

# China Law

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## I. The Scope of Review

The year 1997, earmarked by the return of Hong Kong and the 15th National Conference of the Communist Party,<sup>1</sup> witnessed the dynamic continuation of the legislative campaign for the establishment of a legal framework for a market economy in China.<sup>2</sup> As such, it is impossible to precisely articulate the developments in every sector and geographic area of the country. In the limited space available, this review emphasizes the main enactments of the top legislative body—the National People's Congress (NPC) and its permanent institution, the Standing Committee of the NPC. Also, some national regulations promulgated by the State Council as the central government of the nation,<sup>3</sup> as well as certain important regulations of Ministries and judicial interpretations,<sup>4</sup> are reviewed in order to demonstrate progress in the given fields.<sup>5</sup>

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1. Legally speaking, the Communist Party does not have any legislative power. However, given the political reality of China as a socialist country, the policies formulated by the Party are playing very important roles in practice. For example, the new policy adopted in the Conference to relax the rigid rules of public ownership in the state-owned enterprise reform attracted a great deal of international attention.

2. According to an official survey, since 1979 more than 310 national laws and legal decisions were enacted by the National People's Congress or its Standing Committee; 750 national regulations were adopted by the State Council; and local legislation has recorded up to 5,300 pieces. *LEGAL DAILY*, Dec. 2, 1997 (in Chinese).

3. Institutionally, the State Council is not a legislative body. However, it has been entrusted with considerable legislative powers since 1985 when the NPC adopted the "Resolution To Empower the State Council To Adopt Interim Provisions or Regulations Concerning the Economic System Reform and Implementation of Open-door Policy".

4. In China, a country with a long-standing civil law tradition, the judicial branches do not have law-making power, and powers to interpret laws are vested only in the Supreme People's Court and the Supreme People's Procuratorate by the Constitution. In practice, nevertheless, judicial interpretation may be more useful in the sense that most of the legislation in China lacks specifications and details and that conflicts of laws and regulations issued by different state authorities often cause confusion.

5. Due to the limited space here, the review does not identify the source for each law or regulation. Generally, national laws are published in the Gazette of the Standing Committee of the NPC (in Chinese); the State Council legislation can be found in the Gazette of the State Council of the PRC (in Chinese); the interpretations of the Supreme People's Court are published in the Bulletin of the Supreme People's Court of the PRC; and the Legal Department of the State Council compiles the enactments of ministries and other state administration in its

## II. Domestic Laws and Regulations

### A. CONSTITUTIONAL LAW

The State Defense Law of the PRC was adopted by the NPC on March 14, 1997, coming into force on the same date. Sensitive matters, including the division of national defense powers; the structure of military forces; military research, production, procurement and budget; national mobilization and state of war; and citizens' duty to defend the country were set out for the first time in PRC history in legal form. Nevertheless, the contradictions between modern legality and traditional ideology are still apparent. For instance, article 29 of the Constitution provides that the military forces of the country shall belong to the people, whereas article 19 of the Defense Law states that the military forces of the PRC shall be under the leadership of the Communist Party.

The Standing Committee of the NPC adopted a series of resolutions in the first half of 1997 to implement the provisions of the Election Law concerning the representation of different provincial regions and minority nationalities. According to the resolutions, in the next NPC to be held in 1998, fifty-five minority nationalities shall be represented by at least 356 deputies, and 20,544 deputies shall be elected from thirty-one regions of the mainland. In addition, 120 and 36 seats of the NPC are allocated to Taiwan and Hong Kong, respectively.

The NPC, by a resolution on March 14, 1997, decided to establish Chong Qing as the fourth municipality directly under the Central Government, together with Beijing, Shanghai, and Tianjin. As a result, the number of administrative regions of the country including Taiwan, Hong Kong, and Macau reached thirty-four.

On July 1, 1997, the PRC formally resumed sovereignty over Hong Kong. The Basic Law for the Hong Kong Special Administrative Region (SAR) came into force on the same date. By resolution, the Standing Committee of the NPC amended Annex III of the Basic Law, which sets out the national laws applicable to the SAR. The newly added legislation applicable to Hong Kong are the Law on National Flag, the Law on Consular Privileges and Immunities, the Law on National Emblem, the Law on Territorial Sea and Adjoining Region, and the Garrison Law.

Also, on July 1, 1997, the State Council promulgated an order setting out the territorial limit of the Hong Kong SAR.

The Procedures Concerning the Election of Representatives of the SAR for the Ninth NPC were passed by the Standing Committee on March 14, 1997. The Procedures stipulate the number, qualifications, and the voting rules. According to the Procedures, however, the representatives shall be selected by an election committee of 400, appointed by the NPC in November 1997, rather than by a general election.

