

# WHO WILL PROTECT CHINESE CONSUMERS? THE PAST, PRESENT AND FUTURE OF CONSUMER PROTECTION LEGISLATION IN CHINA

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## INTRODUCTION

In a market economy, the consumer is an integral market player.<sup>1</sup> However, the rapid development of science and technology and the evolution of business organizations have disadvantaged the consumer with respect to possession of information and economic power.<sup>2</sup> Soaring legal costs combined with economic disadvantages further weaken consumers' positions when they attempt to assert their legal rights and protections.<sup>3</sup>

Accordingly, this weak position has led to the violation of consumers' interests as they exercise their consumption options.<sup>4</sup> As

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<sup>1</sup> See Jianming Yu, *China's Consumption Structure and Consumption Trends of Changes* (Aug. 26, 2008), translation available at <http://eng.hi138.com/?i45900>.

<sup>2</sup> See Yuwen Qian, *The Establishment and Evolution of Consumer Rights - Interpretation of Institutional Change Perspective*, 1 MODERN L. SCI. 74, 75 (2010), translation available at [http://eng.hi138.com/?i261623\\_The\\_establishment\\_and\\_evolution\\_of\\_consumer\\_rights\\_-\\_Interpretation\\_of\\_Institutional\\_Change\\_Perspective#](http://eng.hi138.com/?i261623_The_establishment_and_evolution_of_consumer_rights_-_Interpretation_of_Institutional_Change_Perspective#).

<sup>3</sup> See Junhai Liu, *Judicial Conciliation: Consumer Law Changes Will Defend to the Consumer True Equality Moderate Tilt* (June 15, 2009), translation available at <http://www.sourcejuice.com/1181456/2009/06/15/Consumer-Law-moderate-consumers-inclined-defend-genuine-equally> [hereinafter Liu, *Judicial Conciliation*].

<sup>4</sup> See Yuwen Qian, *supra* note 2, at 75.

a result, in countries with developed market economies, consumer protection has become an important part of social life and economic policy.<sup>5</sup> The structure of the consumer protection system is often as follows: the government serves as the leadership, consumer organizations constitute the backbone, and the legal regime provides a strong foundation.<sup>6</sup> The consumer protection system plays an important role in promoting increased consumption and demand and developing the economy.<sup>7</sup>

As a developed market economy, China is no exception. In China, the legal framework for a consumer protection system has been established,<sup>8</sup> and has been gradually perfected; notwithstanding the fact it started relatively late<sup>9</sup> and has suffered some insufficiencies.<sup>10</sup>

The first part of this article introduces the historical development of consumer protection legislation in China and examines the process of perfecting consumer legal protections. The second part discusses the contents and characteristics of China's consumer protection legislation. In sum, China's legal system took the Consumer Rights and Interests Protection Law (the "CRIL") of the People's Republic of China ("P.R.C.") as a core, and coordinated among multi-domain, multi-department special laws and regulations.<sup>11</sup> Moreover, many rules of consumer protection were initiated by local legislation.<sup>12</sup> Finally, the third part addresses the improvement of China's consumer protection legislation, and comments on the revised draft of the CRIL.

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<sup>5</sup> *Id.* at 76.

<sup>6</sup> See Xin Diao, *On the Consumer Movement, the Role of Consumer Protection Legislation* (Dec. 4, 2006), translation available at <http://eng.hi138.com/?i157084#>.

<sup>7</sup> See Xiaopo Wang, *On Perfecting Law System of the Consumer Protection*, 35 PEOPLE F. 78, 78 (2010), translation available at [http://eng.hi138.com/?i282205\\_on\\_the\\_consumer\\_protection\\_law\\_system\\_of\\_the#](http://eng.hi138.com/?i282205_on_the_consumer_protection_law_system_of_the#).

<sup>8</sup> See A. Brooke Overby, *Consumer Protection in China After Accession to the WTO*, 33 SYRACUSE J. INT'L L. & COM. 347, 348 (2006).

<sup>9</sup> See Yang Ding, *Chinese Consumer Protection Law Review and Outlook*, 8 THEORY MONTHLY 88, 88 (2009), translation available at [http://eng.hi138.com/?i210907\\_Chinese\\_Consumer\\_Protection\\_Law\\_Review\\_and\\_Outlook\\_](http://eng.hi138.com/?i210907_Chinese_Consumer_Protection_Law_Review_and_Outlook_).

<sup>10</sup> See Ping Jiang, *Present Situation and Perfect of Legal Protection of China Consumer Rights*, (Nov. 18, 2004), <http://www.cca.org.cn/english/EnNewsShow.jsp?id=30&cid=982>.

<sup>11</sup> *Id.*

<sup>12</sup> See Guanghui Guo, *The Economic Analysis of Law Systematic Changes in Consumers' Protection in China*, 1 HEBEI L. SCI. 87, 87 (2008), translation available at <http://eng.hi138.com/?i162419>.

## I. THE HISTORICAL DEVELOPMENT OF CONSUMER PROTECTION LEGISLATION IN CHINA

During the initial period of reform and open policy, awareness of consumer rights was limited and consumer protection laws and regulations were nearly non-existent in China.<sup>13</sup>

### *a. Consumer Protection Legislation in the Initial Stage*

One of China's first attempts at addressing consumer protection issues resulted in the *Temporary Provision Related to Total Quality Management of Industrial Enterprise*, published by the State Economic Commission in 1980.<sup>14</sup> Next, the *Food Hygiene Law* was enacted in 1982.<sup>15</sup> In 1984, the *Drug Management Law* was issued.<sup>16</sup> Rather than directly address consumer protection concerns, the aforementioned laws and regulations focused more on combating illegal business practices.<sup>17</sup> Thus, the law did not provide relief for consumers in situations where they suffered injuries due to flawed products.<sup>18</sup> Facing the serious social problem highlighted by counterfeit products in the initial period of reform and open policy, it was difficult for these laws and regulations to play a decisive role in consumer protection.<sup>19</sup>

Eventually, in 1986, the State Council issued the *Regulations on Quality Responsibility for Industrial Products*.<sup>20</sup> This was one of

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<sup>13</sup> See Mark Williams, *Foreign Business and Consumer Rights: A Survey of Consumer Protection Law in China*, 18 UCLA PAC. BASIN L.J. 252, 252 (2001); see also Overby, *supra* note 8, at 348.

<sup>14</sup> Temporary Provision Related to Total Quality Management of Industrial Enterprise, available at [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=681&keyword=工业企业全面质量管理暂行办法](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=681&keyword=工业企业全面质量管理暂行办法) (translation on file with author).

<sup>15</sup> Food Hygiene Law of the People's Republic of China (adopted at the 25th Meeting of the Standing Committee of the Fifth National People's Congress and promulgated by Order No. 12 of the Standing Committee of the National People's Congress, Nov. 19, 1982, effective on a trial basis as of July 1, 1983), translation available at <http://www.86148.com/onews.asp?id=20850>.

<sup>16</sup> Pharmaceutical Administration Law of the People's Republic of China (promulgated by Order No. 18 of the President of the People's Republic of China, Sept. 20, 1984, effective July 1, 1985), translation available at <http://www.asianlii.org/cn/legis/cen/laws/pal302/>.

<sup>17</sup> See Guanghui Guo, *supra* note 12, at 87.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Regulations on Industrial Product Responsibility (promulgated by the State Council on Apr. 5, 1986), translation available at <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/consumer->

the first examples of China passing regulations with the specific goal of protecting consumers' rights and interests.<sup>21</sup> The passing of the *Regulations on Quality Responsibility for Industrial Products* demonstrated China's acknowledgment of the necessity of consumer protection. The regulation provided that both the producer and seller would be responsible for the quality of a product.<sup>22</sup> If the product was defective or did not conform to the agreement with the consumer, the producer and seller were both responsible for the repair, replacement, or return, and were required to compensate for actual losses suffered.<sup>23</sup> These general rules about repair, replacement, or return served as the basis for what is now known as the "Three Guarantees," a special rule that will be discussed later in this article.

### *b. A New Era of Consumer Protection Legislation*

Although the above-mentioned laws were steps in the right direction, they did not adequately protect consumer interests.<sup>24</sup> Despite the enactment of these regulations, in some cases, there were no laws in place to provide relief when consumer rights were infringed.<sup>25</sup> For example, when consumer rights were violated, the law did not stipulate how to compensate the consumer or what amount of compensation was necessary.<sup>26</sup> With the dramatic increase in a variety of consumer disputes, the lack of consumer protection laws and regulations hampered the protection of consumers' rights.<sup>27</sup> In light of this, the central government began enacting a series of consumer protection laws.<sup>28</sup>

#### 1. Construction of the Consumer Protection Legal System

In 1987, the Chinese national government began adopting several consumer protection laws. The most significant legislation included: the *General Principles of the Civil Law of the P.R.C.*, the *Product Quality Law of the P.R.C.*, the CRIL, the *Advertising Law of the P.R.C.*, and the *Contract Law of the P.R.C.*

On January 1, 1987, the *General Principles of the Civil Law*

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protection/regulations-on-industrial-product-quality-responsibility-1986.html.

<sup>21</sup> *Id.* at art.1.

<sup>22</sup> *Id.* at art. 4.

<sup>23</sup> *Id.* at art. 2, 11.

<sup>24</sup> See Guanghui Guo, *supra* note 12, at 87.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 88.

<sup>28</sup> See Kui Hua Wang, *Celebrations Turn into Sorrow: Where is China's Consumer Protection Law?*, 4 CANBERRA L. REV. 151, 152 (1997-1998).

of the P.R.C. was officially implemented.<sup>29</sup> As China's first basic civil law, it acknowledged, for the first time, that individuals in China had personal rights and declared that the law would protect these personal rights.<sup>30</sup> By acknowledging that individuals had certain personal rights, the law laid the foundation for safeguarding particular rights, such as those of consumers.<sup>31</sup>

Due to a continual rise in the number of defective products in China, the *Product Quality Law of the P.R.C.* was passed on February 22, 1993.<sup>32</sup> Before this, there was no centralized product liability law and producers of defective products were merely held liable through their contractual privity with victim consumers.<sup>33</sup> The *Product Quality Law* explicitly stipulated that the consumer had the right of supervision, that the seller must be responsible for the product quality and that the consumer had the right to request damages.<sup>34</sup> It specifically provided that if a product defect caused injury to the body or property of the consumer, he could seek redress from the seller and manufacturer.<sup>35</sup> This was the first time that China set up a system for advance payment, which greatly facilitated the protection of consumers' rights and interests.<sup>36</sup> In July 2000, at the Sixteenth Meeting of the Ninth National People's Congress ("NPC"), the law was amended to increase the system of product quality

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<sup>29</sup> General Principles of the Civil Law of the People's Republic of China (promulgated by Order No. 37 of the president of the People's Republic of China, Apr. 12, 1986, effective Jan. 1, 1987), translation available at [http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content\\_21898337.htm](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21898337.htm).

<sup>30</sup> *Id.* at art. 2. ("The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.").

<sup>31</sup> See Mary Ip, *Chinese Consumer Law: Recent Development and Implication*, 6(2) INT'L J. OF BUS. 111, 113 (2001), available at <http://www.thefreelibrary.com/Chinese+consumer+law%3A+recent+developments+and+implications.-a0175523771>.

<sup>32</sup> See Product Quality Law of the People's Republic of China (adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress, Feb. 22, 1993), translation available at <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/consumer-protection/product-quality-law-of-the-peoples-republic-of-china-2000.html> [hereinafter *Product Quality Law*].

<sup>33</sup> See Gary Zhao, *Chinese Product Liability Law: Can China Build Another Great Wall To Protect It's Consumers?*, 1 WASH. U. GLOB. STUD. L. REV. 581, 582 (2002).

<sup>34</sup> *Product Quality Law*, *supra* note 32, at art. 40.

<sup>35</sup> *Id.* at art. 43.

