

MOVABLE PROPERTY REGISTRATION LEGISLATION IN CHINA: STATUS QUO AND IMPROVEMENT

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I. INTRODUCTION

The People’s Republic of China (P.R.C.) Property Law promulgated in 2007 provides that “China applies the uniform registration regime for immovable property.”¹ However, due to the decentralized administration system regarding the immovable property registration, such uniform registration regime faces the difficulties of re-allocation of different authorities’ interests and powers. It wasn’t until November 24, 2014, that the Chinese prime minister of the State Council, Li

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¹ P.R.C. Property Law (promulgated by Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007), art. 10, 2007 P.R.C. LAWS (China) [hereinafter P.R.C. Property Law].

Keqiang, signed off on the Tentative Regulations for the Registration of Immovable Property (Tentative Provisions).² The Tentative Provisions regulate the immovable registration authority, registration book, registration procedure and the access to and protection of registration information, etc. The software and information platform for the immovable property registration system will be launched for pilot operation in July, 2015, according to an official from the P.R.C. Ministry of Land and Resources, who is in charge of the implementation of the Tentative Provisions.³ The platform will be optimized and its operation scope will be extended in 2016, and the normal operation is expected in 2017.⁴ After the immovable property uniform registration was codified, the legislation of movable property uniform registration is now on the agenda. Although scholars and legal practitioners have long been calling for such legislation, the official enactment of the relevant administrative laws and regulations might still take some time. One of the key obstacles is the existing rules regarding movable property registration in the P.R.C. Property Law, i.e., arts. 6, 24, 188 and 189.⁵ The Property Law does not have any clauses to regulate the establishment of a movable property uniform registration regime. However, is it currently possible to establish such a regime through delegated legislation, or based on the private law principle that “any act shall be legal unless the law provides otherwise” by taking reference to the domestic and overseas practices?

To assess this question, Part I of this Article analyzes the *status quo* of the decentralization of authorities in charge of the movable property registration and the negative effects on movable property transaction thereof. Part II of this Article discusses the feasibility of establishing a movable property uniform registration regime by taking reference to the relevant pilot programs currently in practice in Tianjin and Shanghai. Part III makes legislative recommendations with consideration of the balance of the interests among the surety, the secured party, and the third party under the electronic registration system in China—which distinguishes between administrative registration and title registration of movable property as well as between public registration and registration service.

II. STATUS QUO AND EXISTING PROBLEMS

A. High Level of Decentralization of Registration Authorities

Authorities in charge of registration and the registration rules are not uniform in the Chinese decentralized system of movable property registration.

² Tentative Provisions for the Registration of Immovable Property (promulgated by the State Council, Nov. 24, 2014, effective Mar. 1, 2015), 2015 P.R.C. LAWS (China).

³ *Interview with Ministry of Land and Real Estate Registration Bureau*, XINHUANET, http://news.xinhuanet.com/fortune/2014-12/22/c_1113737163.htm (Last visited Jan. 17, 2016).

⁴ *Id.*

⁵ P.R.C. Property Law, arts. 6, 24, 188-89.

Table 1 below lists the different types of movable property, the registration authorities and their respective legal basis. The decentralization of movable property registration directly increases the transactional cost. The secured party, or the third party, has to pay a high cost to evidence its title over the movable property by visiting various authorities and completing various procedures according to the authorities' requirements in order to obtain the valid information of the title to the movable property. In particular, the information of any restriction and prior right over such movable property must be established. Based on the information, the secured party, or the third party, then decides whether to accept such movable property as collateral for the security interest financing, or whether to adopt risk control measures.

Table 1: Current Property Registration Administration Laws and Regulations in China

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
Land Ownership and Use Right	P.R.C. Property Law	<ul style="list-style-type: none"> The creation, change, transfer or extinguishment of a right <i>in rem</i> over immovable property shall come into effect upon the lawful registration; without registration, it shall not be effective unless otherwise provided by the applicable law;⁶ Registration of immovable property shall be carried out by the local registration authority where the immovable property is located;⁷ and If the creation, change, transfer, or extinguishment of a right <i>in rem</i> over the immovable property has to be registered according to the applicable law, the same shall be effective upon registration in the immovable property registration book.⁸
	P.R.C. Land Administration Law	<ul style="list-style-type: none"> As to the collectively owned land, the government of county level or superior level shall register the title,

⁶ *Id.* art. 9.

