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**中华人民共和国合同法附  
最高人民法院关于适用  
《中华人民共和国合同法》司法解释  
(双语版)**

**CONTRACT LAW OF  
THE PEOPLE'S REPUBLIC OF CHINA WITH  
THE JUDICIAL INTERPRETATIONS OF  
THE SUPREME PEOPLE'S COURT  
(Bilingual Version)**

Xinjiang Sun M.P. Ellinghaus E.W. Wright

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Tsinghua University Press  
Beijing

# **BRIEF INTRODUCTION TO TRANSLATORS**

## **Xinqiang Sun**

law professor at Beihang University; Ph. D. in law at Shandong University in 2005, Master of Arts in Political Science at Bowling Green State University in 1994, in history at Wuhan University in 1987, Bachelor in linguistics and literature at Qufu Normal University in 1981; Visiting Scholar at Newcastle University, Australia, 2010, at Vanderbilt University School of Law, U. S. A. , 2007, at Copenhagen University School of Law, Denmark, 2006, at Maquaire University School of Law, Australia, 2005, Fulbright Scholar Visiting at University of Baltimore Law School from 1998-1999; author of *Rationale of The Code* and dozens of articles and essays published in Chinese and foreign law journals.

## **M. P. Ellinghaus**

Professor of Law, Newcastle Law School, University of Newcastle, Australia; Principal Fellow, Melbourne Law School, University of Melbourne.

Professor Ellinghaus graduated in law from the University of Melbourne (LLB Hons, 1963) and Yale University (LLM, 1970). He has periodically engaged in legal practice and has been a partner in a Melbourne law firm.

He taught contract law at the University of Melbourne for 40 years. He also taught at the University of Alabama Law School, in 1969 and 1972. He is the author of a number of journal articles on contract law, and the co-author of a leading treatise, *Cheshire and Fifoot's Law of Contract*, Australian Edition, now in its 10th edition (2012).

## **E. W. Wright**

Professor and Dean of Law at Newcastle Law School, University of Newcastle, Australia.

Professor Wright graduated in science from the University of Toronto (BSc, 1975) and then studied law at Dalhousie University (LLB, 1979) and Cambridge University (MA, 1984). He is admitted as a barrister and solicitor in Victoria, Australia and Ontario, Canada, and practised law for several years in Toronto.

He began his academic career at the University of Victoria, Canada, and was a member of the Faculty of Law, University of Melbourne, 1984-1991. He was appointed as a Professor at Newcastle in 2000. During the 1990s he held a number of senior research and policy positions, including Commissioner of the Law Reform Commission of Victoria, and Director of the Justice Research Centre, Law & Justice Foundation of New South Wales.

Professors Ellinghaus and Wright have been collaborating on research into the codification of contract law since the 1980s. Their major publications in this field are *A Draft Australian Contract Code* (1992, Law Reform Commission of Victoria); *Models of Contract Law* (2005, Themis (Federation) Press); *Reforming Pacific Contract Law* (2009, Asian Development Bank). They are currently drafting a model Australian Contract Law which aims to simplify and modernize Australian law, and harmonize it with that of its major trading partners, including China.

## 译者说明

《中华人民共和国合同法》(以下称《中国合同法》),出版发行的和网上流传的,目前已有多个英文文本。那么,为什么还要重新翻译它呢?因为本译文在许多重要方面与所有其他译文有着显著的不同。以下是本译文的几个特点:

### 翻译目的

本译文的目的是要以一种普通英文读者易于理解的形式陈述《中国合同法》。

### 翻译方法

本译文是一位操着一口流利英语的中国合同法学者(孙新强教授)和两名有着成文法制定经验的澳大利亚合同法学者(艾灵豪斯教授和赖特教授)之间的合作成果,尽管他们不会讲汉语,也无法阅读中文。

首先,由孙新强教授从法律和语言的角度直译《中国合同法》,再由艾灵豪斯教授和赖特教授将其表达为准确、地道的英语。整个翻译工作持续了四年之久,这期间既有多次大家坐在一起一同翻译的经历,也有就有关条文的理解和译文草稿进行的通信交流。

除孙教授的直译以外,我们还逐条地参照、对比了其他七种译文。<sup>①</sup>虽然本译文在许多方面与它们有着重大不同,但我们却从学习它们中受益匪浅。对此,我们心存感激。

