

The Practical Implications of the Unification of the Real Estate Register System in Korea

ABSTRACT

The Korean government has been pushing ahead with the unification of the dualized real estate register system in order to reduce the transaction costs of the conveyancing and to improve efficiency in real estate register administration. The Japanese experience of the unification of real estate register in 1960s has exemplified the policy, but this study shows that the legal and practical differences in Korea and Japan are not tiny to ignore, so that the transformation costs of the unification may surpass its benefit. Although some information improvements and benefits in transaction can be expected through the elimination of discordances between dualized registration books, the unification process should consider some legal and institutional factors which have been stabilized in Korean society.

Prof. Zonghie Han

Daegu University, Korea

Jillyang, Gyeongsan, Gyungbuk

712-714 KOREA

zhan@daegu.ac.kr

I. Introduction

“Real Estate Registry” used in Korea is an official record produced by the courts that contains certain factual and legal relations regarding certain real estate. The law governing the registry, the Act on Real Estate Registry, defines two types of such registry: Land Registry and Building Registry. Real Estate Registries are disclosed to the public so that anyone may conveniently search for factual and legal relations regarding certain estate, thereby enhancing transaction safety regarding real estate. Ledgers(臺帳, *Daejang*) are records produced with a view to clarifying the current state of certain estate itself, and contains such information as its location, lot number, land category, size, name or title of the owner, address and resident registration number(or, in case of the government, local government, corporation, aggregates or foundations without corporation status and foreigners, their respective registration number), to be used as the underlying data for real estate management, administration and policies. In other words, ledgers are records containing certain information on the lands all across the nation, and are registered by the state or institutes designated/delegated by the state, to be kept by the state or institutes designated/delegated by the state. While ledgers clarify the current substantial, physical and tangible status of each land, registry(*Deunggi*) means the public records produced about certain factual and legal relations regarding real estate, by the registration officer in accordance with procedures set forth by the law .

Korean real estate registration system was created when Japanese colonial government decided to apply Japanese laws, including the Civil Code, to Korea with enactment of the Orders Regarding Chosun Civil Matters, Rule No. 7 on March 3rd, 1921. Subsequently on March 22nd, 1912, the Order on Real Estate Certification within Chosun, Rule No. 15 was announced, which replaced the Rule on Land & Building Certification and the Rule on Land & Building Ownership Certification. On January 1st, 1960, the Act on Real Estate Registry was enacted, still in effect to this day after several amendments. As for cadastres, the Rule on Cadastres, Rule No. 45, was enacted in April 1914, while the Land Survey led by the colonial government was still ongoing. The ledger was intended to be the basis for the Registries. In May next year, after conclusion of the Land Survey, the Order on Forest Survey within Chosun was announced which led to the nation-wide Forest Survey, which in turn resulted in the Forest Ledger, produced pursuant to the Rules on Forest Ledger in August, 1920. Such historical course resulted in the creation of the system consisting of Land Registries and Land/Forest Ledgers, which led to the current dual system of Real Estate Registry and Ledgers. In other words, Korea received the Japanese version of the system without much alteration, which is in turn based on the German version.

Although Japan introduced the dual system into Korea, discussions on problems caused by dual system began relatively early in Japan, which led to the unification of the system. Modern cadastre system in Japan was created in Japan in January 1872, with enactment of the Rule on Land Registration Map and inception of the national land survey, a nation-wide survey on farm lands and other lands completed around 1880. As for the registry system, it was constructed with the enactment and enforcement of the Act on Real Estate Registration in 1890. After Japan's defeat in 1945, the dual system was blamed for its defects and other problems such as increased burden on the people and government agencies and insufficient speed and propriety in handling the related affairs. This controversy led to revision of the Act on Real Estate Registration in March 1960, which unified the registry with the ledger.

Korea experienced similar problems, which gave birth to numerous studies after the 1970's focusing on unification of the Registry and the Ledger. But this issue has not been sufficiently discussed in terms of comparative legal analysis. Korea still maintains the dual system of the Real Estate Registry and the Cadastres, and this system is causing problems similar to those in Japan, which include overspending of manpower and budget or inconveniences felt by the people. Such circumstances are behind the constant stream of studies discussing unification of the existing system. In light of the above discussion, this paper discusses the historical background behind the unification effort in Japan spurred by the revision of the Act on Real Estate Registration in 1960, and explores the related legal/administrative debate at the time. Through such discussion, we will be able to draw some implications for the future efforts for unification of registration system within Korea.

