Table of Contents

The Author 3

Glossary (English/Chinese) 19

List of Abbreviations 25

General Introduction 27

§1. GENERAL BACKGROUND OF THE COUNTRY 27
   I. Geography 27
   II. Nationality and Region 27
   III. Language and Cultural Composition 28
   IV. Political System 28
      A. Constitution and the System of People’s Democratic Dictatorship 28
      B. Political Parties and the Chinese People’s Political Consultative Conference 29
      C. System of Regional Autonomy for Nationalities 29
      D. Administrative Division 30
      E. The Judicial System 30

§2. THE ECONOMIC SYSTEM 31

§3. THE LEGAL SYSTEM 31
   I. The Legislation System 31
      A. The General Legislation Procedure 31
      B. The Legislative Procedure of the NPC and Its Standing Committee 32
         1. The Drafting Process 32
         2. The Proposing Process 32
         3. The Deliberation Process 32
         4. The Voting and Adoption Process 33
         5. The Publication Process 33
   II. Legal Interpretation 34
      A. Legislative Interpretation 34
      B. Judicial Interpretation 34
Chapter 3. Commercial Acts 48

§1. THE CONCEPT OF COMMERCIAL ACTS 48

§2. CERTAIN TYPICAL COMMERCIAL ACTS 48
   I. The Commercial Agency System 48
   II. The Commercial Sales Transaction System 48
   III. Commercial Trading: Trust System 48
   IV. The Commercial Brokerage System 49
   V. The Commercial Carriage Contract System 49
   VI. The Commercial Warehousing System 49
   VII. The Leasing and Financial Leasing System 49

Chapter 4. Economic Institutions 50

§1. GOVERNMENT DEPARTMENTS FOR COMMERCIAL ADMINISTRATION 50
   I. The National Development and Reform Commission 50
   II. The State-Owned Assets Supervision and Administration Commission 51
   III. The Ministry of Commerce 51
   IV. China Customs 52
   V. The State Administration for Industry and Commerce 53
   VI. The State Food and Drug Administration 53
   VII. The Banking Regulatory Commission 53
   VIII. The Securities Regulatory Commission 54
   IX. The Insurance Regulatory Commission 54

§2. NON-GOVERNMENT COMMERCIAL ADMINISTRATION ORGANIZATIONS 55
   I. The Industry Associations 55
   II. The China Council for the Promotion of International Trade and China Chamber of International Commerce 55

Chapter 5. General Obligations of Business Operators 57

§1. BUSINESS NAME 57
   I. General Observation 57
   II. Acquisition of Business Name 58
      A. Registration of a Business Name 58
         1. Creation Registration 58
         2. Temporary Registration 58
         3. Modification Registration 59
         4. Assignment Registration 59
         5. Withdrawal Registration 59
         6. Termination Registration 59
      B. Limitations on the Selection of a Business Name 59
      C. Registration Procedure for a Business Name 60
Table of Contents

III. Legal Protection for a Business Name 61

§2. BUSINESS REGISTRATION 62
  I. Categories of Business Registration 62
  II. Administrative Organ of Business Registration 62
  III. Procedure of Business Registration 63
    A. Application 63
    B. Examination 63
    C. Registration 64
    D. Public Announcement 64
  IV. Supervision of Business Registration 64
    A. Scope of Supervision 64
    B. Liabilities 65
      1. Set-Up of Company Archived Documents 65
      2. Dynamic Supervision 65
      3. Annual Examination and Management of Business License 66

§3. BUSINESS BOOKKEEPING 66
  I. General Introduction 66
  II. Set-Up of Business Bookkeeping 66
    A. Categories of Business Bookkeeping 66
    B. The Keeping of Business Books 68

