The valuation of unregistered land:
Case Studies from Ghana, Indonesia, and Peru

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Abstract

The economic case for title registration has been debated for years, but the argument that title registration is absolutely needed to ascertain fair value of land for compensation is quite recent, generating fresh debates about the ‘valuation of unregistered land’. We put the issue to strict proof in the case of Ghana, Indonesia, and Peru by interviewing registered valuers, officers of the land sector agencies responsible for registration, and academics who specialise in valuation and urban planning. On the bases of the data collected, we conclude that the assumption that registration is needed for valuation is misleading. valuers in Ghana, Indonesia, and Peru have adapted established valuation methods to value different types of land/tenure- whether registered or unregistered.

Key words: value, registration, Latin America, commodification, land, land invasions, COFOPRI.

Introduction

As mentioned in the introduction to the section on Indonesia, the economic case for title registration has been debated for years. Peru led the world in implementing such registration, via an organisation called El Organismo de Formalización de la Propiedad Informal (COFOPRI). From our first interview - with COFOPRI’s Executive Director, his legal adviser and a colleague - until the last, for which COFOPRI also invited Habitat for Humanity’s Advocacy/Partnership Outreach Manager, the staff of COFOPRI were exceptionally friendly and helpful.

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In Latin America, this is a particularly important issue:

According the UN-Habitat, Latin America is the most urbanized place on earth (UN-Habitat 2011, XV). Over three-quarters of the region’s population live in cities, and this proportion is only increasing. The industrialization of agriculture and rural depopulation are driving more and more people to Latin America’s urban core and creating endless metropolises. The dramatic increase of a generally low-income, unemployed population has made the provision of housing a primary issue ... As a result, a large proportion of the urban population live in informal settlements—densely packed into peripheral urban space. In 2005, one third of Latin America’s total population lived in slums (UN-Habitat 2011, XV) ...

In a Lincoln Institute of Land Policy report, Edesio Fernandes identifies the legal, social, environmental, political, and economic burdens of informality (Fernandes 2012 [sic: 2011], 6-7). These issues include a lack of legitimate citizenship, exclusion from public services, safety and health hazards, discrimination and stigmatization, and economic inefficiency (Ibid) (Westberg 2014).

As did Westberg, we have chosen Lima as our case study for Latin America.³

Data Collection and Analysis

In addition to the interviews with COFOPRI staff, they also organised a site visit to two of their projects, wherein I accompanied a COFOPRI engineer and her colleague on site visits. The first was to Amplicacion Bahia Blanco, which had an area of still-unregistered housing adjoining the COFOPRI-formalised area:

³ Westberg also chose Rio de Janiero as the second city for her case study. While doubtless a wider selection would have been preferable for both studies, Lima contains lessons that may, with appropriate caution, be applied not only in Latin America, but worldwide.
Figure 1: COFOPRI registered houses at Amplicacion Bahia Blanco, in the Lima District.

Figure 2: A family building their new home on COPOFRI-registered land
Our second site visit was to an area COFOPRI formalised longer ago, Los Olivos. Although still distant, Los Olivos is closer in towards the centre of Lima than is Amplicacion Bahia Blanco.

Los Olivos was also of a very different character. To begin with, it was on level land, not on the hillside like Amplicacion Bahia Blanco. It was practically fully developed in terms of span, but with buildings of different heights and standards, reflecting the relative material successes and interests of the owners. There is at least one real estate agency active there. There is also a robust market there for the leasing of single rooms (as in many other areas around Lima), which is a further reason for adding rooms to buildings above the existing ones.

We also conducted an expansive desk review of scholarship in this and related areas, and were thereby able to identify and usefully interview two senior Peruvian

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consultant / scholars\textsuperscript{5} in the areas of land policy and registration, and officials from the Peruvian equivalent to an institute of valuers, Cuerpo Tecnico de Tasaciones (CTTP).

