

中國大陸國有土地上房屋徵收 與補償法制之探討 —兼論中國大陸不動產徵收法制的範疇

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關鍵詞：房地產權分離結構、城鄉二元制結構、房屋所有權、土地使用權、徵收與補償

Keywords： The Separation of Structure Between House-Ownership and Land-Ownership, The Separation of Structure Between Urban and Countryside, House-Ownership, Land Use Right, Expropriation and Compensation

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摘要

關於中國大陸不動產徵收與補償法制，係由兩大拼圖所構成，即「集體所有土地」徵收法制與大陸「國有土地上房屋」徵收法制，其主要區別的形成原因在於「城鄉二元制結構」。於中華人民共和國憲法確立「城鄉二元制結構」同時，也確立了「房地產權分離結構」。

中國大陸現行《國有土地上房屋徵收與補償條例》，於徵收法律關係性質、徵收目的、徵收程序、徵收補償機制、徵收執行方式與嚴格法律責任的確立等，相較於已廢止的《城市房屋拆遷管理條例》均有大幅提升和改善，制度設計上規定得更科學、更合理也更符合人性。但就其能否實現其「為了規範國有土地上房屋徵收與補償活動，維護公共利益，保障被徵收房屋所有權人的合法權益」、「房屋徵收與補償應當遵循決策民主、程式正當、結果公開的原則」的規範目的，本文認為尚須面對公共利益的判斷與反思、徵收正當程序可操作性、認真對待土地使用權以及司法救濟與強制執行方面等挑戰。

A Study on the House Expropriation and Compensation Legal System of the Chinese Mainland State-owned Land -Also on the Scope of Chinese Mainland Real Estate Expropriation Legal System

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Abstract

Regarding the Chinese mainland real estate levy and Compensation System, the system consists of two puzzles, that is, "collective land" imposition by the rule of law and the mainland, "state-owned land on the house" expropriation rule of law. What causes the main difference is that the "urban-rural dual structure system", the Constitution of People's Republic of China to establish "urban-rural dual structure system", but it also established the "separation of ownership of real estate construction."

In Chinese mainland, the current "state-owned land on the housing levy and Compensation Ordinance", is to impose legal nature of the relationship, the purpose of the collection, the collection procedures, expropriation compensation mechanism, and further to establish and impose strict liability of implementation, etc., which have been abolished compared to the "Urban Housing". We have increased dramatically demolition management regulations "and improved the regulations on the design of the system more scientific, more rational and more humane. However, to achieve "enabling regulation of the state-owned land on the housing levy and compensation activities and to safeguard the public interest, they were imposed to protect the legitimate rights and interests of the owner of the house", "housing levy, and the compensation decisions should be guided by democratic and legitimate program. The results disclosed the principle of "purpose specification, and this paper argues to face judgment and reflection of public interest, the collection of operability seriously land use rights under due process, judicial remedies, enforcement aspects, and other challenges.