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# General Principles of Civil Law of the People's Republic of China (Translation)

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# GENERAL PRINCIPLES OF CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA

TRANSLATED BY WHITMORE GRAY\* AND HENRY RUIHENG ZHENG†

(Adopted April 12, 1986, at the Fourth Session of the Sixth National People's Congress, to take effect on January 1, 1987)<sup>1</sup>

## CHAPTER 1. BASIC PRINCIPLES

### Article 1.

In conformity with the need for development of socialist modernization, in accordance with the Constitution and the actual situation of the People's Republic of China, and based on a summary and analysis of the practical experience in civil activities, this law is enacted to protect the lawful civil rights and interest of citizens and legal persons, and to regulate correctly civil relations.

### Article 2.

The civil law of the People's Republic of China regulates property<sup>2</sup> relations and personal relations between subjects of equal status—between citizens, between legal persons, and between citizens and legal persons.

### Article 3.

In civil activities,<sup>3</sup> the positions of the parties are equal.

### Article 4.

Civil activities must<sup>4</sup> be carried out in accordance with the principles of voluntariness, fairness, exchange of equivalent values, and good faith.

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(The footnotes are all by the translators.)

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1. Order of the President of the People's Republic of China No. 37. The translators gratefully acknowledge extensive, helpful comments on early drafts of this translation by Ross Linehan of the University of Michigan and Edward Epstein of Hong Kong University.

2. Property here is contrasted with "personal" rights, such as the right to name and reputation, and should be understood to encompass a wide range of rights with economic value.

3. The statute uses here a very general concept of civil activities, not related to any particular term in common use in other civilian countries. The sense of this article seems to be that in a civil transaction the parties deal on the basis of equality. The Chinese term for "activities" used here is, however, broad enough to cover even unilateral acts with civil law consequences.

4. In many provisions of the *Principles*, there is no normative language, even though the provision has a normative character. For example, we might read art. 3 as "the positions of the

## Article 5.

The lawful civil rights and interests of citizens and legal persons are protected by law; no organization or individual may violate<sup>5</sup> those rights and interests.

## Article 6.

Civil activities must be in conformity with the law; where there is no provision of law, activities must be in conformity with state policy.

## Article 7.

Civil activities must be in accordance with social morality. They must not harm the public interest, undermine the state economic plan, or disrupt the economic order.<sup>6</sup>

## Article 8.

The law of the People's Republic of China applies to civil activities within the territory of the People's Republic of China, unless the law provides otherwise.

The provisions of the present law concerning citizens apply to foreigners and stateless persons within the territory of the People's Republic of China, unless the law provides otherwise.

## CHAPTER 2. CITIZENS (NATURAL PERSONS)

Section 1. Capacity to Have Civil Rights and Competence to Perform Civil Acts<sup>7</sup>

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parties *shall* be equal." In some provisions, the Chinese text uses a word (here *yingdang*) which means "should" or "must." In this translation, "must" has been used where there is an express normative word, and the plain indicative used where there is none, even though the connotation of the Chinese text may be normative.

5. In the *Principles*, three related Chinese terms are used which suggest particular "invasions" of rights. *Qinfan*, the term used here, is the most general, and has been translated as "violate." See also arts. 73, 121. *Qinshan* suggests invading and occupying, and has been translated as "interference with possession" (arts. 73, 74, 75, 117). *Qinshai* suggests invading and causing damage, and it has been translated "to interfere and cause damage," or simply "to infringe," depending on the context (arts. 18, 83, 106, 109, 117-20, 131, 134, 137).

6. The Chinese text refers to the public interest and the economic order "of society," but the sense of the expressions accords with what is usually called the public interest and the economic order in non-socialist writing. The same term is used to modify morality in the preceding sentence, but the translators felt that there it adds some meaning in the Chinese context.

7. The statute uses here the common concept of "legal act," cf. *Rechtsgeschaeft* or *acte juridique*) but with a particular usage which makes some difficulties for translation. The term "acts" used here refers to legal acts in general, but in other sections there is a difference made between civil acts and civil *legal* acts. The latter term is reserved for valid legal acts. A void legal act is referred to simply as a "civil act," as in article 58. The Chinese usage will be followed in this translation.

## Article 9.

From the time of their birth until their death citizens have civil capacity<sup>8</sup>—in accordance with law they can enjoy civil rights and be obligated to perform<sup>9</sup> civil duties.

## Article 10.

The capacity of citizens to have civil rights is completely equal.

## Article 11.

A citizen who has completed his eighteenth year is an adult; he has full competence to perform civil acts and may engage independently in civil activities; he is a person with full competence to perform civil acts.

A citizen who has completed his sixteenth year but has not completed his eighteenth year and whose principal source of support is income from his own labor is deemed to be a person with full competence to perform civil acts.

## Article 12.

A minor who has completed his tenth year is a person with limited competence; he may engage in civil activities which are appropriate for [one of]<sup>10</sup> his age and intelligence; in other civil activities he is represented by his legal representative or the consent of his legal representative is obtained.

A minor who has not yet completed his tenth year is an incompetent person, and is represented by his legal representative in civil activities.

## Article 13.

A person suffering from mental illness<sup>11</sup> who is unable to understand the nature and propriety of his own acts is an incompetent person, and is represented by his legal representative in civil activities.

A person unable to understand fully the nature and propriety of his own acts is a person of limited competence, and may engage in civil activities which are appropriate for [one with] his state of mental health; in other civil activities he is represented by his legal representative or the consent of his legal representative is obtained.

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8. The term *capacity* is used here in contrast with *competence* in article 11. The Chinese uses compound words which mean literally “civil-rights-ability” and “civil-acts-ability,” respectively. (The distinction is between the five-year-old’s capacity to own property or have a tort claim and his lack of competence to make dispositions in regard to those rights.) These two English terms will be used to make this distinction in translating subsequent provisions.

9. In other contexts the verb *chengdan*, translated here as “be obligated to perform,” is translated as “bear,” “assume,” “incur,” or “have.”

10. Brackets will be used to indicate words added by the translator which are implicit in the Chinese text.

11. The basic meaning of the Chinese term is clearly “illness,” but it could be translated “condition,” since it presumably includes other mental conditions affecting capacity.

#### Article 14.

The legal representative of an incompetent person or a person with limited competence is his guardian.

