

Chinese Consumer Law: Recent Developments and Implications

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ABSTRACT

A consequence of shifting from a centralised to a decentralised market in China is the growing demand for legislation to regulate relationships between different market players. A system of consumer law is necessary to govern the dealings between business operators and consumers. In response to this need, a national consumer statute as well as statutes in other areas have been enacted to deal with various aspects of consumer protection. This paper discusses the roles of the relevant pieces of legislation in protecting consumers in China. This paper also discusses the recent developments in the Chinese consumer law under the revised criminal legislation and the consolidated contract statute, and their implications for investors.

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I. INTRODUCTION

There is a saying among foreign business operators that, even selling sewing needles, you can still make a fortune in China, if everyone buys one needle from you. This statement suggests the magnitude of the Chinese consumer market. China has nearly a quarter of the world's population. With its 1.25 billion people, all potential consumers, China has become a substantial world market. In addition to the huge population, China's market-oriented economic reform, its on-going open door policy for foreign investment, and its forthcoming entry to the World Trade Organisation is bringing about a blossoming of the commodity market.

However, even under these favourable trading conditions, not all investments in China warrant a rich return. Instead some have suffered from crushing failure. One explanation for this is that foreign investors are unfamiliar with the legal environment in China, and are not aware of the growth of the Chinese consumer movement. Consumer protection is a relatively new area of law in China. In spite of its profound impact on traders in the Chinese market place, the study of Chinese consumer law is not popular amongst western scholars. Very little has been written in a foreign language about the legislation protecting consumers, even though it is part of the overall Chinese legal reform.¹

The primary aims of this paper are to increase foreign investors' awareness of legal protection of consumers in China, and to generate discussion in this area of law amongst foreign scholars. With these goals in mind, the paper is divided into four parts. In part one, the paper briefly discusses the major Chinese legislation relevant to consumer protection, such as the General Principles of Civil Law, the Product Quality Law, the Unfair Competition Law, the Advertising Law, and the Consumer Protection Law. In part two, the paper focuses on examining aspects of consumerism in recent enactments, namely, *The Criminal Law of the People's Republic of China*, and *The Contract Law of the People's Republic of China*. In part three, the paper discusses the implications of the Chinese consumer law and its latest developments for business operators. The final part submits that these legislations all have a distinct role in the consumer protection movement. They supplement rather than replace each other.

II. THE LEGAL FRAMEWORK OF CHINESE CONSUMER PROTECTION - AN OVERVIEW

The theory of consumer protection does not have a long history in contemporary China. This is partly because the establishment of the People's Republic of China in 1949 brought about a major change to the structure of the Chinese economy. From 1949 to 1978, the Chinese government adopted a model of planned economy, where the State controlled production and distribution of all commodities.² Since the government purchased all production

from manufacturers, the latter were not concerned with profit-making. Furthermore, there was no incentive for business operators to behave unethically or dishonestly to obtain greater profits.³ At the same time, under the ration system, consumers could not complain about the poor quality of any product allotted. Thus, the concept of consumer protection was left with no significant role to play.

Since 1978 China has undergone a radical transformation from its socialist planned economy to a 'socialist market'⁴ economic structure, and it has adopted a new open door policy for foreign investment. A consequence of the socialist market economy is an increase in conflict of interest between business operators and consumers, because business operators must now profit through greater production and sales.⁵ This has led to the resurrection of consumerism in China.

China realised that the transition to a socialist market economy would not be possible without a corresponding reform of the legal system. Since 1979, the National People's Congress and its Standing Committee have enacted 286 statutes, 700 administrative rules, and 4000 local laws and regulations.⁶ All of these laws form the framework of a socialist legal system for China's market economy, under which Chinese consumer law has gradually developed. Consumer legal protection first appeared at city and province level in the 1980's.⁷ Some examples of early consumer protection laws are: *The Fujian Province, Consumers' Lawful Interests Protection Regulations*,⁸ and *The Beijing Municipality, Protection of Consumers' Lawful Interests Regulations*.⁹ Although city or province regulations may vary, they have the potential advantage of being better able to meet local needs, as consultation is usually carried out before enactment.¹⁰ Furthermore in a vast country like China, local regulations do play an important role.¹¹

Together with the consumer laws at city and province level, the National government has passed other legislation,¹² some of whose provisions also provide legal protection for consumers. The major legislation includes the General Principles of Civil Law, the Product Quality Law, the Unfair Competition Law, and the Advertising Law.¹³

2.1 The General Principles of Civil Law of the People's Republic of China

The General Principles of Civil Law of the People's Republic of China came into force on 1 January 1987.¹⁴ The Law lays the foundation for safeguarding consumer's rights and interests. For example, Article 3 states that all parties shall enjoy equality of position in their civil activities. Article 4 further states that civil activities shall respect the principles of voluntary participation, equity, compensation at equal value, honesty, and trustworthiness. In addition, Article 98 provides that citizens shall enjoy the right to life and to health. The Law not only imposes contractual¹⁵ and tortious¹⁶ liabilities on parties in their civil activities, but its also embodies the fundamental principles of legal remedy. Under the General Principles of Civil Law, the victim, usually the consumer in

the case of product liability, is entitled to damages, lost income, living allowance in case of disability, medical expenses, funeral expenses, and basic living costs for the deceased's dependants.¹⁷

2.2 The Product Quality Law of the People's Republic of China

The Product Quality Law of the People's Republic of China came into effect on 1 September 1993.¹⁸ It consists of 51 Articles and is divided into 6 parts. Given the fact that product quality standards are a rather serious issue in China,¹⁹ Part II of the Act deals comprehensively with the supervision and administration of product quality. One objective of the Act is to safeguard the legal rights and interests of consumers as well as users.²⁰ To achieve this goal, the Act stipulates liability and obligation for business operators at different levels of the distribution chain. Article 14 sets out the liabilities for manufacturers, who are required to ensure product quality. For example, manufacturers must comply with national or industry standards for the protection of health, personal safety, and property safety; and manufacturers must ensure that their product conforms to any standards indicated on the product itself or its packaging. To a great extent, the manufacturer's product liability applies equally to the seller. Article 28 sets out additional liabilities for sellers regarding remedial actions for consumers or users. For instance, the seller may be required to offer repair, replacement or return of the product sold.

