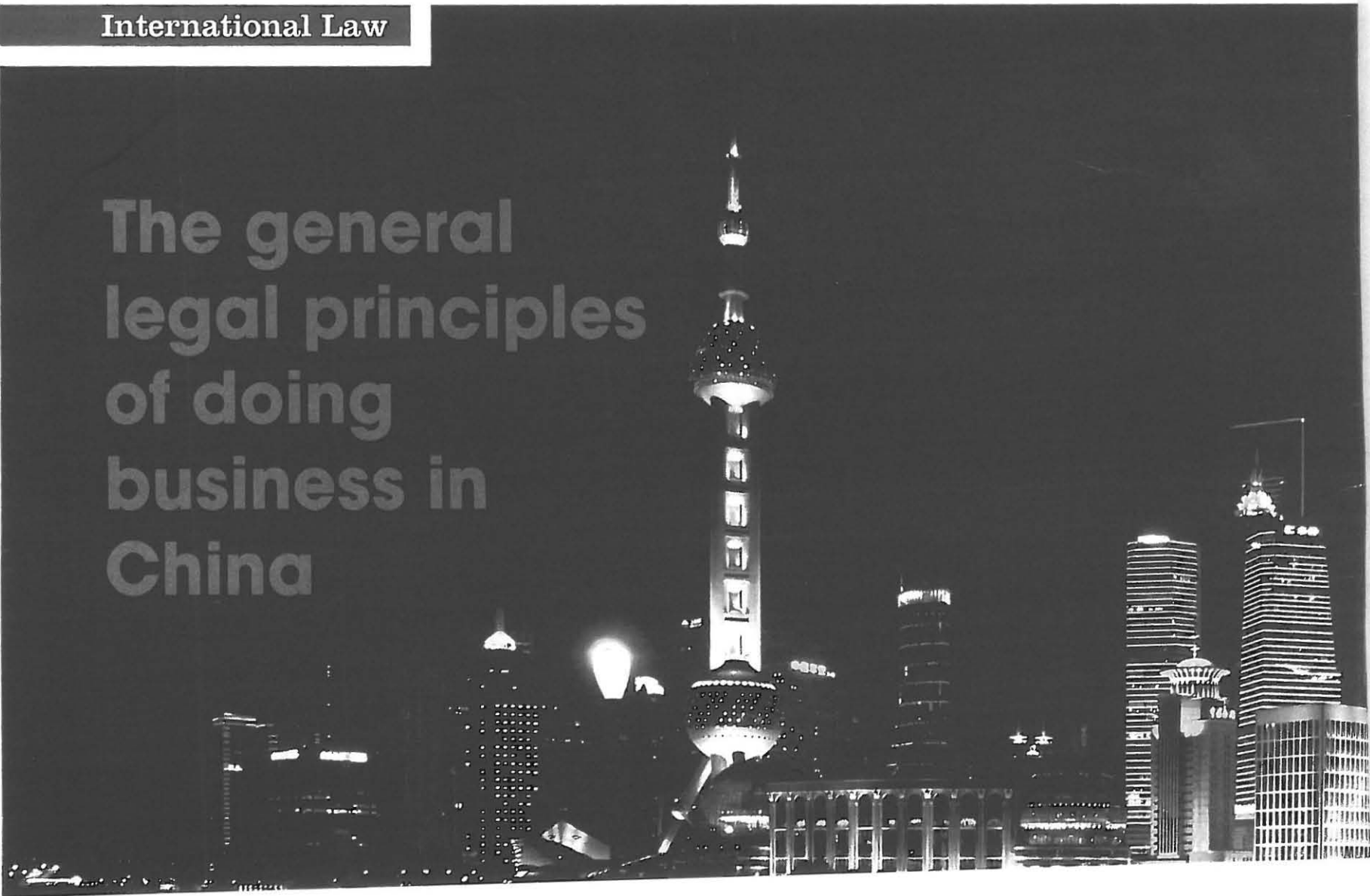


International Law

The general
legal principles
of doing
business in
China





Zhixiong Liao provides an introduction to business law in China

By virtue of the New Zealand-China Free Trade Agreement, more and more New Zealand legal practitioners will have to consider some basic legal issues concerning business law in China when called upon to advise a corporate client with business connections to China. It is risky to assume that the related Chinese law is “basically similar” to its New Zealand “counterparts”.

There is no case law in China as commonly understood by a common law lawyer. The Supreme Court publishes case summaries/reports in its *Gazette*, but case judgments in China are not binding. The Supreme Court may from time to time issue official documents, called “judicial interpretations”, on the application of provisions of a particular statute, and such judicial interpretations are binding on all the Courts in China. The proper way to search Chinese law is first to locate statutes/regulations and to look further for the related applicable judicial interpretations where there are still doubts in mind.

There are basically three branches of law in China, namely: civil law; administrative law; and criminal law. Business activities are largely governed by civil law and administrative law, but some provisions in the criminal code may also be relevant in particular circumstances. The general principles of civil law provided by the statute *General Principles of the Civil Law of the People's Republic of China (General Principles)* are generally applicable to business transactions between the parties, for instances, the “good faith” principle and those concerning agency, civil liability, choices of law and jurisdictions. Specific statutory provisions, however, take precedence over the *General Principles* where a particular matter is concerned.

