

- высокий уровень кадрового потенциала на основе эффективного отбора и назначения на должность, системного обучения и повышения квалификации сотрудников, создания эффективной системы мотиваций;

### Список использованной литературы

1. Налоговый Кодекс Кыргызской Республики, изд. Академия: Б-2022 г.
2. Стратегия развития Государственной налоговой службы при Правительстве Кыргызской Республики на 2019-2021 годы. Постановление ПКР от 3 июня 2019 года № 269
3. Показатели оценки деятельности налоговых органов: обзор существующих подходов. А.Р.Хафизова. Налоговая политика 31(5121)-2012г.
4. <http://www.sti.gov.kg/>
5. <http://www.gov.kg/>
6. <http://pnk.kg>

УДК 321

DOI 10.33514/1694-7851-2022-2-329-336

**Цай Хунвэй**

Түндүк-Батыш педагогика университети, Юридикалык институту, юридика илимдеринин доктору, лектор

**Цай Хунвэй**

Северо-Западный педагогический университет, юридический институт, доктор юридических наук, старший преподаватель

**Cai Hongwei**

Northwestern Pedagogical University, Institute of Law, PhD in Law, Senior Lecturer

**"КЫТАЙ ЭЛ РЕСПУБЛИКАСЫНЫН ГРАЖДАНДЫК КОДЕКСИНИН КЕЛИШИМ  
ЗАКОН БӨЛҮМҮ" ЖӨНҮНДӨ ТАЛДОО  
АНАЛИЗ «КНИГИ КОНТРАКТОВ ГРАЖДАНСКОГО КОДЕКСА КИТАЙСКОЙ  
НАРОДНОЙ РЕСПУБЛИКИ»  
STUDY ON THE BOOK OF CONTRACTS OF THE CIVIL CODE OF P.R.C.**

**Аннотация:** «Гражданский кодекс Китайской Народной Республики» был официально введен в действие в 2021 году, и «Книга контрактов» появился как самостоятельная книга. Основными характеристиками «Книга контрактов Гражданского кодекса Китайской Народной Республики» являются широкий диапазон регулирования, подробное содержание, общие положения обязательственного права, реализация «зеленого принципа» в гражданско-правовой сфере. Составление «Книга контрактов Гражданского кодекса Китайской Народной Республики» тоже имеет положительное значение в активном реагировании на новые проблемы общественной жизни, способствуя углубленному толкованию теории договорного права, реализации структурных новаций «Книги контрактов» и совершенствование системы договорного права Китая.

**Аннотация:** "Кытай Эл Республикасынын Граждандык кодекси" расмий түрдө 2021-жылы күчүнө кирди, ал эми анын "келишим иштер закон бөлүмү" өз алдынча китеп

катары жарыкка чыкты. “Кытай Эл Республикасынын Граждандык кодексинин келишим иштери закон бөлүмүнүн” түзөтүлгөн мазмундары кенен ары деталдуу. Ал карыз иштери законунун жалпы принциптеринин функциясын өзүнө жүктөгөн болуп жарандык иштери чөйрөсүндө “жашыл принциптик” деген негиздүү өзгөчөлүктөрдү мүнөздөгөн.

"Кытай Эл Республикасынын Граждандык кодексинин келишим закон бөлүмүнүн" жарыкка чыгышы абдан манилүү болуп коомдук турмуштагы жаңы көйгөйлөргө активдүү жооп берет. Келишим иштери законунун теориясын терең чечмелөөгө өбөлгө түздү. «КЭР Граждандык кодексинин» структуралык инновациясын ишке ашырып Кытайдын келишим иштери закон системасын кемелдендирди.

**Abstract:** The Civil Code of the People's Republic of China was officially implemented in 2021, and the Book of Contracts appeared as a separate book with the characteristics of a wide scope of adjustments and detailed contents; undertaking the function of the general provisions of the law of obligation, implementing the Green Principle and other main features in the civil field. The codification of the Book of Contracts of the Civil Code of the People's Republic of China is of positive significance which responds actively to new problems in social life; promotes the in-depth interpretation of the theory of contract law; improves the system of China's contract law; realizes the structure innovation of the Civil Code of the People's Republic of China.

