# REGISTRATION OF REAL ESTATE – A COMPARATIVE ANALYSIS OF CHINESE REGULATIONS WITH EUROPEAN TRADITIONS

Shuai Wei*

**Abstract**: Real Estate takes in a vital large part of citizen's private property nowadays, especially in big cities where more and more excessive-priced houses boost the significance of Real Estate. In this sense, protecting the owners' all kind of rights and ensuring secure and efficient transaction is coming to the centre place of Real Estate related mechanisms and legislation, among which the registration of Real Estate is a general model to achieve this globally. As to China, the registration of Real Estate system was from both of the Civil law tradition and Common Law tradition, and mostly it was the Civil law tradition of European Continent. However, there exist some specifics between Chinese regulations and European traditions, such as the institution setting and legal effect of registration, which will be the main object of study of this paper. Basically, this paper would firstly give a brief introduction about the registration of Real Estate; then show the Chinese latest institutional arrangements and its history of registration of Real Estate and the legal rationale behind them; thirdly try to analyze the regulations of European Continent, mostly the Germany and France, as to Germany, focusing on its special institution setting, as to France, focusing on its legal effect; fourthly since both of the German tradition and French tradition has substantial influence on Chinese modern civil law including the Real Estate Registration, the comparative analysis of them and what China should reform in the next step would be showed.

**Keywords**: Real Estate Registration; Civil Code of PRC; European Traditions; French Law; German Law

* Shanghai Jiao Tong University, KoGuan School of Law, China.

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# INTRODUCTION

## A. What Real Estate Is

According to a general legal explanation, the real estate is "property consisting of land and the buildings on it, along with its natural resources such as crops, minerals or water; immovable property of this nature; an interest vested in an item of real property, such as buildings or housing in general. Also: the business of real estate; the profession of buying, selling, or renting land, buildings, or housing."[1] In countries with personal ownership of real property, civil law protects the status of real property in real-estate markets, where estate agents work in the market of buying and selling real estate. The word "real" derives from Latin res ("thing"), which was used in Middle-Age English to mean "relating to things, especially real estate".[2] In English, two words have the similar meaning--estate and property. The paper will use real estate rather than real property in order to conform with terminology habit. Generally speaking, the real estate has the same meaning with real property[3], because both of which could be protected by some forms of real actions, in contrast to personal property or personal estate, where a plaintiff would have to resort to another form of action. The law now broadly distinguishes between real estate (land and anything affixed to it) and personal estate (everything else, e.g., clothing, furniture, money). The related conceptual difference about them was between immovable property, which would transfer title along with the land, and movable property, which a person would retain title to. Basically, real estate has the similar meaning with real property or immovable property; and personal estate has the similar meaning with personal property or movable property. Due to limited length of paper, the article wills not discuss the categories and distinctions of these concepts.

## B. Why Real Estate Need Registration

The real estate registration is a legal term used for recording owners' or obligers title, rights and their changes circled with a certain piece of real estate. Real estate registration is a universal practice in the world. Why real estate needs to be registered compared with personal estate? The next is reason analyze. The content of recording is very complex because those rights related with a certain real estate are multiple, which also be called Bundle of Rights.[4] Real estate is unique because there are multiple

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[1] OXFORD ENGLISH DICTIONARY, P. 546 (9th ed. 2011).

[2] *Id,* P. 1192.

[3] Anyway, some differences arising from the different legal traditions and their terminology practices do exist, but this paper will not pay its attention to distinguish the usage of estate and property. However, this paper will mainly use the word of estate to express the certain concept. See POLDEN, P., *Private Estate Planning and the Public Interest,* The Modern Law Review, vol. 49, P.195-213 (1986).

[4] The term, "bundle of rights," came into use during the late 19th century. Prior to that, the idea of property entailed more the owner's dominion over a thing, placing restrictions on others from interfering with the owner's property. "Bundle of rights," however, implies rules specifying, proscribing, or authorizing actions on the part of the owner. See DANIEL, Klein B., and ROBINSON,

"rights" associated with each piece of estate. For example, right to sell, right to lease, right to acquire minerals/gas/oil/etc. within the land, right to use, right to possess, right to develop, etc. These dividable multiple rights are important because the owner of the real property can generally do what he/she chooses with each right. For example, the owner could choose to keep all the rights but lease the right to dig for oil to an oil company. Or the owner could choose to keep all the rights but lease the property to a tenant. In other words, the owner can elect to keep and/or lease and/or sell the rights to his/her land. And a property can simultaneously be "owned" by multiple parties. So, it is hard for the society and third parties to know the true situation of a certain piece of estate, which always is vague and complicated. That is the need to set up a proper record mechanism to show them and their changes out.

In the history, the earliest registration on real estate was in Ancient Roman Law and Tang Dynasty (A.D.618-907) in China. In Tang Dynasty, real estate were transacted through three mechanisms:立契 (Li Qi: When land or house transactions deals, the two parties need to draw the contract under the direction and recording by local government, and taxes need to be paid), 申牒 (Shen Die: Government's registration book on national's real estate mainly in land and houses. A transaction without 申牒 could not be protected by the authority)，过割 (Guo Ge: a kind of transfer and registration procedure when land or houses to be sold or mortgaged or bestowal and any other estate title alteration. During the procedure, taxes need to pay).[5] However, the modern real estate registration was derived from the City Center's Stadtbuch in the north of Germany around 12th century.[6] Nowadays, almost all countries around the world have a specialized public institution being in charge of the registration of its nationwide real estate.[7] So, the real estate registration has developed into a universal system throughout of the world. However, there exist many differences among countries on the real estate registration system because of their different historical and social conditions. Next, the

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John, *Property: A Bundle of Rights? Prologue to the Property Symposium,* Econ Journal Watch, vol.8(3), P.193-204 (2011).
Ownership of land is a much more complex proposition than simply acquiring all the rights to it. It is useful to imagine a bundle of rights that can be separated and reassembled. A "bundle of sticks" - in which each stick represents an individual right – is a common analogy made for the bundle of rights. Any property owner possesses a set of "sticks" related directly to the land. E.g., United States v. Craft, 535 U.S. 274, 278, 152 L.Ed. 2d 437, 446, 122 S.Ct. 1414, 1420 (2002) (describing the "bundle of sticks" as a "collection of individual rights which, in certain combinations, constitute property").

