

Lawmaking, Rulemaking, Regulatory Documents and Decision-making in China: Opportunities for Public Participation

Case Study: The Making of the Foreign Investment Law

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OUTLINE

- What is “legislation” in China?
- Role of the Chinese Communist Party (CCP)
- National People’s Congress (NPC) and Standing Committee
- NPC Lawmaking
- The Making of the Foreign Investment Law
- State Council and Government Rulemaking
- Regulatory Documents
- Government Decision-making Process

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WHAT IS “LEGISLATION” IN CHINA?

Legislative process [立法] in China governed nationally by the Legislation Law of the PRC (LL)

Covers primarily:

- Laws [法律] adopted by the National People’s Congress (NPC and its Standing Committee (NPCSC)
- Local regulations [地方性法规] adopted by the provincial and lower people’s congresses
- Administrative regulations [行政法规] adopted by the State Council (central government)
- Rules [规章] adopted by central government ministries and other “organs”
- Rules [规章] adopted by provincial and lower level local governments and their departments
- Military regulations and rules [军事法规, 规章]

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WHAT IS “LEGISLATION” IN CHINA?

Does *not* include:

- Standards?
- CCP regulations [党内法规]
- Administrative regulatory documents issued by government organs at all levels [行政规范性文件]
- Decision-making [决策]
 - Includes policymaking and decisions on plans, investment projects, environmental impact assessments, etc.
- SPC, SPP judicial interpretations
 - Although now required under LL to be filed for the record with the NPC Standing Committee

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ENFORCEMENT OF “LEGISLATION” IN CHINA

Cannot sue NPC/PCs or State Council/local governments

Generally cannot sue CCP, except few cases when acting in commercial capacity, e.g., over a lease

Administrative Litigation Law governs ability to sue Chinese government departments (not individual officials)

In general, can only challenge a concrete act, such as issuing a fine, revoking a license

- Not the underlying law, regulation or rule

Exception for judicial review regulatory documents on which a challenged action is based

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ROLE OF THE CHINESE COMMUNIST PARTY

- Since Reform and Opening to Xi, CCP legislative role downplayed, increasing emphasis on expertise and public participation
- October 2014 4th Plenum Decision made clear CCP leadership of legislative work to be strengthened
 - Procedures on CCP policymaking concerning major issues in legislative work to be improved [*Procedures revised but not publicly available*]
 - Any legislation that adjusts major structures or policies must be reported to Central Committee (CC) for discussion and decision
 - NPCSC to report major questions in formulating and revising laws to CC
 - CC also to make suggestions for constitutional revision to NPC
- October 2017 19th PC: Xi called for new CCP law-based governance group to exercise unified leadership over building rule of law

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ROLE OF THE CHINESE COMMUNIST PARTY

- March 2018 amendments to State Constitution added to
 - Article 1: CCP leadership is “most essential characteristic of socialism with Chinese characteristics”
- March 2018 Law-Based Governance Leadership Group elevated to Central Commission, housed in Justice Ministry (MOJ), which was merged with former State Council Legislative Affairs Office
 - Headed by Xi Jinping
 - Work Office headed by Political-Legal Committee director
 - Has held 2 meetings: August 2018, February 2019
 - Approves certain legislation; legislative work priorities; NPCSC, State Council, CCP Rulemaking Agendas, etc. – *most documents not public*

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ROLE OF THE CHINESE COMMUNIST PARTY

- Legislation Law cites CCP leadership, as well as fundamental Constitutional principles, as part of lawmaking framework (Art. 3)
- CCP intimately involved in legislative process through its policy leadership responsibilities and pursuant to unpublished documents
 - 2016 revs’d CCP CC Opinions on Strengthening Leadership of National Legislation – *not publicly available*
 - Essay explains this means political and orientation leadership
- CCP leadership role being written into central regulations
- Number of CCP, joint CCP-State Council policy documents have increased under Xi
- CCP documents sometimes cited as basis for central government implementing regulations and rules

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NATIONAL PEOPLE'S CONGRESS AND STANDING COMMITTEE

- Under Constitution Art. 2 all power belongs to the people, who exercise state power through NPC, local people's congresses (LPCs)
- NPC is highest organ of state power (roughly 3,000 members)
- NPC exercises legislative authority [立法权] under Constitution and Organic Law of the NPC
- NPC and LPCs constituted through elections for 5-year terms, responsible to people, subject to their supervision (Art. 3)
 - Current NPC is 13th, term is March 2018-March 2023
 - NPC meets annually in March
- Chairman NPCSC, currently Li Zhanshu, ranked third politically after Xi and Li