The Standing Committee of the NPC promulgated on February 23, 1997, the Decision to Deal with the Laws and Regulations Effective before the Handover in Accordance with article 160 of the Basic Law of Hong Kong SAR. It includes six articles and three appendixes. Under the Decision, the Hong Kong laws previously in force, including the common law, equity rules, ordinances, supplementary regulations, and custom, except those in contravention of the Basic Law, shall remain the laws of Hong Kong. Consequently, fourteen ordinances and some

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Collection of Laws and Regulations of the PRC (in Chinese). In addition, the State Information Center publishes the monthly New Legislation Catalogue (in Chinese), which includes both central and local legislation. Currently, the best information of domestic legislation in both text and catalogue in English is provided by China Law and Practice.

provisions scattered in several other ordinances were repealed on July 1, 1997. In addition, both Chinese and English are provided as the official languages, and several official or institutional titles were reconstructed to reflect the constitutional change.

## B. ADMINISTRATIVE LAW

The Law of the PRC on Administrative Supervision was promulgated by the Standing Committee of the NPC on May 9, 1997, to replace the Regulation of Administrative Supervision issued by the State Council in 1990. The Law, with seven chapters and forty-eight articles, establishes a national network to supervise public officers and to promote honest performance. It provides the duties and powers of the supervisory institutions, supervision procedures, and legal liabilities. Although the Law represents the latest development in governance in accordance with the law, the confusion in division of jurisdiction among the judicial branch, the discipline committee of the Communist Party, the personnel department of the government, the state organ in charge of a particular sector, and the supervisory institutions is not clarified convincingly.

The Regulation of State Council on Administration of Establishment and Staff of Administrative Organs was adopted on August 3, 1997, with the provisions concerning the principles and administration of the establishment, personnel administration, and supervising procedures; it became effective immediately.

The State Council promulgated the Regulation on Internal Supervision of the Public Security Organs on June 20, 1997. It creates a supervisory committee within the Ministry of Public Security with disciplinary powers.

The Supreme People's Court issued its Interpretation Concerning Certain Issues of Implementing the State Compensation Law of the PRC in 1997. The document provides the local people's courts with some guidance on the issues of exemption of state liability, the claim procedure for state compensation, and criteria governing compensations.

The Supreme People's Court issued the Provisions on the Issues Concerning Trials of Administrative Compensation cases in 1997. The Provisions deal with the scope of complaints acceptance, jurisdiction, standing of parties, trial procedures, and enforcement.

The Ministry of Public Security issued its Interim Provisions on Investigating Liabilities of Leaders in Public Security Organs on April 3, 1997. Administrative penalties are to be imposed against various abuses of powers and violations.

## C. CRIMINAL LAW

The adoption of the new Criminal Law on March 6, 1997, by the NPC marked another significant breakthrough in the criminal law reform following the revision of the Criminal Procedure Law in 1996. Significant achievements were made in the past fifteen years,<sup>6</sup> as evidenced by the increase of articles in the criminal law from 192 in 1979 to 452 in 1997, and the unification and incorporation of as many as twenty-two individual resolutions adopted by the Standing Committee since 1979 that include criminal penalties. Apart from structural upgrading, the positive changes of the contents are also noticeable. The so-called counter-revolutionary crimes are deleted; charges in economic sectors are significantly increased; penalties against new types of crimes including criminal groups, terrorism, money laundering, computer

6. The revision actually began in 1982. See Wang Hanbin, *The Explanation Statements Concerning the Draft of the Criminal Law of the PRC to the NPC on March 6, 1997*, 2 GAZETTE OF THE STANDING COMMITTEE OF THE NPC 219 (1997).

crimes, and insider trading are added; the analogy principle is abolished; the maximum penalty against juvenile criminals is reduced from the death penalty with two-year suspension to life imprisonment. The new Law became effective on October 1, 1997.

The Criminal Procedure Law in 1997 apparently puts the people's procuratorates under scrutiny by the newly provided principles. As a result, the Supreme People's Procuratorate issued the Implementing Rules of the Criminal Procedure Law of the PRC (on trial) on January 15, 1997, which effectively established its own version of the Law with eleven chapters and 414 articles.

#### D. AGRICULTURE LAW

The Law of the PRC on Animal Epidemic Prevention was passed on July 3, 1997, by the Standing Committee of the NPC, and came into effect on January 1, 1998. It aims to promote the development of livestock farming. The Law, with fifty-eight articles in seven chapters, articulates some general principles and sets out the rules concerning prevention of animal epidemic diseases, control and extermination, quarantine of animals and animal products, supervision of epidemic prevention, and legal liabilities.

The Central Committee of the Communist Party and the State Council jointly issued the Notice Concerning Further Strengthening Land Administration and Protecting Cultivated Land on May 20, 1997. This Notice introduced requirements for strict control.

The Regulation on Administration of Farm Chemicals was issued by the State Council on May 8, 1997, and came into force immediately. The Regulation establishes a legal framework for the production, trading, and use of farm chemicals and introduces a registration and supervision system. Legal liabilities for violations are also spelled out. According to the Regulation, the provisions of international treaties that China acceded to shall prevail should any conflicts exist with the domestic legislation.

The Provisional Measures Concerning Raise and Use Administration of Irrigation Construction Fund were issued by the Ministry of Finance on February 25, 1997. The Measures provide for the allocation of the fund at the central and the local levels and the scope of its application. The effective period is from January 1, 1997, to December 31, 2010.

