

The Legislative Process in China

I. Legislative power

China is a state with unitary political system. In other words, there is not a division of legislative power between the central government and the provincial governments in China. The national legislative power is exercised by National People's Congress (NPC) and the Standing Committee of National People's Congress. Among which:

NPC is in charge of making the criminal law, the civil law, state organ laws and other basic laws.

The Standing Committee of NPC is in charge of making and revising the other laws except those promulgated by NPC. While NPC is not in session, the Standing Committee of NPC is also in charge of supplementing and amending parts of the laws promulgated by NPC, yet this should not contradict with the basic principles of these laws.

The State Council can make administrative regulations according to the constitution and laws. NPC and its Standing Committee have the right to make decisions and authorize the State Council to formulate administrative regulations for matters which should but not yet governed by law, depending on the actual needs. However, this does not include matters concerning crimes, punishments, coercive measures for depriving citizens' political rights and restricting their personal freedom, the punishment system and the judicial system. The decision on authorization should make clear the purpose and the scope of authorization. The authorized organs should exercise the power in strict accordance with the purpose and the scope of authorization, and shall not transfer the authorized power to other organs. When conditions are mature, after test in the practice, NPC and its Standing Committee should make a law in time. When the law is made, the authorization for the corresponding legislative matters comes to its end.

The Provincial People's Congress, as well as its Standing Committee, can formulate local regulations reflecting the specific circumstances and the actual needs within their administrative areas, on the precondition that these local regulations do not contradict to the Constitution, the laws and the administrative regulations. In larger cities, the People's Congress and its Standing Committee can formulate local regulations reflecting the city's specific circumstances and actual needs, on the precondition that these local regulations do not contradict to the Constitution, the laws, the administrative regulations, and the regulations of the local province and autonomous region. These local regulations must be submitted to the Standing Committee of the Provincial People's Congress for approval before they are enforced. The Standing Committee of Provincial People's Congress must examine these local regulations which are submitted for approval. If they do not contradict to the Constitution, the laws, the administrative regulations, and the regulations of the local province and autonomous region, they should be approved within four months. The larger cities, as called here, refer to capitals of all provinces or autonomous regions, cities where special economic zones are located, and other larger cities designated by the State Council.

In ethnic minority areas where autonomy is practiced, the People's Congress has the right to

formulate autonomy statutes and separate regulations according to the characteristics of the local people's politics, economy and culture. These autonomy statutes and separate regulations must be submitted to the Standing Committee of NPC for approval before they take effect. The autonomy statutes and separate regulations of autonomous prefectures and autonomous counties must be submitted to the standing committee of the People's Congress of the local province, autonomous region or municipality for approval before they take effect. The autonomy statutes and separate regulations can make changes to some provisions of laws and administrative regulations according to local characteristics. However, the changes must not go against the basic principles of laws or administrative regulations, nor make any changes to the Constitution, the laws on national regional autonomy, as well as specific provisions concerning autonomy in other relevant laws and administrative regulations.

II. The legislative process of National People's Congress

1. The submission of a bill

According to relevant laws, the presidium of NPC, the Standing Committee of NPC, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, the special committees under NPC, one delegation or at least 30 delegates in a joint name, can introduce a bill to NPC. However, there are different methods for handling the proposals raised by different main bodies:

Bills introduced by the presidium of NPC can be directly listed on the agenda and be discussed at the NPC sessions.

Bills introduced by the Standing Committee of NPC, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the special committees under NPC need to be approved by the presidium of NPC before being listed on the agenda of the session. In other words, bills introduced by these main bodies generally will be listed on the agenda, yet in formality, they need to be approved by the presidium of NPC.

Bills introduced by one delegation or at least 30 delegates in a joint name generally are submitted to relevant special committees for deliberation before the presidium of NPC decides whether or not to list them on the agenda of the session. While it is under deliberation, the special committees can invite the sponsors to attend the session and speak out their opinions. Certainly, the presidium of NPC can also decide independently whether or not to list them on the agenda of the session.

The Standing Committee of NPC, the special committees under NPC and the State Council are the most important main bodies to have the right to introduce bills to NPC.

When introduce a bill to NPC, the main body needs to abide by some principles. First, the bill should be within the scope of NPC's power. Matters that do not belong to NPC's power, such as the making of local regulations, cannot be submitted to NPC as a bill. Second, if the main body is a government institution, it should introduce bills within its own power or related to its own affairs. For instance, the State Council should target at administrative affairs, the Central Military Commission at military affairs and the supreme judicial bodies at judicial affairs. The presidium and the standing committee of NPC are not restricted in content, if they introduce bills within their own power. If a delegation or a group of delegates in a joint

name introduce a bill, they are neither restricted within their own power, nor the need to introduce a bill related to themselves. With these principles, it does good to ensure the quality of the bills and good to display each main body's merits or advantages.

There are two ways to raise a proposal. One is to directly raise while the NPC is at session, which is a way seldom used. The other is to raise a proposal to the Standing Committee while the NPC is not at session, with the Standing Committee discussing it before submitting it to NPC, which is the predominant way. If the standing committee decides to discuss a bill at the NPC session, it should hand out the draft bill to the delegates one month prior to the opening of the session.

2. The consideration of a bill

Once a bill is listed on the agenda of the NPC session, a plenary session will be held to listen to the sponsor's explanations, and then it is submitted to the delegation for deliberation.

To put it in other words, NPC has three forms of meetings for examining bills. First, according to the *Rules of Procedure for National People's Congress*, NPC may organize speeches at the meetings when necessary, that is, to make deliberations at the plenary sessions. Second is deliberation by the delegation. The delegation is a temporary organization for the selected NPC delegates to attend the congress. NPC delegates from the same province, autonomous region or municipality make up a delegation. Deliberation by the delegation is the basic deliberation. The total number of NPC delegates is nearly up to 3,000, and so the delegates carry out most of the activities in delegations, except for the plenary session, for the purpose of increasing efficiency and for the convenience of deliberations. Displaying the delegation's role in the process of deliberation is a basic requirement of the people's congress system. When the delegation discusses a bill, the sponsor(s) should send a person (normally a high-rank public servant) to listen to opinions and answer questions so that the discussers and the sponsors can communicate face to face directly and that they can revise and improve the bill with a clear mind. When the delegation discusses a bill, the organizations in charge of drafting the bill, the legal research institutions or the functional departments such as taxation bureaus, tele-communications, trade unions, merchant chambers and women's federations, should arrange for introduction of the proposal. Staffs of NPC and provincial congresses should keep records of the deliberations and sort them up into newsletters for distribution at the meetings. Also, the staff members of the Law Committee of NPC should attend the meetings as visitors and note down the delegates' comments on the bill. A bigger delegation can be split into several smaller groups to discuss at the same time so that every deputy has an opportunity to speak. And third is deliberation by special committees. In the meantime of deliberation by delegations, the relevant special committees also should discuss these bills and raise opinions to the presidium for distribution at the meetings.

