CHAPTER EIGHT
THE MARKET ECONOMY AND REGULATORY CHANGE

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I. The Development and Features of Market Economy Law

A. The Development of Market Economy Law

As the name implies, the purpose of a market economy legal system is to maintain market health according to market fundamentals and conditions. The main principles of a market economy legal system are: equality between market entities; independent ownership; freedom of exchange; robust competition; and equality between exchanges. The system not only includes civil and commercial laws, fundamental to the market economy, but also includes economic laws that establish orderly market competition on a level playing field. Whether or not such a legal system develops is a function of a country’s degree of economic freedom and social development. Thus, the existence of civil and commercial law, and in particular civil law, is a critical measure of whether a market economy legal system exists and can develop.

Ancient China was a country without a developed civil law, having historically attached greater importance to criminal law.¹ Legal reform in the late Qing dynasty, modeled on Western civil law, led to the drafting of an independent Draft of the Great Qing Civil Law 《大清民事草案》 (the Qing Civil Law). Although the Qing empire fell before the Qing Civil Law was enacted, the seed of an independent system of civil law had already been planted. Between 1929 and 1930, during the time of the Republic of China, laws fundamental to a market economy legal system were enacted for the first time in the history of China.

However, upon the establishment of new China in 1949, the “Six Laws Pandect” (六法全书) was repealed to meet the needs of the new

¹ Ye Lixin 叶孝信, Zhongguo minfa shi 中国民法史 [History of China’s Civil Law], (Shanghai, Shanghai renmin chubanshe, 1993) 5.
revolutionary government, which enacted a planned economic system. Thus, the roots of a civil code, central to the market economy, were banished from Mainland China. From 1949 until 1978, China’s politics, economics, and ideology ceased to use market economy law as its foundation. Contracts were replaced by planned allocations; property rights were reduced to simple proprietary claims, with priority given to the state and collectives. During the first thirty years of New China, although there were efforts to draft a civil law, those efforts “met with an early death” due to social conditions and the fact that civil society had become so far removed from commercial-economic society.

In December 1978, the third session of the Eleventh Party Congress was convened. In accordance with the lessons learned from the chaos of the Cultural Revolution, the government shifted its focus to the modernization of socialism, based on strategic decision-making. Their mission was to put forward a policy that promoted reform and opening, the development of a socialist democracy, and rule of law. As a result, China entered a new era of reform and opening and began to modernize socialism. Likewise, the work to establish the rule of law also entered a new era.

Reforming, opening, and modernizing China required a break with the existing planned economy and the development of a new market economy. As a result, from the very beginning, the new era’s legal system had to seek social support different from that of the past; it had

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2 Jiang Ping, “Minfa tongze pouxi 民法通则剖析 [An Analysis of the General Principles of the Civil Law],” in Zhengfa luntan 政法论坛 [Politics and Law Forum], 1st ed. (1986). According to historical data, a New China civil law code was drafted on two occasions before 1979. The first drafting work got underway in 1954 after the founding of the New China, and by 1956 the draft was complete with over five hundred articles. After that, the drafting was interrupted for a period of years. Then, in 1962, began the second period of drafting work. In July, 1964, the Civil Law was complete (in draft). But, at that time the Cultural Revolution was underway and the drafting process was once again interrupted.

3 Gu Angran 顾昂然, Xin Zhongguo lifa gaishu 新中国立法概述 [Overview of the Legislation of the New China], (Beijing: Falü chubanshe, 1995), 23. The third plenary session of the Eleventh Party Congress pointed out: “In order to safeguard people’s democracy, it is necessary to strengthen the socialist legal system, to institutionalize democracy and the law so that this kind of political system and laws have stability, continuity and great authority, so that there is law that one can rely on, and there is law that one must obey, and there is strict law enforcement to investigate breaches of the law.”