

China’s New Civil Code: An Important Benchmark in the Modernization of the PRC

China’s first-ever civil code was approved on the final day of the ‘two sessions’ meetings in Beijing and it comes into effect in January 2021. In development since 2014ⁱ, “[t]he Civil Code has six parts – real rights, contracts, personality rights, marriage and family, inheritance, and tort liabilities, in addition to general and supplementary provisions.”ⁱⁱ

The significance of this monumental event should not be understated. With a focus on order and equality, the Code represents a balancing of interests between individuals, businesses, and the State. The 21st century China needed a uniform overhaul, consistently applied. The Civil Code represents just that, and cements China’s place among other leading nations.

When the new Code became law, “it [abolished], among other laws, the General Provisions of the PRC Civil Law, the PRC Marriage Law, the PRC Guarantee Law, the PRC Contract Law, the PRC Property Law and the PRC Tort Liability Law.”ⁱⁱⁱ These were dispensed with in favour of new, comprehensive code provisions.

Old laws, like disparate treatment of property rights, have been updated for posterity. In days past, there was not equal protection of state and private property. Under Article 207 of the new Civil Code, that has totally changed:

The real rights of the State, collective real rights, private real rights and the real rights of other right holders shall be protected equally by the law and shall not be infringed upon by any organization or individual.^{iv}

This equal treatment of private property rights is likely to help facilitate increased wealth and growth for individuals and businesses in the coming years.

Articles in the code are varied, and cover issues ranging from likeness and IP rights, to biomedical research, to individual protections from sexual harassment and voyeurism.



Personal property is also affected in the new code. Mortgages on homes, for example, can now be transferred without the consent of the mortgagee, allowing for easier disposition of real property^{vi}.

There are provisions clearly delineating various tort and contract provisions as well. The new code has a macro-level scope, with an aim at codifying micro-applicable detail.

Business Tip: Forecasting

The laws outlined in the new code are, for the most part, already on the books – not much is *substantively* novel. What is of paramount importance is the collection, and, by official publication and declaration, the *legitimization* of these laws. This is a statement from the Chinese government that they intend to consistently apply and enforce these protections on businesses, individuals, and civil authorities.

Consistency means predictability. Predictability affords our firm and our clients the means to make informed long-term plans.

The legislation seeks to facilitate greater private sector productivity by reducing the scope of entanglement with government bureaucracy. Clearly delineated policies give individuals and firms a single resource for questions regarding basic regulations. The impact of this reorganization was well described by Reuters when they published the statement that “[t]he civil code . . . is expected to spell out the clearest boundary yet between government and markets since the 1949 founding of the People’s Republic of China.”^{vii}

One mark of an effective legal system is individual accountability. Under the old law, “when an object is thrown from or falls out of a building and causes injury, but the tortfeasor is hard to locate, all residents in the building who *could have* done so . . . will be held liable, unless they can prove that they are not . . . the tortfeasor.”^{viii} This is reasonable on its face because it merely seeks to compensate the injured party (and arguably encourages group maintenance on buildings); the law became problematic, however, because innocent parties could end up paying for damages they did not cause.

The new Code modernizes the approach, and, in Article 1254, now places an obligation on State investigators to find the guilty party.^{ix} In the event that the true perpetrator is not identified, “the user of the building who may have caused the harm shall make compensation,” but “[t]he user . . . shall have the right to recover the compensation from the [true] tortfeasor.”^x This balancing of interests helps secure compensation for the injured person, while going to greater lengths to hold the tortfeasor responsible.



