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On the Rural Land Consolidation Liability Legislation in China¹

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On the Rural Land Consolidation Liability Legislation in China¹

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I. INTRODUCTION

Guided by the Planning of National Land Development and Consolidation from 2001 to 2010, the rural land consolidation has been carried forward energetically and its corresponding supervisions have also obtained certain achievements. "A more comprehensive monitoring system whose cores are project legal person responsibility system, announcement system, tendering and bidding system, supervision system, contract system and auditing system has been basically established." [1] However, China's rural land consolidation legal liability legislation is relatively lagging behind, and the imperfection in the legislative system, the legislative language and legislative content weakens the execution and effects of rural land consolidation supervision. Hence, it's necessary to perfect the rural land consolidation liability legislation in China.

II. AN OVERVIEW OF RURAL LAND CONSOLIDATION LIABILITY LEGISLATION IN CHINA

The rural land consolidation liability refers to the unfavorable legal consequences that the subject of rural land consolidation legal relation has to undertake owing to its unlawful actions in accordance with related legislative provisions. The relevant legislations of rural

land consolidation liability in China mainly consists of departmental regulations, local laws and regulations, and regulations of local governments. Departmental regulations include "the Interim Measures for Funds Management of Land Development and Consolidation Project" issued by Ministry of Land and Resources in 2000, "the Stipulations for an Incorruptible Construction on Land Development and Consolidation Project and Funds Management by Ministry of Land and Resources in 2001", "Some Suggestions for the Planning and Management of Land Development and Consolidation in 2002", "the Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project in 2003", "Some Suggestions for Land Development and Consolidation in 2003", "the Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project in 2003", "A Notice of Issues about Information Records of Land Consolidation Reclamation Project by Ministry of Land and Resources in 2008"; the local law and regulation refers to "the Regulations of Land Development and Consolidation in Hunan Province in 2006"; regulations of local governments include "the Administrative Measures for Land Development and Consolidation in Hebei Province in 2002", "the Interim Measures for Land Reserve and Consolidation Management in Hainan Province in 2006", "the Provisions of Land Development and Consolidation Management in Tianjin in 2008", and "the Administrative Measures for Land Consolidation and Reserve in Tianjin in 2008". [2]

Article 15 of "the Interim Measures for Funds Management of Land Development and Consolidation Project" sets the Ministry of Land and Resources as the supervision department, the financial sectors of units that undertake each project as the specific functional department, and divides the corresponding liability into the three kinds of "criticism and the termination of funding and project etc, economic and administrative responsibility, criminal responsibility". In "the Stipulations for an Incorruptible Construction on Land Development and Consolidation Project and Funds Management by Ministry of Land and Resources", article 9 further clarifies that the supervising departments of land development and consolidation project's implementation and use of funds are the administrative department, financial department and censorial department of land development and consolidation at all