**Негизги сөздөр:** "Кытай Эл Республикасынын Граждандык кодексинин келишим иштери закон бөлүмү"; өзгөчөлүктөрү; мааниси

**Ключевые слова:** «Книга контрактов Гражданского кодекса Китайской Народной Республики»; особенности; значения

**Key words:** the Book of Contracts ; Characteristics; Significance

Since the movement of reform and modification of laws in the Late Qing Dynasty, Chinese legal scholars have been revising Chinese laws taking the laws of Germany, Japan, France and other civil law countries as models. Since the founding of the People's Republic of China, a civil code have been codifying, and most of the drafts of civil codes have references to the German Civil Code and other civil codes. The Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code of P.R.C.) was adopted by vote on May 28, 2020 and came into force on January 1, 2021. The Civil Code of P.R.C. is codified on the basis of fully making full use of the civil codes of the two legal systems, combining the theory of civil law and the practice of Chinese legislation. Different from the German Civil Code, the Civil Code of P.R.C. consists of seven books in structure , in which the Book of Contracts of the Civil Code of P.R.C. (hereinafter referred to as the Book of Contracts) is set up as a separate book. The Book of Contracts in the Civil Code of P.R.C. follows the legislative path of pragmatism, emphasizes the combination of contract law theory and legislative practice with inheritance and innovation, with its own characteristics, structure and contents, and is of great significance.

#### I. Characteristics of the Book of Contracts

##### 1. Wide scope of adjustment and rich contents

As early as in 1999, the Contract Law of the People's Republic of China (hereinafter referred to as the Contract Law of P.R.C.) was promulgated and implemented. The Book of Contracts is formulated on the basis of the Contract Law of P.R.C., whose legislative purpose is followed, maintains a certain openness, and reserves a certain scope for the adjustment of other contracts. In China, even though some contracts, such as insurance contracts and tourism contracts, are stipulated in industrial laws other than the Contract Law of P.R.C., the Contract Law of P.R.C. is still called

“Unified Contract Law” by many Chinese civil law scholars because the Contract Law of P.R.C. has a wide scope of adjustment, strong applicability, and a certain controlling function for all contracts. The adjustment scope of the Book of Contracts is broader and clearer than that of the Contract Law of P.R.C.. In Article 464 of the Book of Contracts, that the legal provisions on the identity relationship shall apply to the agreements related to the identity relationship such as marriage, adoption and guardianship of the provisions of the Book of Contracts may be applied to by reference according to its nature if there is no provision are specified. In other words, under certain circumstances, the Book of Contracts can even adjust the contractual relationship related to identity. Article 467 of the Book of Contracts clearly specifies that the provisions of the general principles of the Book of Contracts shall apply to the contracts not expressly stipulated in the law or other laws, and the other provisions most similar to those provisions in the Book of Contracts or other laws may be referred to. In other words, the legal application of atypical and foreign related contracts are specified in the Book of Contracts. In terms of the number of legal articles, the Book of Contracts accounts for almost half of the total number of legal articles of the Civil Code of P.R.C., and the contents are also relatively rich.

## 2.Undertaking of the function of the general provisions of the law of obligations

In civil law theory and legislative practice of civil law system, the common legislative mode is to set up the book of the law of obligations in the civil code, in which the general provisions of the law of obligations is set up. The general provisions of the law of obligations refer to the general normative system or common normative system abstracted from various specific debts and applicable to various specific debts<sup>[1]</sup>. The general provisions of law of obligation provide common applicable rules for the debts arising from contracts, torts, negotiorum gestio and unjust enrichment. The contents of the general provisions of the law of obligations in the German Civil Code and the Civil Code of Japan which include the objects of debts, the effect of debts, multi-party debts, the performance of debts, the guarantee of debts, the assignment of debts and the elimination of debts are stipulated in the general provisions of the law of obligations. During the process of the codification of the Civil Code of P.R.C., there has been a dispute over whether or not to set up general provisions of the law of obligations. Some scholars hold the view that the general provisions of the law of obligations are the essential contents of the law of obligations, to set up the general provisions of the law of obligations is to realize the abstract legislative technique, and the establishment of the general provisions of the law of obligations makes the law of obligations more concise<sup>[2]</sup>. Some scholars hold the view that the establishment of the general provisions of the law of obligations is always the internal requirement of the systematization of the law of obligations and it is also a common choice of civil codes to set up the general provisions of the law of obligations in various countries or regions<sup>[3]</sup>. However, there are also some scholars hold a contrary opinion that the traditional the law of obligations focuses more on contract law in structure, and contract law occupies the vast majority of the contents of the law of obligations, so the so-called general provisions of the law of obligations actually becomes the general provisions of contract law<sup>[4]</sup>. Some scholars hold the view that in judicial practice, the application of the general provisions of the law of obligations has hardly occurred or rarely occurred in the other fields except contracts, so the actual utility of the general provisions of the law of obligations is in doubt<sup>[5]</sup>. Some scholars hold the view that, based on the definition of the concept of contract in the existing contract law and the legislative practice of tort liability law's separate construction to be a book in China, the general provisions of the law of obligations should be abolished in the Civil Code of P.R.C.because the establishment of the general provisions of the law of obligations does

