on Real Rights in Immovable Property

The Property Law specifies which rights may be entered in the register. The contents recorded in the registration of immovable property are centered on real rights in immovable property. In order to demonstrate the actual existence of real rights in immovable property, an immovable property register should contain at least three parts. The first part records the natural condition of the immovable property, such as the type of land, its area, and its location on the cadastral map. The second part records the status of rights over the immovable property, such as ownership and other rights to usufruct. The third part records encumbrances upon rights or restrictions on rights, including restrictions under private law

[24] WANG Zhigang, 意思主义与形式主义对立的法理与历史根源 (Difference between Consensualism and Formalism: Legal and Historical Basis), 5 法学研究 (*Chinese Journal of Law*), 83 (2010).

[25] CHANG Peng'ao, 不动产登记法的立法定位与展望 (The Legislative Positioning and Future Development of the Law on Registration of Immovable Property), 3 法学 (*Law Science*), 108–110 (2010).

as well as those under public law, such as restrictions imposed by urban and rural planning. In short, a complete immovable property register should encompass all three parts.[26] Each of these entries is directly or indirectly related to the right of control over immovable property.

In addition to real rights, other rights or legal relations relating to real rights may also be entered in the register. The Property Law provides for both registration of a priority notice and registration of a demurrer. What is entered through registration of a priority notice is not a real right itself, but rather a claim for a future change in a real right. For example, in the pre-sale of commercial housing, after a purchaser and a developer conclude a pre-sale contract, the purchaser may apply for registration of a priority notice in order to secure the future acquisition of ownership of the house. In such a case, what is registered is the purchaser's claim under the pre-sale contract to acquire ownership of the house in the future. Registration of a demurrer, by contrast, does not constitute an independent right. Rather, it is a protective mechanism designed to restrict the exercise of the registered right holder's rights and to safeguard the interests of the person who may be the true right holder.

On the one hand, not all real rights are required to be registered. Certain real rights in immovable property, including ownership of immovable property in some circumstances, need not be registered. On the other hand, in order to manifest the order of control over immovable property, the law should require the registration of long-term leases of immovable property, such as leases of real estate for twenty years.

Ever since Roman law, most countries have taken the view that property dedicated to absolute public use need not be registered. Publicly owned sea areas, for example, are generally not subject to registration. The most typical example of a right that need not be registered is State ownership of land. Under Chinese law, all urban land is owned by the State, and State ownership cannot be traded. Since there is no need to protect the security of transactions, there is naturally no need for registration. Public property, however, includes not only property dedicated to absolute public use, but also public property for private use, as well as public property owned by public law legal persons and private property owned by public law legal persons. In order to clarify the legal relations under which public law legal persons possess and use public property, and to define the scope of their rights of control, the relevant real rights in immovable property should be entered in the register. Certain immovable property constructed through state investment that is used for civil activities, such as highways and railways, should likewise be registered from the perspective of real rights in immovable property.

C Two Different Legal Effects of Ordinary Registration of Immovable Property

[26] SUN Xianzhong, 中国物权法总论 (*General Introduction to the Property Law*), 4th ed., 法律出版社 (Law Press · China), at 406 (2018).

The Property Law provides that registration of immovable property gives rise to two different legal effects with respect to changes to real rights, depending upon their distinct legal bases. The first, set forth in Section 1, Chapter II of the Property Law, applies where changes to real rights arise from juridical acts, in which case "no registration, no effectiveness" applies. The second, set forth in Section 3, Chapter II of the Property Law, applies where changes to real rights arise otherwise than from juridical acts. In such cases, the change in the real right takes effect without registration, provided that registration must first be completed before any further disposal of the real right may be made.