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NATIONAL PEOPLE'S CONGRESS AND STANDING COMMITTEE

- Its permanent body is Standing Committee (currently about 160 members) (NPCSC)
- NPCSC normally meets every two months
 - Enacts and amends basic nationwide laws (by more than 50% deputies), and Constitution (more than 2/3 deputies)
 - Laws apply down to township level
 - Power to interpret Constitution and laws
 - Since is legislative act, not judicial, interpretations do not affect prior decided cases
 - Also power to amend or annul regulations, State Council and local government decisions or orders that contravene Constitution or law, through “bei'an” [备案] filing and review procedure

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NATIONAL PEOPLE'S CONGRESS AND STANDING COMMITTEE

NPC also has 10 Special, standing subject matter Committees [专门委员会] to study, examine and draw up bills related to their fields:

- Ethnic Affairs Committee
- Constitution and Law Committee (“Law Committee”)
- Supervision and Judicial Affairs Committee
- Financial and Economic Affairs Committee
- Education, Science, Culture and Public Health Committee
- Foreign Affairs Committee
- Overseas Chinese Affairs Committee
- Environment Protection and Resources Conservation Committee
- Agriculture and Rural Affairs Committee
- Social Development Affairs Committee

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NATIONAL PEOPLE'S CONGRESS AND STANDING COMMITTEE

- Role is to deliberate bills and proposals given them by NPC Presidium or NPCSC, to study, examine and draw up bills and proposals related to their fields and submit, investigate relevant issues
- NPCSC has several work offices [工作机构] including Legislative Affairs Committee [法工委], in charge of daily lawmaking and review activities and acts as general office of Law Committee when NPC not in session

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NPC Lawmaking Process

Constitutional principles:

- All power to the people, who exercise state power through NPC and LPCs, administer state affairs and manage economic, cultural and social affairs through various channels (Article 2)
- PRC governs the country according to law and is socialist country ruled by law (Article 5)
 - No laws or administrative or local rules and regulations may contravene the Constitution
 - All (including political parties) must abide by Constitution and law
- But CCP leads legislative process (LL, Art. 3; 2014 4th Plenum Decision; 2016 CCP Opinion)

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NPC Lawmaking Process

2014 4th Plenum also directed NPC legislative system be professionalized with more experienced legal personnel

- Establish legal advisers system for Special and Work Committees
- Committees to lead legislation vs. government departments
- Drafting process of NPC legislation is governed by:
 - Legislation Law (2000; revs'd 2015)
 - Organic Law of the NPC (1982)
 - NPC Procedural Rules (1989) – to be revised during 13th NPC
 - NPCSC Procedural Rules (2009) - ditto
 - NPCSC Work Rules for Discussion-Consultation on Legislation involving Major Interest Adjustments (Dec. 2017)
 - NPCSC Work Rules for 3rd-Party Assessment of Material Legislative Matters involving Significant Controversy[(Dec. 2017)

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NPC Lawmaking Process

Legislation Law (LL) principles

- Open, participatory lawmaking (LL, Article 5)
- Only NPC law can prescribe criminal offenses and penalties, measures depriving citizen's political rights and restricting personal freedoms, taxation, expropriation of property, justice system-related matters (LL, Article 8)
- Local experimentation departing from existing law may be approved (LL, Article 13)
- Generally not retroactive, except for special provisions to better protect rights and interests of public (LL, Article 93)
- Same basic procedures apply to amendment or annulment of laws (LL, Article 59)
 - For amendments, comparison of texts before and after amendment also submitted (LL, Article 54)
 - And have been made public in recent practice

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NPC Lawmaking Process

- NPC lawmakers subject to political pressure from CCP and State Council leading to “rubber stamp” image
- Yet in post-Mao PRC has become platform for debating and mediating policy disputes
 - Enlisting expert advice and, more recently, incorporating public input and sentiment
 - NPC may be only national legislature worldwide that uses notice-and-comment lawmaking
- Has been termed “multi-stage, multi-arena” process as early as 1995
- NPCSC has on occasion rejected or blocked proposed drafts by State Council, e.g., draft food safety law in 2008

