



Executive Summary

Civil Code which will take effect on January 1, 2021 endeavors to keep pace with the development of market by bringing some new rules for certain contracts, subsequently affecting certain transactions. With this Article we introduce some new rules in the field of contract law worth your attention.

- **General Provisions** provides for conclusion, validity, performance, modification, termination, liability for breach of contract;
- **Typical Contracts** lists 18 typical contracts such as sale contract, lease contract, technology contract, guarantee contract, storage contract, and partnership contract, and the subchapter sets forth more detailed rules for each typical contract;
- **Quasi-contracts** contains two forms, one is negotiorum gestio,<sup>1</sup> the other is unjust enrichment.

So far, contractual law in China primarily consists of the PRC Contract Law, judicial interpretation, etc. All of them have been incorporated into and supplemented by the Civil Code. Upon taking effect of the Civil Code, it will certainly have influence on foreign-related transactions in China.

We highlight the main changes on contractual law for your reference:

I. Major Innovations Provided by the Civil Code

	Rule	Comment
<b>The Forms of contract</b>	The parties may conclude a contract in writing, orally or in other forms. <b>Written form also includes <i>data telex messages</i></b> that can visibly show the described contents and can be accessed and used at any time by means of electronic data interchange and e-mails. <sup>2</sup>	• Nowadays, the use of Wechat or email to conclude a contract is on the rise because online transactions and online communications have become a norm in daily life. In this regard, Civil Code makes clear that Wechat record and email exchange can be defined as a written contract.
<b>Formation of written contracts without appropriate signatures, fingerprints or seals</b>	The written contract is formed when one party has performed the principal obligations and the other party has accepted them <b>prior to</b> both parties affix their signatures, fingerprints or seals thereto appropriately. <sup>3</sup>	• Civil Code provides that in the situation where parties have performed without duly executing signatures, fingerprints, or seals, the written contract is formed under such circumstances even without duly execution. <sup>4</sup>
<b>Formation of contracts in the context of e-commerce</b>	Where the information about commodities or services released by a party through the internet or other information networks is qualified as an "offer," the contract is formed when the other party selects such commodities or services and <b>submits the order successfully</b> . <sup>5</sup>	To conclude a contract in the context of e-commerce transactions, there are two steps: • <b>Offer:</b> The information about commodities or services published online shall be specific and have the main terms, such as subject matter, quantity, quality, price, etc. • <b>Acceptance:</b> The other party shall select the goods or services and submit the order successfully.
<b>Pre-contract</b>	If the parties conclude a subscription contract, subscription order, reservation order, etc. for concluding contracts in the future, the former contracts shall constitute <b>pre-contracts</b> . Where one party fails to perform the obligation (concluding contracts) stipulated in pre-contract, the other party may request him/her to bear the <b>breach of contract liability</b> in relation to the pre-contract. <sup>6</sup>	• Although Civil Code provides that the pre-contract is enforceable and breach of pre-contract produces liability, it does not describe the full extent of the damages for breach of pre-contract. As for this issue, we have to wait for further judicial explanations in practice.
<b>Validity of standard clause</b>	A party asked to sign a contract including standard clause can claim that the standard clause that is adverse to her interests <b>does not form part of the contract</b> where the other party fails to perform the obligation of drawing attention or explanation, causing her/him not to notice or understand the terms with its significant interest. <sup>7</sup>	• Civil Code seeks to strengthen protecting for weaker contracting parties by granting the right to outlaw the standard clause.
<b>Delivery time under e-contract<sup>8</sup></b>	<b>Goods:</b> Where the subject matter of the e-contract is goods delivered through express logistics, <b>the time of signing for receipt by the consignee</b> shall be the time of delivery.  <b>Services:</b> Where the subject matter of the e-contract is services, <b>the time specified in the generated electronic voucher or in the physical voucher</b> shall be the time of provision of services. If the above voucher does not specify the time or the time specified is inconsistent with the time of actual provision of services, <b>the time of actual provision of services</b> shall prevail.  <b>Subject matters delivered by online transmission:</b> Where the subject matter of an electronic contract is delivered by online transmission, the time of entry of the subject matter into the specific system designated by the other party and can be retrieved and identified is the time of delivery. <sup>10</sup>	The legal meaning of delivery hinges on the risk allocation between seller and buyer. • Generally, the risk of damage to or loss of the subject matter shall be borne by the seller before delivery and by the buyer after delivery. <sup>9</sup>

