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Real Estate Registration in the Greater Bay Area: Legal Conflicts Between Hong Kong SAR and Mainland China

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Abstract. Rules governing the effectiveness of real estate registration underpin property security and transaction reliability. Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR) common law regime adopts the registration-opposition principle, under which property changes take effect by party agreement and registration mainly operates against third parties. Mainland China's civil law system follows the registration-effectiveness principle, making registration mandatory for valid property changes. Amid the integration of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA), cross-border real estate transactions have increased, while conflicting registration rules have produced persistent disputes over ownership determination and contract enforcement. Focusing on ownership conflicts and performance dilemmas in GBA cross-border real estate deals, this paper compares the theoretical foundations and institutional disparities between the two regimes, draws on Hong Kong SAR's legal-equitable title structure, and proposes feasible pathways for regulatory alignment. The findings help resolve cross-jurisdictional legal frictions, protect transaction security, and support rule-of-law coordination and institutional improvement of real estate registration in the GBA and mainland China.

Keywords: real estate registration, cross-border real estate transactions, regulatory alignment

1. Introduction

Real estate registration represents the core institutional mechanism for property publicity and transaction order maintenance, and its effectiveness rules define the rights-obligation boundaries in real estate transfers.

Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR) and mainland China are the two areas under different legal traditions, and their systems of real estate registration efficiency are thus fundamentally different. Hong Kong SAR's registration system is based on the common law will theory, and the parties' free will and consensual arrangements are legally binding. It is a dual-structure system of legal title and equitable title, and registration does not confer ownership rights but merely grants opposability. Mainland China's registration system is based on civil law property formalism, and prioritises the numerus clausus, publicity and good faith. Registration is constitutive; otherwise, the change in property rights cannot be deemed legally effective [1].

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With the progress of Guangdong-Hong Kong-Macao Greater Bay Area (GBA) construction, cross-border economic and trade activities have been expanding, and cross-border real estate transactions for investment, residential, and industrial purposes have risen significantly. However, the institutional differences between the two jurisdictions have not been harmonised; thus, frequent disputes arise over ownership determination, contract performance, and the insufficient protection of good-faith third parties. These problems increase transaction costs and legal risks for market participants, impede the free flow of factors of production, and weaken efficient resource allocation in the GBA. Most existing studies remain at a high institutional level, do not address specific problems with corresponding solutions, and have not proposed feasible compromise paths consistent with the institutional foundation of China's registration-effectiveness principle. Based on these concerns, this paper focuses on practical cases of GBA cross-border real estate transactions, identifies legal problems arising from differences in effectiveness, and studies corresponding paths by drawing on Hong Kong's experience. The study has theoretical and practical value for promoting the integrated development of the GBA real estate market and its rule-of-law coordination system.

2. Literature review

Research by scholars at home and abroad has studied the different reasons for weak real estate registration effectiveness in Hong Kong and mainland China and laid a foundation for this paper. Wang Liming and Liang Huixing, for instance, have studied the jurisprudential origins of mainland China's registration-effectiveness doctrine in property rights and traced its legal roots to civil law formalism [2]. Their studies emphasize the need to maintain general order in the real estate market, strengthen property rights regulation through registration and publicity, and organize transactions legally. Scholars of Hong Kong law, including He Jinxuan and Chen Hongyi, have pointed out that Hong Kong's registration-opposition system is based on the common law doctrine of will theory and is supported by the unique dual structure of legal and equitable title [3].

Fu Jingkun and Li Yang have systematically compared the historical development, evaluation mechanisms, and scope of registration credibility in the two systems and explained why they differ in operation under civil law and common law. Based on judicial practice in mainland China, Sun Xianzhong, Wang Yi, and others have studied the problems of complex procedures and low efficiency under the registration-effectiveness doctrine and put forward targeted reform measures [4]. Li Shaoping and Zou Pingxue have mapped the cross-border conflicts in GBA cross-border purchases resulting from regulatory differences and identified their types and forms of legal friction. Huang Jin and Zhang Xianchu put forward macro-level principles for regulatory coordination and institutional alignment in private international law and regional legal integration [5].