#### Article 15.

A citizen's domicile is his registered residence; if the place where a citizen usually resides is not the same as his domicile, the place where he usually resides is deemed to be his domicile.

### Section 2. Guardianship

#### Article 16.

The parents of a minor are his guardians.

Where the parents of a minor are deceased or are not competent to be guardians, one of the following persons who is competent to be a guardian serves as guardian:

1. Paternal or maternal grandparents;
2. Older brothers or sisters;
3. Relatives or friends who have a close relationship to the person and who are willing to assume the responsibility of being a guardian, upon approval by the units of the minor's parents or the neighborhood or village committee at the minor's domicile.

Where there is a dispute with respect to serving as guardian, the units of the minor's father or mother or the neighborhood or village committee at the minor's domicile makes a designation among the close relatives. If there is dissatisfaction with the designation and a lawsuit is brought, the People's Court decides.

Where guardians provided for in the first and second paragraphs [of this Article] do not exist, the units of the minor's parents, or the neighborhood or village committee or the civil affairs department at the minor's domicile serves as guardian.

#### Article 17.

For a mentally ill person with limited or no competence, one of the following persons serves as guardian:

1. Spouse;
2. Parents;
3. Adult sons and daughters;
4. Other close relatives;
5. Other relatives or friends who have a close relationship to the person and who are willing to assume the responsibility of being a guardian, upon approval by the unit of the mentally ill person or of the neighborhood or village committee of his domicile.

Where there is a dispute with respect to serving as guardian, the unit of the mentally ill person, or the neighborhood or village committee at the

mentally ill person's domicile, makes a designation among the close relatives. If there is disagreement with the designation and a lawsuit is brought, the People's Court decides.

Where there is no guardian specified in the first paragraph, the unit of the mentally ill person or the neighborhood or village committee or the civil affairs department at the mentally ill person's domicile serves as guardian.

#### Article 18.

A guardian must perform the duties of guardianship, protecting the person and property as well as other lawful rights and interest of his ward; unless in the interests of the ward, he may not deal with or dispose of the property of the ward.

The rights of a guardian performing guardianship duties in accordance with the law are protected by law.

A guardian who has failed to perform guardianship duties or has infringed the ward's lawful rights or interests must bear civil liability; if he causes damage to the ward's property, he must pay damages. The People's Court may revoke the guardianship on the basis of a petition by a person or unit that has a relationship [to the ward].

#### Article 19.

A person with an interest with respect to a mentally ill person may apply to the People's Court for a declaration that the mentally ill person is incompetent or is a person with limited competence.

Where the person is declared by the People's Court to be incompetent or a person with limited competence, the People's Court may [subsequently], upon application of the mentally ill person himself or of an interested person, declare him to be a person with limited competence or a person with full competence, based on the state of [his] recovery of health.

### Section 3. Declaration as Missing and Declaration as Dead

#### Article 20.

Where the whereabouts of a citizen is unknown for two years, an interested person may petition the People's Court to declare him to be a missing person.

Where a person's whereabouts becomes unknown during a war, the two-year period is calculated from the day the war ends.

#### Article 21.

The property of the missing person is administered for him by his spouse, parents, adult children, or other relatives or friends with a close relationship [to him]. Where there is a dispute with respect to such administration, or none of the persons listed above exists, or those persons do not possess the

competence to undertake the administration, administration will be by a person designated by the People's Court.

The missing person's taxes, debts, or other expenses which must be paid are paid out of his property by the administrator.

#### Article 22.

Where a person declared missing reappears or his whereabouts is ascertained, upon petition of the missing person himself or an interested person, the People's Court must revoke the missing-person declaration.

#### Article 23.

Where with respect to a citizen one of the following situations exists, an interested person may petition the People's Court to declare him to be dead:

1. His whereabouts has been unknown for four years;
2. His whereabouts is unknown because of an unexpected accident, and two years have passed since the time of accident.

Where a person's whereabouts becomes unknown during a war, the period is calculated from the day the war ends.

#### Article 24.

If the person declared dead reappears, or it is ascertained that he did not die, upon the petition of the person himself or an interested person, the People's Court must revoke the declaration of death.

Civil legal acts performed by a person who was competent during the period when he was declared to be dead are effective.

#### Article 25.

After the declaration of a person's death is revoked, he is entitled to demand the return of his property. Citizens or organizations who acquired his property in accordance with inheritance law must return the original property; where the original property no longer exists, appropriate compensation must be provided.

#### Section 4. Individual Industrial/Commercial Households and Rural Contract-Operation Households<sup>12</sup>

#### Article 26.

Citizens who, upon approval and registration in accordance with law, conduct industrial or commercial business within the scope permitted by law are private industrial/commercial households. A private industrial/commercial household may have its own trade name.

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12. These are business units made up of an individual or family group. As they originally developed, the industrial/commercial households were mainly in the city, while contract-management households contracted to undertake certain work or supply certain goods in the countryside.

## Article 27.

Members of rural collective economic organizations who in accordance with provisions of a contract conduct business with respect to goods within the scope permitted by law are rural contract-operation households.

## Article 28.

The lawful rights and interests of individual industrial/commercial households and rural contract-operation households are protected by law.

## Article 29.

Obligations of individual industrial/commercial households or rural contract-operation households are borne by<sup>13</sup> individual property if the business is operated by individuals, or, if the business is operated by a family, the property of the [members<sup>14</sup> of the] family.

## Section 5. Partnerships of Individuals

## Article 30.

The term “partnership of individuals” means two or more citizens, who in accordance with an agreement, contribute funds, property, skills, and the like, and operate in partnership and work jointly in [a business].

## Article 31.

The partners must draw up a written agreement providing for such matters as the shares of capital contribution, distribution of profit, liability for debt, and for joining, withdrawal from, and terminating the partnership.

## Article 32.

Property contributed by the partners is managed and used in common by the partners.

Property resulting from the operation of the partnership is co-owned by the partners.<sup>15</sup>

## Article 33.

A partnership of individuals may have its own trade name, and upon approval and registration in accordance with law, it may conduct business operations within its registered scope of business.

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13. The idea is that they are to be satisfied from the particular property if not paid by the obligor. *See* note to article 48.

14. This seems to be the sense, since there is no concept of family ownership as such separate from the ownership of the individual family members.

15. *See* article 78 regarding co-ownership. (It would seem that the property contributed by the partners is also co-owned, but there is not a specific provision to that effect.)



