

A Guide to the Application of  
the Contact Law of the  
People's Republic of China

# 中华人民共和国合同法 应用指南

傅伟良 等/编译

石油工业出版社

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# 中华人民共和国合同法应用指南

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**A Guide to the Application of the Contract Law of the People's Republic of China**

**By Fu Weiliang et al.**

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傅伟良负责《中华人民共和国合同法》的 428 个条款的英文翻译工作，并编写了本指南的中英文前言。

英文注释由下列人员完成：

刘京安、邱岳负责编写第一章、第二章中合同条文的英文注释；邓罡、李钧、李艳滨负责编写第三章、第四章中合同条文的英文注释；何艳琨、董炎、林余英负责编写第五章、第六章中合同条文的英文注释；孙丽、卢克、于颖负责编写第七章、第八章中合同条文的英文注释；马丽、毛小菁负责编写第九章、第十章、第十一章中合同条文的英文注释；孙华负责编写第十二章、第十三章、第十四章中合同条文的英文注释；于华负责编写第十五章、第十六章、第十七章中合同条文的英文注释；王丽美负责编写第十八章、第十九章、第二十章中合同条文的英文注释；刘艳丽负责编写第二十一章、第二十二章、第二十三章中合同条文的英文注释。

注释的中文参考译文由下列人员完成：

孙华、谭子华编写第一条至第九十九条；刘艳丽、温丽芳编写第一百条至第二百零六条；于华、索伦高娃编写第二百零七条至第三百一十四条；王丽美、梁艳梅编写第三百一十五条至四百二十八条。

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## Author/作者介绍

傅伟良，北京第二外国语学院英语系英语副教授，英语专业国际经济合作方向硕士研究生导师。1986 年至 1990 年曾借调到国外工作，在一个国际经济合作项目中担任总经理助理、首席翻译、公司英国顾问翻译、经营部门经理。全面负责公司的经营管理、合同谈判、合同管理、索赔以及合同文件编写和翻译工作。

由于在国外工作期间，深感我们缺少那些既懂外语、懂国际经济专业，又懂相关国际经济法的人才，1990 年回校任教后，积极研究并提倡外语、专业知识及相关国际经济法知识相结合的三位一体的教学模式，并进行了上述教学模式的研究和实践。目的是要为我国的对外经济事业培养一批跨国经营的复合型人才，即强调集外语、国际经济专业知识与国际经济法法律知识于一身的人才。为此，先后用英语开设了《国际经济英语》，《英文经济报刊阅读》，《对外经济合同英文写作》及《中华人民共和国合同法应用指南》等课程，并编写了上述课程的英文教材。讲授研究生课程：

- (1) 《对外经济合同英文写作》(*Foreign Economic Contract Documents in Writing*)；
- (2) 《国际经济学》(英文) (*International Economics*)；
- (3) 《金融体制与经济》(英文) (*The Financial System and the Economy*)；
- (4) 《中华人民共和国合同法应用指南》(英文) (*Guide to the Use of Contract Law of the People's of China*)；
- (5) 《FIDIC 合同条件与经营管理》(英文) (*Guide to Use of FIDIC Contract Conditions*)等。

## Introduction/前言

中华人民共和国第九届全国人民代表大会第二次会议于 1999 年 3 月 15 日通过了《中华人民共和国合同法》(以下简称《合同法》)。《合同法》于 1999 年 10 月 1 日起正式实施,原先的《经济合同法》、《涉外经济合同法》和《技术合同法》同时废止,这标志着我国结束了“三足鼎立”的合同立法模式。

《合同法》确立了市场经济的基本交易原则;比较全面、具体地规定了市场经济的基本运行规则。《合同法》广泛参考借鉴了市场经济发达国家和地区立法成功经验,反映了现代市场经济客观规律的共同规则,保持与国际公约和国际惯例协调一致。