After that, the legal committee and the relevant special committees join together to discuss the bill, submit a report of the deliberation results and a revised draft of the law to the presidium, with the important different opinions clearly indicated in the report. After the presidium adopts it through deliberation, it will be printed and distributed at the meetings. When necessary, the executive chairperson of the presidium can summon a meeting of the delegation group leaders to listen to the deputies' opinions about the major matters in the bill, discuss the opinions and submit a report to the presidium. Also, the executive chairperson of the presidium can call together the delegates to make deliberations over the major special issues in the bill and submit a report of deliberations and opinions to the presidium.

3. The withdrawal and termination of a bill

The formal legislative process starts with the raising of a bill. However, due to possible changes, the sponsor may claim to withdraw a bill that has been submitted for deliberation. In different cases, NPC handles the situation in different ways. In the first case, the sponsor may have submitted the proposal for deliberation, but NPC or the Standing Committee of NPC has not listed it on the agenda of the session. If the sponsor requests for withdrawal the bill can be cancelled immediately. In the second case, if the bill has been put to vote, the sponsor's request for withdrawing the bill is invalid. In the third case, if the bill has been listed on the agenda of NPC or the Standing Committee of NPC, and if the sponsor requests for a withdrawal prior to the vote for a decision, the sponsor should state the reasons, and after gaining approval from the presidium and reporting to the congress, the sponsor is allowed to withdraw the bill.

If a major dispute arises in the deliberation of a bill or if there are major issues for further consideration, with the proposition from the presidium and the decision from the plenary session, it is possible to authorize the standing committee to make a decision through further deliberations and report the decision to the next session of NPC. Also, it is possible to authorize the Standing Committee to raise a revision program and submit it to the next session of NPC for a decision through deliberation.

4. The voting for a bill and its promulgation

After deliberations by all the delegations, the Law Committee will revise the draft of a law according to the comments made by the delegations in the deliberations. The presidium will submit the revised draft to the plenary session for voting. It is not adopted unless it is approved by a simple majority vote of all the deputies.

The President of the State shall issue a presidential order to promulgate the law enacted by NPC.

III. The legislative process of the Standing Committee of NPC

1. The submission of a bill

The Chairperson's Council of NPC, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, the special committees under NPC and at least 10 members of the Standing Committee in a joint name may introduce a bill to the Standing Committee of NPC.

Like the process of submitting a bill to NPC, there are different processes to list the proposals raised by different main bodies.

Bills introduced by the Standing Committee Chairperson meeting are directly listed on the agenda of the Standing Committee meeting, without any other steps.

As for the bills submitted by the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the special committees under NPC, the Chairperson's Council will decide whether to list them on the agenda of the

standing committee meeting, or submit them to related special committees for discussing and contributing a report before deciding whether or not to list them on the agenda of the standing committee meeting. If the Chairperson's Council thinks that there are major issues for further consideration in a bill, it is advisable that the sponsor should revise and improve it before submitting it to the standing committee.

If at least 10 members of the standing committee in joint name to introduce a bill to the standing committee, the Chairperson's Council will decide whether or not to list it on the agenda of the standing committee meeting, or refer it to related special committees for deliberation before deciding whether or not to list it on the agenda of the standing committee meeting depending on the results of the special committees' deliberations. If they decide not to list it on the agenda of the standing committee meeting, they should report to the standing committee meeting and explain to the sponsor. When the special committees are discussing, it is advisable to invite the sponsor to attend the meeting and speak out his opinions.

If it is decided to list a bill on the agenda of the standing committee meeting, the drafted bill should be distributed to the members of the standing committee 7 days prior to the start of the meeting, except for special circumstances.

2. The deliberation of a bill

Bills which have been listed on the agenda of the standing committee meeting normally should be examined for three times at the standing committee meeting before they are put to vote.

When a bill is discussed at the standing committee meeting for the first time, the members of the Standing Committee listen to the sponsor's explanations at the plenary session, followed by a preliminary deliberation in groups.

When a bill is discussed at the standing committee meeting for the second time, the plenary session listen to the Law Committee's reports of how the draft of the law is revised and the major issues, followed by a further deliberation in groups.

When a bill is discussed at the standing committee meeting for the third time, the members of the Standing Committee listen to the Law Committee's reports of the results of discussing the draft law at the plenary session, followed by a group deliberation of the revised draft of the law.

When discussing a bill, the standing committee, as required, can call a joint meeting or a plenary session to discuss the major issues in the draft law.

To put it differently, the Standing Committee of NPC can discuss a bill in four kinds of meetings.

The first kind is the plenary session. At the plenary session, the members of the standing committee can give speeches, make deliberations of a bill, or make a decision over the draft of a bill.

The second kind is the group meeting. The Standing Committee of NPC split into 6 groups for deliberation of bills. The group deliberation of bills is the basic deliberation. All bills that

have been listed on the agenda of the standing committee meeting should go through group deliberation. Like the deliberation of bills by the delegations of NPC, when a bill is discussed at the group meetings of the standing committee, the sponsor should designate people to listen to opinions and answer questions. And as required by the Standing Committee, the related institutions and organizations should send staffs to answer the questions.

The third kind is the joint session. The members of the standing committee in different groups are called together to discuss or debate over the major issues in a bill. Normally, a joint session only discusses bills, and does not make any decisions about a bill.