<sup>36</sup> See Mary Ip, *supra* note 31, at 114.

certification, the system of production license, and the system of product quality supervision.<sup>37</sup>

Although this legislation was primarily related to protecting consumers' rights and interests, the issue of consumer protection had still not been directly addressed at this point.<sup>38</sup> To deal with the fragmentation in the law, the P.R.C. passed the *Consumer Rights and Interests Protection Law* ("CRIL") on October 31, 1993.<sup>39</sup> This was the first law devoted to consumer protection in China, which symbolized that the legal regime of consumer protection had stepped into a new stage.<sup>40</sup> It was also the law most commonly used to protect consumers in China, and it applied to the consumption relationship in each respective consumption field.<sup>41</sup> For the first time in Chinese law, the CRIL outlined the specific rights to which consumers were entitled, the obligations of the consumer, and the obligations of providers of goods and services. The law also provided a more complete picture of what the P.R.C. considered to be the role of the Government in consumer protection, the duties of the consumer, and the responsibility of society.<sup>42</sup>

Further moving to protect the consumer, the Chinese government turned to advertising. Advertising is considered an important source of consumer information and exerts a powerful influence on consumer decision-making.<sup>43</sup> To protect the consumer from misleading and deceptive advertising, China enacted the *Advertising Law of the P.R.C.* on February 1, 1995.<sup>44</sup>

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<sup>37</sup> See Gary Zhao, *supra* note 33, at 600.

<sup>38</sup> See Mary Ip, *supra* note 31, at 115.

<sup>39</sup> See Consumer Rights and Interests Protection Law of the People's Republic of China (adopted at the Fourth Meeting of the Standing Committee of the Eighth National People's Congress, Oct. 31, 1993, effective Jan. 1, 1994), *translation available at* <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/consumer-protection/law-of-the-peoples-republic-of-china-on-protection-of-the-rights-and-interests-of-the-consumers-1994.html> [hereinafter *CRIL*].

<sup>40</sup> See Mary Ip, *supra* note 31, at 115.

<sup>41</sup> See Jiakai Teng, Speech at the International Seminar on the Protection of Consumers' Rights and Interests (Nov. 18, 2004) (transcript available at <http://www.cca.org.cn/english/EnNewsShow.jsp?id=31&cid=982>).

<sup>42</sup> *CRIL*, *supra* note 39, at art. 6.

<sup>43</sup> See Mary Ip, *supra* note 31, at 115.

<sup>44</sup> Advertisement Law of the People's Republic of China (adopted at the Tenth Meeting of the Standing Committee of the Eighth National People's Congress, Oct. 27, 1994), *translation available at* [http://www.novexcn.com/advert\\_law\\_95.html](http://www.novexcn.com/advert_law_95.html) [hereinafter *Advertisement Law*]; see also Regulations On The Establishment Of Foreign-Funded Advertising Enterprises (Promulgated by the State Administration for Industry and Commerce and the Ministry of Foreign Trade and Economic Cooperation, Dec. 3, 1994), *translation available at*

Contract law can also impact consumer protections greatly, and on March 15, 1999, the *Contract Law of the P.R.C.* was promulgated to regulate trade relationships between equal bodies.<sup>45</sup> It primarily regulated the validity, performance, amendment, transfer, and termination of a contract, the responsibilities of a breaching party, and the conclusion of a trade relationship. The *Contract Law of the P.R.C.* was the first unified contract law and served as a powerful weapon in protecting consumer rights.<sup>46</sup> One innovation of the new law was that it recognized a natural person as a contractual party.<sup>47</sup> Prior to this policy reform, China was a public ownership economy, so the natural person could not serve as the subject of contracts.<sup>48</sup> However, the *Contract Law of the P.R.C.*, for the first time, enabled a natural person to serve as the subject of contracts and it applied contract principles to consumer contracts.<sup>49</sup>

With the emergence of new methods for consumers to purchase products and services, a number of new laws were enacted to protect consumers.<sup>50</sup> For example, in succession, China enacted the *Property Rights Law of the P.R.C.*,<sup>51</sup> the *Anti-Monopoly Law of the P.R.C.*,<sup>52</sup> and the *Tort Law of the P.R.C.*<sup>53</sup>

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<http://www.lawinfochina.com/display.aspx?lib=law&id=464> (full version on file with author).

<sup>45</sup> Contract Law of the People's Republic of China (adopted at the Second Session of the Ninth National People's Congress, Mar. 15, 1999, effective Oct. 1, 1999), *translation available at* <http://www.chinaiprlaw.com/english/laws/laws2.htm> [hereinafter *Contract Law*].

<sup>46</sup> The previous Chinese contract laws rested on three key pieces of legislation: Economic Contracts Law of the People's Republic of China (1981), Foreign Economic Contracts Law of the People's Republic of China (1985), and Technology Contract Law of the People's Republic of China (1987). They were repealed when the new Contract Law came into effect Oct. 1, 1999.

<sup>47</sup> See Mary Ip, *supra* note 31, at 124-26.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Wei Huang, *Rule of Law, Consumer Protection and Livelihood* (Nov. 19, 2010), *translation available at* [http://eng.hi138.com/?i267919\\_Rule\\_of\\_law\\_consumer\\_protection\\_and\\_livelihood](http://eng.hi138.com/?i267919_Rule_of_law_consumer_protection_and_livelihood).

<sup>51</sup> The Property Rights Law of the People's Republic of China (adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China, Mar. 16, 2007), *translation available at* [http://www.lehmanlaw.com/fileadmin/lehmanlaw\\_com/laws\\_regulations/Property\\_Rights\\_Law\\_of\\_the\\_PRC\\_LLX\\_03162007.pdf](http://www.lehmanlaw.com/fileadmin/lehmanlaw_com/laws_regulations/Property_Rights_Law_of_the_PRC_LLX_03162007.pdf) [hereinafter *Property Rights Law*].

<sup>52</sup> The Anti-Monopoly Law of the People's Republic of China (adopted at the 29th meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China, Aug. 30, 2007, effective Aug. 1, 2008), *translation available at* [http://www.china.org.cn/government/laws/2009-02/10/content\\_17254169.htm](http://www.china.org.cn/government/laws/2009-02/10/content_17254169.htm) [hereinafter *Anti-Monopoly Law*].

## 2. The Implementation and Intensification of the CRIL

In order to implement the CRIL, the State Administration of Industry and Commerce formulated target-oriented administrative regulations and standardized documents to clarify and support the existing regulations on consumer protection. These supporting statutes include the following: *The Punishment Methods on Cheating Consumers Practices*; *Administration of Industry and Commerce Organs' Temporary Measures of Accepting the Consumers' Complaints and Reports*; *Departments of Administration of Industry and Commerce's Implementation Methods of Handling the Appeals of the Consumers*; and *the Several Stipulations on Handling the Activities that Damage the Rights and Interests of the Consumers*.<sup>54</sup> These statutes enhanced Chinese consumer law by defining the behavior of cheating the consumer and providing for law enforcement measures on activities that damaged the rights and interests of consumers.<sup>55</sup>

To more adequately address the issues plaguing consumers, the State Administration of Industry and Commerce also promulgated *Some Regulations on Prohibiting the Unfair Competition Behavior of Counterfeiting Names, Packaging, Decoration of Well-known Commodity*; *Some Provisions on Prohibiting the Unfair Competition Behavior of Sales Activities with Prizes*; *the Management Provision on Leasing the Counter Space for Operating*; and *the Management Provision on Commodity Sales Exhibition*. These provisions contained concrete stipulations on a business operator's behavior, which was the outstanding problem in the area of consumer consumption.<sup>56</sup>

The unique legislative bodies in each particular province or autonomous region also amended or formulated a series of local statutes to implement the CRIL according to their local status.<sup>57</sup> These local regulations clarified and complemented the CRIL.

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<sup>53</sup> Tort Law of the People's Republic of China (adopted at the 12th session of the Standing Committee of the Eleventh National People's Congress, Dec. 26, 2009, effective July 1, 2010), *translation available at* [http://www.ssd.com/pdf/chinaupdate/Tort\\_Liability\\_Law\\_of\\_PRC\\_Chinese\\_English.pdf](http://www.ssd.com/pdf/chinaupdate/Tort_Liability_Law_of_PRC_Chinese_English.pdf) [hereinafter *Tort Law*].

<sup>54</sup> See Jiakai Teng, *supra* note 41.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> There are 31 provinces and autonomous regions in China so each locale has its own conditions for implementing national legislation. For example, Fujian, Guangdong, Beijing, and Shanghai all have their own conditions for implementing national legislation.

### 3. Perfection of the Consumer Protection Rule

In addition to the implementation of the CRIL, special rules to protect the consumer were also gradually established; these included the Three Guarantees, the Product Recall System, Moral Damages and consumer housing regulations.

#### 3.1 The Three Guarantees

The initial form of the “Three Guarantees” was rooted in the *Regulations on Quality Responsibility for Industrial Products* issued by the State Council in 1986.<sup>58</sup> In this year, the State Economic and Trade Commission, along with seven other ministries and commissions, jointly promulgated the *Provision on Three Guarantees of Partial Domestic Electric Appliances*.<sup>59</sup> Henceforth, the notion of the “Three Guarantees” became an important component of consumer protection.

Further solidifying the idea into consumer protection law, the State Economic and Trade Commission and relevant departments, jointly issued the *Provision on the Liability for the Repair, Replacement, and Return of Some Commodities* in 1995, in which the kind of commodities regulated by the Three Guarantees was increased from 6 to 18 types.<sup>60</sup> The Provision confirmed the principle that the seller was responsible for the product, and it strengthened the seller’s responsibility of the products by clarifying the approach for consumer complaints.<sup>61</sup> Following this provision was the *Provision on Repair, Replacement, and Return Liability of Agricultural Machinery Products*; the *Provision on Repair, Replacement, and Return Liability of Mobile Telephone Commodity*; and the *Provision on Repair, Replacement, and Return Liability of Fixed Telephone*

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<sup>58</sup> Regulations on Quality Responsibility for Industrial Products, *supra* note 20.

<sup>59</sup> Provision on Three Guarantees of Partial Domestic Electric Appliances (adopted July 30, 1986), available at [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=9301&keyword=部分国产家用电器“三包”规定](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=9301&keyword=部分国产家用电器“三包”规定) (translation on file with author).

<sup>60</sup> Provisions on the Liability for the Repair, Replacement, and Return of Some Commodities (Promulgated by the State Economic and Trade Commission, Aug. 25, 1995), translation available at <http://www.lawinfochina.com/display.aspx?lib=law&id=5782> (in 1995 this provision replaced the Provision on Three Guarantees of Partial Domestic Electric Appliances. The original six types of commodities included: television, refrigerators, washing machines, electric fans and radio-cassette recorders. This list was expanded to include bicycles, video cameras, microwave ovens, air conditioners, vacuums, and motorcycles) (full version on file with author).

<sup>61</sup> *Id.*

*Commodity*. From these additional provisions, the scope of the Three Guarantees was further expanded, and the operability of these provisions was strengthened.<sup>62</sup> The system of China's Three Guarantees for products was gradually maturing at that time.

### 3.2 The Product Recall System

The product recall system first appeared in the United States' automobile industry in 1960, and has since been introduced to other areas of product safety and public health.<sup>63</sup> A product recall typically occurs when the goods or services provided by the operator contain serious defects, which could cause harm.<sup>64</sup> Even if a consumer uses the goods or services properly, defective goods could still harm a consumer or his property.<sup>65</sup> The operator must promptly report to the authorities and provide the consumer with free repair, replacement, or return.<sup>66</sup> During these situations, the authorities supervise the entire process.<sup>67</sup>

Although both the *Product Quality Law* and the CRIL were related to defective products, neither of these laws clearly defined the concept of a product recall system.<sup>68</sup> As a result, local authorities were left to enact more detailed provisions.<sup>69</sup> For instance, Shanghai issued a *Shanghai Consumer Protection Ordinance* in 2002.<sup>70</sup> This law provided that the relevant administrative department would prohibit the operator from selling the defective commodity and the seller would be responsible for all recall measures. After that, China promulgated and implemented some regulations including the *Management Provision on Recalling Defective Auto Products* (2004), the *Management Provision on Recalling Children's Toys* (2007), the *Management Provision on Recalling Food* (2007) and the

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<sup>62</sup> *Id.*

<sup>63</sup> See Yan Shen, *Recall System for Defective Products and the Improvement in the Application of Production Quality Law in China*, (Oct. 9, 2010), translation available at [http://eng.hi138.com/?i259046\\_Recall\\_system\\_for\\_defective\\_products\\_from\\_the\\_responsibility\\_of\\_foreign\\_products\\_in\\_China\\_for\\_the\\_improvement\\_of\\_legal](http://eng.hi138.com/?i259046_Recall_system_for_defective_products_from_the_responsibility_of_foreign_products_in_China_for_the_improvement_of_legal).

