

On the Rural Land Consolidation Procedure Legislation's Perfection in China

LE PERFECTION DE LA LEGISLATION FONCIERE RURALE DE LA PROCEDURE DE CONSOLIDATION EN CHINE

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Abstract

The rural land consolidation procedure legislation's scientific degree is lower in China; it can't guide the rural land consolidation process systematically and normatively. The integral research on legislative practice includes two aspects, i.e., legislative system and legislative content. To do the theoretical research based on legislative text is the most relevant research methods. To perfect the rural land consolidation procedure legislation in China by the formulation or modification of relevant legislation is very necessary and possible.

Key words: Rural land consolidation; Procedure; Legislative system; Legislative content

Résumé

Le diplôme scientifique de la législation foncière rurale de la procédure de consolidation est le plus bas en Chine, il ne peut pas guider le processus de consolidation des terres rurales systématiquement et normativement. La recherche intégrée sur la pratique législative comporte deux aspects, à savoir, le système législatif et le contenu législatif. Pour faire de la recherche théorique basée sur le texte législatif est des méthodes de recherche les plus pertinents. Pour parfaire la législation foncière rurale de consolidation procédure en Chine par la formulation ou la modification de la législation pertinente est très nécessaire et possible.

Mots clés: Le remembrement rural; Procédure; Système législatif; Contenu législatif

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Rural land consolidation procedure refers to the program and order of carrying through rural land consolidation activities. "Legal process represents the program and order of laws' formulation and application activities. Rules of procedure provide the general conditions of public policy-making, including decision-making bodies' power sources and composition, steps and rules of exercising powers, etc. (SONG, 2007)" Scientific rural land consolidation procedure is a necessary element to realize the standardized guide on rural land consolidation progress system. However, due to the fragmented status and the insufficiency of system and content of rural land consolidation procedure legislation in China, which hinders the effective operation of rural land consolidation, it becomes critical to perfect the rural land consolidation procedure legislation in China.

1. AN OVERVIEW OF RURAL LAND CONSOLIDATION PROCEDURE LEGISLATION IN CHINA

The relevant legislations of rural land consolidation procedure legislation in China mainly consist of departmental regulations, local laws and regulations, and regulations of local governments. Departmental regulations include "Notice on Further Strengthening the Management of Land Development and Consolidation by Ministry of Land and Resources in 1998", "Some Suggestions for Planning and Management of Land

Development and Consolidation in 2002”, “Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project in 2003”, “Interim Measures for the Approval of the Provincial Land Development and Consolidation Planning in 2003”, “Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project in 2003”, “Suggestions on Well Dealing with the Ownership Management of Land Consolidation by Ministry of Land and Natural Resources in 2003” issued by Ministry of Land and Resources; the local law and regulation refers to “Regulations of Land Development and Consolidation in Hunan Province in 2006”; regulations of local governments include “Administrative Measures for Land Development and Consolidation in Hebei Province in 2002”, “Interim Measures for Land Reserve and Consolidation Management in Hainan Province in 2006”, “Provisions of Land Development and Consolidation Management in Tianjin in 2008”. “Stipulation of Simplifying the Management Procedures of Land Development and Consolidation Project in the Area of Tongren in Guizhou Province” is the only lower-hierarchical local normative document contained in the legislation in the broadest sense.

“Notice on Further Strengthening the Management of Land Development and Consolidation by Ministry of Land and Resources” designs 7 phases for the management procedure of land development and consolidation in the third part of “Taking effective measures to strengthen the management of land development and consolidation”: the planning of land development and consolidation, the demonstration of project feasibility, design of project, examination and approval of project, implementation and supervision of project, acceptance inspection of project and the ownership management of land development and consolidation. Article 6 and 9 of “Some Suggestions for the Planning and Management of Land Development and Consolidation” specifically stipulate the programming procedure and approval procedure. Article 7, 8, 10, 12, 14 and 15 of “Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project” devise 5 stages for the procedure of completion acceptance on national investment for land development and consolidation project: application for preliminary completion inspection, application for completion acceptance, completion acceptance, submitting report of completion acceptance, and examination and approval of completion acceptance. The fourth section of “Interim Measures for the Approval of the Provincial Land Development and Consolidation Planning” divides the procedure of review and approval into 2 steps of preliminary review and submitting for approval, and devises 4 stages