[5] There are detailed provisions on the possession, sale, inheritance and mortgage of land in <the Law of Tang Dynasty>(《唐律疏议》. In the Tang dynasty, there was the book account, so that the people could buy and sell their lands according the books themselves. It recorded the name, age, gender, land area and land area of the people's households. It stipulated that "all sales (land) shall be subject to an registration by the Ministry of Justice(凡买卖（土地）皆须经所部官司申牒)". "if there is no registration to buy or sell, the land shall be returned to the owner(若无文牒辄买卖，财没不追，地还本主)." Every three years the government would renew the registration.

[6] WEN Shiyang(温世扬), LIAO Huanguo（廖焕国）, *Wuquan Fa Tonglun（物权法通论）[General Theory on Property Law]*, People's Court Press, p.139-143 (2005).

[7] The precondition of the real estate registration is private ownership system. That is to say the real estate registration will be no necessity to exist in public ownership system countries where all of the real estate belongs to the state so no need to register.

paper will mainly discuss real estate registration between China and EU.

### C. Outline

This article is divided into four sections. Section 1 outlines the definition and general information of real estate registration; section 2 give a brief overview of the history and present situation of China, mainly the historical development of Chinese real estate registration; section 3 provides regulations and institutions design under the European tradition, especially the institution setting in Germany and legal effect of the registration in France; section 4 ends with the comparative analyze between China and European tradition, some inspirations and improvements for China to perfect the real estate registration regulatory mechanism would be explored and makes some conclusions passingly. The purpose of this article is trying to give a whole map of Chinese real estate registration situation and then come up with possible approaches to improve it mirroring European traditions.

## I. CHINESE LATEST REGULATIONS AND INSTITUTIONS

### A. History Review

#### 1. Before 1912 in Ancient China

China's land-centered registration system has a long history and has been closely linked to land tax since its inception. According to scholars' research, the registration system related with land transaction began in the middle and late Zhou Dynasty (BC1046-BC256).[8] As it has been said above, in the history of China---Tang (618-907) and Song (960-1279) dynasty, Chinese real estate registration in its early form has grown up and developed naturally. Land sales must be reported and registered in writing by the government before they become effective. Otherwise, not only is the deal invalid, but also it is subject to severe sanctions. That is because, at that time, on one hand the centralized authority was eager to enlarge its power and control its people, land and wanted to collect more and more taxes by registering citizens' real estate clearly without omission. On the other hand, the free-market economy was developing and real estate transactions began to appear and be frequent.[9] But, because of huge protests from the landowners and taxers, adding with small-scale peasant economy being popular at that time, there was no true-meaning and efficient real estate registration system before 1900s--the late period of Qing Dynasty (1636-1912).

From the historical evolution of ancient Chinese land registration system, we can see that it was primarily associated with the land taxes. In another words, it was the

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[8] CHENG Xueyang(程雪阳), *Zhongguo Tidu Zhidu de Fansi yu Biange(中国土地制度的反思与变革)[The Reform of Land System in Modern China: Review on the Perspective of Public Law]* (8 Aug 2012) (unpublished Ph.D. dissertation, Zheng Zhou University) (on file with Fa Yuan Library, Cupl).

[9] ZHANG Jinfan(张晋藩), *Zhongguo Fazhi Shi(中国法制史)[The History of Chinese Law]*, Chinese Law Press, P.78-79 (2008).

derivative of the tax system, so its main purpose was to facilitate tax levy. The title deed of land, as to the owner or user of the land, only had collateral effect and cannot be confirmed as title legally. More importantly, the property deed data were held by the government and kept secret from the outside. Ordinary people cannot inquire about the relevant materials, which was far from the requirements of the modern real estate registration system. So, in the history before the Republic of China (1912-1949), there was no truly real estate registration system with publicity as its purpose.

### 2. In the Pre-Modern Time of China (1912-1979)

However, after Qing Dynasty, the Republic of China (1912-1949) has no powerful and unified central government,[10] and many wars were involved--the civil wars and two times world wars.[11] So it was hard to set up a modern real estate registration system at that time in a big country. But, from the formation and development process of China's modern real estate registration system, in period of the Republic of China, the western legal system has been introduced and accepted. China began to formally establish the modern real estate registration system officially and nationwide. After 1949, the greatest leader of China--Chairman Mao with his CCP unified the whole country, wiped out all of the warlords and set up People's Republic of China. Here the chance came. However, the public ownership and Soviet model were popular in the socialistic China at that time. In the early years of PRC after 1949, the real estate registration system has been built up too. However, as the socialist transformation completed, China totally adopted public ownership economy system, the registration system lost its existence foundation.[12] There was no private real estate ownership, so no real estate registration naturally.[13]

### 3. Modern Development

After 1979, China carried out the open and reform policy and the private ownership appeared to spread over. From that time, the real estate registration system with modern meaning began to grow up step by step in China. After the reform and opening up, especially after the promulgation of <the Land Management Law of

[10] After the Qing Dynesty, there were several strong regional military powers, such as Zhang Xueliang in the Northeast of China, Chen Jiongming in Guangdong of China, Sheng Shicai in Xinjiang, Yan Xishan in Shanxi and so on.

[11] The wars between the warlords, war between CCP and KMT, war with Japan, World War 1 and World War 2.

[12] After the founding of the People's Republic of China in 1949, the public ownership economy was not established immediately. There was a transitional period. This transition has two stages. The first stage was from 1949 to 1952, during which the main task was to eliminate the remaining forces of the KMD reactionaries, eliminate bandits and bullies from all over the country, and consolidate the new people's regime. The second stage, from 1952 to 1956, was also called socialist transformation of the country. That was to transform a capitalist, small-scale peasant economy into a socialist economy. The goal of reform was to establish a public ownership economy in various industries. By 1956, the public ownership of the means of production was basically realized through foreclosure. See RODERICK, Mac Farquhar, *The Cambridge History of China*, Chinese Social Science Press, P. 56-58 (KING, Faribank John ed., 1998).

[13] See Art. 5,6 of PRC Constitution (1954).

PRC>,[14] it has been recovering and developing gradually from then on.

Even though registration system in China has a long history, but in the true sense as the methods of publicity of real rights has started relatively late, and served the purpose of the land and tax administrative management from its start, with strong administrative color, which making the system cannot play its proper role to maintain the secure and efficient transaction and protect right-holders. So as a conclusion, the history of Chinese modern real estate registration is no more than 32years. It is a baby in infancy.