not have systematic harmony; the reason for advocating the abandonment of the general provisions of the law of obligations will lead to the establishment of the dual distinction system between real right and creditor's right is not persuasive; the basic reason why the general provisions of the law of obligations govern the commonality of various debts is not sufficient<sup>[6]</sup>. In the end, the legislature decided not to set up the book of the law of obligations and no longer set up the general provisions of the law of obligations, but to integrate the contents of the general provisions of the law of obligations into the Book of Contracts, so the Book of Contracts actually plays the role of the general provisions of the law of obligations, which realizes the functional innovation of the Book of Contracts.

### 3.Implementation of the Green Principle in the field of contract law

That the Civil subjects engaged in civil activities shall be conducive to saving resources and protecting the ecological environment is stipulated in the General Provisions of the Civil Law of the People's Republic of China (hereinafter referred to as the General Provisions of P.R.C.). This article is the stipulation of “Green Principle”, which means that the parties shall follow the principles of saving resources, protecting the environment and respecting the rights of other animals in civil activities<sup>[7]</sup>. The Green Principle is stipulated in General Provisions of P.R.C. for the first time, it is also the first time to stipulate the Green Principle in the civil codes of the civil law system , which is inherited by the General Provisions of the Civil Code of P.R.C.. The reason why the Green Principle can be absorbed in the Civil Code of P.R.C. is closely related to the ecological wisdom in Chinese traditional culture<sup>[8]</sup>. The Green Principle's absorption in the Civil Code of P.R.C.is of great significance and is the extension of the basic principles of civil law. The Book of Contracts has perfected the Green Principle by the stipulation of the application in the field of contract law through articles 509, 558, 619 and 625, in which the green constraints on contract performance, the duty of waste recovery in post contract duty, the green requirements for packaging, and the recycling requirements for the objects after the expiration of effective service life are respectively clarified<sup>[9]</sup>.

### 4.Incorporation negotiorum gestio and unjust enrichment into the Book of Contracts

The quasi contract theory is absorbed in the Book of Contracts so as to solve the related problems caused by the lack of specific provisions of the law of obligations. Because the Civil Code of P.R.C. does not set up the book of the law of obligations, negotiorum gestio and unjust enrichment in the traditional the law of obligations of the civil law system cannot be placed in the law of obligations. During the process of the codification of the Civil Code of P.R.C., some scholars proposed that Roman law can be learned from and negotiorum gestio and unjust enrichment can be placed in the specific provisions of contract law as quasi contracts<sup>[10]</sup>. The concept of quasi contract was first used by Gaius which refers to the legal facts similar to the contracts other than contracts and torts, including negotiorum gestio, condictioindebiti, guardianship and legacy<sup>[11]</sup>. The quasi contract in the Justinian's “Institutions” are those debts that are not exactly incurred according to the contracts, but not due to infringement, but are considered as if they were incurred according to the contracts<sup>[12]</sup>. During the process of the codification of the “the Book of Contracts”, the quasi contract theory was adopted by legislators and the “quasi contract” was stipulated as a sub book in the “the Book of Contracts” so as to find the position for negotiorum gestio and unjust enrichment in the Civil Code of P.R.C..