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Basic Procedure

- Proposing bills and Agenda-setting (CCP leadership)
- Drafting and Inter-agency review
- Top leadership approval of drafts
- NPCSC 3 readings, Public participation
- NPC/NPCSC debate
- Revision of drafts
- Final review and Adoption

Followed by:

- Implementation
- Review and revision or annulment

LPC processes very similar but greater use of public hearings

- Gansu province (2013), Suqian City, Jiangsu (2018) only ones to adopt specific rules on public participation in drafting local regulations

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Proposing Bills and Agenda-setting

NPCSC to prepare and publish 5-year and annual legislative agendas (LL, new Article 52)

- Based on proposals and recommendations from deputies, extensively solicit opinions, expert recommendations, scientific assessment in a scientific manner
- Legislative agendas adopted at Chairmen's Meeting and issued to the public

Annual agenda normally divided into bills to be passed or considered that year ("A List"), those requiring further preparatory work for possible consideration that year ("B List"), and those for research and later deliberation ("C List")

- Generally less detail and re-organized as published under Xi Jinping

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**Proposing Bills and Agenda-setting;
Case Study: The of Making Foreign Investment Law (FIL)**

- 2013: Revising 3 foreign investment-related laws was placed on 5-year agenda of 12th NPCSC as B List task assigned to State Council
 - Nov. 2013 3d Plenum: unify domestic and foreign investment legislation
 - Put on 2014-2017 rulemaking agendas of the State Council
- January 2015: Ministry of Commerce on behalf of State Council (*not* NPCSC) published draft of unified FIL for comments
- 2016: Listed as unified FIL on B List of annual NPCSC legislative agenda
- 2017: FIL not on *published* annual NPCSC Agenda, which did not have B and C Lists; 12th NPCSC did not put draft out for comment
 - *Caixin* cites inter-departmental disagreements
- 2018: FIL on 13th NPCSC 5-year agenda A List, 2018 NPSCSC annual plan for 1st deliberation in December, & on State Council agenda

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Proposing Bills and Agenda-setting

- Bills proposed to NPC Presidium for consideration in annual sessions by:
 - NPC Presidium, NPCSC, State Council (over 70% of bills), CMA, SPC, SPP
 - NPCSC Special Committees (Con, Article 72; LL Article 14)
 - 30 or more NPC deputies (LL, Article 15) – rarely considered during same session
 - Council of Chairmen decides whether put on agenda
 - If deemed immature, referred to Special Committee for research and development
- CPPCC deputies can also propose
 - ✧ *Citizens, enterprises and organizations have no explicit right to propose nationally, but many local systems permit public recommendations of bills and items for annual legislative agendas*

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Proposing Bills and Agenda-setting

NPCSC receives and develops most bills while NPC not in session

- State actors, Special Committees and 10 members may propose bills (LL, Article 26-27)
- Council of Chairmen decides whether to place it on NPCSC agenda
- If deemed immature, referred to Special Committee for research and development
- If doesn't place members' bill on agenda, must report to NPCSC or explain to proposer (LL, Article 27)

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Drafting

- Once bill on agenda, small group, often of outside experts, begin one or more drafts
 - May start with draft submitted by proposer or prepare entirely new draft
- NPCSC to solicit input and assistance from NPC deputies
- Examined by Special Committees and Law Committee (LL, Articles 32, 33)
 - Before Law Committee prepares its report, Work Offices (LAC, Budget) may assess feasibility, timing, social effects and possible problems of draft law
 - Explanation of the assessment to be provided in Law Committee's report on its deliberation (LL, Article 39)

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Drafting

- Over time, draft considered by larger and larger groups, with attempt to maintain consensus at each step of process by Law Committee (LL, Article 36)
 - Holds discussions involving deputies, Special Committees
 - With government departments and experts on technical issues
 - Holds hearings when major differences of opinion, including public (grassroots and masses representative, people's organizations, concerned sectors of society)
 - Reports on discussions and debates to NPCSC
- NPCSC Work Offices to send drafts to relevant deputies, LPC Standing Committees, relevant gov't departments, organizations and experts to solicit opinions (LL, Article 36)

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Drafting

- By the time full NPC or NPCSC meets to consider a draft, major substantive elements have largely been agreed to among official participants
- Accompanied by explanation and reference materials on necessity of developing or amending the law, feasibility and main contents, and coordination and handling of major dissenting opinions in the course of drafting (LL, Article 53)
- Drafts to be made public for minimum 30-days comment after 1st and 2d NPCSC readings, unless otherwise decided by Chairmen's Council (Article 37)
- Major changes may still be made in original deliberated draft, e.g., in 2016 Charity and Foreign NGO Laws

