

The risk factors of the land registration system in Mongolia

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Contents

- I. Historical background of the Mongolian land registration system
- II. The main problems of the legal relation between land and building
- III. The problems of the Enforcement of the collateralized immovable property
- IV. The other problems of the new land system
- V. Conclusion

국문초록

이 연구의 개발 시스템은 권리 소유자 및 외자 유치와 관련된 다른 부동산 권한에 대한 보안을 제공하기 위해, 토지, 건물에 대한 등록을 통일 할 필요가 있다는 가정에 기초한다. 부동산 등록 시스템은 시장 경제가 제대로 작동하기 위한 중요한 도구 뿐만 아니라, 이중 등록, 분할 양도 토지 자원의 지속 가능성이 있다. 몽골과 같은 전환 국가에서 도입 법률 및 경제 개혁에 따라, 이중 등록 시스템이 필요한 것보다. 분할 양도가 하나의 통합 시스템으로 가지는 것이 중요하다.

주제어 : 토지, 건물, 부동산, 등록, 양도

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I . Historical background of the Mongolian land registration system

This research is based on the assumption that a formal and developed system is necessary to unified registration for land and buildings in order to provide security for owner rights and for foreign investment and other immovable property rights related to landownership. An immovable property registration system is an important tool for a market economy to work properly, as well as for sustainable management of land resources¹⁾ in dual registration, divided conveyance: a separate hypothec regulation represents an unplanned byproduct of Mongolia's legal and economic transition. In other words, this is the end result of the socialist ideology, centralized economy, the restricting of private property, and also traditions of state monopoly on land.

Mongolia faced a difficult task in creating a registration system for immovable property and title assurance because for most of the nation's history the private or commercial ownership of land was prohibited²⁾. Over this past century Mongolian society has undergone several transformations, each one of which would bring significant changes in property laws. Compared with other countries, the land issue of Mongolia, as a country with livestock husbandry is based on a nomadic life style of herders, which unique and led to land remaining in the exclusive domain of the state³⁾.

1) United Nations, Land Administration guidelines (1996), p7

2) N.Lundendorj, Mongoliin gazriin erkhzuin hariltsaanii tuuhen hogjil (The historical developments of the Mongolian land laws and its legal relations) (2007)

3) N.Lundendorj, Mongold gazriig huvid omjilj baisan eseh talaarkhi tuukhen margaan, tuund hiisen tuukh, philosophy, erkh zuin shinjilgee (The historical, philosophical and legal analyze on the controversial argument of the whether Mongolia had a private land ownership or not), (2005)

With the collapse of the socialist system, the role of private property began to change⁴). The most important change concerned the right of non state actors to own and possess rights in immovable property occurred when privatization was allowed for apartments and land⁵).

The Civil Code defines immovable property as land and objects firmly connected to the land (permanent fixtures) that can not be moved without causing damage⁶). Although, Mongolian civil laws treat land and permanent fixtures attached to the land differently⁷), the definition of immovable property encompasses both types of property. Historically, people could own permanent fixtures as personal property, but only the State could own land. In spite of the abolition of the state monopoly on land in 2002, this separate ownership remained valid in the current legislation. Although this divided system is leading to duplication of effort and more time consuming process of land than might otherwise be necessary, under legal and economic reform the dual registration system is introducing in some transitional countries like Mongolia. It is important that these divided conveyance brought into one unified system. The divided conveyance and dual registration system introduce an extra layer of complication into the property system⁸).

4) N.Lundendorj, Supra note 2, at1.

5) T.Sengedorj, Mongol Ulsiin gazriin hariltsaanii erkх zuin zohitsuulaltiin ylamjлal, shinechlelin зарим аsyыdal, (Some issues of the tradition and reforms in the mongolian land law relation)Gazar, ydirdlaga, erkх zui (2005)

6) Civil Code of Mongolia, (2002). Art 8

7) Law on Collateralization of Immoveable property (Hypothec law), (2009), Law on registration of the right to own a property and other property rights related to it (2002).

8) Frank Bennett, Building Ownership in Modern Japanese Law: Origins of the Immoveable home, 26:75,2000 74-90 (2000).

