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Chinese Civil Law

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Preface and Acknowledgments

The idea of writing a book on Chinese civil law arose in the course of editing the sister book “Chinese Business Law” in the series of “Beck International”. The importance of civil law, which constitutes the foundation of Chinese private law, is obvious. Accordingly, civil law is the most developed field of private law in the Chinese jurisdiction. Since the end of the 1990s great efforts were undertaken in China to codify its entire civil law. With the fundamental major statutes governing contracts, property, torts and conflict of laws being promulgated in 1999, 2007, 2009 and 2010 respectively, the most crucial steps have been made toward the creation of a Chinese Civil code. The legislator is now facing the challenge of bringing these elements into a coherent system.

Worldwide comparative civil law has gained in importance, what is exemplified in the course of compiling a scholarly draft of a European Civil Code and the tendency of reinvigoration of private law in the US. As the evolvement of Chinese civil law is essentially a process of integrating Chinese tradition and the borrowed foreign legal concepts, the discussion of creating a Chinese Civil Code could further the study of civil law. At the same time, Chinese civil law is also crucial for business operation in China.

That being said, updated, systematic and comprehensive description of Chinese civil law in the English language is scarce. Most fields of civil law remain still inaccessible to interested readers without sufficient proficiency in Chinese language. Thus, the Chinese Civil Law seeks to shed light on both the theoretical and the practical aspects of Chinese civil law. In particular, by giving a large number of references to commentaries, treatises, and articles the authors attempt to deliver an accurate and authentic account of discussions in China, rather than aspire to develop their own ideas, which would otherwise go far beyond the scope of this book. Although case law only plays a marginal role in Chinese law, this book intends to incorporate relevant cases, in particular those adjudicated by the Supreme People’s Court, to illustrate the application of civil law statutes in judicial practice. A bibliography in front of each part and an index at the end of the book allow for further study of specific areas and facilitate systematic research. No English

translations of statutes, judicial interpretations and cases cited in this book are provided as several commercial databases offer such sources. Marriage and succession law is not addressed in a separate chapter, but rather in conjunction with the issues of private international law. All internet sources are last visited in March 2013.

I thank the contributors to this book who have devoted a significant amount of time to this project despite their other commitments. I am indebted to the staff of the Institute for East Asian Business Law, in particular Eva Bauer, Yiyang Yang, Frederic Dreher and Julian Broens for taking care of the formatting and proofreading as well as Ms Rebecca Ferderer for reviewing the whole book. Special thanks are owed to my husband, Zhongyang Shi for his insight and patience given to this book.

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Abbreviations

Opinions on the GPCL	Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the GPCL of the People's Republic of China
Answers to the Trial of Cases Involving Rights to Reputation	Answers of the Supreme People's Court on Several Issues Relevant to the Trial of Cases Involving Rights to Reputation
AUCL	Anti-Unfair Competition Law
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works
BIT	Bilateral Investment Treaty
CCP	Chinese Communist Party
CEO	Chief Executive Officer
CISG	United Nations Convention On Contracts For The International Sale Of Goods
CL	Contract Law
CPL	Civil Procedural Law
DCFR	Draft Common Frame Reference
ECL	Economic Contract Law
FECL	Foreign Economic Contract Law
GPCL	General Principles of Civil Law
HK Basic Law	Basic Law of the Hong Kong Special Administrative Region
Hong Kong SAR	Hong Kong Special Administrative Region
ICC	International Chamber of Commerce
Interpretation on Liability of Traffic Accidents	Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases Involving Traffic Accidents
Interpretation on the CL (Part 1)	SPC's Interpretations of Certain Issues Concerning the Application of the Contract Law (Part I)
Interpretation on the CL (Part 2)	SPC's Interpretations of Certain Issues Concerning the Application of the Contract Law (Part II)
Interpretations on Mental Damages	Interpretation of the Supreme People's Court on Several Issues Concerning the Ascertainment of Compensation Liability for Non-Material Damages in Civil Torts
Interpretation on Personal Injuries	Interpretation of the Supreme People's Court on Several Issues Concerning the Law Applicable in Hearing Cases of Compensation for Personal Injury
Interpretations to the Trial of Cases Involving Rights to Reputation	Interpretations to Several Questions in the Trial of Cases Involving Rights to Reputation
IP	Intellectual Property
IPR	Intellectual Property Rights
LAL	Law of the Application of Law for Foreign-related Civil Relations
L/C	Letter of Credit
LLC	Limited Liability Companies
Ltd	Limited
LTL	Law on Tort Liability
Macao Basic Law	Basic Law of the Macau Special Administrative Region
Macao SAR	Macao Special Administrative Region
Madrid Agreement ...	Madrid Agreement for International Registration of Trademarks
ML	Marriage Law
Model PIL	Model Private International Law Code

New York Convention	1958 Convention of Recognition and Enforcement of Foreign Arbitral Awards
NGO	Non-Governmental Organization
NPC	National People's Congress
OCTS policy	"One Country Two Systems" policy
Paris Convention	Paris Convention on the Protection of Industrial Property
PICC	Principles of International Commercial Contracts
PQL	Product Quality Law
PRC	People's Republic of China
RRL	Real Rights Law
RMB	Renminbi
Rome Convention	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
RTSL	Road Traffic Safety Law
SAIC	State Administration of Industry and Commerce
SARS	Severe Acute Respiratory Syndrome
SCNPC	Standing Committee of the National People's Congress
SL	Succession Law
SOE	State-owned Enterprise
SPC	Supreme People's Court (of the PRC)
SPC Commodity Premises Interpretation	Interpretation of the SPC on the Relevant Issues concerning the Application of Law for Trying Cases on Dispute over Contract for the Sale of Commodity Premises
SPC Condominium Interpretation	Interpretation of the SPC on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Condominium Ownership in Buildings
SPC Interpretation on Lease Contracts of Urban Houses	Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Cases Involving Disputes Arising From Lease Contracts of Urban Houses
SPC Interpretation on Purchase and Sales Dispute Cases	Interpretation of the SPC on Several Issues About the Application of Law for the Trial of Purchase and Sales Dispute Cases
SPC Judicial Interpretation No. 2007-14	Rules of the Supreme People's Court on the Relevant Issues concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases in Civil and Commercial Matters
SPC Lease Contract Interpretation	Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Cases about Disputes over Lease Contracts on Urban Buildings
SPC Purchase Contract Interpretation	Interpretation of the SPC on Issues Concerning the Application of Law in the Trial of Cases about Disputes over Purchase and Sale Contracts
SPC Realty Services Interpretation	Interpretation of the SPC on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Realty Services
SPC Rules on Period of Limitation	SPC Rules on Certain Issues Concerning the Implementation of Period of Limitations in Civil Litigation
TCL	Technology Contract Law
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNDROIT	International Institute for the Unification of Private Laws
U.S.	United States
WFOE	Wholly Foreign-owned Enterprise
WIPO Convention	Convention Establishing the World Intellectual Property Organization
WTO	World Trade Organization