

China's New General Provisions of Civil Law: Changes and Advancements for the Better

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Abstract

In China, the old umbrella law that generally governs civil and commercial transactions has been in force for thirty years and has growing ineffectiveness. In order to address and accommodate recent social and economic developments, China's supreme legislature has recently passed a new umbrella law entitled "General Provisions of Civil Law" (the new law) to replace the old law. The new law took effect in October 2017. The new law has made changes and advancements to address the old law's ineffectiveness, fill the old law's gaps and accommodate the recent changes in China. This article would demonstrate some of the most important improvements made by the new law. By comparison to the old law, the new law uses a more advanced method to categorise legal persons, recognises the independent status of more organisations and substantively increases the complexity and volume of the relevant rules about legal persons. As a result, the new law enables more legal persons and organisations to play a more positive role in the fast-growing market economy. This positive result highlights the importance of the new law in commercial matters which would not be satisfactorily achieved by the old law. Further, in order to address the old law's inadequate protection of minors, the new law significantly increases the level of protection of minors and fetuses (particularly sexually abused minors) and introduces new rules to regulate minors' legal guardians to maximise the protection of minors. The new law also introduces new rules to fill the old law's gap and allow more adults (particularly aged adults) to have guardians appointed in a flexible way, in order to accommodate the issue of aging

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in China. Likewise, the new law introduces new, concrete and clear rules to regulate important civil matters such as expression of intention and the general statute of limitations and these new changes significantly increase the quality, clarity and volume of the old law's previous rules and fills the old law's gaps in those crucial areas. This makes the new law more effective in dealing with civil and commercial matters by comparison to the old law. In particular, some of the new law's initiatives are more advanced and forward-looking than the special law such as Company Law, Minor Protection Law and Succession Law. The new law's advancements demonstrate that China's supreme legislature possesses sophisticated skills in drafting codes and has a mature and practical attitude towards accommodating social changes and economic developments. As the new law plays an important role in China's legal system, the advancements are helpful to build a more advanced, effective and sophisticated civil law system in China.

I. Introduction

In China, matters relating to contract, property, torts, and companies are governed by specific special laws such as Contract Law¹, Property Law², Tort Law³, Succession Law,⁴ Marriage Law⁵ and Company Law⁶. In addition, those matters are also governed by an “umbrella law” that sets out the general principles and rules in relation to civil and commercial matters—General Principles of Civil Law.⁷ For example, contract related cases are governed by Contract Law that deals specifically with contractual matters, but the same cases are also governed by General Principles of Civil Law. In terms of their application, courts first refer to Contract Law if

¹ 《合同法》 [Contract Law] (People's Republic of China) National People's Congress, 15 March 1999 ('*Contract Law*').

² 《物权法》 [Property Law] (People's Republic of China) National People's Congress, Order No 62, 16 March 2007.

³ 《侵权责任法》 [Tort Law] (People's Republic of China) Standing Committee of National People's Congress, Order No 21, 26 December 2009.

⁴ 《继承法》 [Law of Succession] (People's Republic of China) National People's Congress, Order No 24, 10 April 1985 ('*Succession Law*').

⁵ 《婚姻法》 [Marriage Law] (People's Republic of China) Standing Committee of National People's Congress, 10 September 1980, last revised on 28 April 2001.

⁶ 《公司法》 [Company Law] (People's Republic of China) Standing Committee of National People's Congress, 29 December 1993, last revised on 28 December 2013 ('*Company Law*').

⁷ 《民法通则》 [General Principles of Civil Law] (People's Republic of China) Standing Committee of National People's Congress, Order No 37, 12 April 1986, last revised on 27 August 2009 ('*General Principles*'); 龙卫球 [Long Weiqiu], 《民法总论》 [General Introduction to Civil Law] (中国法制出版社 [China Legal Publishing House], 2002) 19-21, 77.

Contract Law has specific rules that are relevant to the cases (although the general rules of General Principles of Civil Law may also be relevant) and if Contract Law does not have relevant rules, then courts would refer to the general rules of General Principles of Civil Law.⁸

As General Principles of Civil Law is the umbrella law that governs all civil and commercial matters, this law plays a significant role in the Chinese legal system. However, this law took effect in 1986 and therefore does not accommodate the recent changes and developments in China, despite minor amendments in 2009.

In response to the growing ineffectiveness of the general law that was passed in 1986, China's supreme legislature has now passed a new code entitled "General Provisions of Civil Law"⁹ ("the new law") to replace the outdated General Principles of Civil Law ("the old law"). The supreme legislature has noted that passing the new law is an important advancement.¹⁰ The new law has been promulgated and took effect in October 2017. Similar to the old law, the new law sets out the general principles and rules that apply to civil and commercial matters.

Given the relatively recent adoption of the law, there is little academic comments about the new law's possible effectiveness to achieve its objectives, and obviously little case law at this time. The author is therefore seeking to comment on the new law's potential to enhance the social and economic developments in China, by referring to the shortcomings of the old law that have been identified by leading scholars who suggest that the changes adopted in the new law should respond to those issues.

This article would demonstrate some of the most important improvements made by the new law. Overall, the author argues that the new law has made changes and advancements to address the old law's ineffectiveness, fill the old law's gaps and accommodate the recent changes in China. The new law uses a more advanced method to categorise legal persons, recognises the independent status of more organisations and substantively increases the complexity and volume of the relevant rules about legal persons. As a result, the new law enables more legal persons and

⁸ 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law] (法律出版社 [Law Press], 2011) 2.

⁹ 《民法总则》 [General Provisions of Civil Law] (People's Republic of China) National People's Congress, Order No 66, 15 March 2017 ('*General Provisions*').

¹⁰ 十二届全国人大五次会议第二次全体会议 [The Second Plenary Meeting of 5th Plenary Session of the 12th National People's Congress] (8 March 2017) <http://www.china.com.cn/zhibo/zhuanti/2017lianghui/2017-03/08/content_40424610.htm>.

organisations to play a more positive role in the fast-growing market economy. This positive result highlights the importance of the new law in commercial matters which would not be satisfactorily achieved by the old law. Further, in order to address the old law's ineffectiveness in regard to minors, the new law significantly increases the level of protection of minors and fetuses (particularly sexually abused minors) and introduces new rules to regulate minors' legal guardians to maximise the protection of minors. The new law also adds new rules to allow more adults (particularly aged adults) to have guardians appointed flexibly, in order to fill the old law's gap and accommodate the issue of aging in China. Likewise, the new law introduces new, concrete and clear rules to regulate important civil matters such as expression of intention and the general statute of limitations and these new changes significantly increase the quality, clarity and volume of the old law's previous rules and fill the old law's gaps in those crucial areas. This makes the new law more effective in dealing with civil and commercial matters by comparison to the old law. In particular, some of the new law's initiatives are more advanced and forward-looking than the special law such as Company Law, Minor Protection Law and Succession Law. As the new law plays an important role in China's legal system, the advancements are helpful to build a more advanced, effective and sophisticated civil law system in China.

The new law's changes and advancements demonstrate that China's supreme legislature has sophisticated skills in drafting codes, which reflects a mature and practical attitude towards social and economic developments. Furthermore, China's supreme legislature plans to enact a uniform civil code.¹¹ The supreme legislature intends to incorporate the new law and the special laws relating to all civil matters into the uniform civil code that the supreme legislature will enact in the future.¹² Therefore, the author of this article holds the view that the new law's changes and advancements are a significant step towards achieving the goal for enacting a well-drafted and sophisticated uniform civil code.

¹¹ 中国人大网 [National People's Congress Web], 十二届全国人大常委会立法规划 [Legislative Plans of the 12th Standing Committee of National People's Congress] (1 June 2015) <http://www.npc.gov.cn/npc/xinwen/2015-08/03/content_1942908.htm>; 中新网 [China News Service Web], 中国民法总则草案初审 民法典时间表明确 [First Reading of China's General Principles of Civil Code, the Timetable of Enacting Civil Code is Clear] (27 June 2016) <<http://www.chinanews.com/gn/2016/06-27/7919168.shtml>>.

¹² 新华网 [XinhuaNet], 中国民法总则诞生 开启“民法典时代” [The Birth of China's General Provisions of Civil Law, the Beginning of the Civil Code Era] (15 March 2017) <http://news.xinhuanet.com/politics/2017lh/2017-03/15/c_1120634902.htm>.

The following discussion will explain the changes and advancements that are incorporated into the new law in detail. This article will initially discuss how the new law categorises legal persons by a new and advanced method with a view to recognising the legal status of more organisations. The discussion will then proceed to the reasonable and practical adjustments that allow minors to enter into transactions and four changes that have effectively increased the protection of minors and foetuses. The article will then discuss accommodations relating to the aging issue in China; and how the general rules about expression of intention (the means with which claimants must comply to achieve desired legal results) have been improved and how the rules have been changed to account for the requirements of the general statute of limitations.

I. Categorising Legal Persons by a More Advanced Method and Recognising the Status of More Organisations

By comparison to the old law, the new law uses a more advanced method to categorise the types of legal persons. This new method highlights the nature and roles of different legal persons and brings their unique attributes into play. Further, the new law recognises the status of more organisations by comparison to the old law and this allows the organisations to engage in commercial and civil activities independently and actively.

