
The Making of a Civil Code in China

Promises and Perils of a New Civil Law

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The Civil Code of the People's Republic of China (the Code) was enacted on May 28, 2020, and became effective on January 1, 2021, as the first civil code in Communist China.¹ Half a century of codification efforts finally resulted in this much-anticipated code. It utilizes state-of-the-art codification techniques and presents a number of innovative features unique to China.

In its concise 1,260 articles, the Code is divided into seven books: General Provisions, Property Rights, Contracts, Personality Rights, Marriage and Family, Inheritance, and Tort Liabilities. In a break with civilian traditions, the Code divides obligations into contracts and torts,² and it absorbs the law of unjust enrichment into the book on contracts as quasi-contracts.³ Moreover, a book on the law of personality stands on its own and includes an enumerated list of personality rights protected by Chinese law.⁴ These articles on personality rights focus on privacy and data protection in an effort to keep the Chinese civil law up to date so that it can tackle the legal challenges posed by the advancement of technology.

Much progress has been made with the adoption of the Code, but there are problems that need to be addressed for this civil code to be ultimately successful. Some of these problems come from the tensions between the rise of private law and the dominant state sector, the

¹ “中华人民共和国主席令 第四十五号” [“Order of the President of the People's Republic of China No. 45”] (signed by Xi Jinping, President of the People's Republic of China, May 28, 2020) (2020) *Standing Comm. Nat'l People's Cong. Gaz.* (Civil Code Special Issue) 1.

² See “中华人民共和国民法典” [“Civil Code of the People's Republic of China”] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), pts. III, VII (2020) *Standing Comm. Nat'l People's Cong. Gaz.* (Civil Code Special Issue) 2.

³ See *ibid.*, arts. 985–88.

⁴ See *ibid.*, arts. 989–1039.

contradictions among legal transplants, the incompatibility between doctrinal innovations and the existing structure, and the clash between distributive justice – the foundation of Chinese moral philosophy – and commutative justice – the foundation of Western private law. I argue that solutions to some persistent problems require structural change in the Chinese economy, doctrinal innovation and clarification, and conscientious acceptance of a law that is based upon philosophical ideas that differ from traditional Chinese moral philosophy.

1.1 Introduction: Some Persistent Problems

China is certainly the last major civilian jurisdiction to adopt a civil code. In 1991, James Gordley predicted that Western private law would “govern nearly the entire world” when China adopts its civil code.⁵ That statement was true. Chinese private law has been Westernized for a long time, yet China did not have a civil code until recently. In the year 2020, after seventy years of communism, China finally enacted a civil code. In my view, the delay does not reflect a lack of diligence on the part of the legislature and legal scholars but rather arose from some fundamental problems that needed to be resolved before a coherent and functional code could be drafted. Though the pre-communist Civil Code of the Republic of China (ROC) was a modern and sophisticated one, it was based on private ownership and a capitalist market.⁶ When a pure socialist regime was established in 1949, the legitimacy of the ROC’s Code disappeared.⁷ However, after the economic reform of the late 1970s, a state-led capitalist economy reintroduced a socialist market

⁵ James Gordley, *The Philosophical Origins of Modern Contract Doctrine* (Oxford: Oxford University Press, 1991), p. 1.

⁶ The Nationalist government of China promulgated the Civil Code of the Republic of China in 1929, which was modeled on the German Civil Code and included five books: General Principles, Obligations, Property, Family, and Successions. Hao Jiang, “Chinese Tort Law: Between Tradition and Transplants,” in M. Bussani and A. Sebok (eds.), *Comparative Tort Law: Global Perspectives* (Cheltenham: Edward Elgar, 2015), pp. 385, 392. This civil code is still in use in Taiwan.

⁷ According to socialist legal theories, ownership of the means of production was exclusively in the hands of the State. Even means of subsistence, the resources necessary for people’s daily consumption, could not be traded on the market. See “中央政法干部学校民法教研室” [“Civ. L. Teaching & Rsch. Section, Cent. Pol. & Legal Cadres’ Sch.”], “中华人民共和国民法基本问题” [“Basic Issues of the Civil Law of the People’s Republic of China”] (1958) 26, 129.

economy and, most importantly, private ownership.⁸ Nevertheless, additional difficulties came to light in using private law to regulate the life of private citizens.