II. The main problems of the legal relation between land and building

Legally, the relationship between land and buildings was first confronted when privatization began. The Mongolian current legislation concerning transactions in land and legal relationship between land and buildings cannot be understood without some sense of the historical background.

A. The legal foundation of the dual registration system

Mongolia has a duplicate registration of buildings and land⁹⁾. The dual registration system was not the product of a single conscious choice, but the end result of a series of privatization processes. The initial creation of the separate registration was the 1997 Law on Immovable Property Registration. The new land deeds were issued in 2002, as the basis of a new national land privatization. Private land ownership followed the Property Right Registration Law the offering of buildings as security, which recognized the possibility that land and buildings might come to be owned by separate person. This regulation creates a separate registration for land and buildings which are attached to the land. It means the concept of unified title does not exist in Mongolia. Such multiple registrations created additional exercise and expenses for citizens. This Law on Immovable Property Registration required the registration of the land and buildings on separate registers. The same structure of separate registers adapted to a new law named, Law on Registration of the Right to own a Property and Other property Rights Related to it, which came into force in 2003. Immovable Property registration

9) Law on Registration of the right to own a property and other property rights related to it, (2002).

Office changed the name to “The Property Rights Registration Office of Mongolia”, same time with the implementation of the new law¹⁰⁾. Thus a person who owns land which contains a building and registers both receives two certificates from the registration office¹¹⁾.

Mongolia’s Civil Code provides a comprehensive foundation for the country’s private law¹²⁾ as in most civil law systems. Also the civil code¹³⁾ provides that other civil laws must be consistent however, under specific civil law provisions provides that buildings are owned independently of the land beneath. The main problem with this is in the matching of specific civil law provisions with the civil code. Some countries maintain separate registers of buildings for the purpose of taxation, even though within the land registration system the land is taken to include the buildings as well. According to the UNECE basic survey about rights that exist below, on or above ground when asked “Whether building are defined as a part of the land on which they stand?” the 18 countries responded as follows¹⁴⁾; Belarus, Slovakia, Ukraine, including Mongolia and Japan does not defined buildings as part of the land, but other countries, including England defined as building forms a part of the land. As mentioned in the abstract this research is based on an assumption that a formal system is necessary to register land and building together in order to provide secure for land

10) D.Dolgorsuren, Ed horongiin erhiin ylsiin burtgeliin baidal, tylgamdaj bui asyydal, shiidverleh arga zam (The state title registration system, current problems, the way to solve the problems).. (2008).

11) D.Dolgorsuren, Ed horongiin erhiin ylsiin burtgeliin baidal, tylgamdaj bui asyydal, shiidverleh arga zam (The state title registration system, current problems, the way to solve the problems).. (2008).

12) Tim Hansted, supra note 14, at 5.

13) Civil Code of Mongolia, Art 3, (2002).

14) UN ECE, Guidelines on real property units and identifiers united nations New-York and Geneva,(2004)

ownership. Economically, dual registration is a time consuming wasteful one as well¹⁵⁾.

B. Legal foundation for divided conveyancing

This research work is seeking to understand the concept of divided conveyances in Mongolia. Thus this section will provide a legal foundation of the divided conveyance and followed by an overview of some of its consequences. In Mongolia, housing finance has rapidly expanded however, because of the fundamental law governing hypothec lending is undeveloped, the short duration of housing loans today has resulted in greater financial burden on borrowers¹⁶⁾. And the movement on the secondary mortgage securities market provides incentive to improve the primary legal framework as well¹⁷⁾. The hypothec loan and hypothec are the primary assets of the mortgage security system¹⁸⁾. Thus the new Law on Collateralization of the Immovable Property (Hypothec Law) was established on 9th of July, 2009. This new Hypothec law declares the separate hypothec for land and buildings¹⁹⁾.

The principle of divided conveyancing was unambiguously incorporated in the drafting of hypothec law. In case of default, judicial process and interpretation by courts of the Civil Code has made a foreclosure difficult²⁰⁾. And many banks reported that the court is subjective, when processing claims of default and when judging a hypothec default. Thus, the new law

15) Polinsky, A Mitchell, *An Introduction to Law and economics*, New-York, (2003).

16) Margueritte Harlow, *A review of the Mongolian Primary Mortgage market* (2007).