![Figure 4: Our Meeting at CTTP: L to R: Mr Mike Russell (translator); Dr Mike McDermott (Consultant); Mng. Eng. Paul Figueroa Lequien; Econ. Juan Jose Queirolo. Not in picture, but also interviewed: CTTP President Ing. Miguel Cordano Rodriguez.](image)

The conclusion to be drawn from the above is that registration in and off itself is insufficient as a facilitator of real property markets, which exist in informal markets, as indeed they have for millennia. However, it performs a powerfully positive role politically, and also in identity construction and recognition (belongingness needs) of and by the poor (Van Ballegooijen and Pereira 2014, Maceratini 2011, Belk 1988, Ladik 2015, Peltonen 2013). And while not \textit{the} missing ingredient, it is often a missing ingredient which may be a useful artefact towards making valuation more transparent and accountable along the complete spectrum of the Social Tenure Domain Model of UN-Habitat.

\textsuperscript{5}To respect their confidentiality, we have here identified them only as Consultants One and Two. They were interviewed separately.
In accordance with the other country studies, we now provide a brief overview of the land tenure system in Peru, deal directly with valuation, seeking to answer whether unregistered land is valued and if so how. A final section reflects on registration and its underpinning notions of value.

**The Land Tenure System: A Brief Overview**

Peru’s land tenure system is based on the civil code. It legally recognises a wide range of tenures, including ownership, which may be individually held, or held communally, or in partnership. In addition, the law recognises rights to possess and to lease, and also communal rights. Communal rights are known as comunidades, and are the means by which most rural communities hold land. The general assemblies of such communities can “give, rent, sell or mortgage” their lands, provided at least half the assembly concerned agree in the case of coastal communities, and two-thirds in the highlands and jungle regions\(^6\) (USAID 2010, p.5). It further recognises surface rights, easements, and usufruct. Land can be mortgaged and pledged:

*The above-mentioned rights are purely contractual between parties, notwithstanding that registration before the Public Registry grants publicity and enforceability against third parties. Only in the case of mortgages is registration with the Public Registry a requisite for validity* (Mayorga and Simons 2016).

These wide tenure measures are the fruits of land reforms mainly carried out in the latter half of the twentieth century. Before then, Peru had the narrowly concentrated tenure distribution typical of colonised areas worldwide, with a few wealthy landowners on the one hand, and impoverished masses on the other. However, these reforms did not happen through any gradual invisible hands in the property market, but quite visibly and radically. For example, military governments

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\(^6\) The highlands are called sierras, the jungles of the Amazon basin selvas, and the flat, dry coastal regions costa. They make up Peru’s three main geographic divisions. As far as their populations are concerned, there are no cities anywhere in Peru remotely close to the population of Lima, described as “the head of a giant on the body of a dwarf” (Chambers 2005). However, the total urban population apart from Lima rivals that of Lima itself (Trouhanis et al., 2016).
expropriated properties from the elite at the values the owners had declared for rating and taxing purposes, which was often a small fraction of the market value, and even then they were paid in government bonds which prompted further losses in value via inflation (Albertus 2015, p.115). Albertus considers that:

expropriating powerful preexisting elites can serve to demonstrate a dictator’s loyalty to his launching organization while destroying elite rivals out of government that nonetheless have the capacity to threaten the dictator’s survival. Expropriating preexisting elites also serves the complementary function of providing resources to buy the support of key nonelite groups that could otherwise organize destabilizing resistance to the autocrat’s rule. (ibid, p. 131).

Under the Fujimori government, with the assistance of the World Bank the strategy took the form of providing land registration to the urban poor, a tactic that provides political capital to the Fujimoristas to this day. The attachment of the registration of informal properties to a political cause is considered by some property experts to be unfortunate, as the issue has become a political football over the heads of the needs of the poor.  

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**Is Registration Pre-requisite for Land Valuation in Peru?**

Valuation in Peru is guided by the National Appraisal Regulations of Peru, the most recent version of which was gazetted Ministerial Resolution No. 172-2016-Housing in July 2016 (Annexed to this report as Annexure One). Article 7 makes it quite clear that registration is not necessary for the valuation of land in Peru, as in states in the context of describing what is required in the contents of a general valuation report:

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Article 7.- Registration status of the property

7.1 In the case of registered urban properties, the registration number of the Register of Buildings is indicated, specifying the identity data of the holder of the right of ownership or possession registered under Legislative Decree No. 667, which approves the Law of the Registry of Rural Premises, where appropriate.