⁷ *Id.* art. 10.

⁸ *Id.* art. 14.

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>issue the certificate and confirm the ownership;⁹</p> <ul style="list-style-type: none"> • As to the collectively owned land for non-agriculture purposes, the government of county level or superior level shall register the title, issue the certificate and confirm the construction land use right;¹⁰ • As to the state-owned land lawfully used by entities or individuals, the government of county level or superior level shall register the title, issue the certificate and confirm the land use right;¹¹ and • If the title or purpose of the land is to be lawfully changed, such change shall be registered as an amendment to the original registration.¹²
Premise	P.R.C. Urban Real Estate Administration Law; P.R.C. Premise Registration Measures	<ul style="list-style-type: none"> • China implements the regime according to which land use rights and premises ownership shall be registered and the competent authorities have to issue the certificates in this regard;¹³ • If the premise is built on the land for real estate development purpose, the premise owner shall apply to the premise administration department of the government on county or superior level or above for premise registration by presenting the land use right certificate; the premise administration department shall

⁹ P.R.C. Land Administration Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2004, effective Aug. 28, 2004), art. 11, 2004 P.R.C. LAWS (China).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* art. 12.

¹³ P.R.C. Urban Real Estate Administration Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Aug. 30, 2007), art. 60, 2007 P.R.C. LAWS (China).

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>verify the ownership and issue the premise ownership certificate;¹⁴</p> <ul style="list-style-type: none"> • If the real estate is to be transferred or changed, the title owner shall apply to the premise administration department on county or superior level for the amendment of registration; and then apply to the land administration department on county or superior level for the amendment of land use right registration;¹⁵ • If the real estate is mortgaged, the mortgage shall be registered with the designated department of the local government on county or superior. The title transfer due to the realization of the mortgage right over the land use right and premise ownership shall likewise be registered;¹⁶ and • The construction administration department of the State Council shall be in charge of the nationwide premise title registration administration. The registration scope shall include, premise ownership registration, mortgage right registration, easement registration, advanced notice registration, correction registration and objection registration, etc.¹⁷
Equity Interest	P.R.C. Company Law; P.R.C. Company	<ul style="list-style-type: none"> • The Administration for Industry and Commerce is the registration authority for companies;¹⁸

¹⁴ *Id.* art. 61.

¹⁵ *Id.*

¹⁶ *Id.* art. 62.

¹⁷ P.R.C. Premise Registration Measures (promulgated by the Ministry of Construction, Feb. 15, 2008, effective Jul. 1, 2008), 2008 P.R.C. LAWS (China).

¹⁸ P.R.C. Company Registration Administration Rules (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 19, 2014, effective Mar. 1, 2014), art. 4, 2014 P.R.C. LAWS (China).

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
	Registration Administration Rules	<ul style="list-style-type: none"> Company registration includes shareholder registration, establishment registration, change registration and deregistration registration, etc.¹⁹
Securities	P.R.C. Securities Law	<ul style="list-style-type: none"> Security registration and clearing institution shall provide centralized registration, deposit and clearing services for securities transaction. The institution is a non-profitable legal person.²⁰
Special Movable Property (Automobile, Vessels and Aircrafts etc.)	P.R.C. Property Law	<ul style="list-style-type: none"> If the creation, change, transfer or extinguishment of a right <i>in rem</i> over a vessel, aircraft and automobile is not registered, it is not protected against a <i>bona fide</i> third party.²¹
	P.R.C. Road Transportation Safety Law; P.R.C. Maritime Law; P.R.C. Civil Aviation Law	<ul style="list-style-type: none"> The P.R.C. Road Transportation Safety Law provides that China implements the registration regime for automobiles. Automobiles shall be registered with the transportation administration department of the public safety authority before it can be driven.²² The P.R.C. Maritime Law provides that the obtaining, transfer or extinguishment of the vessel ownership shall be registered with the vessel registration authority; if the vessel ownership is not registered, it is not protected against a <i>bona fide</i> third party,²³ and

¹⁹ *Id.*; P.R.C. Company Registration Administration Rules.