Chapter 6. Business Property and Commercial Property Rights 69

§1. SURVEY OF PROPERTY LAW 69
  I. Brief Introduction of Property Law 69
    A. Persisting in the Basic Socialist Economic System 69
    B. Equal Protection for State Ownership, Collective Ownership, and Private Ownership 69
    C. State-Owned Property 69
    D. Collectively Owned Property 70
    E. Privately Owned Property 70
    F. Expropriation and Compensation 70
    G. Miscellaneous 70
  II. Basic Classification of Property Rights 71
    A. Ownership Rights (jus in re propria) 71
    B. Non-ownership Rights (jura in re aliana) 71
      1.Usufructuary Rights 71
      2. Real Rights for Security 71
    C. Quasi In Rem 72
  III. Alteration Modes of Property Rights 72

§2. OWNERSHIP AND ITS PROTECTION 73
  I. Ownership 73
    A. State Ownership and Collective Ownership 73
    B. Private Ownership 75
Table of Contents

C. Owners' Partitioned Ownership of Building Areas 75
II. Common Ownership 75
III. Systems of Obtaining the Rights in Good Faith and
Lost-and-Found Objects 76
   A. System of Obtaining the Rights Bona Fide 76
   B. Lost-and-Found Objects 77
IV. Neighbouring Relationship 77

§3. USUFRUCTUARY RIGHTS 78
   I. Brief Introduction 78
   II. Right to Contracted Management of Land, Right to Use
Construction Land, and Right to Use House Sites 78
   A. Right to the Contracted Management of Land 78
   B. Right to Use Construction Land 79
   C. Right to Use House Sites 79
   III. Right to Use State-Owned Resources and Mining Rights 79

§4. POSSESSION 80

§5. COPYRIGHT 80
   I. Brief Introduction 80
   II. Subjects and Objects of Copyright 81
      A. Subject of Copyright 81
      B. Object of Copyright 81
   III. Content of Copyright and Related Rights 82
      A. Brief Survey 82
      B. Related Rights 82
      C. Limitations on Copyright 83
   IV. Transfer and Licensing of Copyright 84
   V. Remedies 84

§6. TRADEMARK 84
   I. Brief Introduction 84
   II. Content of the Trademark Rights 85
   III. Registration of Trademark 86
   IV. Remedies 87

§7. PATENT 88
   I. Subjects of Patent Law 88
   II. Substantial Conditions for Patent Application 89
   III. Object of a Patent 90
   IV. Patent Rights 90
   V. Obtaining, Assignment, and License of Patent Right 91
      A. Obtaining the Patent Right 91
      B. Limitations on Patent Right 91
   VI. Remedies 93
Chapter 7. Bankruptcy Law

§1. BRIEF INTRODUCTION

§2. SUBSTANTIVE RULES OF ENTERPRISE BANKRUPTCY LAW
   I. Insolvent Properties
   II. Credit of Bankrupt
   III. Recall Right, Exemption Right, and Right of Set-Off
   IV. Distribution of Insolvent Properties
       A. Brief Introduction
       B. Distribution Plan
       C. Additional Distribution

§3. PROCEDURAL RULES OF THE BANKRUPTCY LAW
   I. Application for Bankruptcy
       A. Conditions for Application
       B. Submitting an Application
       C. Withdrawal of an Application
       D. Acceptance of a Bankruptcy Case
   II. Composition and Reorganization in Bankruptcy
       A. Reorganization Plan
       B. Composition Procedure
   III. Rendition of Bankruptcy and Bankruptcy Liquidation
       A. Rendition of Bankruptcy
       B. Bankruptcy Liquidation

Chapter 8. Negotiable Instrument Law

§1. BRIEF INTRODUCTION

§2. RIGHTS ON NEGOTIABLE INSTRUMENTS
   I. Creation of the Rights
   II. Endorsement of the Rights
   III. Acceptance and Guarantee
   IV. Presentation for Payment
   V. Dishonour and Recourse
   VI. Forging or Alteration of Negotiable Instruments

§3. REMEDIES FOR LOSS OF NEGOTIABLE INSTRUMENT

Chapter 9. Securities Law

§1. GENERAL INTRODUCTION
   I. The Chinese Securities Law System
       A. The Securities Law of the PRC and Other Laws
       B. Applicable Administrative Regulations
C. Other Related Laws 107
II. Categories of Securities in China 107