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① 其他七种译文是,凌冰:《中国合同法》(香港:斯维特 & 麦克斯韦尔出版公司亚洲分公司 2002 年版),第 469-519 页;罗伟:《中华人民共和国合同法》(纽约州布法罗:威廉姆·S. 汉恩出版公司 1999 年版);《中国法与实务》(香港:中国法与实务有限责任公司 1987 年一),(1999 年 5 月)第 13 卷,第 4 期,第 19-82 页;《中国民法网》<http://www.dilawctory.com>;《知识产权法查询》, <http://www.npc.gov.cn>;《中国知识产权的司法保护》,载 <http://www.chinaiprlaw.com>;陈健福:《中华人民共和国合同法》(作者提供的手稿)。上列在线刊载的译文中有些还可以在其他网站上查到相同或近似的文本。

## TRANSLATORS' NOTE

Why a new English translation of the Contract Law of the People's Republic of China? A number of translations are already available, in print and online. However, this translation differs significantly from all of these in important respects. Its main features are described below.

### Aim

The aim of this translation is to state the Contract Law in a form which can readily be understood by ordinary English readers.

### Method

This translation is the product of a collaboration between a Chinese contract scholar who is also fluent in English (Professor Sun) and two Australian contract scholars with experience in codification who do not speak or read Chinese (Professors Ellinghaus and Wright).

Professor Sun provided legal and linguistic expertise on the literal meaning of the Chinese text. Professors Ellinghaus and Wright provided legal and linguistic expertise on English meaning and expression. The translation was completed over a period of four years, by a continuous process involving many face-to-face working sessions, written communications and drafts.

In addition to Professor Sun's literal translation, seven other translations of the Contract Law were consulted and compared carefully, article by article.<sup>①</sup> Although this translation differs in many respects, its authors have benefited greatly from studying the others and are grateful to have had their assistance.

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① The seven translations were: Bing Ling, *Contract Law in China* (Hong Kong: Sweet & Maxwell Asia, 2002) pp. 469-519; Wei Luo, *The Contract Law of the People's Republic of China* (Buffalo NY: William S Hein & Co Inc, 1999); *China Law & Practice* (Hong Kong: China Law and Practice Ltd, 1987-) Volume 13 No 4 (May 1999) pp. 19-82; Chinese Civil Law Network <http://www.dilawctory.com>; IPLawSearch <http://www.npc.gov.cn>; Judicial Protection of IPR in China <http://www.chinaiprlaw.com>; Jianfu Chen, *Contract Law of the People's Republic of China* (MS supplied by author). Several of the on-line translations listed above are also available in identical or near-identical form from other websites.

## 译文简洁

译者的目的是要推出一个尽可能简洁的英文文本。因此,相对而言,本译文是所有《中国合同法》译文中最为简短的一个文本。译文使用最少的语词来表达中文含义。当英文中有不只一个正确的译法时,译文通常选择最为简短的译法。<sup>②</sup>

## 关于句法

将中文译成英文遇到的特殊问题是将其他欧洲语言译成英文所不曾遇到的。译者必须补充英文而不是中文所要求的语法成分。在汉语而非在英语中,同一个语词,因上下文的不同,可以是单数或者复数,可以是名词、动词或者形容词;规范语词顺序的规则寥寥无几,句子可以没有动词,动词可以没有主语,小品词和其他语法技巧亦几乎不存在。

提供这样一种具有最大限度的、既精确又简练的句法结构,要求熟练地掌握英文句法。翻译这样一部重要且广泛适用的法律,不仅要求传达原文的语言内涵,而且要求以一种最有效的形式向译文语言的读者表达原文的真实含义。现有的各种译文恰恰在这方面有所欠缺。

### 上接注①

除合同法译文以外,本译文汇编还含有 1999 年《最高人民法院关于适用〈中华人民共和国合同法〉若干问题的解释(一)》的译文,2009 年《最高人民法院关于适用〈中华人民共和国合同法〉若干问题的解释(二)》的译文,2009 年《最高人民法院关于当前形势下审理民商事案件若干问题的指导意见》的译文,以及《最高人民法院关于审理买卖合同纠纷案件适用法律问题的解释(三)》的译文。译者比较了五种《司法解释(一)》的译文、两种《司法解释(二)》的译文、两种《指导意见》的译文和一种《司法解释(三)》的译文。