II. Some Practical Issues Regarding Registration System Unification Project: Two Scenarios

Unification of the Real Estate Registration System is expected to have massive influence on the society and the economy once implemented. Despite of the differences in their laws and systems, all nations adopt the public record system to publicly announce the current physical state and legal relations regarding the lands that form its territory and other fixed buildings thereon. In the modern society, real estate is considered as not only the objects of property rights, but also the objects for transactions and investments. This change led to the renewed requirement of transaction safety and rapid decision making, which elevated the significance of real estate disclosure system.

Korea has its own version of real estate disclosure system: Cadastre System and Registration System. In the Cadastre System, the physical state of each land, including its location, lot number, land category, size, boundaries and coordination, is measured and recorded publicly in the cadastres,

to be managed and utilized later on. In the Registration System, the ownership and legal relations regarding each real estate are recorded into the public record using a unique method called '*Deunggi*(registration)', to be disclosed to the public later on. Each of these two disclosure systems serves the purpose of protecting the people's properties and improving safety and stability in the people's legal life. This type of dual system, however, has been proved to be problematic, as the system caused various problems including the failure to effectively reduce transaction cost and information cost of the government and the people. To be specific, these problems are caused by the discrepancy between the Cadastre System which serves the administrative purpose of disclosing the object of the property right, and the Registration System which serves the judicial purpose of disclosing the holder of such rights. Previous studies on this issue have listed various problems caused by this discrepancy. The first problem is the inconsistency between the Cadastres and the Registries. In this system, two separate records are kept and managed for the same estate, in which case the possible inconsistency between the informations from the two records may disrupt the planning and enforcement of land policies, and result in the waste of administrative efforts invested in bringing the two records to consistency. The second problem is possible waste of administrative budget due to the dual system consisted of lead agencies and operation agencies. The lead agency for the Cadastres is the Ministry of Land, Transport and Maritime Affairs (Cadastre Planning Department), while the Supreme Court(Court Administration Office) serves as the lead agency regarding the Registries, and the Ministry of the Land and Sea(Construction Department) is in charge of the Building Registries. This complex structure has been suspected of causing waste and inefficiency of administrative organizations, manpower and budget. Third, there is another problem of transaction cost and information cost, including direct/indirect cost incurred by issuance of public records, and other administrative inconveniences. To address the above problems, the Ministry of the Land and Sea has announced the plan to implement "the Unification Project for Real Estate Administrative Information" from 2009 to 2012, in collaboration with the Land and Housing Agency. The purpose of this project is to correct numerous errors in real estate administrative information, unify the relevant public records for better management, and establish a new service system that provides the information people want in an accurate and plain manner. The 1st unification phase of this project will begin in April 2010, in which the 17 types of public records maintained by the Ministry will be consolidated into 3 records, thereby unifying all records regarding real estate except for the Certified Copies of Registries.

1. Unification Scenario for Real Estate Registration

As we have discussed above regarding the Japanese case, unification of real estate records is implemented with the innovative purpose of reducing the information / transaction cost and improving the transparency of real estate transactions. Despite these merits, unification turned out to be very

difficult to achieve in Korea as well as other several nations. This difficulty partly lies in the conflict of interest between the people in general and relevant agencies and stake holders. Therefore, the issue of which organization will lead the effort, that is the issue of consolidation of organization and manpower, can be a very sensitive issue with the possibility of evoking sharp conflict and opposition among the related parties. As the direct/life-defining interests of those directly involved are more intensive and intense than those dispersed and secondary (less than life-defining) interests of the people in general, there occurred a sort of ‘moral hazard’ where the welfare of the people in general was overshadowed by the welfare of those directly involved, though the first is larger in size than the latter. In Japan, Korea’s predecessor, the cadastre-related works were transferred from the tax offices to the registration offices under the Bureau of Judicial Affairs in 1951, as the source of real estate tax changed in the turbulent period immediately after the 2nd World War. The Bureau was also responsible for the real estate registration. The Department of Judicial Affairs was replaced by the Department of Legal Affairs in 1948, and the Judicial Office within the Administration of Legal Affairs took over the registration capacity. The Administration changed its title to the Ministry of Legal Affairs in 1949, and the name of the office responsible for estate registration changed to the Bureau of Legal Affairs. The Ministry was reorganized back into the Department of Legal Affairs in 1949, which still stands to this day. In Japan, the cadastre capacity and the registration capacity were consolidated as early as 1951, even before the nation’s reconstruction and economic growth, and the unification of real estate records reached its completion in 1960. This contributed to keeping possible conflict of interest under the surface, and subdued the possibility of fierce debate as to which agency should lead the unification effort.

