

COMPREHENSIVE
GUIDE TO CHINESE
BUSINESS LAWS
中国商事法律要览

(英文本)

XIE ZHAO HUA LAW FIRM

谢朝华律师事务所

PUBLISHING HOUSE OF LAW

法律出版社

Comprehensive Guide to
Chinese Business Laws
中国商事法律要览(英文本)

Xie Zhao Hua Law Firm

谢朝华律师事务所

Publishing House of Law

Beijing China, 1995

法律出版社

1995 · 中国 北京

(京)新登字 080 号

Copyright

All rights reserved.

Except for the quotations of short passages for the purposes of criticism and review, no part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher.

Comprehensive Guide to Chinese Business Laws

中国商事法律要览(英文本)

Xie Zhao Hua Law Firm

谢朝华律师事务所

出版·发行/法律出版社(Publishing House of Law)

经销/新华书店

印刷/张家口市印刷总厂印刷

开本/850×1168 毫米 1/32 印张/14.75 字数/394 千

版本/1995 年 4 月第 1 版 1995 年 4 月第 1 次印刷

印数/0,001—1,000

社址/北京广外六里桥北里甲 1 号八一厂干休所(100073)

电话/3266794 3266883

出版声明/版权所有,侵权必究。(All rights reserved)

书号:ISBN7-5036-1614-8/D·1291 定价:24.00 元

(如有缺页或倒装,本社负责退换)

About the author

Xie Zhao Hua Law Firm is a private law firm founded by Dr. Xie Zhao Hua in his name. The Firm mainly engages in providing legal services involving foreign investment, international trade, finance, insurance, real estate, litigation and arbitration.

Mr. Xie Zhao Hua got his bachelor degree in Southwest Politics & Law Institute in 1982 and entered the graduate student for studying abroad of the State Education Commission in the same year. From July 1983 to March 1988, Mr. Xie Zhao Hua studied in France , and got D. E. A. and doctor degree. After returning China in March 1988, Dr. Xie worked in the Legal Department of CCPIT and North Industries Corporation, etc. . Now, Dr. Xie is the Director of Xie Zhao Hua Law Firm.

PRC 32/51

PREFACE

As far as the interior nature is concerned, socialist market economy is a kind of legal economy, therefore, it is essential to strengthen the economic legislation. In recent years, China has promulgated series of laws and regulations, for example, the Foreign Trade Law, Labor Law, Company Law, Advertisement Law, Rural Real Estate Management Law etc., and reformed the taxation system of the State. The promulgation of these new laws and regulations have greatly improved the legislation situation in China. It also sets up a foundation for China resuming the qualification of membership of GATT (General Agreement on Tariff and Tax) and becoming one of the founding members of the World Trade Organization.

Generally speaking, the development of the Chinese economy should be in line with the world's economy. China needs to understand the world better, and on the other hand, the large potential market in China is very much attractive to foreign investors, therefore, they also need to understand China better, predict the investment risks and enhance the communications and cooperation with the country. One of the most important ways to understand China is to get familiar with the Chinese law environment. However, there are few books on the introduction to the Chinese laws in foreign languages. Moreover, those brief, practical and update are

even fewer. In order to meet the need of such kind of books, Xie Zhao Hua Law Firm has been devoted to writing this book by organizing experienced lawyers and combining laws with practice in addition to providing legal services.

This book contains a comprehensive introduction to the present Chinese commercial laws in eight chapters: Foreign Trade Law, Finance and Banking Law, Company Law, Taxation Law, Real Estate Law, Intellectual Property Law, Arbitration Law and Litigation Law.

In order to guarantee the exactitude, we specially invited Mayer Brown & Platt Law Firm (USA), Professor Wang Liming, Ms. Grace S. Onaga and Mr. Philip Chou to examine and correct the book. We are very grateful for their kind efforts and cooperation.

The book is written for those who are interested in the Chinese business, including business personnel of foreign embassies, foreign consultancy institutions, foreign law offices, foreign enterprises and representative offices in China, etc., and also for domestic consultancy institutions, law offices and enterprises management.