However, some deficiencies in the existing research still exist. Most studies focus on macro-institutional comparison and do not address problem-oriented solution design. Policy recommendations are generally too broad, do not consider the institutional constraints of China's registration-effectiveness principle, and fail to address practical bottlenecks such as conflicting ownership determination, blocked cross-border performance, inadequate protection for bona fide third parties, and inconsistent judicial adjudication. Practitioners, legal advisors and the courts urgently need clear and practical guidance for cross-border transactions in practice.

Therefore, this paper uses practical transaction scenarios for problem-solving instead of only conducting macro-theoretical comparison. It addresses the real problems that have arisen in cross-border real estate transactions in the GBA, draws on Hong Kong's legal-equitable title dual system, and proposes specific and legally binding alignment routes that respect the institutional foundations of the mainland while promoting party autonomy and transaction security.

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3. Jurisprudential foundations and core disparities in real estate registration effectiveness between Hong Kong and Mainland China

3.1. Jurisprudential divergence

The real estate registration system in mainland China is based on civil law property formalism and follows the rule of numerus clausus, publicity, and bona fide reliance. The government needs to ensure transaction security and protect property rights. It publicly records registered property owners to reduce information asymmetry and protect the interests of indefinite third parties. Registration is therefore required for the modification of property rights; otherwise, these changes do not have legal effect [1, 6]. The design fixes the order of transactions and prevents disputes over ownership.

Hong Kong's system of property registration is based on the common law theory of trusts and party autonomy. Property rights take effect upon a valid agreement by the parties. Hong Kong has a dual system of legal title and equitable title; the former requires registration to be enforceable against third parties, and the latter stems from a contract, payment, possession, or other circumstances and is binding on the parties concerned. The registration system serves as an inquiry and priority-setting platform. It is not a right-granting device but rather implements the principle of consent supremacy with publicity support [7, 8].

3.2. Core institutional differences

3.2.1. Different needs for changes in property rights

Mainland China is based on the model of obligatory agreement plus registration for effectiveness: a sales contract establishes only obligational relations, and property rights change only upon completion of registration. This model clearly distinguishes between obligations and disposals to guarantee the certainty and stability of title [9]. Hong Kong uses an effective-upon-consent and registration-for-opposition system of property rights: rights take effect immediately after a valid agreement, and registration is mainly used to prevent third-party claims. Non-registration does not affect ownership between the parties [10].

3.2.2. Divergent registration functions and review modes

Registration has both constitutive and declaratory effects in mainland China. The registration office conducts a substantive review to verify whether the title and grounds for the transfer of rights are legitimate and whether the corresponding registry records meet substantive rights requirements. This method ensures registry authority but is relatively slow and expensive [6]. Registration in Hong Kong has only an oppositional effect and limited credibility. Authorities conduct only formal checks on document format, signatures, and tax compliance without verifying transaction content, which improves efficiency but weakens the guarantee of substantive title [7].

3.2.3. Different standards for ownership determination

Mainland China has set up a system of real estate registries that serve as the primary source of ownership and rights records, upholding the principle of registry credibility. Third parties can safely trade according to the registry record [11]. Hong Kong has a system of layered titles, where registered legal title has the most binding force, and equitable interests arising from contracts,

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payments, or possession are enforceable in equity between the parties and against third parties with notice, forming a structure of dual titles with layered effects [8].

4. Typical legal dilemmas in GBA cross-border real estate transactions

4.1. Conflicts in cross-border ownership determination

The most direct consequence of institutional divergence is that an identical transaction may yield contradictory ownership outcomes. Under mainland law, a buyer holds only a contractual claim before registration, not title. Under Hong Kong law, a buyer may acquire equitable title upon payment, possession, or a valid agreement. A typical real cross-border case in the GBA vividly illustrates such conflicts:

The Hong Kong buyers signed a subscription agreement and paid consideration in 1999, took possession, but failed to complete registration due to the developer's fault. The developer later sold the same flat to a mainland buyer, who completed registration in mainland China and obtained the ownership certificate in 2013. Under the Conflict Law of the People's Republic of China on Foreign-Related Civil Relations, proprietary rights in immovables are governed by the law of the place where the immovable is located (mainland law) [1]. Under mainland China's registration-effectiveness principle, the registered transferee is prima facie the legal owner. However, under Hong Kong's registration-opposition principle, the Hong Kong buyers, having performed in good faith, may claim enforceable equitable title [7].