²⁰ P.R.C. Securities Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2004, effective Aug. 28, 2004, amended Jan. 1, 2006, Jun. 29, 2013 and Aug. 31, 2014), art. 155, 2014 P.R.C. LAWS (China).

²¹ P.R.C. Property Law, art. 24

²² P.R.C. Road Transportation Safety Law (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2007, effective May 1, 2008, amended May 1, 2011), art. 8, 2011 P.R.C. LAWS (China).

²³ P.R.C. Maritime Law (promulgated by the Standing Comm. Nat'l People's Cong., Nov. 7, 1992, effective Jul. 1, 1993), art. 9, 1993 P.R.C. LAWS (China).

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<ul style="list-style-type: none"> The P.R.C. Civil Aviation Law provides that the civil aviation department of the State Council shall establish the civil aircrafts nationality book in order to record the civil aircrafts' nationality in a uniform way. The civil aviation department shall also establish the civil aircrafts title registration book.²⁴
Intellectual Property Right (Trademark right, patent right)	P.R.C. Trademark Law; P.R.C. Patent Law	<ul style="list-style-type: none"> P.R.C. Trademark Law provides that the trademark right is obtained upon the trademark registration certificate is granted by the trademark administration authority. If the trademark right is transferred, the transferor and the transferee shall enter into a trademark transfer agreement and jointly apply to the China Trademark Office for registration and approval. The transfer of trademark shall be announced to the public after the approval of the transfer;²⁵ and P.R.C. Patent Law provides that the patent administration authority of the State Council shall grant the patent right and issue the patent certificate to the applicant if there is no ground of dismissal of the invention patent application after the substantial review. Meanwhile, the patent administration authority shall register the patent right and announce the patent right to the public. The invention patent right

²⁴ P.R.C. Civil Aviation Law (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 30, 1995, effective Mar. 1, 1996, amended Apr. 24, 2015), art. 6, 2015 P.R.C. LAWS (China).

²⁵ P.R.C. Trademark Law (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 23, 1982, effective Mar. 1, 1983, amended Jul. 1, 1993, Dec. 1, 2001 and May 1, 2014), arts. 35, 42, 2014 P.R.C. LAWS (China).

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>shall be effective as of the public announcement day. The patent administration authority of the State Council shall grant the utility model and design patent and issue the relevant patent certificates to the applicant if there is no ground for dismissal of the utility model and design patent application after the preliminary review. Meanwhile, the patent administration authority shall register the patent right and announce the patent right to the public. The utility model and design patent shall be effective as of the public announcement day.²⁶</p>
Mortgaged, Pledged Property	P.R.C. Security Interest Law and the Supreme People’s Court’s Judicial Interpretations of the P.R.C. Security Interest Law	<ul style="list-style-type: none"> • If the registration of the mortgage or pledge is required by the applicable law, one shall register the mortgage or pledge with the relevant authorities; the mortgage contract and pledge contract shall become effective upon such registration,²⁷ and • If the registration of the mortgage is not required by the applicable laws or administrative regulations, one may register the mortgage at will,²⁸ the mortgage contract takes effect upon execution; if one fails to register the mortgage, the mortgage right is not protected against any third party.²⁹

²⁶ P.R.C. Patent Law (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 12, 1984, effective Apr. 1, 1985, amended Jan. 1, 1993, Jul. 1, 2001 and Oct. 1, 2009), arts. 39, 40, 2009 P.R.C. LAWS (China).

²⁷ P.R.C. Security Interest Law (promulgated by the Standing Comm. Nat’l People’s Cong., Jun. 30, 1995, effective Oct. 1, 1995), arts. 41, 78, 79, 1995 P.R.C. LAWS (China).

²⁸ *Id.* art. 43.

²⁹ Supreme People’s Court’s Judicial Interpretations of the P.R.C. Security Interest Law (promulgated by the Sup. People’s Ct., Dec. 8, 2000, effective Dec. 13, 2000), arts. 49, 59, 67, 2000 P.R.C. LAWS (China).