This book is practicable, useful and update, which is its uniqueness. All the staffs in Xie Zhao Hua Law Firm earnestly expect that the book will do some help to our readers. If you have any questions, please do not hesitate to contact us. And we warmly welcome criticisms and discussions from our readers.

Xie Zhao Hua Law Firm

November 23, 1994

Beijing Hotel

Contents

Chapter One Foreign Trade Law

Section 1 General Situation	(1)
Section 2 Administrative Agencies of Foreign Trade	(2)
Section 3 Foreign Trade Operators in China	(2)
Section 4 Import and Export Quota System	(4)
1. Import Quota System	(4)
2. Regulations of Interim Procedures on Imported Mechanical and Electrical Products Management	(6)
3. Export Quota System	(7)
Section 5 Import and Export License System	(7)
1. Import License System	(7)
2. Export License System	(11)
3. Administrative Departments of Export License	(13)
4. Application Procedures for Export License	(13)
5. Legal Responsibility for Breaching the Import and Export License	(15)
Section 6 Legal System of Customs' Supervision on Tariff and Prohibition of Smuggling	(15)
1. Legal Regulations on Customs' Supervision	(15)
2. Legal Regulations on the Supervision of Imported and Exported Cargoes	(17)
3. Legal Regulations on the Supervision of Through- Territory Cargoes	(22)

4. Management on Cargoes, Vehicles, Luggage and Postage through Special Economic Zones (SEZ)	(23)
5. Management on Import and Export Cargoes through Economy and Technology Development Zone	(24)
6. Management on Cargoes through Hainan SEZ	(24)
7. Management on Cargoes through Open Coastal Regions	(25)
Section 7 Laws and Regulations on Tariff	(26)
1. Rate of the Tariff	(26)
2. Dutiable Value of Imported and Exported Cargoes	(27)
3. Tariff by Estimate of Price	(27)
4. Breaking of Tariff	(28)
5. Rights and Obligations of Taxpayers	(29)
6. Legal Regulations on Customs' Prohibition of Smuggling	(30)
7. Inspection and Testing System of Imported and Exported Commodities	(34)
Section 8 Regulations on Restriction and Prohibition in Chinese Foreign Trade Law	(40)
1. Regulations on Restriction of Imported and Exported Cargoes and Technologies	(40)
2. Regulations on Prohibition of Imported and Exported Cargoes and Technologies	(40)
3. Regulations on Restriction of International Service Trade	(41)
4. Regulations on Prohibition of International Service Trade	(42)
5. Regulations on Foreign Trade Operators' Business Activities	(42)

6. Measures to Protect Domestic Industries	(42)
--	------

Chapter Two Finance and Insurance Law

Section 1 General Introduction to China's Finance Industry

.....	(44)
1. Central Bank	(44)
2. Commercial Banks	(46)
3. Policy Banks	(47)
4. Financial Institutions	(50)

Section 2 Management on the Financial Institutions with Foreign Investment

.....	(53)
1. The Scope of Financial Institutions with Foreign Investment	(53)
2. Management and Supervision Organization	(53)
3. Establishment and Registration	(53)
4. Business Activities	(58)
5. Supervision and Administration	(59)

Section 3 China's Foreign Exchange Management System

.....	(62)
1. China's Foreign Exchange Reform	(62)
2. Foreign Exchange Operation Procedures Settlement, Sale and Payment of Foreign Exchange	(63)
3. Foreign Exchange Management of the Institutions within the Financial Budget	(73)
4. Foreign Exchange Management of the Enterprises with Foreign Investment	(74)
5. Bank of China on Loans to Foreign-Funded Enterprises	(75)

Section 4 International Loans	(77)
1. Management on Borrowing Overseas Commercial Loans by Resident Institutions	(77)
2. Management on Granting Foreign Exchange Guarantee by Resident Institutions	(81)
3. Statistics and Supervision of External Debts	(85)
Section 5 Securities and Bonds	(86)
1. RMB Special Share-B Share	(87)
2. Regulations on Issuing Bonds to Foreigners by Domestic Institutions	(88)
3. Domestic Enterprises Issue Shares to Foreign Investors and Go Public Listing in the Overseas Stock Exchange Centers	(91)
Section 6 China's Insurance Legal System	(94)
1. Organization of the People's Insurance Company of China (PICC)	(94)
2. The Functions of PICC	(94)
3. Foreign Insurance Business of PICC	(95)
4. Principles for Establishing Foreign-Funded Insurance Company	(96)
5. Regulations on Setting Up Representative Offices of Foreign Insurance Companies	(96)
6. Management on Representative Offices of Foreign Companies	(97)