Legal persons play an important role in a market economy. As pointed out by scholars, because of shareholders' limited liability and the separation of legal persons' ownership and management, the existence of legal persons encourages investments and trade to stimulate the economy.¹³ As legal persons are given independent legal status by law, they can enter into transactions independently and this lowers the cost of transactions in a modern market economy.¹⁴

Despite the importance of legal persons, the old law had two limitations in relation to allowing them to engage in commercial and civil activities independently. The first limitation is that the old law listed and recognised limited types of legal persons. The list included state-owned

¹³王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law] (中国人民大学出版社 [China Renmin University Press], 2003) 382-384; 龙卫球 [Long Weiqiu], above n 7, 334.

¹⁴王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 382-384; 龙卫球 [Long Weiqiu], above n 7, 334.

enterprises¹⁵, collective-owned enterprises (a form of economic organisation where collectives own assets, work together and are paid accordingly),¹⁶ Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures and enterprises solely invested by foreigners.¹⁷ However, the old law's list did not include all types of entities that should be recognised as legal persons by law. In particular, the old law failed to include domestic enterprises that are privately owned and invested into by Chinese nationals. The old law had a very strong focus on government-funded public enterprises and appears to imply that those domestic enterprises are not recognised as legal persons, although these domestic enterprises are very likely to be the most important component of China's economy.¹⁸ As there is a special law that regulates legal persons (Company Law) which came into force soon after the enactment of the old law,¹⁹ Chinese scholars tend to use the relevant rules of Company Law to discuss topics relating to legal persons, in addition to the rules of the old law.²⁰ It could then be argued that this approach has tended to soften the criticisms against the old law.

However, as the society develops and more types of organisations emerge, scholars start to suggest that there is a need for a change, because the newly emerging and important organisations, such as non-public hospitals, non-public schools and arts organisations, cannot fit

¹⁵ State-owned enterprises are regulated by 《全民所有制工业企业法》 [Law of Industrial State-owned Enterprises] (People's Republic of China) National People's Congress, 13 April 1988, last revised on 27 August 2009.

¹⁶ Collective-owned enterprises are regulated by 《乡镇企业法》 [Law of Rural Township Enterprises] (People's Republic of China) Standing Committee of National People's Congress, 29 October 1996; 《城镇集体所有制企业条例》 [Regulation of Urban and Rural Collective-owned Enterprises] (People's Republic of China) State Council, 1 January 1992, last revised on 6 February 2016.

¹⁷ *General Principles* art 41.

¹⁸ 中国民生银行研究院[China Minsheng Bank Research Institute], 中国民营企业发展研究报告[Research Report On China's Private Enterprise Development] (25 April 2017) <<http://www.cmbc.com.cn/upload/2017/170410/%E3%80%8A%E4%B8%AD%E5%9B%BD%E6%B0%91%E8%90%A5%E4%BC%81%E4%B8%9A%E5%8F%91%E5%B1%95%E7%A0%94%E7%A9%B6%E6%8A%A5%E5%91%8A%E3%80%8B%EF%BC%88%E3%80%8A%E6%B0%91%E9%93%B6%E6%99%BA%E5%BA%93%E7%A0%94%E7%A9%B6%E3%80%8B2017%E5%B9%B4%E7%AC%AC6%E6%9C%9F%EF%BC%8C%E6%80%BB%E7%AC%AC43%E6%9C%9F%EF%BC%89.pdf>>; 中国民营企业 500 强发布报告 [Report of China's Top 500 Private Domestic Enterprises in 2016] (25 August 2016) <http://www.acfic.org.cn/web/c_000000010003000100010002/d_46981.htm>.

¹⁹ 《公司法》 [Company Law] (People's Republic of China) Standing Committee of National People's Congress, 29 December 1993, last revised on 28 December 2013 ('*Company Law*').

²⁰ 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 117-48. 龙卫球 [Long Weiqiu], above n 7, 313-407; 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 375-443.

into the categories recognised by the old law.²¹ Hence, the Chair of Legislative Affairs Commission of the Standing Committee of National People's Congress has openly admitted that it is necessary to make adjustments.²²

The old law's first limitation was caused by the fact that the old law was crafted to achieve certain political priorities. As pointed out, the old law's limited categories of legal persons were shaped and influenced by the political decisions of China's supreme power thirty years ago when the supreme power's main priority was to reform the state-owned enterprises.²³ The background against which the old law was made is outdated. Hence, the old law was not necessarily enacted to accommodate the real needs of a market economy.²⁴ However, the current economic structure is fundamentally different from that of thirty years ago. For instance, the fusion of public and private ownership is now quite common, and so the old law's rough division of public enterprises and private enterprises is no longer effective in supporting and regulating today's economic structure.²⁵

The old law's second limitation was that the old law provided inadequate rules to regulate legal persons. In particular, the old law used only one section to generally mention that government departments, public institutions (such universities and hospitals) and social organisations needed to be registered to be qualified as legal persons, but this section did not, nor did other sections, set out any relevant rules in detail or define these organisations.²⁶

In order to address the two limitations of the old law and the scholarly criticisms, the new law divides legal persons into three main categories according to their nature and purposes—profit-making legal persons, non-profit legal persons and special legal persons.

²¹ 顾昂然 [Gu Angran], 《立法札记》 [Legislation Notes] (法律出版社 [Law Press], 2006) 358; 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], 《民法总则立法背景与观点全集》 [The Legislation Background and Scholarly Views of General Provisions of the Civil Law] (法律出版社 [Law Press], 2017) 507.

²² 中国人大网 [National People's Congress Web], 民法总则权威解读三篇 [Three Authoritative Interpretations about the General Provisions of Civil Law] (14 April 2017) < http://www.npc.gov.cn/npc/xinwen/sywx/2017-04/14/content_2019851.htm>.

²³ 王涌 [Wang Yong], 《法人应如何分类, 评民法总则的选择》 [How to Classify Legal Persons, an Evaluation of the Choices of the General Provisions of Civil Law] [2017] (3) 中外法学 *Perking University Law Journal* 609, 611.
²⁴ *Ibid* 611.

²⁵ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 507.

²⁶ *General Principles* art 50.

The new law first defines the nature of each type of legal person, and then provides the most important and common examples of that particular type of legal person. For example, in relation to profit-making legal persons, the new law defines these as legal persons that are established for the purpose of making profits and allocating those profits to its shareholders and/or other investors.²⁷ The new law then provides examples of profit-making legal persons, such as joint-stock companies (company limited by shares), limited liability companies and other corporation legal persons.²⁸ In other words, the new law does not define each category exclusively, but instead recognises that there may be other examples of each. If new types of profit-making legal persons emerge, the new legal persons would fall into the category of profit-making legal persons and be governed by those relevant rules. Hence, the new law's method not only effectively avoids the limitation of the old law of failing to acknowledge that new and important types of legal persons may occur in the future, but also highlights the overarching profit-making nature and role of those legal persons. In this regard, the new law's method is more advanced and this reflects a more sophisticated statute drafting technique.

A similar analysis applies to non-profit legal persons. The new law first defines a non-profit legal person as one that is established for the purpose of promoting public interests or other non-profit-making purposes and does not allocate profits to its shareholders, investors or members.²⁹ Then the new law provides a few important examples of non-profit legal persons such as public institutions (universities and hospitals), social organisations, fund foundations and social service organisations and others.³⁰ The new law approach not only leaves the category open to include new and other types of non-profit legal persons, but also highlights their nature and role of promoting public interests.

In the view of the supreme legislature, the division of profit-making legal persons and non-profit legal persons highlights the fundamental differences between the two.³¹ The new category of non-profit legal persons can include new forms of legal persons, such as foundations and social

²⁷ *General Provisions* art 76(1).

²⁸ *General Provisions* art 76(2).

²⁹ *General Provisions* art 87(1).

³⁰ *General Provisions* art 87(2).

³¹ 李适时 [Li Shishi], 《关于中华人民共和国民法总则（草案）的说明》 [The Introduction of the Draft of the General Provisions of the Civil Law], in 《民法总则立法背景与观点全集》 [The Legislation Background and Scholarly Views of General Provisions of the Civil Law] (法律出版社 [Law Press], 2017) 11.

service agencies, in order to accommodate China's new developments.³² Furthermore, the new law's new rules arguably regulate non-profit legal persons more effectively, promote the innovation of corporate governance structure and maintain a healthy and orderly environment for legal persons.³³ In particular, due to the old law's limitations, there were no specific rules regulating religious institutes and hence churches and temples were unable to open bank accounts or register real properties or vehicles under their names, causing uncertainties and lack of effective protection of the religious institutes.³⁴ The new law has responded to these issues by giving those religious institutes independent status as a special form of non-profit legal persons and this is considered to be a significant improvement.³⁵

Moreover, the new law has created a new type of legal person—special legal persons, including government departments and rural collective economic organisations (a form of rural economy entity).³⁶ The new law unprecedentedly recognises rural collective economic organisations to be legal persons and this is significant.³⁷ As pointed out by the government, for years, the legal status of rural collective economic organisations has been unclear and this has caused many difficulties such as being unable to sign contracts as independent legal persons and being unable to register website domain names.³⁸ Through giving these organisations the status of a legal person, the new law has removed the barriers and allowed these organisations to play a positive role in China's economy under the protection of the new law, particularly given that they are important components of the economy (the assets the rural collective economic organisations are

³² Ibid.