In cases of double sale to a mainland buyer and a Hong Kong buyer successively, a conflict is nearly inevitable: the registered mainland buyer asserts legal title, while the consensual Hong Kong buyer claims equitable title. Courts applying divergent rules may issue conflicting judgments, leaving ownership in prolonged dispute and undermining transaction security.

4.2. Disparities in cross-border performance and obligation assessment

Mainland China upholds the principle of separation of obligations and property: contract validity does not automatically trigger property change. Sellers frequently refuse to cooperate in transfer or seek rescission on the ground that title has not vested due to non-registration. Although courts generally uphold specific performance, cross-border compulsory transfer remains difficult [9]. Hong Kong regards registration as an integral part of contractual performance; a buyer who satisfies the requirements for equitable title may seek specific performance of registration [8]. Divergent interpretations of registration as an obligation and breach criteria cause frequent performance barriers and inconsistent adjudication of contractual liability across borders.

4.3. Inadequate protection for bona fide third parties and cross-jurisdictional remedy gaps

Mainland China's bona fide acquisition requires good faith, adequate consideration, and completed registration, emphasizing the decisive role of registration publicity [12]. Hong Kong's protection for bona fide purchasers hinges on good-faith ignorance and valuable consideration, without a mandatory registration requirement [7]. Such discrepancies imply that a third party may be deemed bona fide in one jurisdiction but not in the other. More critically, the two jurisdictions lack a systematic framework for judicial assistance and judgment recognition. Property rights judgments rendered in one jurisdiction often face severe enforcement difficulties in the other, exposing bona fide third parties to the risk of unenforceable rights and ineffective relief [5].

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4.4. Institutional incompatibility and increased transaction costs

The coexistence of two sets of registration rules has significantly raised compliance costs and legal risks for cross-border investors. Market participants must conduct dual due diligence under both legal systems, including title verification, risk assessment, and contract design, which prolongs the transaction cycle and increases consulting and administrative expenses. Small and medium-sized investors and individual homebuyers are particularly vulnerable to unexpected disputes due to insufficient understanding of cross-jurisdictional rules. Moreover, the uncertainty of rights confirmation reduces the liquidity of cross-border real estate assets, affects the normal operation of the real estate financing market, and restricts the deep integration of financial services in the GBA.

4.5. Challenges to judicial application and uniformity of adjudication

Registration effectiveness rules in court cases are also different. In dealing with cross-border real estate cases, judges have to conduct conflict-of-laws analysis and legal application screening, which increases the complexity and uncertainty of trials. Different standards for evidence identification and burden of proof may lead to different verdicts in similar cases; thus, the consistency and authority of judicial administration may be undermined. Unstable judicial expectations for cross-border investors create insecurity, so even good-faith parties may face the risk of losing property rights, weakening market confidence and hindering the sustainable development of the GBA real estate market.

5. Hong Kong experience and implications for GBA regulatory alignment

5.1. Establish tiered cross-border title recognition rules to resolve ownership disputes

Based on Hong Kong's dual-title layered-effect system and while adhering to mainland China's registration-effectiveness principle, a dual-rule system of *inter partes* effect and *erga omnes* effect should be introduced [3]. First, party agreements and performance, including payment, possession, and use, should have binding *inter partes* effect and impose a statutory duty on the seller to register and prohibit arbitrary repudiation. Second, in order to ensure *erga omnes* effect against third parties, registration should also be completed in both locations for transaction security. Third, the GBA-wide real estate registration information sharing and inquiry mechanism should be developed to gradually achieve mutual recognition of key registry data and reduce the risk of double-sale and hidden title disputes. These rules respect contractual autonomy and ensure the stability of public rights relations, thereby providing an efficient institutional platform for cross-border transactions.

5.2. Standardize cross-border performance obligations to reduce disputes

Hong Kong's rule that consent generates a registration obligation should be incorporated to clarify that registration is a statutory duty imposed on sellers in GBA cross-border transactions, rather than an optional act [8]. The seller should not refuse to perform or deny the transfer of ownership merely because registration has not yet been completed. Competent authorities can release model contracts for cross-border real estate transactions, standardizing registration deadlines, cooperative obligations, liability for breach, and delay damages to reduce transaction risks. At the same time, courts should support cross-border specific performance orders and strengthen mutual enforcement mechanisms to improve effectiveness. Organizing performance rules can prevent conflicts among rules and improve the enforceability of contracts in cases of breach.