7.2 In the case of non-registered properties, the documents certifying the possession are recorded, stating the date, the type of public or private document, the official issuing it and other characteristics that the expert considers relevant.

The same provisions are applied to rural and agricultural properties in Article 61.

In all other aspects, the regulations apply the same principles and practices of valuation to registered and non-registered properties.

As mentioned above, the valuation profession in Peru is governed by Cuerpo Técnico de Tasaciones del Perú. Established in 1889, it was recognized by Law No. 6761 of February 5, 1930. All its members are engineers and architects who specialise in valuation. This institution is a legal person, constituted as a civil association by Supreme Decree No. 041-2001-MTC of July 26, 2001. The Valuation Standards of Cuerpo Técnico de Tasaciones del Perú also show how to value unregistered land. Valuers are trained with the National Appraisal Regulations of Peru. As but a single subject given within a civil engineering course, valuation is taught by members of the institute. However, once the person graduates they are required to attain a sufficient level of practical experience in valuation to be admitted into the institute, and once there they are required to engage in continuing professional development programs.

Valuation of Land Without Title

Our interview with a Peruvian consultant (Consultant One) revealed that, despite the abovementioned provision for such valuations in Articles 7 and 61 of the National Appraisal Regulations of Peru, valuers – tasadores – are not involved at all in the
valuation of unregistered land, or, for that matter, in land disputes concerning them: they operate exclusively within the formal system.\textsuperscript{8}

There are several reasons for this. As noted above, formal titles are required to gain a mortgage from a bank, and in my many years’ experience as a valuation manager I have found mortgage valuations to be the bread and butter of most valuation firms. Without the critical mass such valuations provide, I consider that the informational and other infrastructure valuation firms require would not be commercially viable for all but a very few. Furthermore, the fees required by those of the professional status of an architect or engineer would make them unaffordable in most cases when they could otherwise be of service to the poor. Even if such services were forthcoming, however, the poor would still be unable to obtain finance.

Peru’s socio-economic level system divides its population into five economic strata, the richest being the “A” strata, and the poorest the “E” strata. From their own commercial pressures, bankers are only concerning themselves with the “A”, “B” and sometimes the very top of the “C” bands. From that group alone, they select those with what bankers in the developed world term the “three c’s”: cash flow, collateral, and character.\textsuperscript{9} So if that standard banking practice can be extrapolated to Peru, and we see no reason why it could not be, without those three there will be no loans given – even to those inside the “A” and “B” bands. If there are exceptions, the extra risks involved could be addressed by a higher loan to value ratio (a proportionately smaller loan than normal), a higher rate of interest on the loan, or both.

That is not to assert, however, that Peruvian valuers are ignorant of the market dynamics in informal areas; to the contrary, their natural disposition of being interested in valuing at all would enfold an interest in such dynamics.

They, and others interviewed, described the present dynamics of the informal market in the following terms.

\textsuperscript{8} This view was not unanimously held. Another interviewee was aware of valuations of unregistered lands occurring, particularly when the land was well-located. However, that same interviewee noted that there was no formal research on valuing unregistered lands in Peru. COFOPRI move in and out of an area without researching the impacts of its activities.

\textsuperscript{9} In this context, character is established by a solid record of servicing one’s debts.
The bridge between informal markets and the poor gaining registration by COFOPRI is filled by professional land invaders and their associates. These “pirates”, as one informant termed them, are often well-connected professionals such as lawyers and engineers. With their networks they are able to identify suitable land, and may sit on it for speculative again for some time, or invade it almost immediately. Once their people have invaded it, their invading teams set about building and otherwise stamping out their patch of land, and are very difficult, if not impossible, to remove after even only 72 hours. Such invasions can be almost military in their timing and precision, and may set up community ownership organisations.

They might invade state land, or private land: it is easier to remove them from the latter than the former, as the Peruvian Constitutions gives Peruvians the right to land, and public land is not registered. While the invaders are not provided with water or sewer until formal title is granted, they are allowed access to electricity. It is from their payment of their electricity bills and similar records as stated in Articles 7 and 61 of the National Appraisal Regulations, that a claim to ownership can be made. Moreover, if one occupies land for ten years without that occupation being formally disputed, provided certain other conditions are met Peruvian law recognises one’s right to ownership of the land concerned. If a challenge is made, the clock starts again.

