

2007 Chinese Legislation

By Laney Zhang* & Bryan Bachner**

2007 may be remembered as a landmark year in terms of the advancement and establishment of business law in the People's Republic of China. The transition from a centrally planned economy to a market economy has continued unabated and in some sectors sped up. Arguably, the enactment of a broad array of laws over the last year illustrates how the law is moving to catch up to the economic changes and respond to the new demands of the market place. Perhaps the most prominent and controversial law passed was the property law that delineated private rights that would gird a market economy and ensure that the interests of a private property owner would be protected. The aim of this article is to survey the variety of business-related laws passed or amended by the National People's Congress (NPC) and NPC Standing Committee (NPCSC)¹ in the year 2007.



1. PROPERTY LAW²

The landmark Property Law was passed on March 16, 2007 after fourteen years of legislative debate and drafting. Prior to its final passage, the Property Law was reviewed by the NPC Standing Committee six times, a record number in the PRC's legislative history.³

The legal foundation for the formation of private property rights occurred in 1999, when constitutional amendments stipulated that the state must protect legitimate rights and interests of individuals and private economic actors and govern the development of non-public economies.⁴ The advancement toward full property rights was further illustrated by a 2002 report of the 16th CPC National Congress explaining that the seemingly contradictory public and private sector must be unified under the auspices of socialist modernization and that both sectors should compete amongst each other to establish their comparative advantages in the marketplace.⁵

In essence the law has been and continues to confirm that the state still owns and controls all land, however, rules exist which allow long term land use rights on that land for different stakeholders. The 2002 Rural Land Contractual Management Law assigns, through contracts and licenses to farmers,

possession of the land for thirty years.⁶ The rules provide for leases, transfers, exchanges and assignments of the land right. In the cities, the maximum term of assigned land use rights for residential purposes is seventy years.⁷ Effective since 1995, the Urban Real Estate Administration Law, amongst other things, facilitates property transactions by obliging the creation of a single document that will be conclusive evidence of a right in such property.⁸

The NPC enacted the national property law with the intention of clarifying property rights, systematizing an unwieldy regime and remedying previous problems. Part I, Chapter 1 of the law sets out fundamental principles and stipulates that

the socialist economy remains the foundation of the Chinese economy; the property law, however, is meant to clarify the protection of the property owner's rights. Property refers to real and movable property and the phrase property rights means the exclusive right of the rights holder to directly

control specific properties through ownership and security rights in property. Public ownership, according to the law, will continue to be dominant in the economy with "alternative" property rights developing in parallel. All private and public property owners receive equal legal status under the law.

Chapter 2, Section 1 deals with the establishment, modification, transfer and lapse of property rights. It is presumed that any property transaction is registered unless explicitly exempted by law. Any transaction will take effect once registered. The

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contract that effects a transaction shall be valid once it is executed unless otherwise provided in law or in the contract. The validity of the contract is not affected by the registration process. The ownership certificate provided by the registrar is evidence of ownership.

Section 2 of the second chapter concerns movable property. The establishment and transfer of right of movable property will take effect upon delivery of the good. A transaction for a boat, plane or car shall not affect the right of a bona fide third party where registration has not occurred.

Chapter 3 governs the protection of property rights. Where property rights are infringed, the law permits the owner to seek a remedy through pacification, mediation, arbitration or litigation. Where an infringement arises as a result of the placement of a hazard, the owner may request the removal of the hazard. The law provides for remedies including repairs, damages or other civil liabilities.

Part II, Chapter 4 spells out ownership rights. The owner has the right to possess, utilize, dispose of and obtain profits from the property. The owner may establish usufructory and security rights in the property. No person may own something already owned by the state. For the sake of the public interest collectively owned land, houses and other properties owned by individuals or institutions may be expropriated; however, compensation for the value of the property lost, including subsidies for resettlement, must be paid.

Chapter 4 also considers state, collective and individual ownership. State properties are declared to be owned by the whole people. The State Council is in charge of the execution of state's ownership rights. Mineral resources, waters, urban

and rural land, natural resources, radio spectrums and cultural relics are all owned by the state. State organs shall have the right to transact business concerning state property as they deem fit in accordance with law, but they will also bear liability for the corruption or waste of the land.

Individual rights of inheritance shall be protected. Neither institutions nor individuals shall occupy or damage legitimate properties owned by individuals.

