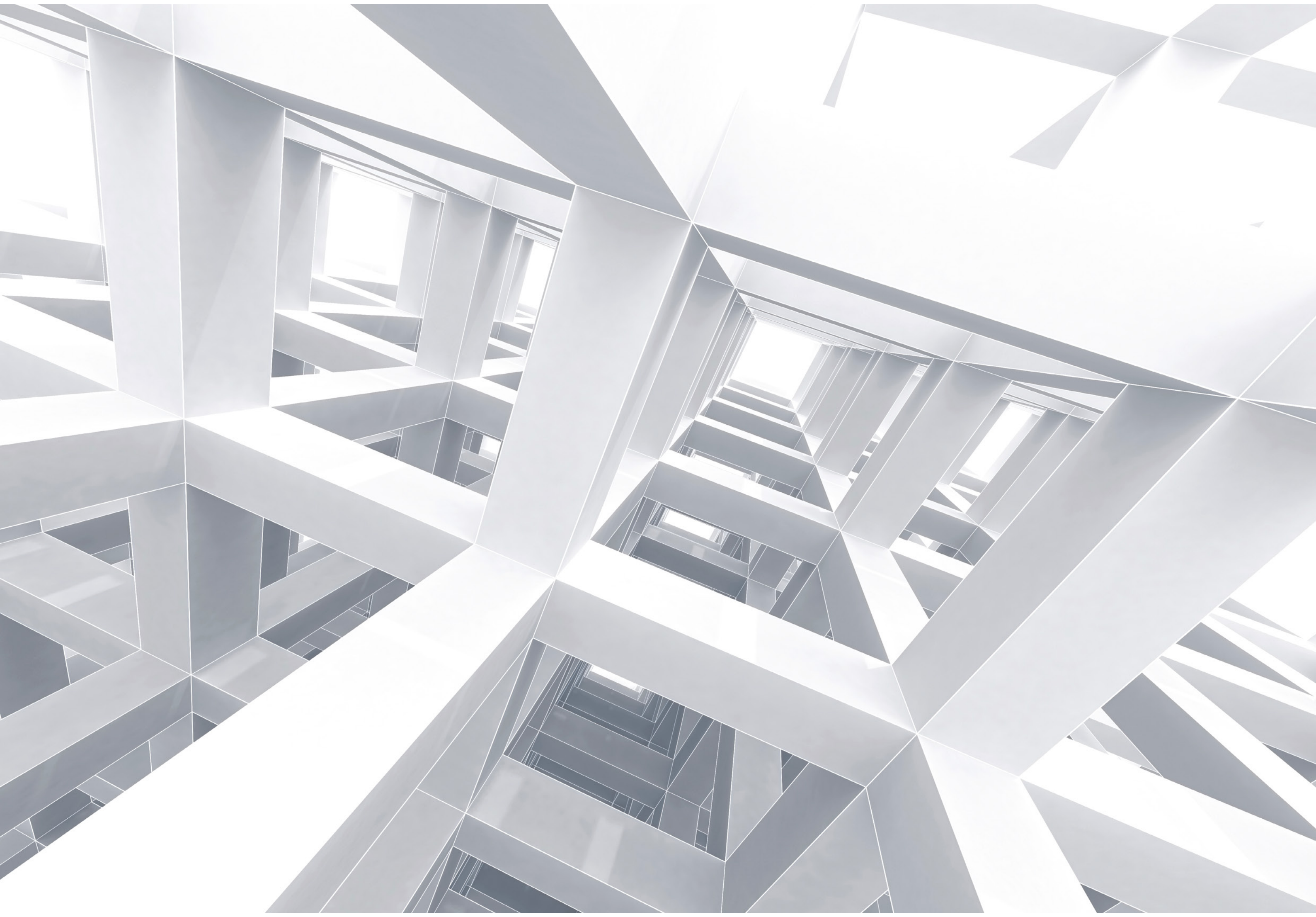
RICS jurisdiction guide

RICS professional standards and guidance, China

RICS Valuation – Global Standards 2017 jurisdiction guide: People's Republic of China

1st edition, May 2019



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RICS Valuation – Global Standards 2017 jurisdiction guide: People's Republic of China

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RICS jurisdiction guides

Since its first publication in 1976, the *RICS Valuation – Global Standards 2017*, generally known as the ‘Red Book’, has set standards for property valuation that are designed to ensure consistency, objectivity and transparency in the valuation process. The primary aim of these standards has always been to sustain public confidence and trust in a valuation undertaken by an RICS member or a valuer working for an RICS regulated firm.

