Jean-Christophe Liebeskind

Chinese Business Law

Stämpfli Verlag

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Bibliographic information published by the Deutsche Nationalbibliothek
Bibliographic information published by the German National Library
The German National Library lists this publication in the German National Bibliography; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de.

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ISBN 978-3-7272-3533-7

The following edition is available in
our online bookshop www.staempflirecht.ch:

E-Book ISBN 978-3-7272-2804-9

For questions regarding product safety
Producer: Stämpfli Publishers Ltd., Wölflistrasse 1, CH-3001 Bern,
verlag@staempfli.ch, www.staempflirecht.ch
EU Importer: Brockhaus Commission GmbH, Kreidlerstrasse 9, DE-70806 Kornwestheim,
gpsr@brocom.de, www.brocom.de

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Foreword

This book focuses on the foundations of Chinese business law applying to foreign investors in and foreign parties trading with China. It mainly comments, to that extent, foreign investment law, relevant parts of the Chinese Civil Code, including the general principles of civil law and of the law of obligations, contract law and the law of liability, both contractual and for illicit acts, as well as the Labor Contract Law, which is the only major nominate contract not included in the Code; the Company Law governing the limited liability enterprise and the shareholding company; the Law on the Partnership Enterprise; the law governing foreign representative offices; and the regime applying the former joint-ventures, now abolished; it also briefly addresses variable interests entities.

The Foreign Investment Law (FIL) was promulgated in 2019 and has been effective since 2020. It was followed by the Chinese Civil Code, promulgated in 2020 and effective since 2021, and the Company Law (2023 Revision), revised in 2023 and effective since 2024. Together, these three laws form the core of the reform of Chinese business law for both domestic investors and, as far as the FIL is concerned, foreign investors. While Chinese law is a continuous process, it can be said that the aforementioned promulgation sequence achieves, by conforming with the latest global standards, the major overhaul of Chinese law undertaken since the Opening from 1978 and its acceleration as of China's accession to the World Trade Organization in 2001.

The full effects of the reform only apply since as recently as one year ago, i.e., as of 1 January 2025, with the end of the transitional period granted to foreign-invested enterprises under the Foreign Investment Law to transform into one the domestic forms of enterprise, thus achieving the level playing field between foreign and domestic investors aimed at by the Chinese legislator. Some commentaries anticipated such reform, this book purports at commenting on its implementation.

While related secondary legislation is mentioned as appropriate, it is not detailed in this book, whose scope it would exceed. Moreover, a large part of it, such as intellectual property law, competition law, tender law, consumer protection law, etc. is anterior to those reforms and has already been abundantly commented.

Owing to the author's education and qualifications, this book adopts a comparative approach with Swiss law, although not systematically, but rather opportunistically, whenever the issue at stake appears relevant enough within its scope. It does not mean in any way that this book is exclusively intended to Swiss lawyers: indeed, the concepts used in Swiss law are comparable in most

respect to other civil (as opposed to common-) law systems, namely, of other continental European jurisdictions, while the terminology in English, French and German will no doubt prove useful to most continental European lawyers. Even though many of such concepts may differ from common law, Anglo-Saxon lawyers will nevertheless be comforted by the great care paid to clarifying the Chinese legal terminology in English, and to point at differences between civil law systems, to which Chinese law pertains in the first place, and common law. Likewise, Chinese lawyers may, conversely, find it useful to be able to explain concepts of Chinese law in English, French and German language to their western counterparts.

Terminology is not the least challenging issue posed by Chinese law, not to say, arguably, one of the main ones. Chinese is not only exceedingly difficult to read for foreign lawyers; printed translations are more often than not crippled with errors, many of which are material, while online automatic translation, however convenient, hardly achieves better results. This issue is worsened by the multiple equivalent expressions available in foreign languages, including conceptual variations between civil and common law. Sources of confusion, which can potentially lead to dire consequences, are endless. The author took great care to dispel potential misunderstandings by equating them with comparable notions in English, French and German and discussing translation issues, as well as by providing the names in Chinese of all laws, etc. and of selected legal institutions mentioned in this book, for the sake of accuracy. All Chinese expressions are followed by their pinyin transliteration, enabling foreign readers who are not proficient in Chinese to communicate with their Chinese counterparts.