17) Stephen B. Buttler, *Development of Mortgage Securities Laws* (2007).

18) Salomon Smith Barney, *Guide to Mortgage-backed and Asset-backed Securities* (Lakhbir Hayer ed. 2001).

19) *Law on Collateralization of Immovable Property*, (2009).

20) Margueritte Harlow, *A review of the Mongolian Primary Mortgage market* (2007).

attempted to resolve the difficulties created by the practical hypothec market²¹).

During the meeting of the working group on the hypothec law, the parliament member Enkhbayar, who defended the provision for the drafting members, indicated that buildings on the land plots are can be excluded from a hypothec, because hypothecated land should be sold by judicial auction²²). But buildings can be sold by agreement or direct purchase. Discussions which led to this separation of land and buildings are the closest thing we have to direct evidence why such a divided conveyancing system was consciously established in the draft, even if the foreign consult and project members were given a comment²³), which is against the divided conveyancing. Following remarks²⁴) by the members of the working group of the Law on Hypothec, discussion of the provisions of the new draft continues with the following exchange.

Enkhbold²⁵): Building should not be separate from the land, does it? According to the Constitutional law buildings should be a part of the land beneath them.

Enkhbayar²⁶): It separated by this draft. The main point is land is prohibited to sell by non- judicial process. But buildings allowed non-judicial process, such as: public auction and negotiated sale. These create a dual

21) Ul hodloh ed horongiin baritsaanii tuhai huuliin uzel barimtlal (Legal foundation for the Law on Collateralization of immovable property) (2009)

22) Ul hodloh ed horongiin baritsaanii tuhai huuliin ajiin hesgiin huraldaanii temdeglel (The meeting notes of the working group on the Law on Collateralization of immovable property), (2009), available at www.open-parliament.mn.

23) Stephen B. Buttler, *Development of Mortgage Securities Laws* (2007).

24) Ul hodloh ed horongiin baritsaanii tuhai huuliin ajiin hesgiin huraldaanii temdeglel, supra note 131, at 27.

25) Parliament member, (2008-2012)

26) Leader of the working group and parliament member (2008-2012).

process for the land and buildings. Therefore we decided to separate them. According to Article 44 of Hypothec Law the land is prohibited sold by the non-judicial process. If a hypothec in land does not extend to the building, the auction of hypothecated land can then give rise to involuntary separation of ownership.

Also money lenders and landowners may want to use divided conveyancing as a concept, without having encountered the full range of complications which divided conveyancing introduced if both land and buildings are allowed to move freely in the market²⁷⁾. This fact influenced the acceptance of divided conveyance. Mongolia's divided conveyancing system is the product of socialist ideology, centralized economy and the restriction of private property, and also traditions of state monopoly on land.

III. The problems of the Enforcement of the collateralized immovable property

When a hypothec must be foreclosed and the collateral property repossessed creditors in Mongolia, have used a different process for the land and building again. The hypothec law²⁸⁾ established two different enforcements for the collateralized immovable property: judicial forced enforcement²⁹⁾ and non-judicial enforcement³⁰⁾. The civil code provides a procedure for enforcing such a claim upon default required judicially forced sale of the collateralized

27) Marqueritte Harlow, A review of the Mongolian Primary Mortgage market (2007).

28) Law on Collateralization of Immovable Property,(hypothec law), (2009).

29) Forced judicial action means an activity of a sale of real estate pledged as collateral organized by an execution authority of court decisions based on a court decision.

30) Non judicial action may include negotiated sale of collateralized immovable property by auction or by direct purchase.

property³¹). This judicial action is conducted by the procedure stipulated in the Civil Code, the Civil Procedure Code and law on Enforcement of Court decisions. The forced sale of procedure called a not only collusion between bidders and the corruption of auction officials, but also obstructive behavior that undermined the value of the security³²). An auction, which is organized by court, is delayed many times³³). Extensive delays based on the rule, which is the auction will be announced as not conducted, if there was not a competition. Because, in practice, there are many cases that a forced auction was suspended depending on judicial bias. Many creditors argue that courts are already biased towards the interests of debtors and that every opportunity is taken to extend the proceeding. Long delays and uncertainties in the enforcement of hypothec threaten loss of collateral value and loan interest. Whether this is true will of course depend on the jurisdiction, but in any case the long delays in the court proceeding is a problem. When pursuing the forced judicial process of foreclosure, there can be up to five banks has to go through before the process is complete and banks reported that the whole process is takes 2-3 years on average³⁴). Also because of the suspension and announcement of illegal auction, bona-fide purchaser's property rights are violated³⁵).