<sup>64</sup> See Jiangyan Zhao, *On the Establishment of the Legal System of Recall of Defective Products*, 31 SCI. & TECH. INFO. 33, 33 (2009), translation available at [http://eng.hi138.com/?i230437\\_Recall\\_of\\_defective\\_products\\_on\\_the\\_establishment\\_of\\_the\\_Legal\\_System](http://eng.hi138.com/?i230437_Recall_of_defective_products_on_the_establishment_of_the_Legal_System).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Yan Shen, *supra* note 63.

<sup>68</sup> See Jiangyan Zhao, *supra* note 64, at 33.

<sup>69</sup> *Id.*

<sup>70</sup> See Yang Ding, *supra* note 9, at 88.

*Management Provision on Recalling Drugs* (2007).<sup>71</sup> Through this progeny of legislation, China improved its recall system.

### 3.3 Emotional Damage Compensation

The compensation for emotional damage is the third special rule to protect consumers. On August 5, 1999, the Guangdong Province Standing Committee of the People's Congress passed *Guangdong Province's Provision on Implementation of Consumer Rights and Interests Protection Law of the P.R.C.*<sup>72</sup> For the first time, the local regulations explicitly stipulated that the standard for emotional damage compensation was to be at least RMB 50,000 Yuan.<sup>73</sup> Afterward, Shanghai, Zhejiang, and Chongqing Provinces each set up local regulations and carried out corresponding provisions. With the increase of emotional damages requests, the Supreme People's Court announced the *Interpretation of the Supreme People's Court on Problems Regarding the Ascertainment of Compensation Liability for Emotional Damages in Civil Torts* on February 26, 2001.<sup>74</sup> For the first time, the scope of the emotional damage compensation standard, as well as the corresponding body of law, was clearly defined.<sup>75</sup> This interpretation extended disability compensation and wrongful death compensation to all areas of personal injury.<sup>76</sup> Thus, it is no longer difficult for a consumer to request emotional damages compensation when pursuing lawsuits against its tortfeasors.

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<sup>71</sup> See Jiangyan Zhao, *supra* note 61, at 33.

<sup>72</sup> Guangdong Province's Provision on Implementation of Consumer Rights and Interests Protection Law of the People's Republic of China (adopted Aug. 5, 1999), available at [http://law.baidu.com/pages/chinalawinfo/1679/2/a57f8f6fb0960cb9b0768621018fc3fd\\_0.html](http://law.baidu.com/pages/chinalawinfo/1679/2/a57f8f6fb0960cb9b0768621018fc3fd_0.html) (translation on file with author) [hereinafter *Guangdong's Provision on CRIL*].

<sup>73</sup> See Conglie Wang, *The Case of a Number of Issues in China's "Consumer Protection Law"*, 1 POL. SCI. & LAW 107, 111 (2007), translation available at [http://eng.hi138.com/?i286021\\_Chinas\\_Consumer\\_Protection\\_Law\\_Case\\_Issues](http://eng.hi138.com/?i286021_Chinas_Consumer_Protection_Law_Case_Issues).

<sup>74</sup> Interpretation of the Supreme People's Court on Problems Regarding the Ascertainment of Compensation Liability for Emotional Damages in Civil Torts (adopted at No.1161 Meeting of the Judicial Committee of the Supreme People's Court, Feb. 26, 2001), translation available at <http://www.lawinfochina.com/display.aspx?lib=law&id=1802> (full version on file with author).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at art. 1.

### 3.4 Consumer Housing Rights

On November 18, 2000, the Ninth Standing Committee of the Fujian province passed the *Consumer Housing Protection Regulation of the Fujian Province*.<sup>77</sup> This law came into force on January 1, 2001 and was the first local regulation to protect consumer housing rights.<sup>78</sup>

Shortly thereafter, on June 1, 2003, the Supreme People's Court announced its interpretation on contract disputes involving the sale of houses. This interpretation was intended to protect the legitimate interests of consumers in real estate transactions and to regulate real estate markets.<sup>79</sup> The judicial interpretation clearly identified the applicable law on real estate contract disputes. This interpretation covered, among other things, renovations, the validity of sales contracts, the advertisement of commercial home sales, the compensation of resettlement, the delivery of commercial houses, the quality of commercial houses, the exclusive selling rights on commercial houses, and secured loans on real estate. Furthermore, this interpretation permitted buyers to potentially recover punitive damages from a seller who breached the principle of good faith or maliciously damaged the buyer's interests.<sup>80</sup> Additionally, some local consumer protection regulations were amended to provide that double compensation could apply to commercial housing transactions in accordance with the guidance provided in the judicial interpretation.<sup>81</sup>

#### *c. Consumer Protection Legislation in the Online Era*

China's legislative framework for online transactions is another area that has been strengthened since the 1990s. In order to provide consumers with a secure online shopping environment, the State Council and the Ministry of Posts and Telecommunications

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<sup>77</sup> See Guanghui Guo, *supra* note 12, at 88.

<sup>78</sup> *Id.*

<sup>79</sup> Interpretation of the Supreme People's Court on the Relevant Issues Concerning the Application of Law for Trying Cases on Dispute over Contract for the Sale of Commodity Houses (adopted at the 1267th meeting of the Judicial Committee of the Supreme People's Court, Mar. 24, 2003, effective June 1, 2003), translation available at <http://www.lawinfochina.com/display.aspx?lib=law&id=2691> (full version on file with author).

<sup>80</sup> See Tangkun Xie, *On Punitive Damages in the Sale of Commercial Housing* (Aug. 8, 2006), translation available at <http://eng.hi138.com/?i156157>.

<sup>81</sup> See Yang Ding, *supra* note 9, at 89. ("Double compensation" refers to CRIL, Art. 49, which provides that business operators engaging in fraudulent activities when providing goods or services may be liable for two times the costs of the good or service provided.)

promulgated a series of rules and regulations, including: the *Interim Regulations of the People's Republic of China on the Management of International Networking of Computer Information (Amended)*;<sup>82</sup> the *Implementation Rules for Provisional Regulations of the Administration of International Networking of Computer Information in the People's Republic of China*;<sup>83</sup> and the *Measures for Security Protection Administration of the International Networking of Computer Information Networks*.<sup>84</sup>

Adopted on August 28, 2004, the *Electronic Signature Law of the P.R.C.*, the first e-commerce legislation in China, laid the legal foundation for e-commerce.<sup>85</sup> This law has had several effects. First, the law clearly mandated that an electronic signature have the same effect as a handwritten signature or seal.<sup>86</sup> Second, the law stated that electronic documents and written documents have equal validity.<sup>87</sup> Third, the law clearly stated the legal status of electronic authenticating organizations, and it set up systems of market access and authenticating services.<sup>88</sup> Finally, the law stipulated that all parties to an electronic signature assume legal liability when they violate the law.<sup>89</sup>

In 2005, the State Council issued *Several Opinions on Accelerating the Development of E-commerce*.<sup>90</sup> In 2007, the

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<sup>82</sup> Interim Regulations of the People's Republic of China on the Management of International Networking of Computer Information (promulgated by Decree No.195 of the State Council of the People's Republic of China, Feb. 1, 1996), translation available at <http://en.chinacourt.org/public/detail.php?id=3114>.

<sup>83</sup> Implementation Rules for Provisional Regulations of the Administration of International Networking of Computer Information in the People's Republic of China (effective Feb. 13, 1998), translation available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=182415](http://www.wipo.int/wipolex/en/text.jsp?file_id=182415).

<sup>84</sup> Measures for Security Protection Administration of the International Networking of Computer Information Networks (promulgated by Decree No. 33 of the Ministry of Public Security, Dec. 16, 1997, approved by the State Council on Dec. 11, 1997), translation available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=182465](http://www.wipo.int/wipolex/en/text.jsp?file_id=182465).

<sup>85</sup> Electronic Signature Law of the People's Republic of China (promulgated by The Standing Comm. of the Tenth Nat'l People's Cong., Aug. 28, 2004, effective Apr. 1, 2005), translation available at [http://www.china.org.cn/business/2010-01/21/content\\_19281152.htm](http://www.china.org.cn/business/2010-01/21/content_19281152.htm) [hereinafter *Electronic Signature Law*].

<sup>86</sup> *Id.* at art. 3.

<sup>87</sup> *Id.* at art. 7-8.

<sup>88</sup> *Id.* at art. 13-26.

<sup>89</sup> *Id.* at art. 27-33.

<sup>90</sup> Several Opinions of the State Council on Accelerating the Development of E-commerce (issued Jan. 8, 2005), translation available at <http://www.chinasourcingguide.com/?q=en/node/10000>.

Ministry of Commerce issued *Opinions on Promoting the Development of the Electronic Commerce*,<sup>91</sup> and, in 2009, it issued *Opinions on Accelerating the Development of E-commerce in the Circulation Realm*.<sup>92</sup> These rules established the government's dedication to and support of e-commerce. The Ministry of Commerce also introduced the *E-business Model and the Internet Trade Service Standard*.<sup>93</sup> The Ministry is now working on the formulation of the *Commodity Distribution Service Standard in Network Shopping* to further improve the management level of enterprises, to optimize the online trading market environment, and to strengthen the confidence of consumers through the industry standard.<sup>94</sup> Although these norms did not have legal enforcement, they were significant to promote on-line transactions and to avoid transaction risk.

In 2010, the State Administration of Industry and Commerce promulgated the *Interim Measures for the Trading of Commodities and Services Through the Internet* in order to regulate electronic commerce markets and protect consumer rights and interests.<sup>95</sup> This was the first administrative regulation that regulated online sales and related services. It had 6 chapters, 44 articles and officially took effect on July 1, 2010.<sup>96</sup> This administrative measure covered all aspects of online sales, including but not limited to: market access, subject, commodity access, trading information, trading contracts, trading credentials, trading competition, the registered trademark, and business name rights. Further, it regulated standards of behavior for online sales and related services, and the obligations and responsibilities of the provider of the online platform.

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<sup>91</sup> *Opinions on Promoting the Development of the Electronic Commerce* (2007), available at <http://eb.mofcom.gov.cn/aarticle/ab/c/200809/20080905807160.html> (translation on file with author).

<sup>92</sup> *Opinions on Accelerating the Development of E-commerce in Circulation Realm* (2009), available at <http://wenku.baidu.com/view/2b1388eb19e8b8f67c1cb990.html> (translation on file with author).

<sup>93</sup> *E-business Model and the Internet Trade Service Standard*, Ministry of Commerce, translation available at <http://english.mofcom.gov.cn/static/column/policyrelease/domesticpolicy.html/1>.

<sup>94</sup> See Junke Xu, *Development of ODR in China*, 42 UCC L. J. 265, 279 (2010).

<sup>95</sup> *Interim Measures for the Trading of Commodities and Services Through the Internet* (adopted at the executive meeting of the State Administration for Industry and Commerce of the People's Republic of China, and came into force on July 1, 2010), translation available at <http://www.lawinfochina.com/display.aspx?lib=law&id=8133> (full version on file with author) [hereinafter *Interim Measures for the Internet*].