《合同法》的实施在我国的进一步改革开放,加强我国与国外的经贸合作,吸引外国公司来华投资,合理解决涉外经济合同纠纷等,都具有积极的作用。

《合同法》是我国迄今为止通过的条文最多,内容最丰富的民事立法。编写《中华人民共和国合同法应用指南》(英汉对照)的目的是为了帮助读者,尤其是外国投资者和我国对外经济从业人员,全面、准确地掌握《合同法》的立法精神、立法原则和具体条文的基本含义。本书主要有两大特点:第一,按照合同法律文件的英文语言写作技巧,把《合同法》的 428 个条款及注释译成英文。力图做到用词准确,句子结构严密,意思明确无误。第二,对每一条款的法义、法理方面作了一些注释,并对各款之间的关系加以说明,以便使《合同法》的使用者更好地理解并运用《合同法》中的各个条款。当然本书中的注释不应看作对《合同法》的各个条款的最终解释,但给《合同法》的使用者提供了一个实用的指南。

在我国加入 WTO 的今天,本书的出版有其重要的现实意义。随着我国加入 WTO,外资将重新关注中国市场,新一轮投资热潮将在中国出现。大批的大、中、小投资者将会涌入中国,他们一定会渴望了解中国的投资环境、投资法规,包括了解我国的《合同法》,可以说本书将成为他们的必读文件。

本书原是北京第二外国语学院英语系高年级专业英语教材,在教学实践中,对《合同法》各条款的翻译不断进行修正。这次正式出版,又请澳大利亚英语教师拉维尼娅·特伦特女士校读了本书的草稿,对英语语言作了把关性的订正。

然而,还是因时间仓促,译者、编者的水平有限,书中难免有不周之处,恳请人家批评指正。

## Acknowledgments/鸣 谢

Many people have made important contributions to this text. Among them is Ms Lavinia Tarrant, an Australian teacher, who proofread the draft of the book. We wish to thank Professor Wang Wenjong, who proof-read parts of the book and provided good judgement. Our thanks also go to Associate Professor Wu Guihong, who advised on the translation of the text.

We also owe thanks to Miss Qi Li for preparing and typing the entire text of this book.

除了本书的编译人员外，还有许多合作者为本书的编写工作做出了贡献。我们衷心感谢各位专家。澳大利亚教师，拉维尼亚·特伦特女士阅读了本书的初稿并作了校对。王文炯教授也审阅了部分书稿，并提出了宝贵建议。伍桂红副教授在本书翻译过程中，提出许多宝贵意见。

齐莉女士在本书编辑整理、打印等方面作了大量工作，在此一并感谢。

## Preface/序 言

1. *Contract Law of the People's Republic of China* (hereinafter called the *Contract Law*), adopted at the Second Session of the Ninth National People's Congress on March 15, 1999, is a basic law in China's market economy.

The *Contract Law* is divided into three parts: General Provisions; Specific Provisions and Supplementary Provisions, with 23 Chapters covering 428 Articles.

### (1) General Provisions

General Provisions deal with the common provisions and specifications of all kinds of contracts, such as the purpose of formulating the contract law, the application limits, the basic principles, the conclusion, effectiveness and performance of contracts, and modification and assignment of contracts, etc. General Provisions of the *Contract Law* include 8 Chapters with 129 Articles, i.e. General Provisions, Conclusion of Contracts, Effectiveness of Contracts, Performance of Contracts, Modification and Assignment of Contracts, Termination of the Rights and Obligations of Contracts, Liability for Breach of Contracts and Miscellaneous Provisions.

