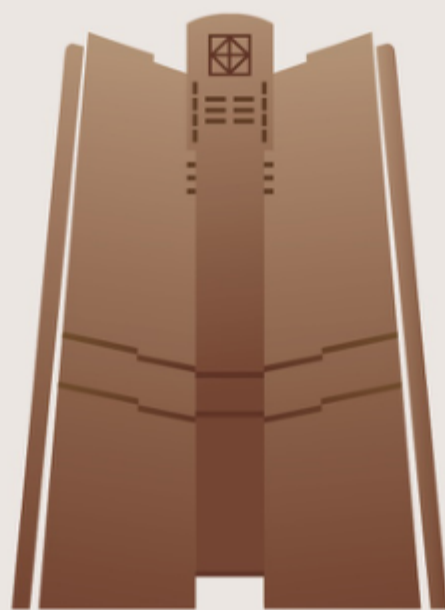



GUIDANCE and COMPLIANCE

**THE WAY
TO
CHINA'S
ENTERTAINMENT
MARKET**

SHIWEN ZHANG



 中国民主法制出版社

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PREFACE

Guidance and Compliance: The Way to China's Entertainment Market

China is a rising star in the entertainment industry. As statistics show, China has grown to be the world's second largest film market, having the largest number of screens and the third largest amount of films produced.¹ Meanwhile, China is also the world's largest TV drama producer and broadcaster.² In China's online audio-visual industry, by the end of December 2018, the number of online video (including short videos) users has reached 725 million.³ China's music industry has also obtained a huge success in recent years. The total scale of the music industry in 2018 reached RMB 374.795 billion yuan.⁴ Besides, in tourism and its related industries, the added value was RMB 4.1478 trillion yuan in 2018, accounting for 4.51% of GDP.⁵

Although the global Covid-19 pandemic has produced varying de-

¹ Cited from *Opinions on Speeding up the Construction of Cinemas and Promoting the Prosperity of the Film Market*, published by China Film Administration.

² Cited from National Radio and Television Administration.

³ Cited from *2019 China Internet Audiovisual Development Research Report*, published by China Netcasting Services Association.

⁴ Cited from *2019 China Music Industry Development Report*, published by Music Industry Promotion Committee.

⁵ Cited from National Bureau of Statistics.

degrees of adverse impacts on the entertainment industry in different countries, it has also brought many opportunities for development of the industries. Generally, fusion of the entertainment industry and the Internet has become more fruitful and closer. It is undeniable that films and TV series filming, stage performance and major sporting events have suffered from Covid-19. Yet, what should not be ignored is the strong vitality shown by Internet audio-visual program (short video, long video, live broadcast), computer games and online virtual art exhibitions under the epidemic situation of Covid-19.

As is known to all, China's entertainment industry is far from reaching the ceiling. With the development of the pan-entertainment consumer economy development model and the increasing demand for fragmented entertainment by mobile network users, the industry has ushered in a period of rapid development and the need of effective communication internationally is more pronounced. The law faithfully reflects this trend: since 2016 the focus has been on the growth of China-Foreign exchange and cooperation, the authorization, development, and protection of intellectual property. China has promulgated a series of laws, regulations, and policies, hoping to further regulate market development and activate market potential through the implementation of law. For instance, in 2019's *Regulation on the Implementation of the Foreign Investment Law of the People's Republic of China*, it is clearly stated that China will broaden the cultural industry market channels and increase the content production to better meet the needs of foreign investment. Similarly, there is a huge potential that many foreign companies are willing to take a share in the China's entertainment market.

Although China-Foreign cooperation and investment have been



unleashed on a macro level, there are still some practical difficulties in individual cases due to differences in law, compliance concepts, and language barriers. Grasping this situation as a practicing lawyer and specialist in China's entertainment law and foreign investment and financing, I set out to write this book for foreign companies, individuals, and other interested people, so they can better understand and enter China's entertainment market.