for approval which include application for approval, review, joint review and reply. Chapter 2, 3, 4 and 5 of “Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project” respectively present a systematic provision for the implementation preparation, project construction, preparation for completion acceptance, supervision and inspection of national investment for land development and consolidation project, while in fact separate the implementation management procedure of land development and consolidation project into 4 steps. Article 5, 6, 7 and 9 of “Suggestions on Well Dealing with the Ownership Management of Land Consolidation by Ministry of Land and Natural Resources” design 4 phases for the ownership management procedure of land development and consolidation, including formulation of ownership adjustment plan, proclamation of ownership adjustment plan, examination and approval of ownership adjustment plan, and re-confirmation of land rights. Chapter 2, 3 and 4 of “Regulations of Land Development and Consolidation in Hunan Province” respectively make a systematic stipulation of land development and consolidation planning, project approval, implementation and protection for land rights, while actually divide the land development and consolidation procedure into 4 steps of planning, project approval, implementation and ownership adjustment. “Administrative Measures for Land Development and Consolidation in Hebei Province” separately gives a systematic provision in Chapter 2, 3 and 4 for the approval, implementation and acceptance of land development and consolidation project, while in fact divides the land development and consolidation procedure into 3 steps. “Interim Measures for Land Reserve and Consolidation Management in Hainan Province” specifically stipulates the land reserve and consolidation procedure under withdrawing and purchasing ways in the 9th and 10th article. Article 12 of “Provisions of Land Development and Consolidation Management in Tianjin” clearly divides the land development and consolidation procedure into 5 steps of approval, planning, budgeting, implementation and completion acceptance, article 14 and 19 respectively make specific provisions for application and acceptance procedure of land development and consolidation project. “Stipulation of Simplifying the management procedure of land development and consolidation project in the Area of Tongren in Guizhou Province” makes specific provisions for the management procedure of land development and consolidation project, and respectively designs 7 phases of project’s combination, application, approval, planning, implementation, calculation of newly added agricultural acreage and completion acceptance, and classifies project acceptance procedure into 3 steps of self-inspection, preliminary inspection and acceptance.

2. THE DEFECTS OF RURAL LAND CONSOLIDATION PROCEDURE LEGISLATION IN CHINA

2.1 Unsound Legislative System

2.1.1 Weak Legislation Specialization

Except “Stipulation of Simplifying the management procedure of land development and consolidation project in the Area of Tongren in Guizhou Province”, relative legislations of rural land consolidation procedure in China are all non-specialized provisions, while they put more emphasis on comprehensive stipulations which refer to problems of rural land consolidation procedure. Weak procedure legislation specialization has been the “macronosia” of China’s legislation, even if the legislative procedural law and judicial procedure law are basically sound, the absence of unified administrative procedure law represents to some extent that legislative tradition of “Value entity more than the procedure” doesn’t change thoroughly.

2.1.2 Low Legislation Hierarchy

Though relative legislations of Chinese rural land consolidation procedure have made specific stipulations from different hierarchies which involve all aspects of rural land consolidation, legislations of higher-hierarchy laws and administrative regulations doesn’t touch upon problems of rural land consolidation procedure. Of course, such problems are mainly caused by the lack of China’s rural land consolidation departmental law system’s integrity.

2.1.3 Unsound Regulating System of Legislation

In terms of existing local laws and regulations, regulations of local governments and local normative documents, their legislative subjects are the Standing Committee of People’s Congress in Hunan Province, People’s Government of Hebei Province, People’s Government of Hainan Province, People’s Government of Tianjin and Administrative Office of Tongren Prefecture in Guizhou Province. In addition to keeping consistent with principled provisions of high-hierarchy procedure legislation, low-hierarchy procedure legislation should highlight the flexible provisions of region difference much more. Rural land consolidation in China has formed three kinds of typical normal operating mode at present, including the comprehensive consolidation of “field, water, roads, woods and villages” in the area of plains, the comprehensive consolidation of “mountains, forests, fields, water and villages” in hilly and mountainous area and single land consolidation (FU, WANG, & WANG, 2007). Then, it’s more necessary for rural land consolidation procedure to reflect local characteristic, and flexible legislations like “Stipulation of Simplifying the management procedure of land development and consolidation project in the Area of Tongren” should