### (2) Specific Provisions and Supplementary Provisions

Specific Provisions of the *Contract*

1. 《中华人民共和国合同法》（以下简称《合同法》）已于1999年3月15日在第九届全国人民代表大会第二次会议上顺利获得通过，这是一部关于我国社会主义市场经济的基本法律。

《合同法》分成三大部分：总则、分则及附则，共23章，428条。

### (1) 总则

总则规定了各类合同的共性规定及规范。例如，立法宗旨，适用范围，基本原则，合同的订立，效力，履行，以及合同的修改及转让等规定。总则共8章129条，这8章分别为：一般规定、合同的订立、合同的效力、合同的履行、合同的变更和转让、合同的权利义务终止、违约责任和其他规定。

### (2) 分则及附则

分则包括15类合同，共15章298条（即



Law include 15 kinds of Contracts with 15 Chapters (from Chapter 9 to Chapter 23) covering 298 Articles (from Article 130 to Article 427).

General Provisions of the *Contract Law* shall apply to all the Contracts listed in Specific Provisions thereof.

Supplementary Provisions of the *Contract Law* include only one article, i.e. the last article of this Law, Article 428: "This Law shall come into force as of October 1st, 1999. The *Economic Contract Law of the People's Republic of China*, the *Law of the People's Republic of China on Economic Contracts Involving Foreign Interests* and the *Law of the People's Republic of China on Technology Contracts* shall be invalidated simultaneously."

### (3) Interpretation of Contracts

Interpretation of Contracts shall comply with the provisions of Article 125 of the *Contract Law*, i.e. "With regard to disputes between the parties to a Contract arising from the understanding of any clauses of the Contract, the true intention of such clauses shall be determined in accordance with such terms and expressions as are used in the Contract, the contents of the relevant clauses of the Contract, the purpose for concluding the Contract, the transaction practices and the principle of good faith. Where two or more languages are adopted in the text of a Contract and it is agreed that both texts of the Contract are authentic, the terms and expressions in various versions shall be presumed and

第九章至第二十三章，第一百三十条至第四百二十七条)。

《合同法》的总则应适用于分则中的 15 类列名合同。

《合同法》的附则仅一条法律条款即本法的最后一条，第四百二十八条，本条规定：

“本法自 1999 年 10 月 1 日起施行。《中华人民共和国合同法》、《中华人民共和国涉外经济合同法》、《中华人民共和国合同法》同时废止。”

### (3) 合同的解释

《合同法》第一百二十五条规定了合同的解释。第一百二十五条规定：“当事人对合同条款的理解有争议的，应当按照合同所使用的词句，合同的有关条款、合同的目的、交易习惯以及诚信原则，确定该条款的真实意思。合同文本采用两种以上文字订立并约定具有同等效力的，对各文本使用的词句推定具有相同含义。各文本使用的词句不一致的，应当根据合同的目的予以解释。”

deemed to have the same meaning. In the case where the terms and expressions in different versions are inconsistent, the terms and expressions in question shall be interpreted under the purpose of the Contract."

In accordance with the provisions of Article 125 of the *Contract Law*, the interpretation of Contracts shall comply with the following principles:

(A) The Contract shall be interpreted under such terms and expressions as are used in the Contract.

(B) The interpretation of contracts shall conform to the purpose for concluding the Contract.

(C) The Contract shall be interpreted in accordance with the contents of the relevant clauses of the Contract.

(D) The Contract shall be interpreted under the transaction practices.

(E) The basic principle of interpretation of Contracts shall be the principle of good faith.

## 2. Application limits of *Contract Law* and Basic Principles:

### (1) Application limits of *Contract Law*

The *Contract Law* shall, in accordance with the provisions of Article 2, apply to the limits of subjects of equal footing, that is, both Chinese and Foreign natural persons, legal persons or other organizations, and apply to the limits of civil rights and obligations between the parties to the Contract without involving personal status relationship.