§2. ISSUANCE OF SECURITIES 107
I. Definition and Classification of Securities Issuance 107
II. Basic Rules for the Issuance of Securities 108
   A. Issuance of Stocks 108
      1. Principles 108
      2. The Main Ways of the Issuance of Stocks 108
      3. Formal Requirements for Stocks 109
      4. Restrictions on the Use of Public Offering Proceeds 109
   B. Issuance of Corporate Bonds 109
   C. The Issuance of Securities Investment Fund Shares 110
III. Issuance by Underwriting 110
   IV. Recommendation System in Securities Issuance 111

§3. SECURITIES TRANSACTION 111
I. General Provisions 111
II. Securities Listing 112
   A. Substantive Conditions for Stocks Listing 112
   B. Procedures for Stocks Listings 112
III. Listing of Corporate Bonds 113
IV. Review by Stock Exchanges 113
V. Ongoing Information Disclosure 113
VI. Insider Information and Prohibited Trading Acts 113

§4. TAKEOVER OF LISTED COMPANIES 114
I. Takeover Methods 114
II. Reporting System of Holding Large Amount of Shares 114
III. Mandatory Takeover 114
IV. Withdrawal and Alteration of Takeover Offer 115
   V. Legal Results of Takeover 115

§5. STOCK EXCHANGES 115
I. Definition of Stock Exchange 115
II. Finance of Securities Exchange 115
III. Organization and Personnel of a Stock Exchange 116
IV. Entrustment of Transactions, Technical Suspension of Trading, and Temporary Speed Bumps 116

§6. SECURITIES COMPANIES 116
I. Definition 116
II. Incorporation of Securities Companies 116
III. Business Scopes of Securities Companies 117
IV. Personnel of Security Companies 117
   V. Measures for Transaction Safety Protection 117

Table of Contents
## Table of Contents

§7. **Securities Registration and Clearing Institutions** 118  
§8. **Securities Service Organizations** 118  
§9. **The Securities Association** 119  

Chapter 10. **Contract Law** 120  

§1. **Introduction** 120  

§2. **General Principles of Contract Law** 120  

§3. **Conclusion of Contracts** 120  
  I. Offer 120  
  II. Acceptance 121  

§4. **Validity of the Contract** 122  
  I. Requirements for Validity of the Contract 122  
  II. Void Contracts 122  
  III. Rescission of the Contract 122  
  IV. Legal Effect of a Void Contract and Rescission 123  

§5. **Performance of the Contract** 123  
  I. Principles of Performance 123  
  II. Performance of a Contract Not Explicitly Agreed 124  
  III. Subject of Performance 124  
  IV. Right of Plea in Performance of Contract 124  
   A. Plea of Simultaneous Performance 124  
   B. Right of Plea for First-Performance 124  
   C. Right to Suspend Performance 124  
  V. Measures for Preservation of Contractual Rights 125  
   A. Obligee’s Right of Subrogation 125  
   B. Obligee’s Right to Cancel a Manifestly Unreasonable Act by Obligor 125  

§6. **Assignment of Contract** 125  
  I. Assignment of Rights 126  
  II. Assumption of Obligations 126  
  III. General assumption of Contract 126  

§7. **Discharge of Contractual Rights and Obligations** 127  
  I. Introduction 127  
  II. Termination of Contract 127  
  III. Mutual Set-Off of Obligations 128  
  IV. Right to Place Subject Matter in Escrow 128  
  V. Release of Obligation 128  
  VI. Merging of Rights and Obligations 128
Table of Contents

§8. LIABILITIES FOR BREACH OF CONTRACT 129
   I. Liabilities for Breach of Contract 129
   II. Exemptions 129
      A. Force Majeure 129
      B. Exemption Clause 130
   III. Election of Remedies in Tort or in Contract 130

