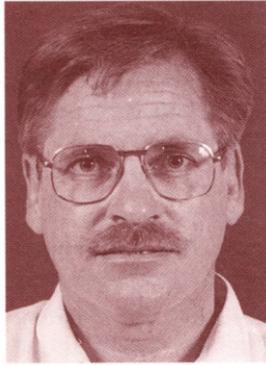


## Step by step: China's new Contract Law

by Roderick O'Brien



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On 1 October 1999 the People's Republic of China will celebrate its 50th birthday. There will be speeches and fireworks, dances and parades. Amid the festivities few people will remember that, on 1 October, China's new Contract Law will come into effect. Although it was passed by the National People's Congress on 15 March there has been a delay to allow for publicity.

By China's standards the new law is massive. It has 428 articles and is divided into two main parts: first, eight chapters of general provisions relating to contracts and then a further fifteen chapters, each relating to specific types of contracts.

The new law went through an extensive and relatively public drafting process. A draft of the law was published in China's legal newspapers, and opinions were sought from academics as well as administrative personnel. In presenting the draft, the Chairman of the NPC's Legislative Affairs Commission suggested that the new law was intended to be centralized and relatively complete. In fact it is neither.

The new law is not a code, or even part of a code. China has legislated, in 1986, the General Principles of the Civil Law, but has yet to issue the rest of the Civil Law Code. Meanwhile, the General Principles will underpin the Contract Law. The new Contract Law does not include many kinds of contracts, which are covered by other legislation: for example, insurance contracts were included in the draft of the new law, but were dropped from the final version. The English lawyer wishing to understand China's Contract Law must look at the General Principles of Civil Law, at the new Contract Law, at various specific laws affecting particular contracts, at a myriad of regulations promulgated by different departments, and at interpretations formally issued by China's Supreme Court. The new law does not centralize contract law.

Nevertheless, it is a step forward. First, the general provisions provide a basis for understanding contracts, and show the influence of international models such as the United Nations Convention on Contracts for the International Sale of Goods. Second, three former laws will be repealed. These are the Economic Contract Law, the Law on Economic Contracts Involving Foreign Interests, and the Law on Technology Contracts. These laws have been consolidated and updated. Third, further specific provisions about other contracts have been included. The new law includes, for example, a kind of foreign trade agency that has recently emerged in China. It includes personal contracts for gift and loan, which were not dealt with in the state-oriented Economic Contract Law. Fourth, the new Contract Law reduces some of the differences between

laws affecting China's own citizens, and laws affecting foreign individuals or legal persons involved in contracts. If we regard the new law as a transitional consolidation, we can understand its achievements.

Immediately after the passage of the new law, dissemination was rapid. Knowing the interest of foreign investors, an English translation was in the bookshops within a month. I am particularly impressed, however, by the work of Professor Liu of Beijing's Peoples' University, who managed to edit two book-length commentaries on the new law and have them in the bookstores in March. One of his commentaries was reprinted in April, so we can see that the demand is heavy. Since publication in China is usually a very slow process, the effort made by the publishers can give us an idea of the importance of this new law. Other professors have gone on the lecture circuit to regional law institutes and faculties to explain the new law.

Yet promulgating a law and disseminating it to legal circles does not make it effective. In my experience, the myriad of administrators who control and participate in most of China's internal and international affairs do not have a contractual attitude necessary for a successful market economy. They still approach contracts with the attitude of Stalinist administrators in a command economy. At the same time, relationships, which have always been important in China, also matter much more than contractual provisions. It will take time for these two attitudes to change, especially in the small and medium-sized enterprises attached to government at various levels.

China badly needs new laws, and also needs new legal attitudes, but the National People's Congress moves slowly. In 1998, for example, the NPC passed only a dozen new laws, while the State Council passed less than twenty regulations. Other regulations come from various ministries, or lower levels of government. This may be compared to the output of the UK parliament, which passed 54 Public and Local Acts and 3,399 Statutory Instruments in the same year.

The new Contract Law is a step from a command economy to a market economy. It is a step from a simple legal regime that gives extensive discretion to officials towards a more transparent legal regime where the laws can be found in the public domain. It is a step from a chaotic legal regime where different principles apply in different situations to a more orderly regime where the principles can be known in advance, and are more consistent across the range of transactions. Step by step, China's legal system is maturing. 

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