be popularized. However, there is only one such kind of legislation. Or from the generalized summary of legislative subjects of local laws and regulations, regulations of local governments and local normative documents, we can still see that most provincial places except for Hunan, Hebei, Hainan, Tianjin and Guizhou doesn’t start rural land consolidation procedure legislation or relevant legislation. Doesn’t rural land consolidation of other provincial regions have local characteristics or need more specific and flexible procedure stipulation to guide their rural land consolidation activities? Certainly, the emergence of such a phenomenon was often the result of imperfect passive-type legislative practices or legislative set-up procedure of legislative subjects at all levels in China.

2.2 Unclear Definition of Legislation Content

Each phase of rural land consolidation activities about rural land consolidation procedure content stated by relevant legislations has begun to take shape, but still has deficiencies in two aspects.

2.2.1 Design of Rural Land Consolidation Procedure Content is Limited to “Management”, While Ignoring “Farmers’ Participation”

Except for “Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project”, “Interim Measures for the Approval of the Provincial Land Development and Consolidation Planning” and “Regulations of Land Development and Consolidation in Hunan Province”, the rest of 11 relevant legislations are all are labeled as “management” in name. To a great extent rural land consolidation activities are defined as a kind of administrative management activities carried out by governments for protecting cultivated land, or at most a sort of governments-led quasi-administrative contract actions. They stress that our country’s encouragement and governments’ support should be the premise of rural land consolidation, and general land use planning formulated by the government should be the basis. Although the corresponding management function of government’s functional departments had been realization in the design of steps or phases, farmers’ participation in the steps or phases is neglected. Actually, farmers’ understanding and participation in rural land consolidation decide effectiveness of such sort of activities. In the planning of rural land consolidation steps or phases, we should reserve space for farmers’ participation and let them join in the whole process of rural land consolidation activities. “Government departments should give the public the opportunity and approach to express their wishes, and form a multilateral interaction mechanism of ‘government - experts - the public’ (YAN, 2008)”.

2.2.2 Certain Contradictions Exist in the Content of Low-Hierarchy Rural Land Consolidation Procedure Legislation

Departmental regulations, local laws and regulations, and regulations of local governments belong to low-hierarchy legislations below constitution, laws and administrative regulations. “Notice on Further Strengthening the Management of Land Development and Consolidation by Ministry of Land and Resources” divides rural land consolidation procedure into 7 phases which are the planning of land development and consolidation, the demonstration of project feasibility, design of project, examination and approval of project, implementation and supervision of project, acceptance inspection of project and the ownership management of land development and consolidation. “Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project” classifies rural land consolidation procedure into 4 steps which include implementation preparation, project construction, and preparation for completion acceptance, supervision and inspection. “Regulations of Land Development and Consolidation in Hunan Province” splits rural land consolidation procedure into 4 steps, including planning, project approval, implementation and ownership adjustment. The rural land consolidation procedure is divided into 3 steps in the “Administrative Measures for Land Development and Consolidation in Hebei Province”: project approval, implementation, check and acceptance. “Provisions of Land Development and Consolidation Management in Tianjin” divides rural land development and consolidation procedure into 5 steps of project approval, planning and design, budgeting, implementation and completion acceptance. Of course, as the different focuses that the above 5 legislations design their respective procedure lead to the difference of procedure content they describe; moreover, overlap exists in the specific content of these different interpretations of phases and steps. Therefore, the difference of procedure content expression should not be equaled to legislation contradiction. However, what is undeniable is that the intersection and overlap of application scope will inevitably happen in their respective application process, which easily cause application plight. There should be higher-hierarchy legislations to provide principled stipulations on the expressions of rural land consolidation steps or phases, which may be helpful to bridge the application problems caused by diverse interpretations of low-hierarchy legislations through explanation and other methods.