## Article 34.

Business activities of the partnership are decided on jointly by the partners; the partners have the right to conduct and supervise [these activities].

Partners may elect a manager (*fuzeren*). Liabilities from business activities of this managing partner and of all other personnel are borne by all the partners.

## Article 35.

Obligations of a partnership are satisfied from the individual property of each partner in accordance with his share of capital contribution or the provisions of the [partnership] agreement.

All partners are jointly liable for the debts of the partnership, unless the law provides otherwise. A partner who has satisfied a partnership obligation in excess of his share is entitled to compensation from the other partners.

## CHAPTER 3. LEGAL PERSONS

## Section 1. General Provisions

## Article 36.

Legal persons are organizations that have civil capacity, are competent to perform civil acts, and according to law independently enjoy civil rights and assume civil duties.

The civil capacity of a legal person and its competence to perform civil acts arise when the legal person is established and cease when the legal person terminates.

## Article 37.

A legal person must satisfy the following conditions:

1. Be established in accordance with law;
2. Possess the necessary property or funds;
3. Possess its own name, organizational structure, and premises;
4. Be able to assume civil obligations independently.

## Article 38.

The legal representative of a legal person is the person with [management] responsibility (*fuzeren*) who, in accordance with law or the provisions of its charter, exercises authority on behalf of a legal person.

## Article 39.

The domicile of a legal person is its principal place of business.

## Article 40.

When a legal person terminates, there must be liquidation in accordance with the law, and activities not related to liquidation must cease.

## Section 2. Enterprises as Legal Persons

## Article 41.

State-owned and collective<sup>16</sup> enterprises that meet the capital requirements provided by the state, possess a charter, an organizational structure, and premises, and are able to assume civil obligations independently acquire the status of legal person upon approval and registration by the responsible agency.

Sino-foreign equity joint venture enterprises,<sup>17</sup> Sino-foreign contractual joint ventures, and wholly foreign-owned enterprises established in the territory of the People's Republic of China that meet the requirements for legal persons acquire the status of Chinese legal persons upon approval and registration in accordance with law by the administrative agencies for industry and commerce.

## Article 42.

An enterprise legal person must conduct business within its registered scope of business.

## Article 43.

An enterprise legal person bears civil liability in regard to business activities of its legal representatives and other personnel.

## Article 44.

Where an enterprise legal person is divided, or merged, or there is a change in other important matters, this must be registered with the registration agency and a public announcement made.

Where an enterprise legal person is divided or merged, its rights and duties are enjoyed and borne by the resulting legal persons or person.

## Article 45.

An enterprise legal person terminates for one of the following reasons:

1. It is cancelled in accordance with the law;
2. It is dissolved;
3. It is declared bankrupt in accordance with the law;
4. Other reasons.

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16. The Chinese terms here are literally "ownership-by-the-whole-people-system" and "collective-ownership-system," respectively.

17. This is a commonly used English translation of the Chinese term *zhongwaihezijingyingqiye*. The Chinese for the two terms following is *zhongwaihezuojingyiye* and *waiziqiye*.

## Article 46.

Upon the termination of an enterprise legal person, its registration must be cancelled with the registration authority and a public announcement made.

## Article 47.

When an enterprise legal person is dissolved, a liquidation organization must be established to effect the liquidation. Where an enterprise legal person is cancelled or declared bankrupt, the competent agency or the People's Court must set up a liquidation organization [consisting of] related personnel and agencies to effect the liquidation.

## Article 48.

A state-owned enterprise legal person bears civil liability to the extent of<sup>18</sup> the property the state has given it to operate and manage.<sup>19</sup> A collective enterprise bears civil liability to the extent of the property the enterprise owns.

Civil liabilities of a collective enterprise shall be satisfied from the assets the enterprise owns. Sino-foreign joint venture enterprise legal persons, Sino-foreign contractual joint venture enterprise legal persons, and wholly foreign-owned enterprise legal persons bear civil liability to the extent of the property the enterprise owns, unless the law provides otherwise.

## Article 49.

Where with respect to an enterprise legal person one of the following situations exists, then in addition to the liability borne by the legal person, its legal representatives may be subject to administrative penalties or fines, or, where the acts constitute crimes, investigated in accordance with law with regard to imposition of criminal penalties:

1. [The enterprise has] conducted illegal business operations beyond the scope of business approved and registered by the registration agency;
2. [The enterprise has] willfully failed to disclose true information to or resorted to deception [in dealing with] the tax or registration agencies;
3. [The enterprise has] withdrawn funds or concealed property to evade [performance of] an obligation;
4. [The enterprise has] dealt with or disposed of property without authorization after being dissolved, cancelled, or declared bankrupt;

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18. The Chinese term here means literally "in accordance with," but the sense clearly seems to be that obligations are to be satisfied from the indicated property. There are similar provisions in articles 29, 35, and 52.

19. The term "operate and manage" is used to describe the relationship of a state-owned unit to state property given to it for use in its operations, in contrast to other units which "own" property. See art. 82. The drafting of the section suggests a limitation to the property originally given to the state-owned enterprise, but should probably be read to include all assets in its business operations which it can be viewed as authorized to "operate and manage."

5. [The enterprise has] failed to apply for registration and make public announcements in a timely manner at the time of changes or termination, resulting in significant loss to interested parties;
6. [The enterprise has] engaged in any other activities prohibited by law, resulting in harm to state interests or public interest.

### Section 3. Government Agencies<sup>20</sup> as Legal Persons, Institutions<sup>21</sup> as Legal Persons, and Associations<sup>22</sup> as Legal Persons

#### Article 50.

A government agency with independent funds enjoys the status of legal person from the day when it is established.

An institution or association which satisfies the requirements for legal persons, and is not required by law to register as a legal person, acquires the status of legal person from the day when it is established; if it is required by law to register as a legal person, it acquires the status of legal person upon approval and registration.

### Section 4. Joint Operations

#### Article 51.

Where a joint operation between enterprises or an enterprise and an institution results in a new economic entity that independently assumes civil liabilities and satisfies the requirements for legal persons, it acquires the status of legal person upon approval and registration by the competent authority.

#### Article 52.

Where a joint operation or operation in common between enterprises, or between an enterprise and an institution, does not satisfy the requirements for legal persons, each party to the joint operation bears civil liability, in accordance with its share of capital contribution or the provisions of their agreement, to the extent of the property each owns or manages and operates. If the law or agreement so provides, the parties are jointly liable.