On the other hand, unification efforts in Korea began at a point when the nation’s economic growth has been stabilized, and the absolute population is beginning to dwindle. Consolidation of organizations and manpower at this point is sure to generate a lot of controversy. Because of such circumstances, we need to first construct a unification scenario only with such factors as expertise, propriety regarding the related works, and its contribution to advancement of real estate transactions, without considering the factors usually discussed in administrative reforms such as inner efficiency of lead/operation agencies and organizational restructuring.

In its formal sense, the unification of real estate records means two things: consolidation of public records and consolidation of lead agencies. Regarding consolidation of Integrated Administrative Record and the Certified Copies of Registry and subsequent consolidation of agencies, the following alternatives can be proposed as of now. Alternative 1: unification into the administrative agencies, which is in charge of Cadastres and Building Ledgers. Alternative 2: unification into the courts, which preside over registry related works.), Alternative 3: unification into a third agency. We will examine

these 3 alternatives for their merits and disadvantages in various terms including its capability for performance, clarification of legal relationships, protection of transactions, conveniences of the people and transportation cost. Judicially, however, it must be noted that related constitutional issues (conflict between application-based registration system and official-centered, compulsory cadastre system) can be addressed in any of the scenarios above, as they once did in Japan.

Category	Alternative 1	Alternative 2	Alternative 3
Lead Agency	Ministry*	Supreme Court	3 rd Agency
Operation Agency	Local Office (Si, Gun, Gu)	local courts registry departments under branch courts Registry Offices	3 rd Agency
Issuing Agency	Local Office (Eup, Myeon, Dong)	local courts registry departments under branch courts Registry Offices	3 rd Agency

<Table 1> Unification Scenario for Registration System

* Ministry: the Ministry of Land, Transportation and Maritime Affairs

1) Alternative 1: Unification into Administrative Agencies (the Ministry + Local Offices of Si, Gun, Gu)

In this scenario, the real estate records are unified, and this unified record is presided by the Ministry and operated by the local offices of Si, Gun, Gu. In this case, these administrative agencies(the Ministry and Si, Gun, Gul offices), which took charge of the works related to Cadastres and Building Ledgers, will have to utilize its own resources and manpower to perform works related to real estate registry, previously undertaken by the courts and Registry Offices.

This type of unification has the following merits. The number of local offices exceed that of the Registry Offices (258 operation agencies as opposed to 204, 3745 issuing agencies as opposed to 204), which offers easy access and reduced transportation cost for the people. Also the current number of

officials in charge working in administrative agencies is 5.8 times as large as that of officials working in Registry Offices, which enables the agencies to perform effective assessment, as well as to verify the current status of the lands and buildings. In addition, by relying on the administrative agencies, we can ensure continuity of authorization work, as the related laws such as the Act on National Land Planning and the Construction Act confer the authority to approve to the heads of the local governments.

Once the real estate registries are transferred from the courts and Registry Offices to administrative agencies, the local Si, Gun, Gu offices will bear the additional burden on top of their current responsibility for Cadastres and Building Ledgers. There are two ways to address this problem: the officials in the agencies could undertake additional work related to registries, or officers previously in charge of registries in the courts or Registry Offices could transfer to local offices.

The first method is very problematic in terms of legal expertise, even if we consider the fact that the registry work involves only formal review and does not require field surveys or substantial reviews. As the registry work requires a high level of expertise possessed by the Registry Officers, it would be unrealistic to expect expert-level ability and knowledge on changes in property rights and other issues in the Civil Code from the officers in local offices.