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levels of Land and Resources System, and classifies the corresponding liability into three kinds of “taking resolute measures to stop and correct, economic and administrative responsibility, and criminal responsibility”; and article 10 stipulates that the imputation procedure of “related responsible staff and leaders” is from “calling to account” to “imposing the punishment about the Communist Party and Chinese government disciplines”, then to “transferring to judicial authorities”. Article 16 of “Some Suggestions for the Planning and Management of Land Development and Consolidation” stipulates that the supervision departments of “the implementation condition of land development and consolidation planning in this administrative region” are “the land administration departments of People’s Governments above the county level”, and the liability of “violating the land development and consolidation planning” should be “ordering to make corrections by a prescribed time and giving punishments”. In the “the Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project”, article 21 prescribes that the supervision department of national investment for land development and consolidation project should be “the management departments of national territory and resources at all levels”; article 22 divides the corresponding liability into three sorts of “correcting, investigating, giving criminal sanctions”. Article 34 of “Some Suggestions for Land Development and Consolidation” formulates in the item of “Strengthening the building of an honest government and regulating the relevant disciplines seriously” that “with respect to the actions of violating related national laws and relevant provisions, or heavy losses caused by mistakes, the responsibility of the persons concerned shall be investigated and dealt with severely. Article 17 of “the Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project” classifies the liability of “committing fraud and practicing favoritism of the personnel concerned with the completion and final acceptance” as two kinds of “strictly making investigations and giving criminal sanctions”. Article 4 of “A Notice of Issues about Information Records of Land Consolidation Reclamation Project by Ministry of Land and Resources” provides in the item of “Filing responsibilities” that “violation of the provisions shall be dealt with severely according to relevant regulations”. “Chapter VI: Legal Liability” of “the Regulations of Land Development and Consolidation in Hunan Province” specifically divides the corresponding liabilities into 5 sorts of “making corrections by order, administrative punishment, administrative penalties, civil liability, criminal liability”. And “Chapter VI: Legal Liability” of “the Administrative Measures for Land Development and Consolidation in Hebei Province” divides the corresponding liabilities into 4 kinds of “making corrections by order, administrative punishment, administrative penalties, and criminal liability”. In “the Interim Measures for Land Reserve and Consolidation

Management in Hainan Province”, the 26th article sets the legal liability of unlawful acts of “administrative authorities and their staff” as 3 kinds of “administrative sanctions, accountability and criminal liability”; the 27th article stipulates that the supervision department of “the actions of damaging or moving government land reserve boundary markers and marks” shall be “administrative departments of land”, and its corresponding liability shall be “ordering to make corrections and imposing a fine”. Article 24 of “the Provisions of Land Development and Consolidation Management in Tianjin” rules that the supervision department of “the conductions of breaching laws and disciplines such as fraud, interception, misappropriation and misuse of project funds, etc” shall be “the administrative department and the financial sector of national territory and resources”, and its corresponding legal liability shall be the three kinds of “circulating a notice of criticism and terminating funding and the project etc, economic and administrative responsibility, criminal liability”. In “the Administrative Measures for Land Consolidation and Reserve in Tianjin, article 27 regulates that the legal liability of illegal actions of “the staff of land consolidation center and its entrusted units” shall be the 2 sorts of “administrative punishments and criminal liability”.

III. THE DEFECTS OF RURAL LAND CONSOLIDATION LIABILITY LEGISLATION IN CHINA

a) *Unsound legislative system*

Low level of the relevant legislation of China’s rural land consolidation legal liability resulted in the difference of legal liability regulatory system. From the 3 aspects of departmental regulations, local laws and regulations and local government regulations, relevant legislations have given specific stipulations on rural land consolidation liability, which are related to various forms of liability like administrative liability, civil liability and criminal liability. “Whether different interest subjects can enjoy effective legal protection about their land rights is an urgent issue to be resolved for rural land system reform”^[3] But, in China, the legislation in the aspects of high-hierarchy laws and administrative regulations didn’t involve the rural land consolidation liability, then how could the different interest subjects get effective protection for the realization of rights unification in the rural land consolidation? Certainly, this problem is mainly the consequence of the lack of “Rural Land Consolidation Act in People’s Republic of China” and the unsound rural land consolidation department’s law system. Moreover, compared with other legislations, the legislation of legal liability puts more emphasis on the consistency of content rather than differences, the same or at least the same type of disadvantageous legal consequences should be undertaken in terms of the same type or same nature of illegal activities of subjects with different legal relations, and the principle of

"proportionate liability" should be followed in accountability.