It is important to note that consumer's and user's right of action under the Act is limited to 2 years; and the right to claim compensation is limited to 10 years. The time commences when the consumer or user has actual or constructive knowledge of the infringement of his or her rights, or when the defective product is first delivered to the consumer or user, providing the safe-use period has not expired.

2.3 The Law of the People's Republic of China Against Unfair Competition

The Law of the People's Republic of China Against Unfair Competition came into force on 1 December 1993.²¹ It consists of 33 Articles divided into 5 parts. Part I stipulates the objectives of the Act and also provides a definition for its main terminologies. The main purpose of the Act is to encourage and protect fair competition in order to safeguard the lawful rights and interests of business operators and consumers.²² It is submitted²³ that healthy competition ultimately benefits consumers by providing access to goods and services at the lowest possible price. Part II outlaws certain categories of conduct with respect to unfair competition. Part III supervises and examines acts of unfair competition. Part IV sets out the liability for business operators and Part V pronounces the implementation date of the Act.

The stipulation relevant for consumer protection is grouped under the substantive provisions of Part II of the Act. Articles 5, 9 and 13 prohibit those anti-competitive behaviours that directly affect consumers. This includes deceptive practices such as passing off of registered trademarks; unauthorised use of a name and packaging in order to imitate other goods and services; false or misleading advertising; and dishonest use of competitions, such as offering prizes, as a marketing technique.

2.4 The Advertising Law of the People's Republic of China

The Advertising Law of the People's Republic of China became effective on 1 February 1995.²⁴ Advertising is considered as an important source of consumer information, which exerts a powerful influence on consumer decision-making.²⁵ The basic objective of the Act is to protect the consumer from misleading and deceptive advertising. To achieve this, the Act prescribes the general standard and content for advertising which broadly speaking, must be clear, truthful and distinct.²⁶ At the same time, the Act supervises the conduct of those people engaged in advertising activities. This includes advertisers, advertising agents, and advertisement publishers, the meanings of which are clearly defined in Article 2.²⁷ The Act also provides that this Law prevails in case of conflict between this and previous laws or regulations.²⁸

2.5 The need for promulgation of a consumer protection legislation

Although these legislations²⁹ all serve to protect consumer rights and interests, they are primarily promulgated for other objectives. Consequently, the issue of consumer protection could not be directly addressed in this jumble of laws. For instance, the objective of the Product Quality Law is limited to supervising product quality and imposing product liability on manufacturer and seller. Nevertheless, product quality is just one aspect of consumer protection. The Unfair Competition Law is stipulated basically for promoting fair competition amongst business operators. Undoubtedly, fair competition ultimately benefits consumers, but the Law is far from adequate in protecting consumers from predatory trade practices. Although the General Principles of Civil Law provides the fundamental concept of liability for protecting consumers, it only covers the facet of civil liability.

In response to this scattered and fragmentary system of consumer law, the Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers (Consumer Protection Law) was enacted in 1993. As its title states, the purpose of the legislation is to uphold consumer welfare, and the consumer is the key figure in the legislation. This is the first piece of Chinese law, tailor-made at national level that provides comprehensive, systematic, and specific coverage for consumer protection. Furthermore, it serves as the nucleus of the system of consumer law in China. Thus, the Consumer Protection Law merits discussion in greater detail.

2.6 The Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers

The Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers came into effect on 1 January 1994.³⁰ It consists of 55 Articles and is divided into 8 Chapters. By incorporating the spirit of consumer protection as spelt out in the United Nations Guidelines for Consumer Protection of 1985,³¹ Chapter 2 of the Law articulates nine consumer rights. These include not only the legitimate consumers' needs³² as provided by the United Nations Guidelines, but also other rights which are specific to China. The more traditional consumer rights are: a) the right to personal and property safety; b) the right to knowledge; c) the right to free choice of commodities or services; d) the right to fair dealing; e) the right to compensation; f) the right to association; and g) the right to obtain information. The Consumer rights specific to China are: a) the right to respect of personal dignity, ethnicity, customs, and traditions; b) the right to supervise; and c) the right to report, complain and criticise.

Chapter 3 of the Law parallels consumer rights with the corresponding obligations of business operators. Business operators are obliged a) to comply with product and service safety requirements; b) to guarantee that the quality of goods and services corresponds to their description; c) to supply their true identity and trade mark; d) not to impose unfair or unreasonable terms on consumers; e) to issue purchase receipts or service vouchers; f) to provide accurate information and to avoid misleading or false advertising; g) to listen to and accept consumers' opinion and supervision; and h) not to insult consumers or violate their personal freedom.

To realise the constitutional right of consumers to form associations, Chapter 5 of the Law was enacted to legalise Chinese consumer groups, the first of which appeared in 1984. Under Article 31, there are two categories of consumer groups: consumer associations, and other consumer organisations.³³ Their duties and functions as spelt out in Article 32 include providing information and consulting services to consumers; supervising commodities and services; accepting and investigating consumer complaints; and supporting the claims of aggrieved consumers. In implementing their duties and functions, consumer associations have been tremendously active in such areas as participating in the drafting of legislation and producing publications;³⁴ launching extensive publicity campaigns;³⁵ and developing various educational programs for consumers.

