



Selected Foreign-related Civil and Commercial Laws
and Regulations of the People's
Republic of China

中华人民共和国涉外民商事法律法规选编

MISCELLANEOUS LAWS

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The General Principles of the Civil Law of the People's Republic of China

(Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986, promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986, and effective as of January 1, 1987)

Chapter I

Basic Principles

Article 1 This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, in order to protect the lawful civil rights and interests of citizens and legal persons, adjust civil relations appropriately and meet the needs arising in the course of socialist modernization.

Article 2 The Civil Law of the People's Republic of China shall regulate property and personal relationships between citizens, between legal persons and between citizens and legal persons on an equal basis.

Article 3 Parties shall enjoy equal status in civil activities.

Article 4 When conducting civil activities the principles of voluntariness, fairness, compensation for equal value, honesty and credibility shall be followed.

Article 5 The legitimate civil rights and interests of citizens and legal persons shall be protected by law and no organization or individual may infringe upon them.

Article 6 Civil activities shall be in compliance with laws; in the absence of relevant prescriptions in laws, they shall be in compliance with the policies of the State.

Article 7 Civil activities shall respect social ethics and shall not harm the public interest, undermine the economic plans of the State or disrupt the social or economic order.

Article 8 When conducting civil activities within the territory of the People's Republic of China, the laws of the People's Republic of China shall be applicable.

The prescriptions of this Law regarding citizens shall apply to foreigners and stateless persons within the territory of the People's Republic of China, except as otherwise prescribed by law.

Chapter II

Citizens (Natural Persons)

Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

Article 9 A citizen shall have the capacity for civil rights from birth to death, and enjoy civil rights and bear civil obligations in accordance with the laws.

Article 10 The capacity for civil rights of all citizens shall be equal.

Article 11 A citizen aged 18 or over shall be an adult. He or she shall have full capacity for civil conduct, and be able to independently engage in civil activities.

A citizen aged between 16 and 18 and whose own labor is the main source of his or her income shall be regarded as a person with full capacity for civil conduct.

Article 12 A minor aged 10 or over shall be a person with limited capacity for civil conduct and may only engage in civil activities appropriate to his or her age and intellect; in other civil activities, he or she shall be represented by his or her agent *ad litem* or participate with the consent of his or her agent *ad litem*.

A minor aged under 10 shall be a person having no capacity for civil conduct and shall be represented by his or her agent *ad litem* in civil activities.

Article 13 A mentally ill person not responsible for his or her own actions shall be a person without capacity for civil conduct and shall be represented by his or her agent *ad litem* in civil activities.

A mentally ill person not fully accountable for his or her own actions shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his or her mental state. He or her shall be represented by his or her agent *ad litem* or participate only with the consent of his or her agent *ad litem* in other civil activities.

Article 14 The guardian of a person without or with limited capacity for civil conduct shall be the agent *ad litem* of the latter.

Article 15 The place where a citizen's residence is registered shall be the domicile; his or her habitual residence shall be deemed his or her domicile if it is not the same as his or her domicile.

Section 2 Guardianship

Article 16 A minor's parents shall be his or her guardians.

If the parents of a minor are dead or lack the competence to be guardians, a person in one of the following categories who has the competence to be a guardian shall act as the guardian:

- (1) Paternal or maternal grandparent;
- (2) Elder brother or sister; or
- (3) Any other closely connected relative or friend who is willing to bear the

responsibilities of guardianship and has obtained approval from the work unit(s) of the minor's parents or the neighborhood or village committee in the place of the minor's residence.

In case of a dispute arising over guardianship, the work unit(s) of the minor's parents or the neighborhood or village committee in the place of the minor's residence shall appoint a guardian from among the minor's close relatives. If disagreement over the appointment leads to a lawsuit, the local people's court shall decide the guardianship.

If none of the persons listed in the first two paragraphs of this Article is available to be the guardian, the work unit(s) of the minor's parents, the neighborhood or village committee or the civil affairs department in the place of the minor's residence shall act as the guardian.

