Perfecting the Chinese Law of Trusts

– A Critical and Comparative Study of the Australian and the Chinese Law of Trusts

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CERTIFICATION

This thesis is submitted to Bond University in fulfillment of the requirement for the
Degree of Doctor of Philosophy.

This thesis represents my own work and contains no material which has been
previously submitted for a degree or diploma at Bond University or any other institution,
except where due acknowledgement is made.

Signature…………………………….          Date ……………………

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SUMMARY

The rapid expansion of the Chinese economy has made China aware of the importance of the rule by law. Perfecting its legal system and expanding its economy are the two goals of modern China. Many laws and regulations have been enacted since the economic reform was launched at the end of 1970s. The enactment of the Chinese *Law of Trusts* is an important step in the refinement of the Chinese legal system.

This thesis aims to identify the deficiencies in the Chinese *Law of Trusts* by giving a critical and comparative study of the Australian and the Chinese trusts law, so as to propose amendments to the Chinese *Law of Trusts*.

This thesis is divided into two Parts, and seven Chapters. Part One, which comprises five chapters, is a comparative study of the Australian and the Chinese trusts law. It also discusses the laws of trusts in other important Common Law and Civil Law jurisdictions. Chapter 1 of this Part deals with the basic concept of the trust. It introduces and discusses the definition, and the characteristics of the trust, the comparison between the trust and other similar concepts, and the classification of trusts. Chapter 2 deals with the creation of express trusts. With respect to the rights and duties of the trust parties, Chapter 3 gives a detailed discussion. Chapter 4 examines the variation and termination of trusts. The last chapter of Part One, Chapter 5, specifically analyses the charitable trusts.

Part Two comprises two chapters: Chapter 6 and Chapter 7. Chapter 6 discusses the practical impact of the Chinese *Law of Trusts* on the Chinese State-owned enterprise reform, which has been progressing for more than two decades in China.

Chapter 7 is a general concluding chapter. It pinpoints the deficiencies in the Chinese *Law of Trusts*, analyses the reasons for the deficiencies, and suggests two solutions to
improve the *Law*: namely, to improve the existing provisions of the *Law* and to adopt eclectically the elaborate concepts of the Australian law of trusts.
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List of Abbreviations

1. CPC: The Communist Party of China;
2. CRS: The Contract Responsibility System;
4. DESME: The Decision Concerning the Establishment of the Socialist Market Economy of the Communist Party of China;
5. DRES: The Decision Concerning the Reform of the Economic System of the Communist Party of China;
6. GPCL, the General Principles of Civil Law of the People’s Republic of China;
7. LIEOWP: The Law of Industrial Enterprises under the Ownership of the Whole People;
8. NPC, the Chinese National People's Congress;
9. ROC, the Republic of China (Taiwan);
10. PRC, the People's Republic of China;
11. SOC: State-owned company;
12. SOCs: State-owned companies;
13. SOE: State-owned enterprise;
14. SOEs: State-owned enterprises
15. TRCRS: Temporary Rules on Contract Responsibility System of the Enterprises under the Ownership by the Whole People