Although 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,^[4] the composition of legal liability's content due to different modes of rural land consolidation is actually consistent, so we shall consider from the 3 aspects of liability subjects, liability actions and liability forms, and at most the difference exists in type selection or scope setting of adverse legal consequences caused by the disparity of each element's manifesting form in specific circumstances. However, the departmental regulations, local laws and regulations and regulations of local governments as the legislation carriers of current rural land consolidation liability belong to the same legislation hierarchy, no matter the liability subjects, liability actions or liability forms, all respectively gives different stipulation from different angles. And in their respective process of application, the inevitable intersection and overlap of applicable scope will easily lead to application contradiction and application difficulties to some extent. Hence, there is a need to make principled provisions for the composition of rural land consolidation liability through higher-hierarchy legislation, which may be helpful to bridge the application problems caused by the different expression of low-hierarchy laws via interpretation.

b) Unperfected use of legislative language

i. Some language expression of relevant legislation is vague

A case in point is the expression of "dealing with seriously" in article 34 of "Some Suggestions for Land Development and Consolidation" and article 4 of "A Notice of Issues about Information Records of Land Consolidation Reclamation Project by Ministry of Land and Resources". These two statements are all formulated as a form of legal liability, but the meaning of "dealing with seriously" is too general and broad, then how to make it a specific disadvantageous legal consequence for subjects of legal relations who violate laws to bear. The style of legislative language can generally be categorized as accurate, concise, standard, serious and simple.^[5] It is necessary to illustrate such sort of legal liability forms like "dealing with seriously" with more proper language according to such kind of style.

ii. Some language expression of relevant legislation is nonstandard

What's typical is the expression of the legal liability form of "criminal liability". A total of nine pieces of legislation stipulates the legal liability form of "criminal liability", its representation falls into three categories: the

first is the expression of alleged involvement, as the ninth article of "those who are suspected of being involved with economic crimes shall be handed over to judicial authorities and be investigated for their criminal liability" in "the Stipulations for an Incorruptible Construction on Land Development and Consolidation Project and Funds Management by Ministry of Land and Resources"; the second is the expression of handover, like article 22 of "those who commit crimes seriously shall be transferred to the judicial authorities to be investigated for criminal liability in accordance with the relevant law" in "the Interim Measures of Implementation and Management about National Investment for Land Development and Consolidation Project"; the third is the general expression of "those who commit crimes shall be investigated for criminal liability according to law", and such representation includes article 15 of "the Interim Measures for Funds Management of Land Development and Consolidation Project", article 17 of "the Interim Measures of Completion Acceptance on National Investment for Land Development and Consolidation Project", article 29, 30, 31 of "the Regulations of Land Development and Consolidation in Hunan Province", article 31, 32 of "the Administrative Measures for Land Development and Consolidation in Hebei Province", article 26 of "the Interim Measures for Land Reserve and Consolidation Management in Hainan Province", article 24 of "the Provisions of Land Development and Consolidation Management in Tianjin" and article 27 of "the Administrative Measures for Land Consolidation and Reserve in Tianjin". To illustrate "criminal liability" as the most punitive form of legal liability with more uniform, refined and precise language is necessary.

c) Unclear definition of legislative content

i. In terms of the definition of supervision department

There are 10 kinds of expression about the supervision department defined by relevant legislation, including "the finance sector of the Ministry of National Land and Resources and each project undertaker", "the management department, finance department, discipline inspection and supervision department of land development and consolidation at all levels in the system of National Land and Resources", "the discipline inspection and supervision department at all levels in the system of National Land and Resources", "the land administration department of the People's Government above the level of county", "the management department of the National Land and Resources at all levels", "provincial department of the National Land and Resources", "the administration department of the National Land and Resources above the level of county", "the finance and auditing department of the People's Government above the level of county", "the administration department of land" and "the administration department and finance department of the National Land and Resources".

ii. *In terms of the definition of liability subject*

The 9 kinds of expression of liability subject defined by relevant legislation are “the units that undertake land development and consolidation projects and the related responsible personnel”, “the project’s management department, its undertaking unit and related responsible personnel”, “the responsible personnel who violate laws and disciplines”, “concerned personnel of completion acceptance”, “the ministry of national land and resources responsible for projects’ acceptance”, “directly responsible supervisor and other direct responsible personnel”, “related state personnel”, “personnel of direct responsibility and main responsible staff” and “staff of the land consolidation center and its entrusted units”.

