

— 中英文对照法规系列 —

**MARRIAGE
& FAMILY &
SOCIAL LAW**

**婚姻家庭
与社会法**

中国法制出版社

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婚姻家庭与社会法

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出版说明

为满足广大法律工作者、法学专业师生、外籍人士的学习和实务所需,我社组织出版了《中英文对照法规系列》丛书。

本套丛书按部门法分册,各分册基本收录了该部门法内我国现行有效的法律法规。在编排上,同页英文居左、中文居右,英文字号稍大,希望这种版式更能接近读者的阅读习惯。此外,为方便读者的学习和查阅,对法律文本中的法律专业术语,以脚注的形式在每页下方作了中英文对照标记。

本套丛书共分9册,分别为:《宪法》、《行政法》、《经济法》、《民事法》、《商法》、《知识产权法》、《民事诉讼法与仲裁法》、《婚姻家庭与社会法》、《刑法与刑事诉讼法》。

图书编辑不足之处,敬请广大读者指正。

2005年9月

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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)

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中华人民共和国民法通则

(1986年4月12日第六届全国人民代表大会第四次会议通过 1986年4月12日中华人民共和国主席令第37号公布 1987年1月1日起施行)

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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, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

第一节 民事法律行为

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第一章 基本原则

第一条 为了保障公民、法人的合法的民事权益,正确调整民事关系,适应社会主义现代化建设事业发展的需要,根据宪法和我国实际情况,总结民事活动的实践经验,制定本法。

Article 2 The Civil Law^① of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3 Parties to a civil activity^② shall have equal status.

Article 4 In civil activities, the principles of voluntariness^③, fairness^④, making compensation for equal value^⑤, honesty and credibility^⑥ shall be observed.

Article 5 The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe^⑦ upon them.

Article 6 Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies.

Article 7 Civil activities shall have respect for social ethics^⑧ and shall not harm the public interest, undermine state economic plans or disrupt social economic order.

第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

第三条 当事人在民事活动中的地位平等。

第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

第五条 公民、法人的合法的民事权益受法律保护,任何组织和个人不得侵犯。

第六条 民事活动必须遵守法律,法律没有规定的,应当遵守国家政策。

第七条 民事活动应当尊重社会公德,不得损害社会公共利益,破坏国家经济计划,扰乱社会经济秩序。

- ① The Civil Law 民法
- ② civil activity 民事活动
- ③ voluntariness 自愿
- ④ fairness 公平
- ⑤ making compensation for equal value 等价有偿
- ⑥ honesty and credibility 诚实信用
- ⑦ infringe 侵犯
- ⑧ social ethics 社会公德

Article 8 The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

Chapter II Citizen^① (Natural Person)^②

Section 1 Capacity for Civil Rights^③ and Capacity for Civil Conduct

Article 9 A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations^④ in accordance with the law.

Article 10 All citizens are equal as regards their capacity for civil rights.

Article 11 A citizen aged 18 or over shall be an adult. He shall have full capacity for civil con-

第八条 在中华人民共和国领域内的民事活动,适用中华人民共和国法律,法律另有规定的除外。

本法关于公民的规定,适用于在中华人民共和国领域内的外国人、无国籍人,法律另有规定的除外。

第二章 公民 (自然人)

第一节 民事权利 能力和民事行为 能力

第九条 公民从出生时起到死亡时止,具有民事权利能力,依法享有民事权利,承担民事义务。

第十条 公民的民事权利能力一律平等。

第十一条 18周岁以上的公民是成年人,具有完全民事行为能力

① Citizen 公民

② Natural Person 自然人

③ Capacity for Civil Rights 民事权利能力

④ civil obligations 民事义务

duct^①, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age of 18 and whose main source of income is his own labour 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 engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13 A mentally ill person^② who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14 The guardian of a person without or

力,可以独立进行民事活动,是完全民事行为能力人。

16 周岁以上不满 18 周岁的公民,以自己的劳动收入为主要生活来源的,视为完全民事行为能力人。

第十二条 10 周岁以上的未成年人是限制民事行为能力人,可以进行与他的年龄、智力相适应的民事活动;其他民事活动由他的法定代理人代理,或者征得他的法定代理人的同意。

不满 10 周岁的未成年人是无民事行为能力人,由他的法定代理人代理民事活动。

第十三条 不能辨认自己行为的精神病人是无民事行为能力人,由他的法定代理人代理民事活动。

不能完全辨认自己行为的精神病人是限制民事行为能力人,可以进行与他的精神健康状况相适应的民事活动;其他民事活动由他的法定代理人代理,或者征得他的法定代理人的同意。

第十四条 无民事

① full capacity for civil conduct 完全民事行为能力

② mentally ill person 精神病人

with limited capacity for civil conduct shall be his agent ad litem.

Article 15 The domicile of a citizen shall be the place where his residence is registered; if his habitual residence^① is not the same as his domicile, his habitual residence shall be regarded as his domicile.

Section 2 Guardianship

Article 16 The parents of a minor shall be his guardians^②.

