

BUCHBESPRECHUNGEN

Knut Benjamin Pissler, *Wohnungseigentum in China: Darstellung und Rechtsgrundlagen*, Mohr Siebeck, Tübingen 2012

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Knut Benjamin Pissler studied Law at the Maximilian University of Würzburg and Law and Sinology at the University of Hamburg. He conducted language studies and research at the Sino-German Institute for Legal Studies at the University of Nanjing from 1996 to 2002. In 2002 he was appointed as Senior Research Fellow for China at the Max Planck Institute for Comparative and International Law in Hamburg. He is a member of the advisory board of the *Zeitschrift für Chinesisches Recht* (which contains annual bibliographies of Western-language works on Chinese law compiled by him since 2003) and *Schriften zum chinesisches Recht* since 2008. Besides three major works on Chinese Law, he contributed several shorter pieces to collections, commentaries, handbooks, encyclopaediae and Chinese legal journals. He has translated several important decisions of the Chinese Supreme People's Court (SPC).

Pissler's interest in apartment ownership (condominium law) was instigated when he became the owner of an apartment in Hamburg in 2008. This inspired him to gather the most important Chinese legislation on apartment ownership, translate the material into German and thereafter compose the book with an invaluable translation.² The book is thus one of the most important Western-language works on Chinese condominium law. Other major contributions are the doctoral thesis of Lei Chen converted into a book with the title *The Making of Chinese Condominium Law*,³ an essay by Van der Merwe in a book edited by Chen and Van Rhee entitled *Towards a Chinese Civil Code* published in 2012,⁴ a doctoral thesis by Xiaoqin WANG in 2011⁵ and an article by Lei CHEN and Mark Kielsingard in the *Chinese Journal of Comparative Law*.⁶

The most important legislation translated and analysed by Pissler is the Chinese Property Code promulgated in 2007. This seminal legislation which contained only 14 provisions on condominium law,⁷ was fleshed out by two important judicial interpretations of the Property Code by the Chinese Supreme People's Court,⁸ namely the SPC Interpretation on Apartment Ownership and the SPC Interpretation on Property Services. Significant subordinate legislation considered by Pissler are the Property Management Regulations of 2003, as amended in 2007; the Manual of Instructions on general meetings and owners' committees of the PRC Ministry for Residential Buildings, Urban and Rural Development of 2009; the General and Special Method for Managing Reserve Funds of the Ministry of Construction and Finance of 2007; and the Method for the Certification of Managing Agents of 2004 as amended in 2007.⁹ Pissler points out that the terminology used in these sources is not always uniform and that several contradictions exist.¹⁰ I have already mentioned that excellent German translations of all these legislative instruments are available as an appendix to Pissler's book.

Condominium law affects a broad section of the Chinese population. In 2009 China's property market bypassed that of the United States as the world's largest real estate market. In 2010 roughly about 85 % of the Chinese population resided in condominium units or private houses, and 900 million square metres of residential space were added to urban and rural areas. Due to the constant increase in the prices of residential property, the Chinese government introduced measures to prevent so-called real estate bubble bursting. This included stricter requirements for loans and a greater taxation of real estate.¹¹ Pissler reports that 18.13 % of all court proceedings in the Haidian City District of Beijing in 2006 related to disputes concerning agreements entered into with managers (service providers) and that most of the judicial proceedings instituted in the peoples' courts in Beijing concerned actions instituted by managers for non-payment of fees.¹² This gives an indication of the problems afflicting the industry.

¹ University of Stellenbosch, South Africa.

² On pp. 83–207 at the end of the book.

³ Lei CHEN, *The Making of Chinese Condominium Law. A Comparative Perspective with American and South African Condominium Law* (2010).

⁴ See CG van der Merwe, 'Comparative Assessment of the provisions of the new Chinese Property Code on Condominiums' in: Lei CHEN/Remco van Rhee, *Towards a Chinese Civil Code* (2012), pp. 177–207.

⁵ See Xiaoqin WANG, *The Chinese Real Estate Industry with Focus on the Role of the Developer in the Development, Sale and Initial Management of Condominium Schemes* (PhD thesis, University of Aberdeen, 2011).

⁶ Lei CHEN/Mark Kielsingard, *Evolving Property Rights in China: Patterns*

and Dynamics of condominium Governance, *Chinese Journal of Comparative Law*, 2013, pp. 1–22.

⁷ §§ 70–83.

⁸ The Supreme People's Court's aim is to interpret legislation so as to ensure uniform judicial pronouncements by the lower courts. Sometimes the interpretation can go beyond the four corners of the Law concerned and thus acquire a quasi-normative character.

