

# **Study on the Legal System of Land Consolidation and Readjustment for the New-Type Urbanization in China**

**Li TAN, Haiyang Wu, Ming Luo, Xiaolong Tao , Jing Wang, China**

**Keywords:** Land Management, Land Consolidation and Rehabilitation, Land Readjustment, Legislation

## **SUMMARY**

Over the years, many Chinese provinces have implemented land consolidation and rehabilitation and land readjustment under the policy of the linkage between the increase of urban construction land with the decrease of rural construction land. Through it, clutter farmland was turned into fertile fields, and the idle construction land was revitalized and reused, which has greatly promoted the cultivated land protection, economical and intensive utilization of land and safeguard national food security. At the same time, it has set up a platform for the exchange of urban and rural resources for China's new-type urbanization to adjust the structure of land functions, improve the efficiency of land use, and promote the orderly development of urbanization regions. However, as a late starter, China's land consolidation and readjustment is still in the stage of transition and development as a whole. The sustainable development of land consolidation and readjustment needs solid legal system foundation. The purpose of the paper is to clarify the main contents and problems existing in the legal system of land consolidation and readjustment, and put forward suggestions to reinforce the institutional basis. Through the analysis, the results indicate that (1) At present, the land consolidation and readjustment legal system mainly consists of the project management system, financial management system, farmland occupation-compensation system and urban&rural construction land linkage system; (2) The main problems of land consolidation and readjustment legal system are the discordance between farmland occupation-compensation system and the urban&rural construction land linkage system, project management system and the urban&rural construction land linkage project area management, financial management system and the internal fund balance of urban&rural construction land linkage. It is concluded that (1) Build an unified consolidation and rehabilitation platform to achieve the incentive effect and guaranteeing function of urban & rural construction land linkage policy; (2) Adopt different project management systems according to various types of land consolidation and readjustment projects in different areas which have individual actual needs; (3) Uphold the trinity of "total quantity, increment and flow" management and control system; (4) The introduction of index adjusting mechanism can organically connect the farmland occupation-compensation system and the urban & rural construction land linkage system.

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## 中文摘要:

长期以来,中国多个省份通过实施土地整治以及以增减挂钩政策为引擎的土地重划,把杂乱的农用地整理为良田,把闲置低效的建设用地盘活利用,极大推动了耕地保护、土地节约集约利用和保障国家粮食安全。同时,为中国新型城镇化发展搭建了城乡资源交换的平台,有利于调整土地功能结构、提高土地利用效率、促进城镇化地区有序发展。但中国土地整治起步较晚,总体上处于转型发展阶段,土地整治持续发展还需要更为坚实的制度基础。研究目的:厘清现行土地整治法律制度的主要内容及存在的不足,并提出对策建议,以夯实制度基础,促进各类土地整治的融合发展。研究方法:文献资料法和比较分析法。研究结果:(1)当前土地整治制度主要包括项目管理、资金管理、占补平衡、增减挂钩四大制度;(2)相关制度之间缺乏衔接,主要存在占补平衡制度与土地重划制度不协调、项目管理制度与土地重划项目区管理不统一、资金管理制度与土地重划资金平衡难统筹的问题。研究结论:新时期促进土地整治的融合发展必须在田水路林村综合治理理念和框架下完善土地整治法律制度,为土地整治事业发展壮大提供良好的制度保障:(1)建立土地整治和土地重划统一平台,发挥增减挂钩激励效应;(2)实行差别化项目管理制度;(3)坚持建设用地总量、增量、流量三位一体的管控制度;(4)建立增减挂钩结余指标调剂机制。

