INTRODUCTION

The Chinese Communist Party (CCP or the Party) is the ruling party in China. It has ruled China for more than five decades since 1949 when it came to power. The CCP was first founded in 1921 and was based on Marxist and Leninist ideology. Having experienced several decades of armed struggle against the Nationalist Government led by the Kuomintang, the CCP has controlled the whole country except Taiwan since 1949 in the name of the People’s Republic of China (PRC).

After the founding of the PRC, the CCP began to establish its own legal and judicial systems to consolidate and maintain its rule in the country. The first step was to abolish the laws left over from the previous regime. The Common Programme of September 1949 provided that “all laws, decrees and judicial systems of the Kuomintang reactionary government that oppress the people shall be abolished. Laws and decrees protecting the people shall be enacted and the people’s judicial system shall be established”.1 Even before that, on 22 February 1949, the CCP issued the “Instructions for Abolishing the Kuomintang’s Book of Six Laws”2 and Determining Judicial Principles for Liberated Areas”, which

2 They are the Organic Law of the Courts, the Commercial Law, the Civil Code, the Criminal Code, the Code of Civil Procedure, and the Code of Criminal Procedure.
rendered ineffective all existing laws enacted by the former Nationalist government, and, more remarkably, the Instructions requested courts to have regard to party policies and other programmes in determining cases pending the enactment of new laws. The rationale behind that was that law developed under a bourgeois system could not be inherited by a socialist system in accordance with Marxist theory. However, as is pointed out, the CCP’s practice of abolishing all existing laws was the first and most likely only one amongst all the communist parties in the world.

The socialist system was established with the adoption of the first Constitution in 1954. However, the Cultural Revolution (1966-1976), a political and social catastrophe, in fact destroyed the adolescent legal system. Thus after this catastrophe the post-Mao communist leaders realised that it was urgent to rebuild the legal system as a necessary means of restoring and maintaining social order and safeguarding economic reform. The Communiqué of the 3rd Plenum of the 11th Central Committee of the CCP held in December 1978 set the goals of the construction and re-establishment of the legal system in China. The above statements since then have become the guidelines for legal reform in the PRC. On the other hand, the Plenary Session also decided to establish the Party Discipline Inspection Committee composed of 100 people led by Chen Yun in order to strengthen the Party construction.

The CCP is not just a party in the traditional sense. It controls society and social life in every aspect from top to bottom through its organisational cells. The influence of the Party in the society is immense and its role critical. Since law is used to govern social life, it is inevitable that it is influenced, or more precisely directed, by the Party. As is opined, no consideration of law in China would be complete without considering the relationship between the CCP and the state and the legal system. Since the post-Mao era, there has been an open-ended debate on which is superior in the Chinese society, the party or the law (dang da haishi fa da). This chapter attempts to expound and assess the relationship between the Party and the law by looking into several key areas where the CCP and the law interact and/or are intertwined.

4 See ibid., at 11.
5 See the relevant contents of the introductory chapter of this book.