The Reform of Contract Rules in China's New Civil Code

Successes or Pitfalls*

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Abstract

The Civil Code of the People's Republic of China (Civil Code) came into force on 1 January 2021. Book III on Contracts of the Civil Code has adopted significant changes compared to the old Chinese Contract Law (Contract Law). This article provides a comprehensive and systemic analysis of those changes from structure to content, from legislative technics to values underpinning the Civil Code. It evaluates all the factors in the context of the development of Chinese society, Chinese culture and Chinese legal system.

This article first outlines the historical background of the development of the Contract Law and the Civil Code. It then moves on to compare the Civil Code and the Contract Law, highlighting the changes in structure, the incorporation of new provisions and the amendments to old provisions in light of contemporary Chinese society and culture. Finally, it argues that the Civil Code is a significant milestone in China's legislative history; that it reflects the legislative experience and judicial practice in China; that it adds provisions which are innovative and of Chinese characteristics to meet the needs of China's changing society and legal system; and that it keeps pace with the development of the global law reform and harmonization.

Keywords: Civil Code of the People's Republic of China, Contracts of the Civil Code, Chinese legal system, legislative history.

A Introduction

The Civil Code of the People's Republic of China (hereinafter the Civil Code) was officially enacted by the National People's Congress of the People's Republic of China (hereinafter the NPC) on 28 May 2020 and came into force on 1 January 2021.

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The Civil Code consists of seven books, 1,260 articles in all.[1] Book III, on Contracts, comprises 29 chapters, a total of 526 articles, from Article 463 to Article 988.[2]

Compared with the Contract Law of the People's Republic of China (hereinafter the Contract Law) as well as other relevant pieces of legislation,[3] significant changes have been adopted in Book III. It changes the structure, improves the previous rules and incorporates many innovative provisions while some important principles that form the foundation of a civil relationship remain unchanged.[4] Statistically, Book III adds 137 new articles, deletes 25 old articles and modifies 260 articles on the basis of the Contract Law, including 102 technical modifications and 158 substantial modifications.[5] Also, apart from the 15 types of typical contracts contained in the Contract Law, four new types of typical contracts have been added into Book III, i.e. surety contracts, factoring contracts, partnership contracts and property management service contracts.

This article attempts to assess the changes in Book III on Contracts of the Civil Code, which is a milestone and centrepiece of the civil law system in China, and to evaluate its successes and pitfalls. Part II will outline the legislative history of the Civil Code, focusing on the development of contract rules. Part III makes a comparison of Book III and the Contract Law as well as other relevant laws. Part IV evaluates the successes and pitfalls of Book III. Part V concludes the discussion.

B Historical Background

The drafting of the Civil Code and the development of contract laws have a long history. The drafting of the Civil Code underwent a tortuous process, four previous attempts to creating a civil code having failed for various reasons in 1954, 1962, 1979 and 2001.

After the failure of the third attempt, in 1979, China adopted a piecemeal approach to achieve its goal. On 12 April 1986, the General Principles of Civil Law of the People's Republic of China (hereinafter the General Principles) was promulgated. As the main source of civil law in China, the General Principles sought to provide a uniform framework for the regulation of civil rights and obligations under civil law. However, owing to its incompleteness, it was considered only as a simplified civil code.[6]

As for contract law, a three-pillar system was established by enacting three different laws, including the Economic Contract Law 1982,[7] the Foreign Economic

1 The seven books of the Civil Code are as follows: General Provisions, Real Rights, Contracts, Personality Rights, Marriage and Family, Succession, Tort Liability.
2 The Civil Code defines management of the business of another and unjust enrichment as 'quasi-contracts', which are regulated by Book III as well.
3 For example, General Principles of Civil Law, Property Law, Contract Law, Guaranty Law, Marriage Law, Adoption Law, Law of Succession, Tort Law and rules concerning personality rights.
4 For example, the principle of fairness and the principle of good faith.
5 Hong Shi, "Significant Development and Innovation in the Part of Contracts" (2020) 4 *China Legal Science*, 45.
6 Mo Zhang, *Chinese Contract Law: Theory and Practice* (Brill, 2006, 2nd ed) 10.
7 It was adopted on 13 December 1981, went into force on 1 July 1982 and was revised in 1993.

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Contract Law 1986[8] and the Technology Contract Law 1987.[9] The three laws focused on different types of contacts and had various deficiencies, often contradicting each other.[10] To cope with the complexities and confusion caused by the three laws and to grapple with China's fast-going economic and legal reform, China took steps to unify the three laws, and, eventually, the Contract Law was enacted in 1999.[11] The Contract Law unified the three previous contract laws and established a systematic and comprehensive contract law regime in China.

In October 2014, a fifth attempt to draft a civil code began. A decision was taken to provide for a combined codification of China's civil law, and the drafting process started from March 2015. In March 2017, the NPC took major strides towards the adoption of a comprehensive civil code by enacting the General Provisions of Civil Law of the People's Republic of China. Primarily based on the 1986 General Principles of Civil Law, the 2017 General Provisions of Civil Law were adopted to work as the general part of the future comprehensive civil code, and it "contained more detailed provisions which reflect both improvement and development made in regulating civil affairs throughout the past decades".[12] From 2017 onwards, legislators focused on other parts of the future civil code. In 2020 the Civil Code was eventually adopted on the basis of the aforementioned efforts on the legislation of civil law and contract laws.

In the Civil Code, Book I provides general provisions of civil law, and Book III regulates specific rules concerning contracts. As to the application of law, when the general provisions conflict with specific rules in Book III, based on the principle that special law prevails general law, those specific rules should be given priority over the general provisions.

C Main Changes in Book III and Comparison with Previous Laws

I Formation of Contract

Significant changes have taken place in the formation of a contract, the most innovative of them being Article 471, which allows parties to enter into a contract by means other than offer and acceptance.[13] As for specific rules on offer and acceptance, the Civil Code modifies several expressions in the Contract Law. The criteria of an offer remain the same, namely that a declaration of will with (a) specific and definite content and (b) an indication that the offeror will be bound by it in the case of acceptance constitutes an offer.[14] Therefore, it is added that commercial publicity meeting the aforementioned conditions may also be considered as an offer; oth-

8 It was adopted on 21 March 1985 and went into force on 1 July 1985.
9 It was adopted on 23 June 1987 and went into force on 1 November 1987.
10 Wang Liming and Xu Chuanxi, "Fundamental Principles of China's Contract Law" (1999) 13(1) *Columbia Journal of Asian Law,* 1, 1-34; Mark Williams, "An Introduction of General Principles and Formation of Contracts in the New Chinese Contract Law" (2001) 17 *Journal of Contract Law,* 13, 14-17.
11 It was adopted on 15 March 1999 and went into force on 1 October 1999.
12 Mo Zhang, *Chinese Contract Law: Theory and Practice* (Brill, 2006, 2nd ed) 14.
13 Civil Code, Art. 471.
14 Civil Code, Art. 472, Contract Law, Art. 14.