#### E. SOCIAL LEGISLATION

The Law of the PRC on Flood Control was passed by the Standing Committee of the NPC on August 29, 1997, with the effective date on January 1, 1998. It sets out some general principles and provides for the planning of flood control, harness and prevention, administration of flood prevention zones and projects, flood prevention and combat, supporting measures, and legal liabilities. The basic scheme established by the Law is one involving the Central Government's planning, direction, and coordination with local responsibilities of implementation.

The Law on Energy Saving of the PRC was promulgated by the Standing Committee of the NPC on November 1, 1997, with the effective date on January 1, 1998. The Law sets out the general principles and provides for the structure on the administration, rational use of energy, progress of energy saving technology, and legal liabilities.

The Law on Construction of the PRC was enacted by the Standing Committee of the NPC on November 1, 1997, and shall be in force on March 1, 1998. The Law covers construction license, contract, supervision, safety administration, quality management, and legal liabilities.

The Law on Blood Donation was adopted by the Standing Committee of the NPC on December 29, 1997, and becomes effective on October 1, 1998. The Law, with twenty-four articles, stipulates the policy to encourage blood donation, the rules concerning blood collection, inspection, storage, benefits to blood donors, and legal liabilities.

The Standing Committee of the NPC promulgated the Law on Prevention and Mitigation of Earthquake Disaster on December 29, 1997. The Law has seven chapters and forty-eight articles and became effective on March 1, 1998. The main provisions include general principles, the monitoring, forecast, and prevention of earthquakes, emergent measures, disaster relief and reconstruction, and legal liabilities.

The State Council promulgated the Regulation on Funeral Administration on July 21, 1997, to replace the Interim Regulation of 1985. The main legislative purposes are to promote cremation in order to preserve cultivated land that has sharply decreased in recent years and to reform the undesirable tradition. The Regulation entered into force upon its promulgation.

The State Council enacted the Regulation on Establishment and Management of Schools by the Society on July 31, 1997. This Regulation specifies the conditions and procedures on establishment of schools, education administration, properties of the schools and their management, change and dissolution, protection and support measures, and legal liabilities.

#### F. INFRASTRUCTURE LEGISLATION

The Highway Law of the PRC was enacted by the Standing Committee of the NPC on July 3, 1997, and became effective on January 1, 1998. In addition to certain general principles, the eighty-four articles of the Law cover planning, construction, maintenance, administration, charge collection of highway, supervision, and legal liabilities. One of the important implications of the Law is that BOT (build, operate, and transfer) projects with foreign investors and their rights to reasonable return are recognized by the Law.

Certain Provisions Concerning Power Projects with Foreign Investment were issued by the Ministry of Power Industry on May 5, 1997. The rules specified include the investment forms, technical standards, approval procedures, contents of contract, and general administration.

#### G. INTELLECTUAL PROPERTY PROTECTION

The Regulation of the State Council on the Protection of New Varieties of Plants entered into force on October 1, 1997. It articulates the rules concerning the contents and ownership rights of the new varieties; the legal conditions of granting the rights; the procedures of application, examination, and approval; the term, expiration and invalidity of the protection period; and penalties.

The State Administration of Copyright adopted the Implementing Measures of Administrative Penalties against Copyright Violations on February 1, 1997. The Measures specify the penalties imposed by the state administration, such as fine and confiscation of unlawful profits.

The General Customs and the State Patent Administration jointly issued the Certain Provisions Concerning Implementation of Customs Protection of Patent Rights on March 11, 1997. The Provisions deal with the circumstances when changes to the patent are made and new filing is required.

The State Commission of Technology issued Certain Opinions on Strengthening the Administration of Technology Secrets in the Course of Moving of Scientific and Technological Personnel in July 1997. The document specifies the moving order, the scope of protection, legal liabilities, and restriction of disclosure by way of contract.

#### H. MEDIA, ENTERTAINMENT, AND ART LEGISLATION

The State Council promulgated the Regulation on Administration of Publication on January 2, 1997, effective on February 1, 1997. The fifty-seven articles of the Regulation include the general principles, the establishment and management of publishing institutions, publication, printing and duplication, protection and rewards, and legal liabilities.

The Regulation on Administration of Printing Trade was issued by the State Council on March 8, 1997, and became effective on May 1, 1997. It provides for the trade principles, establishment of printing enterprises, printing of publications, packaging, and other materials, and legal liabilities.

The Regulation Concerning Protection of Traditional Handicraft and Painting was adopted by the State Council on May 20, 1997, and entered into force immediately. It spells out the definition, the measures of protection and promotion, and legal liabilities.

The State Council adopted the Regulation on Broadcasting and Television Administration on August 11, 1997, with the effective date on September 1, 1997. It specifies the conditions of setting up enterprises in the sector, transmission of network, program standards, and legal liabilities. It is stated that the state prohibits establishment of any foreign joint-ventures or foreign wholly-owned stations in the sector.

The Regulation on the Administration of Commercial Performance was promulgated by the State Council on August 11, 1997, to specify the regulatory principles, the examination and approval procedures, performance administration, and penalties against violations.