《司法解释(一)》,前文凌冰,第 521-523 页;《中国法与实务》,(香港:中国法与实务有限责任公司 1987 年—), (2000 年 3 月) 第 14 卷,第 2 期,第 43-48 页;《中国民法网》, <http://www.cclaw.net>; ISINOLAW <http://www.isinolaw.com>; 拉赫曼、李 & 徐, <http://www.lehamnlaw.com>。

《司法解释(二)》,《中国法与实务》,(香港:中国法与实务有限责任公司 1987 年—)(2009 年 6 月) 第 23 卷,第 5 期,第 69-73 页;

克罗弗茨环球技术服务公司 <http://www.crawfordgts.com/whitepapers/appendix/Appendix3b-Interpretation%20of%20ContractLaw-20090513-en.pdf>

《指导意见》,《中国法与实务》,(香港:中国法与实务有限责任公司 1987 年—)(2009 年 9 月) 第 23 卷,第 7 期,第 47-53 页; <http://www.lawinfochina.com/display.aspx?lib=law&id=7741>。

《司法解释(三)》,《中国法与实务》,(香港:中国法与实务有限责任公司 1987 年—)(2012 年 7 月) 第 26 卷,第 7 期,第 36-45 页。

② 与本译文相比,《中国民法网》刊载的译文长 16%;《知识产权法查询》刊载的译文长 22%;凌冰的长 23%;《中国法与实务》刊载的长 25%;罗伟的长 29%;《中国知识产权的司法保护》刊载的长 32%;陈健福的长 42%。

## Brevity

The aim of the translators was to produce as concise an English text as possible, and this translation is by a considerable margin the shortest of all.<sup>②</sup> It uses the fewest words in English that convey the meaning of the Chinese text. Where English offers more than one valid translation the shortest has usually been preferred.

## Syntax

Translation from Chinese into English presents a particular challenge not presented by translation into English from other European languages. The translator must supply grammatical elements required in English but not in Chinese. In Chinese but not in English, the same word, depending on context, can be singular or plural, a noun, verb or adjective, and rules governing word order are minimal, sentences can be without verbs and verbs without a subject, and particles and other grammatical devices are largely nonexistent.

Supplying this grammatical structure with maximal precision and economy requires a sophisticated understanding of English syntax. The translation of a Law of such importance and general application demands not only the transmission of the linguistic content of the original, but its expression in a form that most effectively conveys the meaning to a reader in the target language. Existing translations often fall short in this respect.

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### 上接注①

This book also includes translations of the Supreme People's Court Interpretation of Contract Law 1 (1999), Interpretation of Contract Law 2 (2009), Guidelines on Trials of Contract Disputes (2009) and Interpretation of Contract Law 3 (2012). The translators were able to compare five other translations of Interpretation 1, two of Interpretation 2, two of the Guidelines and one of Interpretation 3.

Interpretation 1: Bing Ling, above, pp. 521-525; China Law & Practice (Hong Kong: China Law and Practice Ltd, 1987-) Volume 14 No 2 (March 2000) pp. 43-48; Chinese Civil Law Network <http://www.cclaw.net>; ISINOLAW <http://www.isinolaw.com>; Lehman, Lee & Xu <http://www.lehamnlaw.com>.

Interpretation 2: China Law & Practice (Hong Kong: China Law and Practice Ltd, 1987-) Volume 23 No 5 (June 2009) pp. 69-73; Crawford's Global Technical Services [http://www.crawfordgts.com/whitepapers/appendix/Appendix3b-Interpretation IlofContractLaw-20090513-en.pdf](http://www.crawfordgts.com/whitepapers/appendix/Appendix3b-Interpretation%20of%20ContractLaw-20090513-en.pdf)

Guidelines: China Law & Practice (Hong Kong: China Law and Practice Ltd, 1987-) Volume 23 No 7 (September 2009) pp. 47-53; [http://www.lawinfochina.com/display.aspx? lib = law&id = 7741](http://www.lawinfochina.com/display.aspx?lib=law&id=7741)

Interpretation 3: China Law & Practice (Hong Kong: China Law and Practice Ltd, 1987-) Volume 26 No 7 (July 2012) pp. 36-45.

② Chinese Civil Law Network is longer by 16%; IPLawSearch 22%; Bing Ling 23%; China Law & Practice 25%; Wei Luo 29%; Judicial Protection of IPR in China 32%; Jianfu Chen 42%.

