

VENTURE CAPITAL LAW IN CHINA

China's venture capital market is not just the world's largest and fastest developing market, it also has the unique distinction of being engineered through heavy governmental intervention. This book breaks new ground by examining and testing established legal theories regarding the law of venture capital through the lens of the Chinese venture capital market. Using a hand-collected dataset of venture capital agreements, interviews with practitioners, and Chinese court judgments, it provides a comprehensive and insightful analysis of the Chinese venture capital market from the legal perspective. Topics covered include the roles of law and governmental intervention in developing the market, the state of investor protection, unique contractual developments, and exits of venture capital investments. By providing an in-depth comparative analysis against the American venture capital market, it provides critical context and makes the Chinese venture market accessible. It is an invaluable resource for venture capital scholars, policymakers, and practitioners.

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LIN LIN
National University of Singapore



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To Xudong, Yuexin, Yide, and my parents

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PREFACE AND ACKNOWLEDGEMENTS

The inspiration for this book stemmed from designing and teaching three courses at the Faculty of Law of the National University of Singapore (NUS): Alternative Investments; Private Equity and Venture Capital: Law and Practice; and Chinese Commercial Law.

The importance of China's venture capital market has grown as rapidly as its size. It is now the fastest growing and second largest market in the world. However, there is no academic textbook focussing on the law and practice of venture capital in China. Furthermore, China's venture capital market has the unique distinction of being one of very few engineered venture capital markets in the world. Despite the immense potential for research, there remains little literature on the role of law and governmental intervention in developing the Chinese venture capital market. This lack of material has been compounded by the difficulty of accessing source materials in Chinese and a general unfamiliarity with Chinese bureaucracy. The fast pace of regulatory change and market development in China adds a further element of complexity for anyone seeking to study and understand the Chinese venture capital market.

This book seeks to fill the gap in the literature by providing sophisticated and systematic case studies of China's venture capital market, examining how China created the world's second largest venture capital market within a short period of time, analysing how the growth of a venture capital market may be sustained, and illustrating the lessons which may be extracted from this crucial, but yet to be completely studied, experience from China. It also aims to break new ground by examining and testing established legal and economic theories and assumptions regarding venture capital through the lens of the Chinese venture capital market. Relying on my professional experience in China, the United States, and Singapore, this book provides a critical examination of the extensive hand-collected data set and reveals the special characteristics of the Chinese venture capital market and the peculiar legal problems within the Chinese market. Adopting a comparative

perspective between China and the United States, this book aims to make the Chinese venture capital market accessible for all scholars, policy makers, and practitioners.

I have been assisted by a large number of people in writing this book. I have had the privilege of discussing the issues covered in this book with my learned colleagues in my home faculty, the NUS Faculty of Law, including Hans Tjio, Wee Meng Seng, Dan Puchniak, Umakanth Varottil, Wang Jiangyu, Lim Wee Kuan Ernest, Christian Hofmann, Michael Ewing-Chow, Tan Zhong Xing, and Hu Ying. I am immensely grateful to Simon Chesterman, Damian Chalmers, David Tan, Ho Hock Lai, Tan Yock Lin, Dora Neo, Sandra Booysen, Stephen Phua, Lan Luh Luh, Teo Keang Sood, Swati Jhaveri, Gary Bell, Loi Kelry, and Yeo Hwee Ying for their invaluable advice, encouragement, and support. I have also benefitted from the fresh views shared by many cohorts of very bright students who have challenged and taught me more than I have imparted to them.

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I have endeavoured to state the law as of 1 June 2020.

ABBREVIATIONS

AGM	annual general meeting
AIC	Administration for Industry and Commerce
AIGF	Angel Investment Guidance Fund
AMAC	Asset Management Association of China
CBIRC	China Banking and Insurance Regulatory Commission
CBRC	China Banking Regulatory Commission
CIETAC	China International Economic and Trade Arbitration Commission
CIRC	China Insurance Regulatory Commission
CPC	Communist Party of China
CSRC	China Securities Regulatory Commission
DARPA	Defense Advanced Research Projects Agency
DCS	dual-class share
DRULPA	Delaware Revised Uniform Limited Partnership Act
EFG	Shanghai Technology Entrepreneurship Foundation for Graduates
EJV	equity joint venture
FOF	fund of funds
GDP	gross domestic product
GEM	Growth Enterprise Market
GGF	government guidance fund
GP	general partner
HKEx	Hong Kong Exchanges and Clearing Market
ICO	initial coin offering
ILPA	Institutional Limited Partners Association
IPO	initial public offering
IRR	internal rate of return
JSC	joint stock company
LBO	leveraged buyout
LLC	limited liability company
LP	limited partner
LSE	London Stock Exchange
M&A	merger and acquisition
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce

LIST OF ABBREVIATIONS

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NASA	National Aeronautics and Space Administration
NASDAQ	National Association of Securities Dealers Automated Quotations
NDRC	National Development and Reform Commission
NEEQ	National Equities Exchange and Quotations
NSSF	National Social Security Fund
NVCA	National Venture Capital Association
NYSE	New York Stock Exchange
NZVIF	New Zealand Venture Investment Fund
OTC	over-the-counter
PBOC	People's Bank of China
PE	private equity
P/E ratio	price-to-earnings ratio
PEL	Partnership Enterprise Law
PRC	People's Republic of China
QFLP	Qualified Foreign Limited Partner
RDA	regionally decentralised authoritarianism
RMB	renminbi
ROFR	right of first refusal
RQFLP	RMB Qualified Foreign Limited Partner
SASAC	State-owned Assets Supervision and Administration Commission
SAFE	State Administration of Foreign Exchange
SBIR	Small Business Innovation Research
SCSC	Securities Committee of the State Council
SCGC	Shenzhen Capital Group Co. Ltd
SGX	Singapore Exchange
SME	small and medium-sized enterprise
SME Board	Small and Medium-sized Enterprise Board
SOE	state-owned enterprise
SSE	Shanghai Stock Exchange
STA	State Taxation Administration
STAQ	Securities Trading Automated Quotation
STAR Market	Science and Technology Innovation Board
SVCIGF	State Venture Capital Investment Guidance Fund
SZSE	Shenzhen Stock Exchange
UK	United Kingdom
ULPA	Uniform Limited Partnership Act
UPA	Uniform Partnership Act
US	United States
USD	US dollar
VAM	valuation adjustment mechanism
VC	venture capital
VIMA	Venture Capital Investment Model Agreements
WFG	Wagnisfinanzierungsgesellschaft