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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Corporate law and financial market regulation have major implications for how the modern economy is organized and regulated and for how risk is managed and distributed – domestically, regionally and internationally. This Series seeks to inform and lead the vibrant scholarly and policy debate in this highly dynamic area by publishing cutting-edge, timely and critical examinations of the most pressing and important questions in the field.

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VENTURE CAPITAL LAW IN CHINA

LIN LIN
National University of Singapore
To Xudong, Yuexin, Yide, and my parents
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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
xii    P R E F A C E  A N D  A C K N O W L E D G E M E N T S

In this book, I have attempted to provide a comprehensive and
up-to-date analysis of the Chinese venture capital market, with a
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.

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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

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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
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
QFLLP 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