The Law stipulates a hierarchy of dispute resolution mechanisms for consumers and business operators. First of all the disputing parties can negotiate a settlement. Although this is the most time-effective, inexpensive, and amicable way to deal with the problem, its success or effectiveness depends on the willingness of the business operator to compromise, and on the negotiation skills of the consumer.³⁶ Alternatively, an aggrieved consumer may

petition a consumer association for mediation. In order to facilitate mediation by consumer associations, and to encourage consumers to employ this means of dispute settlement, *The Regulations for the Handling of Consumer Complaints by the China Consumer Association* was announced on 1 August 1995.³⁷ The Regulations set out general principles for complaints, the jurisdiction of consumer associations at various levels to receive complaints, and the procedure together with the method of handling complaints. A third option for the consumer in resolving a dispute is to lodge a complaint with the relevant administrative department. The pertinent regulation, namely *The Provisional Regulations for the Handling of Consumer Complaints by the Administrative Organs for Industry and Commerce*,³⁸ was issued on 15 March 1996. The Regulations set forth the procedures for lodging a consumer complaint, the timeframe within which the administrative department must handle the complaint, and the imposition of penalty by the administrative department pursuant to the Law. Under the Law, consumers can also apply to an arbitration organisation. Arbitration is the traditional and preferred method of settling disputes in China. Chinese arbitration law has undergone considerable development in the last decade. Apart from its major statute, namely *The Arbitration of the People's Republic of China*, other legislation contributes to the arbitration framework, for example, the Code of Civil Procedure of the People's Republic of China,³⁹ and the Product Quality Law.⁴⁰ Thus disgruntled consumers have a comprehensive arbitration system available to resolve disputes. As a last resort, consumers may take their case to court, or they can assert their rights directly through judicial proceedings without first attempting the other channels provided by the Law. According to Article 30, measures must be taken by the People's Court to make the courts more accessible to consumers, and the People's Court must accept and handle a case promptly if the case conforms with the conditions under the Civil Procedure Law.⁴¹ An important fact to note is that the Law makes no provision for a limitation period of legal action, nor provides the possibility of class action.⁴²

The Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers has transformed Chinese consumer rights into binding legislation at the national level. It incorporates the spirit of *The United Nations' Declaration on Consumer Protection and Rights of 1985* as well as the more specific Chinese notions of consumer rights. In a symposium to celebrate the fifth anniversary of the implementation of the Law, He Shan, a legal expert in the National People's Congress, praised the Law for being well received by the public and for achieving the highest public awareness in the country.⁴³ Gan Guoping, the deputy director of the State Administration of Industry and Commerce, also said that Chinese consumers now have easier access to service centres to deal with their complaints.

In fact, apart from service centres, other channels are available for consumers to lodge their complaints. In addition to visiting consumer protection authorities and to putting down complaints in writing, Chinese consumers can also air their grievances about business operators' malpractice through special

telephone hotlines or websites⁴⁴ which are set up for this purpose. Nowadays, consumers can stay at home and still have their voices heard.

III. RECENT DEVELOPMENTS IN THE CHINESE CONSUMER LEGISLATION

China's rapid economic growth in the past decade has brought about further legal reform. Law related to the market economy has become a major component of the Chinese legal system. Recently the Chinese government revised two legislations as a response to the new economic needs, namely *The Criminal Law of the People's Republic of China* and *The Contract Law of the People's Republic of China*. The following is an overview of those provisions in the revised legislation, which are particularly relevant to consumer protection.

3.1 The Criminal Law of the People's Republic of China

The Criminal Law of the People's Republic of China was approved by the Eighth National People's Congress on 14 March 1997 and became effective on 1 October 1997. The amended law contains 452 Articles. Many of the new provisions serve market economic development, rather than politics in China. New crimes in the economic domain include crimes of financial fraud; crimes of intellectual property infringement; crimes of disturbing market order; and crimes of producing or selling counterfeit and substandard goods.⁴⁵ Another 'breakthrough' is the recognition of the criminal responsibility of a legal entity. Consequently, both the legal entity and the person-in-charge may be held criminally liable for an offence under the amended law. Since many foreign investors are directly responsible for their business ventures in China, they will now find themselves more involved in the Chinese system of criminal law.⁴⁶

In order to curb market misbehaviour and to protect consumers' rights, Section One of Chapter Three in Division Two of the amended law specifically prohibits *Crime of production and sale of fake or shoddy goods*. This Section contains eleven provisions, which mainly originate from *The Decision for the punishment for production and sale of fake and substandard products*, but are now incorporated into the amended statute.

3.1.1 Article 140 sets out the general sentencing principles for the manufacturing and selling of adulterated, fake, and substandard products. It creates four levels of penalty according to the sale amount, which must not less than Reminbi (Rmb) 50,000. Thus the sale amount is not only crucial for imposing varying levels of penalty, but is also decisive in determining whether the act is punishable under the Article. In other words, manufacturing and selling shoddy goods would only be caught by Article 140 if the sale price involved is equal to or more than the prescribed amount.

The punishment stemming from offences under Article 140 may be principal or supplementary.⁴⁷ Principal punishments involve deprivation of

freedom in the form of criminal detention, fixed term imprisonment, or life imprisonment. In reference to Article 42, the length of criminal detention shall be more than 1 month, but must not exceed 6 months. Imprisonment periods range from a 2 year fixed term to a life sentence. Supplementary punishments, which may be imposed jointly and independently, include fines and forfeiture of property. Article 140 provides a set scale of fines. The scale is computed according to an amount not less than 50 percent, but not exceeding twice the sale value of the goods. Part or whole forfeiture of the offender's assets may be imposed when the offence involves a sale amount of over Rmb 2,000,000.⁴⁸

Under the amended law, an essential element for imposing criminal liability is intention or negligence.⁴⁹ Negligent conduct is not a crime under Article 140, as negligent conduct only constitutes a crime when the statute specifically prescribes for it.⁵⁰ An element of intent would clearly be involved, according to Hu and Li,⁵¹ in acts of mixing improper elements with a product, in passing off fake products as genuine products, or in passing off substandard products as standard products. Thus, a mental requirement for violation of Article 140 is implied. Accordingly, business operators, who unintentionally or negligently produce or sell substandard or fake goods, should not be guilty under this Article.

3.1.2 Article 141 prohibits production and sale of fake drugs. Although the provision does not explicitly state that the drugs concerned are for human consumption, this is apparent from its wording. This is because the Article refers to *The Law of the People's Republic of China on the Administration of Drugs* (the Drug Law) for the definition of its terminology. Besides, a separate provision in the Section deals with fake drugs traded for animal consumption.