Article 17 A person in one of the following categories shall act as guardian for a mentally ill person who is without or with limited capacity for civil conduct:

- (1) Spouse;
- (2) Parent;
- (3) Adult child;
- (4) Any other near relative;

(5) Any other close relative or friend who is willing to bear the responsibility of guardianship and has obtained approval from the work unit to which the mentally ill person belongs or from the neighborhood or village committee in the place of his residence.

In case of a dispute arising from guardianship, the work unit to which the mentally ill person belongs or the neighborhood or village committee in his place of residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the local people's court shall decide the guardianship.

If none of the persons listed in the first paragraph of this Article is available to be the guardian, the work unit to which the mentally ill person belongs, the neighborhood or village committee or the civil affairs department in his place of residence shall act as his guardian.

Article 18 A guardian shall fulfill his duty of guardianship and protect the person, property and other legitimate rights and interests of his ward. Unless it is in the ward's interests, a guardian shall not handle the property of his ward.

The guardian's rights to fulfill his guardianship duties in accordance with the law shall be protected by law.

If a guardian does not fulfill his duties as guardian or infringes upon the legitimate rights and interests of his ward, he or she shall bear full responsibility. If a guardian causes any property losses to his ward he shall make compensation for such losses. A people's court may revoke the qualification for guardianship in response to an application by a party or work unit concerned.

Article 19 Any person closely connected with a mental patient may apply to a people's court for declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the mental health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of a closely connected person, the people's court can declare him to be a person with limited or full capacity for civil conduct.

Section 3 Report of Missing and Death Persons

Article 20 A closely connected person can apply to a people's court for a declaration of a citizen as missing if the latter's whereabouts have been unknown for two consecutive years.

The calculation of the time period in which a person's whereabouts are unknown shall begin on the date the war is declared over if his or her whereabouts become unknown during a war.

Article 21 A missing person's property shall be placed in the custody of his or her spouse, parents, adult children or other closely connected relatives or friends. The local people's court shall appoint a person to take the custody of the property if there is a dispute arising from the custody or if the persons stipulated above are unavailable or are incapable of taking such custody.

Any taxes, debts and other unpaid expenses owed by a missing person shall be deducted from the missing person's property by the custodian.

Article 22 If a person who has been declared missing reappears or his or her whereabouts are ascertained, the people's court shall, upon his or her own application or that of a closely related person, revoke the declaration of his or her missing-person status.

Article 23 Under either of the following circumstances, a closely related person can apply to a people's court for a declaration of a citizen's death:

- (1) If the citizen's whereabouts have been unknown for four years; or
- (2) If the citizen's whereabouts have been unknown for two years after the date of an accident in which he or she was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his or her whereabouts are unknown shall begin on the date the war is over.

Article 24 In the event that a person who has been declared dead reappears or it is ascertained that he or she is still alive, the local people's court shall, upon his or her own application or that of a closely related person, revoke the declaration of his or her death.

Any civil legal acts conducted by a person with capacity for civil conduct during the period in which he or she has been declared dead shall be valid.

Article 25 A person shall have the right to request the return of his or her property if the declaration of his or her death has been revoked. Any citizen or organization having obtained such property in accordance with the Inheritance Law shall return the original articles or make appropriate compensation if the original articles no longer exist.

Section 4 Individual Businesses and Leaseholding Farm Households

Article 26 Citizens who engage in industrial or commercial operations within the scope permitted by law and with approval and registration in accordance with the law shall be considered individual businesses. An individual business may adopt a commercial title.

Article 27 Members of rural collective economic organizations who transact commodities according to the stipulations of contracts and within the scope permitted by law shall be considered leaseholding households.

Article 28 The legitimate rights and interests of individual businesses and leaseholding farm households shall be protected by law.

Article 29 The debts of a business operated by an individual or a leaseholding farm household shall be secured with the individual's or household's property. If the business is operated by a family the debts shall be secured with the family's property.

Section 5 Individual Partnership

Article 30 "Individual partnership" means that two or more citizens operate a business together by respectively providing funds, articles, technologies, and so on, in accordance with an agreement.