Over the past 40 years the Red Book has become global in its application, reflecting the growing internationalisation of the property market and its clients’ requirement for worldwide consistency of standards. A Red Book-compliant valuation is consistent with the International Valuation Standards (IVS) and it is augmented in a growing number of markets by national supplements, which provide guidance designed to ensure that a Red Book-compliant valuation also meets local legal requirements, regulations and practice.

The global Red Book and, where they apply, the national supplements are written primarily for valuers. By contrast, jurisdiction guides will be of use especially to property owners and professionals who are involved in the valuation process, either by commissioning a valuation or by providing advice in relation to its outcome. Owners and their advisers do not usually need to know the full detail of the valuation process and the regulations that govern it (which are set out in the Red Book), but their understanding of the outcome of the valuation is likely to benefit from a better understanding of the key factors that will influence a valuer, and thus the value of the property.

These factors include:

- legislation governing the holding and valuation of real estate
- ownership structures
- lease terms
- planning regulations and development control
- taxation affecting real estate and
- valuation regulations, standards and the application of the Red Book.

These factors will vary significantly between one country and another. Jurisdiction guides therefore aim to examine each factor in its local context and to highlight those that are likely to have a significant impact on the valuation of a property located in the country concerned.

It is important to emphasise that jurisdiction guides are designed to provide a short overview of what in many cases and countries is a complex situation. They have been prepared by RICS and based on information from a variety of sources. The content of this jurisdiction guide is for general guidance only, and the reader is advised not to act on it without consulting an appropriately qualified and experienced professional.

Document status defined

The following table shows the categories of RICS professional content and their definitions.

Publications status

Type of document	Definition
RICS Rules of Conduct for Members and *RICS Rules of Conduct for Firms*	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement (PS)	Mandatory requirements for RICS members and regulated firms.
RICS guidance note (GN)	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice (CoP)	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide (JG)	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies, as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

1 Background

Following a period of rapid growth averaging 10 per cent annually over 30 years, the People's Republic of China (PRC) now has the second largest economy in the world (measured by nominal GDP). Rapid urbanisation over the last four decades has led to a property boom: the MSCI Real Estate Market Size 2017 survey placed the Chinese investment market fifth in the world league, with an estimated value of US$483 billion.

The **JLL Global Real Estate Transparency Index 2018** rated the PRC's first-tier cities as 'semi-transparent' and ranked the PRC 33rd of the 100 markets it surveyed.

2 Legislation

2.1 Principal laws governing real estate

The following laws govern real estate in the PRC:

- The 1982 *Constitution of the PRC* provided for 'socialist public ownership' of the means of production, and the fourth amendment to the constitution in 2004 protected private property ownership by law.
- The *Property Law of the PRC* 2007 introduced protection of the interests of private investors in real estate.

  All land remains in state ownership, but tradable land-use rights can be granted to private individuals and corporate bodies for fixed periods of time.

Real estate may be owned by foreign corporate bodies for their own use, provided the purchaser has a presence in the PRC. Individuals may own real estate if they have worked or studied in the PRC, subject to meeting stringent requirements.

Foreign investors are required to register an onshore Foreign Investment Enterprise (FIE) in the PRC to hold properties that are owned for purposes other than the owner's direct use.

2.2 Types of ownership

There are two categories of land ownership in the PRC: firstly, state-owned land, which is administered by the State Council; and secondly, land owned by collective economic organisations, which are usually village committees. Land cannot be privately owned. Instead, land-use rights can be bought from the state by individuals and legal entities.

Land-use rights are granted by the local administration bureau for a fixed term, in return for a premium. Lease lengths are typically 40 years for commercial uses (e.g. hotel, retail, recreational); 50 years for offices, industrial, education and mixed use; and 70 years for residential property.