Chapter Three Company Law

Section 1 The Choice of a Company's Form and Type ...	(99)
1. The Choice of a Company's Form	(100)

2. The Choice of a Company's Type	(102)
Section 2 Limited Liability Company	(103)
1. Establishment of a Limited Liability Company	(104)
2. Organizational Structures of a Limited Liability Company and Their Operations	(112)
Section 3 Joint Stock Limited Company	(121)
1. Establishment of a Joint Stock Limited Company	(121)
2. Organizational Structures of a Joint Stock Limited Company and Their Operations	(126)
Section 4 Issuance and Transfer of Shares of a Joint Stock Limited Company	(132)
1. Issuing of Stocks	(132)
2. Trading of Stocks	(140)
3. Information Revealed by Listed Companies	(143)
4. Buy-Out of a Listed Company	(151)
5. Safekeeping, Settlement and Transfer of Stocks	(154)
6. Special Provisions Relating to Issuing Shares and Listing Outside China by a Joint Stock Limited Company	(156)
Section 5 Corporate Bonds	(158)
1. Conditions for Issuing Corporate Bonds	(159)
2. Procedures for Issuing Corporate Bonds	(161)
3. Management on Corporate Bonds	(163)
4. Transfer of Corporate Bonds	(163)
5. Convertible Corporate Bonds	(163)
Section 6 Merger, Division, Bankruptcy, Dissolution and Liquidation	(164)
1. Merger of a Company	(164)
2. Division of a Company	(166)

3. Bankruptcy of a Company	(167)
4. Dissolution of a Company	(168)
Section 7 Branches of Foreign Companies	(172)
1. The Legal Status of Branches of Foreign Companies	(172)
2. The Establishment Conditions of Branches of Foreign Companies	(172)
3. Procedure for the Establishment of a Branch of a Foreign Company	(173)
4. The Rights and Obligations of Branches of Foreign Companies	(173)
Section 8 Effects on Foreign Funded Firms after the Execution of the Company Law	(174)
1. Effects on the Original Foreign Funded Firms	(174)
2. How Foreign Investors Invest and Operate in China according to the Company Law	(178)
3. Branches of a Foreign Company	(180)
4. Company Registration Ordinance	(181)
Section 9 Practice Affairs of Laws on Foreign Funded Firms	(182)
1. General Situation of the Legislation	(182)
2. International Agreements between China and Relevant Countries	(185)
3. Legal Practice of Sino-Foreign Equity Joint Venture Enterprises	(187)
4. Legal Practice of Sino-Foreign Cooperative Enterprises	(204)
5. Legal Practice of Wholly Owned Foreign Enterprises	(214)

Chapter Four Taxation Law

Section 1 General Introduction	(226)
1. Tax-Collection Authority	(226)
2. Subjects of the Tax Payment	(229)
3. Tax Types	(229)
4. Tax Rates	(230)
5. Tax Items	(230)
6. Time Limit of Tax Payment	(231)
7. Deduction and Exemption of Tax	(231)
8. Treatment in Violation of Law	(231)
Section 2 Taxes Collected by Tax Authorities	(231)
1. Turnover Taxes	(231)
2. Income Taxes	(237)
3. Resources Tax	(247)
4. Tax for Specified Aims	(248)
5. Tax Laws on Property and Conducts	(253)
6. Taxes Levied by the Customs	(255)
7. Taxes Levied by the Financial Departments	(256)
Section 3 The Administration of Taxes	(257)
1. Administrative Organizations of Tax Collection	(257)
2. Tax Administration	(258)
3. Tax Collection	(259)
4. Tax Inspection	(263)
5. Legal Responsibilities	(264)