In 2005, The Law on Non- Judicial Enforcement of Hypothec Rights had extended the right of non-judicial enforcement to all forms of hypothecated objects. This law attempted to establish a more complete set of rules for the creation and enforcement of hypothec claims³⁶). As defined in the law,

31) Civil Code of Mongolia, (2002).

32) Frank Bennett, *Informal Mortgages in the Japanese Courts*, 18 No3 (2009).

33) Margueritte Harlow, *A review of the Mongolian Primary Mortgage market* (2007).

34) *Review of the Mongolian Primary Mortgage market*, (2007), USAID, p. 14.

35) D. Lkhagvahand, *Ui hodloh ed khorongiin burtgel* (The immovable property registration), (2007).

36) *Ipotekiin zuiliig shuuhiin bus jurmaar hudaldan borluulah jurmiin tuhai huuliin uzel barimtlal*

this non-judicial power of sale was available only to banks and other financial institutions, or to their agents³⁷⁾. This law was promulgated because of its procedural advantages, and because of the direct sale had economic attractions for creditors, however, The Constitutional Court decided³⁸⁾ that some provisions of Law on Non-Judicial Enforcement of Hypothec rights are against the principle of equality and autonomy of the participants of the civil law relations.

At the time drafters forcefully argued that, in any case, the banks and other financial institutions are different from the individual lenders: therefore these organizations need a special regulation. Although, the decision of Constitutional Court provided that “the main purpose of Law on Non judicial enforcement of hypothecated property is contradicting the article 14.1 of the Constitutional Law and the principle of the equality of Civil Code, Parliament had repealed some provisions of this law based on the Constitutional Court decision: however this law was valid until the enactment of a new hypothec law. The new hypothec law adapted the non-judicial enforcement rule of hypothecated property from this law, and the same time with the Hypothec law implementation, the Law on Non judicial enforcement of hypothecated property repealed, in June of the 2009³⁹⁾.

The Hypothec law⁴⁰⁾ establishes a more complete set of non judicial rules for the creation and enforcement of hypothec such claims. A non-judicial enforcement opens an opportunity to freedom of contract⁴¹⁾, however

(2006) (Legal foundation on Law on Non-Judicial Enforcement of hypothec rights).

37) Law on Non-Judicial Enforcement of Hypothec rights (2006).

38) Undsen khuuliin tsetsiin shiidveriin emkhtgel No 2/08, (2005) (The Collection of the Constitutional Court decision).

39) Law on Non-Judicial Enforcement of Hypothec Rights is repealed by the parliament on July, (2009).

40) Law on Collateralization of Immovable property (Hypothec law), (2009).

41) Ugo Mattei, Basic principles of property law: A Comparative legal and economic introduction (2000).

exclude a hypothec claims for land. In cases other than specified in the law the hypothecated property should be sold by the court decision or a forced auction. Under Article 44 of the Hypothec Law, the collateral of land and the collateral of state and socially important historical, artistic, cultural and other valuable items that registered or need to be registered in the state registry, cannot be sold by non judicial action. It means the land hypothec is registered non-possessor collateral which has been enforceable only through court action. The building mortgage is a hypothec by registered deed which can include a power of sale without judicial intervention.

Defending judicial action procedures, ownership may be split despite a sale of both land and buildings⁴²). If such practices prevail, it seems rather senseless to deprive the grantor of the original hypothec of his building. There is no good reason to exclude land collateral from non judicial procedure. Also there is no apparent policy reason to prohibit sale of a property complex by non judicial means. In fact, the negotiation and private sale of collateral property would bring better result⁴³). A forced auction is the least efficient method of selling the property and frequently does not produce the best result for the borrower. The end result Article 44 of the Hypothec Law was the recognition of the divided conveyance system Mongolia. Also this exclusion of undefined rights of land use from the hypothec will call the disadvantage of creditors. Also, this legal environment enables the irresponsible borrower behavior and further contributions to the possibility that discourage the loan for land collateral. Thus, hypothec for land should be treated the same way as hypothec of the buildings and other immovable property. An auction and negotiated sale should be permitted hypothec of

42) Frank Bennett, Building Ownership in Modern Japanese Law: Origins of the Immovable home, 26:75,2000 74-90 (2000).