The fourth kind is the special committee meeting. While the standing committee is in session, the related special committees of NPC must hold sessions to discuss and raise opinions for distribution at the Standing Committee meeting. The deliberation by related special committees is primarily a deliberation from the professional angles. Up to this day, NPC has set up an Ethnic Affairs Committee, Law Committee, Internal and Judicial Affairs Committee, Financial and Economic Committee, Education, Science, Culture and Public Health Committee, Foreign Affairs Committee, Overseas Chinese Affairs Committee, Environment Protection and Resources Conservation Committee and Agriculture and Rural areas Affairs Committee. These special committees are standing committees under NPC, with very extensive functions. The deliberation is conducted mainly by observing these specific processes: First, discuss the relevant bills based on the professional nature of each special committee. For instance, the Financial and Economic Committee is in charge of discussing bills related to financial matters, the Internal and Judicial Affairs Committee is in charge of discussing bills related to justice, public security, safety, civil administration, trade unions and women's federations. Second, they can invite sponsors to attend the meeting and speak out their opinions. Third, when special issues are involved, related stakeholders and experts can be invited to attend the meeting and speak out their opinions. Fourth, raise opinions or suggestions to the Chairperson's Council after deliberation and distribute these opinions to the members of the Standing Committee. And fifth, submit opinions to the Law Committee over related bills.

After that, the Law Committee makes an overall deliberation of the bill according to the opinions put forward by the members of the standing committee and relevant special committees and other sides, and submit a report of revisions or a report of deliberation results and the revised bill. Important different opinions should be stated in the report of the deliberation results. Important opinions submitted by relevant special committees that are not accepted should be fed back to these special committees. When the Law Committee discusses a bill, it can invite related members of the special committees to attend the meeting and speak out their opinions.

The Law Committee's deliberation is an overall deliberation and a key to all deliberations. True, the Law Committee is also a special committee, but compared with other special committees, it shoulders more important responsibilities in the legislation of NPC and its Standing Committee, as well as in the whole legal system. The other special committees are only in charge of discussing the related bills, and the Law Committee is fully in charge of deliberating all the bills. That the Law Committee is fully in charge of discussing bills and submitting them to NPC and its standing committee is a very important system in Chinese legislation. In the Chinese reality, the practice of this system is helpful to ensure the quality of legislation, helpful to give an overall consideration of China's legislative situation, and helpful to maintain the unity of the legal system, avoid and eradicate contradictions and

conflicts between laws, and ensure a harmonious development of the legal system.

Bills that have been listed on the agenda of the standing committee meeting can be discussed for two times at the standing committee meeting before being voted for a decision, if all the sides basically think the same. Some revised bills can be discussed for just one time at the standing committee meeting before being voted for a decision, if all the sides basically reach a consensus.

The working bodies of the standing committee, the, Law Committee, and related special committees should listen to opinions from all sides. Different forms such as work shops, expert round tables and public hearings can be used for listening to opinions.

The working bodies of the Standing Committee should send the drafted laws to relevant organizations and experts for soliciting opinions. After the opinions are sorted up, send them to the Law Committee and related special committees, and as required, distribute them at the Standing Committee meeting.

Important bills which have been listed on the agenda of the Standing Committee meeting can be pre-publicized for soliciting opinions. Opinions raised by government institutions, organizations and citizens are submitted to the working bodies of the Standing Committee.

3. The withdrawal and termination of a bill

Like NPC, the Standing Committee of NPC also handles the sponsor's request for withdrawal in three different ways. In the first case, the sponsor has submitted a proposal for deliberation, but the Standing Committee of NPC has not listed it on the agenda. In this case, if the sponsor requests for withdrawal, the withdrawal of this bill immediately takes effect. In the second case, if the bill has been submitted for a vote, the sponsor's request for withdrawing the bill becomes invalid. In the third case, if a bill has been listed on the agenda of the Standing Committee of NPC, and if the sponsor requests for withdrawal before being voted for a decision, the sponsor should state the reasons, and after gaining approval from the Chairperson's Council and reporting to the Standing Committee, the deliberation of this bill immediately comes to an end.

If there are still major issues for further consideration after a bill has been discussed at three sessions of the Standing Committee, with the proposition from the committee chairperson and the approval from the joint session or the plenary session, the proposal will be postponed for vote, and submitted to the Law Committee and relevant special committees for further deliberations.

There are two cases in which the deliberation of a bill can be terminated: In the first case, regarding a bill that has been withdrawn, the Standing Committee of NPC terminates the deliberation as soon as the bill is withdrawn. In the second case, if there are disagreements on major matters such as the necessity and the feasibility of formulating a particular law while the Standing Committee of NPC is discussing a bill, and the deliberation is suspended for 2 years, or it has not been listed on the agenda of the Standing Committee meeting for 2 years, the Chairperson's Council submits a report to the Standing Committee and the deliberation of a bill comes to an end. In 1993, the 4th session of the Standing Committee of 8th NPC discussed *Law on National Medals and Honorary Titles (Draft)*. Because there are too many problems and because it needs a further research and solution to these problems, this bill has

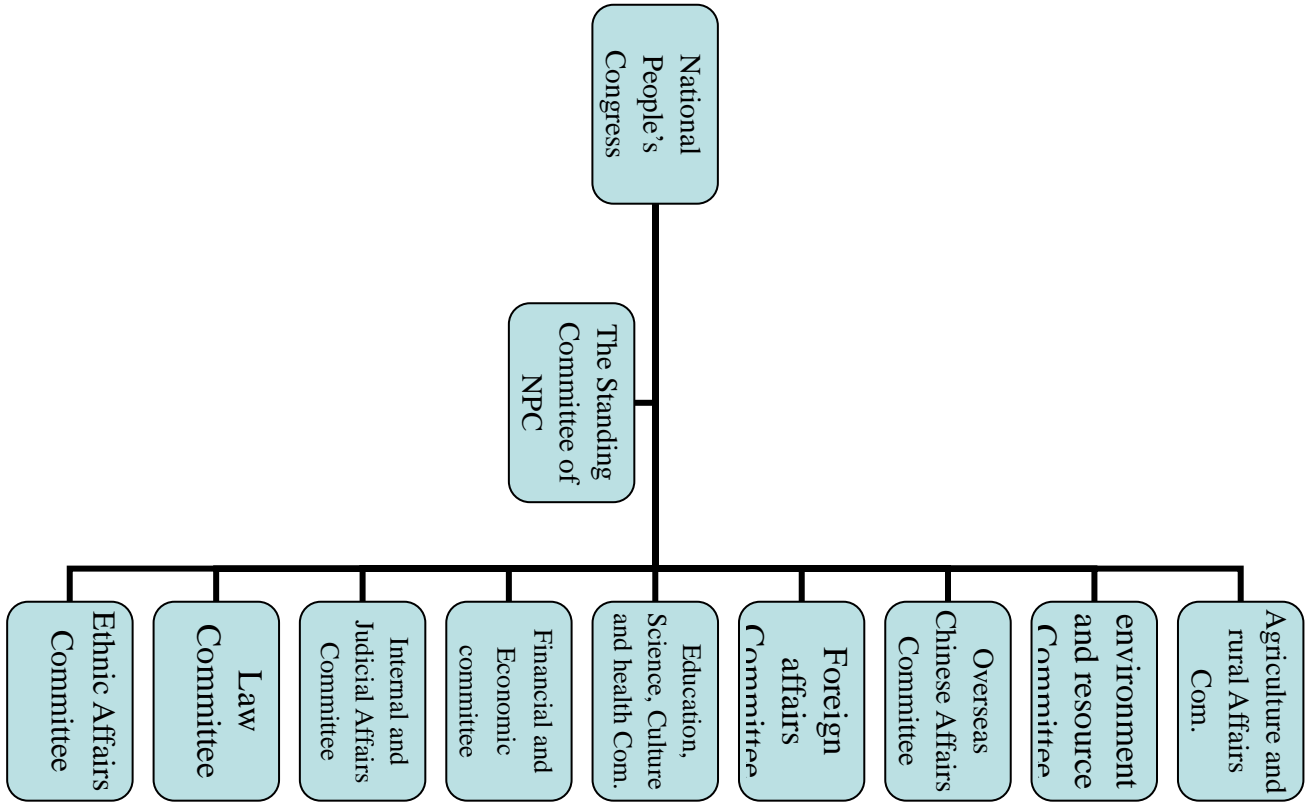
been until this day. According to *Law on Legislation*, the period of its suspension has exceeded 2 years, so the Standing Committee of NPC has terminated the deliberation.