#### Article 53.

Where in accordance with the provisions of their contract each party in a joint operation between enterprises, or between an enterprise and an institution, conducts operations independently, the rights and obligations of the parties are provided by the contract, and each bears civil liability.

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20. E.g., the various ministries and bureaus.

21. E.g., public hospitals and universities.

22. E.g., sports organizations and churches, which are specifically mentioned in article 77. As in the terms noted above in the footnote to article 7, there is an additional Chinese term used here meaning "social" or "in society," but it does not seem to add a significant meaning.

CHAPTER 4. CIVIL LEGAL ACTS<sup>23</sup> AND AGENCY

## Section 1. Civil Legal Acts

## Article 54.

Civil legal acts are lawful acts by which citizens or legal persons establish, modify, or terminate civil rights and duties.

## Article 55.

A civil legal act must satisfy the following conditions:

1. The person performing the act has the appropriate competence;
2. The real intent is expressed;
3. There is no violation of the law or the public interest.

## Article 56.

Civil legal acts may be in oral or written form, or in any other form. Where the law requires a specific form, the provisions of the law must be followed.

## Article 57.

Civil legal acts have legal force from the time they occur. Unless in accordance with a provision of law, or the agreement of the other party has been obtained, the person who performed the act may not himself modify or revoke it.

## Article 58.

The following civil acts are void:

1. One performed by a person who is incompetent;
2. One performed by a person with limited competence who according to law may not independently perform [such an act];
3. One performed under circumstances where one party, by using deceit or duress, or by taking advantage of the other party's distress, causes the other party to act contrary to his real intent;
4. One which involves maliciously conspiring to injure the interests of the state, of a collective, or of a third party;
5. One which violates the law or the public interest;
6. Economic contracts which violate the state mandatory plan;
7. One which uses a lawful form to conceal an illegal purpose.

From the time it occurs, a void civil act has no effect.

## Article 59.

A party has the right to request the People's Court or an arbitral organ to modify or rescind the following civil acts:

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23. See footnote preceding article 9.

1. One where the person performing it was under a significant misconception as to the contents of the act;<sup>24</sup>
2. One which is obviously unfair.

A rescinded civil act is void from the time when it occurred.

#### Article 60.

Where the invalidity of a part of a civil act does not affect the validity of the other parts, the other parts remain valid.

#### Article 61.

After a civil act is confirmed to be void or is rescinded, a party must return property acquired as a result of the act to the party who suffered the loss. A party who was at fault must compensate the other party for the loss caused thereby; where both parties were at fault, each must bear an appropriate amount of liability.

Where both parties have maliciously conspired and performed civil acts harmful to the interests of the state, a collective, or a third party, property acquired by them must be recovered and becomes property of the state or the collective or is returned to the third party.

#### Article 62.

A civil legal act may be made subject to a condition; a civil legal act subject to a condition takes effect when the condition is satisfied.

#### Section 2. Agency

#### Article 63.

Citizens and legal persons may perform civil legal acts through agents.

Agents perform civil legal acts in the name of the principal within the limits of their authority. Principals bear civil liability for acts performed by agents on their behalf.

Civil legal acts which by law or by agreement between the parties concerned must be performed by a person himself must not be performed by an agent.

#### Article 64.

Agency includes agency by agreement,<sup>25</sup> agency by operation of law, and designated agency.

An agent by agreement exercises his authority as agent in accordance with an appointment as agent by his principal; an agency by operation of law exercises authority as agent in accordance with a provision of the law; a

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24. The Chinese text probably is broad enough to cover a serious mistake concerning the general subject matter of the act as well as one regarding the nature of the act itself.

25. The sense of the Chinese is to entrust a matter to someone.

designated agent exercises his authority as agent in accordance with a designation by the People's Court or a designating unit.

#### Article 65.

An appointment as agent for civil legal acts may be in written form or may also be in oral form. If the law provides for the use of written form, written form must be used.

The document containing the written appointment as agent must set forth the name<sup>26</sup> of the agent, the subject matter of the agency, the scope and duration of the agency, and be signed or sealed by the principal.

Where the scope of authority in an appointment document is unclear, the principal must bear civil liability to a third party and the agent is jointly liable.

#### Article 66.

An act performed by an agent without authority or which exceeds his authority or [is performed] after the termination of the agency only results in civil liability for the principal if it is ratified by the principal. As for an unratified act, the person who performed the act bears civil liability. If a person knows that another person is performing a civil act in his name and does not object, he is deemed to have consented.

Where an agent's failure to perform his duty causes loss to his principal, [the agent] must bear civil liability.

Where an agent conspires with a third party to the detriment of the principal's interests, the agent and the third party are jointly liable.

Where a third person, knowing that a person performing a civil act [as agent] is acting without authority, or that he is acting beyond the scope of his authority, or that his authority has terminated, continues to perform the civil act with that person, thereby causing loss to another person, the third person and the person performing the act are jointly liable.

#### Article 67.

Where an agent is aware of the illegality of the subject matter of the agency and continues to act, or where the principal, knowing of the illegality of an agent's act, does not object, the principal and the agent are jointly liable.

#### Article 68.

Where in the interest of the principal an agent by agreement needs to transfer his authority to another person, he must in advance obtain approval from the principal. Where he fails to obtain approval in advance, the agent must promptly inform the principal afterwards; if the principal does not approve, the agent is civilly liable for the acts of the person to whom he

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26. Two Chinese terms meaning family name and first name (*xingming*) and assumed name (*mingcheng*), e.g., the name of an enterprise, have been translated together as "name."

transferred his authority, except, however, in an emergency situation where the agent transferred his authority to another person to protect the interests of the principal.

#### Article 69.

In any of the following situations an agency by agreement terminates:

1. The term of the agency ends, or the task of the agency is accomplished;
2. The principal revokes the appointment or the agent withdraws from the agency relationship;
3. The agent dies;
4. The agent becomes incompetent;
5. A legal person acting as principal or agent terminates.

#### Article 70.

Where one of the following situations occurs, an agency by operation of law or a designated agency terminates:

1. The principal acquires or regains competence;
2. The principal or agent dies;
3. The agent becomes incompetent;
4. The People's Court or unit which designated the agent revokes the designation;
5. The guardianship relationship between agent and principal terminates for another reason.

