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China Master Business Law Guide

Commentary & Analysis

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For enquiries contact your local CCH office.

CCH Asia Pte Limited (Registration No: 199703606K)

8 Chang Charn Road, #03-00 Link (THM) Building, Singapore 159637

Telephone: (65) 6224 2555

Customer Service Hotline: 800 6162 161

Facsimile: (65) 6224 2555

E-mail address: support@cch.com.sg

Website: <http://www.cch.com.sg>

Commerce Clearing House (Malaysia) Sdn Bhd (216303-M)

Suite 9.3, 9th Floor Menara Weld, 76 Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia

Telephone: (603) 2026 6003

Customer Service Hotline: 1800 181 151

Facsimile: 1800 181 173

E-mail address: support@cch.com.my

Website: <http://www.cch.com.my>

CCH Hong Kong Limited

Room 1608, 16/F, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong

Telephone: (852) 2526 7606

Customer Service Hotline: 800 968 667

Facsimile: 800 933 814

E-mail address: support@cch.com.hk

Website: <http://www.cch.com.hk>

CCH (Beijing) Publication Distribution Co. Ltd

Suite 2503, Tower A, TYG Centre, C2 North Road, East 3rd Ring Road, Chaoyang District, Beijing, P.R. China 100027

Telephone: (8610) 5863 7888

Customer Service Hotline: (8610) 5863 7887

Facsimile: (8610) 5863 7999

E-mail: support@cchchina.com.cn

Website: <http://www.cchchina.com.cn>

Wolters Kluwer India Pvt. Ltd

501-A, Devika Tower, 6, Nehru Place, New Delhi — 110 019

Telephone: (9111) 4653 0000

Facsimile: (9111) 4653 0399

E-mail: support@cchindia.co.in

Website: <http://www.cchindia.co.in>

CCH Japan Limited

Towa Misaki-cho Bldg 5F 3-6-2 Misaki-cho, Chiyoda-ku Tokyo 101-0061 Japan

Telephone: 81-3-3265-1161

Facsimile: 81-3-3265-1166

E-mail: support@cch.co.jp

Website: <http://www.cch-japan.jp>

About the Contributing Editors

Jianfu Chen, BSc (Dalian), LLM (Hon I) (Syd), PhD (Syd), is Associate Professor at La Trobe University, Australia. He has wide legal practice experience in China and Australia. His main publications include *From Administrative Authorisation to Private Law: A Comparative Perspective of the Developing Civil Law in the People's Republic of China* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995); *Chinese Law: Towards an Understanding of Chinese Law, Its Nature and Developments* (The Hague/London/Boston: Kluwer Law International, 1999); and numerous articles on Chinese and Australian Law.

Suiwa Ke, LLB (Xi'an), LLB (La Trobe), LLM (Xi'an), is a consultant to Southland International Services Pty Ltd — a consultancy firm specialising in China-related business. She taught and practiced law in China before moving to Australia. She has published several articles on Chinese law and Western legal traditions.

Foreword

The *China Master Business Law Guide* is the pre-eminent introduction to business laws and regulations in the People's Republic of China. The Guide provides authoritative commentary on legislative developments affecting all aspects of doing business in the PRC.

The Guide's Contributing Editors are Dr Jianfu Chen and Ms Suiwa Ke. Both Dr Chen and Ms Ke have a profound knowledge of China's legal system. This has been gained through many years of study and professional experience in the People's Republic of China. Now based in Australia, they work full-time researching, teaching and consulting on Chinese business and law. As the Contributing Editors, Dr Chen and Ms Ke are able to ensure that the Guide is a timely, comprehensive and practical reporting service for business and legal professionals.

First published in March 1991, the original text of the Guide was written by a team of consultants, coordinated by Michael J Moser of Baker & McKenzie in association with CCH International. The team of consultants were: Cole R Capener, Charles J Conroy, David YW Ho, B Thomas Pelle, Eugene Theroux, Winston K Zee, Josef T Ten Berge, Clifford Borg-Marks, Frederick R Burke, Cordelia Chung, William B Clydesdale, Wai-Kit Lau, Florence Li, Tong Mao, Stephen M Nelson, Joseph T Simone, Ai-Lin Szwoch and Sharon Yau. Mr Moser also acted as the Guide's General Editor from March 1991 to September 1993.

Sally A Harpole, who is a Partner and Head of China Practice for Morrison & Foerster, Hong Kong, also acted as General Editor from 1994 to 1998.

Ms Harpole's practice focuses on advising foreign clients doing business in the People's Republic of China and on the settlement of commercial disputes between foreign and Chinese entities. Ms Harpole is one of four foreign nationals appointed by the Chinese Government to the Panel of Arbitrators of the China International Economic and Trade Arbitration Commission in Beijing. She is also an arbitrator with the Pacific/Asia Dispute Resolution Centre, American Arbitration Association and an Associate of the Chartered Institute of Arbitrators.

