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## Overview of Legal Systems in the Asia-Pacific Region: People's Republic of China

Zengguang (Bill) Huo  
*Cornell Law School*, zh36@cornell.edu

Yuhua Shi  
*none*, rainhua2002@hotmail.com

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# OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By  
**THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION**  
and **LL.M. ASSOCIATION**

Saturday, April 10, 2004  
Harriet Stein Mancuso Amphitheater (G90)  
Myron Taylor Hall ~ Cornell Law School

Presented By

**Mr. Zengguang (Bill) Huo**

**Ms. Yuhua Shi**



Red with a large yellow five-pointed star and four smaller yellow five-pointed stars (arranged in a vertical arc toward the middle of the flag) in the upper hoist-side corner

## PEOPLE'S REPUBLIC OF CHINA (CAPITAL: BEIJING)

For centuries China stood as a leading civilization, outpacing the rest of the world in the arts and sciences. But in the 19th and early 20th centuries, China was beset by civil unrest, major famines, military defeats, and foreign occupation. After World War II, the Communists under MAO Zedong established a regime that ensured China's sovereignty and founded the People's Republic of China. After 1978, his successor DENG Xiaoping gradually introduced market-oriented reforms and decentralized economic decision-making. Output quadrupled by 2000.

- **GEOGRAPHIC DATA** – total: 9,596,960 sq km; land: 9,326,410 sq km; water: 270,550 sq km; slightly smaller than the US
- **RACE** – Han Chinese 91.9%, Zhuang, Uygur, Hui, Yi, Tibetan, Miao, Manchu, Mongol, Buyi, Korean, and other nationalities 8.1%
- **LANGUAGE AND LITERACY** – Standard Chinese or Mandarin (Putonghua, based on the Beijing dialect), Yue (Cantonese), Wu (Shanghaiese), Minbei (Fuzhou), Minnan (Hokkien),

- Xiang, Gan, Hakka dialects, minority languages (see Ethnic groups entry); age 15 and over can read and write
- *GOVERNMENT TYPE* – Communist State
  - *ADMINISTRATIVE DIVISIONS* – 23 provinces (sheng, singular and plural), 5 autonomous regions (zizhiqu, singular and plural), 4 municipalities and 2 special administrative regions
  - *LEGAL SYSTEM* – A complex amalgam of custom and statute, largely criminal law; rudimentary civil code in effect since 1 January 1987; new legal codes in effect since 1 January 1980; continuing efforts are being made to improve civil, administrative, criminal, and commercial law
  - *ECONOMY* – In 2003, with its 1.3 billion people but a GDP of just \$5,000 per capita, China stood as the second-largest economy in the world after the US (measured on a purchasing power parity basis). Agriculture and industry have posted major gains, especially in coastal areas near Hong Kong and opposite Taiwan, where foreign investment has helped spur output of both domestic and export goods. Beijing says it will intensify efforts to stimulate growth through spending on infrastructure - such as water control and power grids - and poverty relief and through rural tax reform aimed at eliminating arbitrary local levies on farmers. Accession to the World Trade Organization helps strengthen China's ability to maintain strong growth rates but at the same time puts additional pressure on the hybrid system of strong political controls and growing market influences. China has benefited from a huge expansion in computer internet use. Foreign investment remains a strong element in China's remarkable economic growth.

*[Information adapted from the World Fact Book 2003 published by the Central Intelligence Agency of the US Government.]*

## **Detailed Description of the Chinese Legal System**

### **A. Legal System**

Generally speaking, the Chinese legal system can be characterized as a civil law system. However, given the very long and unique history associated with the development of the Chinese civilization, many scholars regard the Chinese legal system as relatively distinct from other legal systems. Historically, the Chinese legal system included a well-developed criminal justice system, as well as a system of administrative law, although a system for civil adjudication was not well developed. The early Chinese legal system underwent reform in the late Qing Dynasty period from 1901. The reform of civil law in China incorporated certain legal principles from the German civil law system as adopted by the Japanese civil law system. Under the reform, civil law was one of six fundamental components that came into effect, namely, constitutional law, the civil law, civil procedure, criminal law, criminal procedure and commercial law. This system of law has been retained by Taiwan although China has adopted an altogether different legal system since 1949.