The Ministry of Broadcasting, Film, and Television issued the Provisions of Movie Examination on January 16, 1997. The Provisions include general guidelines on censoring institutions, censoring standards, and procedures. The Provisions became effective upon their adoption.

The Provisions of Book Quality Administration were adopted by the State Administration of News and Publication on March 3, 1997, to replace the Interim Provisions of 1992. Provided for are quality grading and standards, administrative procedures and rewards, and disciplines.

#### I. BUSINESS ORGANIZATIONS

Law of the PRC on Partnership Enterprise was enacted by the Standing Committee of the NPC on February 23, 1997, and entered into force on August 1, 1997. The Law provides for rules concerning the general principles, conditions of setting up partnership enterprise, asset management, business operation, relations with third parties, participation in and withdrawal from partnership, dissolution and liquidation, and legal liabilities.

The State Council issued on March 2, 1997, the Supplementary Notice Concerning Certain Issues on State Owned Enterprise Mergers and Bankruptcy As Well As Workers' Re-employment in The Selected Cities on A Trial Basis. The Notice articulates formulation and approval of merger or bankruptcy plans, state asset evaluation and disposition, arrangement of employees, other promotion policies, and legal liabilities.

The Central Committee of the Communist Party and the State Council issued on July 7, 1997, their joint Decision on Rectifying and Cleaning Unlawful Charges, Fines, and Various Apportion Upon Enterprises. The Decision requires overall checking, tightened supervision, and imposition of legal penalties against unlawful collection.

Parallel to the state owned enterprise reform, the State Council adopted the Decision on Establishment of Basic Insurance System for Old Age Enterprise Workers on an Unified Basis on July 16, 1997, with provisions on the governing principles and the scheme of premium contribution.

The Guiding Opinion on Promoting Urban Share Cooperative Enterprises was promulgated by the State Commission of the Economic System Reform on August 7, 1997. The legislation introduces this form of business, which began in rural areas, to urban areas as an effective method to transform state owned enterprises and defines its legal characteristics.

The Regulatory Opinion Concerning State Shareholders' Exercise of Their Rights in Joint Stock Companies was issued jointly by the State Asset Administration and the State Commission of the Economic System Reform on March 24, 1997. The twenty-five article document provides for the state shareholders' rights, duties, and responsibilities in preserving state assets in joint stock companies.

The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) promulgated the Procedures on the Administration of Codes for Import and Export Enterprises on September 4, 1997. The main provisions include application procedures under the codes, administration, annual review, and revocation.

The Ministry of Finance adopted its Standards of Disclosure of the Relationship and Transactions between Affiliated Parties for Enterprise Accounting on June 12, 1997.

The Supreme People's Court issued the Notice Concerning Certain Issues That Should Be Paid Attention To in Trials of Enterprise Bankruptcy Cases by People's Courts on March 6, 1997. The judicial guidance focuses on the validity of mortgage contracts, liquidation, and state asset evaluation.

The MOFTEC and the State Administration of Industry and Commerce (SAIC) adopted Certain Provisions Concerning Changes of Equity Rights by Investor(s) of Foreign Investment Enterprises on May 28, 1997, effective as the date of issue. The twenty-three article document deals with general definition, approval procedures, consent of other investors, and security interest concerned.

The Ministry of Labor issued the Provisional Measures of Salary Income Administration of Foreign Investment Enterprises on February 14, 1997, which provide for the salary level, standard of increase, and ways of distribution.

The Ministry of Labor issued Several Opinions Concerning Collective Consultation on Salaries in Foreign Investment Enterprises on February 14, 1997.

The MOFTEC and the State Administration of Foreign Exchange jointly issued the Notice on Issues Concerning Guarantee Provided by Foreign Investment Enterprises for Foreign Entities on January 20, 1997. The Notice deals with conditions of provision and the approval procedures.

The Department of Development of the MOFTEC adopted the Policy Provisions on Pilot Sino-Foreign Trade Companies on September 1, 1997. The policy states the conditions and procedures of establishment of such companies and their scope of business.

## J. BANKING AND FINANCE LEGISLATION

In less than a year from the date of its promulgation, the State Council revised the Regulation on Foreign Exchange Control of 1996 on January 14, 1997, in order to meet the obligation under article 8 of the Articles of Agreement of the International Monetary Fund by explicitly removing any restriction on regular international settlement and transfers. Other changes were made on foreign currency administration concerning individual use.

The Regulation on Committee of Monetary Policy of the People's Bank of China was promulgated by the State Council on April 15, 1997. The principles, structure, duties and powers, and working procedures of the Committee are stipulated.

The State Planning Committee and the State Administration of Foreign Exchange promulgated the Provisional Measures on Administration of Project Financing Conducted Outside

China on April 16, 1997. The twenty article enactment, which became effective immediately, includes definition, rights and duties of the parties involved, approval procedures, and supervision.

The People's Bank of China issued the Guiding Principles of Strengthening Internal Control of Financial Institutions on May 16, 1997. The Document specifies the goals, principles, contents, basic requirements, and supervision of the internal control of financial institutions.