Because of their high infrastructure establishment costs, mains water and sewer can only be supplied once COFOPRI grant their ownership certificates, which mean that any defaulters can then be located.
In the meantime, there are entrepreneurs supplying potable water via tankers. There were abuses in the early days of COFOPRI – the usual litanies of corruption, cronyism, invading dangerous areas for flooding, earthquakes et al. that make land administration notorious as one of the most corrupt areas of governance worldwide (Quan 2016) - but COFOPRI has greatly improved over the years:

Over the past 20 years, the nation’s Commission of Formalization of Informal Property (COFOPRI) has carried out a series of land formalization projects that have produced cadastral maps for the titling of over 2.3 million urban lots located in informal settlements (Endo, Alarco and Triveno 2016).

All of the interviewees who addressed the topic considered that COFOPRI’s work is now of benefit to the poor. Consultant Two said that from the 1960’s to the 1980’s there was a genuine social need, but now it has become more like a business, but that interviewee, a significant critic of De Soto, could still see its benefits.

There are no processes in the above narrative that are not amenable to conventional valuation methodologies. Even the professional land invaders, for example, to be "knowledgeable, prudent, and [acting] without compulsion", as required if transactions are to be of evidentiary worth to a valuer, would undertake a hypothetical development approach to the invasion to fit the above market value definition. That is, they would ask, “what will I get for the land when I sell it, what will be my costs and risks in getting those values, and what profit and risk factor would I
need to make it worth my while? Taking all that into account, how much is that land worth to me?” Similarly, if the end users ask themselves questions that the market concerned consider fit the definition of market value, the valuer can consider the use of such sales as evidence of market value.

In addition to Consultant One’s abovementioned statement that valuers are not involved in the valuation of unregistered land, we found little evidence from our other interviews that such a valuations have been undertaken by professional Peruvian valuers: but absence of evidence is not the same as evidence of absence. As mentioned above, there are commercial reasons why such absences would occur, but the difficulties of implementing valuation principles and practices in such domains should not be insurmountable. In our interview with Consultant Two, we found that he has come closest to the requisite valuation protocols for determining the circumstances of sale, by researching informal asking prices. He thereby succeeded in establishing values that are arguably robust at the heuristic level. However, if it is available only concluded sales evidence, not asking price evidence, is sufficient for admissibility as evidence for a sworn valuation. The valuer must first determine that such evidence is unavailable after due diligence enquiries have been made before retreating to heuristics as the best evidence available.

Those experienced in interviewing parties to a sale report that, once suspicions are dissolved and trust is established, people are very willing to discuss the sale, as it means so much to them and they want to be sure that they did the right thing.

Valuation of Land with COFOPRI registration

We mentioned that Consultant Two recognises that there are some benefits to registering land. For example (paraphrasing his very approximate and without prejudice comments), Consultant Two estimated that in an area he has studied the added value of registration by COFOPRI was about half as much again as the land was worth unregistered. COFOPRI came up with similarly qualified comments that one may have to pay in the ball park of USD1,500 to USD3,000 to gain possession of an informal plot. Naturally, there are a great many variables, not the least of which would be the time horizon before COFOPRI's registration of the property. Consultant
Two also plans to initiate studies in this area, which studies could help pave the way for professional-level valuations of unregistered land.

When it comes to professional valuations, there are other effects, either direct or collateral, that the valuer will have to take into account. One example is the trend to have buildings on the small site grow upwards as the families’ financial circumstances improve and children grow. While the land has been formalised, the buildings have not, and the taller they get the more concerned some are about their structural robustness – in particular, to withstand earthquakes.\(^\text{10}\) To address these and many other related issues, COFOPRI’s Executive Director advised that they are now looking beyond land towards housing and services.\(^\text{11}\)

\(^\text{10}\) In addition to the “Pontifical Catholic University of Peru (PUCP) and other institutions hav[ing] been working to improve the structural safety of earthen houses located in seismic areas of Peru for the last four decades” (Serrano et al. 2016), Consultant One advises that the World Bank looking at ways and means to address this concern. However, Serrano et al. report that “not one person in the rural Peruvian Andes has independently built his or her house using the proposed reinforcement techniques”.

