Chapter Twelve

Civil Law: Contracts

1. Introduction

The civil law institution of contracts in the form of customary law has a history at least as long as the known history of China.1 State regulation, more often with regard to the control and use of contracts than to their contents, appeared as early as the Western Zhou (11–771 BC).2 However, a comprehensive code on contracts did not appear until the KMT Civil Code was promulgated between 1929–1930.3 Despite its extremely long history, contract law in present-day China is largely a product of the 1980s and 1990s.

As a legal institution contracts have been emphasised as a focal point for legal measures for economic reform, to be utilised for assuming and dividing legal liabilities, as well as for asserting economic autonomy. Despite their importance in economic and legal reform, this area of law was for a long time largely composed of underdeveloped, fragmented and essentially ad hoc legislation until the enactment of a uniform law on contracts in 1999.

This Chapter first provides a brief review of contract law development in the PRC, explaining the evolution of the conception of contract law in line with politico-economic development in post-Mao China. It then outlines the legal framework on contracts in contemporary China, focusing on the generally applicable principles now governing the formation, performance and contracting practices. Through this examination it will be shown that contract law in China most closely reflects the

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1 It is claimed by some Chinese scholars that contracts existed even before the creation of the Chinese written language. See Zhao Yuhong, ‘Contract Law’, in Wang Chenguang & Zhang Xianchu (eds), Introduction to Chinese Law (Hong Kong: Sweet & Maxwell Asia, 1997), at 235.


3 Following the Continental tradition, the KMT Civil Code contained a separate Book (Book II) on Obligations covering both torts and contracts.
ideological transformation from a planned economy to a market-oriented one, as well as the corresponding bureaucratic changes in post-Mao China.

2. The Development of Contract Law in the PRC

The slow development of contract law is better understood in the context of the evolving politico-economic system and the struggle for power within the bureaucratic structure than in terms of Chinese tradition or history. Put crudely, contracts were for a long time simply seen as a means for economic transactions, hence their usefulness and the extent of their use was largely determined by the prevailing politico-economic systems and their development often encountered strong resistance from bureaucratic authorities vested with the power of examination and approval for economic activities. In this situation the first set of regulations on contracts in the PRC, the Provisional Measures concerning the Making of Contracts among Governmental Institutions, State-owned Enterprises and Cooperatives, was issued in September 1950. Thereafter, several more provisional regulations were issued, governing various specific kinds of contractual transactions. One of the main reasons for the initial issuance of contract regulations was the recognition of the co-existence of public and private economies. Socialist transformation however soon led to the domination of public ownership, and so contracts were mainly used as a means for implementing state economic plans, rather than for regulating transactions among individuals and economic entities.

The first major contract law in post-Mao China was the Economic Contract Law (ECL). As it was issued at the initial stage of economic reform, it had the strong flavour of a planned economy. Thus Article 1 of the Law defined the purpose of the

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5 Wang Jiafu, et al. (eds), Contract Law (Hetong Fa) (Beijing: China Social Science Press, 1986), at 5-11; Pi Chunxie & Shi Zhiyuan (eds), An Outline of Economic Contract Law (Jingji Hetong Fa Gailun) (Beijing: People’s Press, 1987), at 33-44.

6 See Wang Jiafu, id., at 141-143.

7 See Wang Jiafu, id., at 141-147.

8 Initially issued by the 4th Plenary Session of the 5th NPC on 13 December 1981 and effective on 1 July 1982, and comprehensively revised by the Standing Committee of the 8th NPC on 2 September 1993. The ECL has now been repealed by the 1999 Contract Law. Before the promulgation of this major contract law there were several provisional regulations issued by different government departments, such as the Tentative Provisions on Basic Clauses of Industrial, Commercial and Agricultural Economic Contracts (issued by the State Administra-