§9. THE CATEGORIZED CONTRACTS 130
   I. Sales Contracts 131
      A. Contractual Rights and Obligations 131
      B. Transfer of Ownership and Risks of the Subject Matter 132
   II. Financial Leasing Contracts 132
   III. Contracts for Hired Work 133
   IV. Technology Contracts 133
   V. Mandate Contract 134

Chapter 11. Commercial Security Law 136

§1. GENERAL OBSERVATIONS 136

§2. TYPES OF COMMERCIAL SECURITY 136
   I. Suretyship 136
   II. Mortgage 137
   III. Pledge 138
      A. Pledge of Movables 138
      B. Pledge of Rights 139
   IV. Lien 139
   V. Deposit 139

§3. OTHER APPLICABLE LAWS 140
   I. The Company Law 140
      A. External Security 140
      B. Internal Security 140
      C. Security Mechanism in Merger and Reduction of Registered Capital 140
   II. Securities-Related Laws 141
   III. Others 141

Part II. Economic Law 143

Chapter 1. Introduction 143

Chapter 2. The Legal System of Market Access 144

§1. INTRODUCTION 144
   I. Guideline Pattern 144
II. Unfair Competition Practices 156
   A. Fraudulent Trade 156
   B. Compulsory Trade 156
   C. Commercial Bribery 156
   D. False Propaganda 157
   E. Business Secrecy Infringement 157
   F. Dumping Sales 158
   G. Tied Sales 158
   H. Malicious Prize-Attached Sales 158
   I. Damaging the Competitor’s Reputation 159
   J. Bidding by Collusion 159
   K. Abusing the Administrative Powers to Restrict Competition 159

III. Implementation of the Unfair Competition Law 160
   A. Institutions 160
   B. Sanctions 160

§2. Anti-monopoly Law 160
   I. Definition of Monopoly and the Anti-monopoly Law 160
   II. The Anti-monopoly Law Enforcement Authority 161
   III. Monopolistic Conduct 162
      A. Monopolistic Agreements 162
      B. Abuse of Dominant Market Position 163
         1. Dominant Market Position 163
         2. Abuse of Dominant Market Position 164
         3. Other Legislation 164
      C. Concentration of Business Operators 165
         1. Definitions 165
         2. Procedure for Concentration Control 165
            a. Declaration 165
            b. Examination 165
            c. Permitting or Prohibiting the Concentration 166
         3. Rules Concerning Mergers and Acquisitions by Foreign Investors 167
      D. Abuse of Administrative Powers to Eliminate or Restrict Competition 167
   IV. Circumstances Constituting Exemptions 168

§3. Law of Protection of Consumer Rights and Interests 168
   I. Brief Introduction 168
   II. Rights of Consumers 169
      A. The Right of a Safety Guarantee 169
      B. The Right to Know the Truth 169
      C. The Right of Free Choice 169
      D. The Right to Fair Trade 170
      E. The Right to Demand Compensation 170
      F. The Right to Form Organizations 170
      G. The Right to Acquire Knowledge 171
Table of Contents

H. The Right of Being Respected 171
I. Right of Supervision and Criticism 171
III. Obligations of Business Operators 171
   A. Statutory and/or Contractual Obligations 171
   B. Hearing Suggestions and Accepting Supervision 172
   C. Safety Guarantee on Commodities and Services 172
   D. Obligations to Provide True Information of Commodities or Services 172
   E. Issue Invoice 172
   F. Guarantees of the Quality of Commodities or Services 172
   G. The ‘Three Guarantees’ 173
   H. Not Pursuing Unfair and Unreasonable Business 173
   I. Non-infringement upon Personal Rights of Consumers 173
IV. Liabilities 173
   A. Civil Liability 173
      1. Liabilities for the Supply of Questionable Commodities or Services 174
      2. Liabilities for Infringement of Personal Rights 174
      3. Liabilities for Infringement of Property Rights 174
      4. Civil Liabilities of Punitive Compensation 175
   B. Administrative and Criminal Liabilities 175
V. Settlement of Disputes 175
§4. PRODUCT QUALITY LAW 176
I. Brief Introduction 176
II. Systems of Product Quality Supervision and Administration 177
   A. Brief Introduction 177
   B. Product Quality Supervision 177
      1. Product Quality Standardization 177
      2. Authentication of Enterprises’ Product Quality Control System 178
      3. Authentication of Quality of Product 178
      4. Administrative Supervision and Inspection of Product Quality 178
      5. Social Supervision of Product Quality 179
III. Obligations and Responsibilities of Producers and Sellers in Respect of Product Quality 179
   A. Producers 180
   B. Sellers 180
IV. Liabilities 180