## B. Regulations at Present

### 1. Regulatory Development

However, the <Land Management Law of PRC>only stipulates the registration of use right and contract right on limited state-owned lands and collective-ownership lands, which is only a tip of the iceberg for the whole real estate rights.[15] And the implementation into practice of the < Land Management Law of PRC > itself took nearly 30 years. In writer's hometown, a rural area in the north of Shanxi Province, the registration of land using-right was made successfully only last year. All of this is due to China's bloated and inefficient administrative system. Therefore, from the central government to the province, then to the city, then to the county, then to the town, and then to the village, the effect of the law has been reduced layer by layer, and finally there is nothing left. So, the real and complete real estate registration, not only land registration, truly began in 2007. On March 16, 2007, the fifth session of the 10th National People's Congress passed the <Property Law of PRC>, which give a special section in the Law providing for a real estate registration system. It clearly stipulates the legal effect, institutions, procedures, types and the compensation liability for the wrong registration. It adopted some advanced legislative experience from western countries and summarized China's past practices also, which established the basic structure of China's real estate registration and provided the overall architecture and train of thoughts for the <Real Estate Registration Law> in the future.[16] This marks a unified real estate registration system in China formally established.

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[14] <The Land Management Law of the People's Republic of China> was deliberated and adopted at the 16th meeting of the standing committee of the sixth National People's Congress on 25 June 1986 and came into force on 1 January 1987. Since then, the law has been amended three times. Article 11 and article 12 and article 13 of the law stipulate the registration procedure of collective land. In addition, article 3 to article 7 of the <Land Management Law Enforcement Regulations of the People's Republic of China>, which is a supporting administrative rule for implementation the law, provide for the procedure of registration of land in detail.

[15] In China, urban land is owned by the state and village land is contracted to farmers. The person on the land only enjoys the right to use and contract. There is no private ownership.

[16] In order to integrate land registration and housing registration, China started the real estate registration reform in 2014 and made adjustments in the legislation and institutional Settings. However, there is no specialized real estate registration law, but only in the form of provisional regulations on

Therefore, we can now summarize China's real estate registration system in two lines. The first is <Property Law of PRC> in 2007, which was integrated into <the Civil Code of PRC> in 2021. Second, it is stipulated in the unified reform of real estate registration since 2014. We will first analyze the real estate registration system in the < the Civil Code of PRC>. China's property law adopts the model of Pandectarum, a typical model of civil law and German law.[17] The Section 2 of < the Civil Code of PRC> is about real estate, divided into four parts: general principles, ownership, usufructuary right and security right. The registration of real estate is stipulated in part I of the general rules. In general rules, there are three chapters which are the first chapter: basic principles; second chapter: the establishment, alteration, transfer and elimination of property rights; and the third chapter: the protection of property rights. The second chapter is mainly about the real estate registration, which takes up 14 articles. So from a large perspective, it's the first time that the provisions of the Section 2 of < the Civil Code of PRC> have the following functions: (1) define the effectiveness of real estate registration; (2) real estate registration procedures are stipulated; (3) the real estate registration types have been improved. (4) Standardizing the liability of the registered parties and the registration authority for compensation.

## 2. Defects and Problems

### a. Stated-Owed Problems

But the real estate registration system stipulated by the Section 2 of the <Civil Code of PRC> in 2021 has many defects. Registration is regarded as the only way to publicize the real estate, for China adopts Registration Effectiveness doctrine.[18] But some contradictions exist in the "Real Estate Section", On the one hand, it stresses the importance of registration-- juristic act of real right cannot take effect without registration.[19] On the other hand, natural resources owned by the state can be unregistered. This contradiction is reflected in article 9. It says, "The establishment,

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real estate registration, a very low and temporary regulation. Promulgated by the state council on November 24, 2014 and effective on March 1, 2015.
According to China's legislation habit, a lot of reforms at first are provisional regulations in the form of administrative law, and will rise to formal administrative regulations or the legal status of special legislation until the time is right running without problems.

[17] The French civil code does not use the word "real estate right", nor does it have the definition of real estate, and there is no concept of real estate. The Italian civil code is similar to this. Therefore, the author says that mostly the Chinese Property Law's choreography and legislative ideas come from Germany, only making some adjustments in line with China's national conditions. See WEN Shiyang(温世扬), LIAO Huanguo（廖焕国）, *Wuquan Fa Tonglun（物权法通论）[General Theory on Property Law*], People's Court Press, p.7-8(2005).

[18] The discussion on the different legal significance of the registration, as the real right publicity, will be carried out in detail below. So, the article does not discuss here.

[19] Art. 14: the establishment, alteration, transfer and elimination of the real right of real estate shall be valid after registered in accordance with the provisions of the law. Art. 15: a contract for the establishment, alteration, transfer and elimination of real property rights between the parties concerned shall come into force upon the establishment of the contract, unless otherwise provided for by law or otherwise stipulated in the contract. Failure to register the real right shall not affect the validity of the contract.

alteration, transfer and elimination of the real right of real estate shall be effective after being registered in accordance with the law. Without registration, it shall not be valid, unless otherwise provided by laws.[20] The ownership of natural resources legally owned by the state may not be registered." This provision makes Registration Effectiveness doctrine a principal rule, except in exceptional cases of law. However, as an exception, the provisions are so vague and the law has a wide meaning, which means that the laws lower than the <Civil Code of PRC> can exclude the application of the <Civil Code of PRC>. There are many other vague exceptions in this provision. And as an emphasis, the article also ends with a special emphasis on that the nature resources owned by the state may be unregistered. Its words are "may be unregistered" rather than "needn't to be registered", which means that register or not to register does not affect the state's ownership of the natural resources. In essence, it excludes the state -- owned natural resources and other circumstances as exceptions provided for by the law from the principle of Registration Effectiveness doctrine. The result of this practice is to make the scope of Registration Effectiveness doctrine extremely narrow, and will be narrower and narrower in the future, eventually become an empty principle. In addition, according to the general explanation, there is no state-ownership in China. State-ownership is only a general expression, because the legal term of it in China can be divided into whole-people-ownership and collective-ownership.[21] Therefore, the Real Estate Section of <Civil Code of PRC> also has the disadvantage of using life language as legal language. Finally, it is difficult to define the natural resources, and whether the most important land is a natural resource.

b. Too General Provisions

In addition, there are other problems existed in the Real Estate Section of <Civil Code of PRC>. Because none of them are as important as the principal problems mentioned above, so I will briefly review them in this paragraph. The first is that the real estate registration system stipulated in it is very illegible and rough. It only makes clear the legal effect of real estate registration, and there are no definite stipulations on system designs, procedure settings and the rights and responsibilities. It says that "the state practices a unified registration system for real estate. The scope of unified registration, registration organs and registration measures shall be prescribed by other laws and administrative regulations."[22] As a result, the real estate registration system stipulated by the "Real Estate Section" is difficult to implement in practice, because there is no specific detailed provisions. Therefore, the significance of Property Law for real estate registration is only at the level of declaring its legal effect, lacking the ability of practical operation. So, it is not a secret to say that the Real Estate Section of <Civil

[20] Means laws, including this law—the property law and other laws.
[21] Article 6 of <Constitution of PRC>: The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people.
[22] Art 10 of <Property Law of PRC>.