Article 31 The partners shall conclude a written agreement stipulating the funds each is to provide, the distribution of profits, liabilities for debts, the entering into and withdrawal from the partnership, the dissolution of the partnership, etc.

Article 32 Property contributed by partners shall be under their unified management and use.

Property accumulated in a partnership operation shall belong to all the partners.

Article 33 An individual partnership may adopt a commercial title and engage in operations with approval and registration, and within the approved and registered business scope.

Article 34 The operational activities of an individual partnership shall be jointly determined by the partners, who each shall have the right of execution and supervision.

The partners can elect a responsible person as manager of the partnership. All the partners shall bear the civil liability for the operational activities of the responsible person and other employees.

Article 35 A partnership's debts shall be secured with the partners' properties in proportion to their respective contributions to the investment or according to the agreement.

Partners shall undertake joint liability for their partnership's debts, except as otherwise prescribed by law. Any partner who overpays his share of the partnership's debts shall be compensated to that extent by the other partners.

Chapter III

Legal Persons

Section 1 General Stipulations

Article 36 A legal person shall be an organization that has the capacity for civil rights and civil conduct, and independently enjoys civil rights and bears civil obligations in accordance with the law.

A legal person's capacity for civil rights and civil conduct shall begin when the legal person status is established and shall end when that status terminates.

Article 37 A legal person shall satisfy the following conditions:

- (1) Being established in accordance with the law;
- (2) Possessing the necessary property or funds;
- (3) Possessing its own name, organization and premises; and
- (4) Being able to independently bear civil liability.

Article 38 A responsible person who acts on behalf of a legal person in exercising its functions and powers shall be its legal representative in accordance with the law or the articles of association of the legal person.

Article 39 The place where its main administrative office is located shall be the legal person's domicile.

Article 40 A legal person shall go into liquidation in accordance with the law and discontinue all other activities upon the termination of the legal person status.

Section 2 Enterprises as Legal Persons

Article 41 Any enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the State, has articles of association, organization and premises, has the capacity to independently bear civil liability and has been approved and registered by the competent authorities.

Any Sino-foreign joint venture, Sino-foreign cooperative enterprise or foreign-invested enterprise established within the territory of the People's Republic of China shall be qualified as a legal person in China if it has the qualifications of a legal person and has been approved and registered by the administrative authorities for industry and commerce in accordance with the law.

Article 42 An enterprise as a legal person shall engage in operations within the approved and registered business scope.

Article 43 An enterprise as a legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44 If an enterprise as a legal person is divided or merged or undergoes any other important change, it shall register such change with the registration authority and make a public announcement of the same.

When an enterprise as a legal person is divided or merged, its rights and obligations shall be enjoyed and borne by the new legal person that results from the change.

Article 45 The status of an enterprise as a legal person shall terminate for any of the following reasons:

- (1) Dissolution by law;
- (2) Disbandment;
- (3) Declaration of bankruptcy in accordance with the law; or
- (4) Other reasons.

Article 46 Upon termination, an enterprise as a legal person shall cancel its registration with the registration authorities and publicly announce the termination.

Article 47 A liquidation organization shall be established to conduct the liquidation when an enterprise is disbanded as a legal person. When an enterprise is dissolved as a legal person or is declared bankrupt, the competent authorities or a people's court shall organize the establishment of a liquidation organization to conduct the liquidation.

Article 48 An enterprise owned by the whole people, as a legal person, shall bear the civil liability for the property it manages as authorized by the State. An enterprise under collective ownership, as a legal person, shall bear civil liability for the property it owns. A Sino-foreign joint venture, Sino-foreign cooperative enterprise or foreign-invested enterprise as a legal person shall bear the civil liability for the property it owns, except as otherwise prescribed by laws.