At the end of the fixed term the usage rights and title revert to the state, but the owner of the land-use right can apply for an extension at least one year before expiry of the term. The extension may be granted, subject to the payment of a renewal premium based on the market value of the usage right but excluding the value of buildings on the site.

Land-use rights on state-owned land may generally be bought and sold freely, but purchases by foreign individuals or legal entities are subject to restrictions.

State-owned enterprises or government occupiers often have allocated land-use rights that cannot be transferred, leased or mortgaged and that may be subject to forfeiture without compensation. They are therefore not suitable for commercial investment.

The title to building structures may be transferred separately to the land-use rights.

Owners of land-use rights to a property are able to grant leasehold interests to third parties, subject to restrictions. Typical lease terms are set out in sections 2.5 and 2.6.

2.3 Registration

Change of ownership of land-use rights and/or title to building structures must be registered with the local real estate authority. Once registered, a property ownership certificate is issued. There is no state guarantee of title but, in the event of an error causing a loss, damages can be claimed against the registration authority.

2.4 Development control

Development control and planning are governed by the planning law (*Law of the PRC on Urban and Rural Planning* 2007 (amended 2015)). The Chinese State Council is responsible for nationwide planning policy via its urban and rural planning department. Local administrations are responsible for implementing planning regulations and designating zoning in their area.

A proposed development requires the following consents before construction can proceed:

- a land-use rights certificate from the local land administration bureau
- a development land planning permit and construction project planning permit, issued subject to approval of an environmental impact report, development plans, budget estimate and written opinions from relevant authorities and
- a construction engineering commencement permit.

Permitted uses, defined in the owner's land-use rights, may be varied subject to negotiation and the payment of a fee.

2.5 Commercial leases

The contract law of the PRC recognises only one form of lease contract, though individual lease provisions are freely negotiable. Urban lettings must also comply with the *Administration of the Leasing of Urban Premises Procedures Law* 1994. Leases longer than six months must be in writing.

Typical terms for occupational leases of offices and retail premises are as follows:

- **Term**: typically, office leases are three to five years, sometimes longer for larger tenants. Retail leases are usually for three years. The lease term cannot exceed 20 years.
- **Breaks**: breaks are by negotiation, but rare.
- **Rent**: this is usually quoted on a gross exclusive basis (based on gross floor area and excluding management fees, utility charges, taxes, etc.), though a gross inclusive basis can also be found (to include these fees and charges). Rents are payable monthly in advance.
- **Rent escalation**: rent is usually fixed for leases up to five years. Longer leases may include provision for a fixed increase or an agreed mechanism for escalation.
- **Statutory rent control**: none, except for car parking fees in commercial developments.
- **Operating expenses, maintenance and repair**: the landlord's costs of maintaining and repairing the building, providing services and maintaining areas

used in common are repaid by the tenant via a service charge (usually known as a management fee).

- **Assignment and subletting**: not usually permitted except with the express permission of the landlord.
- **Use**: the permitted uses under the lease must comply with those in the land-use rights for the property.
- **Insurance**: usually arranged by the landlord, at its own cost.
- **Termination**: renewal options are negotiable.

2.6 Residential leases

The contract law of the PRC governs residential leasing contracts, which are also subject to local leasing policies through the local people's government.

Leases are usually for 12 months and may include an option to renew for a further 12 months. Rent is usually payable quarterly in advance. There are no statutory rent controls.

Chinese landlord and tenant law requires the landlord to be responsible for repair of the leased premises. Rental apartments must be registered with the local authority.

2.7 Property measurement

International Property Measurement Standards (IPMS) for Office Buildings, Residential Buildings and Industrial Buildings were published in 2014, 2016 and 2018 respectively. RICS members must adopt IPMS in line with the RICS professional statement **RICS property measurement** (2nd edition). RICS members are expected to advise their client or employer on the benefits of using IPMS, unless there is a significant reason for departure. It is accepted that in some circumstances IPMS may not be suitable. If IPMS are not to be used, RICS members must document the reasons for departure.

