

Industrial land – The New Game Rules

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❑ Shanghai, changed game rules as of July 1, 2014:

- Shortened land use term: up to 20 years
- Increased land price
- Revised land planning indices, in particular increased floor area ratio (FAR)
- New version grant contract, with a lot of restrictions towards investor

- ❑ May 22, 2014: Ministry of Land and Resources (“MLR”) issued the *Measures on Economical and Intensive Use of Land*, to be effective on September 1, 2014 (“MLR Rules”)
- ❑ Shanghai local rules in February / March 2014

- ❑ Is this a sudden change of land supply rules?
- ❑ What is behind the new rules?
- ❑ What is the impact to the investors?

Content

- I. Background
- II. Legal Analysis on the Major Changes
- III. Foresight & Suggestions



I. Industrial Land in China

Current status according to official tone:

- Low price
- Excessive grant
- Scarce land resources
- Low efficiency in land use
- Low output



I. Legal Development: not an over night change

“thrift and efficient use of land”

State Council Circular

Jan 3, 2008

MLR Rules Draft for public comments

Oct 29, 2013



Various local rules in strengthening industrial land supply rules

Feb / Mar., 2014

Further changes??

Aug, 2006

State Council Notice

“3 means of industrial land grant: auction, bidding or listing”

Mar 16, 2012

MLR Opinion

“promoting thrift and efficient use of land”

Nov, 2013

“Higher industrial land price”

“Stricter construction land supply mechanism”

“Increase efficiency in construction land usage”

May 22, 2014

MLR Rules officially issued

II. Major Changes in Various Local Rules

Changes	Legal Comments & Remaining Issues
<p>(1) Shortened LUR Grant Term</p> <p>MLR Measures: land bureau may shorten term < 50 years</p> <p>Beijing ETDZ: 20 years (as of 15/7/2013) Shandong Linyi: 20 years (as of 11/11/2013) Hangzhou: 30 years (as of 14/3/2014) Shanghai: 20 years (as of 1/7/2014)</p>	<p>Minimum land price?</p> <p>Business duration?</p>
<p>(2) Promoting Alternative Industrial Land Use Models</p> <p>- Preconditions of grant:</p> <ul style="list-style-type: none"> (i) project review; (ii) increased total investment threshold: Shandong and Hangzhou (50 million). <p>- <u>Promoting 3 Alternatives:</u></p> <p>A. Land Lease + LUR Grant (MLR Measures, Shanghai, Hangzhou)</p> <p>B. Land Lease (Beijing and Zhejiang)</p> <p>C. Plant Lease</p> <ul style="list-style-type: none"> (i) Encourage to lease standard plant (Beijing, Shandong, Hangzhou, Nanjing and Suzhou) (ii) Built to lease 	<p>- Legal basis of “land lease”</p> <p>- remaining issues:</p> <p>Ownership of plant? Real estate registration system? Insufficient protection of land user?</p> <p>Built-to-lease, a more ideal alternative?</p>
<p>(3) Stricter Planning Indices</p>	<p>Acceptable for your own investment plan?</p>

II. Major Changes – New version LUR Grant Contract in Shanghai

Breach of Contract	Old Version Contract	New Version Contract
Total fixed asset investment / Investment intensity	Liquidated damages	<ul style="list-style-type: none"> Liquidated damages
Annual tax revenue	N/A	<ul style="list-style-type: none"> Liquidated damages Termination grant contract / take-back of land
Performance review	N/A	<ul style="list-style-type: none"> Termination grant contract / take-back of land
Construction delay	Liquidated damages (rarely enforced)	<ul style="list-style-type: none"> Performance Bond (also in Zhejiang, Shangdong, Anhui) Liquidated damages Termination grant contract / take-back of land
Contamination of underground water and soil	N/A	<ul style="list-style-type: none"> Soil and underground water benchmark test report to be attached to the grant contract Serious contamination: Termination grant contract / take-back of land
Land use right transfer (as a whole)	Not prohibited in rules	<ul style="list-style-type: none"> Transfer under the conditions: <ul style="list-style-type: none"> ✓ transferred with building; ✓ grantor's consent. Termination grant contract / take-back of land
Land separation and partial transfer	Restricted	<ul style="list-style-type: none"> Prohibited (exception: R&D Headquarter Standard Industrial Land - 30%) Termination grant contract / take-back of land
Equity transfer of the project company (LUR owner)	N/A	<ul style="list-style-type: none"> Grantor's consent Termination grant contract / take-back of land

III. Foresight

- local level reform → nationwide roll-out
- higher costs for acquisition of industrial land
- less greenfield investment project in cities like Shanghai, look for alternative locations, e.g. Jiangsu Province
- possible alternative greenfield investment model, e.g. built-to-lease?
- increasing acquisition of existing plants/warehouses?
- transfer / acquisition of collectively owned construction land?



III. Suggestions

➤ Greenfield project

- Thorough research and analysis on local land supply policies and the best possible offers one may get, including local policy change possibility in about 1 year time
- Negotiate a detailed investment agreement with local government, industrial zone, including contractual protection in case of policy change
- Closely monitor the project development and legal / policy development, ideally by a designated project team

➤ Consider other alternatives

- Acquisition of existing factory plant?
- Lease of premises?
- Build-to-lease?
- Make the most of existing plant premises?



Thank you!

Further questions?



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