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erwise, it should be categorized as an invitation to offer.[15] Normally, the offeror could revoke the offer, but in the case that the offeree has made 'reasonable preparation' for performing the contract based on his reliance that the offer is irrevocable, it shall not be withdrawn by the offeror.[16] The Civil Code maintains the twofold category of an offer, that is, the offer is made in dialogue and not in dialogue. If the offer is made in dialogue, it becomes valid by the time the offeree knows its content; in other circumstances, it becomes valid by the time it reaches the offeree.[17] Therefore, the revocation of an offer made in dialogue must be acknowledged by the offeree before he or she accepts the offer; for an offer not made in dialogue, its revocation must reach the offeree before his or her acceptance.[18]

For acceptance, if the offer prescribes no time limit, the acceptance of an offer made in dialogue shall be made immediately, while in the opposite case it shall reach the offeror within a reasonable time.[19] Generally, a contract is formed when the acceptance becomes effective, but the law or parties' agreement can provide a different time of contract formation.[20] If the acceptance is made beyond the time limit or cannot possibly reach the offeror within the time limit under normal circumstances, it shall be considered as a new offer unless otherwise notified by the offeror.[21]

Finally, Article 491 of the Civil Code specially regulates the contract formation in electronic commerce, where a sales contract is concluded when the buyer submits his or her order through the internet. If the contract is in the form of a data message, the domicile of the recipient, instead of its habitual residence, shall be considered as the place where the contract is formed absent a main business place.[22] This may affect the applicable law of the contract if the seller has a different domicile and habitual residence.

For electronic communications, Article 512 Civil Code incorporates Article 51 Electronic Commerce Law to regulate electronic contract concluded through the internet. In electronic sales contracts, goods are normally delivered by means of express service, and, therefore, the time of delivery shall be the time when the consignee acknowledges receipt of goods, i.e. the time when the consignee signs his or her name on the package.[23] Therefore, sellers should bear the risk of loss and damage before the buyer receives the goods, and extra attention is called for during transit.

Rules on agency are more specific in regard to different circumstances. An agent who 'maliciously' colludes with the opposite party to damage the interests of the principal shall be liable for such damage, the word 'maliciously' being added to emphasize the ill intention of the agent.[24] This may require more detailed rules in

15 Civil Code, Art. 473.
16 Civil Code, Art. 476.
17 Civil Code, Arts. 137, 474.
18 Civil Code, Art. 477.
19 Civil Code, Art. 481.
20 Civil Code, Art. 483.
21 Civil Code, Art. 486.
22 Civil Code, Art. 492.
23 Civil Code, Art. 603.
24 Civil Code, Art. 164.

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future case law to identify what constitutes a malicious collusion. Also, an agent is forbidden to perform any juridical act in the name of the principal with itself or other principals represented by it unless it is consented to or ratified by the principal and the other principals.[25] In the case of the appointment of a third party, the agent shall be liable only for the selection of and its instructions to the third party after obtaining the consent or ratification of the principal.[26] As for an act of agency without proper authority, it is added that the opposite party shall have the right to urge ratification by the principal within 30 days of receiving the notice. Failure to respond to such notice will be considered as denial of ratification. The bone fide opposite party also has the right to revoke any act before ratification and claim damage incurred by revocation within the amount of interest that he or she could have obtained if the act had been ratified.[27]

As regards standard terms, the Civil Code expands the obligation of the party, furnishing standard terms to remind the other party to note any contract terms related to his or her material interest, not confined to restriction of liabilities.[28] Otherwise, the aggrieved party could argue their exclusion from the contract, instead of requesting revocation by the court, which emphasizes the real meeting of minds and denies the existence of a binding standard term absent sufficient notice. Article 497 adds new circumstances under which a standard term is void, i.e. the furnishing party unreasonably excludes or limits its liability, aggravates the liability of the other party or restricts the main rights of the other party.

Parties may modify the contract based on consensus.[29] The Contract Law provides for approval or registration procedures by law or administrative regulations in the second paragraph of Article 77, while in the Civil Code, this is incorporated into Article 502, which regulates the validity of a contract, including its modification. If a modified contract fails to go through the relevant procedures, its validity may be challenged; this will be discussed in the next section.

II Validity

The Civil Code reflects a pro-validity approach. The criterion of legal capacity is still based on age and discernibility, yet the age limit of a minor is decreased from 10 years to 8 years.[30] The Civil Code deletes the expression of 'mentally ill' when defining an adult with limited or no legal capacity and focuses solely on his or her ability to discern his or her conduct,[31] avoiding health-oriented discrimination. For a person with limited capacity, in principle an act committed independently by him or her needs to be consented to or ratified by his or her statutory agent, but the Civil Code admits the validity of a purely beneficiary act,[32] balancing the protection of third party and those with limited legal capacity. The law adds ratification as a new

25 Civil Code, Art. 168.
26 Civil Code, Art. 169.
27 Civil Code, Art. 171.
28 Civil Code, Art. 496.
29 Civil Code, Art. 543.
30 Civil Code, Art. 19; General Principles of Civil Law, Art. 12.
31 Civil Code, Arts. 21-22.
32 Civil Code, Arts. 19, 22.

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remedy for admitting the validity of a juridical act committed by a person with limited capacity, together with the opposing party's right to revoke previous juridical act before ratification.[33]

In the case of mistake and error, the Civil Code deletes the remedy of modification by court or arbitral tribunal.[34] As a result, parties can only request revocation of a contract concluded under 'gross misunderstanding'.[35] This restricts the power of judicial and arbitral institutions, reflecting more respect to parties' consensus. Moreover, by leaving the dispute of modification to parties themselves, the time waste during judicial or arbitral proceeding is greatly reduced, increasing efficiency in dispute settlement. The aggrieved party shall exercise his or her right to revoke within 90 days of his or her knowledge.

More detailed provisions on fraud and duress are added to the Civil Code. A contract so concluded is now voidable, omitting previous emphasis on the invalidity of contracts damaging state interests.[36] The consequence of fraud and duress is that the aggrieved party can request the court or arbitral tribunal to rescind the contract, deleting the remedy of modification, as is the case in mistake and error.[37] The same rules apply to third party fraud and coercion, which is not discussed in the old contract law.[38] Also, a special period in which to exercise the right to rescind is provided by the new law, which varies depending on the party's knowledge of fraud. If the aggrieved party knows or should have known the cause of revocation, he or she shall exercise the right within one year, starting from the date of knowledge or the date when the coercive act is terminated. Regardless of his or her knowledge, the right to rescind is extinguished after five years from the day the juridical act is performed.[39] This twofold period balances the protection of the party's legitimate interests and the stability of a juridical act, providing more sensible regulations in fraud and duress.