Under the amended law, an intentional crime is established when there is clear knowledge that one's own act will produce dangerous social consequences (with emphasis).⁵² Therefore, an actual effect is not necessary for conviction of an intentional crime. It also transpires from Article 141 that the contravention of this provision does not require harmful consequences to actually materialise. As long as the 'likely effect' of the fake drug is sufficient to cause serious harm to a person's physical health, then the proscribed act would constitute this offence. In some sense, it is not illegal to produce or sell fake drugs for human consumption provided the fake drug is unlikely to cause, nor has caused, the prerequisite result. Of course, such prohibited conduct may attract the application of other provisions. It is important to note that any violation of Article 141 that results in loss of life will carry a death penalty.

3.1.3 Article 142 punishes the production and sale of inferior drugs for human consumption. Although Articles 141 and 142 are both stipulated for illegal drug dealing, the requirement for its contravention is not the same. In order to be held criminally liable under Article 142, the illegal act must have caused serious injury to physical health. Thus, harmful consequence is the prerequisite for the breach of Article 142. Furthermore, the levels of punishment

depend on the gravity of the consequence, that is 'serious consequence' and 'particularly serious consequence'. However, Article 142 fails to explain the difference between these two degrees of consequence.

While the term 'particularly serious consequence' awaits interpretation by the Supreme People's Court, it is submitted that the term shall refer to any serious consequence not involving loss of human life. The submission is based on the drafting pattern of provisions in this Section. There are two provisions in this Section that imposes the death sentence on an illegal act with certain resultant effect. These are Articles 141 and 144, which explicitly stipulate capital punishment as the penalty for an illegal conduct causing loss of human life. Since such stipulation is not found in Article 142, the meaning of the term 'particularly serious consequence' would probably be construed as submitted here.

3.1.4 Article 143 deals with the production and sale of foods that do not comply with hygiene standards, and are likely to cause serious food poisoning or foodborne disease. In the absence of a definition in the amended law for the key terms 'food' and 'hygiene standard', reference can be made to *The Food Hygiene Law of the People's Republic of China* (the Food Hygiene Law) for interpretation. Cross-reference to other statutes for the meaning of terms shall be permissible in the light of a similar approach taken in Article 141.

The Food Hygiene Law comprehensively defines⁵³ the meaning of food as 'all types of finished products and raw materials intended for human consumption, as well as products traditionally classified as both food and medicine, but not including products consumed solely for the purpose of medical treatment'. However, the Food Hygiene Law does not provide the meaning of 'hygiene standard' for the purpose of Article 143. This term is generally defined⁵⁴ as 'the standards formulated, approved and promulgated by the State Council hygiene administration authority in relation to food, or the local food hygiene standards formulated by the provinces, autonomous regions or municipalities when the State has not provided for it'. The lack of specific definition is understandable due to the vastness of the category understood as food. Therefore, in addition to referring to the Food Hygiene Law, the meaning of 'hygiene standard' for the violation of Article 143 can only be interpreted through employing the relevant hygiene standard rules or regulations formulated by the appropriate authority.

3.1.5 Article 144 sets out that it is a crime to produce and to intentionally sell food that has been mixed with any toxic or harmful non-food raw material. The essential elements for the violation of Article 144 are intention, and the nature of the foreign substance. Resultant effect is not a prerequisite for the contravention of this Article. However, if a case of food poisoning or injury to human health results, heavier penalties would be imposed. When the illegal act leads to loss of human life, the death sentence may apply. It transpires from Article 144 that the production and sale with intent of adulterated food is viewed

gravely in China, as this Article is the second provision in Section One carrying the death penalty.

3.1.6 Under Article 145, it is an offence to produce and sell with knowledge a medical instrument, a substance for medical treatment, or a medical hygiene material which does not comply with the requirements of national or industry standards, and which causes physical injury. Article 145 provides a major issue in its interpretation. First, the amended law is silent on the definition of the important terms 'medical instrument', 'substance for medical treatment', 'medical hygiene material', 'serious consequence', and 'extremely serious consequence'. Second, a relevant statute is lacking which could serve as a reference for this Article. Hu and Li⁵⁵ suggested that 'medical instrument' refers to any medical apparatus used for diagnostic, therapeutic, preventative, or recuperative purposes; and 'substance for medical treatment' or 'medical hygiene material' are those auxiliary materials used in conducting diagnosis, treatment, precautionary or recuperative tasks. However, Hu and Li made no submission as to the meaning of different degrees of consequence, despite their significance in determining the gravity of punishment. Thus, at the time of writing, the terms 'serious consequence' and 'extremely serious consequence' are not defined.

3.1.7 Article 146 prohibits the production or intentional sale of electrical appliances, pressurised containers, inflammable and explosive products, or any other products which do not meet national or industry standards, and which have caused serious or particularly serious consequence. It is usual for Chinese legislation to be expressed in relatively broad terms, consequently interpretation becomes a concern. Article 146 also presents some problems of definition. Hu and Li recommended⁵⁶ that a literal approach be adopted to define such terms as 'electrical appliances', 'pressurised containers' and 'inflammable or explosive products'. However, it is unclear if the ambiguity of the term 'any other products' can be clarified through the application of the *ejusdem generis rule*⁵⁷ -- a statutory interpretation rule which is familiar to lawyers within the common law system. Furthermore, the undefined statutory expressions of 'serious consequence' and 'particularly serious consequence' remain problematic for investors.

3.1.8 Article 147 is also concerned with drug dealing, but for animal or agricultural use. Article 147 makes it an offence to produce spurious, inefficacious, substandard, or misrepresented agricultural chemicals, veterinary drugs, fertilisers or seeds; or to sell agricultural chemicals, veterinary drugs, fertilisers or seeds known to be spurious, inefficacious, substandard, or misrepresented. To bring a conviction under Article 147, the proscribed act must have caused a substantial loss or particularly serious loss of production. A mental requirement for violation is explicitly stipulated for the proscribed act

of selling. Thus, sellers who unintentionally sell the proscribed products in Article 147 should not be found guilty.

