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sees beyond the law.

VINGE

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## China Practice Group

NEWSLETTER FROM VINGE

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*Vinge is one of the leading law firms in Scandinavia. The worldwide staff exceeds 450 of which more than 290 are lawyers. Vinge is the first Swedish law firm with offices in Hong Kong and China (Shanghai).*

*Vinge's China Practice Group assists clients in all aspects of their business activities in China. Many foreign clients, including Chinese clients, have chosen Sweden as their base for investments and business operations not only in Sweden but also within the European Community.*

*Lawyers from Vinge's China Practice Group are represented on the Board of Directors of professional organisations such as the Sweden China Trade Council and the China Forum in Gothenburg.*

## China's New Property Law

### In general

In March 2007, the National People's Congress adopted the Property Law which will enter into effect on 1 October 2007. The law, which applies to movables and immovables, as well as to real property, is expected to increase the importance of secured financing in China. The law is of importance to foreign as well as domestic investors in China.

The law will result in increased clarity regarding interests in real property by providing for the foundation of a uniform public registration system for such property throughout China with respect to ownership and usufruct, including leaseholds of construction land and easement. It also, among other things, opens up for wider opportunities for the use of movable property as security through a registration system for mortgages of "floating" movable property, as well as for the use of shares in ordinary companies as pledges. The law also contains, inter alia, provisions regarding title to movables acquired from unauthorized persons. Some features of the law are dealt with here below.

### Real property register

The details of the uniform registration system regarding real property will be established in future laws and regulations. However, the law clarifies and harmonizes, inter alia, the scope of the authority of the registration departments, i.e., what they shall and may not do, and the standard regarding the determination of registration fees, which may not be determined on the basis of the size or value of the real property.

## Leaseholds of construction land

The Chinese Constitution provides for the principle that all land is owned by the state (or the collectives), that private subjects may not acquire land, but that such subjects may acquire a right to use land. The Property Law contains provisions, applicable to leaseholds of construction land, according to which land of a commercial nature, such as for industry, commerce, tourism, entertainment and commodity residential premises, as well as land for which two or more parties have indicated an interest, shall be granted [by the state] by way of open competition, such as by an invitation for bids or auction. Other leaseholds of construction land may be created without such open competition. The provisions in the law regarding agricultural land contain no equivalent to these provisions.

The law provides that the leasehold contract shall contain, inter alia, its term, and that it shall be registered with the registration authority. When the term of a leasehold of construction land for residential premises expires, it shall be renewed automatically, which is regarded as an important reform, and which is not provided for with respect to other kinds of leasehold contracts. The law does not contain any provision as to whether there may be conditions or fees connected to the renewal of the term, and further laws or regulations may be adopted on the subject, which is not however indicated in the law.

The law briefly provides for compensation in case the land under a leasehold is recovered [by the state] for the public interest, equivalent to provisions on expropriation of ownership of land in other countries.

## Mortgages

The Property Law provides for mortgage of, inter alia, buildings, leaseholds of construction land, existing and future production equipment, raw materials, semi-finished and finished products, buildings, vessels and aircraft under construction, and means of transport. Thus, the law introduces in China a new type of floating charge. Ownership of land, and some other kinds of asset, may not be mortgaged.

Mortgages of some of the enumerated kinds of asset must be registered, whereas mortgages of other kinds of asset may be registered, whereby the secured party will be better protected against third party claims.

## Pledges

Principally, a pledge of movables becomes effective under the law when the movable property is delivered into the possession of the creditor. The law also contains provisions on the pledge of rights (other than ownership of movables), such as, inter alia, bills of exchange, transferable fund shares and equity, transferable intellectual property rights, and, most notably compared to previously, receivables. Most of these pledges become effective upon registration with different authorities.

As for pledges of fund shares and equity, the system is clarified, harmonized and adjusted compared to the previous state of affairs in China, since the law thus establishes a unified system of registration easily accessible to third persons, such as prospective lenders, and applicable also to pledges of shares in ordinary companies not listed on any of the two exchanges in Shanghai and Shenzhen. Such pledge transactions are therefore expected to increase in importance in China.

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