HARMONISING LOCAL LAWS WITH THE CENTRAL LEGISLATION

DIVISION OF LEGISLATIVE POWERS

Local laws constitute an important part of the Chinese legal system. By the end of 2002, more than 9,000 local laws had been enacted by the local people’s congresses and their standing committees and deposited with the Standing Committee of the National People’s Congress (NPC). In addition, the autonomous regions had passed numerous separate regulations applicable within those regions. People may wonder how these local laws come into being and what role they play in the development of the whole Chinese legal system in the direction of the rule of law. The term “law” in China has both broad and narrow meanings: in the broad sense, it refers to the entire body of Chinese legislation and includes all central and local laws and regulations; while in the narrow sense, it refers only to the statutes called “laws” enacted by the NPC and/or its Standing Committee. The term “local laws” used in this chapter are to be interpreted using the above broad meaning.

Legislative power forms the basis for the development of a legal system, an indispensable element in a society governed by the rule of law. As defined, legislative power is “the lawmaking powers of a legislative body, whose functions include the power to make, alter, amend and repeal laws.” It can be further

explained that “[i]n essence, the legislature has the power to make laws and such power is reposed exclusively in such body though it may delegate its rule making and regulatory powers to departments in the executive branch”.4 In the contemporary Chinese legal system, legislative power is originally granted in the Chinese Constitution. It provides that the NPC is the highest organ of state power and its permanent body is the NPC Standing Committee.5 The NPC and its Standing Committee exercise the legislative power of the state.6 Thus the central supreme legislative power in China rests with the NPC and its Standing Committee.

The Constitution grants the following legislative powers to the NPC: (a) to amend the Constitution; (b) to enact and amend basic statutes concerning criminal offences, civil affairs, the state organs, and other matters; and (c) to amend or annul inappropriate decisions of its Standing Committee.7 The NPC Standing Committee also exercises the corresponding legislative functions and powers provided for in the Constitution.8 The Standing Committee is actually granted wider legislative powers than the NPC, while the latter has the power to enact more important laws and statutes. As to the legislative initiative, deputies to the NPC and all those on its Standing Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the NPC and its Standing Committee.9 The NPC also establishes within it a Law Committee to facilitate its enactment of laws and statutes.

At the central level, the State Council and its subordinated ministries also enjoy certain legislative powers as prescribed by the law. The State Council exer-

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4 Ibid.

5 Art. 57 of the Chinese Constitution.

6 Art. 58 of the Chinese Constitution.

7 Art. 62 of the Chinese Constitution.

8 These include: (a) to interpret the Constitution and supervise its enforcement; (b) to enact and amend statutes with the exception of those which should be enacted by the NPC; (c) to enact, when the NPC is not in session, partial supplements and amendments to statutes enacted by the NPC provided that they do not contravene the basic principles of these statutes; (d) to interpret statutes; (e) to annul those administrative rules and regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes; (f) to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations; and (g) to decide on the ratification and abrogation of treaties and important agreements concluded with foreign states. See Art. 67 of the Chinese Constitution.

9 Art. 72 of the Chinese Constitution.