本译文旨在提供一种简洁、准确且文雅的句法；充分利用英文的句法、标点符号和段落划分等资源，以期提高译文的清晰程度，消除冗长和重复。

## 正确选择语词

正确选择语词绝不只是字面翻译。例如，其他译文中的合同的“target matter”或者“fruits”可能表达的是中文的字面含义，但是，这些译法却让不熟悉法律暗喻的英文读者疑惑不解。要确保传达原意，译者必须选择在该语境下对于英文读者来说亦易于理解的等值词，如“subject matter”、“benefit”（标的、成果）。

另一方面，尽管在大陆法和英美法中也有相应的表达，但是，当中文的字面含义在英文中亦有道理，也讲得通时，译文便保留原意。例如，中文中“不可抗力”的概念，译文中就不使用“force majeure”，而是直译为“irresistible force”。因为对于普通英文读者来说，这一中文概念比上述法语概念更易理解，表现力也更强。

## 使用简单英语

本译文遵循以清晰英语草拟法律的原则。只要可能，译文便使用简短、且为人们熟知的词语，避免使用专业术语。例如，译文使用“lawsuit”，而不使用“action”，使用“request”，而不使用“apply to”，使用“treated as”，而不是“deemed to be”。译文也不使用将合同当事方称为“he”，“she”或者“it”的有性语言。

译文使用简短语言符合《中国合同法》的精神，其条文即使用了显著的简洁性语言。例如，该法第 54 条以极少的主题句陈述了几乎所有的有关合同效力的法律。

## 法律术语的使用

只要可能，本译文便力求避免以普通法或者大陆法术语来代替中国的法律概念。因为使用普通法或者大陆法术语会不必要地妨碍中文本的表现力，可能带来各该术语本法律体系中固有的复杂性和解释上的不确定性。

This translation aims to provide a syntax that is concise, accurate and elegant. It uses the full resources of English grammar, punctuation and paragraphing to enhance clarity and eliminate redundancies.

### **Correct choice of words**

The correct choice of words involves more than literal translation. For example, such translations as ‘target matter’ or ‘fruits’ of the contract may represent the literal meaning of the Chinese words, but they are perplexing to an English reader not familiar with these legal metaphors. To make sure that the intended meaning is conveyed, the translator must choose words which have an equivalent meaning to an English reader in that context (‘subject matter’, ‘benefits’).

On the other hand, the literal Chinese meaning has been retained whenever it makes good sense in English, even though an equivalent expression may be used in the civil or common law. For example, the Chinese expression ‘irresistible force’ has been preferred to the French expression ‘force majeure’ because the former is more comprehensible and expressive to an ordinary English reader than the latter.

### **Simple English**

This translation follows the principles of Plain English drafting. Wherever possible it uses short and familiar expressions and avoids technical terms. For example, it uses ‘lawsuit’ rather than ‘action’; ‘request’ rather than ‘apply to’; ‘treated as’ rather than ‘deemed to be’. It also avoids gendered language, for example, references to a contracting party as ‘he’, ‘she’ or ‘it’.

The use of simple language is in keeping with the spirit of the Chinese text as manifested by the bold brevity of many of its articles, for example Article 54 which states almost the whole law of validity in a few short propositions.

### **Use of legal terms**

Whenever possible, this translation avoids the substitution of common or civil law terminology for Chinese legal concepts. Using such terminology can unnecessarily encumber the operation of the Chinese text and introduce complexities and ambiguities of interpretation that belong to the legal system of its origin.

例如,本译文使用“*Ineffective*”,“*terminate*”和“*cancel*”,而不使用“*void*”,“*voidable*”,“*repudiate*”和“*rescind*”;使用“*compensation*”而不是“*damages*”。本译文不使用诸如“*conditional precedent*”,“*conditional subsequent*”,“*estoppel*”,“*lien*”或者“*burden of proof*”等普通法术语;也不使用某些大陆法术语,如“*force majeure*”,“*mandate*”,“*custodial*”和“*entrustment*”。

另一方面,有时本译文也采用众所周知的大陆法和英法律术语,如“*offer*”,“*acceptance*”,“*agency*”和“*validity*”。在没有准确的可替代的日常用语时,也会使用法律术语,例如,使用“*consignee to order*”和“*subrogation*”。