The current law of People's Republic of China has a relatively short history, which began in 1949. It was only from 1986 that the Civil Code was introduced along with provisions relating to the Law of Contract. The Civil Code was greatly influenced by the Napoleonic Civil Code and the Civil Law of Germany. The enactment of Criminal Law Act took 25 years (1954-1979).

In recent years, the laws of common law countries begin to influence the legislation of China. For example, Chinese securities market was first promoted by scholars and attorneys who were educated at US law schools and, accordingly, legislation relating to the subject of securities regulation was essentially modeled after relevant US legislation.

There are generally 6 types of laws in the Chinese legal system. In the order of priorities, they rank as: Constitutional Law, National Law, Administrative Regulations, Local Legislative Regulations, Departmental Regulations and Local Governmental Regulations. The Constitutional Law is the supreme law of the whole legal system. The National People's Congress is responsible for legislation and for amendment of the Constitution Law as well as other national laws. The State Council is the chief administrative body and has power to enact nation wide Administrative Regulations. It is chaired by the Premier and is composed of the heads of each governmental department and agency. There are about 50 members in the State Council. Under the State Council, various ministries are responsible for supervising different sectors. Operating under the State Council are several Commissions that set policies for, and coordinate the related activities of, different administrative organs. In addition, there are several Offices operating under the State Council that deal with matters of ongoing concern. Apart from these, there are also Bureaus and Administrations operating under the State Council but their organizational status is lower than those of the Ministries.

Each of the governmental entities mentioned above makes relevant regulations for matters falling within its jurisdiction. It is common practice for administrative organs to provide more detailed regulations for the application of National Laws. Local government can also enact laws in areas where they have jurisdiction. But such legislation cannot conflict with the Constitutional Law, National Laws, and the law made by the State Council.

In addition to the different levels of legislation, judicial interpretation plays a very important role in the judicial process. Judicial interpretation is first considered by the Judicial Committee of National Supreme Court before it is issued in the form of a Code by the National Supreme Court. The Code consolidates judicial opinions and controls the exercise of discretion of judges in interpreting legislation. Judicial interpretation does not have the effect of legislation, but is binding on all the judicial process regardless of the type or level of the court. As such, in practical terms, the Code has the effect of legislation. Judicial interpretation has a very wide scope, which ranges from fundamental law to administrative regulations. Only the decisions of the National Supreme Court are published. It can be used as authority in litigation, but it is not a practice to cite cases as authority in current litigation.

## **B. Legal Education**

Legal education in China developed very quickly in recent years. There used to be no more than 50 law schools ten years ago. With the increasing demand for legal profession, many law schools have been founded recently and there are law schools in almost every university today. For example, Tsinghua Law School was founded in 1995. The class size of law schools are also expanding very quickly. The number of LL.M. and J.S.D. candidates in Renmin Law School has increased from 50 per year to 300 per year within 5 years.

In case of the admission process of LL.B. candidates, there is no special criteria and process only for law schools. Every year, high school students sit for the National University Admission Test which is a set of standard examinations for admission to all universities. After the examination, applicants may submit standardized forms to apply to no more than three law schools in a year. Law schools will choose from the pool of applicants by reference only to the score obtained by the applicant in the National University Admission Test. Any law school in China can offer courses leading to an LL.B degree. There are normally 40-50 students in one tutorial group and the size of the whole student body varies greatly in different law schools. Classes for LL.B. student take place in the form of lectures and the main content is to interpret statutory law and the underlying legal theories. Recent years, cases are becoming even more important in legal curriculum. The tuition for LL.B. students is RMB 4000 per year and the total cost for four years training is about RMB 16,000 altogether. The average starting salary for LL.B. graduates is about RMB 2000 per month (RMB 1 is equivalent to \$1 in purchase power).

The graduate programs in law schools are normally three year programs, which are relatively smaller in size than undergraduate law programs. The admission process is

also a unified process for all graduate schools except for a part of the examination which relates to the specialized fields of candidates. In this way, applicants can only choose one law school in a year. Admission is again solely dependent on the grade that a candidate has obtained. Graduate programs focus on academic training and are conducted in the forms of lectures, seminars, supervised writing and research. The candidates mostly hold LL.B. degrees. With the reform of legal education, the US J.D. model was introduced in Chinese law schools in 1996 and students with non-legal undergraduate degrees can get into the graduate law programs directly. The tuition for graduate law training is much more expensive, which is RMB 10,000 per year.