As regards illegality and immorality, the Civil Code specifies that illegality results from violation of imperative provisions of any law or administrative regulations, which shall render the contract null and void directly.[40] The concept of immorality is now refined from 'public interests' to 'public order and good morals'. A contract concluded maliciously to damage any other person's lawful interests remains void,[41] which could be seen as an example of immorality.

Finally, in the case of excessive benefits and advantages, the Civil Code also deletes the remedy of modification and leaves the right to rescind unchanged, admitting its presumed validity as before.[42] Specific cases in which a contract term would be regarded as conferring excessive benefits and advantages will be detailed by case law.

33 Civil Code, Art. 145.
34 Contract Law, Art. 54; General Principles of Civil Law, Art. 59.
35 Civil Code, Art. 147.
36 Civil Code, Art. 146; Contract Law, Art. 52.
37 Civil Code, Arts. 148-150.
38 Civil Code, Art. 149.
39 Civil Code, Art. 152.
40 Civil Code, Art. 153.
41 Civil Code, Art. 154.
42 Civil Code, Art. 151.

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It is noteworthy that the remedy of modification is abolished for all types of voidable contracts. This first appears in the General Provisions of Civil Law, which came into effect in 2017 and later becomes Book I of the Civil Code with tiny modifications. Scholars supporting this abolishment explain that modification by court amounts to imposing a new contract on the parties, violating the principle of freedom of will[43] and deviating from party autonomy.[44] Since one party's unilateral request of modification could result in modifications of contract terms binding both sides, it also disrupts the equality between both parties.[45] In addition, it is said that the remedy of modification is not commonly resorted to in legal practice, and parties tend to believe modification by court or arbitral tribunal cannot reflect their unilateral declaration of will, reducing the necessity of providing such remedy.[46] However, other scholars argue that modification should remain because it maintains the existence of contract and increases the efficiency of trade.[47] It also softens the harsh result of rescission, i.e. the contract is void *ab initio*, leaving the parties a different route to resolve disputes.[48] They also believe that modification could save the time of unsuccessful negotiation,[49] but allowing the court or arbitral tribunal to modify the contract on behalf of the parties may significantly reduce efficiency in dispute settlement since no one knows the true will of the parties better than themselves.

III Pre-Contractual Liability

If the parties reach a preliminary agreement on the purchase, they should be bound by it.[50] However, the Civil Code deletes the remedy of termination with compensation in the case of breach, which was provided by the judicial interpretation.[51] The aggrieved party could only request the breaching party to be liable for such breach, but it cannot claim compensation for damages hence incurred.

Article 500 Civil Code provides for *culpa in contrahendo,* that the party shall be liable for damage if it is under one of the following circumstances in concluding a contract and thus causing losses to the other party: pretending to conclude a contract and negotiating in bad faith, or deliberately concealing important facts and providing false information, or performing any act violating the principle of good faith. Article 501 goes on to provide for the obligation not to disclose or use im-

43 Jianyuan Cui, *Contract Law* (Law Press, China, 2017) 84.
44 Tian Yin, "Innovations Evaluation of the System of Legal Act in General Provisions of Civil Code (Draft)" (2016) 11 *Law Science Magazine*, 15-16.
45 Huixing Liang, "Important Problems on the Legislation of General Provisions of the Civil Law (Part III)" (2016) 9 *Chinese Lawyer*, 70-72.
46 Shishi Li, *Explanation on the General Provisions of the Civil Law of the People's Republic of China* (Law Press, China, 2017) 465.
47 Guoyue Hou and Jushi He, "The Limited Reservation of the Right of Alteration of Revocable Contract in Contract of the Civil Code" (2020) 28(2) *Henan Social Sciences*, 77-78.
48 Guoyue Hou and Jushi He, "The Limited Reservation of the Right of Alteration of Revocable Contract in Contract of the Civil Code" (2020) 28(2) *Henan Social Sciences*, 77-78.
49 Guoyue Hou and Jushi He, "The Limited Reservation of the Right of Alteration of Revocable Contract in Contract of the Civil Code" (2020) 28(2) *Henan Social Sciences*, 77-78.
50 Civil Code, Art. 495.
51 Art. 2, Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts.

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properly the trade secret or any other confidential information the parties learn in concluding a contract. Otherwise, he or she shall be liable for any damage hence incurred. These two articles are largely the same as Articles 42 and 43 of the Contract Law. Shiyuan Han has commented that Articles 42 and 43 Contract Law are profoundly influenced by Articles 2.1.15 and 2.1.16 PICC regarding the wording and legislative technics in the final text of the Contract Law.[52] Compared with the UNIDROIT Principles of International Commercial Contracts (PICC), Article 42 Contract Law introduced two other circumstances of *culpa in contrahendo,* while Article 43 restricted the duty of confidentiality to trade secrets only and did not specify the calculation of compensation based on the benefit the breaching party received. This could possibly explain why Article 42 Contract Law remains unchanged in the Civil Code since it is consistent with Article 2.1.15 PICC and could facilitate international trade based on unified private law.[53] As for the duty of confidentiality, the Civil Code extends the scope of protection in Article 43 Contract Law to 'any other confidential information' the parties have learned in contracting, equalling that provided by Article 2.1.16 PICC.[54] This imposes greater pre-contractual duty on the parties for confidentiality and keeps in line with PICC to provide equal protection to trade secrets and other confidential information.

IV Construction of Contracts

The basic principle of contract interpretation remains the same as the Contract Law, namely that contract clauses shall be interpreted according to the words used, taking into account the relevant clauses, nature and purpose of the act, customs and the principle of good faith.[55] If the contract contains unclear quality requirements, these should be interpreted as conforming to relevant standards published by the state or other institutions.[56] The Civil Code rearranges the order of quality standards that serve as the complement of the contract. The sequence is as follows: state mandatory standard, state voluntary standard, industry voluntary standard, customary standard or any particular standard consistent with the purpose of the contract.[57] As regards unclear apportionment of expenses of performance, it is added that the creditor shall bear any extra cost that he or she incurs during performance.[58] Overall, the general principle of contract interpretation is not substantially different from the previous one, while the methods of interpretation, *e.g.* apply state quality standard absent express quality requirements, are more detailed and reasonable. In the case of sale by trial, the buyer shall be regarded as having consented to purchase if he or she has paid part of the price or performed an act such as selling, leasing or creating a security interest on the subject matter during the trial period.[59]

52 Shiyuan Han, "Principles for International Commercial Contracts and the Development of Chinese Contract Law" (2015) 6 *Global Law Review*, 72-73.
53 Contract Law Art. 42 is now Civil Code Art. 500.
54 Contract Law Art. 43 is now Civil Code Art. 501 with modification of the scope of protection.
55 Civil Code, Art. 142.
56 Civil Code, Art. 511.
57 Civil Code, Art. 511.
58 Civil Code, Art. 511.
59 Civil Code, Art. 638.