Again Article 147 fails to explain the different degrees in production loss in their relation to penalties. Article 147 also fails to explain when its listed products are to be regarded as 'spurious', 'inefficacious' and 'substandard'. Interpretation of these terms has been given by Hu and Li.⁵⁸ Nevertheless, the explanation appears to be based on the definition of fake or substandard drugs⁵⁹ provided in the Drug Law. It should be noted that the Drug Law is enacted for human drug dealings, and whether it is an appropriate reference for explaining those terms in Article 147 awaits judicial or statutory clarification.

3.1.9 Due to economic growth and the consequent increase in living standards, most Chinese consumers can now afford to purchase items other than daily necessities. A recent consumer survey has indicated that the spending power of Chinese consumers on cosmetics in major coastal cities is approaching the international level. However, the growth of the cosmetics market in China is accompanied by an increased number of consumer complaints about the products. In response to this, Article 148 stipulates that it is an offence to produce and sell cosmetics in the knowledge that they do not reach the required hygiene standards, and cause serious consequence following consumption.

Article 148 carries the lightest custodial punishment in this Section. The offender may be subject to criminal detention or fixed term imprisonment for no longer than 3 years. Furthermore, Article 148 has the fewest interpretative issues. For interpreting Article 148, *The Supervising the Hygiene of Cosmetics Regulations* (the Regulations) is an invaluable source. With the exception of the phrase 'serious consequence', the Regulations provide an explanation for the main terms in Article 148, such as 'cosmetic' and 'hygiene standard'. They refer to 'cosmetic' as those substances, which are applied or sprayed onto the body, for example, scents, hair dyes, hair removal products, and other beauty aids. In addition, the Regulations have formulated standards for all types of cosmetics to which Article 148 refers. Nevertheless, it should be noted that the Regulations are not an official reference for this Article.

3.1.10 Passing a statute that can exhaustively cover crimes of every description is almost impossible. Therefore a catch-all provision is necessary. Article 149 is intended to focus on capturing the production or sale of shoddy goods that are not already covered by the substantive provisions. It states that offences of producing or selling goods specified in Articles 141 to 148, which are not punishable under the specific provisions will attract the application of Article 140 if the sale amount is equal to or more than Rmb 50,000. However, the production and sale of shoddy goods worth less than the prescribed amount is still not covered by Article 149.

3.1.11 The amended law provides explicitly for the criminal responsibility of a legal entity. It has been submitted that such recognition is unique to the

amended law.⁶⁰ This submission is correct to the extent that no explicit recognition of criminality of a legal person can be found in the previous criminal statutes. Nevertheless, the concept of holding legal persons criminally liable traces back to the mid-1980's. The first legislation to explicitly impose criminal responsibility on a legal person is *The Custom Law of the People's Republic of China* (the Custom Law) enacted on 22 January 1987. The Custom Law also adopts for such a responsibility, a principle of 'dual punishment' under which a legal entity and a natural person can be punished jointly or separately for a crime.⁶¹ A reason for the 'dual punishment' principle is the complexity in the nature and scope of crime that different modes of sanction between the legal entity and the natural person require.

Article 30 of the amended law has done what the Custom Law did with regard to the explicit recognition of criminal responsibility of a corporated or an unincorporated legal entity, and Article 30 refers to it as a 'crime of work units'. The amended law also provides a twofold sanction system for the work unit and its person-in-charge. Article 31 states that when a work unit commits a crime, it shall be fined, and the main persons directly responsible for the work unit, together with other directly responsible persons, shall also be punished in accordance with the specific section of the Law or other laws. Article 31 adopts the school of thought⁶² that the concept of legal person criminality should be stipulated in the General Principles of the amended law, leaving the detail to be covered by the remaining specific provisions of the statute or other relevant legislation.

Article 150 illustrates precisely the operation of Article 31. Article 150 states that if a work unit breaches the provisions of this Section, it is subjected to a fine, and its person-in-charge will be punished in accordance with the specific provisions. Unlike other provisions, Article 150 imposes a joint liability between legal person and natural person for the contravention of provisions in this Section.

3.1.12 From the perspective of consumerism, it is submitted that the amended criminal legislation is not only a law of punishment, but also a law of protection. As a law of punishment for violating consumers' rights, Section One carries 6 types of sanction, including criminal detention, fixed-term imprisonment, life sentence, death penalty, fines, and confiscation of property. Although the resultant effects of an offence are vital in determining the severity of sentencing, they are stipulated in broad terms throughout the Section. Hsin argued⁶³ that the reason for the generality in stipulation is to enable flexibility of application in different parts of the country. Nevertheless, it is commonly known that the adverse effect of flexibility is uncertainty.

As a law of protection for consumers, the amended law provides further safeguards to consumers' rights in China. The specific provisions in Section One of the amended law address the widespread problems of the quality of certain commodities marketed in China. A recent China Consumers' Association survey indicated that more than 54 percent of survey respondents

have suffered from substandard food and consumer goods in 1998; and substandard medicine and medical equipment are the main cause for the increasing number of complaints about the medical service. In fact, the amended law is also a law of protection for investors. The amended law is aimed at providing fair competition among enterprises, and cracking down on market malpractice. Since the amended law specifies conducts for consumers' rights violations, investors are now better informed about types of illegal behaviour, and about what would be caught by the provisions.

The effectiveness of legislation is reliant on its implementation. At the time of writing, the amended law has been in operation for almost two and half years. Thus, it is too early to conclude at this stage whether the amended law has achieved its objectives in fighting against the crimes that violate consumers' rights in China.

3.2 The Contract Law of the People's Republic of China

On 15 March 1999, the Chinese National People's Congress promulgated its first unified Contract law. The previous Chinese contract laws rested on four key pieces of legislation: *The Economic Contracts Law of the People's Republic of China (1981)*; *The Law of the People's Republic of China on Economic Contracts Involving Foreign Interests (1985)*; *The General Principles of Civil Law of the People's Republic of China (1986)*; and *The Technology Contract Law of the People's Republic of China (1987)*. These key statutes, with the exception of the General Principles of Civil Law, were repealed when the new Contract law came into effect on 1 October 1999. An innovation of the new Law is the recognition of a natural person as a contractual party, and the abolition of the distinction between domestic and foreign contract.