## II Structure and contents of the Book of Contracts

### 1. Structure

As the typical civil code in the German civil law system ,the German Civil Code adopts the structure of “General provisions——Specific provisions”, which refines the common contents of

the law to form the general provisions, which makes the contents of the code more concise. This structure is also adopted by the Civil Code of P.R.C. which consists of seven books: General Provisions, Real Right, Contracts, Personality Right, Marriage and Family, Inheritance and Tort Liability. The Book of Contracts belongs to the third book of the Civil Code of P.R.C., with three sub books, 29 chapters and 526 articles. The first sub book of the Book of Contracts is the general principles, which basically plays the role of the general provisions of contract law. There are 132 articles in 8 chapters, in which the common applicable rules of contract law are stipulated. The specific provisions of the Book of Contracts consist of the Sub Book of Nominate Contracts and the sub book of quasi contracts. The Sub Book of Nominate Contracts s consists of 19 chapters with 384 articles, 19 kinds of nominate contracts s, among which the relevant contracts are further classified in transportation contract and technology contract. The sub book of quasi contracts consists of 2 chapters with 10 articles.

## 2. Contents

In the general principles of the Book of Contracts, the conclusion of the contract, the effect of contracts, the performance of contracts, the preservation of contracts, the modification and assignment of contracts, the termination of the rights and obligations under a contract and the default liability are stipulated. Nineteen nominate contracts s specified in the Sub Book of Nominate Contracts in the Book of Contracts are sales contracts, contracts for the supply and consumption of electricity, water, gas, or heat, gift contracts, loan contracts, suretyship contracts, lease Contracts , contracts for financing lease, factoring contracts, work contracts, contracts for construction project, transport contracts, technology contracts, contracts for custody of property, warehousing contracts, entrustment contracts, contracts for property management service , brokerage contracts, intermediary contracts, partnership contracts. By the articles of suretyship liability, general rules and suretyship liability are stipulated; by the articles of transportation contract, general rules, passenger transport contracts, freight transport contracts and multimodal transport contracts are stipulated; by the articles of technology contract, general rules, technology development contracts, technology transfer contracts and technology licensing contracts, technology consultation contracts and technology service contracts are stipulated, among which technology licensing contract is stipulated for the first time. In the sub book of quasi contract, negotiorum nestio and unjust enrichment are stipulated.

## III Significance of the Codification of the Book of Contracts

### 1. Response to new problems in social life

Social life is changing all the time. Contract law, as the main law in private law, should adjust the new problems arising from social development. In this regard, the Book of Contracts has made a positive response to this mainly in the following aspects: first, it has detailed the relevant provisions of the Contract Law of P.R.C.. The Book of Contracts has strengthened the applicability of the Contract Law of P.R.C. to the existing social relations and promoted the adjustment of social relations by adding, deleting and amending the articles of Contract Law of P.R.C. and relevant judicial interpretations. Second, the types of contracts have been appropriately added. On the basis of the Contract Law of P.R.C., the Book of Contracts adds four contract types: suretyship contracts, factoring contracts, contracts for property management service and partnership contracts. Among them, the factoring contract is stipulated for the first time, and the other three types of contracts are transferred into the Book of Contracts from other laws after being modified and supplemented. Third, provisions on electronic commerce have been added. In recent years, the electronic commerce developed rapidly. On the basis of the Contract Law of P.R.C., the Book of Contracts absorbs and

improves the relevant provisions on electronic contracts in the Law of the people's Republic of China on Electronic Commerce, in which the the time of formation and the delivery time of the object of electronic contracts are stipulated in articles 491 and 512 respectively. Fourth, the provisions on compulsory offer and compulsory acceptance due to the needs of rescue and disaster relief and epidemic prevention and control have been added. With frequent occurrence of natural risks and the normalization of epidemic prevention and control in modern society, the rules of compulsory offer and acceptance in the Book of Contracts on the basis of the Contract Law of P.R.C. are stipulated, which can help quickly respond to and resolve the risks caused by natural disasters and improve the efficiency of epidemic prevention. It is the application and embodiment of the principle of priority protection of social public welfare in the field of contract law.

