

## 4.1. General rules of the Civil Law (RC)

### Introduction

The general rules of the Civil Law are actually a pretty interesting read: It is not very complicated, quite simple to understand and might help you to put some assumptions that you made from hearsay into place.

The challenge regarding laws in China is: Even while the law is pretty clear, enforcement might be spotty.

Still, it is recommended to be at least a bit familiar with these general rules since they will help you to put lots of issues in perspective. This law is actually quite new: It became effective in late 2017.

The general provisions of the civil law consist of the following chapters:

- Basic provisions
- Natural persons
- Legal Persons
- Unincorporated organizations
- Civil rights
- Civil juristic acts
- Agency
- Civil Liability
- Limitations period for litigation
- Calculation of time periods
- Supplementary provisions

These provisions provide a framework including provisions on who can enter legal agreements and amongst others regulate liabilities and compensations in certain cases. Similarities to the German civil law are not a coincidence: According to Wikipedia, it is based on the German civil law "with influence from Soviet Socialist from Soviet Union".

### General provisions

- Personal rights, property rights and other legitimate rights and interest of civil subjects are protected by law.
- Subjects should apply the fairness principle in determining the rights and obligations of all concerned parties.
- Laws have to be followed. If no law existing, usual practice may be followed.

- Other more specialized regulations have priority compared to this law if they exist.

### Natural persons

- From birth to death, a person has the capacity for civil law
- Natural persons are all equal
- Adulthood begins with 18 years and adults have full capacity for civil conduct and can independently perform juristic acts. Everyone below 18 years is defined as a minor.
- Civil juristic acts can be performed without limitation by
  - o Adults who are fully accountable of their own conduct
  - o Minors over 16 whose main source of income is his own job.
- Civil juristic acts can be performed under legal guardianship from the age of 8. Purely beneficial acts that are compatible with his age and intelligence can also be performed without guardian.
- A minor under 8 has no capacity for civil conduct and shall be represented by the legal agent.
- Additional interesting regulations that you should read up if you are interested:
  - o Sequence of legal guardianships for minors or people that require a guardian but do not have one assigned
  - o Criteria for disqualification of a guardian

### Legal persons

- Legal persons have the capacity for civil rights and civil conducts
- A legal person assumes civil liability by all its property
- After the legal person has assumed legal responsibility, recovery might be sought from the legal representative
- The legal person does not have legal responsibility anymore after it has been dissolved
- When a legal person dissolves, the board of directors or other members of decision-making bodies are responsible for

liquidation. During liquidation, the legal person survives but is not allowed to engage in other activities except liquidation.

- The investor for a for-profit legal person may not harm the interest of the legal person or the investors.

#### **Civil rights:**

- Natural persons have their rights for personal freedom and dignity protected and they enjoy the right to life, physical rights, health rights, name rights, portrait rights, reputation rights, right of honor, privacy, marriage autonomy and other rights.  
Legal persons enjoy the rights of name, reputation, honor and other rights.
- Personal information of natural persons is protected by law.
- Property rights of civil subjects are protected by law, including real property and chattels.
- Contracts which are concluded according to the law are legally binding.
- A person, who has been infringed on the rights can request the infringer to bear tort liability.
- For unjust enrichment without legal basis, the person who suffered a loss can request the return of improper benefits.
- Intellectual property is protected, e.g. Works, Trade secrets, trademarks, etc.
- Natural persons enjoy inheritance rights.

#### **Civil juristic acts**

- Civil juristic acts are the acts of a civil subject through the establishment, alteration and termination of civil legal relations through expression of intention
- They are based on the expression of intention of both or all parties which can be transmitted in written/oral or other forms
- Civil juristic acts take effect at the time of establishment, except if otherwise provided by the law agreed otherwise by the parties

- Expression of intention is valid when it reaches the other person in general in a 1-one-1 situation or when an announcement is made towards many people.
- Express of intention can be made implicit or explicit. Silence can only be recognized as an expression of intention if stipulated by law or if it meets the trading habits of the parties.
- Expresses of intentions can be withdrawn
- Expresses of intention are invalid if the person expressing the expression
  - o does not have a corresponding capacity for civil conduct
  - o does not violate the laws or public order and social customs
  - o does not have legal capacity for civil conduct

#### **Agents**

- If a juristic act is carried out by an authorized agent, the expression of intent is valid for the principal
- If the agent does not perform to his duties and causes damages to the principal, he bears legal liability

#### **Other interesting provisions:**

- Property and guardianship of missing persons and what happens if they reappear
- Regulation what kind of information a letter or authorization should include for an authorized agent
- Assuming civil liability includes
  - o (1) Stop the infringement;
  - o (2) Exclude the hindrance;
  - o (3) Eliminate the danger;
  - o (4) Return the property;
  - o (5) Restitution;
  - o (6) Repair, remake or replace;
  - o (7) Continue to perform;
  - o (8) Compensate for losses;
  - o (9) Pay liquidated damages;
  - o (10) Eliminate the impact or restore the reputation;
  - o (11) Apologize.

- If not otherwise provided by law, force majeure does not constitute a liability.
- Proper defense has no civil liability
- If an appropriate damage has been caused to avoid an emergency, the liability shall be borne by the person who caused the danger (if available) as long as it is reasonable. Otherwise the helping hand can be liable to give appropriate compensation.
- If you receive damage while protecting other's rights, the infringer bears civil liability.
- If providing emergency relief which causes damages, you are not liable.
- The limitation to request action from a court is three year after infringement of the law until otherwise specified.

### Conclusion

If you are reading this law and are familiar with the German civil law, you might recognize that it has a lot of similarities. And it definitely can be different from your expectation and what you heard about China: When living here for a while, you might have heard especially stories about legal liability that lead to an obligation to compensate someone even while you were trying to help them in good intend, even if you were not violating their rights or body. The reasons for the difference between the hearsay and might be either that the stories you heard happened before the promulgation and effectiveness of this law or because the enforcement in some cases was lacking.