3.2.1 The new Contract law contains 428 Articles, divided into 23 Chapters, and grouped under the headings of "General Provisions", "Special Provisions", and "Supplementary Provision". The first heading *General Provisions* sets out the purpose, the scope of application, the choice of law for dispute resolution, and the application of laws in cases that fall outside the explicit provisions of the new legislation. The General Provisions also deal with the formation, validity, performance, modification, and assignment of contracts; the discharge of contractual rights and obligations; and the liability for breaches of the law.

3.2.2 The second heading *Special Provisions* stipulates separate sets of rules for 15 types of contracts. These contracts include: (1) sale of goods; (2) consumption and supply of electricity, water, gas and heat; (3) gifts; (4) loans; (5) leases; (6) lease-finance; (7) contractors; (8) construction projects; (9) carriage; (10) technology; (11) deposits; (12) storage; (13) mandates; (14) commission agencies; and (15) brokerage. Amongst these 15 specified kinds of contracts, 5 are new types, which have not been regulated before.⁶⁴

Although provisions concerning sale of goods contracts are not new in the consolidated Contract Law, they are scattered over several articles in previous contract statutes and related legislation. In addition, they are drafted in a sketchy manner. For example, under the Economic Contract Law, Article 12 stipulates broadly the principal terms such as the object; the quantity and quality; prices or commission; the time limit, place and method of performance; and the liability for breach of contract. The important elements regarding product quality, product quantity, product prices, and time limit for goods delivery are provided within a provision, ie Article 17, under the chapter dealing with performance of contract. Moreover Article 33 only sets out briefly the responsibilities of suppliers or buyers in case of breach of contract.

Another example of inadequacy in the previous contract statutes is the issue of limitation period for rights of action. Article 43 of the Economic Contract Law sets a two-year period⁶⁵ as the timeframe for applying for arbitration in economic contract disputes. But it is silent on the cut-off date for the application of other dispute mechanisms. Besides, Article 39 of the Foreign Economic Contract Law imposes a period of 4 years as the time limit⁶⁶ for submitting to litigation or arbitration a dispute concerning a purchase and sale of goods contract. However, it also contains no mention of the limitation period for other forms of contract. A further example is the General Principles of the Civil Law, in which the civil liability for breach of contract is outlined by six skeletal provisions.

3.2.3 Under the new Contract legislation, the legal requirements for a sale of goods contract are consolidated and elaborated. For instance, two extra terms regarding the names and domiciles of the parties, and the method of dispute resolution, have been added to the list of principal terms previously required under Article 12 of the Economic Contract Law. Furthermore, in concluding a contract, parties are allowed to refer to the terms in the model text of various types of contract.⁶⁷ With respect to the important elements listed in Article 17 of the Economic Contract Law, these have been considerably expanded and are now covered by 33 provisions⁶⁸ under the new Law. Chapter 9 of the new legislation details the brevity of Article 33 of the Economic Contract Law. Buyer and sellers now know exactly what should be included in a sale contract, and are better informed of their rights and obligations under a sale of goods contract in case of a breach.

The new Law also clarifies the ambiguity in the previous contract statutes regarding the limitation period for legal action. In addition to the purchase and sale contract, Article 129 of the new Law includes into the 4-year category of limitation period the contract for the import and export of technology. Article 129 also states that other types of contracts should refer to the relevant laws for the time limits in applying for arbitration, as well as filing a lawsuit for disputes.

Apart from that, Chapters 7 and 9 of the new Law elaborate the generality of civil liability for breach of contract, as outlined under the General Principles of the Civil Law. Interestingly, Chapter 7⁶⁹ makes particular reference

to the remedial provisions of the Consumer Protection Law if a business operator practises fraud while providing goods or services to a consumer.

3.2.4 The third heading, *Supplementary provision*, which consists of one article, provides the commencement date of the Law and the replacement of previous key contract statutes when the Law becomes effective.

3.2.5 Undoubtedly, the new Contract Law has undergone a major revision by consolidating the earlier fragmentary contract law system into a single statute. It also illustrates the Chinese government's efforts to depart from its traditional legislative practice that is enacting a general law and later supplementing it by specialised regulations. Owing to the fact that the Law has just come into force and little commentary about it has been made outside China, it is too early to conclude its effectiveness. Nevertheless, as discussed above, a number of changes that appear favourable to consumers have been made in the new Law. Whether the new Contract Law is positive for the subject of consumer protection requires other aspects to be addressed, such as the doctrine of freedom of contract, and the concept of property passing. Although these aspects are beyond the scope of examination in this paper, they are definitely on the agenda for discussion in other forums.

VI. IMPLICATIONS FOR BUSINESS OPERATORS

Having an understanding of Chinese consumer law is essential for business operators. It enables them to formulate an appropriate managerial strategy before launching a product or offering a service into the lucrative Chinese market. It also allows them to identify legal risks and develop counter-measures. Business operators should be fully aware that lawsuits have the potential of diverting valuable management resources and could severely disrupt one's business.

It is also important for business operators to keep abreast with the latest developments in the Chinese consumer law. The recent developments in the area of consumer law may affect the profitability, competitiveness, and operation of business in China. For instance, the amended Criminal Law stipulates as crimes certain commercial activities in relation to the provision of goods and services, and imposes an obligation on the person-in-charge of the business. In response to this, members of top management may have to review or to retrench their current business activity to ensure no violation of the law. They may also have to relocate resources into formulating a legal compliance plan, such as by providing employees with an on-going education or training program about the law. In this way, the business will be competent to access corporate compliance with the requirements.