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
Land Contracted Management Right	P.R.C. Property Law	<ul style="list-style-type: none"> • The land contracted management right shall be established upon the effectiveness of the land contracted management right contract. The local government on county or superior level shall issue the land contracted management right certificate, forest title certificate or grassland use right certificate to the land contracted management title holder, register the right into the registration book and confirm the land contracted management right;³⁰ and • If the holder of the land contracted management right transfers his land contracted management right to any others, an application for amendment of the registration of land contracted management right shall be made to the local government on county or superior level; if such amendment is not registered, it cannot defend against a <i>bona fide</i> third party.³¹
Construction Land Use Right	P.R.C. Property Law	<ul style="list-style-type: none"> • In order to establish a construction land use right, an application for the registration of the construction land use right shall be made to the registration authority. The construction land use right is established upon registration. The registration authority shall issue a construction land use right certificate to the title holder;³² • If the construction land use right is transferred or is used as capital contribution or bestowed, an application for amendment of

³⁰ P.R.C. Property Law, art. 127.

³¹ *Id.* art. 129.

³² *Id.* art. 139.

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>registration shall be made to the registration authority;³³ and</p> <ul style="list-style-type: none"> If the construction land use right is extinguished, the grantor shall carry out de-registration procedures in a timely manner. The registration authority shall recover the construction land use right certificate.³⁴
Homestead Use Right	P.R.C. Property Law	<ul style="list-style-type: none"> The obtaining, exercise, and transfer of homestead use right shall be governed by the P.R.C. Land Administration Law and other national laws and regulations;³⁵ and If the registered homestead use right is transferred or extinguished, the amendment of registration or the de-registration procedures shall be carried out in a timely manner.³⁶
Easement	P.R.C. Property Law; P.R.C. Premise Registration Measures	<ul style="list-style-type: none"> An easement shall be valid upon the effectiveness of the easement contract. If the contractual party requests for registration, an application for registration of the easement may be made to the registration authority; if the easement is not registered, it cannot defend against a <i>bona fide</i> third party.³⁷
Mortgage Right	P.R.C. Property Law; P.R.C. Premise Registration Measures	<ul style="list-style-type: none"> If the property specified in Items (1) to (3) of the first paragraph of Article 180 of the P.R.C. Property Law (i.e., buildings and other attachments to the land, construction land use right, and contracted management rights in land, such as wasteland obtained by

³³ *Id.* art. 145.
³⁴ *Id.* art. 150.
³⁵ P.R.C. Property Law, art. 153.
³⁶ *Id.* art. 155.
³⁷ *Id.* art. 158.

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>way of an invitation for bids, auction, public consultation, etc.) or a building under construction as specified in Item (5) of the first paragraph of Article 180 of the P.R.C. Property Law is to be mortgaged, such mortgage has to be registered. The mortgage right is established upon registration,³⁸</p> <ul style="list-style-type: none"> • If the property specified in Item (4) or (6) of the first paragraph of Article 180 of the P.R.C. Property Law (i.e., production equipment, raw materials, semi-finished products, finished products, and transportation vehicles) or a vessel or aircraft under construction as specified in Item (5) of the first paragraph of Article 180 of the P.R.C. Property Law is to be mortgaged, the mortgage right shall be established upon the effectiveness of the mortgage contract; if the mortgage right is not registered, it is not protected against a <i>bona fide</i> third party,³⁹ and • If an enterprise, family proprietor, or agricultural producer mortgages the movable property specified in Article 181 of the P.R.C. Property Law (i.e., the existing and future production equipment, raw materials, semi-finished products, and finished products), the registration shall be carried out with the local Administration for Industry and Commerce of the place where the mortgagor is located. The mortgage right shall be created when the mortgage contract comes

³⁸ *Id.* arts. 180, 187.

³⁹ *Id.* arts. 180, 188.

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		<p>into effect; if the mortgage right is not registered, it is not protected against a <i>bona fide</i> third party.⁴⁰</p>
Pledge Right	P.R.C. Property Law	<ul style="list-style-type: none"> • If a bill of exchange, cheque, promissory note, bond, deposit certificate, warehouse receipt, or bill of lading is to be pledged, the parties shall enter into a written contract. The pledge right shall be created upon the delivery of title certificate to the pledgee; in the absence of a title certificate, the pledge right shall be created upon the registration with the relevant authority;⁴¹ • If fund shares or equity is to be pledged, the parties shall enter into a written contract. If the fund shares or equity that is registered with the securities registration and clearing institution is to be pledged, the pledge right shall be created upon the registration with the securities registration and clearing institution. If other equity is to be pledged, the pledge right shall be created upon the registration with the local Administration for Industry and Commerce;⁴² • If the property right of intellectual property rights, such as trademark right, patent right, and copyright, is to be pledged, the parties shall enter into a written contract. The pledge right shall be created upon the registration with the relevant competent department;⁴³ and • If a receivable is to be pledged, the

⁴⁰ P.R.C. Property Law, arts. 181, 189.