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As for practices and usages, the Civil Code specially provides that the application of usages shall not be contrary to public order and good morals when resolving a civil dispute,[60] delineating the hierarchy between them. The court can now refer to transaction practices between the parties to identify their intentions,[61] to determine the effective time of an acceptance without notice,[62] and to decide whether the inspection period of goods is reasonable.[63] This strengthens the objection test in the construction of contracts adopted in the Civil Code. Also, it might be inferred that practices, particularly past dealings, between parties could be regarded as implied terms of the contract.

V Obligations of the Seller

The seller's obligations in Civil Code remain largely the same as the Contract Law. The seller shall deliver the subject matter or a document for taking delivery of the subject matter and transfer the ownership to the buyer,[64] as well as other relevant documents and information in accordance with the agreement or usage of trade.[65] The intellectual property right in the subject matter shall not belong to the buyer, unless otherwise agreed by the parties.[66] The seller shall deliver the subject matter to the buyer at the agreed time and place, in the agreed manner and in compliance with the agreed quality requirements,[67] and the risk of damage or loss of the subject matter transfers to the buyer by the time of delivery.[68] These obligations are borrowed from the United Nations Convention on Contracts for the International Sale of Goods (CISG), which is probably why they remain in the Civil Code.[69] With regard to conformity of goods, the Civil Code maintains most of the provisions in the Contract Law probably because they are consistent with the CISG and add more detailed standards to facilitate their application. Article 35 CISG provides that the seller shall deliver goods that are of the quality, quantity and description required by the contract and that are contained or packaged in the manner required by the contract. Shiyuan Han has commented that the Chinese Contract Law did not put all these requirements into one article like the CISG but separated them into multiple articles, specifying the standards of different aspects of conformity.[70] Therefore, these articles are maintained in the Civil Code because they develop the rules in CISG and could contribute to the uniformity of global contract law. For third party property right, the seller shall guarantee that no third party has any right to

60 Civil Code, Art. 10.
61 Civil Code, Art. 140.
62 Civil Code, Art. 484.
63 Civil Code, Art. 622.
64 Civil Code, Art. 598; Contract Law, Art. 135.
65 Civil Code, Art. 599; Contract Law, Art. 136.
66 Civil Code, Art. 600; Contract Law, Art. 137.
67 Civil Code, Arts. 601-603, 615; Contract Law, Arts. 138-141, 153.
68 Civil Code, Art. 604, Contract Law, Art. 142.
69 Shiyuan Han, "Chinese Contract Law and the CISG" (2011) 2 *Journal of Jinan University (Philosophy and Social Sciences edition)*, 12.
70 Shiyuan Han, "Chinese Contract Law and the CISG" (2011) 2 *Journal of Jinan University (Philosophy and Social Sciences edition)*, 12. The relevant articles are Arts. 153, 154, 155, 156, 168, 169, Contract Law, which now become Arts. 615, 616, 617, 619, 635, 636, Civil Code, respectively.

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the delivered subject matter unless otherwise provided by law.[71] The buyer shall have the right to suspend payment if he or she has conclusive evidence of third party right on the subject matter, except where the seller provides appropriate securities.[72]

Some minor additions are included in the Civil Code. As mentioned previously, the seller shall bear the extra cost he or she incurs during performance.[73] Also, the seller has to comply with applicable quality standards according to the default rule in contract interpretation.[74] Regarding conformity of goods, if the seller fails to deliver conforming goods, the buyer could, additionally, request him to bear the costs of substitute performance by the third party if the nature of the obligation precludes enforced performance.[75] If the sales contract concerns performance to a third party, that third party could directly request the seller to be liable for breach of contract if he or she fails to perform as agreed, on condition that the law or the contract confers the right to request performance directly to him or her.[76] In addition, the seller cannot claim limitation or exclusion of liability provided in the contract if he or she fails to notify the buyer of the defect in the subject matter intentionally or due to gross negligence.[77] The seller shall package the goods in a manner favourable to conserving resources and protecting the ecology and environment absent party agreement or general manner in the industry,[78] reverberating with the new principle of resources conservation and environmental protection provided in Article 9 of the Civil Code.

VI Obligations of the Buyer

The buyer's primary obligations under the contract of sale are to pay the price[79] and to take delivery of the goods.[80] Viewed from the framework of the articles on buyer's obligations, there are no material changes between the Civil Code and the old Contract Law.

The obligation of payment is the most important obligation of buyers. Generally, the buyer shall use the agreed method to pay the price at the agreed place and at the agreed time.[81] Summarily, four main restrictions are imposed on the obligation of payment: the amount, the place, the time and the payment method. The first three requirements in the Civil Code mirror the old Contract Law. First, for the requirement of amount, the buyer shall pay the price in accordance with the amount stipulated in the contract.[82] Absent such an agreement, the payment obligation shall be generally performed according to the market price of the subject

71 Civil Code, Art. 612; Contract Law, Art. 151.
72 Civil Code, Art. 614; Contract Law, Art. 152.
73 Civil Code, Art. 511.
74 Civil Code, Art. 511.
75 Civil Code, Art. 581.
76 Civil Code, Art. 622.
77 Civil Code, Art. 618.
78 Civil Code, Art. 619.
79 Civil Code, Art. 626.
80 Civil Code, Arts. 605 and 608.
81 Civil Code, Arts. 627 and 628.
82 Civil Code, Art. 626.

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matter at the place of performance at the time of the conclusion of the contract.[83] Second, as to the requirement of the place for payment, the buyer shall pay the price to the seller at the place agreed in the contract. If the place of payment is not determined, it shall generally be paid at the seller's place of business.[84] Third, regarding the time requirement, the buyer shall pay the price to the seller at the agreed time.[85] If such agreement is absent or the time cannot be determined according to Article 510 Civil Code,[86] the payment shall be made at the same time as the receipt of the subject matter or the document for taking delivery of the subject matter.[87] What should be noted is that the requirement of the payment method is newly added in the Civil Code, which reflects the trend to impose more restrictions on the obligation of payment.[88] If the payment method is not agreed or the agreement is ambiguous, performance shall be rendered in a manner that is conducive to realizing the purpose of the contract.[89] This requirement of payment method is mainly borrowed from Article 54 CISG.[90]

In conjunction with the obligation of payment, the buyer also has an obligation to take delivery of the goods.[91] With regard to this obligation, there are slight changes in the wording of the buyer's risk of defective delivery.[92] The new regulation emphasizes that where a subject matter 'fails to be delivered' rather than 'cannot be delivered', as in Article 143 Contract Law,[93] the buyer shall bear the risk of damage.[94] This change lays more stress on the consequence of the fact that the goods are not delivered.