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Public Participation in Drafting Laws

Pre-LL 2015 revision, specific forms of public participation optional

Now, in general:

- Outside experts may be asked to prepare draft of law
- Experts to debate draft laws involving technical issues or where stark differences of opinion (LL, Article 36)
- Hearings with stakeholders including experts and public where major differences of opinion
 - Only 1 hearing held to date, September 2005 on revision of Individual Income Tax Law
- Experts, scholars, research institutes and social organizations (including business associations) should participate in discussions during drafting (LL, Article 53)
 - NPCSC has held as many as 100 workshops and more on some drafts, e.g., Property Law (7 readings)

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Public Participation in Drafting Laws

- NPCSC should publish draft laws after 1st and 2nd readings for general public input (LL, Article 37)
 - Normally a minimum 30-day comment period
 - Online at: http://www.npc.gov.cn/npc/flcazqyj/node_8176.htm
- NPCSC adopted 8 new laws in 2018, all published for comment at least once, Soil Pollution Law 2x, E-Commerce Law 3x
- NPCSC revised 47 laws in 2018
 - Relatively minor revisions not always published for comment
- NPC Work Offices to organize opinions from various channels including public input and report them to relevant Special and Law Committees, and distribute in writing to NPCSC session (LL, Article 38)

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NPCSC Process

- Specialized Committee to review drafts and submit written report(s) on suggestions to NPCSC
- Law/Legislative Work Committee also to review and shepherd bill along
 - Both to collect opinions extensively
- Bills on NPCSC agenda to be distributed 7 days before session (LL, Article 28)
- Bills are generally deliberated three times in NPCSC before being put to a vote (LL, Article 29)
 - 2 readings if general consensus on 2nd draft, and
 - 1 reading if only one matter adjusted or only part of bill revised and general consensus (LL, Article 30)
- Bills adopted upon majority vote, promulgated by decree of PRC President and published
- Special and Working Committees can organize post-enactment evaluation of laws, report to NPCSC (LL, Article 63)

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NPC Process

For bills introduced at NPC session, Law Committee handles deliberations, revision and submission to Presidium for voting

- When NPCSC submits bill to NPC, should be distributed to deputies 1 month in advance (Article 17)
- Sponsor introduces agenda'ed bill to NPC plenary session
- Deputy delegations then deliberate the bill
 - Also subject to deliberation by relevant Special Committee
- Law Committee, based on deliberated opinions of delegations and Special Committee(s), considers bill, reports to Presidium on result of its deliberations on different opinions and prepares Deliberation Draft
- After Deliberation Draft again considered by delegations, Law Committee further revises it and prepares Voting Draft
- Presidium then submits the draft to plenary session for vote
- Bills pass by a majority vote in NPC sessions, promulgated by decree of PRC President and published

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NPCSC and NPC Procedure

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- Dec. 24, 2018: **1st Reading**- State Council via Justice Minister submitted Draft to bi-monthly NPCSC meeting per 2018 agenda
- Dec. 26, 2018: 1st 39-article Draft released for extra-long 61-day public comment period through Feb, 24, 2019
- Dec. 27, 2018 Law Committee Chair Li Fei quoted saying Draft FIL should be submitted to upcoming NPC March 2019
- Jan. 29, 2019: **2d Reading**- extraordinary NPCSC meeting called to consider 2d draft FIL, approved for submission to NPC, 2d 41-article Draft quietly published (with several changes)
 - Unusual NPCSC meeting called to meet requirement for 30-days advance distribution to NPC deputies
- Feb. 24, 2019: comment period closed with 1,339 comments from 391 persons

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NPCSC and NPC Procedure

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- March 8, 2019: **“3d Reading”**- Draft FIL explained to NPC plenary by NPCSC Vice Chair Wang Chen (sponsor)
 - 3d, 41-article Deliberation Draft then published as “abstract” (not for comment; this publication not required by LL)
- March 10, 2019:
 - AM: Delegates deliberate Draft FIL as delegations
 - PM: Delegates deliberate Draft FIL in small groups
- March 11, 2019: Recess so NPC Law Committee can revise Draft FIL based on delegates’ opinions expressed during deliberations
- March 12, 2019: Delegates consider 42-article Deliberation Draft
 - Last-minute addition: Art. 39 forbids official disclosure trade secrets
- March 14: PM: Delegates deliberate Voting Draft
- March 15: AM Plenary vote approves 42-article FIL, effective 1/1/20