Chapter 6 regulates ownership rights of buildings. The owner of an apartment shall enjoy the requisite co-ownership and common management rights. The owner will have the right to dispose of exclusive parts of the ownership as long as no harm occurs to the legitimate rights of the other owners. When the owner transfers a property right in an apartment the joint ownership rights are simultaneously transferred. The roads and green fields within the zoned land of the apartment will be co-owned. Parking lots and garages shall be assigned based on the decision of the owners. The owners may establish an owner's committee to decide how to manage the building.

a. Urban Real Estate Administration Law (Amended)⁹

The Property Law stipulates that for the sake of the public interest, the state may, under certain legal circumstances expropriate property of others. The limitations on this power and the quality of the compensation were of considerable interest to many. The current Administrative Regulation on Urban

House Demolition and Relocation (promulgated by the State Council on June 6, 2001) is in conflict with this provision, because the State Council lacks the power to expropriate houses owned by entities and individuals built on the State-owned land.¹⁰ On August 30,

2008, the NPC Standing Committee decided to amend the Urban Real Estate Law and delegate to the State Council the power to "formulate specific measures" for expropriation. The General Principles of the Urban Real Estate Law was amended to include one new article:

For the sake of the public interest, the State may expropriate houses of the entities and individuals built on State-owned land. The State shall give to the entities and individuals compensation for relocation according to law so as to safeguard the legitimate rights and interests of the entities and individuals subject to expropriation. Where the residential houses of the individuals are to be expropriated, the State shall secure the housing conditions of the individuals subject to expropriation. These specific measures are to be formulated by the State Council.

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b. Implementation of the Property Law

On May 8, 2007, the Ministry of Land and Resources (MLR) of China circulated a notice that sought to illuminate the implementation of the new Property Rights Law. According to the notice, a thorough review of the currently effective land laws, regulations, and rules was underway so as to avoid conflict in the application of the Property Rights Law. The review was to be completed by the end of year 2007. Those laws in conflict with the Property Rights Law would be amended or abolished. Local land and resources authorities were called upon to review the local land rules as well.¹¹

The notice specifically mentioned three new regulations to be promulgated this year. Under the Property Rights Law, although the state has exclusive ownership of all urban land, residential construction land-use rights typically assigned for 70 years will be automatically renewed on expiry. The Law leaves open detailed issues, such as land premiums for the renewals, which are expected to be interpreted by the “Regulations on Determination of Ownership of Land and Land-Use Rights.” The other two related regulations are “Regulations on Land Registration” and “Administrative Rules on Allocated Land-Use Rights.”¹²

In addition, the Supreme People’s Court is preparing a judicial interpretation of the Property Rights Law.¹³

2. CORPORATE TAX LAW¹⁴

The NPC adopted a new Corporate Tax Law on March 16, 2007, which will take effect this year. This law seeks to harmonize the application of tax laws to domestic and foreign-invested enterprises. Previously, a 1991 Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises applied to the foreign-invested enterprises, and the 1993 Provisional Regulations on Enterprise Income Tax applied to the domestic enterprises.¹⁵ Under the old corporate income tax laws, domestic enterprises paid income tax at thirty-three percent while foreign-invested enterprises paid only fifteen percent.¹⁶ The new law unifies the income tax rate for domestic and foreign-invested enterprises at twenty-five percent. The law also unifies the current preferential tax policies.¹⁷



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3. LABOR CONTRACT LAW¹⁸

On June 29, 2007, China passed the Labor Contract Law in a bid to protect workers’ rights amid widespread complaints of unpaid wages, forced labor and other worker abuses. The law took effect January 1, 2008.

Among other things, the law seeks to protect part-time workers by stipulating that their wages should not be lower than the statutory minimum wages set by local governments, and the pay period shall be no longer than 15 days.¹⁹ Wages paid to part-time workers drew headlines in April this year, when several international fast food chains in China were exposed for underpaying part-time employees, mostly students. It was reported that McDonald’s, KFC and Pizza Hut in the southern Chinese

city Guangzhou paid their part-time Chinese employees four yuan (about 52 U.S. cents) per hour, forty percent less than the local minimum wage of seven and a half yuan (about 97 U.S. cents).²⁰

The proposed changes of the Labor Contract Law have been extensively debated. Though applicable to all companies in China, foreign owned companies and their suppliers in particular believe they will be adversely affected by this law.

Some big transnational corporations investing in China expressed concern that the new rules would revive some aspects of socialism and borrow too heavily from labor laws in union-friendly countries. Representatives of some American companies have waged an intense lobbying campaign to persuade the Chinese government to revise or abandon the proposed law.²¹

4. INDIVIDUAL INCOME TAX LAW (AMENDED)²²

In 2007 there were two amendments to the Individual Income Tax Law. The fourth amendment, which took effect on June 29, 2007, delegates to the State Council the power to impose, reduce or suspend individual income tax of interest income deriving from personal savings.²³ On August 15, 2007, the State Council announced a reduction in the tax rate on interest income from twenty percent to five percent.²⁴