VII Remedies

Generally, there are a variety of remedies available for breach of contract, including suspension of performance, specific performance, damages, exemption, interest, avoidance, price reduction and concurrent remedies. The appropriate remedy depends on the circumstances.

1 Suspension of Performance

Suspension of performance is one of the common remedies for breach of contract. Generally, the parties should fulfil their obligations either at the same time or in an order of priority in respect of the performance. If the parties shall perform the obligations simultaneously, a party may suspend his or her performance.[95] If there is an order of priority for performance and one party required to perform the obli-

83 Civil Code, Art. 511.
84 Civil Code, Art. 627.
85 Civil Code, Art. 628.
86 Civil Code, Art. 510.
87 Civil Code, Art. 628.
88 Civil Code, Art. 626.
89 Civil Code, Art. 511.
90 CISG, Art. 54.
91 Civil Code, Arts. 605 and 608.
92 Civil Code, Art. 605.
93 Contract Law, Art. 143.
94 Civil Code, Art. 605.
95 Civil Code, Art. 525.

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gation first fails to do so, the other party, who is to perform later, has the right to suspend his or her performance.[96] These two circumstances are clearly stipulated in Articles 525 and 526 Civil Code, which remain the same as Articles 66 and 67 Contract Law. Besides the general rules, the Civil Code also provides four specific reasons for suspension of performance in Article 527[97] and requires the parties who suspend performance to bear the obligation of prompt notification.[98] After the suspension of performance, if one party provides appropriate assurance, the suspending party shall resume performance. Otherwise, the suspending party may terminate the contract. What is more, the Civil Code newly entitles the suspending party the right to claim liability for breach of contract while terminating the contract.[99]

2 Specific Performance

Each party shall fully perform his or her own obligations as agreed.[100] The Civil Code Article 509 prescribes several principles that the parties shall abide by. Among all the principles, the principle of avoiding waste of resources is a bright spot that has been added to the Civil Code and requires the parties to avoid wasting resources, polluting the environment and destroying the ecology. In addition to the general rules and principles, the specific performance as the remedy for breach of contract is stipulated in Articles 577-581 Civil Code. There are no material changes in Articles 577-578 compared with the old Contract Law. In Article 579, the party's obligation is expanded from the obligation to pay only the price or remuneration to the entire monetary obligation, which reflects that the obligation of payment is refined and aggravated. Article 580 added a clause allowing the court and the arbitral tribunal to terminate the contract if the purpose of contract is frustrated. This obviously grants the court and the arbitral tribunal more powers and leaves them wider discretion. Additionally, under Article 581, which is a totally new article, where the performance of obligation by one party is failed, and the nature of the obligation precludes the enforcement of performance, the other party may request that party to bear the costs of substitute performance by the third party.

3 Damages

The breaching party of the contract can be held responsible for the losses caused by the breach. The damages are used to compensate the aggrieved party for the losses. The Civil Code addresses the damage liability arising out of *culpa in contrahendo*. This system endorses the principle of full compensation: the injured party is entitled to damages.[101] Specifically as to the scope of compensation for damages, Article 584 Civil Code establishes that the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, but not exceeding the probable losses

96 Civil Code, Art. 526.
97 Civil Code, Art. 527.
98 Civil Code, Art. 528.
99 Civil Code, Art. 528.
100 Civil Code, Art. 509.
101 Civil Code, Arts. 577 and 583; Yuhan Liu, "The Principle of Full Compensation in the Civil Code Contract Compilation" (2019) 3 *Western Law Review*, 24-35.

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caused by the breach of contract that are foreseen or should have been foreseen when the party in breach concludes the contract. Thus, in assessing the compensation for damages, the court will usually consider two factors: one is the actual losses caused by the breach of contract, and the other is probable losses that meet the requirement of foreseeability. It should be noted that, as to the probable losses, some scholars suggest that the Civil Code should specify the scope and conditions for probable losses to make the rule more operable in legal practice.[102] However, it is a pity that those suggestions have not been accepted. Additionally, as to the provision of liquidated damages in Article 585 Civil Code, the parties may agree to pay liquidated damages because of breaches of contract and may also agree on a method for the calculation of the amount of compensation for the damages.[103] Especially in comparison with Article 114 Contract Law, Article 585 Civil Code lays more emphasis on the courts' initiative and ability.

4 Exemption

The Civil Code has clearly treated *force majeure* and change of circumstances separately. The exemption of *force majeure* in the Civil Code differs considerably from previous legislation. The scope of *force majeure* has undergone a process from being a non-statutory term to being a statutory term. In Economic Contract Law of the People's Republic of China (1993 Amendment), *force majeure* is not a statutory term. In Article 117 Contract Law, *force majeure* is newly added in the provision as a statutory term.[104] It clearly defines *force majeure* as "any objective circumstance that is unforeseeable, inevitable, and insurmountable".[105] Besides, the scope of applicability is limited to the failure of performing contractual obligations because of *force majeure*.[106] While in the Civil Code, Article 180 retains the definition in the Contract Law and broadens the scope of applicability to the failure of performing 'civil obligations'.[107]

Also, Article 533 Civil Code formally introduces the doctrine of change of circumstances, which is essentially developed from Article 26 of the Interpretation II of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China.[108] Comparing the Civil Code Article 533 and Interpretation II of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China Article 26, there are two main changes. First, the Civil Code no longer distinguishes

102 Liming Wang, "Research on the Major and Difficult Problems in the General Principles of Civil Code Contract Compilation" (2020) 1 *Yunnan Social Sciences*, 86; Guanbin Shi, "The Improvement of Liquidated Damages Reduction Rules in the Drafted Contract Book of PRC Civil Code: Based on the Review of the Courts' Verdicts" (2019) 6 *Legal Forum*, 77-94.

103 Civil Code, Art. 585.

104 Contract Law, Art. 117.

105 Contract Law, Art. 117.

106 Contract Law, Art. 117.

107 Civil Code, Art. 180.

108 Interpretation II of the Supreme People's Court of Several Issues concerning the Application of the Contract Law of the People's Republic of China, Art. 26. For more details *see* Peng Guo and Shu Zhang, "China's Approach to the Principle of Change of Circumstances under the New Chinese Civil Code: From the CISG Model to the PICC Model" (2021) (1-2) *Journal of Contract Law,* 86-104.

