

4.2. Contract law (RC)

Introduction

The general rules of the civil law outline – amongst others – who can enter legal agreements. The contract law describes in more details what kind of information is to be declared in contracts.

Due to the sheer size of the law with more than 400 articles, just a short summary of the most important contents is been given in this chapter. For any more special cases, please consult the law yourself or consult your lawyer.

While the law itself is quite straightforward, especially if you have some background knowledge on how the law works in Germany, the key issue like often in China is the enforcement.

Chapters of the contract law

The law itself consists of the following chapters of which the most important topics were already summarized in this chapter and in the Appendix:

Contracts in General:

- Introduction
- General Provisions
- Formation of contracts
- Terms
- Offers and acceptance
- Validity of contracts
- Performance of contracts
- Amendment and assignment of contracts
- Discharge of contractual rights and obligations
- Liabilities for breach
- Other Provisions

Dedicated description of contracts:

- Sales Contracts
- Contracts for Supply of Power, Water, Gas, Or Heat
- Gift Contracts
- Contracts for Loan of Money
- Leasing Contracts

- Financial Leasing Contracts
- Contracts of Hired Works
- Leasing Contracts
- Contracts for Construction projects
- Carriage Contracts
- Technology Contracts
- Safekeeping Contracts
- Warehousing Contracts
- Agency Appointment Contract
- Trading-Trust Contracts
- Brokerage Contracts

While the first part describes contracts in general, the second part describes special kinds of contracts, the obligations of the client/principal and of the contractor/contractual partner and remedies of breach of contract.

If you are checking a special case regarding a contract, I highly recommend to check the law for relevant provisions.

General Provisions

Contracts are being formed between parties with equal legal standing and have to be entered voluntarily, both parties have to act fairly in prescribing the respective rights and obligations and contracts shall be entered in good faith. Both parties must abide by the laws and administrative regulations, observe local ethics and may not disrupt social and economic order or harm public interests. A lawful contract has a binding effect and neither party may arbitrarily amend or terminate the contract.

Formation of contracts

To enter contracts, the parties shall have the appropriate civil capacities for civil rights and civil acts as described in the general rules of the civil law.

They can be made in writing, orally or any other form. A written form may be demanded by law or administrative regulations or if the parties have agreed so.

The written form also includes letters and electronic messages which are capable of expressing the contents in a tangible form.

Terms

The key elements of a contract shall be prescribed by the parties and include:

- names of the parties and the domiciles thereof;
- subject matter;
- quantity;
- quality;
- price or remuneration;
- time, place and method of performance;
- liabilities for breach of contract;
- method of dispute resolution.

Model contracts or framework-contracts can be used.

Some of the more specialized chapters offer more details about the contents of the contract, e.g. regarding technology contracts.

Offers and acceptance

A contract is concluded by the exchange of an offer and an acceptance. An offer is a party's manifestation of intention to enter into a contract with the other party and it must be specific, definite and it indicates that upon the acceptance by the offeree, the offeror will be bound thereby.

An invitation to offer is a party's manifestation of intention to invite the other party to make an offer thereto. A delivered price list, announcement of auction, call for tender, prospectus, or commercial advertisement, etc. is an invitation to offer. A commercial advertisement is deemed an offer if its contents meet the requirements of an offer.

An offer becomes effective when it reaches the offeree and it may be withdrawn when the withdrawal reaches the offeree before or at the same time as the offer. An offer can also be revoked as long as the revocation reached the offeree before he dispatches a notice of acceptance.

Irrevocable offers cannot be revoked and are constituted if it expressly indicates that it is irrevocable or if the offeree has reason to regard the offer as irrevocable.

An offer is extinguished if

- The notice of rejection reaches the offeror;
- The offeror lawfully revokes the offer;
- The offeree fails to dispatch its acceptance at the end of the period for acceptance;
- The offeree makes a material change to the terms of the offer.