4. The voting for a bill and its promulgation

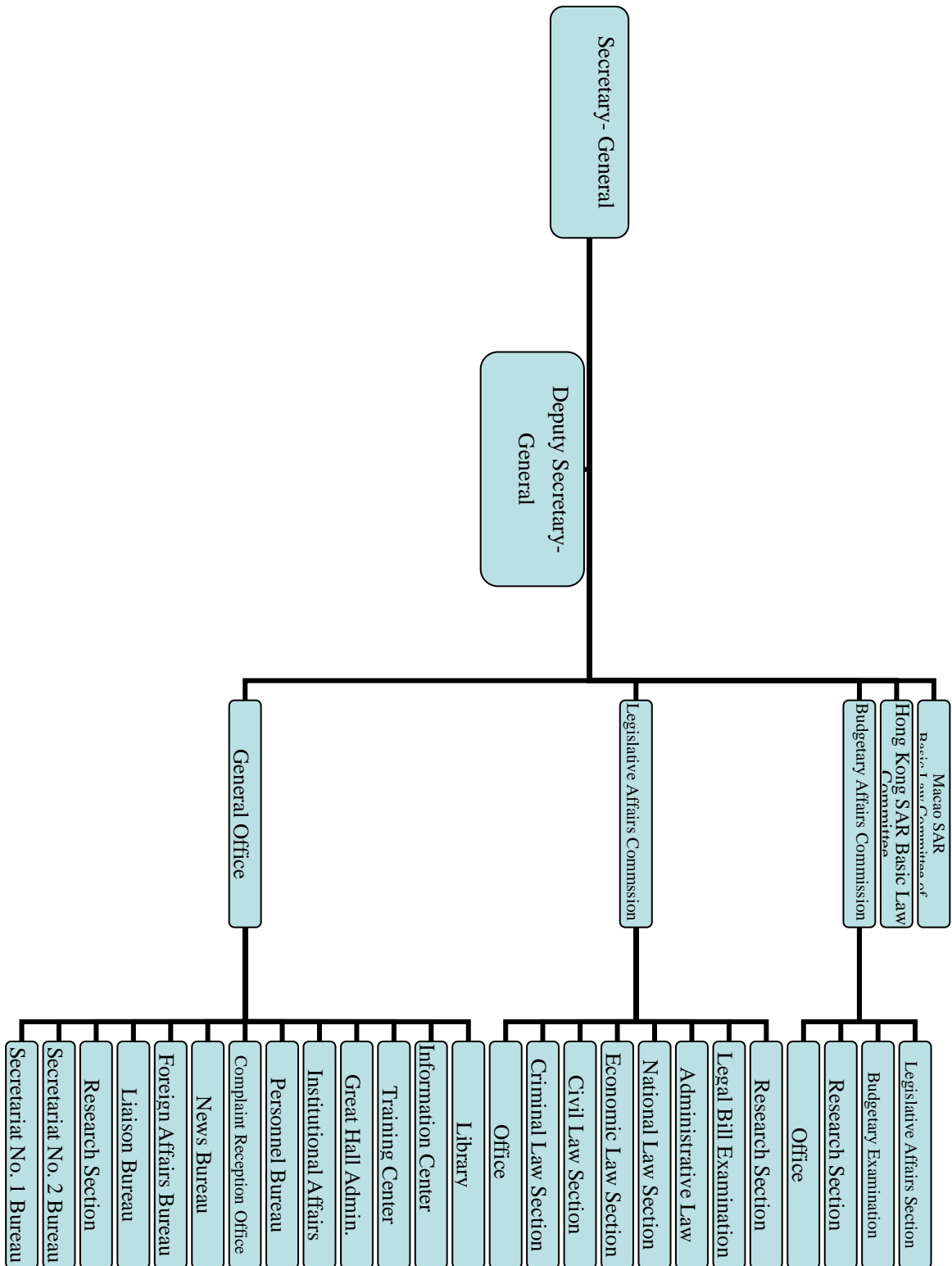
Regarding a bill submitted to the Standing Committee of NPC for deliberation, its revised draft of the law will be discussed at the Standing Committee meeting. The Law Committee revises it and submits a final draft of the law to the Chairperson's Council which, in return, submits it to the plenary session of the Standing Committee for voting. It is not adopted unless it is passed by over half of the members of the Standing Committee.

The State President shall issue a presidential order to promulgate the law enacted by the Standing Committee.