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hardship and *force majeure* in a change of circumstances case as provided for in Article 533.[109] The reason is that although *force majeure* and hardship are two different legal concepts, it is often difficult to make an accurate distinction between them. Thus, to balance the interests between the two concepts, the change leads to the conclusion that as long as the change of circumstances makes the further performance of the original contractual obligations obviously unfair to one party, no matter whether the change of circumstances is caused by *force majeure*, it may constitute a change of circumstances.[110] Second, Article 533 newly entitles the disadvantaged party to request renegotiation with the other party and if the renegotiation fails, to resort to the court or arbitral tribunal to modify or terminate the contract where the basic conditions of a contract undergo a material change that is unforeseeable by the parties at the time of contracting and that is not a commercial risk, rendering the continuation of the performance of the contract unfair for either party.[111] It helps to maintain the contract as much as possible, which is in line with the spirit of encouraging transactions,[112] respecting party autonomy in private law and strengthening cooperation between the parties.[113]

5 Interest

In addition to performing the principal obligation, a debtor is also required to pay interest and the costs associated with the realization of the obligation.[114] If a party fails to pay the interest, the other party may request it to make the payment.[115] Under the Article 561 Civil Code, if the payment is not sufficient to cover all the obligations, the performance shall be made in the order of the costs associated with the realization of the obligation, interest and principal obligation.[116] Additionally, in the newly adopted Article 589 Civil Code, creditor's right to claim interest due to creditor's fault is precluded.[117] The objective of the new rule is to protect the interest of creditors.

6 Termination

The remedy of termination has experienced some welcome developments. The grounds for termination provided by law is clearly enlarged. First, the circumstance of termination of indefinite contract is a new provision, which prescribes that for indefinite contracts, any party can terminate the contract at any time, provided that the other party is notified within a reasonable time.[118] Moreover, the termina-

109 Civil Code, Art. 533.
110 Civil Code, Art. 533.
111 Civil Code, Art. 533.
112 Liming Wang, "Research on the Major and Difficult Problems in the General Principles of Civil Code Contract Compilation" (2020) 1 *Yannan Social Sciences*, 86.
113 Liming Wang, "Discussion on the System of Change of Circumstances: Comments on the Draft Civil Code of the People's Republic of China (Second Review) Article 323" (2019) 36(1) *Studies in Law and Business*, 5-12.
114 Civil Code, Art. 561.
115 Civil Code, Art. 579.
116 Civil Code, Art. 561.
117 Civil Code, Art. 589.
118 Civil Code, Art. 563.

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tion caused by the seller's lack of right to disposal is greatly changed in Article 597. In this article, lack of right to disposal is no longer a validity requirement for the contract but may result in the seller's breach of contract and gives rise to the buyer's right to termination and to damages.

In addition to the grounds for termination, the Civil Code also adds a new rule on the calculation of the time limit for the right to terminate in Article 564 on the basis of Article 95 Contract Law, which specifies that the time limit is one year after the rightsholder knows or should have known his or her right to terminate or a reasonable time after the other party makes a demand.[119]

Major amendments have also been made as to the obligation of notification for termination in Article 565 Civil Code. Specifically, Article 565 adds that where a notice states that the contract will be automatically terminated by the debtor's failure to perform his or her obligation(s) within a time limit, the contract shall be terminated at the expiration of the time limit stated in the notice. It also specifies that the result of one party's directly claiming the termination of the contract without notifying the other party is that if the other party objects to such termination, either party may request a court or an arbitral tribunal to adjudicate the validity of the termination of the contract.[120]

7 Price Reduction

The provision related to price reduction is prescribed in the Article 582 Civil Code. According to this article, the aggrieved party may, in light of the nature of the subject matter and the degree of loss, reasonably choose to request the other party to bear the liability for breach of contract such as reducing the price.[121]

8 Concurrent Remedies

A breach of contract may lead to a set of remedies, which may be applied exclusively or concurrently.[122] Generally, where a party fails to perform his or her obligations, the remedies available to the aggrieved party include specific performance, damages, reduction of price, among others.[123] In most of the cases, the aggrieved party has the right to choose the remedies, so the remedies may be determined case by case. For specific performance and damages, the innocent party has the right to choose remedies. As regulated in the Article 582 Civil Code, where there is no agreement in the contract on the liability for breach of contract or where such agreement is not clear, the aggrieved party may reasonably choose to request the other party to bear the liability for breach of contract by repairing, remaking, replacing, returning the goods, reducing the price or remuneration, etc.[124] In addition, when facing the concurrent remedies of liquidated damages and the deposit,

119 Civil Code, Art. 564; Contract Law Art. 95.
120 Civil Code, Art. 565.
121 Civil Code, Art. 582.
122 Civil Code, Art. 179.
123 Civil Code, Art. 577.
124 Civil Code, Art. 582.

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the aggrieved party has the right to choose either the liquidated damages or the deposit.[125]

D Evaluation

I Structure with Chinese Characteristics

The Civil Code Book III on Contracts has 29 Chapters in total, and they are divided into three subparts: General Provisions, Typical Contracts and Quasi-contracts. The Civil Code does not contain a separate book on the general provisions of the law of obligations. Instead, it chooses to use the part on general provisions on contracts in Book III to substitute the general provisions of the law of obligations. There has been heated debate on whether the Civil Code should have a separate book on the general provisions of the law of obligations,[126] but the legislators eventually decided not to include such a part.

The authors are of the view that the current approach chosen by the legislators is more in line with China's existing legislative and judicial traditions. Although a separate book on the general provisions of the law of obligations may preserve the integrity and systematic nature of the Civil Code and reshape the relationship between the law of obligations and the law of contracts, it may have an adverse impact on the integrity and systematic nature of contract law, particularly the general provisions on contracts that have been applied and tested in judicial practices and produced satisfactory results.

Also, to create a separate book on the general provisions of the law of obligations entails significant changes to other existing laws and their structures in the Civil Code, such as torts. These changes may destroy the integrity and systematic nature of those laws and may create new issues and challenges in their application.

In addition, keeping the integrity of contract law is essential to retaining the independence of contract law, which is more suitable for its future development and for the promotion of Chinese contract law in the context of the regional and global harmonization of contract law. The completeness, systematic nature and integrity of contract law make it more easily understood by relevant stakeholders from other jurisdictions, particularly those with a common law background, who may not be familiar with civil law tradition. However, adding the quasi-contracts part, where the specific rules of management of the business of another (*negotiorum gestio*)[127] and unjust enrichment[128] are provided in great detail, may not be a suitable solution. Management of the business of another and unjust enrichment, as part of the law of obligations, are incorporated into Book III because a general part of the law of obligations is missing in the Civil Code. This arrangement is, to a

125 Civil Code, Art. 588.

126 For a summary of the views for or against the inclusion of a separate book on the general provisions of the law of obligations, *see* Lixin Yang, "Establishment or Abolishment of the General Provisions of the Law of Obligations in the Civil Code" (2014) 6 *Tsinghua University Law Journal*, 82-84.