### CHAPTER 5. CIVIL RIGHTS

#### Section 1. Ownership and Property Rights Related to Ownership

#### Article 71.

Ownership means an owner's right in accordance with law to possess, use, benefit from, and dispose of his own property.

#### Article 72.

In acquiring ownership there must not be a violation of the provisions of the law. Where property is acquired through contract or other lawful means, ownership is transferred at the time the property is delivered, unless the law or the agreement of the parties provides otherwise.

#### Article 73.

State property belongs to all the people.

State property is sacred and inviolable; it is forbidden for any organization or individual to interfere with possession or to loot, secretly divide up, divert for personal use, or destroy [it].



## Article 74.

The property of collective organizations of the working masses<sup>27</sup> belongs to the working-mass collective, and includes:

1. Land, forest, mountains, grassland, undeveloped land, and shorelines designated by the law as collectively owned;
2. Property of collective economic organizations;
3. Collectively owned buildings, reservoirs, agricultural irrigation facilities, and educational, scientific, cultural, public health, sports, and other such facilities;
4. Other collectively owned property.

Collectively owned land belongs according to law to the village collective, and is operated and managed by agricultural collective economic organizations such as village agricultural production cooperatives, or by the village committee. Land already owned by village (township) peasant collective economic organizations may belong to the village (township) peasant collective.

Collective property is protected by law; it is forbidden for any group or individual to interfere with possession or to loot, secretly divide up, destroy or illegally impound, sequester, freeze, or confiscate [it].

## Article 75.

A citizen's personal property includes the citizen's lawful income, house, savings, articles used in daily life, cultural objects, books and reference materials, trees, livestock, and means of production which may be owned by citizens within the limits of the law, as well as other lawful property.

The lawful property of a citizen is protected by law; it is forbidden for any group or individual to interfere with possession or to loot, destroy, or illegally impound, sequester, freeze, or confiscate [it].

## Article 76.

A citizen enjoys the right to inherit property according to law.

## Article 77.

The lawful property of associations, including religious organizations, is protected by law.

## Article 78.

Property may be co-owned by two or more citizens or legal persons.

Co-ownership is divided into co-ownership by shares and joint co-ownership. A co-owner by shares enjoys a portion of the rights and assumes a

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27. While the Chinese term in this clause specifically refers to collectives "of the working masses," elsewhere in the *Principles* the reference is simply to collectives.

portion of the duties in accordance with his own share. Joint co-owners enjoy rights and assume duties with respect to the [whole] common property.

Each co-owner by shares is entitled to ask that his share of the property be separated or transferred. But if his share is to be sold, the other co-owners have a priority right to purchase his share on equivalent terms.

#### Article 79.

[Found] property which was buried or concealed and whose owner is unknown goes to the state. The unit which receives it must give a material reward or praise to the unit or person who turned in the property.

Recovered lost property, articles that have floated away, or strayed domestic animals must be returned to the owner; any expenses incurred [in connection with recovery and return] are reimbursed by the owner.

#### Article 80.

State-owned land may be used in accordance with law by state-owned units, or may in accordance with the law be allocated for use by collective units; the state protects the rights of such units to use and benefit from the land; the units which use [the land] are under a duty to manage, protect, and make reasonable use [of it].

The right of a citizen or collective to operate either land owned by a collective or state-owned land used by a collective according to law under contract is protected by law. The rights and duties of both contracting parties are determined by the contract in accordance with the law.

Land may not be bought and sold, leased, mortgaged, or by other means illegally transferred.

#### Article 81.

The natural resources owned by the state, such as forests and woods, mountain land, grassland, undeveloped land, shorelines, and bodies of water, may be used by state-owned units according to law and may also be allocated according to law for use by collective units; their rights to use and benefit are protected by the state; the units which use [the resources] are under a duty to manage, protect, and make reasonable use [of them].

State-owned mineral resources may be exploited by state-owned units or by collective units according to law, and can also be exploited by citizens according to law. Lawful exploitation rights are protected by the state.

The right of citizens or collectives to operate according to law under contract the forests and woods, mountain land, grassland, undeveloped land, shorelines, and bodies of water that are owned by a collective or owned by the state and used by a collective is protected by law. The rights and duties of both contracting parties are determined by the contract in accordance with law.

State-owned mineral resources and waters, as well as forests and woods, mountain land, grassland, undeveloped land, and shorelines and bodies of water that are state-owned or owned by collectives in accordance with provisions of law, may not be bought and sold, leased, mortgaged, or by other means illegally transferred.

#### Article 82.

The right enjoyed by a state-owned enterprise to operate according to law state property given to it to operate and manage<sup>28</sup> is protected by law.

#### Article 83.

In the case of immovable property all neighbors must, in accordance with the spirit of facilitating production, making life more convenient, harmony and mutual assistance, and fairness and reasonableness, correctly conduct neighborhood relationships such as those with respect to water supply, drainage, passage, air, and light. A person who with respect to his neighbors causes an obstruction or damage must cease any infringement, eliminate any obstruction, [and/or] pay damages.

### Section 2. Obligations

#### Article 84.

An obligation is a relationship of specific rights and duties between parties, arising either from terms of a contract or from a provision of law. The one that enjoys a right is the obligee and the one that bears the duty is the obligor.

The obligee has the right to demand that the obligor perform his duty according to the terms of the contract or the provision of law.

#### Article 85.

A contract is an agreement whereby parties establish, modify, or terminate civil relationships. Contracts formed in accordance with law are protected by law.

#### Article 86.

Where there are two or more obligees, rights are enjoyed in proportion to fixed shares. When there are two or more obligors, the duty is borne according to fixed shares.

#### Article 87.

Where there are on one side two or more obligees or obligors, each obligee may, in accordance with provisions of law or the agreement of the parties, demand that the obligor perform the duty; each obligor with a joint

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28. See the explanation of this term in footnote to article 48.

duty is obliged to satisfy the entire duty under the obligation; the person who performs the duty has a right to demand that any other joint obligor reimburse him in the amount of the share for which [such joint obligor] was obligated.

#### Article 88.

Parties to a contract must fully perform their duties in accordance with the contract.