iii. *In terms of the definition of liability action*

There are 11 sorts of expression of liability action defined by relevant legislation which consist of “the illegal action and disciplinary offence of falsification, intercepting, embezzling, diverting and unauthorized using project funds”, “actions of violating related state laws, regulations and departmental rules”, “the activities of carrying out land consolidation, reclamation and development by breaching land development and consolidation planning”, “improper behavior in the implementation of the project”, “the circumstance of causing heavy losses owing to working mistakes”, “falsification and **irregularities for favoritism**”, “Arbitrarily changing the design of land development and consolidation project”, “abuse of power, **irregularities for favoritism**, and misprision”, “the occurrence of soil erosion, salinization and desertification due to land development”, “damaging or moving the boundary markers and signs of government land reserve”, and “misprision, misuse of privilege, demanding or illegally accepting other people’s property”.

iv. *In terms of the definition of liability form*

The 11 kinds of expression of liability form defined by relevant legislation are composed of “circulating a notice of criticism, terminating funding and project”, “investigating economic and administrative responsibilities”, “investigating criminal liability”, “taking decisive measures to stop and correct”, “inquiring into responsibility and giving sanctions for violating party discipline and administrative discipline”, “ordering to make corrections within a definite time and giving punishment”, “correcting for investigation”, “dealing with severely”, “ascertaining civil liability”, “calling to account” and “ordering to make corrections and imposing a fine”.

The various relatively confused definitions of supervision department, liability subject, liability action and liability form without uniform standard prescribed by relevant legislation are not clear enough to distinguish the disadvantageous consequences that are presented in a variety of combination form and should be assumed by subjects of legal relations of rural land consolidation,

and then difficult to achieve the value orientation of “establishing impeccable corresponding dispute resolution mechanism, and putting emphasis on the rationalization and right-orientation of the relevant order itself while emphasizing strengthening management”. [6] We might as well draw on the 39th and 40th legislative experiences of “Rules for punishment” in Chapter eight of “The regulation of re-partitioning rural land” in China Taiwan region in 1980. Article 39 of “The regulation of re-partitioning rural land” stipulates that “somebody who does one of the activities in the left column shall be given less than one year’s imprisonment and detention, or imposing a fine below 2,000 Yuan, and ordering to restore the original condition: 1)those who change the use of redistributed rural land without permission; 2)those who encumber the implementation of repartitioning rural land due to violating the 9th announcement; 3)those who hamper the implementation of repartitioning rural land by occupying, cultivating, using or other methods.” Article 40 provides that “someone who does one of the activities in the left column shall be imprisoned for less than three years, detained, or punished or totally fined less than 5000 Yuan: 1) those who impair the design and implementation of replotting project, or redistributing land owing to moving or damaging the replotting surveying mark; 2) those who interfere with the construction of replotting project by means of violence, coercion or other methods; 3) those who impair the irrigation, drainage or passing of farm roads and waterways by way of blocking, damaging or other means.” On one hand it states the liability action; on the other hand it illustrates liability form and its specific application range. The contrast between “either punishing or punishing together” and “dealing with severely”, and between “less than a year’, ‘below 2,000 Yuan’, ‘less than three years’, ‘below 5,000 Yuan’” and “‘investigating the criminal liability’, ‘giving penalty’” worth legislators’ pondering. In a word, it’s necessary to summarize through principled provisions of high-hierarchy legislation or to enumerate via implemented provisions of high-hierarchy legislation in order to more clearly define the legislative content such as supervision department, liability subject, liability action and liability form.

