The long-expected Civil Code of the People's Republic of China ("Civil Code") has been passed by the 13th National People's Congress ("NPC") on May 28, 2020, and will take effect on January 1, 2021. The Civil Code is a sweeping collection of existing laws and regulations as well as judicial interpretation related to civil activities and relations, including but not limited to property right, contracts, marriage and family, succession, tort, to personal rights.

BACKGROUND

China had attempted to have a comprehensive civil code five times since 1950s. However, the previous four attempts were unsuccessful because of the then struggling economic, political turmoil or sweeping changes in the country’s economic and social conditions. As a result, the NPC Standing Committee decided to take a "retail" approach by enacting a series of separate statutes governing individual civil law matters first in hopes of integrating them into a unified code when the time is right.

Since the 1980s, China has enacted a series of standalone civil laws, including the General Principles of Civil Law ("GPCL"), General Provision of the Civil Law, Marriage Law, Inheritance Law, Adoption Law, Security Law, Contract Law, Property Law, and Tort Liability Law. These existing legislations are systematically integrated into the Civil Code and will cease to be effective concurrently when the Civil Code take effect.

The Civil Code consists of 7 parts, i.e. General Rules, Property Rights, Contracts, Personality Rights, Marriage and Family, Right of Inheritance and Tort Liability, with a total of 1,260 articles. We briefly summarize each part's relationship with the existing laws:

- the General Rules Part is identical to the GPCL except for a few changes in wordings;
- the Property Rights Part is based on the current Property Law, Security Law and their respective judicial interpretations with some changes;
- the Contracts Part is based on the Contract Law and introduces some new provisions;
- the Personality Rights Part does not have a corresponding standalone statute. It builds on a few provisions in the General Principles of the Civil Law and incorporates quite a number of new provisions;
- the Marriage and Family Part combines the current Marriage Law and Adoption Law;
- the Rights of Inheritance Part is based on the Inheritance Law; and
- the Tort Liability Part is based on the Tort Liability Law with some structural adjustments.

HIGHLIGHTS

We highlight below several major changes worth noting in the Civil Code.

Property Rights

Automatic Renewal: The Civil Code reaffirms that the land use rights for residence will be automatically renewed upon expiration, but leaves it vague whether the owners need to pay for renewal or can obtain it for free. The payment, reduction of or exemption from renewal fee will be handled in accordance with relevant laws and regulations, which are still being formulated. Given the uniqueness and sensitivity of the private
The Civil Code introduces new provisions on the right of privacy and protection of personal information. It provides clearer legal basis for individuals to take civil actions for protecting their personal data and privacy, as well as paving the way for them to seek compensation for infringements that were difficult to enforce against.

**Statutes of Limitations**: Most forms of injunctive relief for infringement of personality rights are not subject to statutes of limitations.

## Contracts

**Contract Termination**: The Civil Code now allows termination of a contract with indefinite contractual term at any time without cause by one party via a notice to the other party.

**Transfer of Mortgaged Property**: Currently, transfer of mortgaged property is subject to prior consent by the creditor. Under the Civil Code, unless otherwise agreed by the parties, the mortgaged property can be transferred with a prompt notice to the creditor. However, the mortgagee’s rights will not be affected by such title transfer of the mortgaged property.

**Guarantee Liability**: Under the current law, in case the form of a guarantee is not specified or not clearly specified in a contract, the guarantee relationship will be considered as a joint and several guarantee, meaning that the creditor may choose to enforce the debt towards the debtor or the guarantor. The Civil Code changes the default position. In other words, only after the creditor claims against the debtor and exhausts the remedies by debtor can it claim for debt payment against the guarantor.

**Guarantee Period**: Currently, in case where the guarantee period is not specified, creditors can claim against the guarantor within 2 years. This is now shortened to 6 months upon expiration of the time limit for performance of the principal obligations.

## Inheritance

**New Forms of Wills**: In the Civil Code, in addition to the existing five forms of wills (notarized wills, testator-handwritten wills, wills written on behalf of the testator, sound-recording wills and oral wills in an emergency situation), two new forms of wills, i.e. printed wills and wills in the form of video recordings are recognized. Both forms require the presence of two witnesses, their signatures (or appearances in the video), and a record of the date on which the will is made.

**Estate Administrator**: Under the current Succession Law, there is no mechanism for administering estates when one dies; consequently, in practice, in either intestate inheritance or testate inheritance, the heirs and/or the beneficiaries need to cooperate and work together to carry out the inheritance of estates of the deceased. A new role of estate administrators is created in the Civil Code, and relevant establishment, functions, powers and liabilities are provided.

## Tort Liability

**Self-assumed Risk**: The new “self-assumed risk” rule clarifies that if a person voluntarily participates in cultural and sports activities with a certain level of risk, and is injured by any other participants, such other participants do not need to bear tort liability, unless the injury is caused by their intentional misconduct or gross negligence.

**Self-help**: By the newly-established rule, in an urgent situation where a person’s legitimate rights and interests are being infringed upon, but cannot be protected by governmental authorities, and such rights and interests will be irreparably damaged if no measures are taken immediately, the individual may take reasonable and necessary measures to protect his rights and interests. However, if the victim takes improper measures causing injury to any other person, he shall bear tort liability.

### OBSERVATION

The Civil Code is a major consolidated piece of legislation in China and will regulate on almost every aspect of the PRC citizens’ civil lives. As the Civil Code is to take effect only on 1 January 2021, we expect that guidance on how the provisions in the Civil Code shall work in practice in the form of implementation rules and judicial interpretations will be released soon.