First, there is a theoretical difficulty in applying Western private law to a partially state-owned economy. According to the ‘will’ theories of explaining legal doctrine that were developed in the West in the nineteenth century, a party was bound by what they willed and only what they willed.⁹ That theory was hard to reconcile with the long-standing idea that contracts should be fair – to use the language of Aristotle, that they should do commutative justice – and it created theoretical difficulties in explaining private law.¹⁰ When this theoretical foundation was borrowed in China, the problems were exacerbated, especially when state ownership was involved. Courts are often misled by will theories and refuse to examine whether a contractual transaction was in fact an effort to strip state assets.¹¹ This problem might be exacerbated further by a progressive structural change adopted by the Code that significantly modernizes Chinese private law. Following the German tradition, the Code unifies the rules governing the voidability of contracts and of civil juristic acts, which were previously in conflict, under one set of rules in the General Provisions of the Code that deals with all civil juristic acts, including contracts.¹² Moreover, the Code no longer treats state interests any differently from private interests and eliminates the power of the State to declare the nullity of a contract.¹³

⁸ See discussion in Section 1.3.

⁹ See, e.g., James Gordley, *Foundations of Private Law: Property, Tort, Contract, Unjust Enrichment* (New York: Oxford University Press, 2006), p. 14; Randy E. Barnett, “A Consent Theory of Contract” (1986) 86 *Columbia Law Review* 269, 272 (explaining that a contract is enforceable because the promisor has chosen to commit himself). For a historical development of will theories, see James Gordley and Hao Jiang, “Contract as Voluntary Commutative Justice” (2020) *Michigan State Law Review* 725, 728–37.

¹⁰ Aristotle saw contracts as voluntary acts of commutative justice and torts as involuntary acts of commutative justice. See Aristotle, *Nicomachean Ethics* (Terence Irwin trans., 2nd ed.) (c. 384 BCE) (Indianapolis: Hackett, 1999), pp. 72–73.

¹¹ See generally Hao Jiang, “Freedom of Contract under State Supervision” (2016) 7 *George Mason Journal of International Commercial Law*, 202 (demonstrating the incoherence arising from China’s adoption of Western contract theory).

¹² See “中华人民共和国民法典” [“Civil Code of the People’s Republic of China”] (promulgated by the Nat’l People’s Cong., May 28, 2020, effective January 1, 2021), arts. 143–57 (2020) *Standing Comm. Nat’l People’s Cong. Gaz.* (Civil Code Special Issue) 2; see also *ibid.*, art. 133 (defining “civil juristic act”).

¹³ See “中华人民共和国合同法” [“Contract Law of People’s Republic of China”] (promulgated by the Nat’l People’s Congress, March 15 1999, effective October 1, 1999), art. 52

Furthermore, conflicting legal transplants need to be harmonized and clear rules established in order to minimize the danger of contradictions within the Code. For example, courts seem to be at odds as to whether recovery for pure economic loss is permitted by Chinese tort law. Before the enactment of the Code, article 2 of the Chinese Tort Liability Law (TLL), like section 823 of the German Civil Code, enumerated the rights protected in tort and excluded rights that are not rights of person and property.¹⁴ As we shall see, German courts have concluded that a plaintiff cannot recover from pure economic loss.¹⁵ Article 6 of the TLL, on the other hand, resembled articles 1240 and 1241 of the French Civil Code, which permit recovery so long as harm resulted.¹⁶ French courts have held that a plaintiff can recover for pure economic loss.¹⁷ The result in China was confusion and inconsistency in judicial decisions.¹⁸ It is my impression that most judges have not faced the question of whether there should be liability for pure economic loss. They either do not see why the law should only protect rights of property and person or consider economic rights part of property rights. Judges who do face the question are unsure whether economic rights are protected by law.¹⁹

Following China's enactment of the Code, it looks like the French view has prevailed among the drafters, as evidenced by the new article

(1999) *Standing Comm. Nat'l People's Cong. Gaz.* (repealed 2021) 104; “中华人民共和国民法通则” [“General Principles of the Civil Law of the People's Republic of China”] (promulgated by the Nat'l People's Congress, April 12, 1986, effective January 1, 1987), art. 58 (repealed 2021), www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm [https://perma.cc/Y6X6-5N54]; see text accompanying notes 37–39.