For overseas companies who have business connections with China or who are contemplating setting up a business in China, the most important statutes and regulations to which they should pay attention are the following:

1. *Statutes/regulations governing overseas*

investments: The three fundamental statutes on setting up foreign-invested enterprises are the *Foreign-Invested Enterprises Law*, *Sino-Foreign Equity Joint Ventures Law*, and *The Law of the PRC on Sino-Foreign Contractual Joint Ventures*. The *Catalogue for the Guidance of Foreign Investments Industries* sets out the different industries for which foreign investments are encouraged, permitted, restricted, or completely prohibited, and the conditions upon which an approval may be granted. It is jointly issued by the Committee of National Development and Reform and the Ministry of Commerce, and is subject to review from time to time. There are also regulations concerning particular industries or types of business organisation. Examples are the *Measures for the Administration of Foreign Investment in the Commercial Sector*, the *Provisions on the Administration of Foreign-invested Advertising Enterprises*, and the *Measures for the Administration on the Establishment of Partnership Enterprises in China by Foreign*

(FTA) may provide favourable to New good idea to check decision regarding into China.
3. *Statutes on rights/c*
For example, the *L* contains basic rule



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Enterprises or Individuals. The Chinese government welcomes overseas investments, especially those in agriculture-related industries or in the Western areas of China. Priorities and/or incentives are generally provided to projects that help protect the environment or save energy, or those that may bring into China new technologies or advanced management skills.

2. *Statutes/regulations on export, import, and foreign exchange:* For example, the *Foreign Trade Law*, *Law on Import and Export Commodity Inspection* (your exported goods may be seized at Customs for non-compliance with the related Chinese packaging/labelling requirements), *Regulations on Import and Export Tariff*, and *Regulations on Foreign Exchange Administration* (China has a stringent foreign exchange regulation scheme, but this does not substantially disturb payments under the "current account" especially those for international transactions of goods or services). China has fewer and fewer restrictions on import, export, and overseas investments since it became a member of the World Trade Organization in 2001. However, as the New Zealand-China Free Trade Agreement (FTA) may provide trade terms that are more favourable to New Zealanders, it is always a good idea to check the FTA before you make a decision regarding your export to or investment into China.
3. *Statutes on rights/obligations over property:* For example, the *Law of Land Administration* contains basic rules on ownership, registration,


planning, and use of land. The *Real Right Law of the People's Republic of China* provides rules on *Res* including both real and personal property. The *Law of the People's Republic of China on Administration of the Urban Real Estate* concerns how to obtain the "right to use land", land development, sale and purchase of real property, mortgage of land, leases, and registration of real properties in urban areas. According to these statutes and regulations, you cannot "own" land for more than 70 years. Nor can you lease an office for more than 15 years (eight years for residential property). The *Guarantee Law* not only provides rules on guarantees, but also those on mortgages, pledges of "movable property" and "rights", liens and deposits, which shows that in China "guarantee" may be a broader concept to cover all of the foregoing than that understood in common law jurisdictions.

4. *The core statute on transactions, ie The Contract Law:* It is a comprehensive code of contract law in China, which contains not only the general principles of contract law, but also rules on particular types of contracts, for example, contracts for the sale of goods, contracts for the supply of utilities, loan contracts, leases, contracts for construction projects, contracts for transportation, etcetera. Most notably, according to this Act, a lease term exceeding 20 years is void for the exceeding period of time. While the general principles set out in *The Contract Law* are applicable to employment contracts, it is *The Labor Contract Law* that

is often applied where a dispute over an employment contract arises.

5. *Statutes/regulations on taxation:* For example, the *Tax Collection and Administration Law*, *Enterprise Income Tax Law*, *Individual Income Tax Law*, *Provisional Regulations on Value-Added Tax*, and *Provisional Regulations on Business Tax*. China has a tax regime different from many other countries, including Australia and New Zealand.

Other legislation may also be relevant, for instance, the *Products Quality Law*, *Standardization Law*, *Law of the People's Republic of China on the Protection of Consumer Rights and Interests*, *Anti-Unfair Competition Law*, *Anti-Monopoly Law*, *Advertisement Law*, as well as the statutes and regulations concerning the protection of intellectual property rights.

Doing business in China will not generally incur criminal liabilities. However, the recent high-profile Chinese case concerning alleged theft of state secrets by a senior employee from Rio Tinto reminds us of the importance of knowing some business-related provisions of the Chinese criminal code (the *Criminal Law of the People's Republic of China*). 

Following this overview, Zhixiong Liao will be providing a series of brief introductions to some particular aspects of China's business-related law.

Zhixiong Liao BA (economics), LL.M, LL.D Renmin; LL.B, MPS (Hons), LL.M (Hons) Auckland is a lecturer in the Faculty of Law, at the University of Waikato; and practised as a lawyer in both China and New Zealand (in commercial law, tax law and overseas investment regulation) before joining the Faculty of Law.