As for the second method where the officers in the courts and registry agencies are transferred to Si, Gun, Gu offices or change their legal status and continue their registry work, this method is based on the realization that we cannot expect to reduce the size and the personnel of these organizations through it. This method can be further classified into two possibilities. First, we could dispose the relevant parts of the courts and all lands and buildings of the Registry Offices, and have the Registry Officers to move to the existing Si, Gun, Gu offices. Or, we could leave the Registry Offices as they are, and only change the officers' legal status. We can expect cost reduction in the first case by selling the relevant lands and buildings. But the downside is that we cannot be sure if the existing Si, Gun, Gu offices are structurally capable of accommodating registry-related facilities and the registries themselves. One of the issues which may arise regarding the second alternative is the relationship between registry works and the works related to civil litigations within the courts. The 'B(乙, *eul*)' part of the registries contains information on seizure, preliminary seizure, preliminary disposal, bankruptcy and composition, and registration of these matters are closely related to the litigation process within the courts. Therefore, it cannot be denied that the professional knowledge about registry works is closely related to litigation works within the courts, and separating the two works will incur a massive amount of additional transaction cost. The common problem of the above two

possibilities is that registry works presided by regular administrative agencies will lead to questioning the agencies' expertise and trustworthiness, as well as the very function of right disclosure system itself, and this questioning will destabilize the very purpose of the unification efforts: clarification of legal relationships and protection of transactional order. This may be considered as a massive defect, in light of the project's original purpose of advancement of the real estate transactions. This may be the biggest reason why the Japanese government, in their transformation from dual system to unification, chose to unify into the Registry Officers instead of Si, Gun, Gu local offices.

Also, the conveniences of the people and cost reduction may not be substantial, considering the propagation of automatic dispensers and expansion of internet-based information search and issuance. Also, the unification may not provide such great advantage in terms of transportation cost and information cost, as most registrations in the field are performed by agents such as scriveners.

2) Alternative 2: Unification into the Registry Offices(Courts)

In this scenario, the Supreme Court presides over the unified real estate records, the Registry Offices operate them, and the Registry Department within the courts and the Registry Offices take over the works related to Cadastres and Building Ledgers formerly undertaken by the administrative agencies, and perform those tasks with their own resources and manpower.

The advantages of this scenario match the disadvantages of the first scenario, unification into the administrative agencies. The advantage offered by this scenario is that it is compatible with the purpose of the disclosure system, which is clear disclosure of legal relationships and transactional safety. This is an obvious advantage, if we consider such factors as the public's confidence in the courts and Registry Offices, and the relationship between litigation works and registry works. Another factor which may work as an advantage for this scenario is that the 'Title Part(*Pyojebu*)' of the current Registry Copy substantially reflect the information in the Cadastres and the Building Ledgers. In other words, unification of real estate records has seen a certain level of progress regarding this Title Part, evidenced by the fact that the Part includes such information as the estate's lot number, land category, land size and the building's size and history. This point can be further clarified if we compare it with its Japanese counterpart. In Japan, the <Title Page> first appeared only after the cadastres and house ledgers were consolidated with the registry copies.

Another factor advantageous for this 2nd alternative is that the level of ability and knowledge required for cadastre and ledger works are substantially lower than in the case of registries. Cadastral surveys are not performed by public officers in local offices, but by cadastral engineers from the cadastral survey corporations. The role of public officers is limited to supervising such engineers. And management and item revision of Cadastres involve changes in the form and quality, separation,

combination and category changes, all of which does not require a high level of expertise. The situation is similar for Building Ledgers, as the involved works - permission of construction, extension/renovation, alteration of purpose of use, approval of use – do not require architect-level expertise. But one could raise the question of whether the Registry Officers, with little experience in actual surveys and discretionary revision, will be able to bear the additional burden of managing the Cadastral Records and Building Ledgers.

The above discussion presupposes that, in the 2nd scenario, the entire mass of works related to Cadastral Records and Building Ledgers will be transferred to the Registry Offices. In this case, we will need to downsize the organization and manpower in charge of the Records and Ledgers within Si, Gun, Gu offices, and the related cost will be reduced in proportion to the size of such downsizing. But this unification method poses a problem as critical as the problems of the first scenario, which is the problem of land management and construction licensing.