127 Civil Code, Art. 979.

128 Civil Code, Art. 985.

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certain degree, reasonable as it will be more unfeasible to regulate them in other parts of the Civil Code but is far from satisfactory.

Last, it is noteworthy that since the general provisions on contracts are expected, to a large degree, to function as general provisions of the law of obligations, it is vital for the legislator and the judiciary to distinguish articles that apply only to contracts from articles that apply to both contracts and other part(s) of the law of obligations to avoid potential confusion and difficulties in their application, considering that the legal terms on the law of obligations and on the law of contract are both used in Book III and some terms are not interchangeable.

II Innovative Provisions with Features of Contemporary Society

With the development of society and the advancement of new technology, such as internet-based transactions, big data and artificial intelligence, new issues and challenges arise from time to time, making it crucial to deal with them in the Civil Code to keep the law 'alive'. As a result, a number of innovative provisions have been created and added to the Civil Code.

Some innovative provisions reflect the development of society and meet the needs of digital business. For example, Article 491 stipulates that if the information on goods or services released by one party on an information network, such as the internet, meets the conditions for an offer, the contract is formed when the other party selects the goods or service and submits the order successfully, unless the parties agree otherwise.[129] Also, Article 512 Civil Code deals with electronic communications. It incorporates the Article 51 Electronic Commerce Law to regulate electronic contract concluded through the internet. In electronic sales contracts, goods are normally delivered by means of express service, and the time of delivery shall therefore be the time when the consignee acknowledges receipt of goods, i.e. the time when the consignee signs his or her name on the package.[130] Sellers should bear the risk of loss and damage before the buyer receives the goods, and this calls for extra attention during transit. All this shows that the legislators have considered the fast development of online shopping and e-commerce in China and intended to provide legal rules to regulate this area. Although the actual effects and consequences of the application of these rules remain unclear, the steps taken by the legislators to face the emerging legal challenges should be welcomed.

Apart from some concrete rules, the Civil Code also adds some innovative principles, such as Article 9 on the basic 'Green Principle', which requires the parties to conduct civil activities paying attention to the conservation of resources and protection of environment. This principle underpins several concrete rules in Book III on Contracts. For example, Article 509 provides that in the performance of a contract the parties shall avoid wasting resources, polluting the environment and destroying the ecology.[131] Also, Article 619 stipulates that the seller shall pack the subject matter in a manner that is enough to protect the subject matter and that is favourable to the conservation of resources and the protection of the environment

129 Civil Code, Art. 491.
130 Civil Code, Art. 512.
131 Civil Code, Art. 509.

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and ecology in case no agreement or general manner on packaging can be determined.[132] These requirements can be regarded as a positive response to environmental issues arising from the development of society and technology and a promotion of a rebalance of human business and natural environment.[133] The 'Green Principle' could potentially be a model for the reform of contract law in other jurisdictions in the context of the global climate change and crisis.

However, some innovative provisions may cause uncertainty and unpredictability in their application. For example, Article 471 Civil Code innovatively allows parties to enter into a contract by means other than offer and acceptance.[134] Although by this stage it is unclear what other means the parties could adopt to enter into a contract, it could be expected that the formation of a contract will be less restricted henceforth, extending the protection of a meeting of minds. Also, Article 469 Civil Code provides for a data message should also be 'readily available for access and inspection' apart from tangibly expressing the contents of a contract, in order to be treated as a 'written form'.[135] However, the definition and interpretation of 'readily available' remains vague and uncertain. Future case law, judicial opinions and interpretations by the Supreme People's Court may clarify this issue.

III Judicial Practices as a Source of New Provisions

In the process of the drafting of the Civil Code, the legislators have taken practical problems and relevant judicial practices into consideration and used them as a source of some new provisions. For example, on the basis of social phenomena and issues that have often been litigated, a property service management contract has been added as a typical contract, and detailed rules have been provided for. In reality, some property management service providers choose to cut off gas, water or heating supply to force some residents who are not satisfied with the management service to pay management fees. Therefore, Article 944 Civil Code stipulates that a property management service provider may not enforce the payment of the management service fees by cutting off power, water, heating or gas supply or by any other means. Also, it often happens that some potential property purchasers or tenants, after obtaining information from real estate agents, enter into a contract with the owner of the property without paying agency fees. These kinds of cases are often litigated. Therefore, in the intermediary contracts section, Article 965 stipulates that where a client uses the trading opportunity or intermediary services provided by the intermediary to bypass the intermediary and directly contract after the acceptance of the services from the intermediary, the client shall pay remuneration to the intermediary. New provisions of this kind show that the legislators intend to deal with the most often litigated cases among citizens in everyday life, to emphasize the importance of good faith and fair dealing in civil activities and to strengthen the protection of weaker parties.

132 Civil Code, Art. 619.
133 Other provisions reflecting the Green Principle include, but are not limited to, Arts. 558, 625 and 655.
134 Civil Code, Art. 471.
135 Civil Code, Art. 469.

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However, a few new provisions deal with some issues only in principle in the absence of detailed rules. For example, although the Civil Code recognizes the validity of an agreement to contract, which is very common in the sale of property in China, it only provides that if a party fails to contract as agreed, the other party may be liable for breach of such agreement.[136] But no detailed rules on how this mechanism will apply are provided. For example, it is unclear whether one party can request the other party to enter into a contract as agreed or whether one party can claim damages and if the answer is in the affirmative what the scope of damages is. These questions should be answered in future judicial practices to pave the way for the correct application of the new provisions.

In addition, the Civil Code has officially recognized and added the doctrine of change of circumstances after the doctrine has been established and affirmed by the Supreme People's Court in its judicial interpretation of the Contract Law and relevant case law. In the drafting process of the Contract Law, the legislators decided not to add the doctrine of change of circumstances. However, change of circumstances issues continuously arose in transactions and were subsequently litigated, prompting the Supreme People's Court to tackle it extensively in its judicial interpretation and case law.[137] It is reasonable to infer that judicial practices are taken seriously by the legislators and could be used as a source for legislative purposes. It may also signify that although the doctrine of precedent is not established in China, case law is valued more, is growing in importance and is contributing to the future development of the law. Judicial interpretation and case law from the Supreme People's Court will avoid frequent revision of the Civil Code to keep it as stable as possible. Hopefully, the Civil Code can last 100 years as the old German Civil Code.

IV Influence of International Instruments on the Civil Code

The Civil Code has been heavily influenced by legislation in other civil law jurisdictions, such as Germany and France. For Book III on Contracts, international instruments, such as the CISG and the PICC, have a significant impact on the Civil Code.