3. THE PERFECTING WAYS OF RURAL LAND CONSOLIDATION PROCEDURE LEGISLATION IN CHINA

3.1 Improving the Legislative System of Rural Land Consolidation Procedure Legislation

The legislative system of rural land consolidation procedure legislation can be improved in the process of constructing Chinese rural land consolidation departmental law system.

3.1.1 Formulating Relevant Provisions of Legal Hierarchy

“It’s really necessary to build a complete rural land consolidation departmental law system cored with the Rural Land Consolidation Act of People’s Republic of China and complemented by related supporting laws and regulations. (ZHAO, 2010)” German related legislative experience and specific rural land consolidation procedure design can be incorporated into the formulation of the Rural Land Consolidation Act of People’s Republic of China in the future with principled stipulations by one chapter of each phase. As the legislative system in China is multilevel and compound, specific implementing provisions can be set up through administrative laws and regulations and low-hierarchy departmental rules, local laws and regulations, and rules of local governments. Hence, the procedure design of legal hierarchy is not necessary to be too meticulous, and three stages of project approval, implementation and acceptance on the basis of drawing on the existing legislative experience of procedure can be passable.

3.1.2 Establishing Relevant Provisions of Administrative Laws and Regulations

We may consider refining rural land consolidation procedure content via specific provisions in accordance with relevant principled stipulations of legal hierarchy in the “Regulations of Rural Land Consolidation Procedure” formulated by the State Council. German related legislative experience can be borrowed to divide the three stages of project approval, implementation and acceptance into 9 phases or more, and to specifically stipulate each phase with one chapter. At the same time, we must take account of local features of rural land consolidation throughout China for highlighting legislative flexibility, and can classify the detailing stage as necessary phase and optional phase. Necessary phase and principled provisions of legal hierarchy shall be the basis of specific local legislation for each place; optional phase can be selective reference for each place according to its local characteristics of rural land consolidation.

3.1.3 Modifying and Drawing up Relevant Regulations of Low-Hierarchy Legislation

First of all, we need to sort out the existing 12 departmental regulations, local laws and regulations and rules of local governments, and to modify them in combination with the content of high-hierarchy legislation. Then we should further intensify the implementation characteristic of low-hierarchy legislation, and orientate the relevant provisions of low-hierarchy legislation with “implementation regulations”. Afterwards, we should promote more local governments to start the formulating

procedure of local laws and regulations, rules of local governments or local normative documents. Under the premise that no contradiction exists with higher-level laws, the detailed regulations of rural land consolidation procedures with local features as “Stipulation of Simplifying the Management Procedures of Land Development and Consolidation Project in the Area of Tongren in Guizhou Province” should be established in accordance with local conditions.

3.2 Formulating the Principled Content of Rural Land Consolidation Procedure Legislation in the Legal Hierarchy

Rural land consolidation can be divided into 3 phases of project approval, implementation and acceptance in principle, therefore 3 chapters of “Project Approval”, “Project Implementation” and “Project Acceptance” can be established in the future “Rural Land Consolidation Act of the People’s Republic of China”.

3.2.1 The Section of Project Approval

This section consists of the three phases of planning, examination and approval, and designing.

The first is planning. In order to carry out rural land consolidation work, detailed general planning must be formulated in advance in accordance with the planning and management of five levels of the whole country, province (autonomous regions and municipalities), city, county and town (HUANG, 2006). People’s governments above county level should organize to formulate the rural land consolidation planning in this administrative region in the light of the planning of national economy and social development and the general planning of land utilization. Rural land consolidation planning should be coordinated with the relevant planning such as village and town planning, farmlands’ irrigation planning, and should make analysis, prediction and evaluation for possible environmental impacts after implementing the planning, and put forward countermeasures and solutions to prevent or alleviate harmful environmental impacts. The administrative department of national land and resources of people’s governments above county level should establish rural land consolidation project library in this level according to rural land consolidation planning, local non-agricultural construction’ occupation of farmland and reserve condition of farmland.