Most law professors in China hold LL.B. and LL.M. degrees. In recent years, J.S.D. is a requirement in order to qualify as a professor. In addition, international exchange programs have also increased. Every year, Renmin Law School held a Summer American Law program. Renmin Law School had also held the China-America Law School Deans' Conference, China-Europe Law School Deans' Conference, the Worldwide Top 100 Law Schools Deans' Conference and Conference of Legal Education in Asia.

Every law school has its own expertise. Renmin Law School is famous for the civil law and criminal law, whereas Beijing Law School is famous for international law and jurisprudence. China University of Politics and Law is famous for civil law and Chinese legal history, while Wuhan Law School is famous for the conflict of laws.

## **C. Legal Practice in China**

Legal practice in China involves a comprehensive range of services. Generally speaking, it can be classified into four categories: lawyers (private practitioner), in-house counsel, judge and prosecutor. The types of legal work in China do not fall neatly into the categories commonly associated with the Anglo-American legal systems. Particularly, in China, there is a clear distinction between the work that may be undertaken by legal practitioners and those that may be assumed by counsel for the government. According to the *Law Relating to Chinese Legal Profession*, government officials cannot practice law as a lawyer. In addition, a lawyer who has been nominated as a congressman is not allowed to practice law during the term of his or her appointment.

### **I. Lawyers in China**

In ancient time, legal practitioners did not enjoy a high reputation in what was essentially a non-litigious society. The value of lawyering was not accepted since the role of the advocate often conflicts with the Chinese preference for conciliation and mediation. However, with the economic development of society and the improvement of the legal system, lawyers gain more and more respectability and prominence. The gradual increase in awareness of their own civil right in the heart of the common people makes lawyers more indispensable.

To practice law in China requires, firstly, qualification as a lawyer and then a valid practicing license. In most cases, obtaining the qualification as a lawyer is the precondition for obtaining the license as a lawyer. There are two prerequisites to obtaining qualification to practice law:

First, the qualification as a lawyer necessitates the passage through the Chinese National Uniform Judicial Examination. The Chinese National Uniform Judicial Examination is equivalent to the bar examination in the US. However, it has its own characteristics. Firstly, the Chinese National Uniform Judicial Examination is a prerequisite not only for the practice of law as a lawyer, but also as a judge or a prosecutor. Secondly, a further difference from the US system of bar examination is that the Chinese National Uniform Judicial Examination is a nation-wide examination which covers all the judicial districts, except Hong Kong and Macao special administrative districts and Taiwan region.

Second, eligibility as a candidate for the examination requires the applicant to hold a bachelor degree in law or a bachelor degree in other majors. Accordingly, this means that entrance to the legal profession is open not only to those who have acquired formal education in law schools, but also to those who did not obtain any formal legal education but merely possess a bachelor degree in other majors. In my opinion, with the increasing complication of Chinese Legal system, it is imperative to require formal legal education for admission to the legal profession. In particular, special training programs that have been developed to circumvent the assurance of quality in legal education in the present system of examination further highlights the need for reform in this area.

Once this qualification is obtained, a one-year internship in a law firm is then required to satisfy the requirement for the procurement of a license to practice as a lawyer.

## **II. Court System**

The composition of the courts is quite different from the courts in the United States. The Chinese court system is divided into four levels: (i) the Supreme People's Court at the national level; (ii) the higher people's court at the provincial level; (iii) the intermediate people's court at the municipal level; (iv) the basic people's court at the county level. There are divisions inside the court, which normally include civil law division, criminal law division, and administrative law division. Every division has several judges. Law school graduate begin their career as clerks. Normally, after four or five year, he/she can be promoted to be an assistant judge, and then a judge. The National Supreme Court has the similar structure.

### **III. People's Prosecutor**

As in other civil law systems, China has a criminal justice system which is generally similar although the organizational structure of the court system in China differs rather significantly.

### **IV. The Perspective of Foreign Law Firms in China**

Since the early 1980s, the growth in foreign direct investment in China gave rise to an increase in international legal work. In July 1992, in order to meet the demand of economic development and to grant better access to Chinese law, the Chinese government began to open up the legal services market to foreign law firms and to allow them to establish offices in China.