The acceptance is the offeree's manifestation of intention to assent to an offer and it shall be manifested by notification, except where it may be manifested by conduct in accordance with the relevant usage or as indicated in the offer.

The acceptance shall reach the offeror within the period prescribed in the offer, if there is no prescribed then it shall be made immediately in an oral offer unless otherwise agreed by the parties or within a reasonable time frame it is a non-oral offer.

If an offer is dispatched too late or includes material changes, it constitutes a new offer.

If standard terms for contracts are being used, the principle of fairness has to be followed and shall – in reasonable manner – call the other party's attention to the provisions whereby such party's liabilities are excluded or limited and shall explain such provisions if requested. If a standard term can be interpreted in different ways, it shall be interpreted against the party supplying it. Terms for a specific contract have priority over standard terms.

When an offer gets accepted, it forms a legal contract.

If one party causes damages to the other party by

- negotiating in bad faith under the pretext of concluding a contract;
- intentionally concealing a material fact relating to the conclusion of the contract or supplying false information;
- any other conduct which violates the principle of good faith

it shall be liable for the damages.

Trade secrets that are being learned during negotiating a contract, regardless if a contract is being formed, it may not be disclosed, otherwise the disclosing party shall be liable for damages.

Validity of contracts

Contracts are valid upon their formation, if an approval or registration is required by law or administrative regulation, this provision applies. The effectiveness of a contract can also be described to become effective under certain conditions.

The contract ends at the end of the contract term.

If a legal representative enters a contract which is not within their authority, it is still a valid contract unless the other party knew that he was acting beyond his scope of authority.

Contracts can be invalid under certain conditions, especially if they harm the state or public interests of it they violate mandatory provisions of any law or administrative regulation. Also, provisions in a contract which exclude the party's liability for personal injury caused to the other party or property loss of the other party due to intentional misconduct or gross negligence are invalid.

Performance of contracts

The parties shall fully perform their respective obligations in accordance with the contract, should abide by the principle of good faith and perform their obligations such as notification, assistance, confidentiality, etc.

If terms such as quality, price, remuneration or place of performance were not (clearly) prescribed in the contract, the parties may supplement it through agreement. If both parties fail to reach a supplementary agreement, such terms shall be determined in accordance with the relevant provisions of the contract or in accordance with the relevant usage.

Contracts either get performed simultaneous or consecutive according to the contract. The performance can be rejected, if the other party has to perform but does not or if there is conclusive evidence that the other party cannot or will not perform their part of the contract. In this case, the other party has to be timely notified.

An early performance can be rejected except if this early performance does not harm the creditor's interests. Additional expenses incurred by the obligee due to the obligor's early performance shall be borne by the obligor.

Partly performance can be rejected by the creditor except if it does not harm his interests.

Once a contract becomes effective, a party may not refuse to perform its obligations thereunder on grounds of any change in its name or change of its legal representative, person in charge, or the person handling the contract.

Amendment and assignment of contracts

Contracts can be amended if both parties agree and if the parties clearly prescribe the terms of the amendment.

The creditor may assign its rights under a contract in whole or in part to a third person, except where such assignment is prohibited:

- in light of the nature of the contract;
- by agreement between the parties;
- by law.

In this case, the obligor shall be notified otherwise it is not binding upon the obligor. A notice of assignment may not be revoked except with the consent of the assignee.

Discharge of contractual rights and obligations

The rights and obligations under a contract are discharged in any of the following circumstances:

- The obligations were performed in accordance with the contract;
- The contract was terminated;
- The obligations were set off against each other;
- The obligor placed the subject matter in escrow in accordance with the law;
- The creditor released the obligor from performance;
- Both the creditor's rights and obligor's obligations were assumed by one party;
- Any other discharging circumstance provided by law or prescribed by the parties occurred.

After the discharge of the rights and obligations, both parties shall still abide by the principle of good faith and perform obligations such as notification, assistance and confidentiality, etc. in accordance with the relevant usage.