The second is the phase of examination and approval. In line with the general planning of land utilization, special plan of land development and consolidation, non-agricultural construction’ occupation of farmland and reserve condition of farmland, the administrative department of national land and resources draws out specific land consolidation declaration project from rural land consolidation project library in this level, and declare to the corresponding administrative department of national land and resources with approval authority of setting up the project in accordance with different levels of

projects. Application materials of project approval include application report, feasibility study report, fund source plan, general planning map of land use, special planning map of land development and consolidation, project planning map, the map of land use’ current situation and certificate of land ownership. The administrative departments of national land and resources with right of project approval organize concerned personnel to check materials, survey sites, make comprehensive evaluation and decide whether to approve or not in prescribed time after receiving application materials of project approval. As to approved, reply to project approval should be given to the administrative department of national land and resources that applies for project approval; as to disapproved, written announcement and explanation should be made. To apply for state-level rural land consolidation project, we shall report to the administrative department of national land and resources in the State Council for project approval only after being examined and agreed by provincial administrative departments of national land and resources; to apply for province-level rural land consolidation project, we shall report to the provincial administrative departments of national land and resources for project approval; to apply for city-level rural land consolidation project, we shall report to the municipal administrative departments of national land and resources for project approval, and report to provincial administrative departments of national land and resources for record after the project is approved.

The third is designing phase. After the project is approved, the administrative department of national land and resources that applies for project approval should entrust qualified measuring and mapping organization to measure and entrust qualified design organization to work out project design and budgeting in terms of reply to project approval and relevant technical regulations. Project design shall be reported to the administrative department of national land and resources that ratifies the project approval for permission; project budgeting shall be reported to the department of finance in the same class after being approved by the administrative department of national land and resources that ratifies the project approval. In the process of working on formulating rural land consolidation project design, the design organization shall announce the design plan in the project site there and listen to the advice of social organizations and villagers related to rural land consolidation such as the people’s government of town, the village committee, “committee of re-distributing rural community land”. Once approved, the rural land consolidation project design should not be changed arbitrarily; if it’s indeed necessary to change, we should report to the original approving authority for ratification.

3.2.2 The Section of Project Implementation

The administrative department of national land and

resources in charge of rural land consolidation project is responsible for the implementation after project approval. The project implementation should be conducted in such management system and contract management ways as announcement, project bidding, project legal person and project supervision. The administrative department of national land and resources works out project implementation plan in accordance with project design and budgeting. Project implementation plan should be announced in the project site and reported to the administrative department of national land and resources that ratifies the project for record. The administrative department of national land and resources should according to law let qualified construction organization chosen via bidding carry through the engineering construction, and entrust qualified supervision organization to supervise the project and respectively sign a contract. The construction organization should reasonably conduct the construction on the basis of project design and construction contracts, and compensate for delaying farming season due to violating project design and construction contracts or other losses. The supervision organization should control the investment, construction period and project quality of the engineering construction according to project design and supervision contract, and assume the supervising responsibility. Farmers' collective that has property in land should enjoy the priority in all the lands' consolidation in this collective. The arable layer, flatness, irrigation and drainage conditions, roads, and ecological protection measures of consolidated lands shall comply with the relevant standards to ensure quality of arable land. The administrative department of national land and resources, the people's government of town in the project site, the village committee and related rural land consolidation social organization and villagers can supervise the construction quality.

3.2.3 The Section of Project Acceptance

After the rural land consolidation project is completed, the project construction organization should put forward the acceptance application to the administrative department of national land and resources in charge of organizing the implementation of this project, and the department should check and accept in set time. National and provincial rural land consolidation project shall be checked and accepted by the provincial administrative department of national land and resources; municipal rural land consolidation project shall be checked and accepted by the municipal administrative department of national land and resources that is entrusted by the provincial administrative department of national land and resources. Materials like application report of project completion acceptance, construction acceptance report, land ownership report, construction supervision report, project financial accounts and auditing report should be submitted for applying for acceptance. The inspection

department shall organize people's government of town and professional technicians in aspects like agriculture and water conservancy and village representatives in the project site, and in accordance with requests of project design check and accept the project construction and provide the project construction acceptance report. The administrative department of national land and resources responsible for acceptance shall command the project's construction organization to modify the unqualified parts within a definite time until being approved qualified. After the acceptance of project completion, the administrative department of national land and resources shall relegate land and relevant facilities to people's government of the town or the village committee in time according to land ownership. Concerned people's government of the town or the village committee should establish management and maintenance system, and manage and maintain the consolidated lands and construction facilities to ensure lands' effective use and normal operation of construction facilities. Management and maintenance costs shall be raised in light of the principle of "who get benefits, who pay".