43) Stephen B. Buttler, Housing Finance in emerging markets: Policy and Regulatory Challenges (2003).

the plot of land. If the non judicial sale is permitted to the land there is a no other acceptable reason to divide the conveyance.

IV. The other problems of the new land system

The Registration Law creates a registration system for rights in immovable property-and, by extension in movables, that are simple but problematic.

a. Speed of registration

The initial problem is *speed of registration*. In a developed mortgage market, there is a key legal prerequisite is the timely and cost effective registration of the land title. But in Mongolia, immovable property registration takes from two to three weeks⁴⁴⁾. The Article 166 of the Civil Code⁴⁵⁾ states that ownership and other rights of immovable properties are valid only if they are registered in the national register. According to the Registration Law⁴⁶⁾ state registrar of property rights would not accept a hypothec registration until the property rights over the immovable was first registered. Theoretically, since the owner's title is not legally valid prior to completion of registration he or she is incapable of creating a valid hypothec until that right to immovable is registered. Because of this principle, it is impossible to simultaneously submit a contract of conveyance and hypothec to the registry. This process creates difficulties in speed of registration. It means lending transaction

44) Marguerite Harlow, A review of the Mongolian Primary Mortgage market, (2007).

45) Article 166 (1) of Civil Code provides that hypothec is created with its registration with the State register.

46) Law on Registration of the Right to own a Property and Other property Rights Related to it, Art.

won't complete until the hypothec right actually has been registered.

b. Incomplete building registration

Second main problem, which is created by the Registration Law, is the registration of incomplete construction as immovable property. The creditor may register a hypothec against the land and take separate collateral of the materials included in the incomplete construction object⁴⁷⁾. This is the subject of the following case⁴⁸⁾.

Mongolian company Eco Construction LLC (Eco company) had the building right and possession right on state owned land. Eco Company established an apartment order contract with the citizens, who were the future owners and founded a fund for the new building. In the middle of the construction Eco company ran into financial difficulties and borrowed money from the bank B. Thus they registered the incomplete building in the state registration office and received an immovable property certificate. Following this Eco Company grants a security over his incomplete building to bank B. Then Eco Company finished the building with help of this loan. The new owners of the apartments moved to the new house and registered their ownership right in the State Registration Office in accordance with the list of the contract. But Eco Company failed to repay the loan on the due date. Then the bank began foreclosure proceedings on default. According to the court decision the state registration of the apartment owners was repealed. Even if the court decision was according to the law, in this case the apartment buyer's legal rights are infringed. In other words, the problem is that the

47) Stephen B. Buttler, *Development of Mortgage Securities Laws* (2007).

48) This case is not decided yet. It is under proceeding. The researcher received information from the friend, who is working in the Immoveable property registration office, by email (bayarsukh@yahoo.com) Case is translated by the researcher.

Registration law creates uncertainty of rights by unfinished building registration. If the courts understand by the law to grant rectifications to the hypothec right holders, the registration system would provide no security for property rights and reliance on the register would make no sense. This problem was also created by the dual registration system.

c. State owned land problem

In Mongolia, state owned land is excluded from the immovable property registration. In many countries the land is held by the nation for the benefit of the community is poorly documented⁴⁹⁾. This is not a problem in countries where the state owns all lands. But where, like Mongolia, there is a private land ownership, that which remains in the possession of the state should be properly controlled. Most of state owned land is leased under possession or use rights⁵⁰⁾. An ownership rights are more fully and accurately, if the state had to register all its rights of state owned immovable⁵¹⁾. State needs to control its property assets and to ensure their efficient use as much as private citizen. A system of registration of title to land will facilitate this. Also, under the Hypothec law ⁵²⁾ an authorized state agency that administers the state or municipally owned immovable property issues a decision to create a hypothec on state owned property. The right to lease an immovable property can be an object of hypothec with the permission of the lessor⁵³⁾. The registration of ordinary leases requires the specific consent of the property owner⁵⁴⁾. In other to promote development of land

49) United Nations, Land Administration guidelines (1996).