\(^\text{11}\) “In 2014, the Directorate of Construction assumed the task to be responsible of sustainable construction, so the Ministry of Housing formulated and approved the national construction technical code and actually is leading the NAMA for Sustainable Construction, the concept note has been finished. A permanent committee is leded by the Ministry of Housing, involving stakeholder from national government, private sector and academy; due to the committee is receiving more support, the technical code has been updated; and in addition, an evaluation of the incremental cost for new building models has been made. As next steps, the Ministry of Housing is going to work on important issues as less carbon construction materials, environmental quality, recycling and incentives” (Roberto Prieto in Swiss Contact 2016).
The majority of building activity in Peru is informal. About 70% of Peruvians build their own homes, (as in the photo in Figure 2 above), which accounts for over 60% of the cement sold in Peru, plus significant proportions of used brick and steel manufacturing (Swiss Contact 2016).

Not all the benefits the market may consider are as tangible as sales of bricks and mortar. Sometimes, asserted benefits may not emerge at all. Indeed, international researches have established that many of the purported benefits of registration not only have not happened, but also that the monetisation of land can lead to more problems, not less (Wehrmann 2006, pp.3-4). However, that research was from Africa, which has its own vast and intricate patchworks of cultural differences which could affect the results of registering land. In similarly vast and differentiated Latin America, researches indicate that more intangible benefits, albeit sometimes more intrinsically valuable than the merely monetary, include but are not limited to: smaller families and more education for the children (Field, 2003 and Galiani and Schargrodsky, 2010), increases in housing investments (Field, 2005; Molina and Soderbom, 2011) and supply of labour (Field, 2007), increased income and consumption (Galiani and Schargrodsky, 2010), and improved nutrition and health (Galiani and Schargrodsky, 2004; Vogl, 2007).

Clearly, one must avoid the temptation to apply sweeping generalisations, one-size-fits-all or one-size-fits-nowhere approaches. Within limits, one usually finds that one size fits some, and what does not fit at one time may fit later (Croucher and Kramer
In general, mindless mechanisation is a menace, but mindful mechanisation can be of considerable benefit: that appears to be so with mechanising / formalising land registration and titling, even though ideological and political forces so often carry the day over rigorous research and insight resulting in skilful and sensitive application.

One recently emerging lesson that could have widespread application, however, is that just because a market has been made formal, that does not necessarily mean that it will remain that way (Gutierrez and Molina 2016, Galiani and Schargrodsky, 2016):

Poor households are caught between certain immediate costs of registering a transaction (i.e. fees) and uncertain future benefits. However, households make these decisions with little knowledge regarding the perils of not registering their property transactions and the legal complications and expensive procedures to correct this problem in the future. The policy implications are serious because they may jeopardize the success of titling efforts. For instance, there may be a high percentage of property owners who are not the legal owners according to public records, which increases tenure insecurity and adversely impacts the effectiveness of the titling program in the long run.

Overall, our results offer the first causal evidence to date regarding the relevance of the registration system for the sustainability of titling programs in developing countries. Currently, policy makers have focused primarily on the process of granting titles. Our results indicate that maintaining a low cost, streamlined registration system is critical to preserve the success of property titling programs. (Gutierrez and Molina 2016 pp.15-16).

The introduction of valuations of unregistered lands could have an important collateral benefit in sensitising owners to the advantages and disadvantages of reverting to informality in their contexts.