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## 1 INTRODUCTION

*The Regulations on Economical and Intensive Land Use* came into effect formally as of September 1, 2014. The document sets out that “land consolidation is encouraged in China. Comprehensive measures are taken to manage the farmland, water, roads, forests and villages pursuant to overall land use planning and land consolidation and readjustment planning”. In the author’s opinion, the key to carry out comprehensive management of farmland, water, roads, forests and villages aiming at whole-area consolidation and readjustment and regional coordination is “planning as a whole”, and the reform and improvement of land consolidation and readjustment legal system is an important sally port. Since *the Land Management Law* was promulgated and put into effect, the Ministry of Land and Resources has worked with relevant authorities to issue more than 130 policy documents with regard to land consolidation and readjustment successively. According to preliminary statistics, they include 23 project management documents, 20 financial management documents, 8 farmland conversion documents and 6 urban & rural construction land linkage documents, which have constituted a land consolidation and readjustment policy system supported by project management and financial management, and guided by farmland conversion and urban & rural construction land linkage, providing a basic institutional guarantee for the regular and orderly progress of land consolidation and readjustment. But as China’s land consolidation and readjustment has focused on farmland consolidation and readjustment, and the rural construction land consolidation and readjustment powered by urban & rural construction land linkage policy formed an important part of land consolidation and readjustment till 2005, the land consolidation and readjustment systems are not integrated, and in urgent need of being reviewed and improved under the comprehensive management concept and framework of farmland, water, roads, forests and villages.

In terms of the implementation itself, land consolidation and readjustment includes traditional farmland development, readjustment and rehabilitation, also includes rural construction land consolidation and readjustment powered by urban & rural construction land linkage policy in 2005. The author considers that, to carry out comprehensive management of farmland, water, roads, forests and villages aiming at whole-area consolidation and readjustment and regional coordination, it needs to consider the rural construction land consolidation and readjustment and the urban & rural construction land linkage system as a whole. Systems serve as a cornerstone and

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guarantee for management. To achieve effective management of land consolidation and readjustment, the reform and improvement of land consolidation and readjustment legal system is an important sally port. From the perspective of integration of urban & rural construction land linkage system into land consolidation and readjustment, this paper tries to clarify the main contents and problems existing in the current legal system of land consolidation and readjustment, and put forward suggestions to reinforce the institutional basis, and promote the integrated development of all types of land consolidation and readjustment.

## **2 CURRENT LAND CONSOLIDATION AND READJUSTMENT AND REFORM OBJECTIVES OF LEGAL SYSTEM OF LAND CONSOLIDATION AND READJUSTMENT**

### **2.1 “Three major changes” in the development of land consolidation and readjustment**

As a strategic development of the CPC Central Committee, land consolidation and readjustment has changed from focusing on farmland consolidation and readjustment to comprehensive management of farmland, water, roads, forests and villages, with farmers as the center, farmland, villages and towns as the highlight, and water, roads and forest as the supporting target. On the whole, “three changes” exist in the development situation of land consolidation and readjustment, i.e. the change from single-targeted land readjustment, rehabilitation to comprehensive land consolidation, change from local consolidation to whole-area consolidation, change from single reform of land to comprehensive reform.

### **2.2 Legal system of land consolidation and readjustment oriented to “three objectives”**

The legal system of land consolidation and readjustment needs to be further improved to promote the achievement of “three objectives”: first, it contributes to boost the whole-area consolidation and readjustment. There should be an overall planning at city and county levels to arrange all types of land consolidation and readjustment activities as a whole, build ecological core areas, arrange the construction of infrastructures such as water, power and traffic facilities, and promote the balanced allocation and rational flow of land, capital and labor force between urban and rural areas. Second, it contributes to enhance regional planning as a whole. On the one hand, differential land consolidation and readjustment will be implemented according to the comprehensive zoning of land consolidation and readjustment defined in the national overall land use planning, with more supports offered to the land consolidation and readjustment in underdeveloped and remote areas; on the other hand, land consolidation and readjustment tasks, key fields and targets in different areas are specified in accordance with the functional orientation and development directions of national main functional areas. Third, it contributes to

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improve regimes and mechanisms. With special funds such as new fees as the main body, relevant funds are led and brought together to encourage, support and lead social investment to participate in land consolidation and readjustment; a multi-departmental joint accountability mechanism is provided, respect is given to the main body position of the mass. Social forces are led and regulated to participate in land consolidation and readjustment.