The Interim Provisions of Purchase-back of Treasury Bonds between Banks was adopted by the People's Bank of China on June 5, 1997. The rules deal with the procedures, settlement, clearance, and administration of treasury bonds.

The Measures of Credit Card Settlement within China were adopted by the People's Bank of China on July 16, 1997, and entered into force on August 1, 1997. The Measures are applicable to commodity transactions between enterprises in the country.

The Interim Provisions on Supervisory Committee of State Owned Commercial Banks were adopted by the People's Bank of China on November 12, 1997. The Provisions provide for the Supervisory Committee's powers, duties, and reporting system.

The People's Bank of China promulgated the Interim Provisions on Loans of Syndicated Banks in November 1997, with seven chapters and forty articles. The provisions stipulate the debtors of loans, the applicable scope of the loans, interest rates, and administration. Foreign banks are not allowed to participate in domestic syndicated bank loans unless they are authorized to engage in Renminbi business.

The Supreme People's Court issued its Interpretation on Certain Issues Concerning Application of Laws in Trials of Fraud Cases on March 27, 1997.

#### K. SECURITIES REGULATION

The State Council issued the Notice on Further Strengthening Administration of Stock Issue and Listing Outside China on June 20, 1997. In order to combat foreign listing through unlawful transfer of state assets, the Notice requires tightened supervision and approval, prohibits domestic enterprises from listing outside China through tender offer or purchase of shell companies, and imposes heavy penalties for violations.

The State Council Securities Commission (SCSC) promulgated the Provisional Regulation on Banning Entry to Securities Market on March 3, 1997. According to the Regulation, company officers, employees in the securities sector, and professionals may be temporarily or permanently prohibited from being high level officers of listed companies or engaging in securities business. These provisions were adopted in order to minimize conflicts of duties and abuses of powers, which have been serious problems in China.

The Ministry of Finance issued the Interim Provisions Concerning Financial Administration of Commodity Futures Trade on March 3, 1997, which operated retroactively on January 1, 1997. The Provisions stipulate the general principle and contain rules governing futures exchanges, brokering firms of futures, and futures investment enterprises.

The SCSC adopted the Provisional Measures on Administration of Convertible Company Bonds on March 25, 1997. Issue conditions and procedure, listing, repayment, supervision, and legal liabilities are provided for in forty-one articles in six chapters. The Measures became effective upon their promulgation after being approved by the State Council.

The Securities Regulatory Commission of China issued the Decision and Detailed Implementing Rules on Entrusting Part of Supervisory Duties to Local Securities and Futures Authorities on April 8, 1997. The rules, stipulated in thirty-nine articles, deal with the jurisdiction of the authorities and their powers of supervision, coordination, investigation, and enforcement.



The Interim Procedures on the Administration of Treasury Debentures Trust were enacted by the Ministry of Finance on April 10, 1997, setting out the rules on the parties' rights and obligations, the trust system, financial administration, administration of treasury debentures storage, and legal liabilities.

The Ministry of Finance promulgated the Interim Rules Concerning the Concentration Trust of Tangible State Treasury Debentures on June 5, 1997. The Rules specify the principles, trust participators and their duties, trust and withdrawal, listing registration, repayment with interest, supervision, costs, and legal liabilities.

The Measures of Investment Funds were enacted by the SCSC on November 14, 1997, with fifty-five articles in seven chapters. The Measures deal with the general principles, conditions of establishment, trading, trustees and management, rights and duties of fund holders, investment operation and supervision, and legal liabilities.

#### L. MARKET REGULATIONS

The Law on Pricing was enacted by the Standing Committee of the NPC on December 29, 1997. The seven chapters of the Law deal with some general principles, regulation of pricing by business operators and the government, macro-adjustment and control of national pricing level, supervision and inspection, and legal liabilities. The Law enters into force on May 1, 1998.

The Regulation on Anti-dumping and Anti-subsidy of the PRC was promulgated by the State Council on March 25, 1997, and came into force immediately. The main issues dealt with by the six chapters include definition of anti-dumping and damages, anti-dumping investigation, counter-measures, and special provisions concerning anti-subsidy.

The Implementation Regulation of Tobacco Monopoly Law of 1996 was adopted by the State Council on July 3, 1997. Details on the license system; planning, purchase, distribution, sales, and transport of tobacco or its products; tobacco related foreign trade and economic cooperation; supervision; and legal liabilities are specified.

The State Council enacted the Regulation on Investigation and Check-ups of the Customs on January 3, 1997, effective as of the date of issue. The legislation sets out the general principles, administration of accounting books and other certificates, implementation of checkups, procedures, and legal liabilities.

The State Council enacted the Regulation on Supervision of Nuclear Export on September 10, 1997, effective as the date of issue. The rules, which apply to export of nuclear materials, technology, and equipment, provide for the approval procedures and legal liabilities.

The Regulation on Administration of Military Goods Export was promulgated by the State Council on October 22, 1997, and became effective on January 1, 1998. The Regulation defines trading companies of military goods, export administration, export order, and legal liabilities.

The SAIC promulgated the Measures on Relay-sale Administration on January 10, 1997. In addition to the rules governing participating parties, registration, supervision, and legal liabilities, the Measures prohibit foreign enterprises and individuals from engaging in such sales in China.