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NPCSC and NPC Procedure

Case Study: The Making of the Foreign Investment Law

- Premier Li Keqiang says China's cabinet to soon propose implementing regulations
 - Drafting national security review regulations already on SC 2018 legislative agenda
- NDRC promises further shortening of foreign investment negative list, opening of new areas
 - New “encouraged” foreign-invested industries catalog will be released
 - NDRC to work with departments, local governments to remove access restrictions for foreign investment in areas outside negative list
 - Government procurement, standards setting, industrial and technological policies, qualification licensing, registration levels, going public and access to financing

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STATE COUNCIL AND GOVERNMENT RULEMAKING

- State Council is central government/cabinet, headed by Premier Li Keqiang and composed of various ministries and commissions
- Constitution gives it power to (Article 89):
 - Submit proposals to the National People's Congress or its Standing Committee
 - Enact administrative regulations [行政法规], issue decisions and orders
 - Alter or annul inappropriate orders, directives and rules issued by ministries or commissions, local governments
- Constitution authorizes ministries and commissions to issue orders and directives [行政规范性文件] and rules [规章] (Article 90)

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STATE COUNCIL AND GOVERNMENT RULEMAKING

- Legislation Law provides NPC can empower State Council to draft national regulations in absence of law, other than on reserved areas under Article 8, effective for period up to 5 years (Article 9)
 - Examples are OGI Regulations, Major Decision-making Regulations
 - When time ripe, experience obtained, State Council may request to draft law, like FIL (Article 65)
- If law requires implementing regulations by government, must be done within one year of law's effective date (LL, Article 62)
- 2014 4th Plenum directed government legislative system be improved in terms of public participation and feedback mechanisms, having legal affairs departments (vs subject matter departments) take lead in drafting

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STATE COUNCIL AND GOVERNMENT RULEMAKING

Other arenas for rulemaking:

- Central Military Commission to develop and apply military rules per its own procedures (LL, Article 103)
- SPC, SPP interpretations on specific application of law to be reported to [备案] NPCSC within 30 days (LL, Article 104)
 - SPC formulates drafting agenda, sometimes publishes draft provisions and interpretations for comment
- CCP “intra-Party regulation” [党内法规] rulemaking (technically, these are “regulatory documents”)
 - 2013 regulations call for Party member and, where draft measure impacts public interest, general public participation

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Procedures for State Council Regulation and Central Department Rule Making

- Similar process as in LL on public participation
 - Opinions to be widely listened to
 - Such channels as workshops, expert justification meetings, hearings may be used and drafts to be published for comment unless exempted (LL, Articles 67, 83)
- State Council issued implementing regulations on State Council *regulation*, and departmental and local government *rule*, making processes in 2001
- Updated with more detailed requirements including 30-day comment period in Dec. 2017, eff. May 1, 2018
- National rulemaking functions transferred to re-organized MOJ (merged with former State Council OLA) in March 2018

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Procedures for State Council Regulation and Central Department Rule Making

- Former State Council Legislative Affairs Office (LAO)/now MOJ legislative departments draft nationwide administrative regulations
 - Prepare annual national regulation plan (LL, Article 66)
 - Departments report suggestions on drafting or revising regulations
 - 2018 State Council agenda called for drafting FIL (NDRC, MOFCOM) and Foreign Investment National Security Review Regulations (NDRC)
 - Watch for additional draft regulations to implement FIL
- Opinions to be extensively sought from deputies, central and local governments, society
 - State Council documents call specifically to solicit views of impacted businesses, trade associations, think tanks, etc. (new March 2019 State Council Opinions on consulting business community)
 - Through workshops, expert discussion meetings or hearings
 - SCOLA/MOJ has never held a hearing
 - Local OLAs have held rulemaking hearings

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Procedures for State Council Regulation and Central Department Rule Making

- Drafts to be published for comment on MOJ central website, <http://zqyj.chinalaw.gov.cn/index> or departmental website, generally for 30 days
 - Unless SC decides not to publish (LL, Article 67)
 - Doesn't provide numbers of comments or comments themselves
 - Reasons for non-publication of drafts: state and commercial secrets, privacy, national security or foreign exchange and currency policy determinations, sensitive social issues
 - Drafts usually accompanied by explanation
- Feedback on comments encouraged but no formal mechanisms yet