¹⁴ See “中华人民共和国侵权责任法” [“Tort Liability Law of the People's Republic of China”] (promulgated by the Standing Comm. Nat'l People's Cong., December 26, 2009, effective July 1, 2010), art. 2 (2010) *Standing Comm. Nat'l People's Cong. Gaz.* 4 (repealed 2021); Bürgerliches Gesetzbuch [BGB] [Civil Code], § 823, www.gesetze-im-internet.de/bgb/_823.html (German).

¹⁵ See discussion in Section 1.4.5.

¹⁶ Tort Law of the People's Republic of China, art. 6; code civil [C. civ.] [Civil Code] arts. 1240–41 (French).

¹⁷ See, e.g., Cour de cassation [Cass.] [supreme court for judicial matters] 2e civ., June 12, 1987, Bull. civ. II, No. 128 (French) (recognizing the right to recovery for pure economic loss but denying recovery because the damage was too uncertain); Cass. 2e civ., February 21, 1979, Bull. civ. II, No. 56 (French).

¹⁸ See discussion in Section 1.4.5.

¹⁹ For example, one judge wrongly noted that pure economic loss is a common law concept not protected by Chinese law. “贺欣、萍乡市恒泰行房地产咨询评估有限公司房地产价格评估合同纠纷二审民事判决书” [“He Xin, Pingxiang City Hengtaihang Real Estate Consulting Appraisal Co., Ltd., Real Estate Price Appraisal Contract Disps., Civ. Judgment of Second Instance”] (2017).

1165.²⁰ Supposedly, this clear contradiction in the TLL ended as of 2021 when that law was superseded by the Code.²¹ However, this significant change was not mentioned in either legislative or academic commentaries before the official passage of the Code. It was not even debated among academics. Indeed, two of the drafters have different opinions as to whether article 1165 has changed the law. Zhou Youjun, one of the drafters, is of the view that the law has not changed and that civil interests are exactly the interests previously listed in article 2 of the TLL.²² Meng Qiang, the secretary of the drafting committee, stated in an email to the author that civil interests are to be broadly interpreted and that pure economic loss will receive more protection with time.²³ Clearly, the two positions are contradictory. There is no doubt that this barely noticed but fundamental change in Chinese tort law will continue to create significant confusion in practice.

Additionally, on a deeper level, philosophical ideals of private law that suit China need to be compatible with doctrinal rules. Western private law is based on the fundamental idea that justice in a dispute between private parties – as Aristotle would say, commutative justice – is distinct from the fairness of the distribution of wealth in society – as Aristotle would say, distributive justice.²⁴ Nevertheless, a concern for the distribution of wealth is supposed to be at the foundation of the Chinese legal system. Courts need clearer guidance as to how to reconcile such a direct conflict between the two. The prime example is a basis for liability in tort that is recognized in China but not in the West: what may be called

²⁰ “中华人民共和国民法典” [“Civil Code of the People’s Republic of China”] (promulgated by the Nat’l People’s Cong., May 28, 2020, effective January 1, 2021), art. 1165 (2020) *Standing Comm. Nat’l People’s Cong. Gaz.* (Civil Code Special Issue) 2 (“The actor infringing upon civil rights and interests of others by fault and causing damage shall assume tort liability.”).

²¹ See *ibid.*, art. 1260 (repealing the legal predecessors to the Code, including the TLL, when the Code took effect on January 1, 2021).

²² Zhou Youjun (周友军), “民法典侵权责任编的制度发展” [“The Institutional Development of the Civil Code Book on Tort Liability”]; (微信: 网络法前沿) [WeChat: Frontiers Cyber L.] (June 2, 2020), <https://mp.weixin.qq.com/s/dKpr6wAwqbZwl3C1KWQNTQ> [<https://perma.cc/E966-PP9X>].

²³ Email from Meng Qiang, Professor of Law, Beijing Inst. of Tech., to author (June 11, 2020, 4:21 a.m.) (on file with author) [hereinafter Email from Meng Qiang, June 11]; Email from Meng Qiang, Professor of L., Beijing Inst. of Tech., to author (June 6, 2020, 11:06 p.m.) (on file with author).

²⁴ See Aristotle, *Nicomachean Ethics*, pp. 71–74.

“liability in equity.”²⁵ According to the doctrine of liability in equity, once harm is done, the party that caused it is partially liable even though he was not at fault, provided that he is in a financial position to pay.²⁶ Whether to impose liability, however, rests at the discretion of Chinese judges.²⁷ This rule is not easy to square with the traditional grounds for liability in the West or with the idea that private disputes concern only commutative justice.