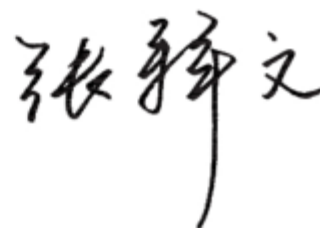
This book is probably the first attempt to systematically review the laws, regulations, and policies (as of January 1, 2020) related to the China's entertainment industry in English, to combine a large number of front-line legal service work experience, judicial precedents, etc., and to present a more systematic and pragmatic presentation of the China's entertainment market and related laws. It is to your advantage to devour this work in its entirety, for you will undoubtedly have an additional edge when exploring the entertainment market in China. This book only selects six fields in the entertainment industry for analysis: film, television, online audio-visual, stage performance, music, and advertising. The topics of e-commerce livestreaming, influencer marketing, art culture, sports, and video games have not been covered for the time being; these parts may also be compiled in the next installment of this book in the future.

In the process of writing and revising this book, I have read a lot of industry data and literature. Here, I would like to thank all the statisticians and authors of the cited data. I also would like to thank Hop Dang, Ramon Huang who have led me to this path and encourage me to go further.

At the same time, I would like to express my sincere gratitude to

Chenyi Sun, William Chappel, and team members Jennifer Shi, Jane Mao, and Key Wu for their wholehearted efforts to this book, and my family, and my dear friends Heinz Holba, Yingzhi Bi, Alban Renaud and the firm I work in, for their strong support for my work. And you, who takes an interest in this book and spend your time reading.

Shiwen Zhang



June, 2020

ACKNOWLEDGMENTS

Storytelling is a profession, but nevertheless, storytelling has a long history in tradition, culture and entertainment. However, like everything else, storytelling has its rules, which rules can only be followed if there's a legal guideline. It is the work of the lawyer/ entertainment attorney who helps to find a mutual ground and lay out the legal "playground", where the basics of any strong professional relationship can gain potential to be transformed into success. If these instructions are followed correctly, you hit the milestones which will lead to the achievement of your goals.

In the entertainment industry, these milestones could be anything. Including but not limited to, projects, production stages, marketing strategies, translations, creative perspectives, execution, staff hiring, talent hiring and so on. Anything that you could imagine a small town to take, since as many of the inspirational quotes state, "it takes a small town..." to create, produce and innovate.

Shiwen does it all. Her profession uniquely combines creative approach with production elements, production elements with innovation, no matter it is about the language (legal terminology, jurisdictions), culture (rules & regulations, criteria) or tradition (expectations & needs). Shiwen teaches and defines them all by giving fundamental assistance to any project and team to build a fruitful and long-lasting business relationship.

It would be difficult for me to explain in a few words what Shiwen's craft is about, but fortunately there is a book you can read which will get you going in deal-making. Don't worry if it seems too much at the beginning to take, the book will help you to make the journey of negotiation an easier and more comfortable experience, as you explore new angles to understand the nature of the entertainment business.

Because the world of entertainment is constantly changing and ever evolving, it is your advantage to understand how you can benefit from making deals and expand your business at foreign grounds, international markets with international creators, producers and businesses.

The knowledge you will gain by being able to connect a huge market like China to the rest of the world or vice versa, is powerful and inevitable. As producers and dedicated storytellers, it is our job to help those with a creative voice and talents to reach and influence audiences worldwide. It is our job to build strategic new ventures and put stories in a form where they can be delivered as film, TV or digital content. It is our job to entertain and we can rely on Shiwen's profession for navigation through language barriers, traditional requirements and cultural differences by collaboration.