Where the terms of a contract relating to quality, duration, place, or price are not clear and definite, and these cannot be determined from the content of related provisions of the contract, or the parties cannot reach agreement through consultations, the following provisions apply:

1. Where quality requirements are not clear and definite, performance is according to the state standard; where there is no state standard, according to the usual standard.
2. Where the time for performance is not clear and definite, an obligor may perform his duty to the obligee at any time, and an obligee may also at any time demand that the obligor perform his duty, but [in both situations] a party must afford the other party the time necessary to prepare [for performance].
3. Where the place of performance is not clear and definite, payment in cash is made at the location of the recipient; other obligations are performed at the location of the obligor.
4. Where the price provision is not clear and definite, performance is according to the state price; if there is no state price, performance is made with reference to the market price or the price of similar products or to standard remuneration for similar services.

Where a contract does not provide who has the right to apply for a patent, the party who brought the invention to completion has the right to apply.

Where a contract does not provide who has the right to utilize the fruits of scientific and technological research, all parties to the contract have the right to use [them].

#### Article 89.

In accordance with provisions of the law or the agreement of the parties the following means may be adopted to assure the performance of obligations:

1. A guarantor guarantees to the obligee that the obligor will perform the obligation; where the obligor does not perform, then according to the agreement the guarantor performs or is jointly liable; after a guarantor performs the obligation, he is entitled to seek compensation from the obligor.
2. An obligor or third party may offer certain property as a pledge. Where the obligor does not perform the obligation, the obligee is entitled in accordance with the provisions of the law to value the pledged

property in cash [and credit it against the obligation], or sell the pledged property and obtain compensation by priority right [from the proceeds].

3. A party may within the limits provided by law give the other party a deposit. After the obligor performs the obligation, the deposit must be deducted from the price or returned. Where the party who gives the deposit does not perform the obligation, he does not have a right to ask for the return of the deposit; if the party who receives the deposit does not perform the obligation, he must return the deposit plus an equal amount.<sup>29</sup>

4. Where one party is in possession of the property of the other pursuant to a provision of a contract, the possessor may, if the other party fails to pay within the agreed time what he is obligated to pay, retain the property, and in accordance with provisions of the law value the retained property in cash [and credit it against the obligation] or sell the retained property and obtain compensation by priority right [from the proceeds].

#### Article 90.

A lawful loan relationship is protected by law.

#### Article 91.

Where one party to a contract is about to make a partial or complete transfer to a third party of his contractual rights or obligations, he must obtain agreement from the other party; he must in no way seek to profit [from the transfer]. Where according to law a contract must be approved by the state, approval by the original approving agency is needed, but not if the law or the original contract provides otherwise.

#### Article 92.

Where improper<sup>30</sup> benefit is obtained without lawful grounds, resulting in loss to another party, the improper benefit obtained must be returned to the person who suffered the loss.

#### Article 93.

Where without legal or contractual obligation one provides care or services to avoid harm to an interest of another, he has a right to demand that the person who received a benefit reimburse him for the necessary expenses incurred.

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29. The Chinese is "return twice the amount of the deposit," but this translation is used to make it clear that that amount is not in addition to return of the original deposit.

30. This presumably covers what might be called "unjust" enrichment in some legal systems, but "improper" gives the sense of the Chinese term used here.

### Section 3. Intellectual Property Rights

#### Article 94.

Citizens and legal persons enjoy the right of authorship (copyright); in accordance with law they have rights such as [the right] to sign [works], to publish<sup>31</sup> [their work], and to receive remuneration.

#### Article 95.

Patent rights of citizens and legal persons acquired in accordance with law are protected by law.

#### Article 96.

The trademark rights of legal persons, individual industrial/commercial households and partnerships of individuals acquired in accordance with law are protected by law.

#### Article 97.

A citizen enjoys a discovery right in regard to a discovery made by him. Discoverers have the right to apply for and obtain a certificate of discovery, a bonus, or other commendation.

With respect to an invention he has made or other fruits of scientific and technological research, a citizen has a right to apply for and obtain a certificate of honor, a bonus, or other commendation.

### Section 4. Personal Rights

#### Article 98.

A citizen enjoys a right to life and health.

#### Article 99.

A citizen enjoys a right to his name, and has the right to decide on his name, to use his name, and, in accordance with regulations, to change his name; it is forbidden for anyone to interfere, appropriate, or fraudulently use [a citizen's name].

Legal persons, individual industrial/commercial households, and partnerships of individuals enjoy the right to their names. Enterprise legal persons, individual industrial/commercial households, and partnerships of individuals are entitled to use and, in accordance with law, to transfer their names.

#### Article 100.

A citizen enjoys a right to his likeness; no one may use a person's likeness for profit without his consent.

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31. The meanings of two Chinese terms used here are covered by the English term "publish."

## Article 101.

Citizens and legal persons enjoy a right to their reputations; a citizen's dignity is protected by law; it is forbidden for anyone to damage the reputation of a citizen or a legal person by the use of slander, libel, or similar means.

## Article 102.

Citizens and legal persons enjoy a right to honors. It is forbidden [for anyone] to deprive a legal person or a citizen illegally of his honorific title.

## Article 103.

A citizen enjoys a right to freedom of marriage; it is forbidden to buy and sell or arrange marriages, or otherwise interfere with freedom of marriage.

## Article 104.

Marriage, family, the elderly, mothers, and children are protected by law. The legal rights and interests of the handicapped are protected by law.

## Article 105.

Women enjoy civil rights which are equal to those of men.

## CHAPTER 6. CIVIL LIABILITY

## Section 1. General Provisions

## Article 106.

A citizen or legal person who breaches a contract or fails to perform other obligations must bear civil liability.

Where a citizen or legal person through fault interferes with and causes damage to state or collective property, or to the property or person of another, he must bear civil liability.

Where there is no fault, but the law provides that there must be civil liability, there must be civil liability.

## Article 107.

Where because of *force majeure*<sup>32</sup> it is impossible to perform a contract or harm is caused to another, there is no civil liability unless the law provides otherwise.

## Article 108.

Obligations must be satisfied. Where [a person is] temporarily unable to pay, then by agreement of the obligee or decision of the People's Court [the

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32. *Force majeure* is defined in article 153.

obligation] may be paid by the obligor in installments. Where a person who is able to pay refuses to pay, a decision to compel payment is made by the People's Court.