³³ Ibid.

³⁴ Zhang Rongshun [张荣顺] (ed), 《中华人民共和国民法总则解读》 [Interpretation of General Provisions of Civil Law] (中国法制出版社 [China Legal Publishing House], 2017) 300-1.

³⁵ 王利明, 周友军 [Wang Liming, Zhou Youjun], 《我国民法总则的成功与不足》 [The Success and Defects of the General Provisions of Civil Law] [2017] (1) 比较法研究 *Journal of Comparative Law* 1, 8-9. *General Provisions* art 92.

³⁶ *General Provisions* art 96.

³⁷ 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 9;

中国人大 [The People's Congress of China], 农村集体经济组织法人如何归类? [How to Categorise Rural Collective Economic Organisations?] (2016) <http://www.npc.gov.cn/npc/zgrdzz/2017-01/20/content_2006318.htm>;

民法总则草案赋予“农村集体经济组织”法人资格 [General Provision Treats Rural Collective Economic Organisations as Legal Persons] (31 October 2016) <<http://www.bjnews.com.cn/news/2016/10/31/421680.html>>.

³⁸ 国土资源部 [Ministry of Land and Resources], 赋予农村集体组织特别法人资格是历史重大进步 [Giving Rural Collective Economic Organisations the Status of Legal Persons is a Significant Progress] (15 March 2017) <http://www.mlr.gov.cn/xwdt/jrxw/201703/t20170315_1442295.htm>.

approximately 2.86 trillion Chinese Yuan).³⁹ Indeed, as argued by scholars, because the category of special legal persons includes legal persons that do not fall into the categories of profit-making or non-profit legal persons, this has introduced more flexibility and made the rules about legal persons more inclusive.⁴⁰

Furthermore, the new law adds an entirely new division to regulate unincorporated organisations (including sole proprietorship,⁴¹ partnership, professional service organisations).⁴² Although unincorporated organisations are not legal persons, the new law allows them to engage in transactions and business activities in their own name.⁴³ Some scholars have pointed out that the new law does not effectively differentiate unincorporated organisations from legal persons, partly because the new law allows unincorporated organisations to be governed by the general rules of legal persons.⁴⁴ The result is that unincorporated organisations may lose their unique characters and exist in name only.⁴⁵ However, this view is rebutted by other scholars who argue that allowing unincorporated organisations to be governed by the general rules of legal persons would make the rules about unincorporated organisations more complete and consistent.⁴⁶ Furthermore, as the new law now requires unincorporated organisations to be registered in order to be established, some scholars are concerned that the new law may exclude unregistered unincorporated organisations and leave their legal status uncertain.⁴⁷ Nevertheless, the author would argue that the new law has made an unprecedented attempt to expressly give unincorporated organisations the new and more powerful status and this greatly facilitates these organisations in participating in the national economy.

³⁹ 全国农村集体经济组织拥有资源性资产达 2.86 万亿元 [Rural Collective Economic Organisations Own Assets Worth 2.86 Trillion Yuan] (3 January 2017) <<http://finance.sina.com.cn/roll/2017-01-03/doc-ifxzczsu6716754.shtml>>.

⁴⁰ 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 9.

⁴¹ Sole proprietorship is also regulated by 《个人独资企业》 [Law of Sole Proprietorship] (People's Republic of China) Standing Committee of National People's Congress, Order No 20, 30 August 1999.

⁴² *General Provisions* arts 102-108.

⁴³ *General Provisions* art 102.

⁴⁴ 王涌 [Wang Yong], above n 23, 638. See also 苏永钦 [Su Yongqin], 《体系为纲, 总分相宜, 从民法典理论看大陆新制定的民法总则》 [The Systematic Methods of Mainland China's New General Provisions of Civil Law, from the Perspectives of Civil Law Theories] [2017] (3) 中国法律评论 *Journal of China Law Review* 72, 84.

⁴⁵ 王涌 [Wang Yong], above n 23, 638.

⁴⁶ 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 9.

⁴⁷ 王涌 [Wang Yong], above n 23, 638.

Moreover, the new law also substantively extends the detail, complexity and volume of the relevant rules about legal persons—there are nineteen sections about the general rules of legal persons,⁴⁸ eleven sections about profit-making legal persons,⁴⁹ nine sections about non-profit legal persons⁵⁰ and six sections about special legal persons.⁵¹ All these new sections constitute a more comprehensive and concrete basis for courts to apply in deciding legal person related cases. Likewise, business circles have more concrete rules with which to comply in legal person related matters. However, as the relevant rules set out by the new law are general in nature, it has been suggested that legislatures should enact more special laws governing legal persons in the future to further implement the general rules set out by the new law, including a special governing non-profit legal persons.⁵²

In summary, the new law has reflected the economic development of the market economy in the past forty years in China and acknowledged the important role of legal persons and organisations in civil and commercial activities. The new law divides legal persons by their nature, gives important examples of each type of legal person, leaves the category open to accommodate new developments and recognises the status of more legal persons and organisations. These innovative developments and advancements introduce a much greater clarity and flexibility for legal persons and organisations that will ultimately allow them to play a more positive role in the market economy. In this regard, the new law is more advanced and forward-thinking than Company Law, the special law in this area that has not employed the new law's advanced methods. In the author's opinion, the new law's approach is very likely to be the approach that Company Law will adopt if it is amended in the future.

II. Adjusting the Age of Minors Who Have Limited Capacity to Make Transactions

The new law has adjusted the age of minors who have limited capacity to enter into transactions, as the age set by the old law created problems and should be lowered.

⁴⁸ *General Provisions* arts 57-75.

⁴⁹ *General Provisions* arts 76-86.

⁵⁰ *General Provisions* arts 87-95.

⁵¹ *General Provisions* arts 96-101.

⁵² 王涌 [Wang Yong], above n 23, 631.

Minors are the persons who are under eighteen years old and not legally independent to make legal arrangements or undertake legal responsibilities. Similar to many other jurisdictions, Chinese law places restrictions on minors' capacity to enter into transactions. Minors must be represented by their parents and transactions made by the minors must be ratified by their parents before being acknowledged and enforced by law.

The purpose of limiting minors' capacity is to protect their interests.⁵³ As pointed out, there are criteria to determine whether an individual should have capacity to enter into transactions.⁵⁴ The criteria include the age and mental condition of an individual, whether the individual can engage in the activities independently and whether the individual has the necessary intellect and experience to understand the nature and consequences of important legal transactions.⁵⁵ Furthermore, the capacity must be given and recognised by law to be effective, in order to guarantee the seriousness of this matter.⁵⁶

In line with the scholarly criteria, both the new law and the old law determine who can have the capacity to enter into transactions through dividing the general population into three categories by age. Although giving individuals capacity by virtue of their age may not be the most satisfactory method, this method is considered to be the most uniform, practical and efficient way to deal with this matter.⁵⁷

There are two categories of minors and the rules governing the two groups of minors are different. The first category is minors who have no capacity to enter into transactions and their parents must represent them in all transactions regardless of the amount of money involved (under the new law these minors are under eight years old, while under the old law these minors are under ten years old).⁵⁸ The minors in this category are infants and younger children. Chinese law has placed strict restrictions on the capacity of these minors to protect the very young infants and children.⁵⁹

⁵³王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 343.

⁵⁴ Ibid 342-43.

⁵⁵ Ibid.

⁵⁶ Ibid 343.

⁵⁷龙卫球 [Long Weiqiu], above n 7, 220-21.

⁵⁸ *General Principles* art 12(2); *General Provisions* art 20; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 104.

⁵⁹王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 350.

The second category is minors who have limited capacity to enter into transactions and these minors are allowed to enter into transactions that are considered appropriate to their age and intellect (under the new law these minors are between eight to eighteen years old, while under the old law these minors are between ten to eighteen years old).⁶⁰ For example, if a ten-year-old minor buys a pencil valued at one dollar, this transaction would be considered to be appropriate to the minor's age and intellect. Hence this transaction is valid and does not need the ratification of the minor's parents. By contrast, if the ten-year-old minor purchases a watch valued at forty thousand dollars, this transaction is obviously not age or intellect appropriate and this transaction is valid if the minor's parents elect to ratify it, or alternatively the transaction is cancelled by the parents.⁶¹ The minors in the second category are older than the minors in the first category and therefore the law is less restrictive, assuming the older minors have a higher intellect and more experience in commercial dealings by comparison to the younger minors in the first category. However, the law still assumes that the minors in the second category do not have the necessary intellect and experience to understand the nature and consequences of important legal transactions.⁶²

The third category is the adults aged eighteen and over who have full capacity to enter all transactions and make legal arrangements as they see fit.⁶³

The difference between the new law and the old law lies in the age that divides the minors who have no capacity and the minors who have limited capacity. Under the old law, minors aged *ten* and over had limited capacity and these minors could only enter into transactions that are appropriate to their age and intellect.⁶⁴ Minors under the age of *ten* had no capacity to enter into transactions and their parents must represent them.⁶⁵

The new law has lowered the age that divides the minors who have limited capacity and the minors who have no capacity. Under the new law, minors aged *eight* and over have limited

⁶⁰ *General Principles* art 12(1); *General Provisions* art 19; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 104-5.