In addition, the new Contract Law incorporates a number of western concepts of contract, and the rules for its formation, performance and discharge are remarkably detailed. Consequently, business operators may have to alter

their previous contract practice in the light of those changes. For example, the new Contract Law recognises a written requirement of contract, including a sale contract, be it in the form of a letter, a telegram, a telex, facsimiles, electronic data interchange and e-mail. No doubt, electronic commerce provides business operators with new trading media and more export channels into the Chinese consumer market. In order to benefit from these new opportunities, business operators have to change from their traditional manner of marketing products or services to China to an on-line method of sale. Owing to the fact that the new Contract Law is still in its infancy, that Chinese consumers are just entering the era of electronic commerce, and that the legal infrastructure for electronic business is inadequate⁷⁰, business operators must keep track of the inevitable changes⁷¹ in this area of law, and be alert when entering into a cyber contract with consumers in China.

V. CONCLUSION

At the beginning of this paper, an attempt is made to discuss the regulatory regime of consumer law in modern China. Although the discussion is cursory, it is hoped that this brief summary sufficiently sets the background for readers to appreciate the evolution and the basic features of the Chinese consumer law system.

A consequence of the shift from a centralised to a decentralised market in China is the growing demand for economic legislation to regulate relationships between different market players. Besides, when the allocation of resources is no longer entirely in the hands of the central government but rather by market force, a system of consumer law is necessary to govern the dealings between business operators and consumers. In response to this, a national consumer statute, as well as statutes in other areas, have been adopted to meet the special needs of different aspects of consumer protection. It is submitted that these statutes should be viewed as interrelated rather than overlapping.

5.1 Consumer Protection Law / Product Quality Law / Contract Law

For instance, the Consumer Protection Law⁷² specifically designates the Product Quality Law as the relevant legislation with respect to product quality standards, civil liability, and penalties required for consumer protection purposes. Those issues that are not covered by the Consumer Protection Law, such as the duty of conformity and the duty to deliver on time, are provided for by the new Contract Law. At the same time, the new Contract Law particularly refers to the Consumer Protection Law for compensation in the case of breach of contract fraudulently committed by business operators.

5.2 Consumer Protection Law / Unfair Competition Law

Furthermore, a consumer's right to sue is different under the Consumer Protection Law and the Unfair Competition Law. It is the nature of the injury resulting from a defective product that determines the right of consumer action under the Consumer Protection Law. However, the prerequisite for the consumer's right to sue, in accordance with the Unfair Competition Law, is having suffered from anti-competitive behaviour.

5.3 Consumer Protection Law/Advertising Law/Unfair Competition Law

The consumers' right to information is enhanced by several legislations. In addition to the basic provisions of the Consumer Protection Law, the Advertising Law protects the consumers' right to information by regulating advertising. As stated earlier, advertising is a main source of information for products and services, and it also has profound impacts on consumer activities in the market place. Closely related to the Advertising Law is the Unfair Competition Law⁷³ that also prohibits misleading publicity with respect to the quality, the place of origin, or the period of validity of the products.

5.4 Consumer Protection Law / General Principles of Civil Law

By building upon the basic principles of compensation that are laid down by the General Principles of Civil Law, the Consumer Protection Law has a remedial provision which is punitive in nature. Article 49 increases compensation for the consumer up to double the sale price if the violator practises fraud. It is a groundbreaking provision that has gone beyond the civil law ambit of recompense to punishment.

A complete analysis of the differing roles played by various laws in the consumer regulatory regime is not the intention of the previous discussion. Instead, it is hoped that the comparison is sufficient to conclude that the Consumer Protection Law and related legislations are interwoven to form a legal network for the protection of consumers in China. Finally, it is also hoped that the above discussion has achieved the ultimate aim of this paper in dispatching the message of Chinese consumerism to business operators and scholars.

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NOTES

1. Ip, Mary, "The Legal Protection of Consumers in China", China International Business Symposium, Shanghai University of Finance and Economics, 27-29 May 1998, Shanghai, China, pp541-552. (hereafter referred to as Ip)
2. Robin, Joan, 'Economic Management in China, Modern China Series No 4', Anglo-Chinese Educational Institute (1975), p24.
3. King, D.B. & Gao, Tong, 'Consumer Protection in China: Translations, Developments and Recommendations', Littleton, CO:Rothman (1991), p7. (hereafter referred to as King & Gao)
4. Meunier-Bihl, Anne, "Consumer Law in the People's Republic of China", Consumer Law Journal, 1996, Vol 4, issue 3, pp39-43, at p39. (hereafter referred to as Meunier - Bihl)
5. King & Gao, p7.
6. Li, Ning, "Framework for a Socialist Legal System", Beijing Review, May 13-19, 1996, p16.
7. Gao, Tong, "Chinese Consumer Protection Philosophy", Journal of Consumer Policy, Vol 14(3), 1991-1992, pp337-350, at p338.
8. promulgated on September 4, 1987. Refer to The Encyclopaedia of Chinese Law: national and regional laws of China, 1991, Hong Kong: Asia Law & Practice, Vol 1, p248. (hereafter referred to as the Encyclopaedia of Chinese Law)
9. promulgated on February 2, 1989. Refer to The Encyclopaedia of Chinese Law, Vol 1, p241.
10. Meunier - Bihl, p42.
11. Ip, p542.
12. There are a number of different branches of law which also indirectly provide consumer protection, such as the Marks Act of 1982, the Weights and Measures Act of 1985, the Standardisation Act of 1989, the Food Hygiene Act of 1995, etc.
13. For the English version of these Statutes, refer to China Laws for Foreign Business - Business Regulations, Vol 4, 1997 CCH (Looseleaf service), Asia Pacific. (hereafter referred to as CCH)
14. CCH, Vol 4.
15. Articles 111-116.
16. Articles 117 and 122.
17. Articles 117 and 119.
18. For English version of full text, see China Law and Practice, Hong Kong: China Law & Practice Ltd (1993), 3 June, pp21-29. (hereafter referred to as China Law and Practice)