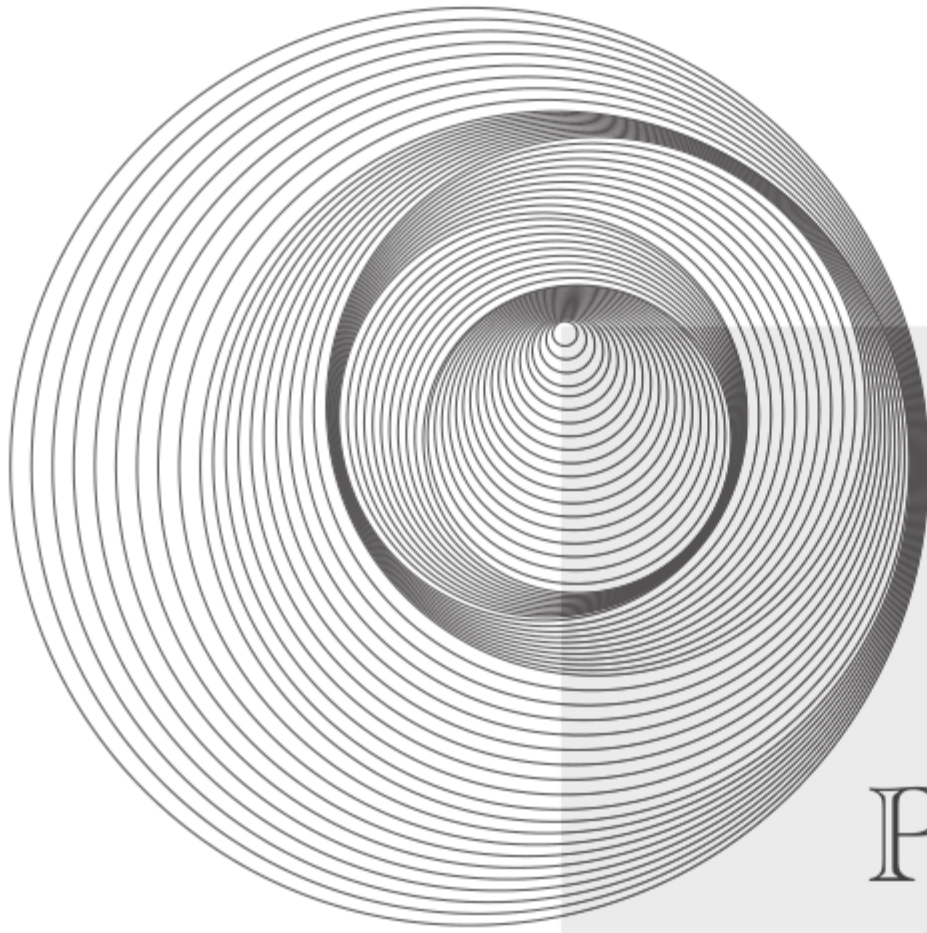
Thank you Shiwen for your support and guidance.

Sincerely,
Kinga Sarah Smith

Kinga Sarah Smith, CEO at Reverse Engineering Studios Inc., Producer of Alien Isolation-Digital series in association with 20th Century Fox, Executive Producer of Lone Survivor, 2Guns, November Man, and Non-Executive creative producer at Sony Pictures TV.

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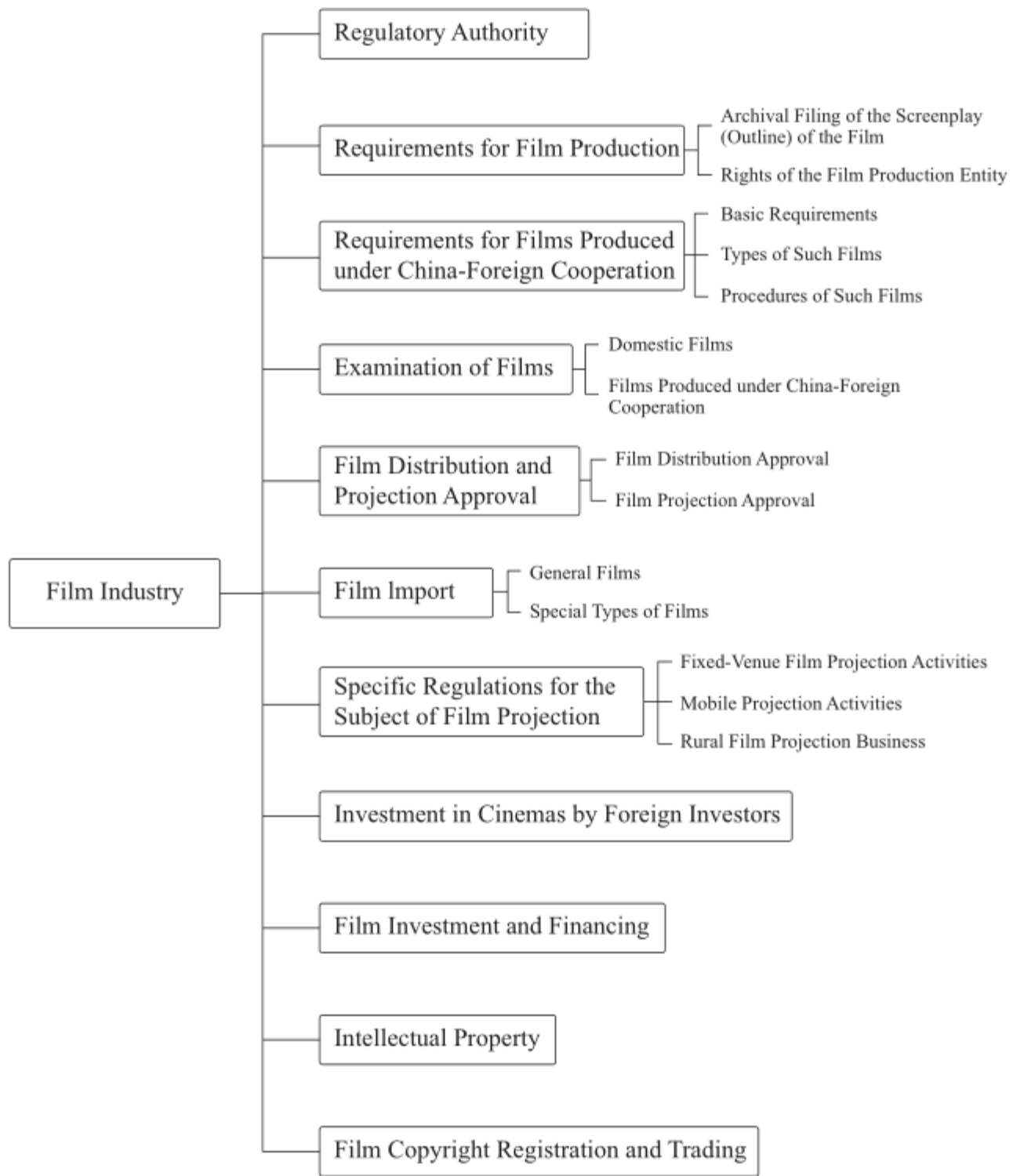
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PART 1