⁶¹ *General Principles* art 12(1); *General Provisions* art 19.

⁶² 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 348.

⁶³ *General Principles* art 11; *General Provisions* arts 17, 18. 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 346.

⁶⁴ *General Principles* art 12.

⁶⁵ *General Principles* art 12(1).

capacity and can enter into age and intellect appropriate transactions.⁶⁶ Minors under the age of *eight* have no capacity to enter into transactions and their parents must represent them.⁶⁷

Through changing the old law, the new law has made what the legislators believe is a reasonable adjustment. The age that is set by the old law to divide the minors who have no capacity and the minors who have limited capacity has been widely critiqued. It has been long suggested that the age prescribed by the old law should be lowered, in order to allow more minors to have limited capacity to purchase necessities and buy bus tickets.⁶⁸ When determining what age is appropriate, factors such as local economic development, family situation and the average level of education across the country should be taken into account.⁶⁹ Indeed, as pointed out by scholars and the members of the supreme legislature, with the development of society, minors' cognitive abilities and psychological maturity have increased.⁷⁰ If the age of ten (the old law's approach) continues to be the age that divides the minors who have no capacity and the minors who have limited capacity, laws may fail to take the social developments into account. The members of the supreme legislature further raise an interesting question to make this point—are minors under the age of ten too young to buy soy sauce for their parents?⁷¹ Obviously, eight-year-old minors have the necessary intellect and experience to buy soy sauce that is worth a few dollars for their parents and engage in equivalent activities and the new law acknowledges this reality.

Further, the new law recognises that unreasonableness and inconvenience would be caused if the law denies eight-year-old minors the capacity to enter into such simple transactions and mandatorily requires their parents to represent them. Indeed, lowering the age of minors who

⁶⁶ *General Provisions* art 19.

⁶⁷ *Ibid.*

⁶⁸ 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 351.

⁶⁹ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 153.

⁷⁰ *Ibid* 25;

新华网[XinhuaNet], 限制民事行为能力人最低年龄到底几岁? 让讨论“再飞一会儿” [What the Age of Minors who Have Limited Capacity Should be? Let the Discussion Expend] (31 October 2016)

<http://www.npc.gov.cn/npc/cwhhy/12jcw/2016-11/01/content_2000282.htm>.

⁷¹ 6岁孩子“打酱油”太小? 争议限制民事行为能力人年龄下限 [Are Six Year Old Minors Too Young To Buy Soy Sauce? A Debate About The Age of Minors Who Have Limited Capacity] (9 August 2016)

<http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2016-08/09/content_1995046.htm>.

have limited capacity and allowing them to enter into age and intellect appropriate transactions respects the autonomy of minors and this is beneficial to developing their personalities.⁷²

In addition to the existing scholarly views, the author would further argue that the new law introduces practicality and flexibility to schools and minors' parents. In China, minors aged six or seven must attend school.⁷³ This means the youngest minors at schools are around six to seven years old. The new law gives these first year minor pupils (aged six or seven) one to two years to adjust to school life. Before turning eight years old, the minors have no capacity and their parents buy the necessities such as pencils and books for them. After adjusting themselves to school life for around one year and reaching the age of eight, those minors are expected to have accrued experience at school and hence the new law gives them limited capacity. The result is that if those minors aged eight or nine buy two-dollar pencils, these transactions are valid under the new law. By contrast, those transactions could be voided under the old law or require their parents' ratification, which is unnecessary and inconvenient. In this regard, the new law has given more convenience, practicality and flexibility to minors, their parents and schools. The number of beneficiaries is enormous given the huge number of first year minor pupils who enrol in primary schools across China each year (approximately 17.5 million enrolment in 2016 as reported by the Ministry of Education)⁷⁴ and their parents.

Furthermore, the new law has added a section that expressly allows minors aged eight and above to enter into arrangements that are for their sole benefit, without the need of their parents' ratification.⁷⁵ Although contract law has a similar section in relation to minors' entering into contracts that are for their sole benefit, contract law exclusively applies to contractual matters.⁷⁶ The new law makes this rule as a general rule that applies to all civil and commercial matters and

⁷² 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 7.

新华社[XinhuaNet], 限制民事行为能力人最低年龄到底几岁? 让讨论“再飞一会儿” [What the Age of the Minors Who Have Limited Capacity Should Be? Let the Discussion Expend] (31 October 2016) <http://www.npc.gov.cn/npc/cwhhy/12jcw/2016-11/01/content_2000282.htm>.

⁷³ 《义务教育法》 [Compulsory Education Law] (People's Republic of China) National People's Congress, 12 April 1986, last revised on 24 April 2015, art 11.

⁷⁴ 教育部 [Ministry of Education], 2016 年全国教育事业发展统计公报 [National Education Development Statistical Report 2016] (10 July 2017)

<http://www.moe.gov.cn/jyb_sjzl/sjzl_fztjgb/201707/t20170710_309042.html>.

⁷⁵ *General Provisions* art 19.

⁷⁶ *Contract Law* art 47.

increases the scope of the validity of arrangements that are for the sole benefit of minors, resulting in greater protection of minors.

III. Adding New Protection of Sexually Abused Minors

In order to address the old law's lack of protection of sexually abused minors (all the persons under eighteen years old), the new law adds new sections to protect those minors. The new law specifies that the statute of limitations starts to run from when victims turn eighteen years old, as opposed to the time when the injuries occur.⁷⁷ Because of the new law, sexually abused minors are no longer under the pressure to take legal action immediately after the injuries. This gives the victims more time to recover from the tragedies and to sue for compensation after they turn eighteen.

Sexual abuse of minors is a serious problem in China. Statistics show that minors account for thirty to fifty percent of the victims in some sexual abuse cases.⁷⁸ Furthermore, a recent report shows that in 2016 there were 433 reported minor sexual abuse cases (the cases involving minors below 14 years old) and the number of sexually abused minors was reported to be 778.⁷⁹ These statistics reflect the reported cases only and may only reflect the tip of the iceberg.

Despite the seriousness of sexual abuse cases of minors, the old law did not give any protection to those sexually abused minors and hence did not provide a solution to this serious problem that desperately needs to be resolved. The old law simply let other laws deal with this serious matter. However, even the protection given by other laws is not entirely satisfactory. It has been observed by scholars that prosecuting and convicting sex offenders and consequently imposing criminal liabilities on them is considered to be the optimal way of dealing with sexual abuse cases of minors.⁸⁰ Although there is a special minor protection law (Minor Protection Law) in

⁷⁷ *General Provisions* art 191.

⁷⁸ 警惕儿童性侵: 部分案件未成年受害人比例达 3-5 成 [Alert! Minor Victims Account for 30 to 50 Percent of the Victims in Some Sexual Abused Cases] (12 April 2017) <http://news.xinhuanet.com/2017-04/12/c_1120791736.htm>.

⁷⁹ 中国少年儿童文化艺术基金会 [China Foundation of Culture and Arts for Children], 2016 年儿童防性侵教育调查报告 [An Report on the Sexual Abuse Prevention Education in 2016] (3 March 2017) <http://gongyi.ifeng.com/a/20170303/44550261_0.shtml>.

⁸⁰ There are scholarly articles about the criminal offences in minor sexual abuse cases. 张华, 沙兆华, 祝丽娟, 王丹 [Zhang Hua, Sha Zhaohua, Zhu Lijuan and Wang Dan], 《性侵害未成年人犯罪法律适用研究》 [A Study on

force in China,⁸¹ scholars have argued that the relevant rules of the special minor protection law are not specific enough to prevent minor sexual abuse cases or protect minors effectively.⁸² Moreover, some scholars have compared the relevant rules between China and the United States and reached the conclusion that the current protection of sexually abused minors in China is less adequate by comparison with what is available in the United States, partly because China places too much emphasis on criminal sanctions and has less adequate rules to give the victimised minors civil protection (such as civil compensation).⁸³

In order to address the old law's lack of protection of sexually abused minors at a civil law level and in response to the scholarly criticisms, the new law recognises the plight of the minors who are victims of sexual abuse. The new law also recognises that lawsuits may be stressful and can impede the minors' development. As pointed out, because taking action against the perpetrators may make the cases public, this could be harmful to the minors' reputation and development and could also be a barrier to marriage in their adulthood, particularly due to the traditional values and pressure imposed by the society.⁸⁴ Sadly, these unfortunate cases have happened, particularly in rural areas.⁸⁵

Indeed, as the minors have suffered from mental and physical harm, the priority after the abuse is their rehabilitation to ensure that they are taken care of, so that they can grow up healthy, instead of placing restrictions on their right to bring lawsuits and protect themselves. After these minors become adults, they can rationally decide whether or not to take action against the perpetrators and claim civil compensation. The new rules also allow victimised minors to sue for compensation after they turn eighteen years old, even if the victimised minors' parents who acted on the victims' behalf decided not to take legal action when the victimised minors were under

the Application of Law in Minor Sexual Abuse Cases] [2017] (1) 预防青少年犯罪研究 *Journal of Studies on Prevention of Juvenile Delinquency* 73; 上海市奉贤区人民检察院 [Shanghai Fengxian District People's Procuratorate] 《性侵害未成年人犯罪案件的惩治、预防、救助机制研究》 [A Study on the Sanctions, Prevention and Remedies in Minor Abuse Cases] [2016] (4) 犯罪研究 *Journal of Studies on Crimes* 107.