Jianfu Chen, who is Associate Professor in La Trobe University, Australia, has been the General Editor since 1999.

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INTRODUCTION • THE LEGAL SYSTEM

Introduction

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INTRODUCTION

China at a glance

[¶1-000] China at a glance

Population: 1.34495 billion (including Hong Kong, Macau and Taiwan), with a total population of 1.31448 billion in Mainland China.

Area: 9,562,904 km²

Borders: North Korea, Russia, Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bhutan, Burma (Myanmar), Laos, Vietnam

Climate: varies from sub-tropical in the south to sub-arctic in the North

Currency: Renminbi (RMB), literally the people's currency, divided into yuan, jiao and fen.

1 yuan = 10 jiao

1 jiao = 10 fen

The exchange rate used to be fixed daily, but from 2005 it was floated within a certain range set by the People's Bank of China. Currently the exchange rate is at around 7 RMB (yuan) to one US dollar, 10.1 RMB (yuan) to one Euro, and 15 RMB (yuan) to one Sterling pound.

Language: Chinese. Official spoken version is called Putonghua or Mandarin. Also Yue, Wu, Hakka, Gan, Minnan, Minbei.

Government: Communist state

Head of State: President Hu Jintao

Head of Government: Wen Jiabao

Hong Kong: reverted from British to Chinese sovereignty on July 1 1997. Hong Kong has a separate legal and economic system (including currency) from mainland China. Visas, customs and taxes are all dealt with under a separate system.

Macau: reverted from Portuguese to Chinese sovereignty on 20 December 1999. Macau has a separate legal and economic systems (including currency) from Mainland China. Visas, customs and taxes are all dealt with under a separate system.

Taiwan: Taiwan is declared by the Mainland Chinese government as a part of China, but its official status is yet to be resolved.

Calendar: Gregorian, although a traditional Lunar calendar is used to set movable holidays such as Chinese New Year.

Time: The whole of China, including Hong Kong, is set to Beijing Time. It is eight hours ahead of Greenwich Mean Time.

At midday in China it will be:

2 pm in Sydney and Melbourne (AEST)
 4 am in London (GMT)
 11 pm the day before in New York (EST)
 midday in Kuala Lumpur, Singapore,
 Manila, and Taiwan.
 1 pm in Seoul and Tokyo
 11 am in Jakarta and Bangkok
 9.30 am in Bombay
 3 pm the day before in Los Angeles
 1 pm in Berlin

Office hours: 8 am to 5 pm, Monday to Friday

Public holidays:	New Year's Day (1 January): one day Chinese New Year (new Lunar Year's Eve and first and second days of the new Lunar Year): three days Qingming Festival (fourth or fifth day of the Fourth Lunar Month): one day Labour Day (1–3 May): three days Duanwu Festival (fifth day of the Fifth Lunar Month): one day Mid-Autumn Festival (fifteenth day of the Eighth Lunar Month): one day National Day (1–3 October): three days
Other national holidays include:	Woman's Day (8 March, half day for women) Youth Day (4 May, half day for 14-year plus youths) Children's Day (1 June, half day for children under 13 years old) Army Day (1 August, half day for service persons) Ethnic minority holidays are to be decided by various local governments.

LAND AND POPULATION

Geography	¶1-010
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¶1-010 Geography

The People's Republic of China (PRC) comprises a total land area of 9,562,904 square kilometres (3,692,244 square miles), making it the third largest country in the world. It borders North Korea, Mongolia, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bhutan, Myanmar (Burma), Laos and Vietnam.

China's eastern coastline stretches for more than 5,774 kilometres (3,588 miles). From north to south, the coastline touches the Yellow and East China Seas, the Bohai Gulf, and the South China Sea.

The nation's territory also includes thousands of offshore islands. The largest is Hainan Island, lying off the southeast coast. Other islands claimed by the PRC as part of its territory are the Pratas (Dongsha), the Paracels (Xisha) and the Spratley (Zhongsha and Nansha) Island groups. Several of China's neighbors (including Vietnam and the Philippines) have laid claim to some of these islands as well. Taiwan and the Pescadores (Penghu) Islands are also claimed by China as integral parts of the PRC.

Since 1945 Taiwan and the Pescadores Islands have been governed by the Nationalist Chinese authorities as the Republic of China. Until July 1, 1997, the territory of Hong Kong was governed as a British Crown Colony. It reverted to Chinese sovereignty on that day. The southern coastal enclave of Macau was administered by Portugal, and reverted to China on December 20, 1999.