⁴¹ *Id.* art. 224.

⁴² *Id.* art. 226.

⁴³ *Id.* art. 227.

Registration Object	Registration Legal Basis	Key Points in the Laws and Regulations
		parties shall enter into a written contract. The pledge right shall be created upon the registration with the credit consulting institution. ⁴⁴

The high level of decentralization of registration authorities also directly reduces the chance for the movable property owner, particularly small- and medium-sized enterprises, to finance in the market. On one hand, many new types of property rights are difficult to register due to the unclear registration authorities of such property rights in China. On the other hand, for those property rights which can be registered, the decentralized registration system actually jeopardizes the credibility value of the enterprises, in particular, the credibility value of an enterprise shall be the total value of all its assets as an integrated combination rather than simply adding together each of their respective asset values (i.e. the whole credibility value of an enterprise as an integrated combination shall be higher than its net asset value).

B. The Function of Registration is Unclear

The administrative registration of movable property and its title registration should be separate. The administrative registration of movable property is generally needed for operation safety or for industrial administration; this is the case with the registration of vessels, aircrafts and automobiles.⁴⁵ Other special movable property such as hoisting machines, elevators, and other special equipment shall be registered according to the requirements of administrative supervision rules, which aim to supervise such special movable property for the sake of public safety.⁴⁶ The title registration is for preventing and settling conflicts regarding a right *in rem*.⁴⁷ Such registration service is a special information intermediary service rather than the exercise of administrative power.⁴⁸ There is a substantial distinction between administrative registration and title registration. The former is a kind of public service, which relates more closely to administration and such service is appropriate to be provided by a government authority; the latter relates more closely to the needs of market transactions.

Furthermore, the right *in rem* registration service could be further classified into title confirmation registration and public notice of the title

⁴⁴ *Id.* art. 228.

⁴⁵ Wang Lu & Jin Jianfeng, *Establishment of the Uniform Registration Regime for Movable Property*, 776 CHINA FIN. 81-82 (2014).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

registration. The former is a kind of administrative service and the latter is a kind of special information intermediary service. Take the agriculture-related title registration for example; the title confirmation registration refers to the confirmation of relevant property information (such as title holder, subject matter, subject matter title and nature, title scope, and title term) by an authority with high public credibility.⁴⁹ In general practice, the authority issues the title certificate to the titleholder. The title public announcement registration is a kind of service provided by the professional registration service institution when the agriculture-related titleholder uses the agriculture-related title as collateral for financing, and the financing parties agree to register the agriculture-related title with such an institution.⁵⁰ In essence, public notice of the movable property title registration is an information collection platform and a searching system. It does not create any new title.

C. Misunderstanding of the Doctrine of “Creation upon Registration”

It is disputable under the P.R.C. law regarding whether the registration results in the establishment of the title to the property, or just entitles the registration applicant to defend its title against any *bona fide* third party. For example, the P.R.C. Trust Law provides that “to the extent required by relevant laws and administrative regulations, trust property shall be registered according to applicable law upon the establishment of trust.”⁵¹ If the trust property is not registered, it shall be registered retroactively, and a failure to register shall lead to the invalidity of the trust.⁵²

This regulation mixes up the relationship between the basic transaction contract (i.e., credit and debt contract) and the registration act. The effectiveness of the credit and debt contract shall not be affected even if the movable property is not registered. The security interest (or registration) of the movable property just “increases the credibility” of the credit and debt contract, which shall be deemed an independent legal act to the effect of recorded lien vis-à-vis third party creditors and bona fide purchasers of the collateral. According to the relevant principles in most jurisdictions worldwide, such registration is not a necessary pre-condition to the establishment of security rights over the movable property. Whether the title is registered or not will not have any substantial impact on the creation of security rights over the movable property, or the effectiveness of the ownership preservation transaction.⁵³ In other words, without registration (or any

⁴⁹ *Id.*

⁵⁰ Lu & Jianfeng, *supra* note 45, at 81-82.

