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# **China Master Business Law Guide**

**Legislation**



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## Foreword

The Chinese economy has grown with high speed and at amazing rates over the past thirty years. To keep up with these developments and the ongoing economic reforms, the Chinese business law system has been in a state of constant change. The global financial crisis which has started to affect China in the last quarter of 2008 has led to additional challenges and changes. As a result, it is often difficult to have at hand up-to-date versions of related legislation. This book is meant to provide practitioners with a bilingual collection of the latest versions of the most important business laws and regulations. This book will also be of good use to academics and students.

The collection is divided into four sections in order to reflect the recent developments of business law in China. Section I comprises general laws of relevance in the area of business law, namely the *General Principles of Civil Law of the People's Republic of China* for rules on legal persons, the *Security Law of the People's Republic of China* and the new *Property Rights Law of the People's Republic of China* covering property law related issues and the *Product Quality Law of the People's Republic of China* which has drawn much attention lately in light of widely reported quality problems of Chinese consumer goods. Last but not least, the *Contract Law of the People's Republic of China* is one of the most important laws for most China related business transactions because these are based on contractual arrangements.

Section II covers the broad area of PRC company law with a focus on foreign direct investment and mergers and acquisitions (M&A). Basic pieces of legislation such as the *Company Law of the People's Republic of China*, the *Securities Law of the People's Republic of China*, the *Enterprise Bankruptcy Law of the People's Republic of China* and the *Partnership Enterprises Law of the People's Republic of China* are reproduced as well as regulations related to the implementation of these basic laws, such as the *Administrative Regulations on Registration of Company Registered Capital* and the *Administrative Regulations of the People's Republic of China on Company Registration*.

Until today, China does not have a unified company law system. In particular, there is a large body of special laws and regulations governing the establishment, operation and termination of so-called foreign-invested enterprises ("FIEs"), most importantly the *Law of the People's Republic of China on Sino-foreign Equity Joint Ventures*, the *Law of the People's Republic of China on Sino-foreign Co-operative Enterprises* and the *Law of the People's Republic of China on Wholly Foreign-owned Enterprises* and respective *Implementing Rules*, which can all be found in Section II of this book as well. They are supplemented by special FIE rules such as the *Regulations on Foreign Investment Guidelines*, the *Catalogue on Industry Guidelines for Foreign Investment*, the *Provisional Administrative Measures on Verification and Approval of Foreign Investment Projects*, the *Administrative Measures on Initial Public Offering and Listing of Shares* and the *Administrative Measures on Investment in Domestic Securities by Qualified Foreign Institutional Investors*.

Mergers and acquisitions (M&A) are still a rather new phenomenon in China. However, recent years have seen an almost explosive increase of China's M&A volume and it is expected that this trend will pick up again as soon as the global financial crisis is overcome. China has enacted a number of laws and regulations addressing different types of M&A projects. The *Several Provisions on Changes in Equity Interest of Investors of*

*Foreign-invested Enterprises* address the acquisition of FIE equity interests. The scope of applicability of the *Provisions on Foreign-funded Mergers and Acquisitions of Domestic Enterprises* covers the purchase of equity interest in purely domestic enterprises as well as asset deals related to target companies with or without FIE status. Finally, there is a large body of rules dealing with special M&A issues such as acquisitions in the state owned sector or of listed companies. All the main rules and regulations are reproduced in this book.

Section III includes laws and regulations in the area of IP and competition law. The main laws and implementing rules relating to the protection of patents, trademarks and copyright can be found here. The *Anti-Monopoly Law of the People's Republic of China*, a bilingual version of which is also reproduced in this Section, is probably one of the most discussed Chinese laws in recent years due to its potential impact on the operation of FIEs in mainland China.

The last Section of this collection is devoted to labour issues. Labour disputes have gained considerable practical significance in recent years as the awareness of staff and workers of Chinese enterprises of their rights and interests is growing along with the increasing pressure on enterprises to improve their viability in terms of employee numbers and labour management. The recently enacted *Labour Contract Law of the People's Republic of China* and related *Implementation Regulations* improve the standards of labour protection on the Chinese mainland. In times of economic downturn, this development has not been welcomed as it appears to put more financial burden on Chinese employers.