¶1-020 Climate

China's climate is extremely variable due to the extensive reach of the country's land mass and its diverse topography.

In North China winters are long and harsh with mean January temperatures ranging from 14-35°F (-10-1.7°C) in Beijing and 2-20°F (-16.7-6.6°C) in Shenyang. Summer months in the north are hot and dry.

Annual temperature difference in China's major cities

<i>Cities</i>	<i>Average January temperature</i>	<i>Average July temperature</i>	<i>Annual temperature difference</i>
Beijing	– 4.8°C	25.8°C	30.6°C
Shanghai	3.5°C	28°C	24.5°C
Qingdao	– 1.10°C	23.7°C	24.8°C
Guangzhou	13.70°C	28.3°C	14.6°C
Wuhan	2.7°C	29.1°C	26.4°C
Urumqi	– 15.8°C	23.9°C	39.70°C
Shenyang	– 13°C	24.9°C	37.9°C

Source: China: A General Survey, Foreign Language Press, 1983.

The climate in most of central China is sub-tropical; temperatures in the Yangtze Valley average between 32° and 46.4°F (0° and 8°C) and rainfall is moderate to heavy, permitting year-round cultivation.

The southeastern provinces enjoy a tropical climate which is influenced by the summer monsoon. Typhoons are a frequent occurrence in the southern coastal areas during the summer.

Harsh climatic conditions prevail in the western regions of Inner Mongolia and Xinjiang which are marked by arid plains and deserts. The Tibetan plateau, bordered on the south by the Himalayas, the world's highest mountains, is legendary for its inhospitable climate.

¶1-030 Population

China's population is the largest of any country in the world. According to the latest population census carried out by the National Bureau of Statistics on 1 November 2000, the Chinese population (including that of Hong Kong, Macau and Taiwan) stands at 1.29533 billion, with a total population of 1.26583 billion in Mainland China.

China's population is unevenly distributed, with more than 90% of the nation's inhabitants crowded on less than half of the land area. It is estimated that approximately 80% of the population live in rural areas, the remainder residing in China's numerous cities.

¶1-040 Nationalities

China's constitution declares that the PRC is a multi-national state. Approximately 93% of the population is of the Han nationality, commonly referred to as "ethnic Chinese". The remainder of the population belongs to one of China's 55 "national minority groups" which possess distinctive cultural and linguistic traits. The major groups include the Tibetans, Uygurs, Mongols, Zhuang, Miao and Hui. The national minorities reside primarily in five autonomous regions, 29 autonomous prefectures (*Zhou*), and 69 autonomous counties.

¶1-050 Language

China is characterised by a high degree of linguistic diversity. Although the vast majority of the population speaks “Chinese”, the language itself comprises a wide variety of regional dialects and subdialects. The official language is *putonghua*, or the common language”, which is a variant of the dialect spoken in the national capital, Beijing. *Putonghua* is taught in school and is the dialect used most widely in the media and in government offices and business. It is often referred to as Mandarin in the West. The major regional dialects are the Wu dialect, spoken in the Shanghai area; the Min dialect, prevalent in Fujian Province and in Taiwan; and Cantonese, spoken in Guangdong Province and other areas of southern China. Although regional dialects are often mutually incomprehensible, written Chinese is for the most part uniform. The national minorities continue to maintain their own linguistic traditions, although many educated members of minority groups also speak *putonghua*.

¶1-060 Weights and measures

Weights and Measures Conversion Table

	Chinese system	Metric system	British system
Length	1 chi	= 33.33 cm	= 1.0936 ft
	1 li	= 500.00 m	= 0.3107 mile
	(li = 1,500 chi)		
Area	1 mu	= 0.0666 hectares	= 0.1647 acres
Weight	(1 dan = 100 jin = 1,000 liang)		
	1 liang	= 50 grammes	= 1.7638 ounces
	1 jin	= 500 grammes	= 1.1023 pounds
	1 dan	= 50 kilogrammes	= 110.23 pounds
		= 0.05 metric tons	= 0.0551 short tons
Capacity	(10 sheng = 1 dou)		
	1 sheng	= 1 litre	= 0.22 Imp. gallon
			= 0.26 US gallon
	1 dou	= 10 litres	= 2.20 Imp. gallon
			= 2.64 US gallon

Source: *Guidebook on Trading with the People's Republic of China*

HISTORY

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¶1-110 Imperial China

The record of Chinese history dates back more than 3,000 years. Until the Republican Revolution at the beginning of this century, China was ruled by successive dynasties or periods of centralized rule by different royal families which rose and fell over time. It was during these periods that the pattern of “traditional” Chinese state and society was formed. This pattern was characterized by the emperor system, the creation of a state bureaucracy, and the emergence of Confucianism which provided a state ethic supporting and supported by imperial power.