Basis of Compensation Valuation

Under Article 70 of Peru’s 1993 Constitution, property is inviolable:
“The right of property is inviolable. The State guarantees it. It is exercised in harmony with the common good and within the limits of law. No one may deprive himself of his property except exclusively because of national security or public necessity, declared by law, and after payment in cash of a compensated indemnity that includes compensation for any damages. There is action before the Judiciary to answer the value of the property that the State has indicated in the expropriatory procedure.”\(^\text{12}\)

The current implementing legislation is the 2015 Legislative Decree No. 1192 - *Framework Law on Acquisition and Expropriation of Real Estate Property, Transfer of State-Owned Property, Release of Interference and Other Measures for the Execution of Infrastructure Works*.\(^\text{13}\)

That Decree states that valuations should be conducted in accordance with the National Appraisal Regulations of Peru. While those regulations often refer to market value, neither document defines what the term “market value” means, and Decree 1192, while adding compensation for disturbance under Article 13.2, makes no specific allowance for other heads of compensation such as injurious affection or severance. However, Article 13.2 could be interpreted to admit such economic losses, provided that they were sufficiently supported by appropriately authoritative evidence.

There appears to be no reference to solatium\(^\text{13}\) despite the above researches indicating that the intangible benefits that solatium is intended to compensate for are among the most significant, and that Peru is a signatory to the FAO’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). Article 18.2 of the VGGT states that:

*Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.*\(^\text{14}\)

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\(^\text{12}\) El derecho de propiedad es inviolable. El Estado lo garantiza. Se ejerce en armonía con el bien común y dentro de los límites de ley. A nadie puede privarse de su propiedad sino, exclusivamente, por causa de seguridad nacional o necesidad pública, declarada por ley, y previo pago en efectivo de indemnización justipreciada que incluya compensación por el eventual perjuicio. Hay acción ante el Poder Judicial para contestar el valor de la propiedad que el Estado haya señalado en el procedimiento expropiatorio. Reference: http://pdba.georgetown.edu/Constitutions/Peru/per93reforms05.html

\(^\text{13}\) A payment to provide solace for having one’s property taken.

\(^\text{14}\) Peru’s Centro Peruano de Estudios Sociales (CEPES) Tierra y Derechos is looking to ensure implementation of such international agreements (Seufert and Suárez 2012).
Article 20.2 does allow a 10% incentive payment over and above the market value, and solatiums are often paid internationally of that order. However, that 10% is not for solatium: it is an incentive payment. Moreover, with traditional societies in particular there is no reason to link the market value of the land and the non-market value of the land to the dispossessed. It is completely counterfactual to dismiss such attachments as mere “sentimentality”: in the abovementioned context of identity construction and maintenance, traditional landholdings can be fundamental to social identity. Consultant One pointed out that one does not obtain compensation for informally held land.

Endo adds that:

Under the new expropriation regime, the active subject (public agency requiring land) and the passive subject (the owner of the land) should engage on voluntary negotiation concerning the value of compensation. If an agreement cannot be reached, the expropriation process begins. The act of expropriation cannot be contested: the passive subject can only question the official valuation before an arbitral or judicial court. However, this procedure does not stop the expropriation process and land can be taken upon depositing the estimated compensation value in a bank account from which the owner can withdraw it. The compensation value is estimated by a government agency according to the rules set in a National Valuation Regulation …

It is too early to assess the implementation of the land expropriation regime. However, some experts have questioned its constitutionality. First, they argue this regime was established by an Executive order (legislative decree) that went beyond the general attributions delegated by Congress to the Executive Power to legislate in economic and financial matters. Second, they argue that the new expropriation regime violates the right to property because it does not allow the expropriated party to contest the act of expropriation, only the compensation value. Finally, they claim that the compensation value calculation criteria does not take into account damages caused to the expropriated owner (Endo 2016).

From the above, it appears that this law will not readily result in the “before and after” principle being fulfilled when it comes to the valuation of unregistered land. That principle holds that the affected parties will be no worse off than they were before the relevant property was taken from them, and is regarded as a minimum standard by most international lending institutions for major infrastructure purposes. Their experiences have confirmed that resettlement allowing existing social networks to remain is preferable to mere monetary compensation - for traditional societies in particular.
Conclusion

Determining whether registration is needed for valuation to be carried out is relatively new in the debate on registration. We carried out case studies in Ghana, Indonesia, and Peru to ascertain whether registration is sine qua non for valuation. As this paper, centred on the Peruvian case study shows, the assumption that registration is needed for valuation is misleading. Local valuers in Peru have adapted established valuation methods to value different types of land/tenure—whether registered or unregistered. This finding suggests that the need for valuation cannot be listed as one of the grounds for advocating registration.
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