The Ministry of Domestic Trade promulgated the Regulatory Opinion Concerning Standardization of the Operation of Chain Stores on March 27, 1997. The document includes definitions and functions of headquarters, outlets, and distribution centers.

The Customs of the PRC adopted the Measures on Supervision and Administration of

Imported Exhibits on February 14, 1997. According to the rules that became effective on April 1, 1997, the normal period allowed for foreign exhibits is six months.

The MOFTEC adopted its new Provisions Concerning Establishment of Trading Companies and Representative Offices Outside of China on June 23, 1997.

The State Administration of Commodity Inspection and the SAIC jointly issued the Measures of Administration of Imported Commodity Quality Inspection in October 1997. The enactment defines the scope and contents of inspection, penalties, and the disposition of the goods that are unlawfully dealt with or fail to meet the quality standards.

#### M. TAXATION

The State Council issued the Notice on Certain Issues Concerning Adjustment of Taxation Policy of Financial and Insurance Business on February 19, 1997. The Notice deals with adjustment of income tax and business tax of the sectors, as well as the jurisdiction of collection.

The Ministry of Finance and the State Administration of Taxation (SAT) issued the Supplementary Notice Concerning Certain Tax Issues on Exported Goods on February 21, 1997. The Supplementary Notice provides for the rate of tax return, the formulae of calculation, the exceptions, and the relations between the current rules and other regulations.

The SAT promulgated the Income Tax Measures of Individual Commercial Households (on trial) on March 26, 1997. Its implementation time was backdated to January 1, 1997. Provided for are the scope of tax, the methods of calculation, deductions and exceptions, and legal liabilities.

The SAT issued the Notice Concerning Certain Concrete Tax Issues of Permanent Representative Offices of Foreign Enterprises on January 2, 1997, which deals with the tax issues of such offices concerning their preparatory and supplementary activities, export representation on behalf of Chinese enterprises, and foreign banking and financial institutions.

The SAT issued a notice on April 9, 1997, to stipulate the income tax rate applicable to branches of foreign investment enterprises.

The SAT issued the Notice on the Handling of Income Tax on Share Transfer of Foreign Investment Enterprises on April 17, 1997.

The Interim Provisions on Income Tax Concerning Mergers, Divisions, Equity Reorganization, and Asset Transfer of Foreign Investment Enterprises were adopted by the SAT on April 28, 1997, and are applicable to the 1997 fiscal year.

The SAT issued the Notice Concerning Income Tax on Interest Earned by Foreign Banks from Foreign Financial Institutions within China on June 19, 1997. According to it, no exemption may be allowed.

The Measures on Income Tax Settlement and Collection Administration of Foreign Enterprises were enacted by the SAT on June 20, 1997, and became effective since the beginning of the 1997 fiscal year. The document provides for the methods of calculation, the filing procedure, the documentations required, and legal liabilities.

The SAT issued the Notice Concerning Taxation of Foreign Financial Institutions on July 25, 1997. The Notice deals with the base of reserve funds for bad debts, exchange rate of foreign currency and Renminbi as the accounting currency, and other matters.

The SAT adopted the Measures of Administration of Enterprise Income Tax Deduction and Exemption on June 18, 1997, which provide for the application and approval procedures, supervision, and jurisdiction.

The SAT issued the Supplementary Opinions Concerning Further Promoting and Deepening the Reform of Foreign Taxation and Administration in December 1997. It is stated that the goal of the reform is to establish a strict and efficient system that is independently administrated and is compatible with international standards.

#### N. REAL ESTATE REGULATION

The Interim Regulation on Tax on Contracts of Transferring Real Estate was promulgated by the State Council on July 7, 1997, to replace the Interim Regulation of 1950 and came into force on October 1, 1997. The Regulation defines the scope of the tax, the methods of calculation, deductions and exemptions, and filing and administration.

The State Administration of Land issued the Notice on Certain Issues Concerning the Mortgage Registration of Land Use Rights on January 3, 1997, which sets out the rules governing validity of registration, land value assessment, and application procedures.

The People's Bank of China adopted the Provisional Measures on Administration of Secured Loan for Individual Housing on April 28, 1997, effective the date of issue. The matters covered by the Measures include definition and procedures for secured loans, and legal liabilities.

The Measures on Administration of Urban Real Property Mortgage were enacted by the Ministry of Urban Construction on May 9, 1997. The rules concern the creation of mortgage, registration, handling of different types of real property, mortgage contract, and disposition of mortgaged property.

The Ministry of Urban Construction issued the Measures on Administration of Ownership Registration of Urban Housing in November 1997. The Measures deal with the initial registration, transfer and change of registration, cancellation procedures, and the documentation required.

#### O. PROFESSIONAL SERVICE REGULATION

The Ministry of Justice enacted the Measures of Penalties against Violations by Lawyers on January 30, 1997, with thirteen articles. Different penalties are stipulated for various violations.