DOI: 10.54254/2753-7048/2026.34438

5.3. Build a unified bona fide third-party protection regime and strengthen cross-jurisdictional remedies

Hong Kong's good-faith protection standard can be used as a reference to establish a unified GBA rule set [7]. First, good faith should mean the absence of actual or constructive knowledge of the title defect, and registration status should be a necessary but not sufficient condition. Second, cross-border judicial assistance should be strengthened to clarify procedures for recognizing and enforcing judgments in favor of bona fide third parties, simplify documentation, and shorten the processing period. Third, mainland China should reasonably adjust its doctrine of bona fide acquisition to moderate formal rigidity in cross-border circumstances and enhance protection for genuine good faith [12]. The integrated protection system would reduce transaction risks, protect transaction funds, and promote confidence in the Chinese real estate sector.

5.4. Promote information interconnection and technological governance innovation

Speed up the construction of a GBA cross-border real estate registration information sharing platform and realise online verification, joint inquiry and secure data exchange. Gather important data on the status of the property owner, mortgages and other liens, court enforcement orders and restrictions, etc., from the platform to reduce information asymmetry and prevent the sale of heavily encumbered properties or false transactions.

Blockchain and electronic certificate technology will be employed to guarantee the authenticity, integrity and auditability of the data. At the same time, the platform will comply with cross-border data security and personal privacy protection rules, adopt a data minimization, anonymisation and on-demand authorisation access mechanism, and clarify the scope of data, use purposes and storage jurisdictions to address the legal risks of cross-border data flow.

Design a one-stop cross-border registration service model to unify acceptance standards, materials and processing procedures, and support cross-border online submission, mutual verification and synchronized progress feedback. Technology can effectively address the institutional gap, promote the optimisation of cross-border trade, and provide reliable technical support for the stable operation of the coordination mechanism in the long run.

5.5. Strengthen judicial coordination and unify adjudication standards

A cross-regional judicial coordination mechanism for GBA real estate disputes should be established, and regular exchanges of typical cases and adjudication guidelines should be organized. A unified review standard for cross-border property rights confirmation, performance obligations, and bona fide third-party identification should be formed, and guiding cases should be issued to reduce the occurrence of similar cases with different judgments [5]. An expert panel for handling cross-border real estate disputes can also improve trial efficiency and professionalism and provide stable and foreseeable judicial protection for market participants.

6. Conclusion

The main reason for the differing impact of real estate registration in mainland China and Hong Kong is that their systems are based on different legal traditions: civil law registration-effectiveness in the mainland and common law registration-opposition in Hong Kong, leading to different models of property change, review mechanisms, title structures, and credibility levels. In cross-border

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transactions within the GBA, these differences directly cause five types of legal problems: differences in ownership-determination rules, non-congruent performance obligations, inadequate safeguards and remedies for good-faith parties, higher institutional transaction costs, and difficulties in ensuring judicial uniformity. All of these problems harm market efficiency and transaction security.

Based on Hong Kong's institutional experience, the GBA can promote a combined-jurisdiction system that respects the laws in both areas while remaining convenient and secure for businesses. Five kinds of alignment are available: first, constructing a system of tiered cross-border title recognition rules to differentiate between *inter partes* and *erga omnes* effect; second, unifying performance obligations by codifying registration as a statutory duty and promoting model contracts; third, establishing uniform *bona fide* protection standards and strengthening cross-jurisdictional judicial cooperation and judgment enforcement; fourth, promoting information interconnection and technological governance innovation to reduce institutional friction; and fifth, improving judicial coordination and unifying adjudication standards to bolster judicial credibility. These proposals not only address existing problems and promote factor mobility in the GBA but also provide guidance for the development of mainland China's model of registration-effectiveness from a rigid system to one that focuses on constitutive effect while protecting reliance interests, fostering a more scientific, open, and efficient national real estate registration system [1, 2].

In the future, based on research into cross-border judicial cases, representative disputes and adjudication rules should be gathered to develop more specific response plans. At the same time, it is necessary to continue tracking the practical effects of the GBA cross-border registration coordination mechanism, summarize experience and deficiencies, and provide a sustainable reference for optimizing relevant systems. With the deepening of GBA integration, the coordination of real estate registration rules will become an important part of regional rule-of-law integration, and its continuous improvement will strongly support the high-quality development of the GBA.

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