⁸¹ 《未成年人保护法》 [Law of Minor Protection] (People's Republic of China) Standing Committee of National People's Congress, 4 September 1991, last revised on 26 October 2012.

⁸² 何挺, 林家红 [He Ting, Lin Jiahong], 《中国性侵害未成年人立法的三维构建》 [Three Dimensional Construction of the Legislation of Sexual Assault Juveniles in China] [2017] (1) 青少年犯罪问题 *Journal of Issues on Juvenile Delinquency* 60.

⁸³ Ibid.

⁸⁴ 李适时 [Li Shishi] (ed), 《中华人民共和国民法总则释义》 [Interpretation of General Provisions of Civil Law] (法律出版社 [Law Press], 2017) 642.

⁸⁵ Ibid.

eighteen years old.⁸⁶ Hence, the new law has effectively addressed the scholarly criticism about the inadequate protection of sexual abuse minors at a civil law level.

Further, the author would argue that the new law gives minor victims' parents a practical and appropriate option of keeping the evidence and giving the evidence to the minors in their adulthood. The parents are no longer under the pressure of taking legal action for the sole purpose of meeting the statute of limitations immediately after incidents of sexual abuse take place. This change to the law may better serve the interests of minor victims.

The new law maximises the chances of protecting sexually abused minors in terms of the statute of limitations. Even the special law in minor protection does not provide this level of protection.⁸⁷ In this regard, the new law is ground-breaking and has filled what has been perceived to be a gap in the legislature. It is the author's view that the specific legislation dealing with minor protection should now be amended to mirror the provisions in the new law.

IV. Broadening the Scope of Eligible Guardians of Minors

The new law has broadened the scope of eligible guardians of minors (all persons under eighteen years old)⁸⁸ and this new approach increases the protection of minors by comparison to the old law.

Guardianship is designed to protect, supervise and take care of the people who cannot take care of themselves due to their age or mental conditions.⁸⁹ Hence, guardianship is an important right and obligation given by law.⁹⁰ Furthermore, the laws primarily prefer to nominate close relatives as guardians due to the unique relationships and bonding between them.⁹¹ Given the importance

⁸⁶ Ibid 644.

⁸⁷ 《未成年人保护法》 [Law of Minor Protection] (People's Republic of China) Standing Committee of National People's Congress, 4 September 1991, last revised on 26 October 2012.

⁸⁸ The equitable fiduciary duty that guardians owe to wards in many common law jurisdictions does not exist in China, although Chinese law requires minors' legal guardians to take care of the minors.

⁸⁹ 龙卫球 [Long Weiqiu], above n 7, 241; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 108.

⁹⁰ 龙卫球 [Long Weiqiu], above n 7, 241

⁹¹ Ibid 242; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 107.

of guardianship, both the old law and the new law set out rules as to who can act as guardians of minors.

Under the old law, the scope of eligible guardians of minors was narrow. Minors' parents⁹², grandparents, elder adult brothers and sisters were eligible to be minors' guardians as a preferred option.⁹³ If appropriate, minors' closely related adult relatives or friends who are willing to undertake the responsibilities could also be guardians as a second option.⁹⁴ Although there is a special law that is specifically designed to protect minors (Minor Protection Law),⁹⁵ scholars have observed that the special law does not broaden the scope of eligible guardians that is set by the old law.⁹⁶ The old law potentially creates a problem—who else can be minors' guardians if the minors' parents and close adult relatives are unfit or dead, or the minors' adult friends cannot undertake the responsibilities for having other commitments? Should the scope of eligible guardians of minors be so narrow and does this protect minors?

As a solution, the new law has substantively broadened the scope of eligible guardians of minors and minors' guardians are no longer limited to their parents, adult relatives or friends. Now individuals and organisations can undertake guardianship responsibilities.⁹⁷

Although Chinese scholars do not appear to list this as a major improvement of the new law, the author would argue that this change to the new law has practical significance. Through broadening the old law's scope of eligible guardians of minors, the new law gives minors more choices with respect to who will act as their legal guardians. Thus, the law is more flexible and practical to better serve minors' interests. For example, orphanages can now act as guardians of orphans for a specified period of time if no other suitable guardian can be found. This arrangement has the potential to be a practical solution as orphans spend most of their time at orphanages and the staff of orphanages are probably in the best position to know what is best for the orphans. The role of legal guardian may facilitate the orphanages to take care of the orphans

⁹² On most occasions, parents are minors' legal guardians.

⁹³ *General Principles* art 16.

⁹⁴ *General Principles* art 16(1)-(3).

⁹⁵ 《未成年人保护法》 [Law of Minor Protection] (People's Republic of China) Standing Committee of National People's Congress, 4 September 1991, last revised on 26 October 2012.

⁹⁶ 杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China] [2016] (1) 法学家 *The Jurists Journal* 95, 97.

⁹⁷ *General Provisions* art 27(3).

in many aspects, if consent or ratification of the minors' guardians is legally required. However, these practical and positive solutions would not be possible under the old law, because the scope of eligible guardians of minors set by the old law was narrow and orphanages (or other organisations) were not allowed by the old law to be the minors' guardians, which is a problem where the minors' parents, close relatives and adult friends are unfit, unavailable or dead. Furthermore, the effectiveness of the new law's approach is inspired and supported by the previous successful experience—the higher local courts in Shanghai ordered minor shelters (places that take care of minors temporarily) to look after prisoners' children and the results were proven to be satisfactory.⁹⁸ Scholars suggested that the new law should adopt this successful approach⁹⁹ and the new law has adopted this approach as a result.

Likewise, a similar analysis applies to mentally unsound minors in psychiatric institutions. These institutions know what is best for the minors' physical and mental health and hence the institutions may be in a better position to act as their legal guardians. The new law facilitates the institutions to conduct treatment on the minors if consent of the minors' guardians is legally required, and if no alternative appropriate legal guardians can be found for a certain period of time.

V. Clarifying the Circumstances where Minors' Guardians can be Removed

As introduced, one of the purposes of guardianship is to protect minors. In order to fulfil this purpose, minors' guardians have certain duties and the duties include safeguarding the minors' personal and proprietary safety, taking care of the minors, protecting their interests, educating, supervising and disciplining the minors.¹⁰⁰ Due to the seriousness of the duties, it is important to have rules in place to ensure guardians perform their duties satisfactorily.

However, the old law did not have rules to monitor guardians' performance or allow courts to remove unfit guardians. In this regard, the old law created a legal vacuum and did not protect

⁹⁸ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 154.

⁹⁹ Ibid.

¹⁰⁰ 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 368-70; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 110.

minors effectively. The old law has been long criticised for not specifying the circumstances where guardians can be removed and this is considered to be a major flaw of the old law in relation to protecting minors' interests.¹⁰¹ Hence, scholars have strongly suggested that new rules should be introduced to ensure that guardians perform their duties satisfactorily.¹⁰²

In order to uphold the seriousness of guardianship and accommodate the scholarly views, the new law adds a new section to clarify the circumstances in which courts can remove minors' guardians and appoint new suitable guardians.¹⁰³ This ensures that the legal guardians will act in the best interest of minors.

The new law specifies that courts can remove minors' guardians if guardians seriously undermine minors' physical and mental health, or guardians are negligent in performing or unable to perform duties but refuse to entrust parts or all of the duties to others and put minors at risk.¹⁰⁴ Courts can remove minors' guardians if guardians undermine the rights and interests of minors in other ways.¹⁰⁵ Examples include sexual abuse, physical abuse and refusing to give minors enough food or clothing.

Chinese courts have started utilising the power granted by the new law to maximise the protection of minors. In the very recent case of *AoXX and ZhouX's Application for Disqualification of Guardianship*, the minor was only 6 years old and the defendant was the minor's legal guardian but the defendant and his roommate abused the minor.¹⁰⁶ The plaintiff (the minor's grandmother) applied for a restraining order against the defendant but the violence continued.¹⁰⁷ The court in Tianjing considered that the defendant's conduct had seriously damaged the minor's physical and mental health and hence disqualified the defendant from being the minor's guardian.¹⁰⁸ This case may be the first case in Tianjing (or even China) where courts

¹⁰¹杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 98.