Appendix 1: Organizational Structure of National People's Congress



Appendix 2: The Structure of Working and Administrative Bodies of the Standing Committee of NPC



Appendix 3:

Agenda of the 4th Meeting of the 10th National People's Congress

March 5-14, 2006

(Adopted by the first meeting of the presidium at the 4th Meeting of the 10th National People's Congress, on March 4, 2006)

March 5 (Sunday)

9 am: The meeting opens

1. Wen Jiabao, Premier of the State Council, delivers government work report
2. Examines the drafted Outline of the 11th Five-year Plan for National Economy and Social Development
3. Examines the State Council's report on the implementation of the plan for national economy and social development in 2005, and the drafted plan for national economy and social development in 2006
4. Examines the State Council's report on the implementation of the central and local budgets in 2005, and the draft of the central and local budgets in 2006

3 pm: The plenary session of the delegation deliberates the government work report

March 6 (Monday)

9 am: The plenary session of the delegation discusses the government work report

3 pm: The group session of delegates to discuss the government work report and examine the drafted outline of the "11th Five-year Plan"

March 7 (Tuesday)

9 am: At the plenary session of the delegation, discuss the government work report and examine the drafted outline of "11th Five-year Plan"

3 pm: At the group session of delegates, discuss the government work report and examine the annual work plan report and budgetary report

March 8 (Wednesday)

9 am: At the plenary session of the delegation, discuss the government work report and examine the annual work plan report and budgetary report

3 pm: At the group session of delegates, discuss the government work report and examine the drafted outline of the "11th Five-year Plan", the annual work plan report and budgetary report

March 9 (Thursday)

9 am: The 2nd plenary session

Wu Bangguo, Chairperson of the Standing Committee of NPC, presents a work report of the Standing Committee of NPC

3 pm: At the group session of delegates, discuss the work report of the Standing Committee of NPC

March 10 (Friday)

9 am: At the plenary session of the delegation, discuss the work report of the Standing Committee of NPC

Afternoon: The delegation or delegates discuss and raise proposals according to law

March 11 (Saturday)

9 am: The 3rd plenary session

1. Xiao Yang, President of the Supreme People's Court, presents a work report of the Supreme People's Court
2. Jia Chunwang, President of the Supreme People's Procuratorate, presents a work report of the Supreme People's Procuratorate

3 pm: At the group session of delegates, discuss the work report of the Supreme People's Court and the work report of the Supreme People's Procuratorate

March 12 (Sunday)

9 am: At the plenary session of the delegation, discuss the work report of the Supreme People's Court and the work report of the Supreme People's Procuratorate

Time for rest in the afternoon

March 13 (Monday)

9 am: At the group session of delegates, discuss the draft resolution of the government work report, the draft resolution of the "11th Five-year Plan" outline, the draft resolution of the annual work plan and the draft resolution of the annual budget

3 pm: At the plenary session of the delegation or the group session of delegates, discuss all the draft resolutions

March 14 (Tuesday)

9 am: The closing ceremony

1. Vote for the draft resolution of the government work report
2. Vote for the draft resolution of the "11th Five-year Plan" outline for national economy and social development
3. Vote for the draft resolution of the implementation of the plan for national economy and social development in 2005 and the draft resolution of the plan for national economy and social development in 2006
4. Vote for the draft resolution of the implementation of the central and local budgets in 2005 and in 2006
5. Vote for the draft resolution of the work report of the Standing Committee of NPC
6. Vote for the draft resolution of the work report of the Supreme People's Court
7. Vote for the draft resolution of the work report of the Supreme People's Procuratorate

The end

Time of the meeting: 9:00 ~11:30 am

3:00~5:30 pm

The managing chairperson of the presidium shall decide whether or not to make any adjustment of the time-schedule.

Appendix 4:

Agenda of the 23rd Meeting of the Standing Committee of the 10th National People's Congress

August 22-27, 2006

August 22 (Tuesday)

9 am: The plenary session

1. Listen to a report on the deliberation results of the draft law on supervision submitted by the Standing Committee of National People's Congress of People's Republic of China, as well as that of the Standing Committee of the People's Congress above the county level.
 2. Listen to a report on the deliberation results of the draft law of the People's Republic of China on business bankruptcy.
 3. Listen to a report on the deliberation results of draft amendments to the law of the People's Republic of China on partnership enterprises.
 4. Listen to a report on revising the draft law of the People's Republic of China on property right
 5. Listen to a report on revising the draft law of the People's Republic of China on combating money laundering
 6. Listen to a report on revising the draft law of the People's Republic of China on farmers' cooperative economic organization
 7. Listen to an explanation of submitting the revised draft of the law of the People's Republic of China on protection of minors for deliberation
 8. Listen to an explanation of submitting the draft of the law of the People's Republic of China on anti-narcotics for deliberation
 9. Listen to an explanation of submitting a bill of authorizing Hong Kong Special Administrative Region to administer the port areas of Shenzhen Port for deliberation
 10. Listen to an explanation of submitting a bill of *A Cooperation Agreement between the government of the People's Republic of China and the Government of the Islamic Republic of Pakistan on Striking Terrorism, Separatism and Radicalism* for deliberation
 11. Listen to a report on examining the qualifications of some delegates
 12. Discuss the draft of appointments and removals
- 3 pm: Group deliberation of the draft of the supervision law

August 23 (Wednesday)

- 9 am: Group deliberation of the draft law on business bankruptcy and the revised draft of the law on partnership businesses
- 3 pm: Group deliberation of the draft law on property right

August 24 (Thursday)

- 9 am: Group deliberation of the revised draft of the law on protection of minors, and the bill of authorizing Hong Kong Special Administrative Region to administer the port areas of Shenzhen Port
- 3 pm: Group deliberation of the draft law on combating money laundering, the draft law on farmers' cooperative economic organization, the report on examining the qualifications of the delegates, and

the draft of appointments and removals

August 25 (Friday)

9 am: Group deliberation of the drafted law on anti-narcotics

3 pm: The plenary session

1. Listen to a report made by the State Council on the implementation of the plan for national economy and social development
2. Listen to a report made by the Standing Committee of NPC on the implementation of *Law of the People's Republic of China on Energy Saving*.

August 26 (Saturday)

9 am: Conduct group deliberations of a report on the implementation of the plan for national economy and social development and a report on the examination of the implementation of the law on energy saving

3 pm: The plenary session

1. Listen to a report made by the Standing Committee of NPC on a track-down examination of the implementation of laws related to environmental protection.
2. Listen to a report made by the Standing Committee of NPC on the implementation of *Law of the People's Republic of China on Judges* and *Law of the People's Republic of China on Procurators*.
3. Listen to a report made by the Law Committee of NPC on the opinions of revising the draft of the law and the results of discusses.

August 27 (Sunday)

9 am: Conduct group deliberations of the issues put to vote, the report on a track-down examination of the implementation of the law on environmental protection and the report on the examination of the implementation of the law on judges and the law on procurators

3 pm: The plenary session

Vote for all the bills

The meeting closes.