### (2) The basic principles of the

根据《合同法》第一百二十五条规定，合同的解释应遵循以下五大原则：

(A) 应按照合同所使用的词句对合同进行解释；

(B) 对合同的解释应符合合同的目的；

(C) 应按照合同的有关条款的规定对合同进行解释；

(D) 应按照交易习惯解释合同；

(E) 合同解释的基本原则应是诚信原则。

## 2. 《合同法》的适用范围和基本原则如下：

### (1) 《合同法》的适用范围：

根据《合同法》第二条规定，《合同法》应适用于平等主体，即中外自然人，法人和其他组织，并适用于合同当事人之间并不涉及身份关系的民事权利义务关系。

### (2) 《合同法》的基本原则是：

*Contract Law* shall be as follows:

The principle of equality, the principle of voluntariness, the principle of fairness, the principle of good faith, the principle of abiding by the laws and administrative regulations and the principle of observing social ethics and the socio-economic order, and the principle of legally binding on the parties to the Contract.

(A) The principle of equality

The principle of equality is the first basic principle of the *Contract Law*. Article 3 of the *Contract Law* stipulates: "The parties to a contract shall have equal legal status. Neither party shall impose its will on the other party".

The principle of equality embodies the equal rights of natural persons, the equality of the parties to the Contract in civil legal relationship, and the civil subjects under equal legal protection.

(B) The principle of voluntariness

The principle of voluntariness is one of basic principles of the *Contract Law*. Article 4 of the *Contract Law* stipulates: "The parties shall, in accordance with the law, have the rights voluntarily to enter into a contract. No unit or individual shall interfere".

The principle of voluntariness embodies the basic characteristics in civil activities throughout the contractual period. The parties shall voluntarily enter into or not enter into a contract with each other, and shall have the right to decide the contents of the Contract. The parties may, during the execution of the Contract, terminate, supplement, amend and vary

平等原则、自愿原则、公平原则、诚实信用原则、守法原则和公序良俗原则、合同效力原则。

(A) 平等原则

平等原则是《合同法》的第一个基本原则。《合同法》第三条规定：“合同当事人的法律地位平等，一方不得将自己的意志强加给另一方”。

平等原则体现了自然人权利能力平等，民事法律关系中合同当事人地位的平等和民事主体受平等的法律保护。

(B) 自愿原则

自愿原则是《合同法》基本原则之一。《合同法》第四条规定：“当事人依法享有自愿订立合同的权利，任何单位和个人不得非法干预”。

自愿原则体现了在合同期间的民事活动的基本特征。合同当事人应有自愿决定相互订立或不订合同的权利，有决定合同内容的权利。在合同的履行过程中，合同当事人可以解除合同，可以通过协议补充，修改及变更合同。

the Contract by agreement.

(C) The principle of fairness

The principle of fairness deals with the contractual relationship of the parties and is the guiding principle for determining the contents of the Contract.

Article 5 of the *Contract Law* stipulates: "The parties shall comply with the principle of fairness in defining the rights and obligations of the parties to the contract".

The principle of fairness is determined in accordance with the contents of the contract, and the rights and obligations of the parties to the contract.

(D) The principle of good faith

The principle of good faith means that the civil subjects shall be fair and honest whilst engaging in their civil activities, and shall, with good intention, perform their obligations. Civil subjects shall not abuse their rights and evade the law and the obligations provided in the contract.

Article 6 of the *Contract Law* stipulates: "The parties to the contract shall, in accordance with the principle of good faith, exercise rights or perform the obligations thereof."

The principle of good faith is closely linked with the contract. In accordance with the principle of good faith, the parties to the contract shall, throughout the period of conclusion, performance, variation and termination of contract, even after the termination of the contractual relationship, exercise their

(C) 公平原则

公平原则适用于合同当事人缔结合同关系，是确定合同内容时所应遵循的指导性原则。

《合同法》第五条规定：“当事人在定义合同各方的权利和义务时应当遵循公平原则”。

这就是说，公平原则是根据合同的内容，当事人的权利和义务而确定的。

(D) 诚实信用原则

诚实信用原则是指民事主体从事民事活动时，应公平诚实，应以善意的方式履行其义务。民事主体不得滥用其权利，规避法律及合同规定的义务。

《合同法》第六条规定：“当事人行使权利、履行义务应当遵循诚实信用原则”。

诚实信用原则与合同关系的联系密切。在合同的订立、履行、变更、终止，甚至在合同关系终止之后，合同当事人都应根据诚实信用原则行使其权利，履行其义务。

rights and perform their obligations.