¹⁰² Ibid 103.

¹⁰³ *General Provisions* art 36.

¹⁰⁴ *General Provisions* art 36(1)-(2).

¹⁰⁵ *General Provisions* art 36(3).

¹⁰⁶ 《暴某某、周某申请撤销监护人资格案》 [AoXX and ZhouX's Application for Disqualification of Guardianship Case], 天津市津南区人民法院 [Tianjing Jingnan District Court], 0112 民特 16 号 [Civil 0112 No. 16], 16 November 2017.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

use the new law's new rules to remove unfit legal guardians to protect minors and the positive result of this case would not be possible under the old law.

Further, in order to ensure that unfit guardians are removed promptly, the new law also allows a wide range of individuals and institutions (including other eligible guardians, schools, hospitals, minor shelters and disability associations) to apply for the disqualification of unfit guardians.¹⁰⁹

In particular, the new law states that the government must remove unfit guardians if those individuals and institutions fail to apply for the disqualification of unfit guardians.¹¹⁰ Scholars have suggested that government should play a more active and positive role to monitor the performance of guardians and obviously the new law has adopted this scholarly view to make the improvement.¹¹¹ Arguably the neutral role of courts increases the credibility and enforceability of the decisions in guardianship related cases.¹¹² As a positive response to those scholarly views, the new law allows a wide range of individuals and institutions (particularly the government) to monitor the performance of legal guardians, allows courts to have the power to remove unfit guardians and subsequently protects minors to a greater extent.

Moreover, by comparison to the old law, the new law gives courts a much clearer basis upon which they can remove unfit guardians. Indeed, the purpose of guardianship is to safeguard and protect minors. If this purpose cannot be achieved, the whole guardianship system would be frustrated, regardless of who acts as the guardian. The new law, when broadening the scope of eligible guardians of minors, also introduces new rules to ensure that the existing and new eligible guardians take care of minors properly.

VI. Increasing the Protection of Foetuses

¹⁰⁹ *General Provisions* art 36(4).

¹¹⁰ *General Provisions* art 36(5).

¹¹¹ 杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 103.

¹¹² 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 156.

In addition to protecting minors, the new law has increased the protection of the rights of foetuses, particularly in secession and donation cases, in order to address the inadequate protection under the old law.

Under the old law, only living individuals were protected in donation cases.¹¹³ Hence, if donations were made to foetuses before birth, the enforceability of the donations could be in dispute after the foetuses' birth. Further, in secession cases the old law did not mandatorily require a portion of assets to be reserved for the foetuses.¹¹⁴ Scholars have criticised the old law's limited protection of foetuses and failure to clarify the legal status of foetuses.¹¹⁵ As an interim solution, it has been argued that foetuses should be given "quasi-capacity" to inherent assets, receive donations and make claims of alimony and damages,¹¹⁶ as allowing foetuses to do so can financially support their future life.¹¹⁷ Moreover, the recognition of the dignity of foetuses is considered to be a mainstream value of modern society¹¹⁸ and arguably the protection of foetuses may be increasingly important due to the development of artificial fertilisation.¹¹⁹ Although some scholars suggest that the capacity of foetuses should be differentiated from the capacity of living individuals, these scholars have firmly insisted that the interests of foetuses must be protected.¹²⁰

In order to increase the protection of foetuses and respond to the scholarly views, the new law adds new rules to protect the rights of foetuses, articulating that foetuses have the capacity and eligibility to inherit property by succession and receive donations before birth.¹²¹ This means that if donations are made to foetuses before birth, the donations would be effective immediately after the birth and hence the validity of the donations is no longer subject to dispute. This new protection is strong, as now living individuals and foetuses are equally protected in donation

¹¹³ *Contract Law* arts 185-195.

¹¹⁴ The protection of foetuses in succession cases primarily lies in succession law. *Succession Law* art 28.

¹¹⁵ 杨立新 [Yang Lixin], 《民法总则中部分民事权利能力的概念界定及理论基础》 [The Definition and Theoretical Basis of the Selected Civil Capacity in the General Provisions of Civil Law] [2017] (5) 法学 *Journal of Legal Studies* 50.

¹¹⁶ 杨立新 [Yang Lixin], 《民法总论》 [General Introduction to Civil Law] (高等教育出版社 [Higher Education Press], 2007) 72-73; 刘召成 [Liu Zhaocheng] 《胎儿的准人格构成》 [The Quasi-capacity of Foetuses] [2011] (6) 法学家 *The Jurists Journal* 66.

¹¹⁷ 刘召成 [Liu Zhaocheng], above n 116, 80.

¹¹⁸ *Ibid* 66.

¹¹⁹ *Ibid* 68.

¹²⁰ 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 338.

¹²¹ *General Provisions* art 16.

cases. Similarly, in succession cases, fetuses can now inherit the assets that they deserve by virtue of Succession Law and this right has been guaranteed by the new law.

Furthermore, some scholars have observed that the texts in the new law are very carefully worded to maximise the protection of fetuses.¹²² As the exact text suggests that fetuses are protected in civil cases, including but not limited to, donation and secession cases, this has left other forms of protection open and available to fetuses.¹²³ In this regard, the new law's new protections are stronger than the scholarly approach of giving the fetuses "quasi-capacity".

VII. Allowing More Adults (particularly Aged Adults) to Have Guardians Appointed and Accommodating the Aging Issue and other Issues in China

In addition to minors who are under eighteen years old, adults may also have legal guardians. The rules governing minors' guardians and the rules governing adults' guardians are two separate sets of rules. This section VII is about the legal guardians of adults.

The old law only allowed mentally unsound adults to have guardians appointed, but this approach creates problems. By comparison to the old law, the new law allows more adults (particularly aged adults) to have guardians appointed. Together with other new rules, the new law addresses the aging issue and other issues in China, while this positive result would not be achieved by the old law.

Under the old law, mentally unsound adults who are wholly incapable of managing their own affairs had no capacity and they must be represented by their guardians.¹²⁴ Mentally unsound adults who are partially incapable of managing their own affairs had limited capacity and they must be represented by their guardians, but these people could enter into transactions that are appropriate to their mental capabilities.¹²⁵ In other words, adults who are mentally sound but not

¹²²王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 7.

¹²³ Ibid;

杨立新 [Yang Lixin], 《民法总则中部分民事权利能力的概念界定及理论基础》 [The Definition and Theoretical Basis of the Selected Civil Capacity in the General Provisions of Civil Law], above n 115, 58.

¹²⁴ *General Principles* art 13(1).

¹²⁵ *General Principles* art 13(2).

capable of taking care of themselves were not allowed by the old law to have guardians appointed.

As criticised by scholars, the old law does not allow aged adults who are mentally sound but incapable of managing their own affairs to have guardians.¹²⁶ As a result, the interests of those aged adults may not be adequately protected.¹²⁷ Furthermore, the old law is also criticised for not allowing adult patients who are in a persistent vegetative state to have guardians, but those patients may need guardians desperately.¹²⁸ Hence, scholars have suggested that the old law's rules must be changed, in order to accommodate China's increasingly expanding aging issue and to protect the existing patients who are in a persistent vegetative state.¹²⁹

In light of social developments and the scholarly criticisms, the new law now allows all adults to have guardians if it is so needed.

Under the new law, adults who are wholly incapable of managing their own affairs can have guardians appointed.¹³⁰ Adults who are partially incapable of managing their own affairs can also have guardians appointed.¹³¹ Further, the new law allows a wide range of individuals and institutions to be adults' guardians, including their spouses, parents, adult children, relatives, individuals and institutions who are willing to undertake those responsibilities.¹³²

The new law's approach is commendable. As the new law's approach gives adults the right to have guardians purely on the proviso that they can fully manage their own affairs, the new law more satisfactorily achieves the purpose of guardianship. It not only recognises the existing need for mentally unsound adults who must have guardians, but also allows other adults who are

¹²⁶杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 97.

¹²⁷ Ibid.

¹²⁸ Ibid;

杨立新 [Yang Lixin], 《民法总则对民法基本规则的成功改革及成因》 [The General Provision of Civil Law's Successful Reform of the Fundamental Rules in Civil Law and the Causes behind the Reform] [2017] (3) 法治研究 *Journal of Studies on Legal Matters* 3, 5.

¹²⁹ Ibid;

杨立新, 张莉 [Yang Lixin, Zhang Li] 《论植物人的法律人格及补正—植物人法律问题研究之一》 [On the Legal Personality of Persistent Vegetative State Patients and Remedies] [2006] (8) *Journal of Law Application* 33.

¹³⁰ *General Provisions* art 21.

¹³¹ *General Provisions* art 22.

¹³² *General Provisions* art 28.

partially or wholly incapable of taking care of themselves to have guardians (including patients in a persistent vegetative state).

In particular, the new law gives aged adults the flexibility to have guardians. Studies have shown that aging has been and will increasingly be a concern in China over the next few decades.¹³³ In some areas, people aged sixty and above account for thirty-two percent of the total local population.¹³⁴ The new law has made accommodations to the aging issue and introduced the new rule so that the whole of China can be ready for this major social change.