Appendix 5:

The Presidential Order of the People's Republic of China

(The No. 53 Order)

The Supervision Law of the People's Republic of China for the Standing Committee of the People's Congress at All Levels was already adopted at the 23rd Meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China, on August 27, 2006. Now it is promulgated and goes into force as of the date January 1, 2007.

Hu Jintao

President of the People's Republic of China

August 27, 2006

Appendix 6:

An Introduction to the Legislative Process of National People's Congress

(By taking the example of the legislative process of the contract law)

1. Legislative background

First, since an amendment to the Constitution stipulated in 1993 that “China practices the socialist market economy” and that “China will strengthen the economic legislation”, the 8th NPC, as soon as it started, clearly put forward the task of building a legal system frame for the socialist market economy. The contract law is considered as an important law of the market economy. Second, in terms of the legal system, China always hopes to formulate a uniform civil code. Since the general principles of civil law were formulated in 1986, the efforts to improve the civil law system have been continuing. The contract law is an integral part of civil law. According to the division of legislative power in the Chinese Constitution, this basic civil law belongs to the scope of legislative authority under NPC. In the end, this law was adopted by NPC. And third, before this contract law was born, the legislation on contract was separate. Apart from the general principles of civil law that provide general principles for contracts, there were three contract laws which were applicable to different social and economic sectors, namely, the contract law for economy, the contract law for foreign-related economy and the contract law for technology. On the one hand, these three contract laws brought the whole system of the contract law in disorder and many articles were contradictory to each other. On the other hand, some new forms of contract were unable to be brought into the existing scope of the three contract laws, for instance, there were not any appropriate legal norms for contract of financing and leasing, contract of entrustment, and contract of industrial disciplines, etc. Thus, it is very necessary to have a uniform contract law.

2. Drafting bodies:

The Legislative Affairs Commission of the Standing Committee of NPC is in charge of drafting the contract law, assisted by other organs such as the Supreme People's Court. Some law experts also participate in the work.

Explanation: The contract law is not a thing administered by one or several administrative departments; it is a comprehensive thing. Normally, a special committee of NPC or the legislative affairs department of the Standing Committee drafts or takes the lead to draft such laws. The Legislative Affairs Commission is a working commission under the Standing Committee of NPC, just like a special committee under NPC. The drafting of laws by an administrative department of the State Council is normally known as “departmental legislation”, which is liable to arouse disputes over powers and interests between different departments. However, such problems normally do not exist in the drafting of laws by the special committees and the Standing Committee of NPC.

3. The legislative process----at the stage of the Standing Committee. This law was already listed in the legislative plan of the 8th NPC (1993-1998), so the drafting work started in this period of time.

(1) Until May 1997, it was a draft for soliciting opinions. The draft was printed and distributed to provinces,

autonomous regions and municipalities, as well as related departments of the central government, law universities and research institutes for soliciting opinions, and a seminar was held to hear opinions. Based on opinions from all sides, the drafting units revised the draft and brought out a formal draft of the contract law.

Explanation: It is a common practice in the drafting process of a law in China that the draft for soliciting opinions or the draft law, once come out, will be distributed to related departments of both local and central governments, social groups and teaching or research institutions for soliciting opinions.

(2) The 1st deliberation at the Standing Committee meeting. After the draft law came out, it was submitted to the 4th meeting of the Standing Committee of 9th NPC for deliberation, which was held on August 24-29, 1998. This meeting of the Standing Committee lasted for 6 days. According to the agenda, the period of time from 9:00-11:30 on the morning of August 26 was group deliberation of a draft of the contract law and an international treaty. In other words, this bill and other motion bills had two hours and a half for group deliberation. Normally, the Standing Committee seldom speaks anything about the deliberation of an international treaty. This meeting had also arranged a half day for deliberation at the general assembly, that is, from 3:00-5:30 on the afternoon of August 28, there were 13 members of the Standing Committee and attendees who made speeches (including joint speeches) at the general assembly. Mr. Zhu Yuli, a member of the Standing Committee, gave a speech in which he spent half of the time talking about the contract law.

Explanation: First, the explanation of the proposal was made by Hu Kangsheng, a deputy director and member of the Legislative Affairs Commission. The Legislative Affairs Commission, in itself, does not have the right to raise a proposal or bill, but this bill, in effect, was put forward at the chairperson's council of the Standing Committee, and Mr. Hu was entrusted by the chairperson's council to make this explanation. Second, the contract law belongs to the legislative scope of NPC, yet it is a common practice in the legislative process that the Standing Committee discusses a proposal before submitting it to the general assembly of NPC for deliberation. And third, the explanation of a proposal must include an explanation of the legislative necessity, the general process of how a draft law comes into existence, as well as the scope of legal adjustments, the different opinions about the major problems and the final methods to handle the problems.

(3) Solicit opinions publicly. After the 4th deliberation at the Standing Committee meeting, the General Office of the Standing Committee of NPC issued *An Circular on Soliciting Opinions about the Contract Law of the People's Republic of China (draft)*. The announcement includes the following items: First, ask the Standing Committee of the People's Congress of provinces, autonomous regions and municipalities to solicit and collect opinions from local related departments, teaching and research institutions and NPC representatives, especially the opinions from large- and medium-sized enterprises, technical research organizations and the people's courts. Summarize the opinions and submit them to the Legislative Affairs Commission of the Standing Committee of NPC prior to October 15, 1998. Second, the Law Committee of NPC, the Financial and Economic Committee, the Standing Committee and the Legislative Affairs Commission jointly hold a seminar to solicit opinions from related departments, law experts and other persons. Third, people of any circles can send their opinions to the Standing Committee of the People's Congress of the local province, autonomous region or municipality, or send directly to the Legislative Affairs Commission of the Standing Committee of NPC. And fourth, ask national and provincial

newspapers, magazines, radio stations and TV stations to organize deliberations of the draft of the contract law, and report the deliberations and opinions publicly.

By October 15, the Legislative Affairs Commission had received opinions and suggestions from 12 provinces, autonomous regions and municipalities as well as 18 departments of the central government, and nearly 100 letters from individual citizens.