Common examples of changes to real rights arising from juridical acts between parties include the creation of a mortgage and the alienation of ownership of a house. In such cases, the principle of "no registration, no effectiveness" is established because changes to real rights produce social effects against third parties. In order to safeguard the security of transactions, such changes to real rights must therefore be made public.[27] A typical example is a transaction involving a completed house between the parties. Registration of the transfer of title to immovable property in fact carries the significance of State endorsement. By virtue of the public credibility of State registration, rights are transferred smoothly. This represents the most typical manifestation where the publicity principle of real rights is implemented through registration of immovable property. The newly created right of habitation under the Civil Code likewise takes registration as a requirement for its effectiveness.

However, every general rule admits exceptions. Under the Property Law, the general rule is that no registration, no effectiveness. For example, whether a mortgage over immovable property is created depends upon whether it has been registered. This represents the ordinary case under the law to which the general rule applies. The exception to this general rule is that certain rights may take effect without registration, although registration is still required before such rights may enter the market and circulate in transactions. The most typical example is the creation of the right to contractual management of rural land. Article 127 of the Property Law (Article 333 of the Civil Code) provides that the right to the contractual management of land shall be established as of the effectiveness of the contract on the right to the contractual management of land. However, where the right is to be further marketized—for example, by creating a mortgage over it—registration procedures must first be completed.

Section 3, Chapter II of the Property Law sets forth various rules governing changes to real rights that arise otherwise than from juridical acts. However, in current practice, erroneous analyses and adjudications frequently occur with respect to these rules. The system for registration of immovable property under these legal rules can only be properly understood from the perspective of the fundamental principles of civil law. The first point that must be made clear is that changes to real rights under such circumstances are all non-transactional. As a matter of legal basis, they do not require publicity for such changes, and therefore do not

[27] The security of transactions involving changes in real rights includes not only the security of transactions of the parties themselves, but also the security of transactions of third parties. See SUN Xianzhong, fn. 26.

require registration of immovable property. For example, where changes to real rights arise from administrative acts of the government (such as land requisition and demolition carried out for purposes of urban and rural development planning) or from judicial acts such as court judgments, the legal effectiveness of such acts does not depend upon the registration system. Accordingly, in such circumstances, changes to real rights take effect directly by virtue of the administrative act or judicial decision itself, rather than upon registration. For instance, where a husband and wife jointly own a house and the register of immovable property records them as co-owners, a legally effective judgment rendered by a people's court in divorce proceedings may determine that the house shall belong exclusively to one of them. In such a case, a change to real rights occurs whereby ownership of the house is transformed from co-ownership into sole ownership. The person who acquires ownership pursuant to the court judgment obtains ownership of the house with legal effect even without registration. Where such changes to real rights are to be entered into the register of immovable property, the registration authority has no power to examine them and can only register them passively in accordance with the court judgment. In addition, changes to real rights arising from an act de facto, such as the acquisition of ownership of a house through self-construction by the holder of a right to use a residential plot, or the acquisition of ownership through succession, are likewise non-transactional changes to real rights. Under the principles of civil law, registration is not a requirement for their effectiveness. Such changes to real rights are regarded in traditional civil law as forms of original acquisition. The underlying civil law principle is not the registration antagonism of French or Japanese law.

As discussed above, Article 31 of the Property Law (Article 232 of the Civil Code) provides that, where changes to real rights arise otherwise than from juridical acts, even without registration, the person acquiring the right may lawfully possess and use the immovable property and may fully exercise the right to exclude infringements. Both the people's courts and administrative enforcement authorities should fully recognize and protect rights acquired in this manner.

IV Immovable Property Registers and the Principle of Land-Based Registration

A Legal Significance of Immovable Property Registers

Once a unified authority for registration of immovable property has been established, the unification of immovable property registers follows as a natural consequence. For this reason, Chinese legal professionals seem to have rarely engaged in further discussion of the legal significance of immovable property registers. Under the mindset that registration of immovable property serves as a means of "ascertaining the national resource inventory," the legal significance of the immovable property register is distorted into that of a mere ledger of natural resources. From the perspective of real right legislation, however, the legal significance of the immovable property register is entirely different.