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Judicial backing of the code is significant as well. It will do little good if courts are loath to enforce the provisions therein. Fortunately, the Supreme People’s Court (SPC) has explicitly expressed its support for the new provisions, which only adds to predictability (or at least reliability) in dispute resolutions. On June 3, 2020, President of the SPC Zhou Qiang stated “The courts should fully [implement] the civil code, make related judicial interpretations, and strengthen training to improve

its judicial capabilities for dealing with civil cases”^{xii} Zhou continued, “[asking] the courts to further judicial reform and smart courts construction, strengthen construction of one-stop diversified dispute resolution mechanism and litigant service system, accelerate the modernization of judicial system and capacity.”^{xiii}



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Business Tip: Data Protection

The civil code will impact the wholesale collection of personal data. Left unchecked, data mining can range from mildly irritating, to invasive. Official protection of consumer and business data is essential to building confidence in the tech sector, as well as large retailers. As one French publication wrote, “[t]he push to shore up data privacy in China is widely seen as an effort to protect and legitimize the country's fast-growing internet sector and place safeguards on the movement of valuable Chinese data overseas.”^{xv}



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Data protection is of utmost importance, and looking to the future impact of the new civil code, “lawyers and legal experts say the recognition of digital privacy rights is an important first step allowing individuals who suffer from [data] leaks to seek [recompense].”^{xvii}

It is anticipated that the new civil code (and the inherent stability it provides) will allow private investment and growth to move forward out of the Covid-19 economic slump. Coupled with a rise in new bank lending (which rose to nearly three trillion yuan / \$405B USD in March alone^{xviii}), ratification of the code could not come at a better time. Stimulus spending plus an added framework of private legal protection will help business, individuals, and the Chinese economy salvage the remainder of the year.

Looking to the future, Chinese legal scholar Jin Peng stated, “[i]t's no easy task to formulate a good law, and it's even more important to make it understood by the public and be enforced effectively. The practice of the rule of law shall never stop.”^{xix} The new Code represents a leap into modernized jurisprudence for China. The drafters and promulgators of the new regulation are not just looking for

short-term economic gains – their gaze is fixed on the decades ahead, and this Code is a brick in the path to the future.

ⁱ <https://www.reuters.com/article/us-china-parliament-civil-code/china-set-to-implement-its-first-civil-code-as-private-investment-slows-idUSKBN22X0TC>.

ⁱⁱ <https://global.chinadaily.com.cn/a/202006/15/WS5ee6cbf0a310834817252f40.html>.

ⁱⁱⁱ <https://www.reedsmith.com/en/perspectives/2020/06/the-adoption-of-the-chinese-civil-code-and-its-implications-on-contracts>.

^{iv} PRC Civil Code (“Code”), Article 207, The People’s Republic of China, 2020.

^v Photo Credit: <http://www.asianews.it/news-en/Willy-Lam:-A-missed-opportunity-for-Chinese-Parliament-21110.html>.

^{vi} This is still subject to a notice requirement, and an agreement not to infringe on the servient rights of the mortgagee; *See also Code* (n iv) at Article 406.

^{vii} *Reuters* (n i).

^{viii} <https://npcobserver.com/2020/05/21/2020-npc-session-a-guide-to-chinas-civil-code/>.

^{ix} *Code* (n iv) at Article 1254.

^x *ibid*.

^{xi} Photo Credit: https://en.wikipedia.org/wiki/Supreme_People%27s_Court.

^{xii} http://english.court.gov.cn/2020-06/03/content_37536685.htm.

^{xiii} *ibid*.

^{xiv} Photo Credit: <https://www.webintravel.com/letter-from-shanghai-ctrip-pushes-on-global-brands-and-lessons-learned-in-china-and-holy-places-here-we-come/panorama-of-the-skyline-of-shanghai-china-with-the-iconic-buildings/>.

^{xv} <https://www.france24.com/en/20200526-china-to-set-individual-privacy-rights-in-first-civil-code>.

^{xvi} Photo Credit: <https://www.thorntons-law.co.uk/knowledge/coronavirus-your-data-protection-queries-answered>.

^{xvii} *France24* (n xiv).

^{xviii} <https://www.reuters.com/article/us-china-economy-loans/china-march-loans-surge-to-405-billion-as-coronavirus-stimulus-kicks-in-idUSKCN21S0VY>.

^{xix} *China Daily* (n ii).