### **3 CURRENT SYSTEMS OF LAND CONSOLIDATION AND READJUSTMENT AND RELATED PROBLEMS**

#### **3.1 Current systems of land consolidation and readjustment**

At present, land consolidation and readjustment related systems mainly consist of the project management system, financial management system, farmland occupation-compensation system and urban & rural construction land linkage system, as well as ownership management system, performance evaluation system, records supervision and management system, and other related systems.

The project management system covers the whole process of project implementation, i.e. project application and approval, planning and design, project implementation, completion and acceptance, monitoring and supervision, etc., including concrete project implementation system such as the project legal person system, bidding and tender system, project supervision system, notification system, and contract system; the financial management system includes the land consolidation and readjustment fund collection, use, budget and final account management systems. Funds are mainly used for the purposes of readjustment, development and protection; the core of farmland occupation-compensation system is that compensation must be followed by occupancy. In a province, compensated arable land must be linked with land consolidation and rehabilitation projects. Local governments are encouraged to introduce market-based mechanisms to attract the participation of social funds. Compensated arable land projects used for farmland occupation-compensation system are put on records on line, farmland conversion is assessed on annual basis; the urban & rural construction land linkage system consists of the project area setting, linkage index management and control, overall examination and approval, fund balancing, record supervision and management, etc. It is relatively complete and establishes its own system. The scale of urban & rural construction land linkage is issued and controlled by the country, and the overall examination and approval is the precondition of the linkage project.

## 3.2 Problems in land consolidation and readjustment related systems

In terms of the integration of urban & rural construction land linkage system into land consolidation and readjustment, the existence of some problems affects the overall effect of legal system of land consolidation and readjustment. Main problems are as following:

### 3.2.1 Discordance between the farmland occupation-compensation system and the urban & rural construction land linkage system

From the perspective of planned management, the farmland conversion consists of two lines, occupancy and compensation, highlights the process management and details the staged tasks, with land consolidation and readjustment as the main body of the project; but the urban & rural construction land linkage is self balancing, with occupancy and compensation integrated, urban & rural construction land linkage as the policy platform, compressing the process and highlights results. Both the land consolidation and readjustment and the urban & rural construction land linkage can eventually achieve no decrease of total quantity and no lowering of quality of arable land. They have consistent objectives and results, but belong to the farmland occupation-compensation system and the urban & rural construction land linkage system respectively. The surplus of arable land in excess of the urban & rural construction land linkage index, for example, cannot be included in the land consolidation and readjustment record system due to system barrier, cannot be used for farmland conversion, and lowers the effect of policy.

### 3.2.2 Discordance between the project management system and the urban & rural construction land linkage project area management

Traditional farmland development and readjustment projects and urban & rural construction land linkage projects belong to two different consolidation and readjustment platforms, and have two sets of management system. The main objective of project management system is to increase the arable land, and the project entity is traditional farmland development and readjustment project. From the project site selection, feasibility study, planning and design, project budget to project construction and project completion and acceptance, all are carried out around the main line of increase of arable land quantity (arable land quality was included in recent years); the urban & rural construction land linkage system aims at the balancing of land use structure in a project area, and implemented in the project area, with linkage index introduced to adjust the implementation scale, highlighting the control of total quantity, closed operation, periodic measurement, and return when due. In practice, the farmland readjustment, urban & rural construction land linkage and historical waste land rehabilitation pilot projects are approved, implemented, accepted and assessed separately, which easily leads to the separation of consolidation and

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readjustment planning, design and construction and other aspects from the idea of comprehensive management of farmland, water, roads, forests and villages, and causes the problem of repeated use and waste of funds.