A table of abbreviations or acronyms, of Chinese locutions sorted in English and in pinyin, of Latin locutions, of Chinese and Swiss laws, of treaties and other legal or regulatory basis mentioned in this book, as well as a selected bibliography in Chinese, Swiss and international law, are available on the beginning; an index in English is available at the end.

The laws, etc. referred to in this book have been considered as per their status on 31 December 2025, although some notable additions posterior to that date may have been mentioned.

This book will inevitably contain mistakes. All errors are the author's. Readers are invited to signal them at john.liebeskind@jcliebeskind.com.

Acknowledgements

I wish to express my gratitude, in particular, to my grandfather, Prof.Dr. Wolfgang-Amadeus Liebeskind (†), former Dean of the Faculty of Law of the University of Geneva; to my father, Dr.med. Bernard Liebeskind (†); to Prof.Dr. Herbert Schönle (†), Ordinary Professor of Law, University of Geneva; to Prof.Dr. Dominique Poncet (†), Founding Partner of my former law firm Poncet Turrettini Amaudruz Neyroud in Geneva; to Dominique Warluzel (†), former Partner at Poncet Turrettini Amaudruz Neyroud; to Prof.Dr. Pierre Lalive (†), Founding Partner of my former law firm Lalive & Partners in Geneva; to Michael Schneider, Founding Partner at Lalive & Partners; to Xing Xiusong 邢修松, Founding Partner of my Chinese law firm Global Law Office 环球律师事务所 huánqiú lǜshī shìwùsuǒ in China; to Zhang Xin, Ph.D. 张昕, Partner at Global Law Office in Beijing; to Gu Weiwei 顾伟伟, Partner at Global Law Office in Shanghai; to James Zimmerman, Partner at Loeb & Loeb in Beijing, Chairman of AmCham China and author of "China Law Deskbook" (ABA ed.); to Fanny Nguyen, Partner at Lefèvre Pelletier & Associés (LPA Law) in Paris and Shanghai; to Dr.iur. Zheng Jun 郑军, Lecturer at the University of Fribourg; to Fanny Weiss, manager at my publisher, Staempfli Éditions S.A. in Bern; and to any individual having contributed to this book whom I may not have mentioned.

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Summary Contents

Foreword ..... **V**
Acknowledgements ..... **VII**
About the Author ..... **IX**
Summary Contents ..... **XI**
Detailed Contents ..... **XIII**
Table of abbreviations ..... **XIX**
Table of Chinese Locutions in English ..... **XXV**
Table of Chinese Locutions in Pinyin ..... **XXXIX**
Table of Latin Locutions ..... **LI**
Table of Statutes ..... **LV**
Bibliography ..... **LXXV**
Chap. 1 Foreign Investment Law **1**
§1. Introduction 1
§2. Definition of "Foreign Investment" 2
§3. Promotion 3
§4. Protection 5
§5. Management 8
§6. International Law 17
Chap. 2 General Provisions of Civil Law **23**
§7. Introduction 23
§8. General Provisions (of Civil Law) 26
§9. Civil Rights 38
§10. Civil Juristic Acts 40
§11. Agency 58
§12. Civil Liability 67
§13. Limitation of Action 72
Chap. 3 Real Rights **79**
§14. Introduction 79
§15. General Principles 82
§16. Property 86
§17. Usufruct 96
§18. Possession 115
Chap. 4 General Provisions of Contract Law **119**
§19. Introduction 119
§20. General Rules 120
§21. Conclusion 122
§22. Validity 131
§23. Performance 133
§24. Preservation 148
§25. Modification and Transfer 150
§26. Termination 154
§27. Liability for Breach of Contract 173

Chap. 5 Special Contracts **187**
§28. Introduction 187
§29. Sale 189
§30. Mandate 220
§31. Brokerage 228
§32. Intermediation 231
§33. Loan 235
§34. Suretyship 240
§35. Lease 247
§36. Financial Leasing 252
§37. Factoring 259
§38. Contract for Work 261
§39. Construction 266
§40. Technology 276
§41. Partnership Contract 295
§42. Deposit 300
§43. Warehousing 303
§44. Transportation 307

Chap. 6 Employment **317**
§45. Introduction 317
§46. General Provisions 322
§47. Formation 327
§48. Performance and modification 338
§49. Termination and Revocation 340
§50. Special Provisions 350
§51. Liabilities 357
§52. Supplementary Provisions 359