Explanation: First, soliciting opinions about the draft law from the general public is an important measure to increase public participation in the legislative process. The rules of procedures for NPC contain articles about this. So far, NPC and its Standing Committee have used this method for 9 times, and 3 times during the period of the 9th NPC. *The Law on Legislation* (went into force on July 1, 2000) re-affirms this practice, namely, important bills that have been listed on the agenda of the Standing Committee meeting can publicize the draft law and solicit opinions after it is decided by the chairperson's council. Opinions from organizations and individuals can be sent to the working bodies of the Standing Committee. Therefore, we believe that this method will be applied more extensively in the future. Second, the joint seminar held by the Law Committee, the Financial and Economic Committee, the Standing Committee and the Legislative Affairs Commission of NPC in the legislative process is conducive to a uniform coordination of the affairs within NPC. Third, pay full attention to the opinions from business people and law people. And fourth, assistance obtained from the local people's congress in the legislative process is of vital importance to the legislation of the central government.

(4) The 2nd deliberation at the Standing Committee meeting. The 5th meeting of the 9th Standing Committee of NPC, which was held on October 27 to November 4, 1998, discussed the draft contract law once again. The Law Committee submitted to the meeting an explanation of related issues on *The Contract Law of the People's Republic of China (draft)*, reporting to the Standing Committee meeting about the major issues of the draft contract law and the major opinions collected. According to the agenda of the meeting, group deliberation of the draft contract law was conducted on the afternoon of October 29 and on the morning of October 30, and the time of group deliberation was 5 hours. Deliberation of the general assembly was conducted on the morning of November 4. Five members of the Standing Committee and special committees made their speeches, and one of them gave a comment on the contract law.

(5) The 3rd deliberation at the Standing Committee meeting. After the previous meeting, the Law Committee and the Legislative Affairs Commission conducted surveys in Beijing, Shanghai and other cities to listen to more opinions from related departments, enterprises, public institutions and law experts. Then the Law Committee held a meeting and spent 3 days discussing the draft law article by article. On December 23-29, 1998, the 6th Meeting of the Standing Committee of 9th NPC once again discussed the draft contract law. The Law Committee of NPC submitted a report on revising *The Contract Law of the People's Republic of China (draft)*, and introduced the Law Committee's opinions about revising the law. The group deliberation of this meeting lasted for half a day, that is, two hours and a half. In this group deliberation, no person gave any comments on the draft contract law.

Explanation: The deliberation of the draft law article by article was conducted by the special committees. There was not a deliberation article by article at the Standing Committee meeting and the general assembly.

(6) The 4th deliberation at the Standing Committee meeting. After the 3rd deliberation, considering the major issues in the deliberation, Chairperson Li Peng conducted surveys and provided the results of the surveys to the meeting in the form of a newsletter. Meanwhile, the Law Committee and the Legislative Affairs Commission invited persons-in-charge from related departments and law experts to hold a 5-day seminar. The Law Committee spent 2 days to have a further deliberation. The 7th meeting of the Standing Committee of the 9th NPC, which was held on January 29-30, 1999, discussed the draft contract law for the fourth time. The Law Committee once again submitted a report to the meeting. Not a speech was made at this meeting. In group deliberation, a half day was spent on discussing five proposals and suggestions, including the draft contract law. On average, the time for deliberation of the draft contract law was half an hour. This meeting decided to submit the draft contract law to the 2nd meeting of the 9th NPC for deliberation.

Explanation: This Standing Committee meeting was the last meeting prior to the next people's congress. Normally, the meeting lasts for a short time, mainly because it is used to identify the items of deliberation for being submitted to the congress. Therefore, the deliberation of the draft law itself is not important; what matters is the process.

4. The legislative process ---- at the stage of the people's congress. The 2nd Meeting of the 9th NPC was held on March 5-15, 1999, during which the draft contract law was submitted to the congress for deliberation according to the decision made by the Standing Committee of NPC. On March 9, Gu Angran, director of the Legislative Affairs Commission, made an explanation of the proposals to the meeting. He mainly explained the necessity and the importance of making the contract law, the guidelines of making the contract law, the drafting process, the four deliberations by the Standing Committee of NPC, as well as the main contents and problems in the contract law. The delegations of NPC had three days available for discussing the draft contract law, yet it needs to be noted that the three days were not completely used for discussing this bill. After deliberations by the delegations, the Law Committee held a meeting on March 12 to discuss the draft contract law. On March 14, Mr. Wang Weicheng, director and member of the Law Committee, reported the deliberation results to the presidium of the meeting and explained the Law Committee's opinions of the deliberation.

Explanation: (1) The arrangement of the time-schedule of the meeting is too general and the specific time of each issue is elastic, so it is difficult to tell exactly how much time it takes each delegation to discuss a bill. (2) The Law Committee conducts an overall deliberation after the delegations have discussed and submits a report of the deliberation results. A uniform process of deliberation is very important to the legislative process of both NPC and its Standing Committee.

5. The enact and promulgation of a law. On March 15, the congress adopted the contract law, and on the same day, the President of the People's Republic of China issued a presidential order. It is a necessary process for the President of the State to promulgate the law adopted by NPC and its Standing Committee, but the President has no right to decide at his or her discretion.

A few points need to be explained in this legislative process: First, the Standing Committee discusses four times and the people's congress discusses only one time, so the major issues actually have been solved before being submitted to the people's congress. Second, the Standing Committee discusses the same law for four times successively and connects it with the people's congress, which makes the legislative process

consistent. This is a good legislative arrangement, but successive deliberations are not legally required, nor frequently occur. Third, soliciting opinions about the draft law openly this time does not have a good effect as before, chiefly because this bill is too professional for common people. In fact, in such a professionally strong legislative process, the role played by the legislative assistant agency and the Law Committee is very important. And fourth, even if it is a law formulated by NPC, the main work of deliberation is conducted by the Standing Committee. At a people's congress, there are many delegates, the time of a meeting is short, the task of deliberation is heavy, and the possibility of making a substantial revision of the draft law is small.

Appendix 7:

An Introduction to the Legislative Process of the Standing Committee of NPC (By taking the example of the legislative process of the securities law)

In December 1990 and in June 1991, two stock exchanges were established in Shanghai and Shenzhen respectively. This marked China's beginning to foster and develop the securities market. However, an appropriate legal system had not been set up, and the call for formulating a securities law was high. The securities law is considered not a basic law, so it belongs to the legislative power of the Standing Committee of NPC and it should be formulated by the Standing Committee. In the introduction to the legislative process of a securities law, some of the same issues and contents involved in the legislative process of the Standing Committee have been mentioned in the previous cases, so it is unnecessary to repeat them here.