According to the 1992 Provisional Regulation, only a foreign law firm can apply for a permit to set up a branch office in China. In order to guarantee the quality of foreign lawyers and also to indirectly limit their number, the Provisional Regulation provides that foreign lawyers practicing with foreign law firm must have legal experience of more than three years. A foreign law office in China may practice the law of the jurisdiction where the foreign law firm has been licensed, but legal issues relating to Chinese laws must be referred to Chinese law firms. This is because foreign lawyers are prohibited from interpreting or practicing Chinese law. As such, a foreign law office and its lawyers can neither represent its clients in a Chinese court nor provide an opinion letter based on Chinese law.

The landmark trade agreement between China and the United States in November 2000 requires the liberalization of the Chinese legal services market with the following provisions:

(1) Restrictive Provisions: (i) The representatives of foreign law firms in China must be foreign attorneys in good standing and with more than three years of practice experience; (ii) The chief representative must be a partner in his/her law firm; (iii) The representatives must stay in China for more than 180 days each year.

(2) Liberalization Provisions: (i) China will eliminate the restrictions on the number and location of foreign law offices by January 1, 2001. (ii) Foreign law offices may develop their businesses in China within a certain scope.

To date, China has granted permits to more than 150 foreign and Hong Kong law firms.

## **Exhibit One: List of ministries and agencies of the State Council of China**

### **A. Ministries and Commissions of the State Council:**

- Ministry of Foreign Affairs
- [Ministry of National Defense](#)
- State Development Planning Commission
- State Economic and Trade Commission
- Ministry of Education
- Ministry of Science and Technology
- [State Commission of Science, Technology and Industry for National Defense](#)
- State Ethnic Affairs Commission
- [Ministry of Public Security](#)
- Ministry of State Security
- Ministry of Supervision
- Ministry of Civil Affairs
- Ministry of Justice
- Ministry of Finance
- Ministry of Personnel
- Ministry of Labour and Social Security
- Ministry of Land and Resources
- Ministry of Construction
- Ministry of Railways
- Ministry of Communications
- Ministry of Information Industry
- Ministry of Water Resources
- Ministry of Agriculture
- Ministry of Commerce
- Ministry of Culture
- Ministry of Health
- State Family Planning Commission
- National Audit Office

### **B. Bureaux and Administrations under the State Council:**

- General Administration of Customs
- State Bureau of Taxation
- State Environmental Protection Administration
- Civil Aviation Administration of China
- State Administration of Radio, Film and Television
- State Sports General Administration
- State Statistics Bureau
- State Administration for Industry and Commerce
- State Press and Publication Administration
- State Forestry Bureau

- General Administration of Quality Supervision and Quarantine
- State Drug Administration
- State Intellectual Property Office
- National Tourism Administration
- State Administration for Religious Affairs
- Counselor's Office under the State Council
- Bureau of Government Offices Administration
- State Industrial Safety Supervision Administration

### **C. Offices:**

- Foreign Affairs Office
- Office of Overseas Chinese Affairs
- Taiwan Affairs Office
- [Hong Kong](#) and [Macao](#) Affairs Office
- Legislative Affairs Office
- State Economic Restructuring Office
- [Information Office](#)
- Research Office

### **D. Institutions:**

- [Xinhua News Agency](#)
- [Chinese Academy of Sciences](#)
- [Chinese Academy of Social Sciences](#)
- Chinese Academy of Engineering
- Development Research Center
- National School of Administration
- State Seismological Bureau
- China Meteorological Administration
- [China Securities Regulatory Commission](#)
- China Insurance Regulatory Commission

### **E. Bureaux Supervised by Commissions and Ministries:**

- State Grain Bureau
- State Tobacco Monopoly Industry Bureau
- State Bureau of Foreign Experts Affairs
- State Oceanography Bureau
- State Bureau of Surveying & Mapping
- State Postal Bureau
- State Bureau of Cultural Relics
- State Administration of Traditional Chinese Medicine
- State Administration of Foreign Exchange

## **Exhibit Two: Major Law Schools in China**

- Peking University School of Law
- Renmin University School of Law
- China University of Political Science and Law
- WuHan University School of Law
- Tsinghua university School of Law
- Fudan University Law School
- University of International Business and Economics School of Law
- Southwest University of Political Science and Law
- East China University of Political Science and Law
- Southeast University of Political Science and Law

## Short Overview of the Contract law of People's Republic of China

### 1. **Applicable Laws**

- Contract of the People's Republic of China.