#### Article 109.

Where one sustains a loss in preventing or stopping interference causing damage to state or collective property, or to another person's property or person, the person [responsible for the] interference is liable to make compensation [to the person who suffered the loss]; the person who received the benefit may also give appropriate compensation.

#### Article 110.

Where in regard to a citizen or legal person who is civilly liable an enquiry as to administrative liability is needed, then there must be an enquiry as to administrative liability; if [the conduct] constitutes a criminal act, then as to the citizen or legal representative of the legal person there must be an investigation according to law as to criminal liability.

### Section 2. Civil Liability for Breach of Contract

#### Article 111.

Where one party fails to perform his contractual duty, or his performance of his contractual duty is not in accordance with the agreed terms, the other party has a right to demand performance, or the taking of measures to correct [the defective performance], and has the right to demand compensation for loss.

#### Article 112.

The liability for compensation of a party who breaches a contract must be equal to the loss the other party incurred as a result of the breach.

Parties may provide in a contract that when a party breaches the contract he pays to the other side a certain sum of money for breach;<sup>33</sup> they can also provide in the contract the method for calculation of damages caused by a breach.

#### Article 113.

Where both parties have breached a contract, it is necessary to determine separately the amount of civil liability each should bear.

#### Article 114.

A party that sustains a loss due to breach of contract by the other party must promptly take measures to prevent an increase in the extent of the loss.

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33. The statute uses a special term here, literally "breach-agreement-money," so this amount is not necessarily related to the concept of compensation described in the first paragraph of this article.



If measures are not taken promptly to prevent an increase in the extent of the loss, the party does not have a right to demand compensation for the resulting increase.

#### Article 115.

The modification or termination of a contract does not affect the right of a party to claim compensation for losses.

#### Article 116.

Where the cause of a party's inability to perform its contractual duty is its supervisory organization, the party must, in accordance with what is agreed in the contract, pay compensation to the other party or take measures to correct [the defective performance]; the supervisory organization is then responsible for dealing with the loss that the party sustained as a result.

### Section 3. Civil Liability for Torts

#### Article 117.

Where there is interference with possession with regard to state or collective property or another person's property, the original property must be returned, or if return of the property is impossible, an amount equal to its value must be paid as compensation.

If there is interference causing damage to state or collective property or another person's property, [the property] must be restored [to its] original condition, or an amount equal to its value must be paid as compensation.

Where the injured party sustains other substantial loss as a result, the party who caused the damage must also pay compensation for that loss.

#### Article 118.

Where the rights of a citizen or legal person to authorship (copyright), patent, trademark, invention, discovery, or other fruits of scientific and technological research are infringed by such [acts] as plagiarizing, distorting, or passing off, there is a right to demand that infringement cease, its effects be eliminated, and any loss be compensated.

#### Article 119.

Where personal injury is caused to a citizen, compensation must be paid for medical expenses, loss of income from work, expense of living as a disabled person, and similar expenses; when death is caused, there must also be payment for funeral expenses, as well as expenses such as necessary maintenance for the deceased's dependents.

#### Article 120.

Where the right of a citizen to his name, likeness, reputation, or honor is infringed, he has a right to demand that the infringement cease, the

reputation be restored, and the effects [of the infringement] be eliminated, and to demand an apology; he may also demand compensation for loss.

Where the right of a legal person to its name, reputation, or honor is infringed, the above provisions apply.

#### Article 121.

Where a state agency or workers in a state agency in the course of performing their official duties violate the lawful rights and interests of citizens or legal persons and cause damage, there must be civil liability.

#### Article 122.

Where because of the sub-standard quality of goods damage is caused to the property or person of another, the manufacturer or seller of the goods must bear civil liability according to law. Where transporters and bailors are responsible for this [damage], the manufacturers and sellers have the right to demand compensation for loss.

#### Article 123.

Where engaging in work which constitutes high risk to the surroundings, such as work in the upper atmosphere or work involving high pressure, flammables, explosives, strong poisons, radioactive substances, or high speed transportation vehicles, results in damage to another, there must be civil liability; if it can be proved that the damage was intentionally caused by the party who suffered the loss, there is no liability.

#### Article 124.

Where there is a violation of state provisions for the protection of the environment from pollution, and the pollution of the environment causes loss to another, there must be civil liability according to law.

#### Article 125.

Where without placing clear signs and adopting safety measures excavations are dug or repairs or installation of underground facilities or the like are made in public areas or along a road or in a roadway, [thereby] causing loss to another, the person doing the work must bear civil liability.

#### Article 126. \

Where buildings or other facilities, as well as railings or hanging articles, collapse or loosen or fall, and cause loss to another, the owner or person in control<sup>34</sup> [of the building or facility] must bear civil liability, but not where he is able to prove that he was not at fault.

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34. The Chinese term used here might include a manager, and in the next article might include anyone caring for animals. It may be used, however, to suggest a more technical concept of possession as distinguished from ownership—for example, a truck in possession of a driver who has

## Article 127.

Where a domestic animal causes loss to another, the owner or person in control of the animal must bear civil liability; if the damage is due to the fault of the person who suffered the loss, the owner or person in control of the animal does not bear civil liability; where the loss was caused by the fault of a third party, the third party must bear civil liability.

## Article 128.

Where in self-defense loss is caused, there is no civil liability. If, however, self-defense exceeds the limits of what is necessary, and unnecessary loss is caused, there must be appropriate civil liability.

## Article 129.

Where [action taken to] avoid danger in an emergency causes loss, the person that caused the dangerous situation bears civil liability. Where the danger was due to natural causes, the one [who took action to] avoid danger bears no civil liability or bears appropriate civil liability. If unnecessary loss was caused because inappropriate means were used or the necessary limits were exceeded, the person who [took action to] avoid danger must bear appropriate civil liability.

## Article 130.

Where two or more persons jointly infringe a right and cause loss to another, they must bear joint<sup>35</sup> liability.

## Article 131.

Where a party who suffers a loss is also at fault with respect to occurrence of the loss, the civil liability of the person who caused the loss may be reduced.

## Article 132.

Where none of the parties is at fault with respect to the causing of loss, then in accordance with the actual circumstances civil liability may be apportioned among the parties.

## Article 133.

Where a person who is incompetent or has limited competence causes loss to another, his guardian is liable. If the guardian has fulfilled his duty as a guardian, his liability may be appropriately reduced.