Code of PRC> in 2021 only started an incomplete beginning for the registration of real estate in China. More works need to be done in the future.

c. No Remedy Mechanism

Second, there are insufficient provisions on the scope of authority and responsibility of the registration institutions. What are the remedies available to the applicant when the registration institution fails to perform its obligations properly? The author holds the views that this is a very important part of the real estate registration system, which is very vital to the applicants too. Because according to legal philosophy, real estate registration should be a right of the real estate owner.[23] The procedural setting by the state shall not add any obstacles to the exercise of the rights of the right-holder; otherwise, it will cause substantive infringement on his or her rights. For real estate, the right-holder should enjoy his or her rights to real estate without the recognition of any other third party including the state. As long as it is a right, it exists from its beginning to the end. The activity of registration is only the way to publicize the real estate. The activity of registration does not add nor subtract any significance to the existence of rights. In other words, the right-holder has a real estate right, even if it is not registered; he or she still enjoys the right with no doubt. This is the relationship between the right-holders and the real estate right. The significance of registration is only the claim that the right-holder enjoys the real rights. This is also in line with the original intention of real estate registration -- the main way of real rights publicity. Therefore, the state should provide such convenience to citizens, and avoiding the expansion of administrative power and authority's rent-seeking activities which would cause inconvenience to the right holders in exercising rights and even infringement to their substantive rights.

d. Un-Unified Registration System

Finally, the Real Estate Section of <Civil Code of PRC> in 2021 has not changed China's past practice of distinguishing between housing registration and land registration. The development of real estate registration in China is that practice precedes the system. The earliest practice was about housing registration, which at that time was regarded as the main measure of China's Reform and Opening policy. In 1982, the State Administration of Urban Construction of China promulgated the interim regulations--<On the Management of Real Estate Rights in Cities (Towns)>, which started the registration of real estate ownership nationwide. Subsequently, the <Regulations on the Administration of Urban Private House> by the State Council in 1983, <the Law on the Administration of Urban Real Estate> in 1987,[24] <the Measures

[23] NI Shuyin, LI Xiandong, *Budongchan Dengji Xingzhi de Jieshi Lun Yanjiu (不动产登记性质的解释论研究) [Interpretation Theory Research on Real Estate Registration]*, Land and Resources Information, vol. 10, P.46-56 (2016).

[24] The name of this regulation was related with "real estate", while it is only circled on the urban house other than urban land which belongs to the state according to the constitution.

on the Registration and Administration of Urban House Ownership> by the Ministry of Construction in 1987, and <Property Law> in 2007 which marked the increasingly standardized and legalized house ownership registration system in China. However, the registration of land property rights is in another road. The pioneer registration of land property rights is <the Land Management Law> in 1986. And then is <the Property Law> in 2007. Article 2 and article 6 of <the Land Management Law> in 1986 stipulated the form of real rights of land. That is the ownership belongs to the whole people and the collective and cannot be transferred. So, the using right was emphasized mostly and specialized.[25] Article 9 and article 10 provide for the detailed registration mechanism of land estate rights.

> **Article 2**: The People's Republic of China exercises socialist public ownership of land, namely, ownership by the whole people and collective ownership by the working people. No unit or individual may occupy, buy, sell, lease or otherwise illegally transfer land. The state may requisition land owned by collectives according to law for the needs of public interests. The right to use state-owned land and collectively-owned land may be transferred according to law. Specific measures for the transfer of the right to the use of the land shall be formulated separately by the State Council. The state practices a system of compensated use of state-owned land according to law. Specific measures for the compensated use of state-owned land shall be formulated separately by the State Council.
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> **Article 6**: Land in urban areas shall be owned by the whole people, that is, by the state. Land in rural areas and suburban areas shall be collectively owned, except as provided by law for the state. Homesteads and private plots of land and mountains shall belong to the collective.
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> **Article 9**: Land collectively owned shall be registered by the people's government at the county level, certified and confirmed in ownership. State-owned land lawfully used by units under ownership by

[25] Because of the special land ownership in China, some scholars believe that "the state-owed" in the constitution cannot be understood placed in the "constitution" article 13 which is about private property rights. And it should be understood from the constitution article 12--public property. In this way, the state-owed ownership in <the Property Law> should be placed under the constitutional system of state-owed to understand. Some scholars also believe that ownership by the whole people and collective ownership are essentially empty ownership, so that it cannot be used in the fact. As reflected in the economic and monetary indicators, trillions of assets are frozen. Therefore, the right to use is of great importance, because the ownership has been conceptualized, and the right to use is the largest real estate right. Therefore, China's system has a special place for the right to use. The right of use also has a special status in China. Even that different from the general practice of regarding ownership as the core of real estate, the right to use in China is actually the core right of real estate. See LI ZhongXia(李忠夏), *Guojia Suoyou de Xianfa Jiedu – Yichang Meili de Wuhui (国家所有的宪法解读——一场美丽的误会) [The State-owed in Constitution of China—a perfect misunderstanding],* Tsinghua University Law Review, vol.5, P.34-45 (2015).

> the whole people, units under collective ownership and individuals shall be registered and catalogued by the local people's governments at or above the county level, certified and issued certificates, and the right to use shall be confirmed. The right of ownership or use of woodlands and grasslands and the right to use water surfaces and beaches shall be confirmed in accordance with the relevant provisions of the <Forest Law>, the <Grassland Law> and the <Fisheries Law> respectively.
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> **Article 10**: If the ownership or right to use the land is changed in accordance with the law, it must go through the procedures of registering the change of ownership of the land and replacing the certificate.

The above law excerpts are all about land registration, no house registration. This situation of separate registration of real estate continued until 2010s. A reform started in 2010. A significant change was the reform of the establishment of institutions. In the past, land rights were registered by the Land and Resources Bureaus of governments at county level, while house registration was handled by the House Registration and Management Center which is the special registration authority at county level. In recent years, after successive reforms across China,[26] the above two institution are merged into one--the Real Estate Registration and Management Center. In fact, it is made by integrating the land registration authority originally belonging to the Land and Resources Bureaus into the House Registration and Management Center to make it a true real estate registration authority. The following part will focus on the reform of unified registration of real estate in China in recent years, which is the first step of real estate registration reform.