Chap. 7 Quasi-contracts **361**
§53. Introduction 361
§54. Negotiorum Gestio 362
§55. Unjust Enrichment 364

Chap. 8 Liability for Illicit Acts ("Torts") **367**
§56. Introduction 367
§57. General Provisions 368
§58. Damage Compensation 371
§59. Liability of Certain Authors 377
§60. Product Liability 381
§61. Liability for Environmental Pollution and Ecological Damage 383
§62. Extreme Hazards Liability 386

Chap. 9 Company Law **391**
§63. Introduction 391
§64. The PRC Company Law 395
§65. The Partnership Enterprise 493
§66. Joint-ventures 521
§67. Representative Offices 529
§68. Variable Interest Entities 538

Index **541**

Detailed Contents

Foreword ..... **V**
Acknowledgements ..... **VII**
About the Author ..... **IX**
Summary Contents ..... **XI**
Detailed Contents ..... **XIII**
Table of abbreviations ..... **XIX**
Table of Chinese Locutions in English ..... **XXV**
Table of Chinese Locutions in Pinyin ..... **XXXIX**
Table of Latin Locutions ..... **LI**
Table of Statutes ..... **LV**
Bibliography ..... **LXXV**
Chap. 1 Foreign Investment Law **1**
§1. Introduction 1
§2. Definition of "Foreign Investment" 2
§3. Promotion 3
§4. Protection 5
§5. Management 8
I. Corporate Form 8
II. The Negative List 9
III. Pre-approval 12
IV. Business License 13
V. Registration 13
VI. Record Filing 14
VII. Reviews 15
VIII. Derogations 17
§6. International Law 17
I. Introduction 17
II. The Washington Convention (ICSID) 17
III. The Sino-Swiss Bilateral Investment Treaty 18
IV. Other Treaties 20
Chap. 2 General Provisions of Civil Law **23**
§7. Introduction 23
§8. General Provisions (of Civil Law) 26
I. Basic Provisions (Within the General Provisions) 27
II. Natural Persons 28
III. Legal Persons 29
A. Establishment 30
B. Changes 30
C. Legal Representative 31
D. Liability 32
E. Termination 33
F. Legal Persons Categories and Unincorporated Organizations 35
§9. Civil Rights 38

§10. Civil Juristic Acts 40
I. Introduction 40
II. General Provisions (on Civil Juristic Acts) 41
III. Declarations of Will 42
IV. Validity of Juristic Acts 52
V. Juristic Acts Subject to Conditions or Terms 58
§11. Agency 58
I. Introduction 58
II. Distinctions and Translation Issues 60
III. Powers of Agency and Agents Without Power 62
IV. Sub-agency, Liability, Expiry and Other Provisions 65
§12. Civil Liability 67
I. Introduction 67
II. Civil Liability 69
§13. Limitation of Action 72
I. Introduction 72
II. Limitations of Action 74

Chap. 3 Real Rights 79
§14. Introduction 79
§15. General Principles 82
I. Introduction 82
II. Existence of Real Rights 84
III. Protection of Real Rights 85
§16. Property 86
I. Introduction and General Provisions 86
II. State-, Collective- and Private Property 88
III. Other Property-Related Rights 92
§17. Usufruct 96
I. Introduction 96
II. Usufruct in General 97
III. Construction Usufruct 99
A. Introduction: the Freehold and the Leasehold in Common Law 99
B. The Construction Usufruct in Chinese Law 101
C. Servitudes 106
IV. Security in Property 108
A. Introduction 108
B. General Provisions 109
C. Mortgage, Pledge and Lien 113
§18. Possession 115

Chap. 4 General Provisions of Contract Law 119
§19. Introduction 119
§20. General Rules 120
§21. Conclusion 122
§22. Validity 131
§23. Performance 133
I. Introduction and General Rules 133
II. Contractual Interpretation 134
III. Multiple Debts, Creditors or Debtors and Third Parties 138

IV. Exceptions 141
V. Miscellaneous Provisions 146
§24. Preservation 148
§25. Modification and Transfer 150
§26. Termination 154
I. Introduction 154
II. Automatic Termination 155
III. Early Termination 157
IV. Deferred Termination 160
V. Termination Time 162
VI. Termination Liability 163
VII. Deferred Termination: Comparative Law 165
VIII. Deposit 170
§27. Liability for Breach of Contract 173
I. Introduction 173
II. Compensation 177
III. Performance Guarantees 178
A. Liquidated Damages 178
B. Deposit 180
IV. Mitigation and Exoneration 182
V. Comparative Law 184