From a comparative perspective, there are very many similarities between the CISG and the Civil Code, showing that the legislators took the CISG fully into account when drafting the Civil Code. For example, the Civil Code fully embodies the spirit of party autonomy, the principle of good faith and encouragement of trade, which is highly valued and endorsed by the CISG. Also, with respect to the specific provisions, many of the provisions in the Civil Code borrow extensively from the CISG. For example, the original model of formation of contract (offer-acceptance model without consideration),[138] obligations of the parties and some rules con-

136 Civil Code, Art. 495.

137 For more details *see* Peng Guo and Shu Zhang, "China's Approach to the Principle of Change of Circumstances under the New Chinese Civil Code: From the CISG Model to the PICC Model" (2021) (1-2) *Journal of Contract Law,* 86-104.

138 *See, e.g.* Civil Code, Arts. 472, 480; CISG, Arts. 14, 18.

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cerning the remedies for breach of contract almost mirror the related provisions in the CISG,[139] in order to align with international standards and practices.

However, in regard to meeting the changing needs of society and some values that are particularly important for the Chinese culture, the legislators, in some areas, did not follow the CISG model. For example, although in both the CISG and the Civil Code the form of the conclusion of a contract is not subject to specific requirements, which means that it can be concluded either in writing or not, the term 'writing' is defined differently and the written form in the Civil Code is broader than that in the CISG. Article 13 CISG limits the term 'writing' to telegrams and telexes,[140] while Article 469 Civil Code expands the interpretation of 'writing' to include 'a written contract, letter, telegram, telex, facsimile or any other form that can tangibly express the contents contained therein'.[141] Besides, a data message that tangibly expresses the contents contained therein by electronic data interchange, e-mail, or any other means and is readily available for access and inspection shall be treated as a written form.[142]

Obviously, the diversified writing forms included in the Civil Code, especially electronic forms, are responsive to the needs of the buyers and sellers in the new era and can facilitate the transactions. Also, even though both the CISG and the Civil Code follow the offer-acceptance (without consideration) model in contract formation, Article 471 Civil Code innovatively allows parties to enter into a contract by means other than offer and acceptance.[143] This is based mainly on the fact that the efficiency of commercial practice has led to a constant renewal of means of transactions. Nowadays, the contracting form can be quite flexible and also goes beyond the basic structure of the typical offer and acceptance model. It also shows the legislators' efforts to ensure that the law keeps pace with changing society.

Moreover, the legislators added new provisions to fill some gaps in the CISG. For example, the part concerning termination contains some new provisions and significant changes in the Civil Code that are different from the CISG. Article 563 concerning the termination of indefinite contracts prescribes that any party can terminate the contract at any time, provided that the other party is notified within a reasonable time.[144] The Civil Code also adds a new rule on the calculation of the time limit for the right to terminate in Article 564, which specifies that the time limit is one year after the rightsholder knows or should have known his or her right to termination or a reasonable time after the other party makes a demand.[145] These new provisions are particularly important as they reflect the issues arising from judicial practices and provide new solutions or approaches that will improve and strengthen the application of the Civil Code. The CISG focuses on sale of goods, while Book III on Contracts deals with all kinds of contracts, and, therefore, a mi-

139 *See, e.g.* Shiyuan Han, "Chinese Contract Law and the CISG" (2011) 2 *Journal of Jinan University (Philosophy and Social Science edition)*, 9-13.
140 CISG, Art. 13.
141 Civil Code, Art. 469.
142 Civil Code, Art. 469.
143 Civil Code, Art. 471.
144 Civil Code, Art. 563.
145 Civil Code, Art. 564; Contract Law Art. 95.

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nor gap in the CISG could mean a huge loophole in the Civil Code. Hence, it is necessary to fill the gaps that can be envisaged now and leave those that may appear in future for judicial interpretation or guidance from the Supreme People's Court.

In the Chinese culture, good faith and fairness are of particular importance. The Civil Code has stipulated the principle of good faith[146] and the principle of fairness[147] as fundamental principles. With this in mind, the legislators have eventually recognized the doctrine of change of circumstances in Article 533 Civil Code, which is not expressly covered by the CISG. Apart from experiences accumulated in judicial practices, the legislators referred to the PICC on this issue. After deliberate consideration and heated discussions, they abandoned the CISG model, which deals with *force majeure* and hardship in one article,[148] and adopted the PICC model, which regulates *force majeure* and hardship separately.[149] Article 533 now imposes a duty to renegotiate on parties upon the occurrence of a change of circumstances and grants courts the power to adapt or terminate the contract upon the parties' failure to reach an agreement. This article is in line with the spirit of *favor contractus* and the principle of good faith and the principle of fairness in the Civil Code. Although both the CISG and the PICC are successful and renowned international instruments on international contract law and have a significant impact on the Civil Code, in general, and on Book III on Contracts, in particular, the legislators tend to choose the one that is more aligned with Chinese culture or that provides more suitable solutions for Chinese society, taking into account the political, economic and legal structures prevalent in China.

In summary, during the past 70 years and after four attempts to draft a civil code, China's supreme legislature has demonstrated that it has accumulated and grasped highly sophisticated skills in drafting legislation, particularly for a civil code. The legislators have taken a practical approach in preparing the Civil Code and have a clear goal of accommodating the development of society and the world and keeping the Civil Code in line with the law reforms in other jurisdictions, such as the reform of German and French civil codes and the trend of harmonization of contract laws at a global level, such as the CISG and the PICC, and, most importantly, to maintain the Chinese character in the consideration of China's political, economic and legal systems.

E Conclusion

The Civil Code is the first civil code in China. It is comprehensive, systematic and up to date, representing a milestone in China's legislative history. The Civil Code has made significant changes to the existing laws, particularly contract law, from

146 Civil Code, Art. 7.
147 Civil Code, Art. 6.
148 CISG, Art. 79.
149 For more details *see* Peng Guo and Shu Zhang, "China's Approach to the Principle of Change of Circumstances under the New Chinese Civil Code: From the CISG Model to the PICC Model" (2021) (1-2) *Journal of Contract Law,* 86-104.

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structure to content, from legislative technics to underpinning values on the basis of 70 years of legislative experience and judicial practices in China. It deletes obsolete rules, modifies unsatisfactory articles and adds innovative provisions to meet the changing needs of society and the new era, to emphasize Chinese characteristics, and to keep pace with the development of the global law reform and harmonization (the CISG and the PICC).

Despite some shortcomings in the Civil Code, such as the structure and potential uncertainty, the innovations in the Civil Code largely represent the right direction and trend of law reform and development. China is now a 'true' member of the civil law world, and the Civil Code may become a Chinese model for future law reform in other jurisdictions and add new elements for the rich and profound eastern culture in the 21st century.

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