## 2. Promotion the in-depth interpretation of the theory of contract law

The theory of contract law can provide necessary theoretical support for the legislation of contract law. Contract law is an important part of the legal system of civil law system and common law system. The codification process of the Book of Contracts is the multiple perspectives exchanges of civil law thoughts and ideas between Chinese and foreign civil law scholars. During the process of the codification of the Book of Contracts, Chinese civil law scholars sorted, analyzed and integrated contract law theories of civil law system and common law system together, which is further understanding, interpretation, improvement and legislative application of contract law theory.

Chinese civil law scholars conducted more discussion on the provisions of the General Principles of Civil Law of the People's Republic of China and the Contract Law of P.R.C., and resorted out the relevant civil law theories. After many demonstrations, through inheritance and sublation, the relevant regulations of the Book of Contracts were finally established by legislation. For example, compared with the Contract Law of P.R.C., the provisions on the effectiveness of contracts in the Book of Contracts are greatly reduced; the unification of legal acts and contract acts has been realized; and the controversial article 51 of the Contract Law of P.R.C. has been deleted; on the basis of pragmatic legislation, the quasi contract theory of Roman law is adopted; the relationship between anticipatory breach of contract in common law and uneasy defense in civil law are coordinated; the relevant provisions on the preservation of debts are detailed, which shows the collective wisdom of Chinese civil law scholars and legislators.

## 3. Realization of the innovation of code structure of the civil code

The German Civil Code is a model of the civil codes of the civil law system, in which the contents of contract law are arranged in the law of obligations. Contract law is an integral part of the law of obligations in the traditional civil law theory, but the obvious difference of the Civil Code of P.R.C. from the German Civil Code is that the book of the law of obligations are not set up, contract law appeared be the Book of Contracts. During the process of the codification of the Book of Contracts, whether or not to set up contract law to be a separate book has also experienced a process from full of disputes to gradual acceptance. Some civil law scholars insist on adopting the structure of the German Civil Code to set up “Book of the law of obligations”, in which the relevant provisions such as contracts, torts, negotiorum gestio and unjust enrichment should be included. In terms of the legislative practice of contract law, the Contract Law of P.R.C. promulgated and implemented in 1999 is thought highly of to be technical and practical. From the aspect of practice, China's legal profession, especially the judicial circles, have strong wishes to maintain the integrity of the Contract Law of P.R.C., which stems from the significant impact of the advanced nature of the Contract Law of P.R.C.<sup>[13]</sup>. With the further progress of the codification of the Civil Code of P.R.C.,

some scholars who insist on establishing the general provisions of the law of obligations also changed their views, support the opinion to maintain the relative integrity of the Contract Law of P.R.C., and suggested that the Contract Law of P.R.C. should be revised and improved through the integration of all the relevant regulations about contract law in China to be the Book of Contracts<sup>[14]</sup>. The proposal was adopted by the legislature. The construction of contract law as a separate book is another attempt in structure of civil codes of civil law system, which provides a legislative sample for the evolution of book of the law of obligations into book of contract law of civil law system.

#### 4.Improvement of the system of contract law

By the continuous amendments and supplements to the relevant contents of the Contract Law of P.R.C., the relevant provisions of the Book of Contracts are more detailed and practical, and the system of China's contract law is improved, which are mainly reflected in the following two aspects: first, the Book of Contracts enriches the contents of China's contract law. After the promulgation and implementation of the Contract Law of P.R.C., China has formulated several judicial interpretations of Contract Law to make up for the legislative omissions to meet the needs of judicial practice. The Book of Contracts integrates many provisions in the Contract Law of P.R.C. and relevant judicial interpretations, such as appointment contract, imputation of payment, the Principle of Change of Circumstances and so on. The Book of Contracts also supplements and specifies the existing regulations of contract law, such as the provisions on creditors' right of subrogation and rescission, standard terms and other systems. Second, the Book of Contracts can provide applicable basis for other contracts. Many provisions in general principle of the Book of Contracts, such as offer and acceptance, as well as the provisions on the effectiveness and the performance of the contract, are complementary and informative to all contracts. In other words, if there are still omissions in the contract legal system in other laws other than the Book of Contracts, the provisions of the Book of Contracts can still be applied to.