### 3. Reform Process and Achievements

#### a. Reform Schedule and Directions

The reform was first carried out in Guangdong, the bridgehead of Reform and Opening up policy in China. In April 2014, Guangdong provincial Department of Land and Resources established the leaders-group and office for unified real estate registration reform, which was the prelude of the unified real estate registration reform throughout the province. After the relevant policies of the Ministry of Land and Resources were issued, Guangdong began to formulate the implementation rules, and started experiments in Guangzhou and Shenzhen firstly, and then spread out in the whole province.[27] Since 2014, the unified real estate registration system would be fully

[26] Any reform measures in China are not usually rolled out across the country at the same time. Instead, it will be tested in a certain place, successfully followed by widespread adoption, and eventually nationwide. So, it's going to take about three to five years for a reform measure to spread across the country.

[27] Available at: https://baike.baidu.com/item/%E4%B8%8D%E5%8A%A8%E4%BA%A7%E7%99%BB%E8%AE%B0/2666287?fr=aladdin (15.6.2024).

implemented in about 3 years, and the unified information management platform of real estate registration can be run in about 4 years, finally forming a unified real estate registration system. To be specific, the basic system for unified registration would be established in 2014, the implementation transition of the unified registration system was promoted in 2015, and the unified registration system was fully implemented in 2016. By 2018, the information management platform for real estate registration would be put into operation, and the unified real estate registration system would be basically formed.[28]

b. Reform Practice and Achievements

In practice, since the <Interim Regulations on Real Estate Registration>[29] was issued on March 1, 2015, several cities including Qingdao, Xiamen, Guangzhou and Shenzhen have launched the unified real estate registration system before Beijing and issued the certificate of real estate right. Nanjing, Dalian, Shenyang and other cities also moved afterward. Beijing officially implemented the unified real estate registration system on November 9, 2015.[30] Citizens of 16 Districts and Counties in Beijing would apply for a new certificate of real estate ownership instead of the previous "House Certificate". In addition, the original certificates will continue to be valid following the principle of "non-retroactivity". The rights on the old certificate will not be changed and the certificates will not be changed compulsively. The reform would go forward gradually and new certificates take place with the old step by step in order that no burdens would be added to citizens and enterprises. Shanghai also began to implement the unified real estate registration system in the whole city on October 8, 2016.

It was reported that by 2017 the provincial real estate registration integration has been completed in China: city (state) level 187, accounting for 56%; the county (district) level, 1,125, accounting for 40% of the total. By the end of 2017, it was difficult for the institutions integration of real estate registration be completed in municipal and county level. However, it has been accomplished up to now. This marks the true unified real estate registration has been established in China.

The unified registration includes a unified organ, unified legal basis, a unified bookkeeping and a unified information platform--four unifications. It focuses on legal construction, and establishes a comprehensive framework at various levels including laws, regulations, policies and technical specifications. Efforts have been made to build an information-sharing platform to realize real-time exchange and sharing of various kinds of real estate registering and transaction. This will improve the administrative

[28] The Ministry of Land and Resources has set a unified registration schedule for land and houses, which would be fully implemented after 3 years. XINHUA NET (22 Apr. 2014).
[29] The <Interim Regulations on Real Estate Registration> came into force on March 1, 2015 . LAND TRANSFER INFORMATION NET (25 Oct. 2016).
[30] Beijing, as the center of Chinese politics, has been the most conservative and stable place in China at all reforms. So, every reform policy is last in Beijing. Beijing doesn't allow any political missteps.

efficiency of the governments, make it easier for the society to inquire information and provide effective services. Gradually the next step is to expand the application field of information platform to create conditions for the establishment and improvement of social credit investigation system and national natural resource asset management system in China.

Up to now, the unified real estate registration in China has been basically established nationwide. But it is still in its infancy and its beginnings. A more mature and complete approach requires constant experience from both of practice and theory. Because the current main regulation is only a temporary regulation--temporary and lower-ranked regulation, there is no state legislation at higher ranking.[31]

## II. REGULATIONS IN EU, GERMANY, FRANCE

### A. Coordination Condition Within EU

The above is an introduction to the historical development, current situation, reform and future trend of real estate registration in China. The author tries the best to give a comprehensive presentation to the readers. But in the following part, the author will discuss the German law and French law as EU member states respectively at a certain point, instead of comprehensively introducing the real estate registration system of these two legal systems. For German law, the author focuses on the special institution setting of its registration authority, while for French law, the author focuses on the legal significance of real estate registration. These two points are the most special of them, which are also different from China and other legal areas. Therefore, the author will not comment on the general introductions, limited to the length of the article.

There is no unified real estate registration system within EU. That is because firstly real estate registration is still a matter of national sovereignty. In addition, due to different legal traditions and different real estate registration habits formed in history, and the real estate registration itself is sensitive, EU member states usually keep real estate registration firmly in their own hands. So, the trend of legislation harmonization in real estate registration is not big. The EU only has real estate registration information sharing under certain conditions. On one hand, real estate has the strongest immovable characteristics, and the relevant laws about real estate are usually governed by the laws of the place where it is located-- principle of territorial jurisdiction. On the other hand, real estate registration information often belongs to the category of personal privacy,

[31] <Provisional Regulations on the Registration of Real Property> was formulated and issued by the State Council.
The State Council is the central administrative organ, not the legislature organ in China. The legislature organ is the National People's Congress. So, to be exact, it's not really a law, and it's just an administrative law and more importantly, a temporary law. Of course, China's legislative habit is to use provisional regulations first, such as the lower-ranked, temporary regulations. Then, it will be revised into regulations according to actual feedback, and finally, it will be upgraded from regulations to national laws.

and the registration authorities will not show it to a third party unless under strict legal procedures. So even information sharing, it is at a very low level. At last, the unification in real estate registration is less important than other more important aspects, and is less relevant to the goals and objects established by the EU Treaties. Article 3 of <EU Treaty> is about aim and goal of establishing the Europe Union. They are to promote peace, its values and the well-being of its people. The Union mainly functioned to "offer its citizens an area of freedom, security and justice without frontiers". In addition, an internal market for the sustainable development is pursued too. So, a harmonized real estate registration does not relate much with the objectives and goals of EU. Therefore, the author will focus on the MS of EU, Germany and France, according to different legal traditions.

## B. Institution Setting in Germany

The real estate registration in Germany has developed much early and mature, and has its own characteristics, some of which are worthy of China's learning and reference. The author holds the views that the most special part lies in the particularity of the institution setting mechanism. Generally speaking, real estate registration institutions setting have three modes: administrative organs, courts and mixed modes.[32] It is quite common to see the model of administrative organs. For example, China's Real Estate Registration Bureau, as an administrative organ, is bound by administrative law. There are also Japan, the United Kingdom, Russia, Australia and the United States, as well as France, as described below.[33] Only Germany, Austria, the Czech Republic and South Korea take courts as register organs.[34] They all come from the experience of German law.[35] Therefore, the German practice of using the court as registration organ is quite special and worthy of researching.