IPMS for other asset types will be published in due course. In the interim all RICS members must follow *RICS property measurement* (2nd edition) Section 1 *Application of the professional statement*. In some instances other measurement standards can be used, such as the RICS guidance note **Code of measuring practice** (6th edition), providing the reason for departure is stated.

In China, there are no nationally accepted common standards of measurement. However, the Ministry of Housing and Urban-Rural Development publish a guide on measurement standards for commodity housing and associated common building areas.

Office space is usually measured on a net floor area (NFA) basis for letting and valuation purposes. NFA includes columns and internal walls plus half the thickness of external or dividing walls but not corridors, stairs, lifts, toilets, etc. Gross floor area may also be used; this amounts to all the space within the perimeter walls for each floor or unit.

Floor areas are expressed in square metres.

3 Taxation

The taxation position for real estate in the PRC is complex. There are regional variations, and the tax liability may vary according to whether a property is Chinese- or foreign-owned. The list below provides a brief summary of the principal taxes to which a property in the PRC may be subject, and which may be relevant to an appraisal. For rates of tax and further advice, a suitably qualified and experienced professional should be consulted.

3.1 Value-added tax (VAT)

VAT has applied to the real estate industry since 1 May 2016. It is added to the purchase price and is payable by the purchaser. Rent is also subject to VAT.

3.2 Deed tax

Deed tax is payable by the purchaser as a proportion of the total purchase price. It varies according to the local jurisdiction.

3.3 Stamp duty

Stamp duty is levied on property sale and lease contracts. It is payable by both the buyer and seller, or landlord and tenant.

3.4 Land value appreciation tax

Land value appreciation tax is payable by the seller on net gains resulting from the transfer of real estate. Acquisition, development and other prescribed costs may be offset against the taxable gains.

3.5 Enterprise income tax (EIT)

Companies established in China are subject to EIT on net profits or capital gains. Foreign enterprises without a Chinese base are taxable on income and capital gains on a gross withholding basis.

3.6 Real estate tax

Real estate tax is payable by owners of real estate at varying rates according to how the property is used.

3.7 Urban and township land use tax

Urban and township land use tax is payable by occupiers and based on the floor area of the property. Rates are set locally.

4 Regulation and standards

4.1 Valuation regulation

The creation of saleable land-use rights has led to the establishment of a recognised valuation profession. Appraisal activities are now regulated by the state through three agencies: the China Real Estate Valuers Association (CREVA), the China Institute of Real Estate Appraisers and Agents (CIREA), and the China Appraisal Society (CAS). These agencies license the appraisers and firms that provide valuation services. In order to become licensed, members must meet the requirements of the organisation. All require the applicant to hold a college degree, pass the organisation's examination and have an approved level of practical experience.

The three bodies each publish their own appraisal standards, but they have different emphases and areas of expertise:

- CREVA comes under the Ministry of Land and Resources of the PRC. CREVA and its members deal principally with the appraisal of land. Licensed members are required to abide by the Regulations for the Valuation of Urban Land and have the designation Licensed Land Valuer/Appraiser.
- CIREA is under the Ministry of Housing and Urban-Rural Development and deals with the appraisal of buildings through the code for real estate appraisal. It established the PRC's first uniform property appraisal standard in 1999 and has drawn up regulations for professional conduct, the content of valuation reports and fee rates. Members must comply with the Code of Real Estate Appraisal (Property) and have the designation Licensed Real Estate Appraiser.
- CAS is under the direction of the Ministry of Finance. Its members deal with appraisal of a wide range of assets, including general asset and business valuation, land and buildings for financial reporting, and plant and machinery valuation. The CAS Asset Appraisal Standards include professional codes of ethics and practice norms. Qualified members are designated Certified Public Valuers. CAS is a member of the International Valuation Standards Council (IVSC).

Additional licences, administered by the State-owned Assets Supervision and Administration Commission of the State Council, are required for the appraisal of assets owned by certain state-owned companies in the PRC.

Property appraisal firms are graded by the Ministry of Finance into three categories (A, B and C), according to six criteria:

a length of time in operation

b registered capital

c shareholder structure

d number of qualified appraisers

e scale of projects and

f range of activities.