⁵¹ P.R.C. Trust Law (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 28, 2001, effective Oct. 1, 2001), art. 10, 2001 P.R.C. LAWS (China).

⁵² *Id.*

⁵³ STUD. GROUP ON A EUR. CIV. CODE & RES. GROUP ON EC PRIV. L., PRINCIPLES, DEFINITIONS AND MODEL RULES OF EUROPEAN PRIVATE LAW (Christian von Bar & Hugh Beale, et al. eds. 2009), <http://ec.europa.eu/justice/policies/civil/>

other public announcement measures such as occupation or control), the *bona fide* third party acquiring such unregistered movable property is entitled to the protection of its lawful property acquisition due to the principle of equity and good faith, since the third party is unable to access to the information regarding the title over the movable property.

III. EXEMPLARY PRACTICES OF UNIFORM MOVABLE PROPERTY REGISTRATION IN CHINA

A. Practice in Tianjin: Uniform Registration Platform for Movable Property Financing of Credit Reference Center of People's Bank of China

In 2012, with the great support from the Tianjin government, the Credit Reference Center of the People's Bank of China launched the pilot uniform platform for movable property title registration.⁵⁴ The platform is based on the current receivables registration system and finance leasing registration system.⁵⁵ It aims at establishing a uniform registration and public announcement platform with information of right *in rem* over various movable properties used to back financing.⁵⁶ The platform further increased transaction efficiency and transparency and improved the development of movable property financing to the largest extent.

During the pilot program, the Tianjin government also issued a series of supporting measures to guide the local government authorities, finance institutions and enterprises to proactively use the uniform movable property registration platform.⁵⁷ In March 2013, the Tianjin government further issued the draft "Measures of Movable Property Title Registration Public Announcement and Searching," which was originally issued by the Tianjin Finance Office and the People's Bank of China Tianjin Branch (Measures).⁵⁸ The Measures clearly stated the orientation and purpose of the reform—that the uniform public notice and searching platform be established in Tianjin gradually.⁵⁹ As to the steps and measures to reach this goal, firstly, government authorities have to provide the registration institution approved by the People's Bank of China with the movable property registration information.⁶⁰ Secondly, the government authority has to

docs/dcfr_outline_edition_en.pdf.

⁵⁴ Wang Doudou, *Tianjin Took the Lead in Carrying Out Movable Property Uniform Registration*, LEGAL DAILY, Jan. 13, 2014, at 6.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Doudou, *supra* note 54, at 6.

⁶⁰ *Id.*

further delegate the movable property registration work to such registration institutions.⁶¹ The detail measures shall be enacted separately.⁶²

On January 9, 2014, the Tianjin Higher People's Court promulgated its "Guidance Opinion on the Issues of Registration and Public Announcement Regarding Movable Property Title Dispute Cases (Trial)" (Opinion).⁶³ This Opinion aims to promote the perfection of a movable property uniform registration regime as well as to provide further guidance thereon from a judicial perspective.⁶⁴ According to the Measures issued by the Tianjin government, the lawful registration authorities are entitled to delegate their current function and competence on movable property registration and public notice to the designated institutions.⁶⁵ The Tianjin Higher People's Court positively confirmed the reform approaches regarding registration and public notice in the Opinion. The Opinion not only provides a solid legal basis for such administrative acts, but it also confirms their legal effect from a judicial point of view.

The receivables pledge registration public announcement system, and the finance leasing registration public announcement system established by the People's Bank of China, provides great convenience to small- and medium-sized enterprises for their financing and its user number has increased gradually. This is the first internet-based electronic registration platform in China. Take the receivables pledge registration public announcement system for example; in 2012, the number of registration entries amounted to 252,638 and the searching requests amounted to 347,531.⁶⁶ In the last five years, the movable property mortgage and pledge loan has been increasing at around 20% annually.⁶⁷ Among them, the annual increase of receivables financing has been around 50%.⁶⁸

B. Practice in Shanghai: Shanghai Trust Registration Center

On June 20, 2006, the China Banking Regulatory Committee approved the establishment of the "Shanghai Trust Registration Center," which was founded on June 21 in Pudong, Shanghai.⁶⁹ The Shanghai Trust Registration Center has committed itself to a clear step-by-step development plan since its founding.⁷⁰ At

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Doudou, *supra* note 54, at 6.