In modern city planning and public laws on real estate, the licensing authority is delegated to the local governments, which administratively embodies the purpose of appropriate use of the lands and restriction of property rights on account of the public interest. This principle has been one of the two pillars supporting the execution of real property rights, along with the innate value of personal property under the modern civil law. It is also the intention underlying the Act on Planning and Utilization of National Land, that development of real estate must be restricted by the public, even when the estate is the object of someone's established right. Licenses related to buildings, such as license of construction, extension, renovation, reconstruction, alteration of purpose of use or approval of the use of the constructed building, as well as licenses related to lands, such as licenses of changes in forms and quality, changes in land category, separation and combination, are prerequisite for procedural validity and compliance with the public law. Some of the licenses even work as requirements for legal effects under the Civil Code. If public regulation regarding lands and buildings, in the form of licensing authority, is transferred from the local governments(Si, Gun, Gu offices) to the judicial agencies, this will mark an unprecedented deviation in the history of city planning. And it is hardly imaginable under the current system of city planning and public laws on real estate that the Registry Officers(or the chief justice of the competent court) manage the unified real estate records, issue construction permission and permission to alter land shape and quality, and accordingly alter the entries within the records, as the unification of the records as well as the related works will necessarily entail transfer of licensing authority to the Registry Offices or the courts.

Therefore, the problem of expertise aside, it is currently not possible for judicial agencies to preside over works related to licensing, judging from the very nature of such works. If that is the truth, there

is only one solution left within this scenario, if we are to achieve clarification of legal relations and protection of transaction order, simultaneously maintaining the administrative agencies' grip on licensing authorities under the current city planning system: the operation of Cadastral Records and Building Ledgers remains the responsibility of the Si, Gun, Gu offices as before, while designating the courts as the lead agencies for such operation by designating the related works as "delegated". As Cadastral Records and Building Ledgers are being maintained electronically, the officers in charge of cadastres and construction can continue their work using the computerized system to maintain or alter Cadastres and Building Ledgers on their own discretion, and regularly report the result of their works to the competent courts for approval ex post facto. Such unification scenario has been already tested and accepted in relation to the family register. In this way, we may achieve by matching the lead agency of Cadastral Public Records and Building Ledgers, with that of Registries, while simultaneously maintaining the basic structure of public laws regulating permission of real estate development. Its downside, however, is that the scenario does not offer organization/manpower downsizing through unification.

Category	Unification Alternatives	
	Alternative 1	Alternative 2
Pros	<ul style="list-style-type: none"> ▪ Offers convenient services with less cost ▪ Facilitates cadastral works requiring actual review, and assessment of the current state of lands and houses. ▪ Ensures work continuity of licensing by the head of local governments 	<ul style="list-style-type: none"> ▪ Is compatible with the intention of the disclosure system of clarification of legal relationships and protection of transactional order. ▪ Unification into the Title Part of the Registries has shown substantial progress.
Cons	<ul style="list-style-type: none"> ▪ Questions regarding the agencies' ability to perform registry works which require high level of expertise ▪ Is incompatible with the intention of the disclosure system of clarification of legal relationships and protection of transactional order. 	<ul style="list-style-type: none"> ▪ The Registry Offices and the courts lack the organization and manpower necessary for actual reviews. ▪ Licensing authority inherently falls into the realm of the administrative agencies.

<Table 2> Pros and Cons of Unification Alternatives

In summary, while the unification scenario into administrative agencies offer various advantages, it is incompatible with the intention of the disclosure system of clarification of legal relationships and

protection of transactional order. And unification into Registry Offices is not viable without revision or relevant laws and systems, due to the problem of licensing authority which inherently falls into the realm of the administrative agencies. Therefore, this study argues that the best alternative for unification of real estate records in the current circumstance is to unify the lead agencies while maintaining the current operation agencies of Registries and Ledgers, and delegate the related works to the operation agencies.

III. Conclusion

After its introduction from the German and Japanese legal system in the early 20th Century, the registration system was first introduced has been the backbone of the Korean real estate records system. With active efforts from the administration, this system is facing a new era of change. The problems caused by the traditional dual system, such as too much economic/administrative cost and the resultant inconveniences suffered by the people, as well as additional costs incurred by inconsistency in various records, offer more than enough reason for such unification efforts. The same motivation was also behind Japan's active unification efforts decades ago.