此外,本译文在其他译文使用“*shall*”的地方,使用了“*must*”,因为对于英文读者来说,“*shall*”既可以表示“*must*”(必须),也可以表示“*will*”(将要)。

## 译文追求统一

我们在分别翻译《中国合同法》、《司法解释》以及《指导意见》时始终使用相同的用语。有时,中文本使用了多种用语来传达一种意思。这些不同的用语如果再现在英文中的话,可能会给读者造成无意的和不必要的混乱。

例如,《中国合同法》既使用“*terminate*”也使用“*dissolve*”,而本译文自始至终坚持使用“*terminate*”。同样地,其第 45 条使用“*unfairly*”,而不是“*improperly*”,“*unjustifiably*”或者“*inappropriately*”,以与第 5 条、第 39 条和第 54 条的译文保持一致。在第 272 条中使用了“*subcontract*”,以描述同一个法律行为,尽管中文本使用了不同的术语(这些术语可相应翻译为“*assign*”,“*delegate*”,“*entrust*”,“*pass*”,“*subcontract*”,“*sublease*”)。

译文不仅追求句法上的统一,而且追求术语上的统一。例如,将第 84 条翻译为:“经债权人同意,债务人可以转让合同义务”,而不是“债务人必须得到债权人同意才能转让合同义务”,以与第 79 条和第 88 条保持一致。以后再翻译时也保持着相同的形式,例如,“依照合同”,“在以下情形下。”

For example, this translation uses 'ineffective', 'terminate' and 'cancel', rather than 'void', 'voidable', 'repudiate' and 'rescind'. It uses 'compensation' rather than 'damages'. It does not use common law terms such as 'condition precedent', 'condition subsequent', 'estoppel', 'lien' or 'burden of proof'. Nor does it use civil law terminology such as 'force majeure', 'mandate', 'custodial' or 'entrustment'.

On the other hand, civil and common law legal terms have been adopted if they are so well known as to have a vernacular meaning, such as 'offer and acceptance', 'agency' and 'validity'. Legal terms have also been used where they have no precise vernacular substitute, for example 'consignee to order' and 'subrogation'.

This translation uses 'must' where other translations use 'shall' because to an English reader 'shall' can mean either 'must' or 'will'.

## **Consistency**

This translation adheres to uniformity of expression throughout the Contract Law, the Interpretations and the Guidelines. The variety of expressions sometimes used in the Chinese text to convey a single meaning would, if reproduced in the English version, lead to unintended and unnecessary confusion in the mind of an English reader.

For example, the Contract Law uses both 'terminate' and 'dissolve' whereas this translation uses the word 'terminate' throughout. Similarly, the word 'unfairly' has been used in Article 45, instead of 'improperly', 'unjustifiably' or 'inappropriately', in order to be consistent with Articles 5, 39, and 54. In Article 272 the single word 'subcontract' has been used to describe the same conduct even though the Chinese text uses different words (variously translated as 'assign', 'delegate', 'entrust', 'pass', 'subcontract' 'sublet').

Consistency extends to syntax as well as terminology. For example, Article 84 is translated as 'An obligor can transfer obligations under a contract ... with the consent of the obligee', rather than 'The obligor must obtain the consent of the obligee before transferring obligations under a contract', to maintain consistency with Articles 79 and 88. Recurrent statements are always presented in the same form, for example 'in accordance with the contract', 'in any of the following circumstances'.

## 译文具有完整性

本译文汇集了《中国合同法》全文和最高法院先前发布的三项《司法解释》及一项《指导意见》。

《中国合同法》不只是一部国内法,而且还是一部具有地区,乃至世界意义的法律。它的英文(世界性语言)文本以相称于其原文的形式传播发行,乃是人们所期待的。本译文追求的正是这样一种标准。

译者希望,本译文能对中国、其他国家和地区的实务工作者、学者、学生以及教师有所助益。

本书已被北京航空航天大学选为研究生双语教学之用,同时也可作为国内法学院校法律英语教学的参考用书。

## **Completeness**

This translation brings together in the one place the complete text of the Contract Law, as well as the three Interpretations and the Guidelines issued since by the Supreme People's Court.

The Contract Law of the People's Republic of China is not merely of domestic but of regional and global significance. Its dissemination in English, the global language, in a form worthy of the original, is highly desirable. This translation aims to be of that standard. Its authors hope that will be of value to practising lawyers, scholars, students and teachers, in China and elsewhere.

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