In order to further accommodate the aging issue, the new law has particularly added a new rule to allow aged adults to appoint legal guardians at an earlier stage of their life if they wish to do so, in case the aged adults at a later stage become partially or wholly incapable of managing themselves so that the appointed legal guardians can step in immediately and take care of them, in compliance with the aged adults' voluntary arrangements.¹³⁵ The legal guardians could be their relatives, other individuals or institutions.¹³⁶ The appointed legal guardians start undertaking their responsibilities immediately after the aged adults become partially or wholly incapable of managing themselves.¹³⁷ Obviously, the new law gives aging adults more options of arranging their life and they can now choose individuals or nursing homes that they trust to be their guardians when this becomes necessary. The new law's approach is consistent with the scholarly view that all adults (regardless of age) should be allowed to appoint their legal guardians at any stage of their life, in order to respect their voluntary decisions about their

¹³³ In 2014, China's elderly population (aged 65 and above) accounts for 15.5% of the total population. This figure is estimated to be 20.3% in 2024. 国家信息中心 [National Information Centre], 我国人口老龄化趋势及其影响 [The Trend of Aging Population in China and its Influence] (22 January 2016) <<http://www.sic.gov.cn/News/455/5900.htm>>.

¹³⁴ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 153.

¹³⁵ *General Provisions* art 33

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

arrangements in life.¹³⁸ This new law's approach also arguably gives greater flexibilities to deal with the possible complicated situation and diversified specific needs of aged adults.¹³⁹

Furthermore, the old law is criticised for failure to specify the circumstances where adults' guardians should be removed.¹⁴⁰ In particular, the old law is criticised for not having rules to allow the state or government to monitor the performance of guardians or intervene in cases of need, and this may weaken the functions of guardianship.¹⁴¹

In order to address this scholarly criticism, the new law specifies that courts can remove adults' guardians if the guardians seriously undermine the adults' physical and mental health, or are negligent in performing or unable to perform duties and put the adults at risk.¹⁴² The new law also allows a wide range of individuals and institutions to apply for the removal of unfit guardians and the appointment of new guardians, including other eligible guardians, hospitals, elderly shelters, women's associations and disability associations, and the new law requires that the government must remove unfit guardians if those individuals and institutions fail to apply for the removal of unfit guardians.¹⁴³ This new rule monitors and ensures the satisfactory performance of adults' guardians. This new rule also echoes the scholarly view that government should play a more active role in those matters¹⁴⁴ and courts are more neutral and powerful to settle guardianship related cases compared to other solutions.¹⁴⁵

Moreover, in order to protect aged parents, the new law has added a section to emphasise adult children's obligations of supporting, helping and protecting their aged parents.¹⁴⁶ The new law,

¹³⁸杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 101; 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 153.

¹³⁹ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 153.

¹⁴⁰杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 98.

¹⁴¹Ibid.

¹⁴² *General Provisions* art 36(1)-(2).

¹⁴³ *General Provisions* art 36(4)-(5).

¹⁴⁴杨立新 [Yang Lixin], 《民法总则制定与我国监护制度之完善》 [The Enactment of the General Provisions of Civil Law and the Improvements of Guardianship System in China], above n 96, 103.

¹⁴⁵ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 156.

¹⁴⁶ *General Provisions* art 26.

in line with other law that is designed to protect aged people,¹⁴⁷ has further reinforced the family's responsibility of caring for aged parents and adult children and strengthened China's traditional family values (particularly filial piety).¹⁴⁸ This approach has invested the new law with more Chinese unique cultural and social characters to make the new law more adaptable and suitable to the environment in China.

VIII. Adding Rules of Expression of Intention

The new law adds new sections in relation to expression of intention.

Expression of intention is an overarching and broad concept that applies to all of the important activities in private law, including contractual and testamentary matters.¹⁴⁹ It means the process of expressing claimants' intention and willingness to achieve certain desired legal consequences,¹⁵⁰ so that their legal intents can be ascertained and assessed by other claimants and courts. Claimants must comply with the relevant rules of expression of intention to achieve their desired legal results. For example, forming, altering and terminating contracts is a form of expression of intention, as the claimants performing the conduct seek to achieve certain consequences in contractual matters (the contractual formation, alteration and termination). In order to make the contractual formation, alteration and termination valid, the conduct must satisfy the rules about expression of intention in addition to the rules of Contract Law. Another example of expression of intention is making wills, an expression of intention to achieve the desired legal consequences in testamentary cases. These examples demonstrate the importance of expression of intention. After all, if expression of intention is not effective due to the non-compliance with the relevant rules, no desired legal results can be achieved or recognised by law.

¹⁴⁷ 《老年人权益保障法》 [Law of Protection of Elderly's Rights and Interests] (People's Republic of China) Standing Committee of National People's Congress, 29 August 1996, last revised on 24 April 2015.

¹⁴⁸ 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 5.

¹⁴⁹ 王利明 [Wang Liming], 《民法总则研究》 [Studies on General Principles of Civil Law], above n 13, 533-543; 龙卫球 [Long Weiqiu], above n 7, 446-447.

¹⁵⁰ 王利明 [Wang Liming], 《民法总则研究》 [Studies on General Principles of Civil Law], above n 13, 533-543; 龙卫球 [Long Weiqiu], above n 7, 446-447.

Despite the importance of the concept of expression of intention, the old law did not have any sections or rules to regulate or clarify its application and hence creates a legal vacuum in this important matter.

In order to fill the old law's gap relating this important matter, the new law adds six new sections to outline the fundamental rules of the expression of intention which apply to contract, testamentary and other civil and commercial cases. In particular, the new law has articulated that expression of intention can be made in an express or an implied way.¹⁵¹ If the expression of intention can be made impliedly as allowed by law, as agreed by claimants or as required by convention, the implied intention takes effect.¹⁵² This new approach is consistent with the scholarly view that implied expression of intention should only take effect on special occasions as an exception to the general rule that intention must be expressed to take effect.¹⁵³ Further, this new rule is highly relevant to contractual cases such as whether contractual rights can be waived by silence and whether offers can be accepted by silence. Because Contract Law does not have concrete sections regarding accepting offers by silence or waiving contractual rights impliedly, the new law has filled a gap in Contract Law and hence is more advanced than Contract Law. This is important because the validity of implied conduct may have major impacts on claimants' legal rights.

In addition, scholars have argued that the new law makes a significant improvement by adding rules about disingenuous expression of intention.¹⁵⁴ As pointed out, claimants may express disingenuous intentions and use this to hide their real purposes, for example, forming contracts of donations to hide the real purpose of avoiding paying debts or tax.¹⁵⁵ As opposed to the old law's approach of sanctioning using disingenuous intentions to hide illegal purposes only, the new law sanctions claimants for using disingenuous intentions to hide all legal and illegal purposes.¹⁵⁶ Hence, the new law arguably gives courts a wider basis and greater flexibilities to

¹⁵¹ *General Provisions* art 140(1).

¹⁵² *General Provisions* art 140(2).

¹⁵³ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 223.

¹⁵⁴ 王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 10. *General Provisions* art 146.

¹⁵⁵ 梁慧星 [Liang Huixing], 《民法总则立法的若干理论问题》 [Some Theoretical Questions about the Enactment of the General Provisions of Civil Law] [2016] (1) 暨南学报 (哲学社会科学版) *Jinan Journal (Philosophy and Social Sciences)* 19, 29-30.

¹⁵⁶ *General Provisions* art 146.

deal with the disingenuous expression related cases and this is considered to be a great reform.¹⁵⁷ This has also demonstrated that China's supreme legislature is more skilful in drafting codes to deal with the increasingly sophisticated civil activities of life.

Furthermore, the new law adds new rules about interpretation of expression of intention. Factors such as the wording, relevant sections of documents, the nature and purposes of the conduct, custom and the good faith principle should be taken into account.¹⁵⁸ In addition, as pointed out by scholars, the new law further refines the relevant rules by differentiating the expression of intention made to specific claimants from the expression of intention made to general public, as the new law clarifies that the interpretation of the former should refer to the exact wordings while the interpretation of the latter should not be too literal.¹⁵⁹ Although Contract Law has some rules about contractual interpretation,¹⁶⁰ Contract Law exclusively applies in contractual cases. The new law sets out additional rules and raises these rules up to a general law level. The result is that courts and claimants now have more concrete and complete rules to aid them to interpret expression of intention related matters in all civil and commercial cases, for example, testamentary cases. In this regard, the new law has filled a gap as the old law did not contain those rules. The new law is also more advanced than some special law relating to civil matters, as the special law (such as Succession Law) also does not contain rules concerning expression of intention interpretation issues.

The new law's approach is commendable. The new law outlines the overarching rules of expression of intention. As pointed out, the new law's new rules also have highlighted the important overarching role of expression of intention in civil activities.¹⁶¹ It is recommended that the special law in Contract Law and Succession Law, for example, should follow and make rules that are consistent with and perhaps even more comprehensive and detailed than the rules of the new law. This approach has highlighted the purpose, nature and role of the new law—a general

¹⁵⁷杨立新 [Yang Lixin], 《民法总则对民法基本规则的成功改革及成因》 [The General Provision of Civil Law's Successful Reform of the Fundamental Rules in Civil Law and the Causes behind the Reform] above n 128, 9.