50) Sh.Batsukh, Good governance and good land administration in Mongolia, (2007).

51) S. Rowton Simpson, Land law, (2007).

52) Law on Collateralization of immovable property (Hypothec law), (2009).

53) Law on Collateralization of Immovable property (Hypothec law), (2009).

54) Law on Collateralization of Immovable property (Hypothec law), (2009).

markets, holders of long term rights of use or lease of state and municipal land should be permitted to hypothec without consent of the land owner⁵⁵).

V. CONCLUSION

Good governance, private ownership of land and secure tenure are foundation for social and economic development⁵⁶). Although each country has a different set of civil laws, they share a common approach to the problems of land registration and have similar ways of defining and conceptualizing these. This research used a comparative study to recognize international trends and to give some recommendations to the problems in the land transactions of Mongolia. The law should be seen as a significant step towards the creation of an effective national registration system however the Mongolian civil laws create a separate registration for land and buildings, which is totally different from the orthodox concept. As mentioned before this separation is the unconscious choice but unavoidable. The initial and main recommendation of this paper is the specific Mongolian civil laws that should match with the civil code. If the dual registration and divided conveyance system under civil laws converted to a unified system, there would not be other problems such as unfinished building or divided foreclosure. These all the problematic issues are created by the dual registration only. This research offers some following recommendations based on the assumption, as mentioned before, that a formal and developed system is necessary to unified registration for land and buildings in other to provide secure for owner right, foreign investment and other immovable property rights related

55) Stepen B. Buttler, *Development of Mortgage Securities Laws* (2007).

56) United Nations, *supra* note 51, at 12.

to landownership.

Recommendations

1. Legally, land extends downwards below the surface of the earth and upwards into the sky. Land includes all permanent buildings and construction erected construction, all vegetation growing on it, and areas covered by water such as seas and lakes in orthodox jurisdiction. In Mongolia, legally, differentiate between the land and buildings attached. The land rights should extend downwards below the surface of the earth, upwards into the, and relates to all things permanently attached to the soil.
2. Mongolia's Civil Code provides a comprehensive foundation of the country's private law⁵⁷⁾, like in most civil law systems. Also the Civil Code⁵⁸⁾ provides that other civil laws must be consistent with the Code. However, as mentioned before, under specific civil law provisions provides that buildings are owned independently of the land beneath them in it. The main recommendation for this is the matching of specific civil law provisions with the Civil Code.
3. In all countries, the state is the major owner of land. It influenced the immovable property market not only its role as regulator but also as a participant. State needs to operate in the same way as any other landowner with regard to registration of rights in land so that conflicts of interest that may otherwise arise from combining these two roles can be reduced. There should be equal access to land related registration for all land relation participants. Therefore state owned land title should be registered.
4. The hypothec of a land plot should not be permitted without hypothec of

57) Tim Hansted, *supra* note 14, at 5.

58) Civil Code of Mongolia,(2002). Art 3.

all buildings and structures located on the land. And if borrowers want to exclude structures from the hypothec they should first be required to subdivide the land under the structures and thereby create a new land plots as unique object. This separation will bring to resolve the types of disputes that may arise under this provision of hypothec law.

5. Legal restrictions on ownership and use of land by foreigners are designed to achieve a variety of policy issues, which evoke nationalist and protective sentiments. But in other hand this legal restrictions on foreign ownership may limit the foreign investment. It is useful to learn the lessons and performance of other countries in their land liberalization policy. For instance number of countries, including Korea and Thailand to consider changes their restrictions on foreign land ownership⁵⁹⁾. It might be useful if the land law agrees the foreign investment under long term possession, where people not settled areas.
6. Since the developed hypothec market requirement is a cost-effective property foreclosure process for property, it is better to adopt a doctrine unified conveyancing system and non judicial foreclosure procedure for land hypothec. This recommendation is based on disadvantage of creditors that is exclusion and undefined rights of land use from the hypothec

Abbreviations and Terms

ALAGaC	Administration of Land Affairs, Geodesy and cartography
FDI	Foreign Direct Investment
UN ECE	United Nations Economic Commissions for Europe
UN	United Nations

59) Novel V. Bangsal, *Foreign Land ownership: A survey of Regulatory Approaches in selected countries*, (2009).