### 1. Judiciary Registry

Although the German real estate registration agency is called the Land Registration Authority (Gundbuchaemter), it is in the charge of the local court

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[32] CHENG Xiao(程啸), *Budongchan Dengji Fa Yanjiu(不动产登记法研究)[Real Estate Law Reaearch]*, Law Press of China, P.107 (2011).

[33] *Id*. P.108.

[34] The South Korea was colonized by Japan from 1909 to 1945. After that, the South Korea completely studied the West and introduced western laws. Its real estate registration is especially famous for German templates. South Korea's civil law is the most typical system which combined French civil law, German civil law, Swiss civil law, etc. And its case law tradition is from UK and US. South Korea's legal transplant is based on the legal traditions of various countries and finally made. Examples of simultaneous transplantation of several civil law systems, such as South Korea, are rare in the world. Its transplantation of western law is not to strengthen the internal theories of the self, but to meet the needs of the regime or the needs of the dictatorship. See ZHENG Xianzhe(郑现喆), *Xifang Fa zai Zhong Han Liangguo de Zhuanyi he Zhuanxing ji Fazhan Yanjiu(西方法在中韩两国的移植和转型及发展研究)[ Analyze on the Transplant of West Laws on China and South Korea]* (15 Aug 2010) (unpublished Ph.D dissertation, Politic Science and Law of East of China University) (on file with Fayuan Library, CUPL).

[35] *Id.* P.109.

(Amtsgerichte (AG)) in accordance with the first sentence of Article 1, Paragraph 1, of the <German Land Registration Regulations>. So, the district court (Amtsgerichte (AG)) is the real estate registration organs. It is responsible for the production of land registers and the administration of land within local region. [36] This can also be found in the German Court Organization Laws (Das Gerichtsverfassungsgesetz). German courts have four levels: the Local Court (Amtsgerichte (AG)), State Court (Landgericht (LG)), State High Court (Oberlandesgericht (OLG)) and Federal Court (Bundesgerichtshof (BGH)). According to article 13 of the Court Organizational Law (Das Gerichtsverfassungsgesetz), the affairs of a local court (Amtsgerichte (AG)) consist of civil cases, domestic matters, non-litigation matters and criminal matters—four parts. At the same time, Article 23a, Paragraph 2, Subparagraph 8 of the Law (Das Gerichtsverfassungsgesetz) stipulates that real estate registration matters are non-litigation events. In terms of hierarchical jurisdiction, land registration belongs to the local courts (Amtsgerichte (AG)) and its jurisdiction is exclusive. From the perspective of regional jurisdiction, local courts (Amtsgerichte (AG)) have regional jurisdiction over all lands within their management range. Of course, the Land Registration Regulation clearly stipulates in Article 1, Paragraph 1, Subparagraph 2: "for the sake of clarity, the area of land registration is in principle the same as the area of town."[37]

### 2. Theory Basis

The theoretical basis of real estate registration by judicial organs rather than administrative organs is to prevent the infringement of private rights by registration organs. In real estate registration, once the registration authority makes an incorrect decision, it is very likely to infringe the rights of the right holders or third party. Therefore, the whole German real estate registration process is set up around how to prevent the registration authorities from making wrong decisions. It is only when professional, neutral, and vetting bodies are responsible for real estate registration that the possible mistakes can be minimized. [38] Clearly, such institutions are nothing but courts. So, the land registration officers are judges whose official activities are judicial rather than administrative. [39]

At the same time this also greatly facilitates the legal relief of the parties. The State Court (Landgericht (LG)) is the appellate court of the Local Court (Amtsgerichte (AG)) under Article 72 of the Land Registration Regulation. Those qualified to make a decision include three full - time judges in the civilian court of the State Courts

[36] Land registration is the main part of real estate registration in Germany, but it does not mean that it is only about land in Germany. On the contrary, other forms of real estate are regarded as rights with land, such as land rights, residential ownership and building ownership.

[37] BAUR, Stürner, Sachenrecht ｜,Law Press 2004, p.278-279.

[38] RECHBERGER & BITTNER, Grundbuchsrecht, S. 125.

[39] More recently, registration has been undertaken by the Rechtspfleger. Rechtspfleger are civil servants of the high judicial institutions in Germany, who share the same professional independence as judges and are required to submit their decisions to judges on limited matters. This role is similar to that of a judicial assistant in China.

(Landgericht (LG)). When a party is dissatisfied with the registration act made by a judge, the legal remedy is to appeal under Article 81, Paragraph 1, of the Land Registration Regulation. The object of the appeal is the decision of the Land Registry (Gundbuchaemter), in particular its refusal to register the application. The decision of the State Court (Landgericht (LG)) may also be appealed to the State High Court (Oberlandesgericht (OLG)) according to the Article 78 of Land Registration Regulation. The reappeal is only de jure examination. In other words, the jurisdiction of the reappeal court (Oberlandesgericht (OLG)) is only to examine whether the judgment of appeal has legal error and whether there is any violation of law provisions.[40] New facts may not be considered. In order, of course, to prevent the State High Courts (Oberlandesgericht (OLG)) from making different decisions on land registration matters, the State High Court (Oberlandesgericht (OLG)) shall refer the reappeal case to the Federal Court (Bundesgerichtshof (BGH)) in accordance with the conditions described in Article 79, Paragraph 2 of the Land Registration Regulation. (It's the idea of maintaining the unity of the law. See Article 28 of the <the Law of Non-Litigation Matters Jurisdiction>, and the second sentence of Paragraph 1 of Article 546 of the <Civil Procedure Law.) [41]

### C. Registration Antagonism in France

The above is the introduction and appraisal of the special institution setting of the German real estate registration authority, and its reference significance for the future development of China's real estate registration, which will be discussed next. Here is a discuss focusing on the legal effect of registration of real estate in France.