<sup>96</sup> *Id.*

## II. THE CONTENTS AND FEATURES OF CONSUMER PROTECTION LEGISLATION IN CHINA

Consumer protection law in China is clearly not one-dimensional. Instead, China has developed a web of consumer protection related regulations and devices including regulations on commodity production, quality supervision, quarantine, market management, and advertising management. The CRIL serves as the core of this unique and complex legal system to protect the consumer.<sup>97</sup> The *Product Quality Law of the P.R.C.*, the *Food Safety Law of the P.R.C.*, the *Medicine Administration Law of the P.R.C.*, the *Anti-Unfair Competition Law of the P.R.C.*, the *Advertisement Law of the P.R.C.*, the *Trademark Law of the P.R.C.*, the *Anti-monopoly Law of the P.R.C.*, the *Tort Liability Law of the P.R.C.*, and administration regulations and local rules all support the CRIL.<sup>98</sup> All of the above constitute the legislative system of consumer protection in China.<sup>99</sup>

### *a. Legal Protection of Consumer Rights in China*

#### 1. The Contents of the CRIL

The CRIL regulates consumer rights by way of 9 articles in Chapter II, including the right of inviolability of personal and property safety, the right to obtain true information, the right of free choice of goods and services, the right of fair deals, the right to demand compensation, the right to form public organizations, the right to acquire knowledge, the right to be respected, and the right of supervision.<sup>100</sup>

The first right stipulates that the consumer's personal and property safety cannot be harmed when he purchases and uses goods or accepts services,<sup>101</sup> and the right to require the operator to provide the good or service according to the requirement of ensuring personal and property safety.<sup>102</sup>

Second, under the CRIL, the consumer enjoys the right to learn about the real situation of the good or service.<sup>103</sup> In light of the great variety of products and services, the consumer has the right to

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<sup>97</sup> See Guanghai Guo, *supra* note 12, at 87.

<sup>98</sup> *Id.* at 87.

<sup>99</sup> *Id.*

<sup>100</sup> *CRIL*, *supra* note 39, at art. 7-15.

<sup>101</sup> *Id.* at art. 7.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at art. 8.

require the operator to provide the price, origin, producer, uses, performance, size, grade, main ingredients, production date, expiration date, certificate of inspection, operation instructions, post-sale service and service content, specifications, costs and other relevant information.<sup>104</sup>

Next, the consumer enjoys the right to choose goods or services independently, the right to choose the operator and the range of goods or the mode of services, to decide to buy or reject any kind of goods, and accept or refuse any services.<sup>105</sup> The consumer also has the right to compare, identify and independently select when he or she purchases goods or accepts services.<sup>106</sup>

Under the fourth right, the consumer may obtain fair trade conditions, like quality assurance and reasonable pricing, and the ability to refuse the compulsory transaction of business when he bought the goods and accepted the services.<sup>107</sup>

The fifth right encapsulates a consumer's right to obtain damages by law and regulation when his person and property are harmed in the process of purchasing goods or receiving services.<sup>108</sup>

The sixth right then provides that the consumer enjoys the right to establish social groups by law for the purpose of safeguarding his legitimate rights and interests.<sup>109</sup>

The seventh right provides the consumer the right to access relevant knowledge about consumption and protecting rights.<sup>110</sup> Thus, the consumer should strive to master the skills and proper method of use and enhance the awareness of self-protection.

From the eighth right, the consumer enjoys the right to be respected in personal dignity, national customs and traditions when he purchases and uses goods or receives services.<sup>111</sup>

Finally, the ninth right entitles consumers to supervise the work of consumer protection.<sup>112</sup> The consumer has the right to complain against those violating consumer's rights, and to criticize or give suggestions for consumer protection.<sup>113</sup>

The CRIL imposes obligations upon the operator with 10

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at art. 9.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at art. 10.

<sup>108</sup> *Id.* at art. 11.

<sup>109</sup> *Id.* at art. 12.

<sup>110</sup> *Id.* at art. 13.

<sup>111</sup> *Id.* at art. 14.

<sup>112</sup> *Id.* at art. 15.

<sup>113</sup> *Id.*

articles in Chapter III.<sup>114</sup> Those obligations include the following: (1) the operator shall fulfill obligations in accordance with the *Product Quality Law* and other relevant laws and regulations when he provides the consumer with goods or services.<sup>115</sup> If the operator has an agreement with the consumers, which is not in violation of the laws and regulations, they shall fulfill their obligations in accordance with the agreement.<sup>116</sup> (2) The operator shall listen to the consumer's opinions about goods or services and accept the supervision of the consumer.<sup>117</sup> (3) The operator must ensure that the goods or services he provides meet the requirements of personal and property safety.<sup>118</sup> For those goods and services that might jeopardize personal or property safety, the operator must make a true statement and clear warning, indicate the correct method of using the goods or services, and note the preventative measures against such an occurrence.<sup>119</sup> If the operator finds that goods or services have serious defects that would be harmful to the consumer, even if properly used, the operator must immediately report to the relevant authorities, inform the consumer, and take measures to prevent harms from occurring.<sup>120</sup> (4) The operator must provide the consumer with true information on goods or services, and avoid false or misleading propaganda.<sup>121</sup> The operator must provide true and clear answers when the consumer asks him the quality of goods or services and proper usage methods.<sup>122</sup> Goods in a store must have the price marked clearly.<sup>123</sup> (5) The operator must indicate their real names and identity, and if they rent the counter or site, the operator must also indicate their real names and marks.<sup>124</sup> (6) The operator must provide the invoice to the consumer in accordance with the relevant regulations or business practices. If the consumer requested the invoice, the operators must issue it.<sup>125</sup> (7) The operator must guarantee the quality, function, usage and validity period that goods or services should possess under normal operation and acceptance, except if the consumer was already aware of the defect of the goods or services before he purchased the

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<sup>114</sup> *Id.* at arts. 16-25.

<sup>115</sup> *Id.* at art. 16.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at art. 17.

<sup>118</sup> *Id.* at art. 18.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at art. 19.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at art. 20.

<sup>125</sup> *Id.* at art. 21.

goods or received the services.<sup>126</sup> The operator must guarantee that the actual quality of the goods or services has the same quality as he states in the advertisements, product descriptions, or samples.<sup>127</sup> (8) The operator must undertake repair, replacement, return or other responsibilities in accordance with the state regulations or the agreement with the consumer, and must not delay deliberately or refuse unreasonably.<sup>128</sup> (9) The operator must not impose unfair and unreasonable rules on the consumer, and cannot reduce or escape its civil liability for infringing the consumer rights and interests by the standard contracts, notices, announcements, and shop notices. If the standard contracts, notices, announcements, and shop notices contain the contents in the preceding paragraph, they are invalid.<sup>129</sup> (10) The operator must not insult or defame the consumer, must not search the body of the consumer or the goods he carried, and must not violate personal freedom of the consumer.<sup>130</sup>

Chapter IV of the CRIL establishes the duties of government towards the consumer by providing that the people's government at various levels should strengthen their leadership in organization, coordination and supervision of the work of the relevant administrative departments for the protection of the legal rights and interests of consumers.<sup>131</sup>

Chapter V of the CRIL establishes duties and functions of the consumer organizations; it stipulates that consumer associations and other consumer organizations must carry out social supervision of commodities and services and protect the legal rights and interests of consumers.<sup>132</sup>

Chapter VI of the CRIL generally addresses the resolution of disputes. Consumers may resolve disputes with business operators over their rights and interests in the following ways: (1) negotiate a settlement with the business operator; (2) request a consumer association to mediate; (3) complain to the relevant administrative department; (4) apply to an arbitral body for arbitration in accordance with the arbitration agreement reached with the business operator; or (5) institute legal proceedings in a People's Court.<sup>133</sup>

Chapter VII of the CRIL regulates legal responsibilities and

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<sup>126</sup> *Id.* at art. 22.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at art. 23.

<sup>129</sup> *Id.* at art. 24.

<sup>130</sup> *Id.* at art. 25.

<sup>131</sup> *Id.* at arts. 26-30.

<sup>132</sup> *Id.* at arts. 31-33.

<sup>133</sup> *Id.* at arts. 34-39.

enumerates different civil liabilities.<sup>134</sup> Article 49 specifically states that an operator that practices fraud in providing a commodity or a service must, at the request of the consumer, increase the compensation for losses incurred by such consumer.<sup>135</sup> The amount of the increase in compensation is set forth as the price of the commodity purchased or the fee for the service received by the consumer.<sup>136</sup> This is called “double compensation.”

## 2. The Protection of Consumer Rights Through the *Contract Law of the P.R.C.*

The *Contract Law of the P.R.C.* protects consumer rights mainly in the following areas: commercial advertisements, standard term contracts, damages, exemption clauses, and mandatory contract obligations.

### 2.1 Commercial Advertisements

If the content of a commercial advertisement fulfills the legal requirement of an offer, it will be held to be an offer.<sup>137</sup> If the operator does not fulfill obligations following the contents of an advertisement, the court might hold that the operator’s conduct constituted a breach of contract.<sup>138</sup> If the operator’s commercial advertising is fraudulent, the court might hold that the operator’s conduct constituted fraud under contract law, and therefore, the consumer could apply for revocation of the contract.<sup>139</sup>

### 2.2 Standard Terms

Standard terms are clauses that one party prepares in advance for general and repeated use, and which are not negotiated with the other party when the contract is concluded. If a party provides a form contract, the party supplying the contract must follow the principle of fairness in rights and obligations between the parties.<sup>140</sup> The party supplying the form contract must take reasonable steps to draw the other party’s attention to the terms that limit or exclude the liabilities

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<sup>134</sup> *Id.* at arts. 40-53.

<sup>135</sup> *Id.* at art. 49.

<sup>136</sup> *Id.*

<sup>137</sup> *Contract Law, supra* note 45, at art. 15(2).

<sup>138</sup> *Id.* at art. 107.

<sup>139</sup> *Id.* at art. 54.

<sup>140</sup> *Id.* at art. 39.

of the party supplying the form contract.<sup>141</sup> Further, the party supplying the form contract must explain the terms according to the requirements of the other party.<sup>142</sup> The standard terms shall be invalid if the party supplying these terms exempts itself from its liabilities, increases the other party's liabilities, and deprives the material rights of the other party.<sup>143</sup> If the parties have different understandings of the terms, they must be interpreted in accordance with the common understanding shared by the two parties.<sup>144</sup> If there are two or more interpretations of the standard terms, an interpretation unfavorable to the party supplying the standard terms shall be preferred.<sup>145</sup> If the standard terms and non-standard terms are inconsistent, the non-standard terms prevail.<sup>146</sup>

### 2.3 Damages

The damages provisions of the *Contract Law* also reflect a movement toward protecting the consumer.<sup>147</sup> The provisions provide that if a party fails to fulfill the contractual obligations according to the agreement, the breaching party must fulfill the obligations or take remedial measures. After that, if the other party has other losses, the breaching party must compensate the other party for the damages sustained as a result of the breach.<sup>148</sup>

### 2.4 Exemption Clauses

In modern society, especially in a modern market economy, exemption clauses have been used more widely.<sup>149</sup> Exemption clauses are contract terms that limit parties' future responsibilities. The *Contract Law of the P.R.C.* made special restrictions to the exemption clause. First, an exemption clause is invalid if it exempts a party from responsibility for personal injury.<sup>150</sup> Second, an exemption clause is invalid if it exempts a party from responsibility for property

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at art. 40.

<sup>144</sup> *Id.* at art. 41.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at arts. 39-41.

<sup>147</sup> *Id.* at art. 112.

<sup>148</sup> *Id.*

<sup>149</sup> See Qiongfang Yang, *Blatantly Unfair of Standard Terms in Consumer Services*, 7 EC. RES. GUIDE 98, 98 (2009), translation available at <http://eng.hi138.com/?i159311>.

<sup>150</sup> *Contract Law*, *supra* note 45, at art. 53(1).

damages because of intentional conduct or gross negligence.<sup>151</sup>

## 2.5 Mandatory Contract Obligations

Forced contract obligations, also known as mandatory contract obligations, refer to individuals or enterprises that are liable to contract with the other.<sup>152</sup> For example, under Article 289 of the *Contract Law of the P.R.C.*, if a carrier engages in public transportation he cannot refuse the reasonable transport requirements of the passenger and shipper.<sup>153</sup> In modern society, mandatory contractual obligations such as these are necessary in light of consumers' limited bargaining power relative to that of large companies.<sup>154</sup> If mandatory provisions did not exist and large companies were permitted complete discretion to mandate the object of contract, it would be detrimental to consumers' rights.