While the Korean legal system borrows its general framework from the Japanese system, the Korean version differs from that of Japan in various details. This is also the case in real estate registration. To list some of them: 1) Registration offices responsible for the Registries are affiliated to the courts, instead of the Ministry of Legal Affairs. 2) There are a large number of real estate records, all of which can be computerized and informationalized. 3) The number of objects for registration is much larger than in Japan, where unification was achieved at a much earlier stage when the economy and the society was relatively under developed. This means that the effects and side effects of unification should differ from those in Japan. In both of the scenarios proposed in this paper, we can anticipate actual, serious problems. These problems are concerned with the expert nature of registry works and local autonomy in land planning, which go beyond the scope of simple unification itself. In addition, Korean unification efforts face an additional problem of separation of power. Under Japan's dual system before unification, there were dual lead agencies, the Department of Legal Affairs and the Department of Local Autonomy(and the local governments), and these two departments belonged to the same cabinet, which meant that unification project could be implemented once the cabinet decided on it. As Japan adopts the parliamentary cabinet system where the legislative body and the administrative body are one and the same,, the relevant legislation was performed along the same line as the cabinet's decisions. On the other hand, such consistency in unification efforts cannot be expected in Korean circumstances, as the registries fall into the jurisdiction of the judicial body, separated from the administrative body. Actually, the Judiciary is withholding announcement of

its official stance towards the Real Estate Administrative Information Unification Project led by the Administration. As the issue touches both the Administration and the Judiciary, there is no guarantee that the Judiciary will respond to the call for unification, however clear is the reason for such efforts. In December 2007, the Anti-Corruption and Civil Rights Commission recommended unification of real estate records as well as consolidation of relevant agencies. But this recommendation has no binding force, as the Judiciary has no duty to respond to such recommendation. In terms of pure formal procedure, it is possible to circumvent the Judiciary entirely to achieve unification through the National Assembly, but in reality, it would be very hard to achieve unification without the consent and collaboration from the Judiciary.

This is why those against unification in Japan have been proposing an alternative where the ledgers are managed by local governments and registries are maintained by the Registry Offices in accordance with the traditional concept of real estate records under the continental law system, but the local *Shi, Cho, Son* offices are also delegated with registry-related works, which they argue will contribute to reducing transactional confusions, protecting people's rights and improving conveniences. The similar alternative has been adopted in the form of "Consolidated Office" by Germany, a nation which became the source of Japan's legal system. In this sense, the above alternative may be worth focusing on in the context of unification debate in Korea. This alternative can be deemed reasonable in that the family register is actually maintained as the delegated works performed by the local governments (*Shi, Cho, Son* in Japan, *Si, Gun, Gu* in Korea) located in the vicinity of the people instead of the courts, when such register should belong to the jurisdiction of the judiciary (the Department of Legal Affairs in Japan, and the Supreme Court in Korea).

References

- Choi, Seung Young, 2006, A Study on the Improvement of Land Public Notice System of Real Estate Register and Cadastre, *Land Jurisprudence*, Vol.22, pp.121-141.
- Gaudio, Arthur, 2002, Electronic Real Estate Records: A Model for Action, *Western New England Law Review*, Vol. 24, pp.271-290.
- Han, Zonghie, 2011, A Case Study on the Unification of Real Estate Registration : Japan, *Korea Real Estate Academy Review*, Vol. 49, pp.76-90.
- Hawerk, Winfried, 1995, Grundbuch and Cadastral Systems in Germany, Austria and Switzerland, *Proceedings of the One Day Seminar "Modern Cadastres and Cadastral Innovations"*, held during the Annual Meeting of Commission 7, *Cadastre and Rural Land Management of the International Federation of Surveyors (FIG)*, May 16, 1995, Delft, The Netherlands.
- Hiroyuki, Auba, 2004, The Development of Register System in Japan and Germany, *Journal of Inada Jurisprudence Society*, Vol.54. pp.1-52. (大場浩之, "日本・とドイツにおける登記制度の発展(登記法制定後を中心に)", 稲田法学会誌, 稲田法学会, 2004, 第54巻.)
- Yoon, Tae Seok, 2009, A Study on the Unification Method of Real Estate Registration System and Cadastre System, *Comparative Private Law*, Vol.16, pp.35-65.