Three tiers of valuation operations are recognised: those in tier 1 are international firms with a wide pool of expertise and range of services; tier 2 comprises the larger domestic firms with the capability to undertake major appraisal instructions; and tier 3 is made up of smaller firms dealing primarily with residential property valuation, who will also usually have management and agency functions.

4.2 Valuation regulation – practical issues

The property market in the PRC is at a relatively early stage of development and is subject to a high degree of state control. Chinese appraisal regulations and techniques reflect this, and the codes set by CREVA, CIREA and CAS result in a more formulaic approach that reflects the lack of a true ‘open market’. For example, the Chinese definition of market value differs from that of the IVSC and RICS, reflecting local conditions. Approved methods and techniques of valuation and reporting requirements are also different. As a result, a valuation produced in accordance with Chinese regulations will probably not result in the same figure as one undertaken in accordance with the requirements of the IVS or RICS.

However, the growth and spread of appraisal services is now beginning to catch up with the PRC’s rapid urbanisation. In the largest cities (Beijing, Shanghai, Guangzhou and Shenzhen), market transparency and the availability of professional services is improving rapidly, although in many other cities this process is at an earlier stage.

4.3 International standards

The two recognised global standards for valuation are:

- **International Valuation Standards (IVS)** – published by the International Valuation Standards Council (IVSC), which comprises about 100 member organisations dedicated to setting generic global standards for valuation practice and valuation professionals. RICS is a member of IVSC.
- **RICS Valuation – Global Standards 2017 (the Red Book)** – the Red Book sets out global valuation standards for valuations undertaken by RICS members and regulated firms. It adopts and applies the IVS and imposes certain additional requirements with particular reference to ethics, competency, objectivity and disclosures.

Both are recognised in the PRC. However, at present international standards are mainly used for the valuation of prime property in tier 1 cities owned by international organisations.

5 Application of the RICS Valuation – Global Standards 2017 in the People's Republic of China

5.1 User's perspective

Global standards

- The Red Book is written to ensure that valuation assignments undertaken by RICS members and regulated firms (see PS 1 sections 1 and 2) are fully in accordance with International Valuation Standards (IVS).
- The Red Book complements the IVS by providing detailed guidance and specific requirements regarding the practical implementation of IVS.
- All valuations provided in writing by RICS members and regulated firms must comply with the requirements of the Red Book. Surveyors must be suitably trained and have appropriate qualifications and adequate experience for the task.
- Valuers must be independent, objective and transparent in their approach.
- Adoption of Red Book global standards ensures consistency of approach and aids understanding of the valuation process and the value reported.
- A Red Book-compliant valuation must provide clarity regarding terms of engagement, basis of value (including any assumptions or material considerations taken into account), and reporting.

National supplements

National supplements of the global Red Book are published by RICS in a growing number of countries to ensure compliance with local legal requirements, regulation and practice.

5.2 Red Book – implementation in the People's Republic of China

5.2.1 Red Book translation

A Chinese translation of the *RICS Valuation – Global Standards 2017* is now available on **the RICS website**.

5.2.2 Red Book application in the Chinese context

The Red Book is written from an international perspective and adopts and applies the IVS. It expressly recognises (in PS 1 section 4) that in individual jurisdictions, compliance with specific statutory, regulatory or other authoritative requirements is necessary, and doing so does not preclude a valuation from being declared as performed in accordance with the Red Book.

In the PRC, state regulations will frequently require a valuation in accordance with CREVA, CIREA or CAS standards (as appropriate for the type of property interest), especially where the valuation is being undertaken in connection with a statutory function, for example in the grant of a land-use right. The valuer may need to be licensed by the State-owned Assets Supervision and Administration Commission of the State Council. For the reasons outlined in this guide, the basis of valuation, the figure reported and the reporting format on one of these bases may involve a departure from the requirements of the Red Book.

The benefits of a valuation compliant with the Red Book are increasingly being acknowledged, especially where a figure is required in connection with a market transaction and where the owner has cross-border business or financial interests. While the lack of market transparency can be a challenge, especially in some parts of the country, a valuation in accordance with the terms of the Red Book is viable and often required for property located in the principal Chinese cities.

Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

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