In the fifth amendment, the individual income tax threshold was raised from RMB1,600 per month to RMB2,000 (equivalent to about \$281). This amendment sought to benefit



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medium and low income earners facing higher living costs. Official reports suggest that the revenue to the state will decrease by RMB30 billion.²⁵

5. ANTI-TRUST LAW²⁶

On August 30, 2007, after over ten years of debate, the NPC Standing Committee passed the PRC Anti-Trust Law. The purpose of this law, according to the official report, is to protect and maintain order in the market and the principles of market competition.²⁷

Within the eight chapters and fifty-seven articles, the law bans monopoly agreements, such as cartels and other forms of collusion²⁸ and prohibits monopolies from using dominant market status.²⁹ If certain standards were met, concentrations of business operators are subject to government approval.³⁰ The law also bans government agencies from abusing their administrative power to eliminate or limit competition.³¹ The law provides that an anti-trust commission be established under the State Council to “organize, coordinate and guide the anti-monopoly work.”³² The details of the commission’s power, however, may depend on the implementation regulation, which the State Council is expected to issue before August 1, 2008, the effective day of the law. The coming implementation regulation is expected to identify the “Anti-monopoly Enforcement Agency” which will enjoy

broad power in the implementation of the law.

Foreign acquisitions of Chinese companies will be subject to stringent new checks intended to protect China’s economic security in accordance with this law, according to a report of the official news agency Xinhuanet. National security checks are expressly provided for where a foreign investor contributes to the concentration of business operators by merging or acquiring a domestic enterprise or by any other means, and national security is involved. In addition to the examination of the concentration of business operators to determine compliance with this Law, the examination on national security shall also be conducted according to the relevant provisions of the State.³³

Annex: Other NPC Laws Passed/Amended in the Year 2007

1. Emergency Response Law

(Promulgated by the NPCSC on August 30, 2007, effective November 1, 2007. 6 NPCSC GAZETTE 535-543) (2007).

2. Employment Promotion Law

(Promulgated by the NPCSC on August 30, 2007, effective January 1, 2008. 6 NPCSC GAZETTE 554-559) (2007).

3. Animal Epidemic Prevention Law (Revised)

(Promulgated by the NPCSC on July 3, 1997, amended August 30, 2007, effective on January 1, 2008. 6 NPCSC GAZETTE 569-578) (2007).

4. Urban and Rural Planning Law

(Promulgated by the NPCSC on October 28, 2007, effective January 1, 2008. 7 NPCSC GAZETTE 683-690) (2007).

5. Civil Procedure Law (Amended)

(Promulgated by the NPC on April 9, 1991, amended on October 28, 2007, effective April 1, 2008. 7 NPCSC GAZETTE 702-726) (2007).

6. Lawyers Law (Amended)

(Promulgated by the NPCSC on May 15, 1996, last amended October 28, 2007, effective June 1, 2008. 7 NPCSC GAZETTE 734-740) (2007).

7. Energy Saving Law (Amended)

(Promulgated by the NPCSC on November 1, 1997, second amendment October 28, 2007, effective April 1, 2008. 7 NPCSC GAZETTE 749-756) (2007).

8. Law on Labor Dispute Mediation and Arbitration of the People's Republic of China

(Promulgated by the NPCSC on December 29, 2007, effective May 1, 2008. 1 NPCSC GAZETTE, 18-23) (2008).

9. Law on Scientific and Technological Progress (Amended)

(Promulgated by the NPCSC on July 2, 1993, amended on December 29, 2007, effective July 1, 2008. 1 NPCSC GAZETTE, 49-56) (2008).

10. Law on Frontier Health and Quarantine (Amended)

(Promulgated by the NPCSC on December 2, 1986, amended on December 29, 2007. 1 NPCSC GAZETTE, 66-68) (2008).

11. Law on the Protection of Cultural Relics (Amended)

(Promulgated by the NPCSC on November 19, 1982, last amended on December 29, 2007. 1 NPCSC GAZETTE, 73-83) (2008).

12. Law on Road Traffic Safety (Amended)

(Promulgated by the NPCSC on October 28, 2003, amended on December 29, 2007, effective May 1, 2008. 1 NPCSC GAZETTE, 32-45) (2008).

13. Law on Narcotics Control

(Promulgated by the NPCSC on December 29, 2007, effective June 1, 2008. 1 NPCSC GAZETTE, 4-10) (2008).

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¹ The latest issue of the NPCSC Gazette collected is the 1st issue of 2008, published on Jan. 20, 2008.

² Wuquan fa [Property Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) 3 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 291, 309 (P.R.C.).

³ Wang Zhaoguo, *Explanation of the PRC Property Law Draft to the 10th NPC 5th Session* STANDING COMM. NAT'L PEOPLE'S CONG. GAZ 309, 310 (2007) (P.R.C.).