Simply put, under real right legislation, the immovable property register is precisely the

officially endorsed record of real rights in immovable property; that is, it constitutes the legal basis of such rights. This legal basis has significant implications in judicial practice because it gives rise to what is known as the "presumption of correctness of registration of immovable property." The meaning of this presumption is that, when a people's court analyzes and adjudicates disputes concerning real rights in immovable property, it should presume the entries contained in the immovable property register to be correct and, in reliance on those entries, make the following four presumptions. First, the presumption as to the right holder: The person recorded in the immovable property register is presumed to be the lawful holder of the real right in question. Second, the presumption as to the type of right: The type of right recorded in the immovable property register (such as various rights to usufruct or mortgages) is presumed to be the correct type of right. Third, the presumption as to the content of the right: The content of the right recorded in the immovable property register is presumed to be accurate. And fourth, the presumption regarding entitlement to damages: The elements of rights recorded in the immovable property register serve as the basis for determining and adjudicating entitlement to damages. In both legislation and judicial practice, the term "presumption" refers to an objective inference based on a legal basis. It constitutes a fundamental principle governing both judicial adjudication and administrative enforcement in immovable property matters. However, a presumption is not absolute. Where a party possesses a stronger legal basis, the registration authority for immovable property may correct the contents of the register, and the entries recorded therein may even be overturned in judicial proceedings.

The presumption of correctness of the immovable property register, together with the overturning of that presumption and the correction of the register, constitutes a common analytical and adjudicative approach employed by both the people's courts and administrative enforcement authorities.[28] At present, both administrative authorities and the people's courts in China have, in handling disputes concerning real rights in immovable property, basically implemented these principles.

B Immovable Property Registers Must Be Maintained by Official Authorities

Because of the requirements of the publicity principle of real rights, the immovable property register constitutes a judicial record maintained by official authorities, and the entries contained therein serve as the basis for judicial adjudication and administrative enforcement. For this reason, during both the drafting of the Property Law and the codification of the Civil Code, I did not support the view that registration functions should be entrusted to social organizations or trade associations.

From the perspective of real right legislation, an immovable property register must possess the following four characteristics: (1) Unity. Within a single registration district, there should

[28] SUN Xianzhong, fn. 11.

be only one unified immovable property register so as to ensure the proper functioning of the publicity principle of real rights. (2) Official maintenance. Throughout history, immovable property registers have been maintained by official authorities, so as to ensure the public credibility of registration of immovable property and thereby establish legal safeguards for real rights in immovable property. (3) Long-term preservation. Historically, immovable property registers have been preserved on a long-term basis. The laws of most jurisdictions provide that immovable property registers are archival records that may not be destroyed. Even today, it is not uncommon to discover historical registration records of immovable property in China dating back several hundred years. (4) Public accessibility. The law requires that registration of immovable property be open to relevant right holders rather than treated as private or confidential information. This is an inevitable requirement of the publicity principle of real rights.[29]

C Establishment of Immovable Property Registers: The Principle of Land-Based Registration

As discussed above, immovable property registers in China should be established based on the objective fact and legal fact that land is a fundamental immovable property. A land cadastre should first be established, upon which a unified system of immovable property registers should then be created, thereby providing the basis for the entire system for registration of immovable property.[30] This is the basic concept underlying the principle of land-based registration. The concept of land-based registration was adopted by reference to German civil law and Japanese civil law.

From a comparative perspective on international legislative models, there are two principal models for organizing immovable property registers: *Realfolium*, under which registers are organized based on immovable property itself, and *Personalfolium*, under which the registers are organized around the right holder as the primary axis.[31] The principle of land-based registration is one of the fundamental organizational models for compiling immovable property registers and is also referred to as *Realfolium*. Its essential idea is that land, as the physical object, serves as the organizing framework under which the government first conducts a comprehensive land survey and assigns a unified identification number to every parcel of land by combining the national administrative divisions with the geographical location of each parcel. A cadastral system corresponding to the national administrative divisions is then established, after which ownership, rights to usufruct, security interests, and other rights existing over each parcel are entered into the register under the corresponding

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[29] My proposal was adopted in the legislation. See Article 18 of the Property Law.

