

Legal Issues Regarding the Development and Utilization of Rural Wasteland

By David Yu and Bernie Liu

China has a large number of barren mountains, gullies, hills and beaches (the “**Rural Wasteland**”) widely distributed across the country with considerable potential for future development. In light of State Council’s policy regarding the encouragement of economical land use, the development and utilization of Rural Wasteland is drawing great attention. This article confirms the definition of Rural Wasteland, presents the legal basis of obtaining the land-use right, discusses legal issues worthy of notice regarding its development and utilization.

The Definition of Rural Wasteland

Promulgated by General Office of the State Council in 1996, the *Notice on Management and Development of Rural Resource of Rural Wasteland and Further Strengthening the Reservation of Soil and Water* (《关于治理开发农村“四荒”资源进一步加强水土保持工作的通知》) (Notice No.23) defines Rural Wasteland as “barren mountains, gullies, hills, beaches, lands, slopes, sands, grasslands and ponds”. However, instead of perfecting the definition of Rural Wasteland, the revised *PRC Land Administration Law* (《中华人民共和国土地管理法》) (“Land Administration Law”) classifies lands into three categories according to the usage of lands as agricultural lands, construction lands and unutilized lands. Being further categorized into state-owned and collectively-owned, the unutilized lands include all lands other than for agricultural and construction use.

In order to clarify the scope of Rural Wasteland and unutilized land, the General Office of the State Council promulgated *Notice on Further Management of Rural Resource of Rural Wasteland* (《关于进一步做好治理开发农村“四荒”资源工作的通知》) (Notice No.102) in 1999, indicates that (i) unutilized lands shall include Rural Wasteland; (ii) Rural Wasteland shall be owned by collectively-owned economic organization; (iii) Rural Wasteland does not include cultivated lands,

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Legal Issues Regarding the Development and Utilization of Rural Wasteland

forestland (including hills allotted for private use and farming hills), grassland and state-owned unutilized land; and (iv) The delimitation of Rural Wasteland shall be based on the classification of land and the zoning ordinances made by competent authorities and land administrative department.

China's Current Land Use Classification Chart (2007 version) further classifies the unutilized lands as follows:

unutilized land	Current Land Use Classification	
	First Class Name	Second Class Name
	Grassland	Other grassland
	Water area and irrigation facility	River surface, lake surface, costal beach, inland beach, glacier and firm
	Other lands	Saline land, swampland, sand land and bare land

The abovementioned legal classification assists as the basis for the development and utilization of the Rural Wasteland.

Obtaining the Land-use Right of Rural Wasteland

Before commencing the development and utilizing the Rural Wasteland, a person or entity shall obtain the land-use right of such land. The Land Administration Law and the PRC Law of Land Contract in Rural Areas ("Rural Land Contract Law") (《中华人民共和国农村土地承包法》) sets out the obtaining methods as follows:

Obtaining Method of Rural Wasteland				
No.	Granting party	Granted party	Obtained right	Method
1.	(i) Collectively-owned economic organization or (ii) villagers committee	Members of collectively-owned economic organization	right to land contract	Household Contract
2.		Other entities or individuals	right to land contract (1) members of the collectively-owned economic organization concerned shall enjoy priority; (2) consent of not less than two-thirds of the members of the collectively-owned economic organization by village assembly, or of representatives of the villagers, before submitting to the people's government of county (town) for approval	Other Contracts (by bidding, auction, public consultation, etc)

Legal Issues Regarding the Development and Utilization of Rural Wasteland

The Development and Utilization of Rural Wasteland

Section 8 and 33 of the Rural Land Contract Law prohibits any contracted land to be used for non-agricultural development without prior approval. Also, Notice No.23 and Notice No.102 state the purpose of the development and utilization of Rural Wasteland as “to control the soil and water loss, improve ecological environment and promote the sustainable development of agricultural”, and that Rural Wasteland shall not be used for any non-agricultural purpose.

The Rural Land Contract Law and other relevant laws and regulations set to protect the rights under land contract of collectively-owned economic organization members and other entities or individuals, granted or transferred by means of household contracts. As to elaborate, during the term of the contractual period, grantors shall not: (i) retrieve or make adjustments to the contracted lands, or (ii) terminate such contracts unilaterally, or (iii) retrieve the contracted land for satisfaction of debts.

It shall be noted that pursuant to Notice No.102, generally, Rural Wastelands shall have their use rights contracted, leased or auctioned before being developed for a period no more than 50 years. Moreover, all individuals and entities shall only receive from competent governmental authorities, right certificates regarding Rural Wastelands (such as the use of land, forest, grassland or aquaculture) after completing the initial stage of development and management, in accordance with the major business plan. Notice No.102, also makes it clear that all Rural Wastelands, originally as unutilized lands, may be converted into land for agricultural use after development and relevant certificates may be obtained. However, a grantor is entitled to retrieve the land-use right if : (a) the grantee causes water and soil loss by: (i) failure to manage and develop the lands; (ii) damaging forest, grass, vegetation to commence crop planting; or (iii) other means of predatory development, or (b) a grantee puts Rural Wasteland into non-agricultural developments without prior approval.

We have also noticed that some local governments have created new measures for utilizing the Rural Wasteland, such as developing new energy resources (wind energy and solar energy) related modern agriculture to make use of such land more efficiently. However, subject to the nature of the Rural Wasteland and relevant legal requirements, all innovations shall be made in the agriculture development of Rural Wastelands, and are yet to be piloted by local governments.

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