## 3. The Protection of Consumer Rights in the Field of Tort Law

### 3.1 The *Product Quality Law of the P.R.C.*

The *Product Quality Law of the P.R.C.* protects consumer rights by providing a complaint mechanism for consumers, by holding producers and sellers liable for defective products, and by providing consumers the ability to receive damages for defective products.

First, the *Product Quality Law* clearly provides the consumer with social supervision rights.<sup>155</sup> Article 22 stipulates that the consumer has the right to seek advice from both producers and sellers on quality problems with products and to complain to the supervisory departments for product quality and the administrative departments for industry and commerce.<sup>156</sup> The departments who accept the complaint will be held responsible for resolving the complaint.<sup>157</sup> Article 23 states that social organizations for protecting consumers may refer product quality problems to the relevant department, and

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<sup>151</sup> *Id.* at art. 53.

<sup>152</sup> See Ming Yi, *With Regard to the Principle of Freedom of Contract Restrictions on the Grounds on the Thinking* (July 10, 2008), translation available at <http://eng.hi138.com/?i137345>.

<sup>153</sup> *Contract Law*, *supra* note 45, at art. 289.

<sup>154</sup> See Xianbin Luo, *Also on the Freedom of Contract and Standard Terms*, 1 ENTERPRISE ECON. 190, 192 (2008), translation available at <http://eng.hi138.com/?i148672>.

<sup>155</sup> *Product Quality Law*, *supra* note 32, at art. 22.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

may also support consumers in bringing suits to the people's court for damages.<sup>158</sup>

Second, the *Product Quality Law of the P.R.C.* stipulates that the producer shall be responsible for the quality of the product that a consumer purchases.<sup>159</sup> The product must not pose a threat to personal or property safety.<sup>160</sup> For example, if there are national or industry standards of safeguarding human health or personal and property safety, the product must comply with these standards.<sup>161</sup> Additionally, a product must perform to the standard required, except for circumstances where the producer explains product defects in advance.<sup>162</sup> Further, the product must meet the standard marked on the product or its packaging, and must meet the quality standards demonstrated by the product descriptions or samples.<sup>163</sup> Also, the identification on the product or its packaging must be true.<sup>164</sup>

Third, the *Product Quality Law of the P.R.C.* provides that the seller will also be responsible for the quality of products that a consumer purchases.<sup>165</sup> In order to take responsibility and ensure the quality of a product, the seller must establish and implement a system of inspection and acceptance.<sup>166</sup> The seller must check the product's quality certificates and other identification.<sup>167</sup> The seller shall not sell adulterated, shoddy, or unqualified products.<sup>168</sup> Indeed, it is the goal of the law to ensure and maintain the quality of a sold product.<sup>169</sup> Under the law, the seller is prohibited from selling a product that the government explicitly forbids, nor may a seller forge the origin or falsely use another person's name or address in connection with selling products.<sup>170</sup> The seller must not falsely or fraudulently use certified quality marks.<sup>171</sup>

Fourth, the *Product Quality Law of the P.R.C.* provides that the consumer has the right to demand compensation for damages.<sup>172</sup> The seller will be held responsible for repair, replacement, or return

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<sup>158</sup> *Id.* at art. 23.

<sup>159</sup> *Id.* at ch. 3, sec. 1.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at art. 26(1).

<sup>162</sup> *Id.* at art. 26(2).

<sup>163</sup> *Id.* at art. 26(3).

<sup>164</sup> *Id.* at arts. 26-32.

<sup>165</sup> *Id.* at ch. 3, sec. 2.

<sup>166</sup> *Id.* at art. 33.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at arts. 33-39.

<sup>169</sup> *Id.* at arts. 34-39.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at art. 38.

<sup>172</sup> *Id.* at ch. 4.

of the product, and must compensate for losses caused by the product in the following circumstances: (1) the seller did not state in advance that the product did not have the standard of use which the product should have; (2) the product did not meet the standards described on the product or its packaging; or (3) the product did not meet the quality standards demonstrated by the product descriptions or samples.<sup>173</sup> After the seller undertakes the repair, replacement, return or compensation for losses in accordance with these provisions, the seller has the right to recourse against its producers and suppliers if the liability belongs to them.<sup>174</sup> If a product is defective and has caused bodily injury or property damage to others, the victim may seek compensation for damages from either the producer or seller, or both.<sup>175</sup>

In July 2000, the *Product Quality Law of the P.R.C.* was amended to improve and expand the system of product quality certification, the product license system, and the system of product quality supervision, which includes product sampling and recall.<sup>176</sup>

### 3.2 The Tort Law of the P.R.C.

Chapter V of the *Tort Law of the P.R.C.* is devoted to product liability and fully reflects the protection of consumer rights.<sup>177</sup> For example, when a manufacturer causes a product defect, the manufacturer shall assume tort liability.<sup>178</sup> Similarly, when a seller causes a product defect, the seller shall assume the liability.<sup>179</sup> However, a victim of a defective product may require compensation from *either* the manufacturer or the seller of the product.<sup>180</sup> Chapter V does however provide for contribution between the seller and the manufacturer.<sup>181</sup> For example, if one party bears liability for damages that were caused by the other party, the party that assumes liability is entitled to recover from the party that actually caused the defect.<sup>182</sup> However, if the seller cannot identify the manufacturer or supplier of the defective product, the seller shall bear the liability.<sup>183</sup> Chapter V also allows a seller or manufacturer to seek contribution from a

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<sup>173</sup> *Id.* at art. 40.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at art. 43.

<sup>176</sup> *Id.* at arts. 12-16.

<sup>177</sup> *Id.* at ch. 5.

<sup>178</sup> *Id.* at art. 43.

<sup>179</sup> *Id.* at art. 42.

<sup>180</sup> *Id.* at art. 43.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at art. 42.

transporter or other third party if the third party caused the defect and the seller or manufacturer paid the liability.<sup>184</sup>

If the product defect endangers the personal or property safety of another, the injured party is entitled to request the producer or the seller to remove the obstruction or eliminate the dangers.<sup>185</sup> If the defect is not discovered until after the product has entered circulation, the producer and seller must promptly take remedial measures like issuing a warning or a recall.<sup>186</sup> If the producer or seller do not take timely remedial action, or the remedial measures are proven ineffective, that party may be held liable for product liability.<sup>187</sup> If the producer and seller knew about the product defect but still produced and sold the product, and doing so results in death or serious bodily harm, the injured party has the right to request appropriate punitive damages.<sup>188</sup>

In addition, Article 20 of the *Tort Law* also references consumer protection.<sup>189</sup> Article 20 provides that if the infringement of a person's rights and interests also causes property damage, the injured party can seek compensation according to the losses suffered.<sup>190</sup> If it is difficult to determine the actual loss of the injured party, the injured party can seek compensation according to the gain of the tortfeasor.<sup>191</sup> If it is difficult to determine the tortfeasor's gain, and the parties cannot agree on this amount, the People's Court can determine the amount of compensation according to the specific situation.<sup>192</sup>

#### 4. The Protection of Consumer Rights in Other Fields of Law

##### 4.1 The *Food Safety Law of the P.R.C.*

The *Food Safety Law of the P.R.C.*<sup>193</sup> is a law specifically intended to protect and provide for the safe consumption of food by

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<sup>184</sup> *Id.* at art. 44.

<sup>185</sup> *Id.* at art. 45.

<sup>186</sup> *Id.* at art. 46.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at art. 47.

<sup>189</sup> *Id.* at art. 20.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> Food Safety Law of People's Republic of China (adopted at the 7th Meeting of the Standing Committee of the Eleventh National People's Congress, Feb. 28, 2009; replaced the Food Hygiene Law of 1995), translation available at [http://www.procedurallaw.cn/english/law/200903/t20090320\\_196425.html](http://www.procedurallaw.cn/english/law/200903/t20090320_196425.html) [hereinafter *Food Safety Law*].

consumers. Article 52 regulates market organizers, and states that they have the duty to supervise the market.<sup>194</sup> If the market organizer is in violation of such obligations, they will bear the corresponding civil liability to the consumer.<sup>195</sup> Article 52, which sprung from the legacy and innovation of CRIL Article 38, provides for joint liability of centralized market organizers and operators.<sup>196</sup> The CRIL does not provide accountability of market organizers to consumers.

Article 96 regulates punitive damages,<sup>197</sup> which is not only a continuation of the CRIL but also an improvement to it. The innovation is expressed in several ways: first, the food producer or seller may incur punitive damages ranging from two times up to ten times the cost of the food; second, the food producer or seller is subject to punitive damages, notwithstanding a lack of fraudulent conduct on their behalf.<sup>198</sup> Additionally, Article 96 of the *Food Safety Law* provides that if the product does not meet health standards, the consumer can request ten times compensation, whereas Article 49 of the CRIL provides that producers and sellers are subject to punitive damages based upon fraudulent conduct.<sup>199</sup>

#### 4.2 The Advertisement Law of the P.R.C.

Articles 4 and 5 of the *Advertisement Law of the P.R.C.* relate to the responsibility of the advertising operator.<sup>200</sup> If there is false information in an advertisement, the advertiser will be subject to joint and several liability. If social groups and other organizations recommend this product or service, they will also be subject to civil liability.<sup>201</sup>

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<sup>194</sup> *Id.* at art. 52.

<sup>195</sup> *Id.*

<sup>196</sup> *CRIL*, *supra* note 39, at art. 38.

<sup>197</sup> *Food Safety Law*, *supra* note 193, at art. 52.

<sup>198</sup> *Id.*

<sup>199</sup> See Junhai Liu, *Will Raise the Fine From One to Ten When the Consumers Exercise the Right to Claim a Penalty* (June 15, 2009), translation available at <http://www.sourcejuice.com/1181646/2009/06/15/right-substantiate-claims-consumers-leave-fine-point-leave-fine> [hereinafter Liu, *Will Raise the Fine*].

<sup>200</sup> *Advertisement Law*, *supra* note 44, at art. 4 (“An advertisement shall not contain any false information, and shall not cheat or mislead consumers”); *Advertisement Law*, *supra* note 44, at art. 5 (“Advertisers, advertising agents and advertisement publishers shall, when engaged in advertising activities, abide by laws and administrative rules and regulations, adhere to the principles of fairness, honesty and credibility”).

<sup>201</sup> *Id.* at art. 38.

#### 4.3 The *Anti-Monopoly Law of the P.R.C.*

On August 30, 2008, the Twenty-Ninth Session of the NPC Standing Committee passed the *Anti-Monopoly Law of the P.R.C.*<sup>202</sup> Some commodities and services that relate to the lifeline of the national economy or national security are operated by State-owned businesses. The *Anti-Monopoly Law* expressly provides that the State shall protect the lawful business operations conducted by these business operators.<sup>203</sup> In doing so, the State shall also supervise and regulate these operations and control their prices, so as to protect consumer interests and facilitate technological progress.<sup>204</sup>

#### 4.4 The *Interim Measures for the Trading of Commodities and Services Through the Internet*

The *Interim Measures for the Trading of Commodities and Services Through the Internet* (the “*Interim Measures*”) were enacted with the goal of protecting consumers’ interests in e-commerce.<sup>205</sup> Due to sellers’ virtual identity in e-commerce transactions, the *Interim Measures* provide for consumer protection by requiring the true identity of the online retailer be known, by outlining the obligations of e-commerce retailers, and by establishing a consumer complaint system.<sup>206</sup>

In order to protect consumer rights and interests, the *Interim Measures* provide two rules to ensure that consumers can verify the true identity of e-commerce retailers. The first rule ensures that an online retailer registers its true identity.<sup>207</sup> This rule requires that e-commerce retailers who register with the government as an online retailer must publicize their business license information in a notable position on the homepage or webpage used to engage in commercial activities.<sup>208</sup> Second, operators that provide platform services for online trade shall examine and register the true identities of natural persons who are not qualified for commercial registration.<sup>209</sup> The platform operator should review the natural person’s true identity information and registration, and then set up a registration file, check and update the registration file regularly, issue legitimate tags, and

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<sup>202</sup> See *Anti-Monopoly Law*, *supra* note 52.

<sup>203</sup> *Id.* at art. 7.