¹⁵⁸ *General Provisions* art 142(1).

¹⁵⁹王利明, 周友军 [Wang Liming, Zhou Youjun], above n 35, 10. *General Provisions* art 142.

¹⁶⁰ *Contract Law* art 125.

¹⁶¹杨立新 [Yang Lixin], 《民法总则对民法基本规则的成功改革及成因》 [The General Provision of Civil Law's Successful Reform of the Fundamental Rules in Civil Law and the Causes behind the Reform], above n 128, 8.

umbrella law of civil and commercial matters. In this regard, the new law fills the old law's gap successfully and satisfactorily.

IX. Extending the Period of the General Statute of Limitations and Improving the Relevant Rules

The new law extends the duration of the general statute of limitations¹⁶² and significantly improves the quality, clarity and completeness of old law's rules governing the general statute of limitations.

As pointed out, the general statute of limitations is designed to achieve the important goals of upholding legal order, stabilising legal relations, reducing courts' burdens, lowering the cost of transactions and protecting claimants from the disadvantages caused by the destruction of evidence.¹⁶³ It is also designed to urge claimants to exercise their civil rights promptly, as laws do not favour laches.¹⁶⁴ If claimants fail to observe the relevant rules of the statute of limitations, courts would do not support their claims, although the claims could have been upheld by courts if the relevant rules were observed.¹⁶⁵ As the general statute of limitations applies to all civil matters unless laws specify otherwise,¹⁶⁶ the general statute of limitations plays an important role in civil cases. Hence, it has been clearly argued that the period of the general statute of limitations must be prescribed by law and cannot be altered, shortened or waived by claimants at will.¹⁶⁷

However, the old law did not entirely uphold the importance of the general statute of limitations. The old law's two-year general statute of limitations is criticised for being too short by

¹⁶² *General Provisions* art 188. This particular improvement is about general statute of limitations. There are specific statute of limitations that apply to particular cases. About the specific statute of limitations, see 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 723-24.

¹⁶³ 王澤鑾 [Wang Tze-Chien], 《民法總則》 [General Principles of Civil Law] (自版 [Published by the Author of this Book], 2010), 553.

¹⁶⁴ 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 703-4.

¹⁶⁵ *Ibid* 743-48.

¹⁶⁶ *Ibid* 722.

¹⁶⁷ 王澤鑾 [Wang Tze-Chien], above n 163, 554; 魏振瀛 [Wei Zhenying] (ed), 《民法》 [Civil Law] (北京大学出版社 [Peking University Press], 2007) 196.

comparison to its counterparts in other civil law jurisdictions such as France,¹⁶⁸ and hence cannot fully protect claimants' interests.¹⁶⁹ In particular, as banks cannot make claims against debtors successfully after the old law's short two-year period, Chinese banks suffer hundreds of billions of losses each year.¹⁷⁰

Although the scholars criticise that the period set by the old law is too short, when it comes to determining an appropriate period of the general statute of limitations, arguably the period should not be too long, partly because market economy requires efficiency and modern technologies shorten the time of exercising civil rights,¹⁷¹ partly because a long period of statute of limitations would increase the difficulties of collecting evidence and may not achieve the purpose of urging claimants to exercise their rights promptly.¹⁷² Further, as most judges, lawyers and claimants are very familiar with the old two-year period, the new period should not be too much longer than the old two-year period.¹⁷³ Hence, the appropriate period of the general statute of limitations is suggested to be three to five years.¹⁷⁴ After considering the existing judicial experience and referring to the relevant rules of German and Russian civil codes, some scholars consider three years to be an appropriate time period as a compromise.¹⁷⁵

In response to the scholarly criticisms and suggestions, the new law extends the period and now claimants have a three-year time period to consider whether to pursue lawsuits. This protects the rights of claimants to a greater extent without sacrificing the general statute of limitations' purposes of stabilising legal relations and urging claimants to exercise their civil rights promptly.

¹⁶⁸王利明 [Wang Liming], 《民法总则研究》 [Studies on General Principles of Civil Law], above n 13, 722-23; 梁慧星 [Liang Huixing], 《民法总论》 [General Introduction to Civil Law], above n 8, 254.

¹⁶⁹梁慧星 [Liang Huixing], 《民法总则立法的若干理论问题》 [Some Theoretical Questions about the Enactment of the General Provisions of Civil Law], above n 155, 37.

¹⁷⁰《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 94.

¹⁷¹梁慧星 [Liang Huixing], 《民法总则立法的若干理论问题》 [Some Theoretical Questions about the Enactment of the General Provisions of Civil Law], above n 155, 37.

¹⁷²《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 120.

¹⁷³ Ibid.

¹⁷⁴王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 723; 杨立新 [Yang Lixin], 《民法总则对民法基本规则的成功改革及成因》 [The General Provision of Civil Law's Successful Reform of the Fundamental Rules in Civil Law and the Causes behind the Reform], above n 128, 10.

¹⁷⁵ But the scholars do not give sufficient scholarly justification to support this view. 梁慧星 [Liang Huixing], 《民法总则立法的若干理论问题》 [Some Theoretical Questions about the Enactment of the General Provisions of Civil Law], above n 155, 37.

As the new period is one year longer than the old one, it aligns with the scholarly views and makes it easier for judges and lawyers to adjust to the new rule.

Moreover, the new law improves the quality, clarity and completeness of the old law's rules of the general statute of limitations. The new law fills the old law's gap and adds a new rule to expressly forbid claimants from waiving the right of pleading the statute of limitations,¹⁷⁶ changing the duration of the statute of limitations or modifying the statutory rules about how the statute of limitation is calculated, suspended or interrupted.¹⁷⁷ This new rule not only guarantees the seriousness of the statute of limitations, but also effectively prevents innocent claimants from being taken advantage of by dishonest claimants. The new law's new rule is also consistent with the academic view that the rules of general statute of limitations are statutory and mandatory.¹⁷⁸

Further, the new law unprecedentedly clarifies the circumstances where the general statute of limitations does not apply, such as claims for the return of property and claims for payment of alimony.¹⁷⁹ The new law's approach echoes the academic view that the general statute of limitations should not apply to certain cases related to the personal status of claimants, otherwise it would be morally inappropriate and contradict the special nature of personal status.¹⁸⁰ For example, alimony may be the major financial source of the claimants who are aged or incapable of working.¹⁸¹ Hence, the claims relating to personal status should be treated differently from the claims relating to contractual obligations to which the general statute of limitations should apply.¹⁸²

Indeed, when the new law was under review by the supreme legislature, Chinese judges suggested that the new law should include more specific and clear rules for them to apply.¹⁸³ As a positive response, the new law's new rules give judges and courts a clear basis upon which to

¹⁷⁶ *General Provisions* art 197(2).

¹⁷⁷ *General Provisions* art 197(1).

¹⁷⁸ 王利明 [Wang Liming], above n 77, 712.

¹⁷⁹ *General Provisions* art 196.

¹⁸⁰ 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 718.

¹⁸¹ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 667.

¹⁸² 王利明 [Wang Liming], 《民法总则研究》 [Studies on the General Principles of Civil Law], above n 13, 719.

¹⁸³ 《民法总则立法背景与观点全集》编写组 [Editorial Board of the Legislation Background and Scholarly Views of General Provisions of the Civil Law], above n 21, 174.

deliver judgments accurately and consistently in the matters that are related to the statute of limitations and this positive result would not be achieved by the old law.

X. Conclusion

China's supreme legislature has enacted and passed a new general umbrella law that governs all civil and commercial matters—General Provisions of Civil Law.

The new law includes a number of innovative changes and advancements that have been designed to adapt to the economic and social changes in China, address the old law's ineffectiveness and fill the old law's gaps in many important matters. This article has demonstrated some of the most important improvements made by the new law.

The new law uses a more advanced method to categorise legal persons, recognises the independent status of more organisations and allows them to play a more positive role in the fast-growing market economy. Further, the new law increases the level of protection of minors and fetuses (particularly sexually abused minors) and introduces new rules to regulate minors' legal guardians. The new law also allows more adults (particularly aged adults) to have guardians flexibly and this accommodates the issue of aging in China. The new law significantly increases the quality, clarity and volume of the rules relating to important civil matters such as expression of intention and the general statute of limitation and fills the gaps of the old law in those crucial areas. This makes the new law more effective in dealing with civil and commercial matters by comparison to the old law. In particular, some of the new law's initiatives are more advanced and forward-looking than the special law such as Company Law, Minor Protection Law and Succession Law.

The new law's changes and advancements demonstrate that China's supreme legislature possesses sophisticated skills in drafting codes and has a mature and practical attitude towards accommodating social changes and economic developments. As the new law plays an important role in China's legal system, the new law's advancements are helpful to build a more advanced, effective and sophisticated civil law system in China, particularly given the advancements will be incorporated into the uniform civil code that will be proposed in the future.