Moreover, doctrinal innovations can be a double-edged sword that need to be more carefully crafted to avoid conflicting or counterproductive results. The adoption of a book on personality rights is a prime example. Its adoption was based on the view that it is an independent set of laws that deserves its own space.²⁸ Nevertheless, when seeking relief, it only makes sense that the general provisions of tort law apply.²⁹ This situation raises several practical difficulties for parties seeking relief. If both tort law and personality rights law elements have to be met before a party can bring an action under personality rights law, it is unclear whether the innovation is actually making it easier to protect personality rights.

This chapter uses historical and comparative insights to showcase the tensions between the new Code and these pre-existing and persistent problems. As we shall see, the root cause of these persistent problems comes not only from legislative techniques but rather mostly from the Chinese economic structure and state ownership, conflicts between distributive justice – the foundation of Chinese moral philosophy – and commutative justice – the foundation of Western private law – and from the compatibility issues in legal transplants.

1.2 Some History

In 1949, when the People’s Republic of China was founded following World War II and the Chinese Civil War, the Civil Code of the ROC was

²⁵ See Civil Code of the People’s Republic of China, art. 1186 (“If the damage is through no fault of both the victim and the tortfeasor, the loss may be borne by both parties according to the law.”).

²⁶ For a detailed discussion, see Section 1.5.1.

²⁷ Wang Liming (王利明), Zhou Youjun (周友军), and Gao Shengping (高圣平), 中国侵权责任法教程 [Textbook on the Tort Liability Law of China] (Beijing: 人民法院出版社, 2010), p. 167.

²⁸ See discussion in Section 1.4.1.

²⁹ This is a position that is endorsed by one of the drafters, Meng Qiang. See Email from Meng Qiang, June 11.

abolished along with the other codes and laws of the ROC. Massive nationalization of private ownership and the use of central planning to replace a private market took place in the 1950s.³⁰ Afterward, private ownership of the means of production was eliminated.³¹ When private ownership was denied, it became hard to track the development of private law, and many would argue that the first thirty years of communist China was a lawless era in private law.³²

As private ownership lost its legitimacy, it became hard to justify the existence of property law and tort law. Nevertheless, contracts and contract law could still exist to regulate the contractual dealings between government agencies and state-owned enterprises (SOEs).³³ Contracts were only allowed between government agencies and SOEs and for the sole purpose of implementing state economic policies and directives.³⁴ Such activities were regulated by governmental regulations rather than statutes. All economic activities undertaken with the motive of making a profit were deemed illegal.³⁵ As a result, the contracting process was heavily regulated, and little autonomy was left to the contracting parties.³⁶ State-owned enterprises were instructed to enter into a contract with an assigned counterpart on terms stipulated by the State.³⁷ They did not have an independent budget and were deprived of the autonomy to retain any profit.³⁸ As a result, no official law (neither statutes nor case law) dealing with private law was in place until the economic reform at the end of the 1970s. Thereafter, contractual transactions were regulated by different bodies of statutes depending on the identity of the parties

³⁰ For the history and economic logic in establishing state-owned enterprises and massive nationalization of the economy, see Justin Yifu Lin et al., *State-Owned Enterprise Reform in China* (Hong Kong: Chinese University of Hong Kong Press, 2002), pp. 20–28.

³¹ See *ibid.*

³² Jiang, “Freedom of Contract under State Supervision,” pp. 215–23.

³³ “机关、国营企业、合作社签订合同契约暂行办法” [“Interim Measures for the Signing of Contracts by Government Agencies, State-Owned Enterprises, and Cooperatives”] (promulgated by the Fin. & Econ. Comm. Cent. People’s Gov’t Admin. Council, September 27, 1950, effective September 27, 1950), art. 1, CLI4.159965 (<http://PKULaw.com>).

³⁴ See *ibid.* (stating that the purpose of the law is to facilitate business transactions between government agencies, state-owned enterprises, and village collectives to prevent unfaithful conduct that causes loss to a party and impairs the planned economy).

³⁵ See Jiang, “Freedom of Contract under State Supervision,” pp. 235–38 (explaining that profiteering was deemed an illegitimate contracting goal).

³⁶ See *ibid.*, pp. 218–19.

