



New Civil Code: Will The New Law Affect Old Cases?

With the publishing of the text of the incoming new Civil Code of PRC China, which is to take effect from January 1st, 2021, a large number of modifications to old laws have been made. After the modifications, the conflict between the old and the new law always raises the same question: How will the succession of law occur between the old and new laws in legal practice?

A retroactive law or regulation is one having effect from the time before it has been approved. In other words, the question is: How does the new Civil Code affect our old cases after the new law takes effect?

Firstly, in legal practice, lapses of time are quite common. The legal activity could be committed a long time before litigation. When a dispute enters litigation, it may have undergone months of negotiation in advance; the litigation procedure system will cost about 1-2 years of time before an effective verdict is granted. Such time-lapse prolongs the entire dispute resolution period and hinders the old cases' ending before the new law takes effect. For example, when a contract validity issue is under debate during the hearing of the court, the contract execution analyzed usually occurred years ago.

Then, when the new law takes effect, the old laws will be repealed. However, the old laws, whether repealed or not, can still be used as a basis for the ruling of old cases even though the related new law exists. Taking the contract law area as an example, the related laws to be repealed by the Civil Code includes the 1999 Contract Law of PRC, the 2009 General Principle of Civil Law, and the 2017 General Rules of Civil Law. For example, a contract dispute case in which the contract was signed in 2018 but debated in court in 2021 can still be judged as per the aforementioned laws.

Meanwhile, the related judicial interpretations will remain effective after the Code takes effect. They will only be repealed by new interpretations, which will lead to other converging issues. The Supreme Court of PRC tends to solve such convergence problems through judicial interpretations. The Supreme People's Court issued the 2018 Interpretations Concerning the Application of the Limitation of Action, to solve such conflict and converging issues in the 2017 General Rules of the Civil Law and the 2009 General

Principles of the Civil Law. On this occasion we may also estimate some new interpretations to solve converging problems.

On the other hand, according to the Legislative Law of PRC, the general rule is substantive laws have no retro-activity, while the procedural laws shall be retroactive. There are exceptions such as in cases when the dispute is absent in the old law, or when there is a specific regulation which stipulates the new law to be retroactive on some matters.

That is to say, the Civil Code will generally not be retroactive on old cases, but there will be some exceptions and the legal interpretations to be issued after the Civil Code takes effect shall further emphasize these points as they shall be the main instrument the Supreme Court shall use to solve retro-activity and time validity issues.

Finally, since the conflict of new and old laws may still exist, participants to a case may have to analyze which law is more favorable for them in their old case and decide whether or not to hurry along their proceedings or move to settle the case before the Civil Code takes effect.

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