Article 49 An enterprise as a legal person shall bear the liability, its legal representative shall additionally be given administrative sanctions and fined and, if the offense constitutes a crime, his or her criminal responsibility shall be investigated in accordance with the law in any one of the following circumstances:

- (1) Conducting operations beyond the business scopes approved and registered by the registration authorities;
- (2) Concealing facts from the registration and tax authorities and practicing fraud;
- (3) Secretly withdrawing funds or hiding property to evade repayment of debt;
- (4) Disposing of property without authorization after an enterprise is dissolved, disbanded or declared bankrupt;
- (5) Failing to apply for registration and make a public announcement appropriately when an enterprise undergoes a change or terminates, thus causing closely connected persons to suffer heavy losses; or
- (6) Engaging in other activities prohibited by laws, damaging the interests of the State or the public interest.

Section 3 Official Organs, Institutions and Social Organizations as Legal Persons

Article 50 An official organ with independent funds shall be qualified as a legal person from the date of its establishment.

An institution or social organization having the qualifications of a legal person shall be qualified as a legal person on the date of its establishment if it does not need to go through the procedures for registering as a legal person according to law. It shall be qualified as a legal person after being approved and registered if it is necessary to go through the registration procedures according to law.

Section 4 Economic Associations

Article 51 A new entity shall be qualified as a legal person after being approved and registered by the competent authorities if the new economic entity is formed by enterprises or an enterprise and an institution which engage in economic association, and it independently bears civil liability and has the qualifications of a legal person.

Article 52 If the enterprises or an enterprise and an institution which engage in economic association conduct joint operations but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement, bear civil liability for the property each party owns or manages. If the joint liability has been specified by laws or agreements, the parties shall jointly bear the liability.

Article 53 If the contract for economic association of enterprises or of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party which shall bear the civil liability.

Chapter IV

Civil Juristic Acts and Agencies

Section 1 Civil Juristic Acts

Article 54 A civil juristic act shall be the legitimate act of a citizen or legal person for the purpose of establishing, changing or terminating civil rights and obligations.

Article 55 A civil juristic act shall meet the following requirements:

- (1) The actor has relevant capacity for civil conduct;
- (2) The intention expressed is genuine; and
- (3) The act is not in violation of laws or the public interest.

Article 56 A civil juristic act can be carried out in written, oral or other forms. If the law prescribes that a particular form be adopted, such prescription shall be observed.

Article 57 A civil juristic act shall be legally binding once it is established.

The actor shall not alter or rescind his act except in accordance with laws or with the consent of the other party.

Article 58 The following civil acts shall be null and void:

- (1) Those performed by a person without capacity for civil conduct;
- (2) Those which can not be independently performed by a person with limited capacity for civil conduct according to law;
- (3) Those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by another party;
- (4) Those performed through malicious collusion and detrimental to the interests of the State, a collective or a third party;
- (5) Those in violation of laws or the public interest;
- (6) Economic contracts that violate the State's mandatory plans; and
- (7) Those performed under the guise of legitimate acts but concealing illegitimate purposes.

Civil acts which are null and void shall have no legal force from the very beginning.

Article 59 A party shall have the right to request a people's court or an arbitration organization to alter or rescind the following civil acts:

- (1) Those performed by an actor who seriously misunderstood the contents of the acts; and
- (2) Those which are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60 If part of a civil act is null and void but does not affect the validity of the other parts, the other parts of the civil act shall remain in effect.

Article 61 After a civil act has been determined to be null and void or has been rescinded, any property acquired by a party as a result of the act shall be returned to the party which suffered the loss. The erring party shall compensate the other party for the loss it suffered as a result of the act. If both parties are in error, they shall respectively bear their proper shares of the liability.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the State, a collective or a third party, the property obtained therefrom shall be recovered and turned over to the State or the collective, or returned to the third party.

Article 62 Conditions can be attached to a civil juristic act. Conditional civil juristic acts shall be effective when the attached conditions are met.

Section 2 Agencies

Article 63 Citizens and legal persons can perform civil juristic acts through agents.

An agent shall perform civil juristic acts in the name of the principal within the scope of the agent's power. The principal shall bear the civil liability for the agent's acts.

If civil juristic acts are to be performed by the principal according to the