Chapter 4. The Legal System of Macroscopic Economic Adjustment and Control 181

§1. BUDGET LAW AND GOVERNMENT PROCUREMENT LAW 181
   I. Brief Introduction 181
Table of Contents

II. Budget Law 182
   A. Brief Introduction 182
   B. Functions of Budget Management 183
   C. Scope of Budgetary Revenues and Expenditures 183
   D. Procedures for Budget Management 184
   E. Liabilities 185

III. Government Procurement Law 185
   A. Parties to Government Procurement 185
   B. Methods and Proceedings for Government Procurement 186
   C. Government Procurement Contracts 187
   D. Legal Liabilities 187

§2. TAX LAW 188
I. Brief Introduction 188
II. Turnover Tax Law 189
   A. Value-Added Tax 189
      1. Subject of Taxation 189
      2. Scope of Taxation 189
      3. Tax Rates 190
      4. Calculation of the Tax Payable 190
   B. Consumption Tax 190
      1. Subject of Taxation 190
      2. Scope of Taxation 190
      3. Tax Rates 191
      4. Calculation of the Tax Payable 191
   C. Business Tax 191
      1. Subject of Taxation 191
      2. Scope of Taxation 191
      3. Tax Items and Tax Rates 192
      4. Calculation of the Tax Payable 192

III. Income Tax Law 192
   A. Individual Income Tax 192
      1. Taxpayers of Income Tax 192
      2. Scope of Taxation 193
      3. Tax Rates 194
      4. Calculation of the Tax Payable 194
      5. Tax Declaration 194
   B. Enterprise Income Tax 194
      1. Subject of Taxation 194
      2. Scope of Taxation 195
      3. The Tax Rate 195
      4. The Taxable Income Amount 195
      5. Tax Payable 196
      6. Preferential EIT Treatment 196
         a. Transitional Preferential Tax Treatment 196
         b. Special Preferential Policy 196

IV. Other Substantive Tax Rules 196
Table of Contents

V. Law of Tax Collection Administration 197
  A. Brief Introduction 197
  B. Tax Administration 197
    1. Tax Registration 197
    2. Management of Accounting Books and Vouchers 198
    3. Tax Declaration 198
  C. Tax Collection 198
    1. Tax Deduction and Exemption 198
    2. Safeguard Measures for Tax Collection 198
    3. Priority of Tax Collection 199
  D. Tax Inspection 199
  E. Liabilities 199

§3. PRICE LAW 200
  I. Brief Introduction 200
  II. The Pricing Behaviour of Business Operators 200
  III. Pricing Activities of Government 201
    A. Scope of Government-Set Prices 201
    B. The Basis for Government-Set Prices 202
  IV. Macroscopic Adjustments and Control of Overall Price Levels 202
  V. Price Supervision and Inspection 202
  VI. Liabilities 203

§4. LAW OF FINANCIAL ADJUSTMENT AND CONTROL 203
  I. Legislative Framework 203
  II. The Legal System of the Central Bank 203
    A. The Banking System in China 203
    B. The People’s Bank of China 204
  III. The Foreign Exchange Administration System 205
    A. The Administration of Foreign Exchange 205
    B. The Administration on Foreign Exchange under Current Accounts 206
    C. The Administration on Foreign Exchange under Capital Accounts 207
    D. Supervision and Administration on Foreign Exchange Transactions 208
    E. Supervision and Administration on CNY Exchange Rate and Foreign Exchange Market 208
    F. Liabilities 208

Selected Bibliography 211

Index 213