A COMPARATIVE ASSESSMENT OF THE PROVISIONS OF THE NEW CHINESE PROPERTY CODE ON CONDOMINIUMS

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ABSTRACT

This chapter compares the provisions on condominium law of the Chinese Property Code and their official Interpretation by the Judicial Committee of the Supreme People’s Court to similar provisions in other condominium statutes. The chapter examines a few basic condominium concepts, the physical subdivision of a condominium complex into independent units and common areas and devotes a special section to the regulation of parking spaces. Thereafter management issues, the appointment of a professional manager, consumer protection measures and sanctions to secure a harmonious condominium community are considered. The codification of the Chinese law of property is a momentous achievement and some of the provisions on condominiums are unique and well-suited for modern circumstances. Possible future amendments may include sufficient provision for a reserve fund, sanctions with sharper teeth to enforce the financial and social obligations of unit owners and a two-tiered management structure for multi-building and large mixed-use condominium schemes.

Keywords: Property Code, Condominiums, Uniqueness, Comparative Lessons

1. INTRODUCTION

The New Property Code (also designated Property Rights or Real Rights Law) was promulgated during the fifth plenary session of the 10th National People’s Congress of the People’s Republic of China (PRC) on 16 March 2007 and came into operation on 1 October 2007. A legislative plan to prepare a Chinese Property Code was embarked upon in 1994 and in 1998 the legislature appointed a panel of nine Chinese civil law scholars to initiate the drafting. The legislative intent was to secure the protection of private property by a clear definition of the various kinds of property, with the aim of safeguarding free trade in property in order to promote sustainable economic development.1 The enactment of the Property Code has been

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acclaimed by one of its drafters as “perhaps the single most significant development in Chinese civil law since the founding of the PRC”.2

The aim of this chapter is to compare the provisions on condominium law of chapter six of the Chinese Property Code to similar provisions in other condominium statutes. The heading of chapter six has been translated in various ways as: “Partitioned Ownership of Building Areas”, “Building Distinction Ownership”, “Owners’ Ownership in a Building” and “Ownership of Parts of Buildings”. All of these translations contain the notion of ownership of units in a building which has been subdivided vertically and horizontally into real estate or property units—in the same way that land designated for the development of a new township is subdivided vertically into smaller parcels of real estate.

These provisions will be discussed in conjunction with their official Interpretation by the Judicial Committee of the Supreme People’s Court, adopted at a meeting on 23 March 2009 and officially implemented on 1 October 2009. A combination of these two texts is the most authoritative recent pronouncement on Chinese condominium law and cannot be ignored in any discussion of this topic.

The chapter will start with a discussion of a few basic condominium concepts which have been adopted in the Property Code. It will go on to examine the physical subdivision of a condominium complex into independent units and common areas, and will indicate the greater use that can be made of the units than of the common elements. A special section will be devoted to the regulation of parking spaces under the Property Code, followed by a section on management and the appointment of a professional manager to administer the day-to-day management of the scheme. Before summarizing my conclusions, I shall consider the adequacy of the provision on consumer protection and whether the Code contains sufficient sanctions to maintain the building in a good state of repair and secure a harmonious and contented condominium community.

2. Basic Concepts

The first provision of chapter six adopts a threefold legal relationship as the basis for the Chinese institution of condominium.3 This threefold re-

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