### 2. **Formation of Contract**

- Mutual Assent (offer and acceptance)
  - Offer
    - Make an offer
      - (1) Its contents shall be detailed and definite;
      - (2) It indicates the proposal of the offeror to be bound in case of acceptance.
    - Withdraw an offer:
      - the withdrawal notice reaches the offeree before or at the same time when the offer arrives.
    - offer shall be null and void under any of the following circumstances:
      - (1) The notice of rejection reaches the offeror;
      - (2) The offeror revokes its offer in accordance with the law;
      - (3) The offeree fails to make an acceptance at the time when the time limit for acceptance expires;
      - (4) The offeree substantially alters the contents of the offer.
    - irrevocable offer:
      - (1) the offeror indicates a fixed time for acceptance or otherwise explicitly states that the offer is irrevocable; or
      - (2) he offeree has reasons to rely on the offer as being irrevocable and has made preparation for performing the contract.
    - Counteroffer:
      - Where an offeree makes an acceptance beyond the time limit for acceptance
  - Acceptance
    - A contract is established when the acceptance becomes effective.
    - An acceptance shall reach the offeror within the time limit fixed in the offer.
    - no time is fixed in the offer
      - If the offer is made in dialogues, the acceptance shall be made immediately except as otherwise agreed upon by the parties;
      - If the offer is made in forms other than a dialogue, the acceptance shall arrive within a reasonable period of time.
      -
- Consideration: no concept of consideration.

- Defenses – concepts of void or voidable, does it matter if contract is executory vs. executed
  - Mistake
    - A party shall have the right to request the people's court or an arbitration institution to modify or revoke the following contracts:
      - those concluded as a result of serious misunderstanding;
      - those that are obviously unfair at the time when concluding the contract.
  - Statute of Frauds
  - null and void
    - A contract is concluded through the use of fraud or coercion by one party to damage the interests of the State;
    - Malicious collusion is conducted to damage the interests of the State. A collective or a third party;
    - An illegitimate purpose is concealed under the guise of legitimate acts;
    - Damaging the public interests;
    - Violating the compulsory provisions of the laws and administrative regulations.
  - Lack of capacity
    - A contract concluded by a person with limited civil capacity of conduct shall be effective after being ratified afterwards by the person's statutory agent, but a pure profit-making contract or a contract concluded which is appropriate to the person's age, intelligence or mental health conditions need not be ratified by the person's statutory agent.
    - A contract concluded by an actor who has no power of agency, who oversteps the power of agency, or whose power of agency has expired and yet concludes it on behalf of the principal, shall have no legally binding force on the principal without ratification by the principal, and the actor shall be held liable.
    - If an actor has no power of agency, oversteps the power of agency, or the power of agency has expired and yet concludes a contract in the principal's name, and the counterpart has reasons to trust that the actor has the power of agency, the act of agency shall be effective.
    - Where a statutory representative or a responsible person of a legal person or other organization oversteps his/her power and concludes a contract, the representative act shall be effective except that the counterpart knows or ought to know that he/she is overstepping his/her powers.

### 3. **Terms of the Contract**

- Parol Evidence Rule

- When there is no agreement or such agreement is unclear, the parties may agree upon supplementary terms through consultation. In case of a failure in doing so, the terms shall be determined from the context of relevant clauses of the contract or by transaction practices.
  - If quality requirements are unclear, the State standards or trade standards shall be applied; if there are no State standards or trade standards, generally held standards or specific standards in conformity with the purpose of the contract shall be applied.
  - If the price or remuneration is unclear, the market price of the place of performance at the time concluding the contract shall be applied; if the government-fixed price or government-directed price shall be followed in accordance with the law, the provisions of the law shall be applied.
  - If the place of performance is unclear, and the payment is currency, the performance shall be effected at the place of location of the party receiving the payment; if real estate is to be delivered, the performance shall be effected at the place of location of the real estate; in case of other contract objects, the performance shall be effected at the place of location of the party fulfilling the obligations.
  - If the time limit for performance is unclear, the obligor may at any time fulfill the obligations towards the obligee; the obligee may also demand at any time that the obligor performs the obligations, but a time period for necessary preparation shall be given to the obligor.
  - If the method of performance is unclear, the method which is advantageous to realize the purpose of the contract shall be adopted.
  - if the burden of the expenses of performance is unclear the cost shall be assumed by the obligor.
- If a dispute over the understanding of the standard terms occurs, it shall be interpreted according to general understanding.
- Where there are two or more kinds of interpretation, an interpretation unfavourable to the party supplying the standard terms shall be preferred. Where the standard terms are inconsistent with non-standard terms, the latter shall be adopted.
- Reformation of Contract
- Collateral Contract Doctrine

