

# China Legal Report\*

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## **Adoption of General Rules on Civil Law**

### **I. Introduction**

In the People's Republic of China, the adoption of a Civil Law Code was initiated four times since 1949. On 1 June 2015, the compilation of Civil Law Code was re-scheduled in the Legislation Plan of the Standing Committee of the 12th National People's Congress ("Legislation Plan"). The Legislation Plan provides that the Civil Law Code shall be implemented in two stages: At first, General Rules on Civil Law shall be adopted during the year 2017; in a second stage, the different chapters of the Civil Law Code shall be adopted by the year 2020.

At the Fifth Session of the 12th National People's Congress, the General Rules on Civil Law of the People's Republic of China ("General Rules on Civil Law") have been adopted in accordance with the Legislation Plan. The General Rules on Civil Law shall come into force as of 1 October 2017.

The adoption of the General Rules on Civil Law will not provide a fully new set of private law. The General Rules on Civil Law shall ensure a "better compilation" of all the pre-existing private law rules. The General Rules on Civil Law promulgate general rules providing, among others, general provisions in respect of legal persons, non-incorporated organizations, agency, liability, and statute of limitation.

Meanwhile, the General Principles of Civil Law that were adopted in the year 1986, will not be repealed with the adoption of the General Rules of Civil Law. In the event of conflicts between these two legislative acts, however, the General Rules on Civil Law shall prevail.

## II. Comparison with the General Principles

### 1. Statute of Limitation

The General Rules on Civil Law extend the statute of limitation from 2 to 3 years. The new statute of limitation of the General Rules applies, unless special laws provide other statute of limitation. E.g. the limitation period for claims against the carrier with regard to the carriage of goods by sea is one year.

### 2. Time bars for legal actions

The limitation of action shall be calculated from the date on which the cause of action has occurred to the party entitled to claim when he would be deemed to have known about the cause of action.

An absolute time bar of 20 years shall apply. E.g. if a tort occurred more than 20 years ago, the People's Court shall not hear that claim. Under "special circumstances", however, the People's Court may decide to extend the limitation of action; the "Opinions of the Supreme People's Court on Certain Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (Trial)" provide that if an applicant failed to exercise its right to claim within the statutory period of limitation of action due to impersonal obstacles, the applicant may fall under such "special circumstances".

### 3. Legal Persons and Special Legal Person

The General Rules on Civil Law newly classify the legal persons into three categories: (1) for-profit legal persons, (2) non-profit legal persons, (3) special legal persons. In addition, the General Rules of Civil Law also adopt an unincorporated organization which is an organization without the status of legal person, but that shall be able to conduct legal activities on its own behalf. The unincorporated organizations include enterprises with sole proprietorship, partnership enterprises and professional service agencies without the status of legal person.

(1) A For-profit Legal Person

A for-profit legal person means a legal person established for the purposes of making profits and distributing profits to its shareholders and other investors. For-profit legal persons include, among others, limited liability companies, joint stock companies and other enterprises.

(2) A Non-profit Legal Person

A non-profit legal person means a legal person which is established for public benefit purposes or other non-profit purposes, and does not distribute the profits obtained to its investors, founders or members. Non-profit legal persons include, among others, public institutions, social organizations, foundations and social service agencies.

(3) A Special Legal Person

The legal persons of government organs, the legal persons of rural collective economic organizations, the legal persons of cooperative economic organizations in urban and rural areas, and the legal persons of grassroots self-governing people's organizations shall be special legal persons. The special legal persons have legal personality and may engage in legal activities on their own behalf.

### **III. New Amendments**

1. Green Principle

The General Rules on Civil Law will newly provide the “Green Principle” as a fundamental legal principle. As a fundamental principle, the Green Principle shall be of the same value as the principles of equity, voluntariness, fairness, good faith and lawfulness. Any legal act shall always be conducted by aiming to save resources and protect ecologic environment (sustainability). The Green Principle does not explicitly address the consequences of the legal acts violating this new basic principle. Special laws shall regulate the details, such as the environmental protection.

The Green Principle in the General Rules aims, however, to combine the economic development and environmental protection, and judges shall consider it in their future decisions.

## 2. Custom (Common law)

The General Rules on Civil Law provide that, disputes shall be resolved in accordance with the law; or where the law is silent, custom may apply. Custom, however, shall not be contrary to public order and good morals.

It is the first time that custom were set out in private law, and therefore became a mandatory rule.

## 3. Protection of Personal Information

Compared to the General Principles, apart from the protection of natural liberty, human dignity and the right of life, the right of personal information has been added in the General Rules on Civil Law.

The General Rules on Civil Law explicitly protect the personal information of individuals. According to the General Rules on Civil Law, any organization or individual that needs to obtain personal information of others shall obtain such information pursuant to the law and ensure information security, and may neither illegally collect, use, process or transmit the personal information of others, nor illegally trade, provide or disclose the personal information of others.

The General Rules on Civil Law also protect the data. The General Rules on Civil Law do not specify, however, what kind of data shall be protected and how to protect such data.

## 4. Tort Liability

The Tort Liability Law of the People's Republic of China provides that, if a person suffers damage in the course of preventing or deterring the infringement of civil rights, the tortfeasor shall be liable.

The General Rules on Civil Law further provide that if anyone suffers loss or injury as a result of protecting the civil rights and interests of others, the beneficiary may have to provide appropriate compensation to the injured party under certain conditions; if there is no tortfeasor or the tortfeasor escapes, or cannot afford the indemnification, the injured party may claim compensation from the beneficiary of the protected civil rights or interests. The General Rules on Civil Law do not stipulate whether this rule will also apply in the event of damage caused by intentional act and gross negligent conduct.

In addition, the General Rules on Civil Law explicitly stipulate that the name, portrait, reputation or honor of “a hero” shall be protected, while no legal definition of “hero” is provided. By all means, the new rule shall avoid the general concerns of people to engage in emergency situations, by supporting the “hero” to save other people without risking tort claims.

#### **IV. Conclusion**

The adoption of General Rules on Civil Law is the first significant step of the compilation of a Chinese Civil Law Code. The revision of the different chapters of the future Civil Law Code, e.g. Property Law, Contract Law, Tort Liability Law etc. is, however, on the legislative agenda again. The Civil Law Code shall be adopted and promulgated by the 13th National People’s Congress.

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