If the parties agree, a contract can be terminated or a condition under which a contract gets terminated can be prescribed.

Further, the contract can be terminated if:

- force majeure frustrated the purpose of the contract;
- before the time of performance, the other party expressly stated or indicated by its conduct that it will not perform its main obligations;
- the other party delayed performance of its main obligations, and failed to perform within a reasonable time after receiving demand for performance;
- the other party delayed performance or otherwise breached the contract, thereby frustrating the purpose of the contract;
- any other circumstance provided by law occurred.

The contract has to be terminated within the prescribed period for exercising termination right or within a reasonable time frame if no period is prescribed.

Upon termination, performance which has not been rendered is discharged. If a performance has been rendered, the other party may be

asked to restore the subject matter to its original condition or otherwise remedy the situation and is entitled to damages. Accounts still have to be settled.

Liabilities for breach

If a party fails to perform its obligations under a contract, or rendered non-conforming performance, it shall bear the liabilities for breach of contract by specific performance, cure of non-conforming performance or payment of damages, etc.

Where one party expressly states or indicates by its conduct that it will not perform its obligations under a contract, the other party may hold it liable for breach of contract before the time of performance.

Where a party fails to perform, or rendered non-conforming performance of, a nonmonetary obligation, the other party may require performance, except where:

- performance is impossible in law or in fact;
- the subject matter of the obligation does not lend itself to enforcement by specific performance or the cost of performance is excessive;
- the creditor does not require performance within a reasonable time.

If the performance does not meet the prescribed quality requirements, the breaching party shall be liable for the breach according to the contract and the aggrieved party may require the other party to assume liabilities for breach by way of repair, replacement, remaking, acceptance of returned goods or reduction in price or remuneration, etc. A non-performing party is also reliable to pay damages of the other party, including any benefit that may be accrued from performance of the contract, provided that the amount shall not exceed the likely loss resulting from the breach which was foreseen or should have been foreseen by the breaching party at the time of conclusion of the contract.

A party who was unable to perform a contract due to force majeure is exempted from liability in part or in whole in light of the impact of the event of force majeure, except otherwise provided by law. Where an event of force majeure occurred after the party's delay in performance, it is not exempted from liability. A timely notification and a proof within a reasonable time of the force majeure is required.

If the one party breached the contract, the other party shall take appropriate measures to prevent further loss.

Other Provisions

Where another law provides otherwise in respect of a certain contract, such provisions prevail.

In case of any dispute between the parties concerning the construction of a contract term, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions and the purpose of the contract, and in accordance with the relevant usage and the principle of good faith.

Parties to a foreign related contract may select the applicable law for resolution of a contractual dispute, except otherwise provided by law. Where parties to the foreign related contract failed to select the applicable law, the contract shall be governed by the law of the country with the closest connection thereto.

Parties in a dispute may resolve it through settlement or mediation. If they are unable or do not wish to resolve the dispute in this way, it may be submitted to the agreed arbitration institution. If no arbitration institution is agreed on, it may be submitted to the People's Court.

Disputes arising from international goods sales or a technology import or export contract, the time limit for arbitration is four years. For all other disputes the time limit is governed by the relevant law.

Sales Contracts

Sales contracts are defined by transferring title to the buyer who pays the price.

It may include terms such as packaging method, inspection standard and method, method of settlement of the account, language version of the contract etc.

The seller shall have title to or the power to dispose of the subject matter for sale.

Title to the subject matter passes at the time of its delivery except if it is otherwise provided by law or agreed by the parties.

The parties can also agree that title of the subject matter remains in the seller until the buyer has paid the price or has performed other obligations.

The seller shall deliver subject matter at the prescribed time. Where the contract prescribes a period, the seller may deliver at any time during the period.