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borrowed it from its owner. It may also reflect the fact that in Chinese property law, state-owned property is only "operated and managed" by the unit to which it is given. *See* art. 82.

35. For a description of liability, see article 87.

Where a person who has property is incompetent or has limited competence and causes loss to another, payment for compensation is from that person's property. If that is not sufficient, an appropriate amount is paid by [his] guardian, except where the guardian is a unit.

#### Section 4. Forms of Civil Liability

##### Article 134.

The forms of civil liability are principally:

1. Cessation of infringement;
2. Elimination of obstructions;
3. Elimination of danger;
4. Return of property;
5. Restoration of the original condition;
6. Repair, reconstruction, or replacement;
7. Payment of compensation;
8. Payment of [agreed] contract breach money;<sup>36</sup>
9. Elimination of effects and restoration of reputation;
10. Apology.

The above forms of civil liability may be used separately or in combination.

In the trial of a civil case, the People's Court may, in addition to using the above provisions, issue admonitions, order repentance, or confiscate property used for illegal activities or things obtained illegally, and may also in accordance with law impose fines or detention.

#### CHAPTER 7. TIME LIMITS FOR BRINGING SUIT

##### Article 135.

The period of limitation for bringing a suit in the People's Court seeking protection of a civil right is two years, unless the law provides otherwise.

##### Article 136.

The period of limitation for the following lawsuits is one year:

1. A suit seeking compensation for bodily injury;
2. A suit [based on] sale without notice of products of sub-standard quality;
3. A suit [based on] delay or default in [payment of] rent;
4. A suit [based on] loss of or damage to bailed property.

##### Article 137.

The period of limitation for bringing a suit is calculated from the time the infringement of the right was known or should have been known. However, after twenty years from the day of infringement of the right, the court does

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36. See footnote to article 112.

not provide protection. Where there are special circumstances, the People's Court may extend the period of limitation for bringing suit.

Article 138.

Voluntary performance after the period of limitation for bringing suit expires is not affected by the period of limitation for bringing suit.

Article 139.

Where within the last six months of the period of limitation for bringing suit it is impossible because of *force majeure*<sup>37</sup> or other obstacles to bring a claim, the period of limitation for bringing suit is suspended. The running of the period of limitation for bringing suit resumes from the day when the cause of the suspension ceases.

Article 140.

The period of limitation for bringing suit is cut off when a lawsuit is brought, or a party demands performance or agrees to perform his duty. A new period of limitation for bringing suit is calculated from the time the prior period was cut off.

Article 141.

Where the law provides otherwise with respect to the period of limitation for bringing suit, that provision is applied.

CHAPTER 8. APPLICATION OF LAW TO FOREIGN CIVIL RELATIONSHIPS

Article 142.

The law to be applied in foreign civil relationships is determined in accordance with the provisions of this chapter.

Where an international treaty that the People's Republic of China has concluded or participates in contains a provision which differs from the civil law of the People's Republic of China, the provision in the international treaty applies, except for an article as to which the People's Republic of China has declared a reservation.

Where the law of the People's Republic of China or international treaties which the People's Republic of China has concluded or participates in do not contain a relevant provision, international custom may be applied.

Article 143.

Where a citizen of the People's Republic of China is residing abroad permanently, [in determining] his competence to perform civil acts the law of his permanent residence may be applied.

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37. *Force majeure* is defined in article 153.

## Article 144.

[In determining] ownership of immovable property, the law of the place where the property is located applies.

## Article 145.

The parties to a foreign contract may choose the law applicable to the settlement of the disputes arising from the contract, unless the law provides otherwise.

Where the parties to a foreign contract have not made a choice, the law of the country which has the closest connection with the contract applies.

## Article 146.

[In regard to] compensation for loss caused by a tortious act, the law of the place where the tortious act occurred applies. When both parties have the same nationality, or have their domicile in the same country, their national law or the law of their domicile may also be applied.

Where acts occur abroad that are not considered tortious acts by the law of the People's Republic of China [when they occur] in China, they are not to be treated as tortious acts.

## Article 147.

[In regard to] the marriage of a citizen of the People's Republic of China with a foreigner, the law of the place where the marriage is entered into applies; for divorce, the law of the forum hearing the case applies.

## Article 148.

[In regard to] support, the law of the country which has the closest connection with the supported person applies.

## Article 149.

[In regard to] succession determined by inheritance law, the law of the deceased's domicile at the time of death applies to movable property; for immovable property, the law of the place where the immovable property is located applies.

## Article 150.

Where foreign law or international custom is applied in accordance with this chapter, there must not be a violation of the public interest of the People's Republic of China.

## CHAPTER 9. SUPPLEMENTARY PROVISIONS

## Article 151.

The people's congress of a national<sup>38</sup> autonomous area may, on the basis of the principles of this law, enact modified or supplementary statutes or regulations in light of its special national characteristics. The statutes or regulations promulgated by the people's congress of an autonomous region are reported in accordance with law to the Standing Committee of the National People's Congress for approval or recording. The laws or regulations enacted by the people's congress of an autonomous prefecture or county are reported for approval to the standing committee of the people's congress of the province or autonomous region.

## Article 152.

State-owned enterprises which started business before this law goes into effect, upon the approval of supervisory agencies of a province or autonomous region, of a city controlled directly by the central government, or of a higher government level, and which have already registered with the industrial and commercial administrative agencies automatically have the status of legal person without applying again for registration as a legal person.

## Article 153.

"Force majeure" as used in this law refers to objective situations that are unpredictable, unavoidable, and irresistible.

## Article 154.

In civil law, time periods are calculated in terms of year, month, day, and hour according to the Gregorian calendar.

Where a provision is calculated according to hours, the time begins to run from the time provided. Where a provision is calculated according to days, months, or years, the time begins to run from the next day, without taking into account the named day.

Where the last day of the time period is a Sunday or other legal holiday, the next day after the holiday is the last day of the time period.

The last day of the time limit ends at midnight. Where there are business hours, [the last day ends] when the business activities end.

## Article 155.

"More than (*yishang*)," "less than (*yixia*)," "within (*yinei*)," [and] "full (*jieman*)" as used in the civil law include the number referred to; "less than (*buman*)" [and] "beyond, outside of (*yiwai*)" do not include the number referred to.

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38. This is the term usually used to refer to the minority groups who live in various special administrative areas.

Article 156.

The law goes into effect on January 1, 1987.