[30] SUN Xianzhong, 不动产登记基本范畴解析 (An Analysis of the Basic Categories of Registration of Immovable Property), 6 法学家 (*The Jurist*), 19 (2014).

[31] Fritz Baur & Rolf Stürner 德国物权法 (*German Property Law*), Vol. 1, translated by ZHANG Shuanggen, 法律出版社 (Law Press・China), at 299 (2004).

parcel, thereby creating a system of publicity under which "one parcel of land, one register, and one cadastral map" correspond to one another. The immovable property registers established in most modern jurisdictions have largely been modeled upon the Torrens system for registration. In the mid-nineteenth century, when Australia was still a penal colony of Britain, land titles were in a state of considerable disorder, and fraudulent land transactions occurred frequently. In 1858, the Governor of South Australia, Robert Richard Torrens, introduced the concept of registration of immovable property. A comprehensive survey of colonial land was conducted, and immovable property registers, or land registers, were compiled according to administrative divisions. Each parcel of land was assigned a unique identification number, and the registers, organized by parcel number, recorded the ownership status of each parcel, thereby matching specific land rights of individuals with their corresponding parcels and giving each parcel what may be described as its own "household registration" or legal title record.[32] This system exerted a profound influence internationally and was subsequently adopted by many countries. Having remained in effective operation for more than a century, it amply demonstrates the sustainability of a cadastral-based system in terms of both technology and administration, as well as its adaptability across different genealogies of law.

Although the concept of registration of immovable property did not exist in Chinese history, China's legal system had long employed such instruments as land deeds, house deeds,[33] and the Fish Scale Atlas, all of which performed functions comparable to those of immovable property registers. In particular, the Fish Scale Atlas that emerged during the Ming Dynasty bears a striking resemblance to the modern immovable property register. During the Hongwu period, in order to rebuild the system of taxation and corvée labor following years of warfare, the government of ZHU Yuanzhang ordered the Ministry of Revenue to dispatch officials to conduct a nationwide land survey and compile the Fish Scale Atlas. With boundaries defined by natural topography like mountains, plains, and ponds, the interlocking plots resembled fish scales—hence the name. The registers contained detailed information concerning the boundaries, acreage, land quality, tax classification, and names of landholders for every parcel. They served not only as the primary ledger for tax collection but also as the prototype of a cadastral system.[34] Although the Fish Scale Atlas was originally compiled for taxation purposes, it also objectively performed the function of manifesting rights over land and other real rights in immovable property. This practice was subsequently inherited by the Qing Dynasty. During the late Qing legal reforms, under the influence of Western jurisprudence, the Draft Civil Law of the Great Qing Dynasty for the first time established a separate Book on Real Rights. Although the draft never entered into force, it had already linked registration

[32] SUN Xianzhong, fn. 26 at 392.

[33] The "deeds" as in land deeds and house deeds consisted of both an original deed and a duplicate deed, both of which were prepared by official authorities The original deed was retained by the government, while the duplicate deed was delivered to the right holder, corresponding to what is today commonly referred to as a real right certificate.

[34] GONG Shuduo & LIU Delin, fn. 2.

of title deeds with the acquisition of ownership. In 1915, the Regulations on Registration of Immovable Property were promulgated, formally introducing the concept of the land register. It adopted the German *Realfolium* model together with the Torrens system for registration. Organized around parcel numbers, the register recorded various real rights associated with each parcel, including houses erected on the land, permanent tenancy rights, pawning rights and mortgages.