⁹ For exact details on the location of these sources, see Pissler, pp. 1–2.

¹⁰ Pissler, pp. 75–76.

¹¹ Pissler, p. 3.

¹² Pissler, pp. 3–4, n. 21 and 22.

Pissler begins the book by comparing certain basic concepts of Chinese condominium law namely the threefold legal relationship entered into by purchasers when they buy into a condominium development;¹³ the distinction between physical parts of the building and the land which form part of a unit, the common property or an exclusive use area;¹⁴ the structuring of parking spaces in Chinese condominium law;¹⁵ the designation of a unit owner as master of his or her unit;¹⁶ and the manner in which ownership is acquired in a unit.¹⁷ This is followed by a section on the community of owners which include topics such as the rights and duties of owners;¹⁸ the use of the common property;¹⁹ the conversion of residential units into commercial spaces;²⁰ works undertaken on the common property;²¹ and profits, liabilities and expenses;²² and the maintenance reserve fund.²³

As can be expected the most important part of the book concerns the management structure of Chinese condominiums. Pissler first points out that Chinese law does not draw a clear distinction between the respective roles of the individual owners, the community of owners and the general meeting in the management of a condominium scheme.²⁴ This is followed by a few general remarks on the relationship between the owners' executive committee and the general meeting²⁵ and the manager (service provider) and the developer.²⁶ The Chinese manager is designated a service provider in order to remove the stigma typically associated with management firms which could be put down to historical instances of managers who abused their management powers.

A significant section of Pissler's monograph is devoted to a discussion of the general meeting. Having explained that a general meeting is not obligatory, but *may* be established by the owners,²⁷ Pissler examined the preparation for convening the first general meeting;²⁸ the agenda of general meetings;²⁹ the manner in which general meeting are conducted and the provision for ordinary and

special general meetings;³⁰ resolutions that can be passed at general meetings;³¹ the calculation of votes at general meetings;³² legal challenges to resolutions;³³ and further functions of the general meeting.³⁴ The discussion of the general meeting is followed by a detailed discussion of the role of the manager (service provider) in the management of condominium schemes. Topics covered are provisional service and owners' management contracts,³⁵ including non-binding contracts and terms;³⁶ the inspection of the condominium building in order to pre-empt disputes as to whether the owners or managers are responsible for later discovered defects in the building;³⁷ the obligations, functions and powers of managers;³⁸ the dismissal of managers;³⁹ and the consequences of a rescission of service contracts concluded with managers.⁴⁰ Pissler's next focus is on the owners' committee which is the executive organ of the community of owners responsible for the implementation of the resolutions of the general meeting. This is different from the position in German law where the professional manager must implement the decisions of the general meeting and where the owners' executive committee fulfils a mere advisory role.⁴¹ This section deals with the election of the owners' committee;⁴² meetings of the committee;⁴³ the functions and powers of the committee;⁴⁴ the disqualification of members;⁴⁵ and vacancies and election of new members.⁴⁶

A final important part of the book explores state supervision of condominium schemes in China. In 1994 the Chinese State Council adopted a comprehensive national housing reform policy which focused on the privatization and commercialization of the housing market.⁴⁷ This led to the amendment of the Constitution which put private property on the same footing as state-owned property⁴⁸ and recognised the right to private property as a fundamental freedom.⁴⁹ Prior to this reform all condominium

¹³ Pissler, pp. 4 and 16.

¹⁴ Pissler, pp. 5-6 and 13-16.

¹⁵ Pissler, pp. 17-18.

¹⁶ Pissler, pp. 6-7.

¹⁷ Pissler, pp. 12-13.

¹⁸ Pissler, pp. 19-22.

¹⁹ Pissler, pp. 22-25.

²⁰ Pissler, pp. 25-26.

²¹ Pissler, p. 27.

²² Pissler, pp. 28-29.

²³ Pissler, pp. 32-36.

²⁴ Pissler, p. 77.

²⁵ Pissler, pp. 7-8.

²⁶ Pissler, pp. 9-10 and 29-30.

²⁷ Pissler, p. 29.

²⁸ Pissler, pp. 37-40.

²⁹ Pissler, p. 40.

³⁰ Pissler, p. 41.

³¹ Pissler, pp. 42-46.

³² Pissler, pp. 45-46.

³³ Pissler, pp. 46-47.

³⁴ Pissler, pp. 47-49.

³⁵ Pissler, pp. 50-52.

³⁶ Pissler, p. 55.

³⁷ Management Regulations § 37.

³⁸ Pissler, pp. 56-60.