The seller shall deliver the subject matter at the prescribed place, if this is not clearly defined it shall be delivered

- if the subject matter needs carriage, the seller shall deliver the subject matter to the first carrier for transmission of the buyer
- If it does not require carriage and if both parties know that it is at a particular place, it shall be delivered to that place
- If it does not require carriage and if not both parties know the location, delivery shall take place at the seller's place of business at the time of conclusion of the contract.

The risk between buyer and seller passes at delivery. If the delivery is delayed by the buyer, the risk passes to the buyer from the date of the breach.

Unless otherwise agreed by the parties, the risk of damage or loss is borne by the buyer when the subject matter has been delivered to a carrier for transportation and is in transit

The seller is obligated to warrant that the buyer will be free from any third-party claim against it in respect of the subject matter delivered, except otherwise provided by law.

The subject matter is to be packed in the prescribed manner by the seller. If the packing manner is not prescribed, the goods shall be packed – if applicable - in a customary manner or in a manner adequate to protect the subject matter.

The buyer shall timely inspect the subject matter and notify the seller timely of any non-compliance in quantity or quality.

The payer shall pay the price at the prescribed time, if no time was described it should be paid when it receives the subject matter or the document for taking delivery of.

If the buyer receives a higher quantity than agreed on, it should accept the over-delivery by paying the additional quantity or reject the excess quantity by timely notifying the seller.

Gift Contracts

Gift contracts are constituted if the donor conveys his property without a reward the done manifests his acceptance of the gift. If a gift contract serves public interest or fulfills a moral obligation such as disaster relief, poverty relief or if the gift contract has been notarized, the done may require delivery if the donor fails to deliver the gift property.

Where the gift property is damaged or lost due to any intentional misconduct or gross negligence of the donor, he shall be liable for damages.

If a gift is subject to obligations, the done shall perform his obligations in accordance with the contract.

The donor is not liable for any defect with the gift property, except if the gift is subject to obligations or if the donor intentionally omitted to inform the donee of the defect or warranted the absence of a defect.

A donor may revoke the gift if

- It is seriously harming the donor or any immediate family member thereof
- He is failing to perform support obligations owed to the donor

- He is failing to perform the obligations under the gift contract.

The revocation shall be handled within one year.

Contracts for Loan of Money

A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and returns the sum borrowed and pays interest thereon at the prescribed time.

A contract for loan of money shall be in writing, except where the loan is between natural persons who have agreed otherwise. A contract for loan of money includes terms such as the loan's type, currency, purpose, amount, interest rate, term and method of repayment, etc.

A contract for loan of money between natural persons

- becomes effective at the time the lender makes the loan amount available
- is deemed interest-free if payment of interest was not (clearly) prescribed
- may not contravene the relevant stipulations of the state regarding limit on loan interest rate.

The lender can ask for assurance which shall be arranged in accordance with the security Law of the People's Republic of China.

The borrower shall provide true information concerning its business operation and financial condition in connection with the loan as required by the lender. The lender is also allowed to examine and monitor the application of proceeds in accordance with the contract.

A deduction of interest in advance by the principal is not allowed. For loans by a financial institution engaged in lending operations the interest rate shall be prescribed between the minimum and maximum rates mandated by the People's Bank of China.

The interest has to be paid at the prescribed

time, if no time is prescribed the interest shall be paid annually for a multi-year contract and together with the repayment of the loan if the remaining time of the contract is less than a year. For delayed repayments, the borrower shall pay delay interest in accordance with the contract or the relevant stipulations of the state. I

The borrower shall repay the principal at the prescribed time, if no time is prescribed the borrower may repay at any time and the lender may demand repayment from the borrower within a reasonable time.

A loan may be extended if both parties agree before the maturity of the loan.

If the borrower repays the loan early, the interest shall be calculated based on the actual period of the loan.

If the lender does not make the loan available on the prescribed date in the prescribed amount and causes thereby losses to the borrower, it shall pay damages. If the borrower does not draw down on the prescribed date and in the prescribed amount, he still shall pay the interest.