3.3 Setting Criteria for Farmers' Participation of Rural Land Consolidation Procedure Legislation in and Below the Hierarchy of Administrative Laws and Regulations

3.3.1 The Stage of Project Approval

In the phase of project inspection, farmers can publicize information via consultation to take part in; in the phase of project design, they can participate in through giving advice and attending relevant hearing. Specifically, when choosing project site we should study from aspects such as the current situation of land use, land suitability, water balance analysis, the potential of new arable land and project implementation feasibility and determine the scope of the project area, the scale of investment, the proportion of new land and the project's major content, and make a comprehensive analysis of the project implementation's influence on the ecological environment and farmers' income. Ways of informal discussion or publishing request for advice through the village committee and related rural land consolidation social organization can be used to let peasants obtain various public information. Information opened to peasants includes project name, area scope, properties and reply to project approval, etc. We should encourage farmers to submit all kinds of oral or written wishes and suggestions via the village committee and relevant social organizations of rural land consolidation. The village committee and relevant social organizations of rural land consolidation should convey all kinds of integrated and reorganized wishes and suggestions to the designer party of land consolidation project, and take farmers' wishes and advice into project design to the greatest extent so as to make the project plan be consistent with public interests as much as possible. After

the preliminary design of the project plan is completed, comprehensive design achievement which consists of project planning text, planning notes and drawings can be formed. We should actively promote the application of public hearing in rural land consolidation activities and disburse related costs from the fund of land consolidation project, and let peasants join in the examination and approval, modification and improvement of design achievement together. The project plan shall be announced in time after being examined and approved.

3.3.2 The Stage of Project Implementation

Farmers can take part in the project implementation through supervisory rights like investment, labor, petition letter, accusal and disclosure and so on. Announcement signs that include name, location, scale, acreage of new arable land, total investment, construction period, land ownership condition, undertaking organization, construction organization, supervision organization and design organization of the approved construction project should be placed in the construction site in order to let farmers clearly understand basic situations of the project construction. Farmers' participation in the project implementation specially organized by the village committee and relevant social organizations of rural land consolidation can on one hand let related peasants have more visualized perception and sense of identity about the land consolidation project and on the other hand provide opportunity for concerned farmers to increase income. The project implementation can be entirely funded by the government under the premise that the government has sufficient financial resources, but if the government's lack of construction fund, we can collect funds from farmers and determine the ways of refundment and profits in forms of "fundraising, collecting stock and dividends" after approved by the concerned competent department. Moreover, we should practice the announcement system of project fund and carry out the operation publicly to put the project fund in peasants' supervision. In the main implementation places of single project, the standards, investment, construction and supervision organization of the constructed project shall be publicized. The village committee and relevant social organizations of rural land consolidation can organize farmers supervision group to monitor the project quality and progress, if disputes happen and the village committee and relevant social organizations of rural land consolidation cannot deal with, farmers can let concerned administrative department of

national land and resources or judicial authority to step in discretion by means of petition letters, accusal, disclosure or lawsuit.

3.3.3 The Stage of Project Acceptance

In the bottom-up process of project acceptance, the village committee and the relevant social organizations of rural land consolidation can organize farmer representatives to join in the project acceptance group to examine and accept the project, and organize farmers' symposium to seek their advice. After the project is completed, signboard and marking of land consolidation which consist of the project area's location, acreage, responsible person, relevant policies, sketch map and telephone of supervision and accusal shall be set up in accordance with norms. Besides, the village committee and the relevant social organizations of rural land consolidation can coordinate with the people's government of the town and the relevant administrative department of national land and resources in the place of project to decide and publicize the allocation plan of profits as land ownership adjustment in the project area together and to assist in dealing with land alteration registration and issuing certificates.

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