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China Passes the General Provisions of its Civil Law

Introduction

The National People's Congress of the People's Republic of China (the "PRC") passed the General Provisions of the PRC Civil Law (in Chinese, 中华人民共和国民法总则) (the "**General Provisions**") on 15 March 2017, which will take effect on 1 October 2017. The General Provisions are the opening chapter of the PRC civil code planned to be enacted in 2020. The General Provisions are based on a 1986 version, called the General Principles of Civil Law (the "**1986 General Principles**"), which has only undergone a minor amendment in 2009. However, the General Provisions are far more than an amendment and deemed to be great progress in many aspects.

The General Provisions consist of 11 chapters and 206 articles, covering principles of civil law, definitions of terms in the civil legal system, civil rights, basic rules for civil acts, agency, civil liability, and litigation, among other subjects. As a comparison, the 1986 General Principles comprise 9 chapters and 156 articles. We set out below some key highlights of the General Provisions.

Entitlement of Rights of the Fetus

The General Provisions add a clause to grant and protect the rights of fetuses. According to the General Provisions, fetuses that require protection in the succession of estates and receipt of donations shall be deemed as having the capacity for civil rights, provided that, if the fetus were dead when it was born, its rights shall be deemed non-existent from the very beginning.

Protection of Rights of Young and Elderly

The General Provisions have lowered the statutory age limit for minors with limited capacity for civil conduct from 10 to 8 years, which is primarily designed to raise minors' awareness of their rights and obligations. This is also in line with the development of the society as minors are now exposed to more information and more channels to access information than at any time in history.

The General Provisions also provide that an adult with no capacity or limited capacity for civil conduct shall be eligible to have a guardian appointed. As a comparison, the 1986 General Principles only allow guardians for minors and mentally-ill people with no capacity or limited capacity for civil conduct.

In addition, pursuant to the General Provisions, guardians must act in the best interests of the ward and respect the ward's true will. In the event that a guardian conducts actions severely harmful to the ward, or fails to perform his or her guardianship obligations and puts the ward in danger or poverty, he or she will be disqualified from serving as a guardian.

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New Classification of Legal Persons

The General Provisions provide new classification of legal persons, i.e., for-profit legal person, non-profit legal person and special legal person. A for-profit legal person, e.g., a company, is established for making profits and distributing the profits to its shareholders and other investors. A non-profit legal person typically operates for purpose of public interests or other non-profit reason and does not distribute its profits to the founders or members, such as a social group, foundation or social service institution. A special legal person refers to an official organ, rural collective economic organisation, urban and rural cooperative economic organisation or grass-roots self-governing mass organisation.

The General Provisions provide further detail in relation to unincorporated organisations, which refers to organisations not being qualified as legal persons but capable of conducting civil activities in their own name. Unincorporated organisations include sole proprietorships, partnerships and professional services institutions not being qualified as legal persons. It is deemed to be the first time that the law confirms the definition and liabilities of unincorporated organisations.

Protection of Personal Data

While the 1986 General Principles only protect the privacy right of individuals, the General Provisions have incorporated personal data protection, which is considered to be a groundbreaking move. Article 111 of the General Provisions provides that "Personal data of individuals shall be protected by the law. Any organisation and individual, when having the need of collecting personal data of individuals, shall collect it in a legitimate way and shall ensure security of such personal data, is prohibited from illegally collecting, using, processing, transferring, selling or purchasing, providing or publishing other people's personal data." Currently, PRC has no Personal Data Protection Law, so this Article 111 has been deemed to establish, for the first time, an individual's civil rights on his/her own data and has confirmed the ownership of such personal data.

Effectiveness of Entrustment Agency after Death of Principal

The General Provisions clearly provide that acts of an agent which are carried out after the death of the principal, are effective if:

- (i) The agent does not know and is not expected to know about the death of the principal;
- (ii) It is ratified by the inheritor(s) of the principal;
- (iii) It is expressly provided in the authorisation that the agency rights will cease when the entrusted matters are completed; or
- (iv) It is carried out by the principal before his/her death and the continuance of the entrustment agency is for the benefit of the principal's inheritors.

The above provisions have been provided in certain judicial interpretations. However, it is the first time that it is provided in a law passed by the PRC National People's Congress. This has great significance, especially in complicated commercial transaction structures. For example, the VIE (variable interest entity) structure usually requires some shareholders to entrust their rights to a party designated by the actual controller or investor. One of the potential risks for a VIE structure is whether such entrustment can survive the death of the principal. The General Provisions have provided a clear answer and legal basis to this issue.