⁴ XIAN FA art. 16 (1999) (P.R.C.).

⁵ 16TH CCP NATIONAL CONGRESS REPORT (November 8, 2002), available at http://news.xinhuanet.com/newscenter/2005-01/16/content_2467718.htm.

⁶ Nongcun Tudi Chengbao Fa [Rural Contractual Land Management Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 2002, effective Mar. 1, 2003) 5 art. 20 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 347, 349 (P.R.C.).

⁷ [Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas] (promulgated by the St. Council on May 19, 1990) art. 12, 10 ST. COUNCIL GAZ. 355, 356 (P.R.C.).

⁸ Chengshi fangdichan guanli fa [Urban Real Estate Administration Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995, amended Aug. 30, 2007) 5 art. 62 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 33, 42 (P.R.C.).

⁹ *Id.*

¹⁰ Guangtao, *supra* note 3 at 592.

¹¹ GUOTU ZIYUAN BU GUANYU GUANCHENG SHISHI ZHONGHUA RENMIN GONGHEGUO WUQUAN FA DE TONGZHI [THE MLR NOTICE ON IMPLEMENTING PRC PROPERTY RIGHTS LAW] (May 8, 2007) available at http://www.gov.cn/zwgk/2007-05/17/content_617406.htm.

¹² 2007 Nian Jiang Wancheng Wuquan Fa Sanbu Bumen Peitao Guizhang de Zhiding [Three Departmental Regulations to Cope with the Property Rights Law to Be Issued by 2007], XINHUANET, May 21, 2007, available at http://news.xinhuanet.com/legal/2007-05/21/content_6129057.htm.

¹³ Zuigao Renmin Fayuan Jiang Shishi Zhiding Wuquan Fa Xiangguan Sifa Jieshi [The Supreme People's Court Is to Issue Judicial Interpretation of the Property Rights Law in Proper Time], XINHUANET, Mar. 29, 2007, available at http://news.xinhuanet.com/legal/2007-03/29/content_5913950.htm.

¹⁴ [Corporate Tax Law] (promulgated by Standing Comm. Nat'l People's Cong., Mar. 15, 2007, effective Jan. 1, 2008) 3 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 319-24 (P.R.C.).

¹⁵ Jin Renqing, *Explanation of the PRC Corporate Tax Law Draft to the 10th NPC 5th Session*, 3 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 324-25 (P.R.C.).

¹⁶ Xin Zhiming, *Unified Corporate Tax Sign of Progress*, CHINA DAILY, Mar. 10, 2008, available at http://www.chinadaily.com.cn/china/2007-03/09/content_823153.htm.

¹⁷ Jin, *supra* note 11.

¹⁸ [Labor Contract Law] (promulgated by the Standing Comm. Nat'l People's Cong., Jun. 29, 2007, effective January 1, 2008) 5 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 410-420 (P.R.C.).

¹⁹ *Id.*, Art. 72.

²⁰ XINHUANET: *Draft Labor Contract Law Improves protection of Part-Time Workers*, available at http://news.xinhuanet.com/english/2007-06/24/content_6284526.htm.

²¹ David Barboza, *China Draft Law to Boost Unions and End Abuse*, N.Y. TIMES, Oct. 13, 2006, at A1.

²² [Individual Income Tax Law] (promulgated by the Nat'l People's Cong., Sept. 10, 1980, fifth amended Dec. 29, 2007, effective March 1, 2008) 5 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 436-438 (P.R.C.).

²³ *Id.*, Art. 12.

²⁴ Xinhuanet: The State Council Decided to Reduce the Tax Rate on Interest Income from 20% to 5%, available at http://news.xinhuanet.com/fortune/2007-07/20/content_6407322.htm.

²⁵ *The Threshold of Individual Income Tax to be Raised to 2000, the Revenue will Decrease by 30 billion*, NPC NEWS, Dec. 24, 2007, available at <http://npc.people.com.cn/GB/6690632.html>.

²⁶ [Anti-trust Law] (promulgated by the Standing comm. Nat'l People's Cong, Aug. 30, 2007, effective August 1, 2008). 6 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 517-523 (P.R.C.).

²⁷ Cao Kangtai, *Explanation of the PRC Anti-Trust Law Draft to the 22nd Session of the 10th NPC Standing Committee* (June 24, 2006), 6 NPCSC GAZETTE, 523, 523 (2007).

²⁸ *Id.*, Ch. 2.

²⁹ *Id.*, Ch. 3.

³⁰ *Id.*, Ch. 4.

³¹ *Id.*, Ch. 5.

³² *Id.*, Art. 10.

³³ *Id.*, Art. 31.