1. Formulate a draft law and submit it to the Standing Committee for deliberation for the first time. In August 1992, the Financial and Economic Committee established a team to draft the securities law. This team contributed a draft law by studying relevant legal systems of other countries and inspecting the securities market in Shanghai, Shenzhen and Hong Kong. After it was discussed and adopted by the Financial and Economic Committee, it was submitted to the 3rd meeting of the 8th Standing Committee of NPC for deliberation on August 18, 1993. Mr. Liu Suinian, director of the Financial and Economic Committee, made an explanation of the proposal to the Standing Committee meeting.

Explanation: First, the Financial and Economic Committee of NPC drafted this law and submitted it to the Standing Committee meeting. In recent years, it has become more and more widespread that the special committees, other than the Law Committee, draft and submit bills, which is considered a mark showing China is strengthening the functions of its people's congress. Second, it is already a widespread practice in the legislative process that China conducts a great deal of research and draws the experience of the legal system from other countries before starting to draft a law, especially in the economic legislation.

2. The second deliberation. After the previous deliberation by the Standing Committee, the Legislative Affairs Commission of the Standing Committee sent the draft law to about 200 agencies, including related departments of the Central Government and the State Council, the provinces, autonomous regions and municipalities, some cities and stock exchanges, securities companies, law universities and research institutes, to solicit opinions. Also, two special seminars were held, attended by related departments (the Securities Committee of the State Council, the State Reform Commission, the State Planning Commission, the People's Bank of China, the Ministry of Finance, the Legal Affairs Bureau of the State Council, and the Development and Research Center of the State Council). And meanwhile, China Securities Regulatory Commission and the drafting team of the securities law held an international symposium on the securities law, inviting national and international experts to discuss the draft law article by article. On December 17, 1993, the Law Committee of NPC submitted a report of how to revise the securities law to the 5th meeting of the Standing Committee of the 8th NPC.

Explanation: First, unlike the contract law, the securities law involves many administrative departments, thus in the drafting process, many administrative departments are absorbed to participate. Second, it should be the first time in the Chinese history of legislation that an international symposium is held specifically for

a bill and that the proposal is discussed article by article. Third, at the beginning, this law was drafted by the Financial and Economic Committee of NPC, and later, it was revised by the Law Committee, thus it is worth considering how to handle the relations between the Law Committee and the other special committees in the legislative process. The overall deliberation by the Law Committee is a statutory step, but before the overall deliberation, it is necessary to make other special committees play a bigger role.

3. The third deliberation. After the second deliberation, the Law Committee, the Financial and Economic Committee and the Legislative Affairs Commission of NPC jointly held a 5-day seminar to study how to revise the draft of the securities law. On June 18-22, 1994, the Law Committee held a meeting to discuss and revise the draft article by article, and this revised draft was submitted, for a third time, to the Standing Committee for deliberation on June 25, 1994. Because the draft was so controversial, it was not passed at the 8th NPC.

Explanation: First, the Chinese securities market was a latecomer, without much experience. Under the circumstances that the legislative conditions are not mature, the relevant legislative work is very difficult. Second, *The Company Law* was already passed in 1993, which specifically defined the limited-liability company and the listed company. Some contents will be involved in the securities law, thus, to some degree, alleviating the pressure of formulating the securities law. Third, in the meantime, the State Council issued *Interim Regulation for Management of Stock Issuance and Exchange* (1993), *Regulation for Management of Business Bonds* (1993), and *Method for Management of Stock Exchanges* (1996), among others, to regulate the securities market. While the legislative conditions of NPC and its Standing Committee are not mature, it is a common practice in the Chinese legislation that administrative regulations and ministerial regulations are passed in advance. And fourth, this is a legislation crossing two terms of NPC. In the procedures of the people's congress in China, a proposal will not be invalidated or cancelled simply because of re-election.

4. The fourth deliberation. After the previous deliberation, in December 1995, the State Council held a special meeting to listen to the opinions of the Legal Affairs Bureau of the State Council about how to formulate the securities law. On September 22, 1998, Chairperson Li Peng presided over a work meeting and listened to the reports of how to revise the securities law by the Law Committee, the Financial and Economic Committee and the Legislative Affairs Commission. The 5th meeting of the Standing Committee of 9th NPC (October 27 to November 4, 1998) once again discussed the draft of the securities law. The Law Committee submitted a report of how to revise the law to the Standing Committee meeting.

Explanation: First, to a draft law which involves many administrative departments and has very controversial opinions, the internal coordinating mechanism of the State Council is very important. As the supreme administrative body, the State Council plays a vital role in whether or not it can solve the basic policy problems and unify the different opinions of administrative departments. In the legislative process of some foreign countries, administrative departments must solve the policy problems before they can raise a bill to the parliament, thus ensuring that there will be no disputes between different administrative departments, nor will there be the disadvantages of the so-called "departmental legislation". Second, the chairperson's council and the committee work meeting are also an effective way to coordinate the legislative disputes within the units of NPC. Third, it is not normal for a bill to be discussed with an interval of four years between two meetings of the Standing Committee. Currently, these similar problems have not been solved in the legislative process.

5. After deliberation at the 5th meeting, the Law Committee and the Legislative Affairs Commission printed the revised draft and distributed it to the related departments of the local government and the State Council to solicit opinions and hold seminars attended by experts. Chairperson Li Peng conducted survey and research of the problems in the deliberation. The leaders of the State Council submitted their opinions about the revised draft. When the Law Committee was discussing the revised draft, leaders from related departments of the State Council and from the Financial and Economic Committee of NPC attended the meeting. The 6th meeting of the Standing Committee of 9th NPC, which was convened on December 23-29, 1998, once again discussed the revised draft. After group deliberation, the Law Committee of NPC submitted a report of how to revise the law to the Standing Committee. In the end, this meeting passed the securities law.

Explanation: First, before this discuss started, leaders from the State Council and from the Standing Committee of NPC paid great attention to this law, which has an important influence on the final adoption of this law. Second, leaders from other special committees attended the Law Committee meeting and participated in the deliberation, which also has some effect on settling the disputes between the special committees. In the procedures of the people's congress in China, there is not the system of a joint committee or a mixed committee. In practice, a mixed committee can achieve a better effect in a bill which involves the affairs of more than two special committees. Third, this legislation underwent a long time and many difficulties, which lasted nearly 6 years and a half starting from the establishment of the drafting team to the final adoption of the law. Despite its great significance, this lawmaking process has many things to summarize and improve.