### 3.2.3 Discordance between the fund management system and the internal fund balancing of urban & rural construction land linkage

Traditional sources of land development and readjustment funds include: new construction land use fees, land transfer income used for agricultural development, arable land cultivation fees, land rehabilitation fees and supporting funds from local finance. Revenues and expenditures are accounted for separately. The funds are earmarked for specified purpose only and included in financial budget management, and shall not be used for balancing the fiscal budget. After the Cai Zong [2014] No.7 document was issued, the urban & rural construction land linkage fund balance construction land use index was linked to the urban land transfer income and the balance index transaction income must be included into the State Treasury. Farmers' resettlement compensation, readjustment and rehabilitation, and construction of infrastructures such as schools, which are needed for the implementation of urban & rural construction land linkage are all financed by fiscal budget. Self balancing shall be achieved through governments at the county level. In accordance with the idea of "fund following the project", comprehensive management projects of farmland, water, roads, forests and villages need to use funds from multiple sources such as special consolidation and readjustment funds from land authorities, funds managed by other competent authorities that relate to land consolidation and readjustment, self-raised funds, and private capital. The current financial management system still needs improvement in respect of multi-source fund raising, integrating, and concentrated investment. In accordance with the requirement that all proceedings from urban & rural construction land linkage shall be returned to the rural areas, whether the urban & rural construction land linkage balance index proceedings are all used for urban & rural construction land linkage project area needs to be specified.

## **4 SUGGESTED COUNTERMEASURES FOR IMPROVED MANAGEMENT SYSTEM OF LAND CONSOLIDATION AND READJUSTMENT**

To improve the land consolidation and readjustment system and integrate the urban & rural construction land linkage into land consolidation and readjustment in the new period, the uppermost thing is to properly handle the reform strategies for the project management system, farmland occupation-compensation system and urban & rural construction land linkage system.

## 4.1 Basic Idea

### 4.1.1 Build an unified consolidation and readjustment platform to achieve the incentive effect and guaranteeing function of urban & rural construction land linkage policy

The essence to implement urban & rural construction land linkage is to consolidate and readjust the rural construction land. In the long run, the urban & rural construction land linkage policy will be included into the entire land consolidation and readjustment system framework, change the project management to institutional arrangement, highlight the urban & rural construction land linkage aiming at consolidation and readjustment, and stimulate the advancement of land consolidation and readjustment. Studies will focus on policy measures for issuing linkage index, orderly and flexible use of linkage index, and paid use of balance index.

### 4.1.2 Adopt different project management systems according to various types of land consolidation and readjustment projects in different areas which have individual actual needs.

According to the optimized land development layout strategy, different types and scales of comprehensive land consolidation and readjustment will be carried out in national “four zones and one belt” (23 center gathering zones, 52 concentrated distribution zones of arable land, 16 important ecological function zones, 76 concentrated zones of mineral resource exploitation, and the (function degraded) belt of the coast of Bohai Bay, the coastal part of Northern Jiangsu, the coastal part of Fujian, and the coast of Pearl River Estuary). To implement differential land consolidation and readjustment is a necessary requirement for carrying out regional development strategy. In term of the project management system reform, it needs to establish a suitable project examination and approval management system to offer guidance for different types of land consolidation and readjustment projects such as farmland consolidation and readjustment, high-standard basic farmland construction, urban inefficient land redevelopment and rural construction land consolidation and readjustment, industrial and mining waste land consolidation and readjustment in eastern, middle and western areas.

### 4.1.3 Stick to the principle of increment control and stock revitalization, and uphold the trinity of utilization management and control system

In recent years, China controlled the increase of construction land rigidly, encouraged and forced the reuse of stock construction land, and intensified the land consolidation and readjustment. In terms of the planned management of land, the total quantity, flow and increment of land have been controlled simultaneously: namely, the total quantity of construction land is under the control of the National Overall Land Use Planning; the flow of construction land is regulated and controlled through

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the urban & rural construction land linkage system. A project area is formed through the removal of old buildings and construction of new ones, with no increase of the construction land area and no decrease of the arable land area and no degradation of the quality of arable land in the project area; the construction land increment is under the control of planned targets through farmland conversion. Economical and intensive land use must be achieved through control of increment, revitalization of stock, optimized structure and efficient use of construction land.