The State Planning Commission and the Ministry of Justice jointly promulgated the Provisional Measures on Administration of Lawyer Service Charge on March 1, 1997, which contain twenty articles, replacing the old provisions of 1991. The document covers service standards, service agreement, reduction and waiver, and investigation of charge violation.

The State Planning Commission and the Ministry of Justice jointly issued the Measures on Administration of Service Charge by Notary Public on March 3, 1997, to replace the old provisions of 1991. The new rules define the scope of charge, the methods of changing, reduction, and exemption.

The Ministry of Personnel, the State Commission of Economy and Trade, and the Ministry of Justice adopted the Interim Provisions Concerning the Practice Qualification of Enterprise Legal Counsel on March 12, 1997. Provided for are the definition, qualification, registration, and the duties and responsibilities of enterprise legal counsel.

The Ministry of Personnel, the State Commission of Economy and Trade, and the Ministry of Justice issued the Implementing Measures of Practice Qualification Examination for Enterprise Legal Counsel on March 12, 1997.

The MOFTEC adopted Certain Provisions on Establishment of Appraisal Institutions with Foreign Investment on June 21, 1997. The definition, conditions of establishment, the procedures, the scope of business, and the operation period are stipulated.

#### P. LAW OF TRANSPORTATION

The State Council promulgated the Regulation Concerning Right Registration of Civil Aircraft on October 21, 1997, effective the date of issue. The twenty article regulation deals with secured interest registration, requirements of documentation, and procedures.

The Regulation on Nationality Registration of Civil Aircraft was enacted by the State Council on October 21, 1997, and came into force immediately. The Regulation specifies the principles of registration, the signs of nationality and registration, and temporary registration.

The State Council revised the Regulation on Water Transport Administration of 1987 on December 3, 1997. The new Regulation includes the general principles, transport operation, and penalties for violations.

The MOFTEC issued the Notice on the Issues Concerning Administration of Goods Transportation Agency Between Taiwan Strait on March 4, 1997.

#### Q. TELECOMMUNICATION REGULATION

The State Council revised the Regulation on International Linkups of Computer Information Network of 1996 on May 20, 1997. The main addition and revisions concern mandatory license for linkups, operation conditions, and the penalties. The revision entered into force immediately.

The Provisions on Registration of Domain Names for Chinese Internet System were adopted by the Leading Group on Information of the State Council on June 3, 1997, which stipulate the responsible state organ, the structure of the system, the registration procedure, and the supervision scheme. The Leading Group on Information of the State Council issued the Detailed Rules for Implementing the Provisions of Registration of Domain Names for Chinese Internet System with three annexes. The document deals with verification of registration, change and cancellation of registration, administration, and costs.

#### R. OTHER LEGISLATION

The State Council approved the new Guiding Catalogue of Foreign Investment Industries on December 29, 1997. The new catalogue still classifies foreign investment industries into four groups: encouraged, permitted, restricted, and prohibited. However, as compared with the old catalogue of 1995, adjustments are made in many sectors. The Catalogue became effective on January 1, 1998.

The State Council promulgated the Implementing Regulation of Auditing Law of the PRC on October 21, 1997. The fifty-seven article regulation addresses the general principles, auditing institutions and their personnel, duties and responsibilities, and procedures. The Regulation became effective immediately.

The State Council approved the Supervisory Measures of the Customs on Bonded Zones with the effective date on August 1, 1997. The enactment intends to improve the effectiveness of Customs' supervision over fifteen such zones in China by adopting a system of filing and reporting.

The Ministry of Personnel issued the Interim Provisions on Handling Personnel Disputes in August, 1997. It contains thirty-seven articles dealing with employment contract, resignation, dismissal, and arbitration of disputes.

The Supreme People's Court issued the Notice on Certain Issues Concerning Implementation of the Arbitration Law of the PRC on March 26, 1997. The judicial guidance focuses on validity of arbitration agreements and their enforcement.

### III. International Conventions and Agreements

#### A. MULTILATERAL CONVENTIONS AND TREATIES

The Standing Committee of the NPC on May 9, 1997, decided to ratify the Employment Policy Convention concluded at the 84th Conference of the International Labor Organization in Geneva in 1964.

By a resolution of the Standing Committee of the NPC dated May 9, 1997, China ratified the Organic Law of the International Telecommunications Union and the International Telecommunications Union Convention, which were signed by the Chinese Government in 1972 in Geneva when the two treaties were originally concluded.

The Standing Committee ratified the Fifth Additional Protocol to the Organic Law of the Universal Postal Convention, which was signed by the Chinese Government in 1994 in Seoul.

The Standing Committee on behalf of China decided on May 9, 1997, to accede to the Vienna Convention on the Law of Treaties of 1969. The accession was made with two declarations: (1) China would enter a reservation to article 66 of the Convention that provides for judicial procedures to resolve international disputes over treaties; and (2) the signature of Taiwan made in 1970 on the Convention shall be unlawful, and thus void.

The Standing Committee of the NPC on July 3, 1997, declared its accession to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, which was concluded in Hague in 1970. The Ministry of Justice was named as the central organ in charge of handling requests for taking evidence to or from China. Also, reservations were entered relating to certain common law procedures, and evidence taking by diplomatic personnel, consuls, or designated officers from foreign countries.