⁶⁵ *Id.*

⁶⁶ Movable Property Finance is an Important Way in Financing Services Innovation, tjpeople.cn (June 7, 2013), <http://www.022net.com/2013/6-7/485047172758725.html>.

⁶⁷ Doudou, *supra* note 54, at 6.

⁶⁸ *Id.*

⁶⁹ *Council of Shanghai Trust Registration Center set up in Pudong*, PUDONG.GOV (Apr. 28, 2007), http://english.pudong.gov.cn/html/pden/pden_ap_news_en/2007-04-28/Detail_71150.htm.

⁷⁰ Liu Shiguo, Gao Lingyun & Zhou Tianlin, *Trust Registration Legal Issues Study*,

an appropriate time, the Center will subsequently establish and optimize the trust property registration regime and carry out the plan for the circulation of beneficial interests on the basis of trust property registration regime.⁷¹ During the past two years, the Shanghai Trust Registration Center has established an integrated trust property registration including rules, procedures, standards, and has completed the establishment of a trust registration system.⁷² Under the guiding principle of “based in Shanghai and providing services to the Yangtze River delta area, the Yangtze River basin and the whole country,” the Shanghai Trust Registration Center has successfully grown to an institution with 41 trust companies nationwide.⁷³

The Shanghai Trust Registration Center represents a positive attempt by the Chinese trust supervision authority to optimize the trust registration regime. The services and businesses of the Center include; basic trust information registration, trust property registration, other trust-related title and interest registration, custody business, trust-related information disclosure and announcement, trust registration information searching and certification, research and consultancy on trust and relevant title registration, and promotion of the standardization and liquidity of trust product.⁷⁴ The goal of this Center is to provide services regarding trust registration, relevant title registration, custody, and other relevant services in order to increase the public credibility of the registered trust.⁷⁵ It is also meant to protect the legal right of the participating parties, and facilitate the development of the trust industry in China.⁷⁶ Although the Shanghai Trust Registration Center currently provides trust registration service, most of the time it serves as a platform to collect and disclose trust information and facilitate the searching and recommendation of trust products.⁷⁷ The Center currently serves as an example and assists the government authority with administration and supervision.⁷⁸ The establishment of the Center provides an important platform for the development of trust in the financial service industry. The Center also lays a solid foundation for the gradual optimization of the trust registration regime, the improvement of microstructure of the trust market, the protection of the participating parties’ rights and interests, and the increase of public credibility and influence over the trust financial products.

197(1) SHANGHAI GOVERNMENT LEGAL SYSTEM STUDY (2009).

⁷¹ *Id.*

⁷² *Id.*

⁷³ List of Trust Companies, SHANGHAI TRUST REGISTRATION CENTER, http://www.strc.org.cn/commix/product/BookManage3530_query.jsp (Last visited Jan. 20, 2016).

⁷⁴ *Shanghai Trust Registration Center Introduction*, SHANGHAI TRUST REGISTRATION CENTER, <http://www.strc.org.cn/commix/member/BookManage2410.jsp> (Last visited Jan. 20, 2016).

⁷⁵ *Id.*

⁷⁶ Liu, Gao & Zhou, *supra* note 70.

⁷⁷ *Id.*

⁷⁸ *Id.*

The Chinese trust supervision authority has already issued the relevant documents in 2014 to approve the envisaged establishment of a nationwide trust registration center in the Shanghai Free Trade Zone.⁷⁹ The responsibilities of this center would mainly include, trust beneficiary right centralized registration, trust contract registration, trust beneficiary right transfer, and pledged financing. The trust industry practitioners anticipate that the establishment of such a nationwide trust registration center will play a positive role in liquidizing the assets in the trust market and enlarging the scope of the trust beneficiary right liquidity platform so that the risk due to the insufficient liquidity could be minimized dramatically.⁸⁰

