China’s Legal System

China adopts a socialist legal system with Chinese characteristics. The system consists of legislative, executive, judicial and legal supervision organs.

Legislation

Pursuant to the provisions set out in the Constitution and the Legislation Law of the People’s Republic of China, the National People’s Congress (NPC) and its Standing Committee exercise the legislative power of the state. NPC enacts and amends basic laws governing criminal offences, civil affairs, state organs and other matters. The NPC Standing Committee enacts and amends laws other than the ones to be enacted by the NPC, and when the NPC is not in session, partially supplements and amends laws enacted by the NPC, but not in contradiction to the basic principles of such laws. The State Council formulates administrative regulations in accordance with the Constitution and laws and, upon authorisation by the NPC, enact provisional rules and regulations on economic system reform and opening-up policy. The ministries and commissions of the State Council, the People's Bank of China, the National Audit Office as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules. The people’s congresses and their standing committees of the provinces, autonomous regions and municipalities directly under the Central Government may, in light of the specific conditions and actual needs of their respective administrative areas, enact local regulations, provided that such regulations do not contradict with the Constitution and other laws and administrative regulations. The people’s congresses and their standing committees of cities where the provincial or autonomous region people’s governments are located, cities where special economic zones are located, as well as larger cities approved by the State Council, can enact local regulations according to the special conditions and actual needs of their respective cities, provided that such local regulations do not contradict with the Constitution, laws, administrative regulations and local regulations of the province or autonomous region where they are located. The people's governments of provinces, autonomous regions, municipalities, cities divided into districts and autonomous prefectures can formulate regulations in accordance with the law, administrative rules and regulations, and local regulations of the respective provinces, autonomous regions and municipalities. The people’s congresses of national autonomous areas are authorised to enact autonomous regulations and separate regulations in accordance with the political, economic and cultural characteristics of the local nationalities. The people’s congresses and their standing committees of provinces and cities where special economic zones (SEZs) are located can, as authorised by the NPC, enact regulations to be implemented within the SEZs.

Based on the legislative system described above, China’s legal system consists of the following four components:
(a) Fundamental laws: the Constitution and related laws;

(b) Basic laws: laws that govern the basic issues of the state and society, including administrative laws, civil and commercial laws, economic laws, social laws, criminal laws, and litigation and non-litigation procedural laws;

(c) Laws other than basic laws: other laws which are enacted on the basis of basic laws to govern specific issues such as the Company Law and Intellectual Property Law;

(d) Normative documents: these include administrative rules and regulations, local regulations, departmental and government rules and regulations, and autonomous regulations and separate regulations of the national autonomous areas.

The Constitution has supreme legal power. No laws or rules or regulations shall contravene the Constitution. As a rule, laws (including basic laws and those other than the basic laws) have higher legal power than administrative rules and regulations, and local regulations. Administrative rules and regulations have higher legal power than local rules and regulations. Local rules and regulations have higher legal power than rules and regulations of local governments of the same level or below. Rules and regulations enacted by the people’s governments of provinces and autonomous regions have higher legal power than those enacted by the people’s governments of cities divided into districts and autonomous prefectures within the respective administrative districts. Autonomous regulations and separate regulations which are adapted from laws, administrative rules and regulations, and local rules and regulations in accordance with law have full legal force in the respective autonomous areas. SEZ rules and regulations which are adapted from laws, administrative rules and regulations, and local rules and regulations in accordance with law have full legal force in the respective SEZs. Departmental regulations and local government regulations have the same legal power and are enforced within their respective jurisdiction.

Execution of Law

Execution of law refers to the exercise of administrative powers, performance of duties, implementation and enforcement of the laws by administrative organs of the state in accordance with statutory powers and legal procedures. There are three types of executive organs in China:

(a) The Central People’s Government and local people’s governments at different levels. The State Council is the highest organ of state administration. The local people’s governments are divided into four levels: provincial (including autonomous regions and municipalities directly under the central government), city, county and village (township). The limit of executive power at each level and their respective functions are stipulated by law.

(b) The subordinate departments under local governments at different levels which have executive power are known as administrative departments. They include industry and commerce, taxation, public security, railways etc. They exercise executive power within their respective jurisdiction.

(c) Administrative arbitration organs and adjudicating organs at different levels.

Judiciary
Judiciary refers to the handling of prosecuted cases by state judicial organs and their personnel in accordance with the legal responsibilities and legal procedures stipulated in the law.

Judicial organs include people’s courts and people’s procuratorates which exercise judicial authority and procuratorial power respectively. People’s courts are categorised as Supreme People’s Court, local people’s courts at different levels and specialised courts such as military courts. Local people’s courts at different levels are further classified as higher people’s courts, intermediate people’s courts and grass-roots people’s courts. People’s procuratorates are divided into Supreme People’s Procuratorate, local people’s procuratorates at different levels and specialised people’s procuratorates such as military procuratorates.

Legal Supervision

Legal supervision refers to the supervision and monitoring of the legality of legislative, executive and judicial processes by the competent state organs in accordance with their legal responsibilities and the legal procedures.

(a) Legislative supervision. It not only concerns the legality of normative documents but also the legality of the legislation process per se. For example, the NPC may alter or annul inappropriate decisions of the NPC Standing Committee; and the NPC Standing Committee may annul administrative rules and regulations, decisions and orders of the State Council that are deemed to contravene the Constitution and the law. The State Council may alter or annul inappropriate decisions and orders made by state administrative organs at various local levels.

(b) Executive supervision. It refers to supervision of the legality of administrative acts carried out by administrative organs. It includes: supervision by organs of state power over administrative departments at the same level; supervision by administrative departments at a higher level over those at a lower level; supervision by auditing organs; supervision by supervisory organs; and supervision by procuratorial organs.

(c) Judicial supervision. It refers to the supervision of the judicial acts of adjudicating organs, procuratorial organs and public security organs. It includes: supervision by organs of state power over judicial organs at the same level; supervision by judicial organs at a higher level over those at a lower level; supervision among adjudicating organs, procuratorial organs and public security organs.

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