IV. IMPROVEMENT IDEAS OF RURAL LAND CONSOLIDATION LIABILITY LEGISLATION IN CHINA

a) *Perfecting the legislative system of rural land consolidation liability legislation*

Improving the legislative system of rural land consolidation liability legislation in the process of constructing rural land consolidation departmental law system is possible. “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."^[7]

i. *Formulating relevant provisions of the legal hierarchy*

The legislative experience of "the Regulations of Land Development and Consolidation in Hunan Province" and "the Administrative Measures for Land Development and Consolidation in Hebei Province" may be incorporated into the formulation of the Rural Land Consolidation Act of People's Republic of China in the future with principled stipulation through the chapter of "Legal liability". We shall clarify the supervision system, demarcate the main and auxiliary department, and unify the expression of supervision departments' name. Furthermore, as for different liability subjects and their different kinds of liability actions, the administrative responsibility, criminal responsibility and civil responsibility, duty responsibility and non-duty responsibility, property responsibility and non-property responsibility, and dos responsibility and don't responsibility they shall bear ought to be summarized concisely and clearly.

ii. *Establishing relevant provisions of administrative laws and regulations*

We may consider to refine in terms of the implementation provision of rural land consolidation liability content according to the relevant principled stipulation of legal hierarchy in the "Enforcement regulations of land management law of People's Republic of China drafted by the State Council, and then to list in terms of different sorts of liability subjects an liability actions. Explicit provisions: the administrative responsibility generated from violating administrative laws and regulations in the specific operation process of rural land consolidation; the criminal responsibility created by crimes with serious illegal activities; the civil responsibility caused by the problems such as land property dispute and redistributing land. Clear definition: the duty responsibility caused by the subordinate staff of the administrative department of national land and resources, the association of land consolidation and the city planning department etc for official business; the non-duty responsibility produced by the above staff's activities in their own position. Clear definition: the property responsibility that complements the loss of oblige with property content as the key element in order to highlight compensation; the non-property responsibility that does not punish doer's action with the property content as the key element in order to highlight sanction. Clear definition: the dos responsibility that initiatively violates relevant legislative regulations in the process of rural land consolidation; the don't responsibility that although with active duty but passively carries out the rural land consolidation activities or don't carry out completely.

iii. *Modifying and drawing up the legal hierarchy of departmental rules, local laws and regulations and regulations of local governments*

First of all, we need to amend the existing 12 departmental regulations, local laws and regulations and regulations of local governments, and to modify combined with the content of high-hierarchy legislation, and especially to unify the basic expression language of the constituent elements of supervision government and legal responsibility. Then we should further intensify the implementation characteristic of the legislation in this hierarchy, and orientate the relevant provisions of the legislation in this hierarchy with "implementing regulations", and combine the provisions of legal responsibility with different categories of rural land consolidation activities, and afterwards promote more local governments to start the formulating procedure of local laws and regulations and regulations of local governments. Under the premise that no contradiction exists with higher-level laws, the detailed regulations of rural land consolidation liability with local features as "the Interim Measures for Land Reserve and Consolidation Management in Hainan Province" should be established in accordance with local conditions.

b) *Amending the legislative language of rural land consolidation liability legislation*

i. *Amendment of vague language expressions*

The vague language expressions like the sort of "dealing with severely" shall be modified to let the legislation intention and policy of legislative subjects present exactly with more accurate and affirmative written language. "Dealing with severely" can be revised to "punishing or investigating criminal responsibility" in order to avoid the different awareness and understanding of legislation observers and suitable people due to the difference of profession, experience, sex and education level and finally to transmit specific and unambiguous information to legislation embracers via expressions directly reflect "serious" meaning.

ii. *Amendment of non-standard language expressions*

The non-standard language expression as the sort of "criminal responsibility" shall be modified. We should unify the basic expressing language of "'expression of alleged involvement', 'expression of handover' and 'common expression'", and absorb their respective advantages of the 3 kinds of expressions to transmit the related information of legislation subjects with more standard form. The 3 kinds of expression can be integrated into "those who are suspected of a crime shall be transferred to judicial authorities to be investigated for criminal responsibility" so as to accord with language expression customs of the most criminal responsibility provisions and also to highlight "the principle of no conviction without trial" and "the principle of due legal procedure" gradually set up in Chinese judicial process.