Following the founding of the People's Republic of China, feudal land deeds were abolished through the land reform, and certificates of ownership of land and houses were issued. Rural land became collectively owned, urban land became owned by the State, while private ownership of houses continued to be recognized. Between 1951 and 1953, the first nationwide registration of houses was carried out in the People's Republic of China. The parcel numbering system inherited from the Republic of China period was retained, house floor plans were redrawn, and certificates of ownership of houses were issued on the basis of a unified cadastre. The certificates continued to contain such items as the location of the property, its boundaries, area, use and type of right.

Looking back over this millennium-long development, it is apparent that, whether in the form of the Fish Scale Atlas or today's modern registers, the essential nature of the system has always been that of a land-based system for the publicity of immovable property. From ancient times to the present, registration of immovable property has always been concerned with real rights in the legal sense. Ownership of land, ownership of houses, and other real rights must all be confirmed through the immovable property register. Registration of immovable property is not merely a matter of administrative management or resource development, as the two can be fully addressed through other means. However, from the perspective of transactions involving real rights, registration of immovable property must be unified and must adopt the principle of land-based registration.

V Conclusion

This paper has studied the fundamental issues concerning the implementation of real right legislation through legislation on registration of immovable property from three perspectives: practical necessity, jurisprudential foundation, and institutional logic. At the same time, it should be noted that the inclusion of the system for registration of immovable property in the General Provisions of the Property Law is an important development of China's civil law system, one possessing both significant theoretical value and profound practical importance. From a jurisprudential perspective, this system, by implementing the publicity principle in the field of real rights in immovable property, established a new knowledge framework under which changes to real rights arising from juridical acts take registration of immovable property, rather than contracts, as their legal basis, thereby fundamentally distinguishing the legal effects of contractual obligations from those of changes to real rights. This knowledge framework has rendered the legal doctrines governing changes to real rights and changes to

rights in personam more scientific and systematic, representing a significant advancement in the core aspects of fundamental civil law theory from planned and natural economic regimes to a market economic regime. From the perspective of legislation and judicial practice, this reform eliminated the various forms of disorder that characterized the system for registration of immovable property during the early establishment of the market economy. Through implementation of the "Five Unifications" principle, it established a solid institutional foundation for real rights in immovable property with the public credibility urgently needed by the market economy regime, while also providing the people's courts and other law-applying authorities with a legal technical tool—that is both jurisprudentially sound and straightforward to apply—for confirming real rights in immovable property. The Regulation, formulated following the Property Law, has likewise made significant contributions to the development of the system for registration of immovable property. Nevertheless, the current system for registration of immovable property still has room for further improvement, and a law on registration of immovable property that fully complies with the publicity principle of real rights and meets the requirements of the modern market economy system still remains to be formulated. This is something we should strive to accomplish.

It should be emphasized that a society under the rule of law must attach great importance to the institutional establishment and improvement of the order of control over property, and the order of control over immovable property unquestionably occupies the central and foundational position. The establishment of that legal order cannot be accomplished without a scientifically sound law on registration of immovable property. It is upon this understanding that I have devoted more than thirty years to the study of legislation on registration of immovable property and, on that basis, has submitted some legislative proposals to China's highest legislative authority. This paper has undertaken a relatively systematic discussion of improving the system for registration of immovable property from the traditional perspective of legislation on real rights in immovable property. During the mid-to-late 1990s, Internet technology in China was still in its infancy, and registration of immovable property had not yet entered the era of digital networks. Consequently, the institutional conceptions put forward by legal scholars at that time could not have reflected the realities of registration of immovable property in the Internet age. Even so, I remain of the view that, although there is room for the methods by which entries are recorded during registration of immovable property to improve through digital technology, the objective fact and legal fact that land is the fundamental immovable property and that real rights in immovable property are the core of registration have not changed. It is for this reason that this article once again emphasizes the theoretical and practical basis on which the principles of real right legislation must be carried through the legislation on registration of immovable property. Only in this way can we truly respond to the developmental needs of the times and formulate a scientifically sound law on registration of immovable property.