As mentioned above, the author intends to highlight the history and shortcomings of China's real estate registration and present the reform direction to the readers as much as possible. This is because China's real estate registration system is undeveloped yet, it is difficult to extract effective theoretical points from it. The system display is OK but the theory analysis is insufficient. On the contrary, in EU especially Germany and France, both have a sophisticated civil law system and mature real estate registration system, so it is possible to explore their theoretical foundations. However, in the face of complex real estate registration system in various aspects, it is impossible for the author to make a comprehensive introduction and review. So, it is better to choose one point that is particularly special and worthy of learning by China's real estate registration system. For Germany, the author concentrated on its neutral judiciary as the registration authority. For France, the author pays no attention to the system design

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[40] WANG Zhicheng(王志成),SNOW, Dennis, KRUPP, Hans Jurgen, *Deguo Budongchan Dengji Zhidu Guanli Fazhan Xianzhuang(2)(德国不动产登记制度管理发展现状(二))[German Real Estate Registration System and Administration Development Status Quo(2)],* Resources and Habitation Environment Journal, P.26-29 (2016).

[41] WOLF, Baur, *Non-litigation Matters Jurisdiction*，vol.Ⅰ，§31；WOLF, Baur, *The Basic Concept of the Law on the Jurisdiction of Non-litigation Matters*，Chapter 5 (2nd ed, 1980).

any more, but to the particularity of the legal effect of registration. Next the author makes an introduction to the various legal effects of real estate registration.

### 1. Three Legislative Styles of Registration

In recent and modern countries, there are roughly three legislative styles about the real property registration modes: Registration Effectiveness, Registration Antagonism and Torrens--mixed registration system.[42] The Registration Effectiveness, also known as the Substantive registration Doctrine or the right registration system, refers to the legislative system in which the real estate right cannot be effective unless it is registered, in the process of establishment, transfer, change and repeal of real estate rights.

The author mentioned above Germany uses Registration Effectiveness doctrine, which was initiated by Germany and adopted by Switzerland, Austria, Hungary and Taiwan of China.[43] As the name implies, registration is one of the effective elements of real right activities, and the Registration Effectiveness has the following legal features: (1) registration is the effective element of real right activities; (2) registration is subject to substantive examination; (3) registration has credibility; (4) compulsory registration is needed; (5) the register centers on real estate; (6) registration is mainly static property rights. Registration Antagonism, also known as Deeds Registration system or Formalist Registration, refers to real rights activities shall take effect immediately after a contract is concluded by the party concerned, but cannot against a third party unless registered. Here, registration is no longer a must for effectiveness, but only for confrontation to third parties. The Registration Antagonism system has the following legal features: (1) registration as the counter element of real right activities; (2) registration shall not be compulsory; (3) formal examination in registration; (4) registration has no credibility; (5) the register adopts the principle of right holders-centered; (6) registration of both static and dynamic real estate rights. It was pioneered by France and adopted by most countries in the world, such as the United States and Italy. It respects the free will of the parties, who can choose to register or not to register according to different transaction types, which can promote the transaction efficiency. It can be seen that the above two different registration forms are completely opposite with each other. They are completely opposite in every aspect and are typical two approaches. It is also adopted by most countries in the world.

However, there is also another registration form, which has integrated some of their characteristics respectively into a mixed registration mode. That is Torrens. Torrens registration system, also known as the Right Deliver Doctrine Registration or

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[42] WANG Xingmin(王兴敏), *Budongchan Dengji Gailun(不动产登记概论) [Introduction to real estate registration]*, P.113-115 (2017).

[43] CHEN Li(陈丽), *Deguo Budongchan Dengji Zhidu ji Chengyin Tanjiu(德国不动产登记制度及成因探究)[Analyze on German Real Estate Registration System and Its Back Reason],* Sheke Zongheng(Xinlilun Ban) Social Sciences Review(New Theory Version), vol. 7, P.34 (2009).

Mixed registration, refers to the registration system that, after substantial examination, the right certificate issued by the registration authority can confirm the real rights. The Torrens is the specialized word to stand for mixed registration system, which was invented by Robert Torrens--a member of the colony's House of Assembly in Australia, to solve some land problems which appeared in Australia, the colony of UK at that time. Those problems cannot be settled by the common law registration mode used in UK and its colonies.[44] So he combined both of the Deeds Registration system and Registration Effectiveness which were popular in Europe. So, the Torrens registration system has the following legal features: (1) registration does not implement comprehensive coercion; (2) registration is subject to substantive examination; (3) registration has credibility; (4) delivery of the certificate of rights; (5) the right burden on the land needs to be registered; (6) setting up a compensation fund. So, it is such a system of real rights registration in which real rights are transferred by means of a certificate issued by the government. It was first created in Australia as a British colony, and has been used only in the relevant countries of the British colonies or in English-speaking countries. It is now adopted by all the states of Australia, New Zealand, England, Scotland, Ireland, most of the provinces of Canada, Singapore, Malaysia, and 12 states (or 10, some scholars say) of the United States, including Colorado and Hawaii.[45]

### 2. Registration Antagonism in France

The above three real estate registration models have their own characteristics and advantages; of course, they are relative and limited to the Country's history and respective situations. They are also prevalent in different forms throughout the world. Such as Germany's Registration Effectiveness, and France's Registration Antagonism (Deeds Registration system) is particularly special and completely different from Germany's tradition. It derived from the unique French civil law tradition and logic and has been used by French legal practices for hundreds of years. The history of the French real estate registration depends on the history of mortgage. It can be said that, as a guarantee of non-transferable possession, in order to ensure the realization of its

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[44] A boom in land speculation and a haphazard grant system resulted in the loss of over 75% of the 40,000 land grants issued in the colony (now state) of South Australia in the early 1800s. To resolve the deficiencies of the common law and deeds registration system, Torrens proposed a new title system in 1858, and it was quickly adopted. The Torrens title system was based on a central registry of all the land in the jurisdiction of South Australia, embodied in the Real Property Act 1886 (SA). All transfers of land are recorded in the register. Most importantly, the owner of the land is established by virtue of his name being recorded in the government's register. The Torrens title also records easements and the creation and discharge of mortgages. The historical origins of the Torrens title are a matter of considerable controversy. See Hoffmann Karl Bernhard Edler von, Deutsches Kolonialrecht, G.J. Göschen, Leipzig 1907, page 121.