³⁹ Pissler, p. 54.

⁴⁰ Pissler, pp. 55-56.

⁴¹ Pissler, pp. 80-81.

⁴² Pissler, pp. 61-62.

⁴³ Pissler, pp. 62-63.

⁴⁴ Pissler, pp. 63-65.

⁴⁵ Pissler, pp. 65-66.

⁴⁶ Pissler, pp. 66-67.

⁴⁷ Decision of the State Council on extending Housing Reform in Urban Areas.

⁴⁸ Constitution (amended 14 March 2004) § 13.

⁴⁹ See further CHEN/Kielsgard (n. 5), pp. 4-5.

units were government owned and all buildings were government managed. Pissler shows that condominium legislation still reflects such state supervision to a certain extent. In this context he refers to the role of local authorities to initiate the convening of general meetings and the establishment of owners' committees;⁵⁰ the nationwide supervision of condominium property management and the management reserve fund by the Chinese State Council Building Management Department;⁵¹ the provision for joint meetings to be held by unit owners and the relevant government street committee or the peoples' government at community or small city level;⁵² state supervision of managers;⁵³ and the provision that complains received from owners, the owners' committee, property users and managers to be heard expeditiously by property management departments of the local peoples' government on and above county level.⁵⁴

The National People's Congress of the People's Republic of China must be congratulated for their momentous achievement in codifying the Chinese law of property in the Property Code and for including therein some basic provisions of the law relating to condominiums. The condominium provisions were further fleshed out by two important official interpretations of the Property Code by the Judicial Committee of the Supreme People's Court. The nuts and bolts of condominium management are however contained in several pieces of subordinate legislation such as the Property Management Regulations of 2003 as amended in 2007, the Manual of Instructions of 2009 and the General and Special Method for Managing Reserve Funds of 2007. It is in this field that Pissler has made an invaluable contribution. He identified and compiled the most important subordinate legislation on condominium management and most importantly provided an excellent German translation of these subordinate Chinese legislative instruments.

Pissler has drawn attention to the following unique characteristics of Chinese condominium law. First, although the Property Code in principle accepts that unit owners become the co-owners of the common property in undivided abstract shares, it appears that in the absence of an agreement to the contrary, the developer can reserve parts of the common property such as parking spaces and the common swimming pool for himself and that facilities providers can do the same with part of the common property that house a particular facility.⁵⁵

Secondly, not only registered unit owners but also unregistered prospective unit owners who has entered into a contract of sale for their unit, may attend the general meeting in person and vote on most of the matters put to the vote.⁵⁶ Thirdly, we have seen that the management of condominium schemes are imperfectly structured mainly due to the fact that corporate personality on the part of the management body of the owners' community has not been officially recognised in China.⁵⁷ Instead of recognising an management body consisting of all the unit owners in the scheme with the general meeting as decision-making and the owners' committee as executive organ,⁵⁸ the Chinese condominium legislation presents an uncomfortable relationship between the general meeting and the owners' committee in which decisions of the owners' committee sometimes take precedence over resolutions of the general meeting. Finally, Chinese condominium legislation reflects a constant presence of government control at state, provincial and local government levels.⁵⁹ This could perhaps be explained on the basis that the state are still considered the owner of all land in China and that residents are only accorded certain land use rights with regard to the soil which expires over a 70 years period, but are renewed automatically. Although this stifles free management of condominiums and commercial enterprise in condominium units to a certain extent, it has its advantages. Local government departments often assist condominium schemes to get off the ground by facilitating general meetings and the election of owners' committees and street committees. By working in tandem with the police, they play an important role in curbing anti-social behaviour within condominium schemes.

A more detailed version of this review was published under the name 'Reflections on Chinese apartment ownership law' in *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg*, No. 4, 2014, pp. 788 et seq.

⁵⁰ Pissler, pp. 67–68.

⁵¹ Pissler, p. 69.

⁵² Pissler, pp. 69–70.

⁵³ Pissler, p. 70.

⁵⁴ Pissler, p. 75.

⁵⁵ Pissler, pp. 15–16 and 76.

⁵⁶ Pissler, p. 78.

⁵⁷ Pissler, pp. 8–9 and 76.

⁵⁸ In South Africa, the body corporate is structured as a central management body with juristic personality acting through its legislative organ (the general meeting) and its executive organ (the trustees). See *van der Merwe*, Sectional Title in: *CG van der Merwe/JC Sonnekus*, Sectional titles, Share Blocks and Time-sharing (service issue 17, 2013), pp. 14-5–14-6.

⁵⁹ Pissler, pp. 81–82.