³⁷ *Ibid.*

³⁸ *Ibid.*

(domestic or foreign) and the types of transactions (technological or economic).³⁹ In 1986, legislation similar to a civil code with the title General Principles of Civil Law was adopted.⁴⁰ It supplied a framework for civil law in modern China, providing basic rules of property law, contract law, tort law, and unjust enrichment in only 156 articles.⁴¹ Apparently, the coverage was not complete and many detailed rules were needed for a civil code of proper length.

Several failed attempts to codify Chinese civil law led to a piecemeal approach. Each book of the civil code was to be enacted separately, and a final codification ensured the consistency and coherence of the code. For example, Contract Law was enacted in 1999 to replace the three separate contract law statutes,⁴² Property Law in 2007,⁴³ and Tort Liability Law in 2009.⁴⁴ Lastly, the General Provisions of Civil Law, now the first book of the Code, was enacted in 2017.⁴⁵ A draft civil code was released in

³⁹ The three separate contract law statutes were Economic Contract Law (1981), Foreign Economic Contract Law (1985), and Technology Contract Law (1987). “中华人民共和国经济合同法” [“Economic Contract Law of the People’s Republic of China”] (promulgated by the Nat’l People’s Cong., December 13, 1981, effective July 1, 1982) (repealed 1999), <http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053738.html> [https://perma.cc/8AE5-2MRK]; “中华人民共和国涉外经济合同法” [“Law of the People’s Republic of China on Economic Contracts Involving Foreign Interests”] (promulgated by the Standing Comm. Nat’l People’s Cong., March 21, 1985, effective July 1, 1985) (repealed 1999), www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4455.htm [https://perma.cc/QHG4-CXWH]; “中华人民共和国技术合同法” [“Law of the People’s Republic of China on Technology Contracts”] (promulgated by the Standing Comm. Nat’l People’s Cong., June 23, 1987, effective November 1, 1987) (repealed 1999), www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4484.htm [https://perma.cc/782B-DHMM].

⁴⁰ “中华人民共和国民法通则” [“General Principles of the Civil Law of the People’s Republic of China”] (promulgated by the Nat’l People’s Congress, April 12, 1986, effective January 1, 1987) (repealed 2021), www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm [https://perma.cc/Y6X6-5N54].

⁴¹ See *ibid.*

⁴² “中华人民共和国合同法” [“Contract Law of People’s Republic of China”] (promulgated by the Nat’l People’s Congress, March 15, 1999, effective October 1, 1999) (1999) *Standing Comm. Nat’l People’s Cong. Gaz.* 104 (repealed 2021).

⁴³ “中华人民共和国物权法” [“Property Law of the People’s Republic of China”] (promulgated by the Nat’l People’s Congress, March 16, 2007, effective October 1, 2007) (2007) *Standing Comm. Nat’l People’s Cong. Gaz.* 291 (repealed 2021).

⁴⁴ “中华人民共和国侵权责任法” [“Tort Liability Law of the People’s Republic of China”] (promulgated by the Standing Comm. Nat’l People’s Cong., December 26, 2009, effective July 1, 2010) (2010) *Standing Comm. Nat’l People’s Cong. Gaz.* 4 (repealed 2021).

⁴⁵ “中华人民共和国民法总则” [“General Provisions of the Civil Law of the People’s Republic of China”] (promulgated by the Nat’l People’s Congress, March 15, 2017, effective October 1, 2017) (2017) *Standing Comm. Nat’l People’s Cong. Gaz.* 191 (repealed 2021).

December 2019 and was subject to extensive public, academic, and legislative debate prior to its official enactment on May 28, 2020.⁴⁶

1.3 Legitimizing Private Law

In my view, the single most important feature of the Code is its effort to legitimize private law. For the first time in the history of communist China, state and private interests are treated equally. The recognition of the legitimacy of private ownership interests has always been a major ideological hurdle in China's private lawmaking since the 1950s. The Chinese Constitution of 1954 actually set a clear goal to transform private ownership into socialist public ownership. Article 10 of the Constitution of 1954 provided: "The policy of the State towards capitalist industry and commerce is to use, restrict and transform them. The State . . . encourages and guides their transformation into various forms of state-capitalist economy, gradually replacing capitalist ownership with ownership by the whole people."⁴⁷