19. Meunier - Bihl, p41; King & Gao, p8.
20. Article 1 of the Product Quality Law of the People's Republic of China, 1993. It is unclear why the provision stipulates protection to 'consumer' and 'user' as the former seems to cover the latter.
21. For full text in English version, see China Law and Practice, 18 November 1993, pp31-39.
22. Article 1 of The Law of the People's Republic of China Against Unfair Competition 1993.
23. Bing, Song, "Competition Policy in a Transitional Economy: The Case of China", Stanford Journal of International Law, Vol 31, Summer 1995, pp387-422, at p414.
24. For English version of full text, see <http://www.scmp.com/chinamedia/laws.html>
25. Zhang, Shouwen, "Protecting Consumers' Rights to Information", in Wang, Guiguo and Wei, Zhenying (ed) *Legal Development in China - Market Economic and Law*, Part 6, pp361-369, at p364 and p368.
26. Ibid, p368.
27. Under the Law of Advertising of the People's Republic of China, Article 2 defines: "Advertisers" as legal persons, individuals, and other economic institutions who design, produce, and release advertisements, either by themselves or through entrusted agencies, for the purpose of promoting goods or providing services. "Advertising agencies" as legal persons, individuals, and other economic institutions who, upon entrustment, provide services of design and production of advertisements, and who act as advertising agents. "Advertisement publishers" as legal persons or other economic institutions who publish advertisements for advertisers, and for advertising agencies entrusted by advertisers.
28. Article 49.
29. Except the Advertising Law which was enacted in 27 October 1994.
30. For English version of full text, see <http://www.gis.net/chinalaw/lawtran1.htm>
31. For details of the United Nations Guidelines for Consumer Protection adopted by the General Assembly in 1985, refer to Patrizio, Merciai, "Consumer Protection and the United Nations", Journal of World Trade Law, March - April, 1986, Vol 20, n2, pp206-231, at p225. (hereafter referred to as Patrizio)
32. This was referred to as 'rights' in the first draft of the United Nations for Consumer Protection. Refer to Patrizio p226 for details of legitimate needs within the United Nations Guidelines.
33. In 1996, 29 provinces, municipalities and autonomous regions had established 45,000 grass-root consumer protection organisations. Reference from Kou, Zhengling, "Consumers Seek Legal Protection", Beijing Review, May 6-12, 1996, pp11-14, at p14. (hereafter referred to as Kou)

34. An example of a publication by the Chinese consumer association is the periodical named *The Chinese Consumer*.
35. For example, making 15 March the annual Day for consumers, where there will be on-the-street publicity, consultancy, acceptance of complaints, distribution of pamphlets, exhibitions and seminars.
36. Ip, p547.
37. Peichang, Shiwu, & Congshu, 'Consumer's Rights, Protections and Remedies', China Economic Publication (1997). (hereafter referred to as Peichang)
38. China Business Law Guide, 1997 CCH International, para 98-290. For a discussion of the Provisional Regulations, refer to Ip, Mary, "Making Consumer Complaints to an Administrative Authority", International Bar Association Asia Pacific Forum, Vol 6, No 2, December 1998, pp11-12.
39. Chapter 28.
40. Article 35.
41. Article 108.
42. Reference from Gao, p346; and Meunier - Bihl, p43.
43. Su, Dan, "Law protects consumer's rights", China Daily, Internet version, 26 December 1998, visited on 20 March 1999. <http://www.chinadaily.net>
44. <http://168.160.224.208/315/index.html>
45. For English version of the provisions relevant to consumer protection, refer to Ip, Mary, "Implications of the New Chinese Criminal Law on Consumer Protection", Consumer Law Journal, Vol 7, No 1, 1999, pp49-57. For a further discussion of the aspect of consumerism in the amended law, refer to Ip, Mary, "An Analysis of the Revised Chinese Criminal Law from the Perspective of Consumerism" The 9th ENDEC World Conference on International Entrepreneurship, Nanyang Technological University, 15-18 August 1999, Singapore, pp190-199.
46. Chen, Jianfu, "The Chinese Criminal Legal System and its impact on the foreign investor", China Law News, 30 April 1998, Issue 10, pp1-6, CCH-Australia. (hereafter referred to as Chen)
47. Article 32.
48. Article 59.
49. Articles 14 and 15.
50. Article 15 proviso.
51. Hu, Kang Sheng and Li, Fu Cheng, 'Annotated Criminal Law of the People's Republic of China', Beijing: Legal Publication (1997), at p161. (hereafter referred to as Hu and Li)
52. Article 14.
53. Article 54.
54. Articles 14 and 15.
55. Hu and Li, p169.
56. Ibid, p171.

57. Eiusdem generis: when general matters are referred to in conjunction with a number of specific matters of a particular kind, the general matters are limited to things of the like kind to the specific matters.
58. Hu and Li, p173.
59. Articles 33 and 34.
60. Thuemmel, Martin, "Criminal Law Amendments", Legal Forum, (1998). http://www.enstar.net/china/law/vm_articles/items/item10.htm, at p1.
61. Chen, p10.
62. Zhao, Binzhi and Bao, Suixian, "The Present and Future of Criminal Law Reform in China", Journal of Chinese and Comparative Law, 1995, Vol 1(1), pp133-144, at p136.
63. Hsin, Chang, "The Criminal Law", pp235-239, in (ed) Weng, Byron and Hsin, Chang, *An Introduction of Chinese Law*, 2nd Edition, Ming Po Publication (1989), at p241.
64. The five new types of contracts are: finance lease contract, gift contract, entrustment contract, intermediary contract, and commission contract.
65. The limitation period starts from the day the parties know or should know their rights have been encroached upon.
66. The limitation period is 4 years from the time the party knows or should have known of the infringement of its rights.
67. Article 12 of the New Contract Law.
68. Articles 61 to 63, and Articles 138 to 169.
69. Article 113.
70. Bath, Vivieen, "Ecommerce in China – Is China Ready To Do E-Business?", China Online, <http://www.chinaonline.com/comment> , at pp3 & 7.
71. The State Council issued the 'Administration of Commercial Encryption Regulations' on 7 October 1999.
72. Articles 40 and 50.
73. Article 9.

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