<sup>204</sup> *Id.*

<sup>205</sup> See *Interim Measures for the Internet*, *supra* note 95, at art. 1.

<sup>206</sup> *Id.* at arts. 10-31.

<sup>207</sup> *Id.* at art. 10.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at art. 20.

add it in its website homepage.<sup>210</sup>

Article 12 of the *Interim Measures* stipulates that e-commerce retailers shall not infringe the legitimate interests of consumers, and shall provide the goods and services in accordance with the CRIL, the *Product Quality Law* and other laws, rules, and regulations.<sup>211</sup>

Regarding internet sales contracts, Article 13 stipulates that when an online retailer provides consumers with goods or services, it must disclose, in advance, the name, type, quantity, quality, price freight, distribution methods, payment methods, methods of return and replacement, and other major information.<sup>212</sup> Further, the seller must take security measures to ensure the transaction is safe and reliable and it must provide goods or services in accordance with the agreement.<sup>213</sup> If an online retailer provides an electronic form contract, it must arrange rights and obligations of parties in accordance with the principle of fairness, use reasonable and significant ways to draw the attention of the consumer to the significant terms of the consumer's rights, and explain the form contract in accordance with the requirement of the consumer.<sup>214</sup> The online retailer cannot exempt itself from responsibility to perform under the contract or exclude or restrain the consumer's major rights by using electronic standard terms.<sup>215</sup>

Article 15 relates to online purchase receipts, and stipulates that online retailers must comply with the relevant regulation or business practice when issuing receipts.<sup>216</sup> With the consent of the consumer, the receipt and voucher can be issued in electronic form.<sup>217</sup> The electronic receipt and voucher can be used as a basis for dealing with consumer complaints.<sup>218</sup>

### *b. The Characteristics of Consumer Protection Legislation in China*

#### 1. A Coordinated Approach, Rather than Single, Comprehensive Legislation<sup>219</sup>

The CRIL is basic legislation that safeguards the legitimate

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<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at art. 12.

<sup>212</sup> *Id.* at art. 13.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at art. 15.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> See Ping Jiang, *supra* note 10.

rights and interests of consumers, but it only covers basic principles of consumer protection law and addresses only the most important questions of consumer protection. The CRIL does not contain implementation details that would ordinarily be involved in specific commodity legislation, like legislation pertaining to real estate or education.<sup>220</sup> Because of this, China has used the CRIL simply as its core and has coordinated among multiple departments, consumer groups, and local legislation to deliver a comprehensive approach to consumer protection.

Consumer rights are not a single right but a bundle of rights.<sup>221</sup> There are nine consumer rights listed by the CRIL: right of security, right of information, right of choice, right of fair trade, right to claim damages, right of association, right of education, right of being respected, right of supervision. Consumers also have other legal rights, such as the right of privacy, regret, credit, reputation, demonstration, freedom of expression and so on.<sup>222</sup> Consumer groups further expand protection to areas like telecommunications, Internet, finance, insurance, legal, medical, transportation, education, entertainment, and tourism.<sup>223</sup>

Corresponding to the consumer rights are the obligations of operators. The statutory obligations of operators should not be limited to the ten statutory obligations stipulated by the CRIL. Hence, many provisions in other laws expand the obligations of the operator, and thus solidify consumer protection. For example, the *Contract Law* requires that business operators take on obligations before contracting, that they accept fault liability, and that they assume obligations after the contract.<sup>224</sup>

As previously stated, because the CRIL did not cover all areas of consumer protection law, other specialized laws and administrative regulations were enacted to support the CRIL and to better protect the interests of consumers. Thus, in addition to the CRIL, the following laws were enacted to further expand the scope of consumer protection law: the *Product Quality Law* stipulates that the producer and seller shall be responsible for the quality of the product that a consumer purchases; the *Food Safety Law* and the *Medicine Administration Law* are special laws intended to protect and provide for the safe consumption of food and medicine by consumers; the *Advertisement Law* relates to the responsibility of the advertising operator; the *Tort Law* provides that if the infringement of a person's rights and

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<sup>220</sup> See Yang Ding, *supra* note 9, at 89.

<sup>221</sup> See Yuwen Qian, *supra* note 2, at 82.

<sup>222</sup> *Id.*

<sup>223</sup> See Jianming Yu, *supra* note 1.

<sup>224</sup> *Contract Law*, *supra* note 44, at arts. 42, 92.

interests also causes property damage, the injured party can seek compensation according to losses suffered; the *Anti-monopoly Law* establishes that the government shall supervise and control the monopoly business operations and the prices of commodities and services provided by these business operators, so as to protect the consumer interests; the *Electronic Signature Law* laid the legal foundation for e-commerce.

Simultaneously with many of these laws, various administrative regulations were issued in order to facilitate the laws' implementation. For example, the *Provision on Punishment to the Behavior of Cheating Consumers* strengthened penalties for consumer fraud; the *Interim Provision on Administration of Industry and Commerce Accepting Consumer Complaints* and the *Implement Provision on Administration Institution of Industry and Commerce Processing Consumer Complaints* cleared the channels of legal remedies for consumers; *Some Regulations on Prohibiting the Unfair Competition Behavior of Counterfeiting Names, the Packaging, Decoration of Well-known Commodity* and *Some Provisions on Prohibiting the Unfair Competition Behavior of Sales Activities with Prizes* all governed unfair competition that might bring harm to consumers; and the *Management Provision on Leasing the Counter Space for Operating* and the *Management Provision on Commodity Sales Exhibition* provided for consumer protection in various ways.

The local rules of the province, autonomous regions and the municipality also play a supporting role. Data from the China Consumer Association website showed there were 193 national laws and regulations, 177 local rules and regulations, and 37 local activist provisions.<sup>225</sup> These laws and regulations are related to all aspects of consumer life, and they form a relatively complete consumer protection system.<sup>226</sup>

## 2. Local Legislation Plays an Important Role

As mentioned previously, another major feature of consumer protection law in China is the role of local legislation.<sup>227</sup> Consumer protection began at city and province levels in the 1980s.<sup>228</sup> In fact, Fujian Province issued China's first regulation on consumer protection, known as *The Fujian Province Rule of Consumer Rights and Interests Protection*, which was issued on September 4, 1987.<sup>229</sup>

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<sup>225</sup> See Guanghui Guo, *supra* note 12, at 87.

<sup>226</sup> See Yang Ding, *supra* note 9, at 88.

<sup>227</sup> See Mary Ip, *supra* note 31, at 113.

<sup>228</sup> *Id.*

<sup>229</sup> See Guanghui Guo, *supra* note 12, at 87.

For the first time, the regulation defined what rights consumers enjoyed when purchasing goods or receiving services.<sup>230</sup> Shortly thereafter, some local governments, such as Guangdong, Hubei also released similar local regulations.<sup>231</sup> Before the CRIL was officially released on October 31, 1993, there were already 27 provinces, autonomous regions, and municipalities issuing rules on consumer protection all over the country.<sup>232</sup>

Local regulations are very flexible, so they have the potential advantage of being better able to meet local needs.<sup>233</sup> Moreover, consumers' rights rules began with local regulations, and then were promulgated into national legislation.<sup>234</sup> Hence, the local regulations improved the national legislation.<sup>235</sup> Some examples are:

First, in 1998, the Fujian Province passed *Several Provisions to Protect the Interests of the Farmers to Purchase Agricultural Means of Production*, and became the first farmer consumer-targeted local regulation.<sup>236</sup> Second, the Guangdong Province determined the compensation for moral damage to consumers.<sup>237</sup> On August 5, 1999, the Guangdong Province Standing Committee of the People's Congress passed *Guangdong Province's Provision on Implementation of Consumer Rights and Interests Protection Law of the P.R.C.*<sup>238</sup> It explicitly stated that the standard of moral damage compensation was to be at least RMB 50,000 Yuan.<sup>239</sup> Third, in 2000, Fujian Province's *Commodity Housing Consumer Protection Regulations* became the first special regulations related to commercial housing purchases.<sup>240</sup> Fourth, Zhejiang Province, in 2001, extended consumer protection to patients and the Three Guarantees towards real estate.<sup>241</sup> Fifth, *Shanghai Consumer Protection Regulation*, passed in October 2002, provided that relevant administrative departments must require the operator to suspend selling any good or service that has serious defects and could cause harm to the consumer's person and/or property, and must take measures to recall the goods sold.<sup>242</sup> Shanghai established the first

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<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 88.

<sup>233</sup> See Mary Ip, *supra* note 31, at 113.

<sup>234</sup> See Yuwen Qian, *supra* note 2, at 79.

<sup>235</sup> *Id.*

<sup>236</sup> See Guanghui Guo, *supra* note 12, at 89.

<sup>237</sup> See *Guangdong's Provision on CRIL*, *supra* note 72.

<sup>238</sup> *Id.*

<sup>239</sup> See Conglie Wang, *supra* note 73, at 107.

<sup>240</sup> See Guanghui Guo, *supra* note 12, at 89.

<sup>241</sup> *Id.*

<sup>242</sup> See Yang Ding, *supra* note 9, at 88.

product recall system.<sup>243</sup> Sixth, in 2003, Xinjiang passed the *Implementation of Consumer Protection Law Approach*, which applies the double compensation provision of the CRIL to real estate fraud.<sup>244</sup> Seventh, on February 1, 2003, the *Electronic Transaction Regulation of Guangdong Province*, China's first e-commerce local legislation, was formally implemented.<sup>245</sup> Eighth, in 2004, the Anhui Province passed the Rule of Consumer Rights and Interests Protection, which provided the regret right of consumers.<sup>246</sup> Finally, in 2008, Beijing Industry and Commerce Bureau issued *Opinions on the Implementation of Regulations of Beijing Municipality on Promotion of Informatization*<sup>247</sup> and *Enhancement Supervision and Management of E-business*.<sup>248</sup> This was the first local regulation on monitoring online retailers in China.

These examples demonstrate that local regulations play an important role in China. They further supplement and improve the legal system that protects Chinese consumers' rights and interests.<sup>249</sup>

### III. IMPROVEMENT OF CONSUMER PROTECTION LEGISLATION IN CHINA

When China promulgated the CRIL in 1993, China was transitioning from a planned economy to a market economy.<sup>250</sup> The CRIL was the first instrument that comprehensively confirmed consumer rights in the law.<sup>251</sup> It was of vital significance to maintain social economic order in the market economy, but China's consumer protection system still needs further improvement, and it faces new questions that continue to appear with the deepening of reform and development of the market economy.<sup>252</sup>

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<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> Electronic Transaction Regulation of Guangdong Province (adopted at the 38th meeting of the Standing Committee of the Ninth People's Congress of Guangdong Province on Dec. 6, 2002, Feb. 1, 2003), *translation available at* <http://www.lawinfochina.com/display.aspx?lib=law&id=2614> (full version on file with author).

<sup>246</sup> *Id.*

<sup>247</sup> Regulations of Beijing Municipality on Promotion of Informatization (Sept. 14, 2007), *translation available at* <http://lexiscn.com.cn/law/regulations-of-beijing-municipality-on-promotion-of-informatization.html?eng=0> (full version on file with author).

<sup>248</sup> *Id.* at art. 2.

<sup>249</sup> See Jiakai Teng, *supra* note 41.

<sup>250</sup> See Guanghui Guo, *supra* note 12, at 87.

<sup>251</sup> See Yang Ding, *supra* note 9, at 88.

<sup>252</sup> See Wei Huang, *supra* note 50; see also Xiaopo Wang, *supra* note 7, at 36.