Starting in 1954, government regulations required that private enterprises be converted into public-private joint ventures with the State.⁴⁸ In 1956, all private and individually owned enterprises were transformed into public private joint ventures, which soon became de facto SOEs.⁴⁹ By the end of that year, only 0.5 percent of private enterprises had not yet been formed into public-private joint ventures.⁵⁰ In 1957, 70 percent of industrial output was allocated through state planning, while the

⁴⁶ For a detailed timeline of the codification process, see the official legislative commentary, "关于 中华人民共和国民法典（草案）的说明" ["Notes on 'The Civil Code of the People's Republic of China (Draft)'" (delivered by Wang Chen, vice chairman of the Standing Comm. Nat'l People's Congress, May 22, 2020) (2020) *Standing Comm. Nat'l People's Cong. Gaz.* (Civil Code Special Issue) 178.

⁴⁷ Constitution [Xianfa], art. 10 (1954).

⁴⁸ James Gordley et al., *An Introduction to the Comparative Study of Private Law* (2nd ed.) (Cambridge: Cambridge University Press, 2021), p. 578; Yifu Lin et al., "State-owned Enterprise Reform in China," pp. 26–27.

⁴⁹ Willy Kraus, *Private Business in China: Revival between Ideology and Pragmatism* (Erich Holz trans.) (Honolulu: University of Hawaii Press, 1991) pp. 54–55 ("[M]ixed enterprises would be directed and administered solely by the government . . . [P]rivate owners had 'actually become state employees [sic].'" (quoting *Private Business*, China News Analysis [China News Analysis, Hong Kong, China], March 29, 1957, at 1, 1); Yifu Lin et al., "State-Owned Enterprise Reform in China," p. 27.

⁵⁰ Gordley et al., *An Introduction to the Comparative Study of Private Law*, p. 578.

remaining 30 percent was through sales contracts.⁵¹ In the Chinese Constitution of 1975, the protection of private ownership was finally discarded, and only public ownership was inviolable.⁵² After the economic reform at the end of the 1970s and the declaration of establishment of a socialist market economy, the ideology shifted toward protection of the private economy, and the law has followed suit. A 1988 amendment to the current Chinese Constitution, adopted in 1982, permitted “the private sector of the economy to exist and develop within the limits prescribed by law.”⁵³ Further, the private sector of the economy was regarded as “a complement to the socialist public economy.”⁵⁴ The status of the private economy was elevated to “an important component” of the economy in 1999.⁵⁵ In 2004, a constitutional amendment provided that private ownership is inviolable.⁵⁶ Today, the private economy makes up more than half of the Chinese economy,⁵⁷ and the commitment to protect private interests is absolutely critical to the growth of China. This commitment to equal protection of state and private interests is duly recognized by article 207 of the Code, which provides: “The property right of the State, the collectives, the individual persons and other obligees are protected equally by law, and no organizations or individuals shall encroach on it.”⁵⁸

1.3.1 State Interest in Contract Law

Contract is considered a subcategory of civil juristic acts in German-inspired civil law systems, including China. Supposedly, there is only one set of rules regulating validity of civil juristic acts that determines the

⁵¹ Liang Huixing (梁慧星), “论我国合同法律制度的计划原则与合同自由原则” [“On the Plan Principle and Principle of Freedom of Contract in Our Contracting System”] (1982) 4 法学研究 [*China Journal of Law*], pp. 44–46.

⁵² Xianfa art. 8 (1975).

⁵³ Xianfa amend., art. 1 (1988) (amending Xianfa art. 11 [1982]).

⁵⁴ Ibid.

⁵⁵ Xianfa amend., art. 16 (1999) (amending Xianfa art. 11 [1982]).

⁵⁶ Xianfa amend., art. 22 (2004) (amending Xianfa art. 13 [1982]).

⁵⁷ The private sector makes up 60 percent of the Chinese gross domestic product. Amir Guluzade, “The Role of China’s State-owned Companies Explained,” *World Economic Forum* (May 7, 2019), www.weforum.org/agenda/2019/05/why-chinas-state-owned-companies-still-have-a-key-role-to-play/ [https://perma.cc/67R2-B7JH].

⁵⁸ “中华人民共和国民法典” [“Civil Code of the People’s Republic of China”] (promulgated by the Nat’l People’s Cong., May 28, 2020, effective January 1, 2021), art. 207 (2020) *Standing Comm. Nat’l People’s Cong. Gaz.* (Civil Code Special Issue) 2.