Film Industry



Picture 1 Structure of This Chapter



The *Report on the Development of Global Film Industry (2019)* released on August 29, 2019 pointed out that in recent years, the Chinese film industry has developed rapidly. In 2018, the total number of Chinese movie screens reached 60079, an increase of 18% year-on-year. The growth rate of the number of screens has exceeded that of the box office (9%) and the number of moviegoers (6%) at the same time period. According to data from the China Film Administration, the total box office nationwide in 2018 was RMB 60.976 billion yuan, and the number of moviegoers in urban theaters reached 1.716 billion. According to the *Opinions on Accelerating the Construction of Movie Theaters to Promote the Prosperity and Development of the Film Market* issued by the China Film Administration on December 11, 2018, China has become the world's second largest movie market, with the number of movie screens ranking first stably in the world, and the number of moviegoers constantly rising. According to the statistics of the "Endata" website (<http://www.endata.com.cn>), the cumulative box office data for the quarter from September 13, 2019 to December 11, 2019 is RMB 15.0571 billion yuan and has exceeded the North American box office in the latest quarter, which once again confirms the value of the Chinese film industry.

The film industry is the largest industry in the field of culture and entertainment in terms of economic aggregates and attention, and it is also the regulatory focus of China's entertainment law. The entire process of a movie project from investment, project establishment, filming, examination to distribution, projection, import and export, and participation involves the following laws and policies: *Copyright Law of the People's Republic of China* (Order No. 26 of the President) amended by Standing Committee of the National People's Congress on February 26, 2010,

which came into force on April 1, 2010, *Film Industry Promotion Law of the People's Republic of China* (Order No. 54 of the President) issued by Standing Committee of the National People's Congress on November 7, 2016, which came into force on March 1, 2017, *Regulations on the Administration of Movies* (Order No. 342 of the State Council of the People's Republic of China) issued by State Council on December 25, 2001, which came into force on February 1, 2002, *Interim Provisions on Operation Qualification Access for Movie Enterprises* (Order No. 3 of the State Administration of Press, Publication, Radio, Film and Television) amended by the former State Administration of Press, Publication, Radio, Film and Television on August 28, 2015, which came into force at the same time, *The Provisional Regulation on Investment in Cinemas by Foreign Investors* (Order No. 3 of State Admission of Press, Publication, Film and Television), which was amended by the former State Admission of Press, Publication, Film and Television and took effect on August 28, 2015, *The Provisions on the Administration of Chinese-Foreign Cooperative Production of Films* (Order No. 13 of the State Administration of Press, Publication, Radio, Film and Television) amended by the former State Administration of Press, Publication, Radio, Film and Television on December 11, 2017, which came into force at the same time, *Provisions on the Archival Filing of Film Scripts (Abstracts) and the Administration of Films* (Order No. 13 of the State Administration of Press, Publication, Radio, Film and Television) amended by the former State Administration of Press, Publication, Radio, Film and Television on December 11, 2017, which came into force at the same time, *Regulations on the Employment of Overseas Creator to Participate in the Production of Domestic Films* (No. 1451[2001] of the State Administration of Radio, Film and Television) issued by the State Administration of Radio,