#### Conclusion

Contracts are closely related to our life. To conclude contracts is the most common affair in life. The importance of the Book of Contracts in the Civil Code of P.R.C. is self-evident. A large number of articles and detailed contents in the Book of Contracts pay comprehensive attention to the life and social development of the whole society. The Book of Contracts is codified on the basis of the Contract Law of P.R.C., which is the inheritance of the Contract Law of P.R.C.. The Book of Contracts basically maintains the integrity of the Contract Law of P.R.C. in contents. The Book of Contracts is constructed separately as a book in the Civil Code of P.R.C., and also realizes the controlling function of the law of obligations, which improves the system of China's contract law and realizes the innovation of the civil code in structure. The codification of the Book of Contracts collects the civil law wisdom of Chinese civil law scholars and legislators who pay attention to both the theoretical nature of civil law and the practicability of the code. Although the Book of Contracts is a relatively mature and applicable law in China's civil law, with the development of society, more contract related problems will continue to appear, which need to be adjusted through contract law. In addition, some omissions in the Book of Contracts are inevitable and need to be continuously perfected. However, we have reason to hold the view that the implementation of the Book of Contracts will promote China's economic development and improve people's living standards and the rule of law.

#### References:

1. Liu Jingwei. Several issues on establishing the general provisions of the law of obligations in China's Civil Code [J] China Legal Science, 2007 (04).

2. Cui Jianyuan. General principles of the law of obligations and the formulation of China's civil code -- Also on the positioning of making an apology, restoring reputation and eliminating influence [J] Journal of Tsinghua University (Philosophy and Social Sciences Edition), 2003 (04).
3. Liu Jingwei. Necessity and feasibility of establishing the general provisions of the law of obligations [J] Xiamen University Law Review, 2004 (02).
4. Xue Jun. On the structural design of the law of obligations of the future Civil Code of China [J] Studies in Law and Business, 2001 (02).
5. Qin Youtu, Ma Changhua. Preservation and abolition of the general provisions of the law of obligations in China's civil code [J] Law Science, 2003 (05).
6. Xu Zhongyuan. The concept of contract and the existence and abolition of the general provisions of China's the law of obligations -- Also on the system of China's civil code [J] Tsinghua University Law Journal, 2010,4 (01).
7. Xu Guodong, editor in chief: draft green civil code [M], Beijing: Social Science Literature Press, 2004.
8. Lv Zhixiang, Zhao Tianwei. The advanced nature of the green principles in the civil code [J]. Journal of Hebei University of Environmental Engineering, 2021,31 (03).
9. Liu Changxing. Analysis of green clauses in the contract of the civil code [J] Journal of law, 2020,41 (10): 21-22.
10. Qin Youtu, Ma Changhua. Preservation and abolition of the general provisions of the law of obligations in China's civil code [J].Law Science, 2003 (05).
11. Wang Liming. Establishment of quasi contract and general provisions of the law of obligations [J] Jurist, 2018 (01).
12. Fei Anling. Roman law factors of quasi contract interpretation in China's civil code [J] Comparative study, 2021 (05).
13. Liu Chengwei. Legislative orientation and system openness of the Book of Contracts of the Civil Code [J] Global Law Review (2020),42,02.
14. During the process of the codification of the Civil Code, scholars such as Wang Liming and Liang Huixing changed their ideas from insisting on the establishment of the general provisions of the law of obligations to support the idea of not to establish the general provisions of the law of obligations.

УДК 330

DOI 10.33514/1694-7851-2022-2-336-341

**Шакирова К.К., Мусуралиева М.М., Абдраимова Б.К.**

И.Арабаев атындагы КМУ, экономика жана башкаруу кафедрасы, экономика илимдеринин доктору, доценттинин м.а.,

И.Арабаев атындагы КМУ, экономика жана башкаруу кафедрасы, саясат илимдеринин кандидаты, доценттинин м.а.,

И.Арабаев атындагы КМУ, экономика жана башкаруу кафедрасы, ага окутуучу

**Шакирова К.К., Мусуралиева М.М., Абдраимова Б.К.**

КГУ им.И.Арабаева, кафедра экономика и управления, доктор экономических наук, и.о. доцента,

КГУ им.И.Арабаева, кафедра экономика и управления, кандидат политических наук, и.о. доцента,