Leasing Contracts

A leasing contract is a contract whereby the lessor delivers to the lessee the lease item for it to use or accrue benefit from, and the lessee pays the rent. A leasing contract includes terms such as the name, quantity and purpose of the lease item, lease term, amount of rent, time and method of rent payment, as well as maintenance and repair of the lease item, etc.

Benefits from the possession or use of the lease item belong to the lessee, except otherwise agreed by the parties.

The maximum lease term is 20 years. For leases of six months or longer, the lease term shall be in writing. If it is not done in writing, it is deemed as a non-term lease.

In a non-term lease, either party may terminate the contract at any time provided that the lessor shall give the lessee a reasonable advance notice before the termination.

When the lease term expires but the item continues to be used by the lessee, the original contract remains effective and becomes a non-term lease.

The lessor shall deliver the lease item to the lessee in accordance with the contract and shall, during the lease term, keep the lease item fit for the prescribed purpose. The lessee shall use the lease item in the prescribed manner (if prescribed) or in a manner consistent with its nature (if not prescribed). If this is the case, the lessee is not liable for damages for wear and tear. A lessor may terminate the contract and claim damages if the lease item is not used in the prescribed manner or manner consistent with its nature. The lessee is still responsible for damages the item was damaged or lost due to improper care.

The lessor is responsible for maintenance and repair and has to be notified within a reasonable time. If the lessor fails his obligation, the lessee may maintain or repair the lease item on the lessor's expense. If the item is impaired due to maintenance or repair, the rent shall be reduced or the lease period shall be extended accordingly.

Subject to consent by the lessor, the lessee

- may make improvement on or addition to the lease item
- may sublease the lease item to a third party.

The lessee shall pay the rent at the prescribed time. If no time is prescribed, the rent shall be paid at the end of the lease term if the remaining lease time is less than one year, otherwise it shall be paid annually.

If the rent is not paid or delayed without cause, the lessor may require the lessee to pay the rent within a reasonable period. If the lessee still fails to pay, the lessor may end the contract.

If the lease item was damaged or lost in part or in whole due to any reason not attributable to the lessee, the lessee may require reduction in rent or refuse to pay rent or – if

the contract is frustrated – the lessee may terminate the contract.

A change of ownership of the leased item does not affect the validity of the leasing contract.

The contract may be terminated by the lessee at any time if the lease item poses a danger to the safety or health of the lessee, even if the lessee was aware of the quality non-compliance at the time of the conclusion of the contract.

Contracts of Hired Works

A contract of hired work is a contract whereby the hiree completes certain work as required by the hirer and delivers the work product, and the hirer pays the remuneration. The contract includes

- the subject matter of hire,
- quantity,
- quality,
- remuneration,
- method of hire,
- supply of materials,
- time of performance,
- standard applicable to and method of acceptance inspection, etc.

The hiree shall use his own resources and may not delegate the main work without approval of the hirer, delegating auxiliary tasks is allowed. The hirer is obligated to assist in performance and he might monitor the work without impairing the normal work of the hiree.. Materials provided by hiree or hirer shall be in accordance with the contract. Materials and work product have to be kept with due care.

The hirer is responsible for damages for late delivery of drawings and technical requirements or technical requirements.

When the product is finished, the hiree shall submit the required technical materials and related quality certificates upon the hirer shall conduct acceptance inspection. If the product

does not match the quality requirements, the assumes liabilities for breach of contract.

Relevant information has to be kept confidential as required by the hirer and the hiree may not retain any replica or technical material without permission by the hirer.

The hirer shall pay the remuneration at the prescribed time, if no payment time is prescribed he shall pay at delivery of the product or at partial deliveries. If the hirer fails to pay, the hiree is entitled to possess the product except otherwise agreed by the parties.

The hirer can terminate the contract at any time, provided he shall indemnify the hiree for its loss as a result, if any.

Learn more

Use the search engine of our choice to find an English translation of the “Contract Law of the People’s Republic of China”.