We hope that this collection of Chinese business laws and regulations can serve as a comprehensive reference book for “China lawyers” and that it will facilitate work with as well as studies and research of related topics. We are grateful that all translations of laws and regulations have been provided by CCH Hong Kong Ltd. All rights are owned by and all credits belong to CCH Hong Kong Ltd.

Hong Kong, April 2009

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## 序言

在过去三十年，中国经济以令人惊讶的速度持续发展。而与这一良好的发展势头以及正在进行的经济体制改革相适应的则是其商事法律体系的相应变化。在2008年最后一季度，全球金融危机已经开始影响中国，带来了更多的挑战与变化。也正因为如此，要得到相关法律的最新版本就往往变得困难。本书旨在将一些最重要的商事法律与法规的最新中英文版本提供给法律业者，同时本书对学术研究与学生学习也非常有用。

本书分为四个部分，以反映中国商事法律的最新进展。第I部分包括商事法律领域的一般法律，即规定法人民事权益的《中华人民共和国民法通则》、涉及物权相关法律问题的《中华人民共和国担保法》和新《中华人民共和国物权法》以及《中华人民共和国产品质量法》，鉴于近期有关中国消费品的质量问题的广泛报导，产品质量法受到广泛关注。最后还有《中华人民共和国合同法》，由于商务交易以契约活动为基础，这部法律是处理大部分与中国相关的商务交易时最重要的法律。

第II部分涉及中国公司法律的广泛领域，而重点关注外商直接投资与并购。其中包括几部基本法律，如《中华人民共和国公司法》、《中华人民共和国证券法》、《中华人民共和国企业破产法》和《中华人民共和国合伙企业法》，以及这些基本法律的相关执行规定，如《中华人民共和国公司注册资本登记管理规定》和《中华人民共和国公司登记管理条例》。

时至今日，中国尚没有一个统一的公司法律体系，而是以颁布众多特别法律与法规的方式来具体规管外商投资企业的设立、运营和终止，其中主要包括：《中华人民共和国中外合资经营企业法》及其实施条例，《中华人民共和国中外合作经营企业法》及其实施细则，《中华人民共和国外资企业法》及其实施细则。以上这些法律与法规均收录在本书第II部分中。这些法律与法规以特 外资企业规定作为补充，如《指导外商投资方向规定》、《外商投资指导产业目录》、《外商投资项目核准暂行管理办法》、《首次公开发行股票并上市管理办法》和《合格境外机构投资者境内证券投资管理暂行办法》。

公司之间的并购在中国虽仍属新现象，但近年来并购的数量却在急剧增加，我们预计在全球金融危机过后，这一趋势仍将持续。中国颁布了一系列法律法规来规管各种并购活动。《外商投资企业投资者股权变更的若干规定》用于解决外商投资企业股权收购事项。《关于外国投资者并购境内企业的规定》的适用范围则包括收购境内企业的股权和与具有或不具有外商投资企业身份的目标企业相关的资产处理。此外，本书还收录了数量众多的特别规定，主要是一些针对公司并购的专门性问题，比如对上市公司或国有股的收购问题。主要的规则与规定均已收录在本书中。

第III部分包括知识产权和竞争法领域的法律与法规，包括保护专利、商标和版权的主要法律以及相关执行条例。此部分还提供了《中华人民共和国反垄断法》的中英文版本，由于其对在中国大陆经营的外商投资企业有着潜在影响，该法律可能是近年最具争议的中国法律之一。

本书最后一部分集中劳动问题。近年来，由于中国企业的职员与工人保护自身权益的意识不断增强，劳动争议受到重大关注。随着雇员人数与劳动管理的不断增长，企业面临提高生存能力的压力。最近颁布的《中华人民共和国劳动合同法》及其实施条例提高了中国大陆的劳动保护标准。在经济下滑期间，此进展不受欢迎，因为看上去它给在中国的雇主带来了更大的财务负担。

我们希望本书收集的中国商事法律与法规可以作为“中国法律业者”的全面参考书籍，并且能够方便法律学生及相关主题研究的工作。我们非常感谢CCH Hong Kong Ltd.为本书提供所有法律与法规的英文译本，而一切权利均归CCH Hong Kong Ltd.所有。

香港，2009年4月

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# CHINA MASTER BUSINESS LAW GUIDE

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