[45] LIU Yan(刘艳), *Yingmei Budongchan Dengji Falv Zhidu Yanjiu (英美不动产登记法律制度研究) [Study on Anglo-American Legal System of Real Estate Registration]* (8 Apr. 2014) (unpulished Ph. D dissertation, Shandong University) (on file with Fayuan Library, CUPL).

functions, the mortgage rights instinctively call for publicity so that it can confront the third party. [46]

Levy has pointed out that in France it was the mortgage that led to the establishment of publicity on real estate rights' effectiveness and changes. The secret trade, as a French tradition, was very popular in the 13th to 18th centuries in France.[47] That made trading very unsafe. So, the French Republic enacted the law on October 9, 1795, which established the publicity system for all mortgage rights, so as to protect the establishment of the mortgage loan legal relationship. During this period, every administrative region in France established a mortgage registration authority, which was subordinate to the Financial Management Authority. According to the law in this period, the establishment and transfer of real rights without the form of publicity would lead to that it could not confront the third party, but it would not affect the establishment of real rights themselves. In other words, publicity or not doesn't affect the effectiveness of real rights activities. This is a typical representation of the Registration Antagonism. This kind of registration in France was solidified by the middle of the nineteenth century, and it is still alive today. The Registration Antagonism has been viewed as an internal part of French Civil Law system which spreads many countries throughout of the world. Therefore, France, as a continental European country, and part of civil law tradition system, following by the tradition of Roman law, the legal effect of its real estate registration is quite different from that of Germany. For the above differences between France and Germany and their inspirations to China, the author will discuss them below.

## D. Comparative Analyze and Inspirations to China

The author has explained the history and present situations of real estate registration in China, the institution setting of real estate registration in Germany and the legal effect of real estate registration in France. The differences between Germany and France are rather obvious. Namely, one is registration and the other is publicity. The difference of words using shows the great difference of legal meaning of them.[48] In fact, France and Germany seem to be two different approaches, but the substance is the same. The legal effect of Germany's registration system is consistent with its special institutional setting, that is, real estate registration should be under the control of judicial jurisdiction, because judicial jurisdiction can ensure the legitimacy of the

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[46] In France, the close relationship between publicity of immovable property and the mortgage system can even be proved by the name of the relevant authority. The administrative authority of immovable property publicity in France keeps the name of Conservation des Hypotenuse, which is totally different from the Land Registration Authority in Germany.

[47] The reasons behind this social phenomenon are not discussed here limited by the length. See Ph. Levy, *An Overview of the History of Collateral*, Rev. hist. du droit, cité par Malaurie et Aynès P.257-266 (1987).

[48] XV Kecheng(徐克晟), *Liangda Faxi Budongchan Dengji Zhidu Bijiao Yanjiu (两大法系不动产登记制度比较研究) [Comparative Analyze on the Real Estate Registration in two Legal Traditions]* (25 Oct. 2015) (unpublished Master thesis, Soochow University) (on file with Fayuan Library CUPL).

registration behaviors, so it can guarantee the authenticity and accuracy of registration. On the contrary, in France, the legal effect of the publicity is also in line with its institutional setting. As an administrative organ, the status and function of the publicity authority is only slightly different from the financial department, so it can only examine the legitimacy of legal acts in the form instead of its actual effect.

So, Germany uses Registration Effectiveness doctrine and France uses Registration Antagonism doctrine, each has different register authority institutions and register legal effect. They also represent two different registration systems. For China at present, the legal effect of real estate registration is the same as that of Germany--Registration Effectiveness. In other words, real estate registration is one of the effect elements of real rights change. Only the registered real right change is effective among the parties, while the non-registered real right change has no legal effect at all. [49] But at the same time, China's registry institution setting has not adopted a neutral court like Germany's mode, and adopted the French model—administration organ as registry institution. It can be seen that the legal effect of China's real estate registration and its institutional setting are contradictory. Such a setup is easy to violate the rights of the right holders and is not conducive to the guarantee of transaction security and the promotion of transaction efficiency.

Therefore, the direction of China's real estate registration reform in the future should be the coinciding institution setting and the legal effect. If adopt the Registration Effectiveness doctrine, the court and other neutral institutions should be used as registration organs, while if adopt the Registration Antagonism doctrine, administrative organs can be used as registration organs. But in China's situation, both reforms are difficult to achieve. The first reform is institutional reform. The reason for it is hard to achieve is that under the first kind of reform pattern, the legal effect of real property registration—Registration Effectiveness remains unchanged, only the registration authority needs to be changed from administrative system into the court system. And China's court system business is very busy now, no history and habit of bearing non-litigation affairs. So, it is very hard to increase its non-litigation business suddenly.

Therefore, the author thinks that the second reform pattern is relatively easy to be achieved in theory. The existing registration organ system remains unchanged, and the legal effect of registration is changed from Registration Effectiveness doctrine to Registration Antagonism doctrine. That is because although the Chinese civil law is mostly inherited from the German civil law tradition, there is no such deep historical restraint and traditional concerns as the original Germany civil law tradition, so China can adjust its theory to meet the needs of reality at any time. The Registration

[49] According to the tradition of German civil law, the idea of dichotomy of real activity and contract activity, so the contract is still established despite no legal effect of property rights change. China's civil law system comes from Germany and same as it.

Effectiveness doctrine has not been established completely,[50] the resistance of reforming it into Registration Antagonism is much little. However, as the author mentioned before, China just established the real estate registration system nationwide in 2007. At that time, the reform emphasizes on the registration tradition of real estate registration dichotomy between house and land, which was not shaken by the <Property Law> in 2007 and shall be the reform direction in the future. So, the contradiction between the registration institution and the legal effect of registration discussed in this article was not the major issue for Chinese legislators at that time in 2007. However, with the establishment of a unified real estate registration system nationwide in 2017, the above contradiction has become the major constraint of China's real estate registration system and the direction of the next step of reform.

## CONCLUSION

China's real estate registration has a long history, but in the past, it was generated around levy and the emperor's control of the nation. It has not been effectively implemented in the whole country due to the vast territory in China and lazy administrative system. But modern real estate registration started rather late. It was not until 2007 that the <Property Law> made real estate registration legal status nationwide for the first time. But at that time the real estate was still respectively two registration patterns—house and land. More work needs to be done in the future. So, the unified reform began in 2011, and unified registration was basically achieved nationwide in 2017.

However, further reform is still needed for the legal effect of real estate registration and its institution settings. The author investigates the tradition of real estate registration in continental European countries such as Germany and France. The legal effect of real estate registration and its institutional setting are unified, which has its profound legal basis. Germany adopts Registration Effectiveness and therefore takes the court as the registration authority, while France adopts Registration Antagonist taking the administrative authority as the registration authority. This can be learned for China's next reform. China can change the relatively loose Registration Effectiveness doctrine into Registration Antagonist doctrine to cooperate with the current practice of administrative organs as registration institutions, which is closer to the French model. In this way, the security of the transaction can be guaranteed and the rights of the right holders can be respected.

[50] Even though Registration Effectiveness is the main doctrine adopted in China, there does exist Registration Antagonism in the <Property Law> in 2007. It is used on some big movable property and usufructuary rights. See Article 24, 129, 158, 188, 189 of <Property Law> 2007.