The decision was made by the Standing Committee of the NPC on July 3, 1997, to ratify the No. 1 and No. 2 Protocols to the Treaty on the African Non-nuclear Weapons Area, which were open for signatures and ratification by the five permanent members of the Security Council of the United Nations for their legal commitments.

On October 27, 1997, China signed the International Convention on Economic, Social and Cultural Rights of 1966. The Convention will be binding on the PRC 3 months after the deposit of the ratification instrument.

The Standing Committee on August 29, 1997, ratified the Agreement on Mutual Reduction of Military Forces in Border Areas Between the PRC and the Republic of Kazakhstan, the Republic of Kirghizstan, the Russian Federation, and the Republic of Tadzhikstan, which was signed on April 24, 1997, in Moscow.

On November 21, 1997, the Ministry of Foreign Affairs announced the intention of the PRC to continue to submit periodic reports on the Hong Kong SAR to the Human Rights Commission pursuant to the International Convention on Civil and Political Rights of 1966, to which the PRC is not a party. The Convention was extended to Hong Kong by the British Government since 1976.

#### B. BILATERAL AGREEMENTS AND TREATIES

On February 23, 1997, the Standing Committee of the NPC ratified the Agreement on Judicial Assistance in Civil and Commercial Matters between the PRC and Morocco concluded in 1996.

The Treaty on Extradition between the PRC and the Republic of Bulgaria of 1996 was approved by the Standing Committee on February 23, 1997.

The Treaty on Extradition between the PRC and Romania of 1996 was approved by the Standing Committee on February 23, 1997.

The legislative procedure was completed for implementing the Agreement on Judicial Assistance in Civil and Commercial Matters between the PRC and the Republic of Kyrgyzstan of 1996, which was ratified by the Standing Committee on February 23, 1997.

The Standing Committee approved the Treaty on Extradition between the PRC and the Republic of Kazakhstan on February 23, 1997.

The ratification procedure of the Consular Agreement between the PRC and the Republic of Croatia was completed when the resolution of approval was passed by the Standing Committee of the NPC on May 9, 1997.

On May 9, 1997, the Standing Committee adopted the Decision on Ratifying the Agreement Between the PRC and the Republic of India on the Measures for Building Up Trust in Military Field Along the Boundaries of the Actual Control Between the Two Countries, which was signed by the two governments in 1996.

The Agreement on Judicial Assistance in Civil and Commercial Affairs between the PRC and the Republic of Tadjikistan was ratified by the Standing Committee on August 29, 1997. The ratification increased the number of judicial assistance agreements between the PRC and foreign countries to twenty-seven.

#### IV. Possible Developments in 1998

The drafting of a uniform contract law as one of the basic laws of the country in the last few years attracted a great deal of attention both inside and outside China. The implementation of the plan to adopt the law in 1998, however, became uncertain because of many unsettled issues and the new NPC term. It is also not clear whether the long-awaited Securities Law and the new Bankruptcy Law can be passed in 1998.

Some laws that were reviewed by the Standing Committee of the NPC are expected to be promulgated in 1998. These laws include the Law on Fire Control, the Law on Science and Technology Development Funds, and the new Forest Law. The draft of Implementing Rules of the Law on Taiwan Investment Protection was also submitted for adoption.

As a new campaign for China's participation in the World Trade Organization started last fall when the trade tariff was significantly reduced again,<sup>7</sup> the overhaul of the foreign investment laws in China should be closely watched. The revised foreign investment guideline is expected to be enacted by the MOFTEC in 1998.

The state-owned enterprise reform shook the traditional legal regime in many respects. An acceleration of preparing legislation on property rights, social welfare, corporate finance, business organization, and market regulation can be expected.

The recent financial turbulence in Asia put the central government on alert. The message of tightened control and scrutiny over the financial sector is clear in the recently held National Financial Conference.<sup>8</sup> As a result, certain regulations to prevent risks and speculation on

7. During the 15th National Conference of the Communist Party, trade tariffs on 4874 items were cut from an average level of 23% to 17% since October 1, 1997. The move was taken just before the 6th meeting of the China Group of the WTO. See CHINA ECON. NEWS, Sept. 29, 1997, at 5.

8. The Conference, which was called for the second time in PRC history, was held on November 17-19, 1997, in Beijing with the participation of all key leaders of the country. The goal of the conference was to ensure financial safety in accordance with the laws and to accelerate the establishment of a modern financial system in China. LEGAL DAILY, Nov. 21, 1997 (in Chinese).

the financial market, such as introduction of the federal reserve system to China, may be adopted.

During President Jiang Zemin's visit to the United States, China signed, on October 27, 1997, the International Convention on Economic, Social and Cultural Rights, which was adopted by the United Nations in 1966. The ratification by the Standing Committee of the NPC can be expected in 1998. However, the accession to the International Convention on Civil and Political Rights, another important human rights treaty, seems not to be on the immediate agenda of the government.

The Supreme People's Court will continue to play an active role in legal development. The implementation of the new Criminal Law, for example, will definitely require further guidelines on many new issues arising in practice.

