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China's *Civil Code*: legally innovative, socially conservative

The Civil Code is a milestone, in the works for decades. We complement this overview with an extensive slidedeck exploring the details and the debate behind the final text.



Civil Code: a legal coming of age for China

an aspiration since the Mao era, the code brings together existing civil legislation, clarifies rights and introduced new rules

The National People's Congress adopted the *Civil Code* on 28 May 2020, a legal coming of age. Its significance is threefold

- it tackles social issues that directly affect the lives of Chinese people
- it displays maturing of the legal system and builds a foundation for future civil law
- it delivers a long-promised politically advanced, unified and distinctly socialist legal code

outlining the code

An aspiration since the Mao era, there have been four false starts at a civil code. This round began in 2014; the General Provisions were written and adopted in 2017 to guide drafting of content chapters.

A massive piece of legislation, the *Civil Code* brings together existing civil legislation, clarifies rights and introduces new regulations. It contains 1,260 articles divided into seven sections

- General Provisions
- Property Rights
- Contract Rights
- Personality Rights
- Marriage and Family
- Inheritance
- Tort Liability

Each section will be explored in detail in our forthcoming slidedeck.

Elements were put to the public ten times, receiving more than 1 million opinions and suggestions from over 400,000 people. The comment period was extended to almost twice the normal length.

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personality rights section is a world first, though ultimately conservative

The *Civil Code* must look both backwards and forwards. It must be consistent with existing laws to avoid widespread upheaval in business, family and personal relationships; address conflicts between current civil laws; and provide answers to new and future legal questions resulting from rapid change.

world-first personality rights

Hailed as a 'major development and innovation' by Wang Yi 王轶 *Civil Code* Project Leading Group, the *Civil Code* introduces a personality rights section that adds

- a right to privacy, in physical rather than cyber-space
- protection of personal information, including electronic data
- provisions regulating organ donations and medical research using human tissue
- sexual harassment provisions

Controversial throughout its long drafting process, this section is ultimately conservative in the rights it confers; progress should not be overstated. Much remains unaddressed

- personal information ownership is not defined as a right; victims of breaches are not guaranteed the right to seek compensation
- no checks are placed on collection and use of personal information by the state, a bone of contention given the volume of health data collected in the name of epidemic control

The legislature nonetheless lauded this section for protecting basic rights and committing to a people-centred approach to law.

conceiving marriage and family

marriage and family section attracted most comment and most radical proposals

The Marriage and Family section attracted most public comment, sparking heated debate. Ultimately the more radical proposals of both modernisers and conservatives were omitted, but here too conservative voices triumphed.

Hot topics included

- 30-day cooling-off period for divorce: proponents argued it will reduce rash divorce; opponents cited the impact on vulnerable women and children (NPC later confirmed a waiver in cases of domestic violence)
- marriage equality and cohabitation of same-sex or unmarried couples: hundreds of thousands of comments were submitted advocating same-sex marriage. Ultimately the state deemed traditional marriage suitable for China and the rules did not change; concerns persist that the civil rights of LGBTQ and unmarried couples are not adequately protected

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code reach

The breadth of issues tackled means the *Civil Code* has far-reaching policy implications. We highlight some policy areas below.

on data: code fails to consider data collection by the state; IT firms successfully lobbied against stricter regulations

science and innovation

Privacy provisions respond to popular frustration with rampant misuse of data, resulting in harassment calls and outright scams. Yet the *Civil Code*'s impact is limited and unbalanced: it fails to consider data collection by the state; e-commerce and other IT firms have successfully lobbied against stricter regulations. Trade in data remains poorly regulated, despite the 2016 *Cybersecurity Law* and a draft *Data Protection Law*. Personality rights could lead to a 'new type of ownership right' for individuals, notes Liu Dian 刘典 Renmin University of China, but there is no roadmap. The long-awaited *Individual Data Protection Law* may provide more clarity.

on ag: strengthens rights of farmers, creating new collateral to obtain credit

agriculture

The *Civil Code* strengthens the rights of farmers, most notably by recognising farmland use rights as collateral, creating a new channel through which to generate credit. There is now greater clarity regarding compensation for land expropriation by local governments, including villagers' homes in the scope, and requiring prompt payment. Rural collectives have also been granted legal personhood. To ensure farmers maximise benefits from property values, says Cai Jiming 蔡继明 Tsinghua University Centre for Political Economy Research, amendments that authorise buying and selling homestead plots (illegal under the 2019 revision of *Land Management Law*) are still needed.