Chapter Five Real Estate Law

Section 1 A Survey of Legislation Concerning Real Estate	
.....	(269)
1. Real Estate Laws	(269)
2. Regulations Concerning Real Estate Adopted by the State Council	(272)
3. Ordinances Concerning Real Estate	(274)
4. Regional Regulations Concerning Real Estate	(274)
5. Real Estate Policy	(275)
Section 2 Administration of Real Estate	(275)
1. Real Estate Administrative Organizations	(276)
2. Housing Property Administration	(277)
3. The Administration of Land Property	(285)
4. Real Estate Administration Concerning Foreign Elements	(293)
Section 3 Real Estate Development	(307)
1. Procedure for Real Estate Development	(307)
2. Principles and Requirements of Real Estate Development	(308)
3. Organizations of Real Estate Development and Management	(308)
Section 4 The Settlement of Real Estate Disputes	(314)
1. Methods to Settle Real Estate Disputes	(314)
2. Methods to Settle Land Disputes	(321)

Chapter Six Intellectual Property Law

Section 1 Legal Practice of Patent in China	(324)
1. General Situation of Legislation of Patent in China	(324)
2. The Scope of Patent Rights Grants	(326)
3. The Ownership of Patent Rights	(327)
4. Patentees' Rights and Obligations	(328)
5. The Procedures Concerning the Application for Patents, Examination and Approval for Patent Rights	(329)
6. Legal Protections of the Patent and Settlement of Disputes	(334)
Section 2 Legal Practice of Trademark in China	(337)
1. General Situation of Trademark Legislation in China	(337)
2. Procedure Concerning the Application for Trademark Registration	(339)
3. Rights and Obligations of the Registrant for Trademark	(341)
4. Legal Protection of the Right to Exclusive Use of a Registered Trademark	(342)
Section 3 Legal Practice of Copyright in China	(345)
1. General Situation of Copyright Legislation in China	(345)
2. Administrative Authorizations of Copyright	(345)
3. Basic Regulations of Copyright	(346)
4. Protection of Computer Software	(349)

5. Protection of Copyright and Settlement of the Disputes	(351)
---	-------

Chapter Seven Arbitration Law

Section 1 China Arbitration Law in General	(353)
1. Arbitration System	(354)
2. Law on Arbitration	(356)
Section 2 International Arbitration in China	(358)
1. Domain of Arbitration	(359)
2. Arbitration Agreement	(360)
3. Arbitrators	(360)
4. Arbitration Procedures	(362)
5. Hearing	(365)
6. Measures of Recourse	(368)
7. Foreign Arbitration Awards	(370)
8. Recognition and Enforcement where New York Convention Does Not Apply	(370)
Section 3 Domestic Arbitration	(371)
1. Arbitration Body	(371)
2. Arbitration Jurisdiction	(371)
3. Property Preservation in the Arbitration Proceedings	(372)
4. Arbitration Agreement	(372)
5. Arbitrators	(372)
6. Arbitration Proceedings	(372)
7. The Validity and Execution of the Award	(373)

Chapter Eight Litigation

Section 1 Survey of Procedure Law in China	(376)
Section 2 Litigation Organs and Jurisdiction	(377)
1. Litigation Organs	(377)
2. Jurisdiction	(381)
3. Formation of Collegial Panel and the Withdrawal System	(395)
Section 3 Scope of Accepting Civil and Economic Cases	(397)
1. Scope of Ordinary Court	(397)
2. Scope of Specialized Court	(400)
Section 4 Several Important Systems of Litigation in China	(402)
1. Participants in Proceedings	(402)
2. Evidence	(407)
3. Limitation of Action	(412)
4. Conciliation System	(414)
5. Property Preservation and Advance Execution	(416)
6. Compulsory Measures	(422)
7. Litigation Costs	(425)
Section 5 Trial Procedure for Civil and Economic Cases	(431)
1. Bringing a Lawsuit and Hearing a Case	(431)
2. Trial in Court	(433)
3. Suspension and Termination of Legal Proceedings	(438)
4. Summary Procedure	(440)
5. Procedure for the Second Instance	(440)