The main focus of the State during imperial times was the emperor, known as *tian zi* or “Son of Heaven”. The emperor’s authority and legitimacy were believed to be derived from the Mandate of Heaven (*tian ming*). This concept held that Heaven itself entrusted the emperor to rule over his subjects; accordingly, the emperor was believed to be vested with quasi-divine attributes. The concept also imposed a sacred duty on the emperor to ensure that he governed in accordance with the precepts of morality and virtue. When this trust was violated, it was believed, the mandate was lost and a new dynasty was born.

The political power of the emperor was extended beyond his court to the far reaches of the empire’s territories by the imperial bureaucracy. Under this system, civil servants appointed by the emperor took up positions in local towns and districts as resident magistrates. Their responsibilities included tax collection, the administration of justice, education, the preservation of local order and public morality, and other tasks. Working in conjunction with local landowners and clan leaders, these officials provided centralized control over diverse elements of the realm. Often referred to as “literati” or “scholar officials”, state bureaucrats were selected by competitive examinations which emphasized study of the Confucian classics, poetry, music and philosophy, rather than practical skills.

The glue which bound the emperor system to the state bureaucracy on the one hand and to the larger polity on the other was a system of political philosophy commonly known as Confucianism. Based on the teachings of Confucius (551 BC-479 BC), this philosophy emphasized the importance of hierarchical relationships and the duties of the emperor to the people, officials to the emperor, children to their parents and so forth. The Confucian ethic also put a premium on the importance of the family and the continuity of the family line.

Chinese scholars generally trace the origins of imperial China to the Xia (c 21st-16th centuries BC) and the Shang (c 16th century-1066 BC) dynasties. Little is known for certain about life in China during these periods. However, recent archaeological

evidence suggests the existence of a stratified agricultural society ruled by a political-religious leader known as the Son of Heaven. Oracle bones and bronze artifacts from this period also provide evidence of high artistic and cultural attainments.

The Shang rulers were overthrown in 1066 BC. Subsequently, the Zhou clan established their own dynasty which lasted until 221 BC. The Zhou, ruling from their capital near present-day Xian, expanded the territory under their control through military conquest. Later, in about 750 BC, the Zhou emperor moved his court to Luoyang, which remained the capital of successive dynasties for nearly two thousand years. Over time, the State established by the Zhou eventually broke up into a number of independent kingdoms. The leaders of these kingdoms struggled among themselves for supremacy and the mantle of "Son of Heaven". It was during this "Warring States" period that Confucius lived. He developed and put forward his philosophy to various rulers in the belief that it offered a prescription for the chaos in which China was then embroiled.

In time one ruler, Prince Qin, established hegemony over the other leaders of the Warring States and declared himself as emperor. During his period of rule, known as the Qin Dynasty (221 BC-206 BC), China was unified by conquest and political and social stability were imposed with the sword. Despite the legendary harshness of his rule, the Qin Dynasty is remembered today as a period of great achievement. Extensive road systems, linking various parts of the empire, were constructed; standard measures and weights were enacted; and the Great Wall of China, previously constructed in parts, was strengthened and linked together as a barrier against frontier tribes from the steppes who began to encroach with greater frequency on China's agricultural hinterland.

On the death of Prince Qin, a struggle for succession broke out. It ended with the victory of a military rival, Liu Bang, and the creation of a new dynasty, the Han (206 BC-220 AD). During the period of Han rule, China's territory was greatly enlarged. The Han Dynasty was also a period of economic prosperity and political stability. During this period, China's contacts with the outside world grew significantly. Trade links to Central Asia were developed along the Silk Road. Buddhism was introduced to China and became established at the court. These foreign influences provided stimulation to the arts and literature which reached new heights of achievement.

The period of Han rule, however, was short-lived. By 220 AD the dynasty had collapsed and the country had divided into three warring kingdoms, the Wei, Shu and Wu, each of which struggled for dominance over the other. In time further break-away kingdoms emerged. China was not united again until the Sui Dynasty, which was established in 581 AD. However, the Sui were never able to effectively establish their rule. Less than 40 years after assuming the throne, the Sui itself fell to a new group of rulers.

The dynasties which followed — the Tang Dynasty (618 AD-907 AD) and the Song Dynasty (960-1279) — are remembered as the most illustrious periods of traditional Chinese history. During their rule, the Tang established an empire which became one of the most powerful and developed in the world. With their capital at present-day Xian, the Tang reunited the empire and strengthened China's trade links to central Asia along the Silk Road. Both Confucianism and Buddhism flourished during this period. Also, significant advances were made in the cultural arts — painting, music, and the theatre — and in the sciences. By 907 AD the Tang Dynasty, under pressure from nomadic tribes along its borders for some time, collapsed and China again lapsed