II. Significant Changes Comparing the Civil Code to Current PRC Contract Law

Note: The underlined content is the expansion upon comparison

1. Expanding Subrogation Right for Creditor

Civil Code	Contract Law
Prior to the maturity of the creditor's claims, <u>where the limitation of action for the debtor's claims or the collateral rights relating to the claims is about to expire or the debtor fails to declare bankruptcy claims in a timely manner</u> , thus affecting the realization of creditor's claims, the creditor may request the PRC court to subrogate the debtor's rights, or to declare to the bankruptcy administrator, or to perform any other necessary act. <sup>11</sup>	If the debtor is negligent in exercising his due creditor's rights, thus causing damage to the creditor's rights, the creditor may request the PRC court to subrogate the debtor's rights. <sup>12</sup>

2. Expanding Cancellation Right for Creditor

Civil Code	Contract Law
The creditor may request that a PRC court revokes the following debtor's actions: • The debtor abandons his or her claims, <u>a guarantee of claims free of charge, transfers assets without compensation or otherwise, or maliciously extends the period for performance of its due claims</u> , thus affecting the realization of claims by the creditor; • The debtor transfers its property at an obviously unreasonable low price, <u>accepts the property of another person at an obviously unreasonable high price, or provides a guarantee for another person</u> , thereby affecting the realization of the creditor's claims, and the assignee knows or should have known of the relevant circumstances. <sup>13</sup>	The creditor may request that a PRC court revokes the following debtor's actions: • The debtor abandons his due creditor's right or transfers his property free of charge, thus causing damage to the creditor; • The debtor transfers the property at an obviously unreasonable low price, causing damage to the creditor, and the assignee is aware of the situation. <sup>14</sup>

We expect many judicial interpretations will appear as guidance for practice once the Civil Code takes effect. Asiallians will keep a close eye on the practical implementations.

Please be advised that it is always appropriate for companies to mechanically follow corresponding legal provisions when drafting a contract, as legal provisions are only basic essential regulation and a contract should always be tailored to the planned specific legal transaction. Further, companies shall always properly safekeep the company chops and make sure the company chops are properly used for executing contracts.

(1) "Negotiorum gestio" means "where an administrator who does not have statutory or contractual obligations manages the affairs of others to avoid losses to the interests of others, the administrator may request the beneficiaries to reimburse the necessary expenses for managing the affairs; where an administrator suffers losses from management affairs, the administrator may request the beneficiaries to pay appropriate compensation." Article 979 of the Civil Code  
(2) Article 469 of the Civil Code  
(3) Article 490 of the Civil Code  
(4) Please note this situation is different from parties concluding oral contracts—this situation is where a written contract has been negotiated but not executed properly, Specifically, the situation is for the following two circumstances: 1) where the contract is required to be concluded in written form under laws and regulations, for example, a pledge contract, a lease contract where the lease term more than six months, a technology development contract, a technology transfer contract, a technology license contract, etc, or 2) parties agree to conclude written contract.  
In this situation, the contract **is considered as being concluded in written form**. This is not transfer to oral contract.  
(5) Article 491 of the Civil Code  
(6) Article 495 of the Civil Code  
(7) Article 496 of the Civil Code  
(8) "E-contract" means the contract executed (signed/sealed) online, please note this is different from contract in electronic version. The PRC Electronic Signature Law provides the requirements for the qualified execution of contract online. In real world, there are e-signature platforms emerging at a fast rate.  
(9) Article 604 of the Civil Code  
(10) Article 512 of the Civil Code  
(11) Article 536 of the Civil Code  
(12) Article 73 of the PRC Contract Law  
(13) Article 538-39 of the Civil Code  
(14) Article 74 of the PRC Contract Law

Should you need more details, please contact us at [asiallians@asiallians.com](mailto:asiallians@asiallians.com). As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in China, Hong Kong and Taipei.

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