on environment: 'green'; added as a fundamental principle

energy and environment

Among the few fundamental principles added to the general provisions is a 'green principle', requiring all civil acts to conserve resources and be environmentally responsible. Accountability for environmental damage, supplementing administrative penalties with expanded civil liability, and foundations for reparation and compensation rules have been expanded. New provisions make it easier for state agencies and social organisations to bring public interest environmental lawsuits.

A milestone in many respects that brings together decades of legislation and makes important progress, the *Civil Code* is decidedly cautious, sidestepping strong reform. With many questions still unanswered, it will be up to other standalone laws or accompanying interpretations to push civil law boundaries.

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what the experts are saying



Wang Liming 王利明
Renmin University vice president

Helping draft of much of the *Civil Code*, Wang is a renowned expert on the process. Deeming it to be essentially a law of rights, he cites the Personality Rights section as a major step in safeguarding the private rights of citizens. He warns however that personal information protection should be more complete and afforded the higher legal status of a 'right' to aid application in other laws. Greater clarity is indeed needed in distinguishing public and private information, and when it can be collected for public interest purposes.



Yang Lixin 杨立新
Chinese Law Society Civil Law
Research Association vice president
and Renmin University professor

Another *Civil Code* drafter, Yang lectured on its interpretation. He agrees the Personality Rights section is the biggest innovation, yet comments more on Marriage and Family, the most controversial. Taking a progressive stance throughout the drafting process, Yang proposed recognition in law of same-sex and unmarried couples' capacity to cohabit, and that civil unions be explored in future, and urging more recognition of IVF babies under the law. On release of the *Civil Code*, he urged further legislation ensuring the 30-day divorce cooling off period is not enforced arbitrarily in complicated circumstances.



Ding Yuxiang 丁宇翔
Beijing First Intermediate People's
Court judge

A regular commentator on legal problems in the digital era, Ding suggests that user privacy and corporate abuse of it have become major issues in personal rights protection. Like others, Ding warns the *Civil Code* and related protections in the *Internet Security Law* fail to protect user data. Privacy protection in the *Civil Code* is largely limited to physical space, neglecting cyber-privacy. Good law in this area will, he suggests, arise only when law and technology are more integrated.

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context

28 May 2020	NPC deliberates and approves the <i>Civil Code</i>
28 Dec 2019 - 26 Jan 2020	all chapters of the <i>Civil Code</i> are put to the public: 114,574 comments received from 13,718 citizens
28 Dec 2019	NPC deliberates the full <i>Civil Code</i> , but does not approve it
23 Dec 2019	the <i>Civil Code</i> is first presented in its entirety, incorporating the General Provisions and the other six sections in draft
October 2019	NPC Standing Committee reviews third draft of Marriage and Family
August 2019	NPC Standing Committee reviews third drafts of Personality Rights and Tort Liability
June 2019	NPC Standing Committee reviews second drafts of Marriage and Family and Inheritance
April 2019	NPC Standing Committee reviews second drafts of Property Rights and Personality Rights
December 2018	NPC Standing Committee reviews second drafts of Contract Rights and Tort Liability
August 2018	NPC Standing Committee reviews first draft of all the content chapters of the future <i>Civil Code</i>
1 Oct 2017	<i>General Provision of the Civil Law</i> is promulgated, the guiding first section of the Civil Code
15 Mar 2017	NPC Standing Committee deliberates and approves <i>General Provision of the Civil Law</i>
27 Jun 2017	NPC Standing Committee reviews first draft of General Provisions
March 2015	special working group to draft and compile the <i>Civil Code</i> set up
October 2014	Fourth Plenary Session of 18th CPC Central Committee sets the goal of compiling a civil code
2001	fourth attempt to compile a code began under Jiang Zemin
1979	third attempt to compile a code under Deng Xiaoping
1962	second attempt to compile a code under Mao
1954	first attempt to compile a civil code under Mao