*a. The Deficiency of Consumer Protection Legislation in China*

## 1. The Nature of the CRIL is Unclear in Jurisprudence

The determination of the nature of the legal department decided the CRIL's governing object, scope, and method.<sup>253</sup> Confusion and inconsistency of applicable law in the judicial practice resulted because the nature of the CRIL is not explicit.<sup>254</sup> Today, the CRIL is classified as economic law, but economic law is nothing less than the legal department that regulates civil legal relationships by administrative and macro-control means.<sup>255</sup> The major adjusting object of the CRIL should instead be the relationship between the consumer and the operator. It should explain the mutual relationship of the consumer and the operator; however, the CRIL only stipulates the operator's legal obligation on the foundation of consumer policy, or that consumers' rights have always been concrete provisions of other regulations. Additionally, the purpose of the CRIL was distorted so that it is always considered as "the imperative law", which causes administrative departments to set up conflicting rules and regulations.<sup>256</sup> These deficiencies led to an inconsistent judicial understanding of whether to directly apply the CRIL to the concerned consumer's contract lawsuit.<sup>257</sup>

## 2. A Dispersed and Fragmented Legal System

The various laws or special regulations outside of the CRIL have their own adjustment scope, so it can easily lead to duplication of legislation and a conflict between the laws.<sup>258</sup> This makes it difficult to fully protect consumer rights, and makes it nearly impossible to achieve a marked improvement and true development of the CRIL.<sup>259</sup>

For example, the CRIL and the *Product Quality Law* both provide liability for product quality issues, but they do so in an inconsistent manner.<sup>260</sup> The law distinguishes between a consumer

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<sup>253</sup> See Ping Li, *How to Understand the Relationship Between Economic Law and Related Laws*, 2 J. OF GUIZHOU POLICE OFFICER VOCATIONAL C. 10, 10 (2005), translation available at <http://eng.hi138.com/?i157786>.

<sup>254</sup> See Yang Ding, *supra* note 9, at 89.

<sup>255</sup> See Ping Li, *supra* note 253, at 11.

<sup>256</sup> See Jing Xu, *On the Improvement of Consumer Rights Protection System* (Nov. 11, 2006), translation available at <http://eng.hi138.com/?i20794>.

<sup>257</sup> See Conglie Wang, *supra* note 73, at 107.

<sup>258</sup> See Jing Xu, *supra* note 256.

<sup>259</sup> *Id.*

<sup>260</sup> See, e.g., *CRIL*, *supra* note 39, at art. 35; *Product Quality Law*, *supra* note

who is considered a “purchaser” of the goods and a consumer that is considered a “user” of the goods.<sup>261</sup> Under the CRIL, both a “user” and “purchaser” of a product may sue and obtain relief from a seller.<sup>262</sup> However, according to Article 40 of the *Product Quality Law*, only the “purchasing” consumer would be permitted to seek relief against the seller for a product’s lack of conformity with the applicable consumer protection laws.<sup>263</sup> This difference causes a conflict between the CRIL and the *Product Quality Law* in that if the consumer is only the “user” of goods, but not the actual “purchaser,” the consumer could seek relief directly from the seller of the goods, according to the CRIL,<sup>264</sup> but could not directly sue the seller under the *Product Quality Law*.<sup>265</sup>

### 3. The Shortcomings of Specific Legal Regulations

Although the legal system of consumer protection has improved in China, the legal system is still behind certain other countries that have nearly perfected their consumer protection system.<sup>266</sup> Some of China’s consumer protection deficiencies are apparent in the following examples:

#### 3.1 The Class Litigation System

Class action lawsuits can be generally described as a lawsuit in which one or multiple parties sue on behalf of many others who have common interests and allege an injury based on a common set of facts and issues. In a class action lawsuit, a judgment covers all persons involved in the litigation.<sup>267</sup> This system was originated in England,<sup>268</sup> and has since been adopted in many countries.<sup>269</sup> A class action lawsuit often helps to avoid the situation where an individual

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32, at art. 40.

<sup>261</sup> See, e.g., *CRIL*, *supra* note 39, at art. 35.

<sup>262</sup> *Id.*

<sup>263</sup> See Gary Zhao, *supra* note 33, at 585.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> See Wei Huang, *supra* note 50.

<sup>267</sup> See Zeyong Wu, *Group Litigation in Germany: “alien” or “blueprint”?* (Dec. 27, 2010), translation available at [http://eng.hi138.com/?i276909\\_Group\\_Litigation\\_in\\_Germany:\\_alien\\_or\\_blueprint?](http://eng.hi138.com/?i276909_Group_Litigation_in_Germany:_alien_or_blueprint?).

<sup>268</sup> See Wei-jian Tang & Shu-guang Zhang, *On the Establishing of the Consumers’ Right Litigation System*, 3 J. OF POL. SCI. & LAW 50, 51 (2008), translation available at [http://eng.hi138.com/?i262611\\_Mechanism\\_of\\_action\\_the\\_establishment\\_of\\_consumer\\_rights](http://eng.hi138.com/?i262611_Mechanism_of_action_the_establishment_of_consumer_rights).

<sup>269</sup> See Zeyong Wu, *supra* note 267.

consumer, with extremely limited means, is unable to continue to pursue a claim against a wealthier defendant and must abandon litigation because of costs. Instead, where group litigation is adopted through the use of a class action lawsuit, the court may inform other victims based on the same ground to register for participation in the collective action.<sup>270</sup> All injured parties would receive the appropriate compensation if they were successful.<sup>271</sup> This system is rarely used in China, so improving it and making it more accessible could save on the cost of litigation, improve the efficiency of the court, and protect consumers more extensively.<sup>272</sup>

### 3.2 The Small Complaints Court

To facilitate consumer complaints, many countries have set up courts that only entertain small claim lawsuits.<sup>273</sup> These courts have played an important role in protecting the interests of the consumer.<sup>274</sup> These small claims courts, also known as “petty complaint tribunals,” have many defining characteristics, like the general subject matter of the complaints, flexible trial principles, simplified proceedings and low-cost proceedings.<sup>275</sup> However, China lacks this type of “small claims” system, which affects many consumers seeking relief. The result is high litigation costs and long proceedings, which deprive consumers of timely compensation and timely protection of their rights.

### 3.3 The Consumer’s Right to Revoke the Contract

A “right to revoke the contract” refers to a consumer’s right to unilaterally rescind the contract within a certain period without assuming liability for breach of contract.<sup>276</sup> Because consumers are likely to buy something out of impulse or temptation, some countries give consumers a “cooling-off period” after contracting.<sup>277</sup> During this period, the consumer can unconditionally revoke the contract.<sup>278</sup>

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<sup>270</sup> See Wei-jian Tang & Shu-guang Zhang, *supra* note 268, at 51.

<sup>271</sup> *Id.*

<sup>272</sup> See, e.g., *id.*

<sup>273</sup> *Id.*

<sup>274</sup> See Wei Huang, *supra* note 50.

<sup>275</sup> See Wei-jian Tang & Shu-guang Zhang, *supra* note 268, at 51.

<sup>276</sup> See Yuwen Qian, *supra* note 2, at 83.

<sup>277</sup> See Wei-jian Tang & Shu-guang Zhang, *supra* note 268, at 51.

<sup>278</sup> See Junhai Liu, *The Right to the Use of Regret Could Not be Abused by Consumers* (June 15, 2009), translation available at <http://www.sourcejuice.com/1181566/2009/06/15/right-use-regret-not-strictly-abuse-consumers/> [hereinafter Liu, *Right to the Use of Regret*].

In the United Kingdom, the *Leasing Sales Act* (1964) provided a 4-day cooling-off period; the *Consumer Credit Act* (1974) expanded this system to all consumer credit contracts, and provided a 6-day cooling-off period.<sup>279</sup> In some U.S. states, the cooling-off period for door-to-door sales is usually 3 days.<sup>280</sup> Japan, France, Taiwan and other countries and regions also have a right-to-revoke system.<sup>281</sup> However, China lacks this type of system, which makes returning goods very difficult for consumers who change their mind. This is another area of law where China could enhance their consumer protection legislation.

### 3.4 Online Consumer Protection

At present, there is no law on online consumer protection in China.<sup>282</sup> Although the Ministry of Commerce has issued regulations on online sales, its provisions are only aimed at the operators and the providers of network platforms.<sup>283</sup> Online consumer rights including information, security, and fair trade need to be improved further by legislation.<sup>284</sup>

#### *b. The CRIL Under Revision*

The social development, improvement of people's living standards, and advent of the Internet have changed the market and consumption structure in China.<sup>285</sup> Facing more and more new problems, the CRIL could not meet the demands of reality, and had to be amended.<sup>286</sup> In October 2008, the NPC Standing Committee put the modification of the CRIL into its 5-year legislation plan.<sup>287</sup>

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<sup>279</sup> See Consumer Credit Act 1974, Ch. 39, sec. 67 (1974) (Eng.).

<sup>280</sup> See, e.g., N.Y. PERS. PROP. LAW § 427 (McKinney).

<sup>281</sup> See Yuwen Qian, *supra* note 2, at 83.

<sup>282</sup> See Chu Jin, *The Problems Posed by Online Shopping*, (May 26, 2009), translation available at <http://eng.hi138.com/?i142935>.

<sup>283</sup> See Several Opinions on Accelerating the Development of E-commerce, *supra* note 90; Opinions on Promoting the Development of the Electronic Commerce, *supra* note 91; Opinions on Accelerating the Development of E-commerce in Circulation Realm, *supra* note 92.

<sup>284</sup> See Erdan Cao, *Consumer Protection for Online Shopping* (Nov. 15, 2010), translation available at [http://eng.hi138.com/?i266394\\_Consumer\\_protection\\_for\\_online\\_shopping](http://eng.hi138.com/?i266394_Consumer_protection_for_online_shopping).

<sup>285</sup> See Jing Xu, *supra* note 256.

<sup>286</sup> See Junhai Liu, *There Are Five Aspects In the Existing Law Not Meet the Current Economic Situation* (June 15, 2009), translation available at <http://www.sourcejuice.com/1181192/2009/06/15/existing-law-are-aspects-extinction-not-meet-current-economic> [hereinafter Liu, *Five Aspects*].

<sup>287</sup> See Yuwen Qian, *supra* note 2, at 79.

Currently, the CRIL has officially entered the second phase of amending. The latest revised version is marked “Original” and “Amended Texts” in two places,<sup>288</sup> so the future reform direction of the CRIL can be clearly seen.

### 1. An Increase in the “Regret Right” in Off-Site Shopping

The original Article 9 of the CRIL granted consumers the right to choose which provider of goods and services he would like to patronize, to choose the assortment of goods or means of services, to decide whether to purchase certain goods, and to choose whether to accept or not accept any services. When the consumer purchased certain goods or services, the consumer could identify the good he desired, compare it to other goods, and select the particular item that he desired.<sup>289</sup> Revised Article 9 expands the applicability of original Article 9 by adding that for purchasing goods by telephone, mail sales, home sales and other non-fixed location sales, the consumer has the right to return the goods without incurring any costs within thirty days after receipt of goods, except for resale goods.<sup>290</sup> This right is known as the “regret right.”

The establishment of the “regret right” enables a consumer, who had little product information at the time of purchase, to exercise the right of return and full refund within a certain period of time.<sup>291</sup> The “regret right,” previously referred to as the “right of revocation,” means the consumer has the right to revoke the contract in a certain period of time after the conclusion of the contract based on civil law error, fraud and other reasons, or under special law.<sup>292</sup> The “right of revocation” is recognized by civil law, and the “right of revocation” provided by the CRIL specifically should be in the foregoing.<sup>293</sup>

### 2. The First Mention of Consumer Privacy

The original Article 14 of the CRIL provided that the consumer enjoyed the right to have his dignity, national customs and traditions respected when he purchased and used commodities, or

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<sup>288</sup> See Consumer Rights and Interests Protection Law of the P.R.C. (opinion-inviting version on the revision), available at <http://wenku.baidu.com/view/4df60e1ba8114431b90dd8f9.html> (translation on file with author) [hereinafter *CRIL* (opinion-inviting version)].

<sup>289</sup> *CRIL*, *supra* note 39, at art. 9.

<sup>290</sup> See *CRIL* (opinion-inviting version), *supra* note 288, at art. 9.

<sup>291</sup> See Liu, *Five Aspects*, *supra* note 287.

<sup>292</sup> See Yuwen Qian, *supra* note 2, at 83; see also Liu, *Right to the Use of Regret*, *supra* note 278.