#### 4. **Third Party Rights**

- Privity of Contract Rule
- Assignment of Rights (Manner and Requirements)
  - The obligee may assign, wholly or in part, its rights under the contract to a third party, except for the following circumstances:

- The rights under the contract may not be assigned according to the character of the contract;
    - The rights under the contract may not be assigned according to the agreement between the parties;
    - The rights under the contract may not be assigned according to the provisions of the laws.
  - An obligee assigning its rights shall notify the obligor. Without notifying the obligor, the assignment shall not become effective to the obligor.
  - The notice of assignment of rights may not be revoked, unless the assignee agrees thereupon.
  - If the obligor assigns its obligations, wholly or in part, to a third party, it shall obtain consent from the obligee first.
  - Delegation of Contractual Duties (Manner and Requirements)
    - If the obligee assigns its rights, the assignee shall acquire the collateral rights relating to the principal right, except that the collateral rights exclusively belong to the obligee.
    - If the obligor assigns its obligations to a third party, the new obligor shall assume the collateral obligations relating to the principal obligations, except that the obligations exclusively belong to the original obligor.
- Third Party Beneficiaries
  - If the obligor assigns its obligations to a third party, the new obligor may claim the demur belonging to the original obligor in respect of the obligee.
  - After the obligor receives the notice of assignment of the creditor's right, it may claim its demur in respect of the assignor to the assignee.

## 5. **Performance of Contract**

- When satisfied or excused
  - Anticipatory breach
    - One party, which shall render its performance first, may suspend its performance, if it has conclusive evidence that the other party is under any of the following circumstances:
      - Its business conditions are seriously deteriorating;
      - It moves away its property and takes out its capital secretly to evade debt;
      - It loses its commercial credibility;
      - Other circumstances showing that it loses or is possible to lose the capacity of credit.
    - Where a party suspends performance of a contract without conclusive evidence, it shall be liable for the breach of contract.
  - Impossibility, Impracticability or frustration
    - Where one party to a contract fails to perform the non-monetary debt or its performance of non-monetary debt fails to satisfy the terms of the contract, the other party may request it to perform it except under any of the following circumstances:
      - It is unable to be performed in law or in fact;

- The object of the debt is unfit for compulsory performance or the performance expenses are excessively high; or
- The creditor fails to request for the performance within a reasonable time period
- Breach
  - Statute of Limitation
    - Statute of limitation is two years.

## 6. Remedies

- Damages
  - Reliance The parties to a contract may agree that one party shall, when violating the contract, pay breach of contract damages of certain amount in light of the breach, or may agree upon the calculating method of compensation for losses resulting from the breach of contract.
  - If the agreed breach of contract damages are lower than the losses caused, any party may request the people's court or an arbitration institution to increase it; if it is excessively higher than the losses caused, any party may request the people's court or an arbitration institution to make an appropriate reduction.
  - If the parties to a contract agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the debt obligations after paying the breach of contract damages.
- Any duty to mitigate?
  - After one party violates a contract, the other party shall take proper measures to prevent from the enlargement of losses; if the other party fails to take proper measures so that the losses are enlarged, it may not claim any compensation as to the enlarged losses.
  - The reasonable expenses paid by the party to prevent from the enlargement of losses shall be borne by the party in breach.
- Specific Performance
  - Where one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract, the other party may demand it to continue to perform its obligations, to take remedial measures, or to compensate for losses.
  - Where one party to a contract expresses explicitly or indicates through its acts that it will not perform the contract, the other party may demand it to bear the liability for the breach of contract before the expiry of the performance period
- Conlitate clause
  - The parties to a contract may agree that one party shall, when violating the contract, pay breach of contract damages of certain amount in light of the breach, or may agree upon the calculating method of compensation for losses resulting from the breach of contract.
  - If the agreed breach of contract damages are lower than the losses caused, any party may request the people's court or an arbitration institution to increase it; if it is excessively higher than the losses caused, any party may

request the people's court or an arbitration institution to make an appropriate reduction.

- If the parties to a contract agree upon breach of contract damages in respect to the delay in performance, the party in breach shall perform the debt obligations after paying the breach of contract damages.

Useful sources for Chinese law:

<http://www.qis.net/chinalaw/>

<http://www.chinaiprlaw.com/english>