(E) The principle of abiding by the laws and the principle of observing social ethics and socio-economic order

Article 7 of the *Contract Law* stipulates: "The parties shall, in concluding and performing a contract, abide by the law and administrative regulations, observe social ethics. Neither party shall disrupt the socio-economic order or damage the public interests."

In fact, this article includes two principles, i.e., the principle of abiding by the law and the principle of observing social ethics and socio-economic order. The principle of abiding by the law requires that the parties to the contract shall, under the law, conclude and perform the contract, and shall, under the law, deal with and settle the disputes in contracts, breach of contract. The principle of observing social ethics and socio-economic order means the principle of observing social ethics and socio-economic order without disrupting the socio-economic order or harming or damaging the public interests.

(F) The principle of legally binding on the parties to the contract

Article 8 of the *Contract Law* stipulates: "If, in accordance with the law, a contract is made and concluded, the contract in question shall legally be binding on the parties thereto. The parties thereto shall, in accordance with the terms, conditions and provisions of the contract, perform their respective obligations. Neither party shall

(E) 守法原则和公序良俗原则

《合同法》第七条规定：“当事人订立、履行合同，应当遵守法律、行政法规、遵守社会公德，不得扰乱社会经济秩序，损害社会公共利益。”

实际上这一法律条款规定了两个原则：守法原则和公序良俗原则。守法原则要求合同当事人应该根据法律规定，订立、履行合同，应该根据法律处理、解决合同争议，以及处理违约责任。公序良俗原则是指遵守社会公德和不扰乱社会经济秩序，不损害社会公共利益的原则。

(F) 合同效力原则

《合同法》第八条规定：“依法成立的合同，对当事人具有法律约束力。当事人应当按照约定履行自己的义务，不得擅自变更或者解除合同。依法成立的合同，受法律保护。”

unilaterally modify or terminate the contract. The contract concluded and entered into under the law shall be protected by the law."

The principle of legally binding on the parties to the contract possesses the significance for ensuring the safety of the contract, compelling the parties to perform the contract, and protecting the legal interests of the parties to the contract.

合同效力原则对确保合同安全，促进合同当事人履行合同，以及保护合同当事人的合法权益具有重要意义。

## Commentary on Articles/

### 《合同法》条文的注释

The following commentaries refer to some aspects of individual articles of the *Contract Law of the People's Republic of China*.

The commentaries should not be taken as representing any definitive interpretation of the text of these articles. The notes are, however, intended to give users a practical guide to the operation of various articles and to explain their relationship to each other.

Where definitions are self-explanatory no comment is given.

本书中的注释只是对《中华人民共和国合同法》中各条文的一些方面分别加以解释。

对各条文的注释不应看作是对这些条文内容的最终解释。然而这些注释的目的是给读者在使用《合同法》的不同条文时提供一个实用指南，并对条文之间的关系加以说明。

凡条文本身不释自明的，不再进行注释。

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# General Provisions/总 则

## Chapter 1 General Provisions

### 第一章 一般规定

This Chapter including 8 articles (from Article 1 to Article 8) deals with the general provisions of the *Contract Law of the People's Republic of China* (hereinafter called the *Contract Law*). Article 1 deals with the purpose of establishing the *Contract Law*. Article 2 states the concept of the *Contract Law*. Articles 3 to 7 provide the basic principles of the *Contract Law*. Article 8 refers to the legal effect of the *Contract Law*.

本章共有合同条款 8 条（第一条至第八条）涉及《中华人民共和国合同法》（以下简称《合同法》）的一般规定。第一条涉及建立《合同法》的目的；第二条是《合同法》的概念；第三条至第七条是《合同法》的基本原则；第八条是《合同法》的法律效果。