Film and Television (now reformed into the China Film Administration) on December 13, 2001, which came into force on January 1, 2002, etc. This chapter will focus on the relevant legal practices of the Chinese film industry.

The Chinese film industry includes the production, import, export, distribution, and projection of films such as feature films, documentary films, popular science films, animation, and special topic films. It also involves investment and financing, and copyright transactions. China applies a licensing system with respect to the production, import, export, distribution, and projection of movies and public projection of films. No entity or individual shall, without permission, be engaged in the activities of production, import, export, distribution or projection of films, nor shall it/he import, export, distribute or project the films for which the license has not been obtained.

China encourages legal persons and other organizations to make cross-border investments through Chinese-foreign cooperative production of films and other methods, and guarantees their reasonable use of foreign exchange for foreign trade, cross-border financing, and investment in accordance with the law. It is worth noting that the *Special Administrative Measures (Negative List) for the Access of Foreign Investment (2019)* canceled the rule that “movie theater construction and operation must be controlled by the Chinese”, and the “*Notice by the State Council of Launching the Pilot Program for the Reform of ‘Separating Operating Permits from Business Licenses’ in All Pilot Free Trade Zones*” stipulates that in the free trade zone, the “Permit for Film Projection Business” for the approval of the establishment of film projection entities and the establishment of foreign-invested movie theaters shall implement the notification

commitment. If the applicant promises that the conditions are met, an approval decision will be made on the spot after the formal examination. This means that under the Chinese entertainment law, the government will further open up the film market to the outside world.

I. Regulatory Authority

Laws and regulations related to the film industry stipulate that the film administrative department of the State Council shall be responsible for the film work across the country; and the film administrative departments of the local people's governments at or above the county level shall be responsible for the film work within their respective administrative regions.

According to the *Plan of Deepening the Reform of the Institution of the Party and the State* issued by the CPC Central Committee, which took effect on March 21, 2018, the film management responsibilities of the former State Administration of Press, Publication, Radio, Film and Television were assigned to the Central Propaganda Department, which uniformly manages the film industry, highlighting the film's special status in publicity. The plaque of the China Film Administration shall be hung at the Publicity Department of the CPC Central Committee. After the adjustment, the main duties of the Central Propaganda Department regarding film management are to manage film administrative affairs, guide and supervise film production, distribution, and projection, organize examination of film content, guide and coordinate major national film activities, and undertake foreign cooperation of film making, international cooperation and communication of input and output films.



II. Requirements for Film Production

The law systematically regulates the qualifications of various subjects engaged in film activities. The *Regulations on the Administration of Movies* that came into effect on February 1, 2002, stipulates that before obtaining a business license, the application for the establishment of a film production entity shall be examined and consented to by the administrative department for film under the people's government of the province, autonomous region or municipality directly under the Central Government where the applicant is located before submitted to the administrative department for film under the State Council for examination and approval. In the past, it was necessary for an entity other than film production entities to obtain a one-off "License for Producing A Film" in advance. Only after filming more than two films, the entity can apply for a License for Producing Movies that can be used repeatedly. The *Film Industry Promotion Law* issued by the Standing Committee of the National People's Congress on November 7, 2016, which came into force on March 1, 2017 canceled the administrative examination and approval of film production entities and the approval of the License for Producing A Film. The requirement of shooting a film is that the outline of the screenplay or the screenplay conforms to regulations, but the projection still needs to obtain a Permit for Public Projection of the Film. Before actually filming a movie, a legal person or any other organization shall directly file the outline of the screenplay with the film administrative department of the State Council or the film administrative department of the people's government of the province, autonomous region, or municipality directly under the Central Government, and obtain the archival filing certifi-