c) *Clarifying the legislative content of rural land consolidation liability legislation*

i. *Clarification of supervising system*

As a kind of typical legal relationship of economic law, rural land consolidation legal relationship is concerned with administrative legal relationship and civil legal relationship. The administrative legal relationship refers to both interior administrative actions and exterior administrative actions, and the civil legal relationship involves civil contracts among equal subjects and administrative contracts among unequal subjects. Except the administrative sector of national land and resources as responsible department shall take part in it, the related finance sector, auditing sector and the discipline inspection and supervision sector also shall participate in because the fund of Chinese rural land consolidation is mainly from governments. Hence, the supervising system of Chinese rural land consolidation shall be "unitary and compound". The administrative department of national land and resources as the main supervising sector shall monitor the whole process of rural land consolidation activities; the auxiliary supervising departments include finance department, auditing department and discipline inspection and supervision department, the finance department is mainly in charge of monitoring the budget of rural land consolidation fund allocated by government and its enforcement, the auditing department is principally responsible for supervising the operation performance of rural land consolidation fund allocated by government and acceptance enforcement of rural land consolidation project, and the discipline inspection and supervision department mainly takes care of supervising actions of main responsible personnel, direct responsible personnel and other people in government offices involved with rural land consolidation. Besides, "administrative department of national land and resources" can be used to unify the various expressions of relevant main supervising departments such as "the system of national land and resources", "administrative department responsible for land", "management department of national land and resources", "department of national land and resources" and "administrative department responsible for national land and resources".

ii. *Summary of liability subject*

In accordance with the nine expressions of liability subject in the related laws of China, the liability subject could be summarized as the actor of rural land consolidation. The actor surely takes on different looks in various legal relationships of natures, which could be sorted into three categories, that is, the major responsible personnel, the direct responsible personnel and other work staff in national offices; the major responsible personnel, the direct responsible personnel and other work staff who participate in social groups like the farmers' specialized cooperative society of the rural

land consolidation; the citizens who join in the rural land consolidation personally.

iii. *Enumeration of liability action*

In accordance with the 11 expressions of related laws of China, four varieties can be generated for responsibility behavior. Firstly, the behaviors that caused losses due to misbehavior in compiling and approving the rural land consolidation plan. Secondly, the behaviors that hinder the implementation of the rural land consolidation plan by occupying, farming on, or using the land or other methods; the action of removing or destroying the surveying marks; the action of disturbing design construction and land distribution; the action of obstructing the construction through force, threat or other means. Thirdly, behaviors leading to poor project quality that caused losses, misuse of authority, playing favoritism and fraud, dereliction of duty, doing bribery, corruption, embezzling funds on land collating. Lastly, behaviors of privately changing the land use ways without approval.

iv. *Enumeration of liability form*

In combination with Chinese relevant legislation, the 11 kinds of liability forms can be divided into 4 categories. The first is administrative sanction which aims at the main responsible personnel, direct responsible personnel and other work staff in government offices involved with rural land consolidation and consists of warning, recording misconducts, recording serious misconducts, demotion, dismissal and expulsion. The second is administrative penalty that directs at the main responsible personnel, direct responsible personnel and other personnel who take part in social groups of rural land consolidation and citizens who participate in rural land consolidation personally. It covers ordering to correct in a limited time, circulating a notice of criticism, warning and imposing a fine. The third is civil responsibility for the 3 kinds of subjects who join in rural land consolidation in equal status and form the civil legal relationship, including stopping funding, termination of the project, economic compensation and indemnifying losses. The fourth is criminal responsibility for the 3 sorts of subjects suspected of a crime in the rural land consolidation, including fine, surveillance, detention and three years' imprisonment.

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