Chapter Eleven
Chinese Exit and Entry Administrative System

INTRODUCTION

This chapter will build on and recount earlier work, to conduct a systematic analysis of the administration of exit and entry in China and related issues and implications for RLR. The chapter examines (i) the functions of exit and entry administrative authorities; (ii) the discretions of those authorities;¹ and (iii) the merits review of administrative decisions regarding exit and entry.

11.1 FUNCTIONS OF EXIT AND ENTRY ADMINISTRATIVE AUTHORITIES

As is clear from the book so far, a wide range of authorities administer the control of exit, entry, transit, residence and travel of Chinese citizens and aliens and supervise the establishment and supervision of emigration intermediary agencies. Exit and entry administrative functions are distributed across 15 ministerial-level authorities – for immigration, emigration, nationality, border inspection, criminal

¹ As for general administrative system in the Chinese government, please refer to Appendix I of The Structure of the Chinese State Organisations.
investigation, household registration, foreign exchange control, and emigration agencies, and further divided into various levels between central and local governments. The complexity is far from conforming to the needs of a massively growing number of international travellers. The need of an objective examination of the current system and issues germane to the protection of RLR is vital.

11.1.1 The division of the functions of exit and entry administrative authorities

The division of functions between the central and local governments

China’s administrative units are currently based on a five-level system dividing the nation into central government, provinces and autonomous regions and municipalities under the central government, municipalities and cities with districts, counties and cities without districts, and townships.

The overall administrative authority for exit and entry is a matter of Chinese foreign affairs. Under Article 89 Clause 1(4) (9) of the Constitution of the PRC (Amendment) 2004, the State Council conducts foreign affairs. However, this division is sometimes flexible. For example, the expense of expelling aliens, in theory a cost for central authorities, is in practice afforded by local financial authorities. The flexibility of the division of functions has the potential to jeopardize the overall effectiveness of the system. This division between the central and local governments has an historical basis in the period between 1949 and 1958, discussed previously in part 5.3.1.

More recent reform has empowered local authorities, devolving functions to them, and allowing for only selective intervention by central government. Local programs have effectively improved administration, and have more importantly, in some circumstances, engaged and included local communities in their design. In the light of their expanded functions, local governments have enacted numerous rules and regulations to control and improve exit and entry administration within their administrative areas, as discussed in parts 5.4 and 5.5. Local rules can

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3 Under Article 3 Clause 5 of the Rules of the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Finance on Implementation Measures of Forced Expelling Aliens 1992 (PRC), if a foreign embassy or general consulate in China cannot afford or refuses to afford the expense caused by the forced expulsion of an alien, the Chinese government shall afford the expense. Based on parity principle of power and responsibility, the “Chinese government” in this context means the Central government. However, Article 7 of the Rules stipulates the opposite: the local financial department that forced the expulsion of an alien shall incur the expense.