MNT	Mongolian Tugrik (as 15.12. 2009: 1USD=1,456,000 MNT)
Aimag	Province
Khasaa	Parcel hedged with a wooden fence
Ger	Felt tent
Soum	Subdivision of a Province
Myangad	Administrative unit, which includes one thousand soldiers.
Shanyui	Title used by the nomadic supreme rulers of middle and Central Asia during the Qin and Hunnu dynasties.
State Great Hural	Parliament of Mongolia

United Nations, Land Administration guidelines, 1996.

N.Lundendorj, Mongoliin gazriin erkhzuin hariltsaanii tuuhen hogjil (The historical developments of the Mongolian land laws and its legal relations), 2007.

T.Sengedorj, Mongol Ulsiin gazriin hariltsaanii erkh zuin zohitsuulaltiin ylamjal, shinechleliin zarim asyydal, (Some issues of the tradition and reforms in the mongolian land law relation)Gazar, ydirdlaga, erkh zui, 2005.

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Frank Bennett, Building Ownership in Modern Japanese Law: Origins of the Immovable home, 26:75, 2000.

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D.Dolgorsuren, Ed horongiin erhiin ylsiin burtgeliin baidal, tylgamdaj bui asyydal, shiidverleh arga zam (The state title registration system, current problems, the way to solve the problems).., 2008.

- UN ECE, Guidelines on real property units and identifiers united nations New-York and Geneva, 2004.
- D.Dolgorsuren, Ed horongiin erhiin ylsiin burtgeliin baidal, tylgamdaj bui asyydal, shiidverleh arga zam (The state title registration system, current problems, the way to solve the problems), 2008.
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- Ul hodloh ed horongiin baritsanii tuhai huuliin uzel barimtlal (Legal foundation for the Law on Collateralization of immovable property), 2009.
- Parliament member, 2008-2012.
- Stephen B. Buttler, Development of Mortgage Securities Laws, 2007.
- Leader of the working group and parliament member, 2008-2012.
- Marqueritte Harlow, A review of the Mongolian Primary Mortgage market, 2007.
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[Abstract]

The risk factors of the land registration system in Mongolia

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This research is based on the assumption that a formal and developed system is necessary to unified registration for land and buildings in order to provide security for owner rights and for foreign investment and other immovable property rights related to landownership. An immovable property registration system is an important tool for a market economy to work properly, as well as for sustainable management of land resources in dual registration, divided conveyance; a separate hypothec regulation represents an unplanned byproduct of Mongolia's legal and economic transition. In other words, this is the end result of the socialist ideology, centralized economy, the restricting of private property, and also traditions of state monopoly on land.

Mongolia faced a difficult task in creating a registration system for immovable property and title assurance because for most of the nation's history the private or commercial ownership of land was prohibited. Over this past century Mongolian society has undergone several transformations, each one of which would bring significant changes in property laws. Compared with other countries, the land issue of Mongolia, as a country with livestock husbandry is based on a nomadic life style of herders, which unique and led to land remaining in the exclusive domain of the state. With the collapse of the socialist system, the role of private property began to change. The

most important change concerned the right of non state actors to own and possess rights in immovable property occurred when privatization was allowed for apartments and land.

The Civil Code defines immovable property as land and objects firmly connected to the land (permanent fixtures) that can not be moved without causing damage. Although, Mongolian civil laws treat land and permanent fixtures attached to the land differently, the definition of immovable property encompasses both types of property. Historically, people could own permanent fixtures as personal property, but only the State could own land. In spite of the abolition of the state monopoly on land in 2002, this separate ownership remained valid in the current legislation. Although this divided system is leading to duplication of effort and more time consuming process of land than might otherwise be necessary, under legal and economic reform the dual registration system is introducing in some transitional countries like Mongolia. It is important that these divided conveyance brought into one unified system. The divided conveyance and dual registration system introduce an extra layer of complication into the property system.

Key words : land, building, estate, register, transfer