#### 4.1.4 The introduction of index adjusting mechanism can organically connect the farmland occupation-compensation system with the urban & rural construction land linkage system.

As the root that an urban & rural construction land linkage project area is different from the increment control, overall measurement and closed operation is unshakable. But the urban & rural construction land linkage balance index adjusting mechanism can connect the arable land balance after urban & rural construction land linkage with the farmland occupation-compensation system, connect the construction land balance with the construction land acquisition or collective construction land circulation, and connect the urban & rural construction land linkage and land consolidation and readjustment with the collective construction land circulation and land acquisition system reform.

## **4.2 Suggestions**

### 4.2.1 Adopt different land consolidation and readjustment project management systems

Land consolidation and readjustment projects fall into comprehensive and single ones. If a comprehensive land consolidation and readjustment project is approved, the farmland, water, roads, forests and villages in the scope of the project are approved. Priority is given to the rehabilitation of rural construction land, which will be used after rehabilitation. The scale of construction land rehabilitation is approved separately and assigned in advance through the “urban & rural construction land linkage index”. A special section concerning urban & rural construction land linkage can be included in the overall consolidation and readjustment project planning. If a single consolidation and readjustment project is approved, farmland readjustment, rural construction land readjustment, urban inefficient land, industrial and mining waste land rehabilitation and consolidation projects are approved respectively according to their own approval regulations. The same approval method is adopted for the construction land consolidation and comprehensive consolidation.

### 4.2.2 Establish urban & rural construction land linkage balance index management system

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After the implementation of land consolidation, both the comprehensive and single consolidation projects can generate the “construction land balance index” and “arable land balance index” in the project area through village consolidation and farmland readjustment. It is suggested to reflect the whole process of index approval, use and write-off through provincial balance index management ledger. When construction land approval is needed outside the land consolidation project area, overall urban & rural construction land linkage approval and farmland conversion approval are conducted on the basis of “construction land balance index” to form a project area by the urban new building construction plot and old building removal plot; or, farmland conversion approval is executed on the basis of planned targets. If the construction land balance index is used in poverty relief and development, ecological migration and post-disaster reconstruction, the operation is conducted in the provincial range within a certain range of proportion.

#### 4.2.3 Regulate the balance index transaction management system

The transaction of construction land balance index and arable land balance index can manifest the income of urban & rural construction land linkage, and serves as a medium for the reasonable return of urban & rural construction land linkage benefit. What needs to be regulated are: first, the transaction price. The minimum and maximum price of construction land balance index transaction can be set by reference to the cost of urban & rural construction land linkage readjustment and rehabilitation, compensation and resettlement, farmland conversion and land acquisition, avoiding too high and too low compensations in practice. Second, the direction of expenditure. It is suggested to allocate a certain proportion of urban & rural construction land linkage income to be used for farmland consolidation and improvement of agricultural production condition. Third, the transaction shall be limited between governments.

#### 4.2.4 Specify the farmer resettlement construction management system in land consolidation and readjustment

One of the two options can be adopted for the approval of farmer resettlement construction land in land consolidation and rural collective construction land: the first option is that all constructions are subject to construction land approval. It is advocated to use a certain proportion of linkage index for new building construction in farmer resettlement, and approve the arable land (farmland) to be occupied by concentrated farmer resettlement as the “new building construction index”; the second option is that, as long as within the scope of land consolidation project, the land is regarded as construction land readjustment and replacement, is collective-owned before and after implementation, needs no approval, and can be excluded from the construction land flow management.

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## **BIOGRAPHICAL NOTES**

Li Tan, senior engineer, has dedicated to the study of land readjustment and land policy, used to be responsible for college and university's land area indicators research of China ,has published more than 10 first-author papers.

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