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Prohibition of Defamation of “Heroes and Martyrs”

The General Provisions prohibit the defamation of “heroes and martyrs.” They provide that individuals who harm the name, portrait, reputation and honor of heroes and martyrs, thus harming the public interest, shall bear civil liability.

Extension of Statute of Limitations

In general, the statute of limitations for filing civil lawsuits is 2 years under the 1986 General Principles. However, the General Provisions extend the general statute of limitations to 3 years, unless otherwise provided in other specific laws. For example, based on the PRC Contract Law, the statute of limitations for initiating legal proceedings in relation to contracts of international sale of goods and contracts on technology import and export is 4 years.

Furthermore, the General Provisions add a provision stating that the statute of limitations for filing a lawsuit for damages for a victim of sexual assault who is a minor starts when he or she reaches the age of 18.

Concluding Words

The General Provisions do not replace or supersede the 1986 General Principles, so after the General Provisions come into effect on 1 October 2017, both will co-exist for an uncertain period of time. Currently, it is still unclear how the conflicts between the General Provisions and the 1986 General Principles shall be dealt with, and we await further clarification and interpretation from the Standing Committee of the PRC National People’s Congress and the PRC Supreme Court.

China has chosen to adopt a two-step approach to make the civil code. The first step is to lay down the General Provisions, and the second step is to lay down each chapter under the civil code, including the chapters on property, contract, tort liability, marriage and inheritance etc. So, there may be potential conflicts between the General Provisions and each chapter under the civil code as they are not made and passed at the same time.

Notwithstanding the potential conflicts mentioned above, the General Provisions still signify a big step for China in the making of its civil code.

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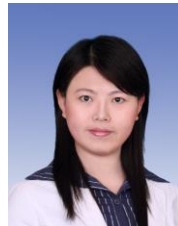
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ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

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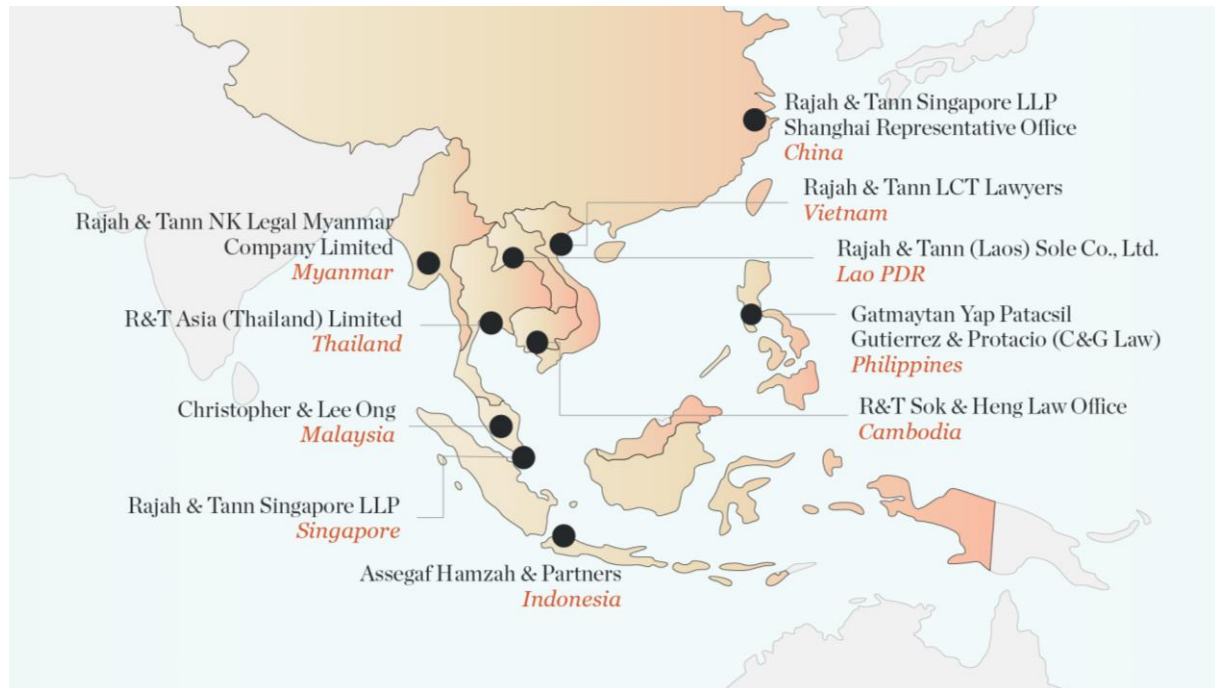
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