IV. IMPROVEMENT DIRECTION IN THE FUTURE

A. Establishment of a Uniform Electronic Registration Platform

The key purpose of movable property registration is to divulge the true information on the title to the property, whether possession of the property is transferred or not. Given that, the possessory status is unable to correctly reflect the title transfer and restriction over the movable property. As a result, the transaction parties, which merely rely on the property's possession, may be subject to a false understanding of the legal property status. This would further have a negative impact on the transaction confidence, or lead to related disputes after the transaction. Nowadays, under the modern economic background, cross-region movable property transaction is quite frequent. Since the types of movable property under transaction are quite complicated (e.g., title retention by the creditor, ownership preservation transaction, financial lease, trust, re-lease after sale and trust, etc.), the previous Chinese movable property registration concept, system and regime, which are based on industrial department administration (vertical administration) and territorial administration (horizontal administration), should now be incorporated together and replaced by a uniform registration and searching system. Since the Internet is becoming widespread in China, the regime of information upload, verification, amendment, and searching based on Internet technology should be urgently established. Such a uniform system is able to reduce the negative impact due to the current decentralized regime of both vertical and horizontal administration. The uniform system can also decrease the delay in registration application and the manual mistakes due to the previous paper-based document submission and registration regime.

⁷⁹ Du Lijuan, *National Trust Registration Center Will be Established in Shanghai and Aim to Solve the Financial Liquidity Issue of RMB 13,000 Billion*, CHINA BUSINESS JOURNAL (Nov. 8, 2015), http://www.cb.com.cn/economy/2014_1108/1094073.html (last visited Jan. 20, 2016).

⁸⁰ *Id.*

B. The Nature of Registration Authority Should Be Clear

Since the movable property registration merely establishes an information recording and disclosure mechanism, but does not create any new right *in rem*, it is different from the administration/supervision registration required for the public safety purpose (e.g., registration of elevators, large transportation equipment, vessels, and medical equipment). Thus, the movable property registration could be conducted by the market participants themselves and does not have to be conducted by a government authority. Since the services provided by such movable property registration institution are related to public interest, such a registration institution should obtain the permit and be under the administration supervision of the government. China has for many years already implemented such relevant practices on the title registration of certain movable properties, such as the practices of the China Security Registration and Clearing Co., Ltd., and the China National Debt Registration Co., Ltd.

C. Establishment of Delegation Registration and Voluntary Registration Regimes

As mentioned above, various P.R.C. laws and regulations follow the principle of “effectiveness upon registration.” However, since registration does not establish any new right *in rem*, it shall be the free intention of the parties to decide whether to register or not. For example, the movable property surety might voluntarily apply for a movable property security interest registration in order to facilitate the continual transaction with the secured party. The surety might even be willing to provide detailed registration materials as found in the loan agreement. If neither the surety nor secured party has any contractual registration obligation, it is not necessary for either of them to submit application for registration; however, this might lead to the loss of some potential future credit transaction opportunities. Therefore, the participating parties will be encouraged to register the moveable property based on market power, rather than the compulsory administrative measure.

Nevertheless, in order to increase the correctness and efficiency of the registration, China should enact relevant laws and regulations to encourage the registration institution to provide the services of registration, amendment to the registration, and deregistration in a timely manner.

D. The Registration Confirmation and Searching Regime Should Be Clear

As to the detailed operation of online registration, the registration authority should establish the verification and confirmation regime regarding information registration and registration request in order to ensure the parties’ (or their agents) intention is valid and the registration information is accurate. It is

not difficult to establish such regime from a technical point of view. Internet verification and electronic signature are now available.

As to the use and public announcement of movable property registration information, the authorized searching regime and differentiated searching access control regime should be established. One could only have access to the registration information upon the approval from the information provider. If the surety or insured party does not request the registration information regarding the security interest collateral be kept confidential, or even wishes to disclose the credibility over the security interest collateral (if the value of security interest collateral is far beyond the credit amount), the surety would probably welcome the idea of public free access to the registration information.

V. CONCLUSION

In conclusion, followed by the promulgation and implementation of the immovable property uniform registration regime, the movable property uniform registration has already become the next legislation goal. Movable property uniform registration will have a significant impact on reducing the transaction cost and increasing the financing capacity of small- and medium-sized enterprises. While the Chinese economy gradually integrates into the world economy, the establishment of a uniform movable property registration regime becomes not only necessary but also possible with the help of Internet technology.