<sup>293</sup> See Liu, *Right to the Use of Regret*, *supra* note 278.

received services.<sup>294</sup> Amended Article 14 adds that consumers have the right to have the following personal information protected including, the consumer's name, gender, age, occupation, contact information, health status, family status, property status, consumption records, and other information related to the individual and his family.<sup>295</sup>

The revised Part 3 of the CRIL, "the operator obligations," provided that the operator shall collect the reasonably necessary personal information from the consumer on the condition that the consumer was fully informed and then expressed consent. Meanwhile, the operator must provide free services of consulting, accessing, and revising personal information for a consumer.<sup>296</sup> The operators bear the obligation of safe custody, reasonable use, possession, and proper extermination. Except as stated otherwise in the provisions of the laws and regulations, the operator shall not collect information unrelated to providing goods and services, nor may he disclose, rent, or sell that information.<sup>297</sup>

The revised CRIL further provides protection of consumer privacy with respect to consumer-operator relationships. As consumer activity on the Internet continues to grow, many challenges regarding the security of consumer information and the privacy of these online transactions have followed in the wake of this growth.<sup>298</sup> The CRIL's amendments were timely as they added various provisions concerning the importance of protecting private information.<sup>299</sup> However, despite these changes to the CRIL, China's current legislation on personal privacy is still inadequate and must be updated.

### 3. An Increase in the Amount of Punitive Damages

The original Article 49 of the CRIL stated that the operator shall, at the demand of the consumer, increase the amount of compensation for losses stemming from the operator's fraudulent provision of goods or services.<sup>300</sup> Under original Article 49, the amount of relief available was two times the price of the goods and services.<sup>301</sup> The Revised Article 49 provides that the operator must

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<sup>294</sup> *CRIL*, *supra* note 39, at art. 14.

<sup>295</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 14.

<sup>296</sup> *Id.* at art. 25.

<sup>297</sup> *Id.*

<sup>298</sup> *See* Chu Jin, *supra* note 282.

<sup>299</sup> *See* Junhai Liu, *Judicial Conciliation*, *supra* note 3.

<sup>300</sup> *CRIL*, *supra* note 39, at art. 49.

<sup>301</sup> *Id.*

pay 'x' times the price of goods or services to the consumer if he uses fraud, coercion or force in transactions.<sup>302</sup> This means the amount of punitive damages has not yet been established under the Revised Article 49 of the CRIL.

The establishment of punitive damages was aimed at deterring and punishing operators' fraudulent conduct.<sup>303</sup> At the same time, the imposition of punitive damages is intended to encourage consumers to actively protect their own interests.<sup>304</sup> Consumer protection laws in developed countries have a similar system.<sup>305</sup> Although the revised version of the CRIL does not yet determine specific levels of compensation, it is certain to increase penalties in China.

#### 4. An Expansion of the Scope of Protection

The original Article 2 of the CRIL stipulated that if consumers purchased and used goods or received services for their living needs, then their interests were protected by law.<sup>306</sup> The Revised Article 2 defines a consumer as a natural person who does not purchase goods or receive services for production or business purposes.<sup>307</sup> As a result, the revised article regulates bulk commodities, such as cars and houses, within the scope of the CRIL.<sup>308</sup> In addition, the new revised version also extends the range of protection to online consumption.<sup>309</sup> It provides that if consumers' legitimate rights are infringed when they purchase goods or services through the Internet, they might seek relief from the online retailer.<sup>310</sup> If the online retailer fails to fulfill its obligations, they shall bear joint responsibility for providing relief to the consumer.<sup>311</sup>

#### 5. A Further Refinement and Expansion of the Three Guarantees

The original Article 23 of the CRIL stipulated that an operator who provided goods and services must undertake responsibilities of repair, replacement, or return in accordance with laws and regulations

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<sup>302</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 49.

<sup>303</sup> See Guanghui Guo, *supra* note 12; Tangkun Xie, *supra* note 80.

<sup>304</sup> Tangkun Xie, *supra* note 80.

<sup>305</sup> See Liu, *Will Raise the Fine*, *supra* note 199.

<sup>306</sup> *CRIL*, *supra* note 39, at art. 2.

<sup>307</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 2.

<sup>308</sup> See Xiaopo Wang, *supra* note 7, at 79.

<sup>309</sup> See Erdan Cao, *supra* note 284; see also Liu, *Will Raise the Fine*, *supra* note 199, *supra* note 128; *CRIL* (opinion-inviting version), *supra* note 288, at arts. 19, 24.

<sup>310</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 38.

<sup>311</sup> *Id.*

or the agreement with the consumer. Further, the original Article 23 provided that an operator must not intentionally delay or reject those responsibilities.<sup>312</sup>

Revised Article 23 now states that the operator who provides goods or services must bear the obligations of repair, replacement, or return (referred to as the “Three Guarantees”) in accordance with laws and regulations, and the operator shall not intentionally delay or unreasonably refuse to repair, replace and return.<sup>313</sup> If quality problems occur with a product within seven days, the operator must accept the return of the product or send a replacement free of charge.<sup>314</sup> If quality problems occur in the product within fifteen days, the operators must provide a replacement.<sup>315</sup> If quality problems occur in the product over fifteen days, the operator must bear the responsibility of repair in accordance with the laws and regulations or the agreement with the consumer.<sup>316</sup> If products cannot be used normally during the repair period, the operator must provide substitute goods.<sup>317</sup> If the commodity could not be repaired or used normally after being repaired twice, the operator is responsible for replacement or return at no cost to the consumer.<sup>318</sup> This article applies not only to goods, but also to prizes, gifts, and free services provided by an operator in the form of sales, lotteries, and bonuses.<sup>319</sup>

## 6. An Enhancement of Form Contract Regulations

The original Article 24 of the CRIL mandated that an operator may not make additions to or add unfair or unreasonable terms within their contracts with consumers, or attempt to change a consumers’ rights and responsibility in a transaction by promulgating announcements and shop notices, or reduce or obtain a waiver of the consumers’ right to damages or other legitimate rights through standard contracts or notices of interests.<sup>320</sup> If a standard contract, notice, announcement or shop notice contained the contents in the preceding paragraph, it was invalid<sup>321</sup> (i.e., if a contract contained unfair or unreasonable terms, it would be held invalid).

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<sup>312</sup> *CRIL*, *supra* note 39, at art. 23.

<sup>313</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 23.

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *See CRIL*, *supra* note 39, at art 24.

<sup>321</sup> *Id.*

Revised Article 24 now provides that if an operator uses a form contract when he provides consumers with goods or services he must take reasonable measures to draw the consumer's attention to the significant terms in relation to the consumer's rights, and must also explain the terms to the consumer.<sup>322</sup> A form contract used by an operator may not contain the following unfair and unreasonable terms: (1) terms that reduce or exempt the operator from the contract obligations they shall bear; (2) terms that reduce or eliminate civil liability of the operator when he caused damage to the legitimate interests of consumers; (3) terms that let consumers assume the obligations and risks of the operator; (4) terms that increase the obligations or responsibilities of consumers; (5) terms that entitle the operator to change or terminate the contract at will, exclude or restrict the consumer's right to change or terminate the contract, or entitle the operator to interpret the contract by one side; (6) terms that eliminate or restrict the consumer's legal right to resolve the dispute, to request the payment of liquidated damages; or (7) any other terms that mitigate or eliminate the duties of the operator, or exclude and restrict the consumer's primary rights. If the form contract contains the above-mentioned contents, it will be invalid.<sup>323</sup>

A party cannot take advantage of his economic status by drawing up a contract that includes standard terms that exempt the drafter from responsibility while increasing the liability of the opposite party. These sorts of provisions are a serious departure from good faith, public order and good customs under the guise of "contractual freedom".<sup>324</sup> Many countries started to regulate these unfair provisions by developing special laws in order to balance the interests of both parties.<sup>325</sup> The newly revised CRIL drew on the experience of international common practice to better safeguard the interests of consumers.

### 7. An Expansion of Consumer Dispute Resolution

The original Article 34 of the CRIL stipulated that if a consumer had a dispute with an operator, he might settle it through the following approaches: (1) negotiating with the operator; (2) requesting the consumer association mediation; (3) complaining to the relevant administrative departments; (4) referral to arbitration in accordance with the arbitration agreement; or (5) bring suit in the

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<sup>322</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 24(1).

<sup>323</sup> *Id.* at art. 24.

<sup>324</sup> See Liu, *Judicial Conciliation*, *supra* note 3.

<sup>325</sup> See Xianbin Luo, *supra* note 154.

people's court.<sup>326</sup>

The revised law, while maintaining the basis of the original provision, adds the following provisions: (1) if a consumer brings his complaint to an administrative department or a consumer association, the department or association must carry on the mediation between the consumer and the other party, and make the mediation agreement on the basis of both parties' agreement.<sup>327</sup> The mediation agreement must state the complaint, the complainant's requests, the facts and the mediation results.<sup>328</sup> Once the mediation agreement is signed and sealed by both the consumer and the opposing party, the mediation agreement is legally binding.<sup>329</sup> Because the agreement is legally binding, if one party refuses to perform his obligations under the agreement, the other party might apply to the court for enforcement. (2) The arbitration committee is permitted to establish simple arbitration proceedings for the handling of small consumer disputes.<sup>330</sup> (3) The court is permitted to set up a small court to hear small consumer disputes.<sup>331</sup>

These new regulations further added more methods and forums in which parties could resolve their consumer disputes. The new regulations also have the added benefit of reducing a consumer's apprehension about soaring litigation expenses and the protracted lawsuit process.<sup>332</sup>

## 8. Other New Regulations of Consumer Protection

In addition to these changes, the revised CRIL added the following new provisions to protect consumers' rights:

(1) If a consumer demands an invoice, the operator must write it up, may not replace it with a receipt, and cannot charge any fees in providing the invoice to the consumer.<sup>333</sup> If the operator and consumer agree to provide an invoice in the future, the operator must bear the reasonable costs to do so.<sup>334</sup>

(2) An operator must respect the personal dignity, national habit and custom of the consumer, and must not insult or slander the

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<sup>326</sup> *CRIL*, *supra* note 39, at art. 34.

<sup>327</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 34.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *See* Wei-jian Tang & Shu-guang Zhang, *supra* note 268, at 54.

<sup>333</sup> *CRIL* (opinion-inviting version), *supra* note 288, at art. 21.

<sup>334</sup> *Id.*

consumer.<sup>335</sup> Laws and regulations have explicitly stipulated that the operator cannot search the consumer's body and goods and cannot encroach upon the consumer's personal freedom.<sup>336</sup>

(3) If the operator charges the consumer in advance, new regulations require the operator to place the funds in a special account in a reliable commercial bank.<sup>337</sup> These funds placed in the account must be recorded and earmarked for the specific purpose for which they were received.<sup>338</sup> The funds must be drawn down upon by stages.<sup>339</sup> Finally, if the operator desires to draw the payment in advance, he must provide a guarantee to a bank.<sup>340</sup>

(4) If the operator disseminates an advertisement by using the internet, mobile network, mail, express mail, e-mail, or short message services, the advertisement must comply with relevant regulations and provide proper notice to the consumer with respect to the way a consumer may reject an advertisement.<sup>341</sup> If the consumer explicitly rejects the advertisement, the operator is not allowed to continue to send such advertisement communications to the consumer.<sup>342</sup>

Revisions to the CRIL did not make fundamental changes in the nature and system of consumer protection in China based on the reality of China's current situation. However, the CRIL was revised based upon the advanced experience of consumer protection in other countries. As a result, the revisions to the CRIL further improved the system of consumer protection in China.

## CONCLUSION

With significant economic prosperity and a substantial increase in peoples' incomes, China has become the world's largest consumer market.<sup>343</sup> After more than 30 years in development, China has formed a basic system of consumer protection. Although this system needs improvement in comparison to some developed countries, it plays an important role in protecting the rights and interests of Chinese consumers. The revised CRIL fully reflects the omnidirectional nature of consumer protection. Supported by other related laws and regulations, the amended CRIL will take on heavy

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<sup>335</sup> *Id.* at art. 25.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at art. 19.

<sup>342</sup> *Id.*

<sup>343</sup> *See* Mary Ip, *supra* note 31, at 112.

responsibility for protecting the earnings of Chinese consumers.