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

(1) paternal or maternal grandparent;

(2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighbourhood^③ or village committee^④ in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit,

行为能力人、限制民事行为能力能力人的监护人是他的法定代理人。

第十五条 公民以他的户籍所在地的居住地为住所,经常居住地与住所不一致的,经常居住地视为住所。

第二节 监护

第十六条 未成年人的父母是未成年人的监护人。

未成年人的父母已经死亡或者没有监护能力的,由下列人员中有监护能力的人担任监护人:

(一)祖父母、外祖父母;

(二)兄、姐;

(三)关系密切的其他亲属、朋友愿意承担监护责任,经未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的,由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的,由人民法院裁决。

① habitual residence 经常居住地

② guardians 监护人

③ neighbourhood committee 居民委员会

④ village committee 村民委员会

the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this article is available to be the guardian, the units of the minor's parents, the neighbourhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17 A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

- (1) spouse^①;
- (2) parent;
- (3) adult child;
- (4) any other near relative;

(5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighbourhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among his near relatives^②. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighbourhood or village committee in the place of his resi-

没有第一款、第二款规定的监护人的,由未成年人的父、母的所在单位或者未成年人住所地的居民委员会、村民委员会或者民政部门担任监护人。

第十七条 无民事行为能力或者限制民事行为能力人的精神病人,由下列人员担任监护人:

- (一) 配偶;
- (二) 父母;
- (三) 成年子女;
- (四) 其他近亲属;

(五) 关系密切的其他亲属、朋友愿意承担监护责任,经精神病人的所在单位或者住所地的居民委员会、村民委员会同意的。

对担任监护人有争议的,由精神病人的所在单位或者住所地的居民委员会、村民委员会在近亲属中指定。对指定不服提起诉讼的,由人民法院裁决。

没有第一款规定的监护人的,由精神病人的所在单位或者住所地的居民委员会、村民委员会或者民政部门担任监护人。

① spouse 配偶

② near relatives 近亲属

dence or the civil affairs department shall act as his guardian.

Article 18 A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his ward. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardian's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian^① based on the application of a concerned party or unit.

Article 19 A person who shares interests with a mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the 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 an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

第十八条 监护人
应当履行监护职责,保护被监护人的人身、财产及其他合法权益,除为被监护人的利益外,不得处理被监护人的财产。

监护人依法履行监护的权利,受法律保护。

监护人不履行监护职责或者侵害被监护人的合法权益的,应当承担责任;给被监护人造成财产损失的,应当赔偿损失。人民法院可以根据有关人员或者有关单位的申请,撤销监护人的资格。

第十九条 精神病人
的利害关系人,可以向人民法院申请宣告精神病人为无民事行为能力人或者限制民事行为能力人。

被人民法院宣告为无民事行为能力人或者限制民事行为能力人的,根据他健康恢复的状况,经本人或者利害关系人申请,人民法院可以宣告他为限制民事行为能力人或者完全民事行为能力人。

① disqualify a guardian 撤销监护人资格

Section 3 Declarations of Missing Persons^① and declaration of Death^②

第三节 宣告失踪和宣告死亡

Article 20 If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

第二十条 公民下落不明满2年的,利害关系人可以向人民法院申请宣告他为失踪人。

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

战争期间下落不明的,下落不明的时间从战争结束之日起计算。

Article 21 A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

第二十一条 失踪人的财产由他的配偶、父母、成年子女或者其他密切的其他亲属、朋友代管。代管有争议的,没有以上规定的人或者以上规定的人无能力代管的,由人民法院指定的人代管。

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

失踪人所欠税款、债务和应付的其他费用,由代管人从失踪人的财产中支付。

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

第二十二条 被宣告失踪的人重新出现或者确知他的下落,经本人或者利害关系人申请,人民法院应当撤销对他的失踪宣告。

① Declarations of Missing Persons 宣告失踪

② declaration of Death 宣告死亡

Article 23 Under either of the following circumstances, an interested person may apply to the 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 was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

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

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

Article 25 A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in accordance with the Inheritance Law^① shall return the original items or make appropriate compensation^② if the original items no longer exist.

第二十三条 公民有下列情形之一的,利害关系人可以向人民法院申请宣告他死亡:

(一) 下落不明满4年的;

(二) 因意外事故下落不明,从事故发生之日起满2年的。

战争期间下落不明的,下落不明的时间从战争结束之日起计算。

第二十四条 被宣告死亡的人重新出现或者确知他没有死亡,经本人或者利害关系人申请,人民法院应当撤销对他的死亡宣告。

有民事行为能力人在被宣告死亡期间实施的民事法律行为有效。

第二十五条 被撤销死亡宣告的人有权请求返还财产。依照继承法取得他的财产的公民或者组织,应当返还原物;原物不存在的,给予适当补偿。

① the Inheritance Law 继承法

② make appropriate compensation 给予适当补偿

Section 4 Individual Businesses and Leaseholding Farm Households

Article 26 “Individual businesses^①” refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27 “Leaseholding farm households^②” refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

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

Article 29 The debts of an individual business or a leaseholding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property^③ if the business is operated by a family.

Section 5 Individual Partnership

Article 30 “Individual partnership^④” refers to two or more citizens associated in a business and

第四节 个体 工商户、农村 承包经营户

第二十六条 公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

第二十七条 农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

第二十八条 个体工商户、农村承包经营户的合法权益，受法律保护。

第二十九条 个体工商户、农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

第五节 个人合伙

第三十条 个人合伙是指两个以上公民按照协议，各自提供资金、

① Individual businesses 个体工商户

② Leaseholding farm households 农村承包经营户

③ the family's property 家庭财产

④ Individual partnership 个人合伙