Chap. 5 Special Contracts 187
§28. Introduction 187
§29. Sale 189
I. Introduction 189
II. The Vienna Convention (CISG) 193
III. Seller's Obligations 198
A. Transfer of Property 198
B. Delivery 201
IV. Buyer's Obligations 203
A. Payment 203
B. Inspection and notification 204
V. Passing of the Risks 208
VI. Warranty for Defects 212
VII. Other Issues 217
A. Time Limitations 217
B. Other Provisions 220
§30. Mandate 220
§31. Brokerage 228
§32. Intermediation 231
§33. Loan 235
§34. Suretyship 240
I. Introduction 240
II. General Provisions 242
III. Liability 244
§35. Lease 247
§36. Financial Leasing 252
§37. Factoring 259
§38. Contract for Work 261

§39. Construction 266
§40. Technology 276
I. Introduction 276
II. General Provisions 279
III. Technology Development Contracts 285
IV. Technology Transfer Contracts and Technology License Contracts 288
V. Technical Consulting Contracts and Technical Services Contracts 292
§41. Partnership Contract 295
§42. Deposit 300
§43. Warehousing 303
§44. Transportation 307
I. Introduction 307
II. General Provisions 310
III. Freight Transportation 311
IV. Multimodal Transportation 314

Chap. 6 Employment 317
§45. Introduction 317
§46. General Provisions 322
§47. Formation 327
§48. Performance and modification 338
§49. Termination and Revocation 340
§50. Special Provisions 350
I. Collective Contracts 351
II. Labor Dispatch 352
III. Part-time Employment 355
IV. Supervision and Inspection 356
§51. Liabilities 357
§52. Supplementary Provisions 359

Chap. 7 Quasi-contracts 361
§53. Introduction 361
§54. Negotiorum Gestio 362
§55. Unjust Enrichment 364

Chap. 8 Liability for Illicit Acts ("Torts") 367
§56. Introduction 367
§57. General Provisions 368
§58. Damage Compensation 371
§59. Liability of Certain Authors 377
I. Workers 377
II. Internet Users and Providers 378
III. Managers of Public Places 380
§60. Product Liability 381
§61. Liability for Environmental Pollution and Ecological Damage 383
§62. Extreme Hazards Liability 386

Chap. 9 Company Law 391
§63. Introduction 391
§64. The PRC Company Law 395
I. Introduction 395

II. General Provisions 396
A. Basic Provisions (Within the General Provisions) 397
B. Shareholders and the Shareholders' Meeting 401
C. Liabilities 404
D. Company Registration 405
III. Limited Liability Company 409
A. Formation 409
B. Organization 415
C. Equity Transfer 423
IV. Shareholding Company 426
A. Formation 427
B. Shareholders' Meeting 437
C. Board of Directors and Manager 439
D. Board of Supervisors 442
E. Special Provisions on the Organizational Structure of Listed Companies 442
F. Offering and Transfer of Shares of a Shareholding Company 447
1. Offering of Shares 447
2. Transfer of Shares 453
V. Special Provisions on the Organizational Structure of State-owned Companies 461
VI. Qualification and Duties of Directors, Supervisors, and Senior Executives 462
VII. Corporate Bonds 471
VIII. Financial Affairs and Accounting of a Company 473
IX. Combination, Division and Capital Increase or Reduction of a Company 476
X. Dissolution and Liquidation of a Company 481
XI. Branches of Foreign Companies 487
XII. Liability of the Company 489
XIII. Supplemental Provisions 493
§65. The Partnership Enterprise 493
I. Introduction 493
II. General Partnership 498
A. Establishment 498
B. Property 500
C. Partnership Affairs 501
1. General Provisions 501
2. Liability Towards Third Parties 503
3. Joinder and Withdrawal 504
III. Specialized General Partnership 507
IV. Limited Liability Partnership 510
V. Dissolution and Liquidation of Partnerships 516
VI. Liabilities 517
§66. Joint-ventures 521
§67. Representative Offices 529
§68. Variable Interests Entities 538
Index 541