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Procedures for State Council Regulation and Central Department Rule Making

- Central departments to follow similar procedures
 - Some have issued own rulemaking procedural rules, e.g., CFDA, MEP, SAMR draft published Jan. 18, 2019
 - Many publish annual rulemaking agendas, e.g. SAMR
- Departmental rules may not impair rights or increase obligations of public, nor increase power or decrease statutory duties of the department (LL, Article 80)

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Complaints about Regulation and Rule Making Procedures

- Not all revisions (“adjustments”) subject to publication and comment
- Many central departments in past gave only 10-15 days or less to comment on major regulations; monitoring to see if better under revised State Council rulemaking 30-day requirement
- Many drafts not posted on central website
 - Departmental drafts placed on obscure pages of their websites
- Posted several days into comment period
- Official web “information management” platforms provide inadequate space for comments (but allow regulator to electronically sort and organize comments more easily)
- Comments not made public
 - except for some local governments
- Lack of feedback on handling of comments

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Local government rulemaking

- Many local governments have more detailed rulemaking procedures
- Some like Shanghai and Beijing permit or seek public suggestions for legislative agenda, as well as on draft rules
- Local OLAs/Justice Bureaus and departments have held legislative hearings
- Some publish comments on drafts and issue summary explanations
- LPC regulations and local government rules to be filed with SCOLA/MOJ for record
 - 1,776 filed in 2017, reported in OLA OGI annual report of March 2018 and on website

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Procedures to challenge law, regulation or rule

- Social organizations, enterprises, public institutions or citizens may report to NPCSC any administrative regulation or local regulation, etc. they believe contravenes Constitution or law (LL, Article 99)
 - Feedback on the review to be provided to state authorities, social organizations, enterprises, public institutions and citizens recommending review
 - May also be released to the public (LL, Article 101)
- No right to sue State Council or local governments/government departments over a rulemaking (considered “abstract act”)
 - Revised regulations provide normally not less than 30 day comment period: can public sue if agency provides shorter or no comment period?
 - Like 15-business days rule for responding to OGI requests

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REGULATORY/ ADMINISTRATIVE NORMATIVE DOCUMENTS

- “Red-headed” policy documents, like guidance documents – 行政规范性文件
- No national law or regulation governing these yet
 - State Council policies
 - Other central policies, local legislation trying to reign them in
- Earlier State Council documents and 2014 4th Plenum called for bringing these documents under filing and review [备案] system
 - Cancel and correct those that violate Constitution or law, create new burdens or restrict rights
 - Localities prohibited from enacting those of “legislative nature:”
- Can challenge regulatory document (but not rules) used as basis for contested government action in administrative litigation

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REGULATORY/ ADMINISTRATIVE NORMATIVE DOCUMENTS

- May 2018 State Council Circular now standardizes formulation and management of administrative regulatory documents
- Defines as official documents, other than State Council administrative regulations, decisions and orders; and departmental and local government rules, that:
 - Are formulated according to statutory authority and procedures and publicly issued by authorized administrative organ or organization authorized by law to manage public affairs
 - Involve rights and obligations of the public
 - Have a general binding force
 - Are repeatedly applied within a certain period of time (of general application)

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REGULATORY/ ADMINISTRATIVE NORMATIVE DOCUMENTS

- Imposes limits on regulatory documents, which may not, without a basis in law:
 - Impair rights or increase obligations of public
 - Increase administrative powers or decrease administrative duties
 - Establish new licensing requirements, administrative penalties, other compulsory measures or duplicative or unnecessary certification requirements
 - Interfere with fair competition, normal production and business activities, or market access and exit
- Article 24 of FIL contains similar stipulations with respect to regulatory documents impacting foreign investment

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REGULATORY/ ADMINISTRATIVE NORMATIVE DOCUMENTS

- Significant regulatory documents must undergo 5 procedures:
 - 1) assessment and appraisal of their necessity, feasibility and reasonableness
 - 2) widely soliciting the public's opinions; written notice and comment not required if other methods used
 - 3) legality review
 - 4) collective deliberation and decision to prevent arbitrary actions
 - 5) public issuance
- "Significant" not defined, but public opinion soliciting procedure is required for documents that involve the "vital interests" of the people or have a "major" impact on the public's rights and interests

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REGULATORY/ ADMINISTRATIVE NORMATIVE DOCUMENTS

- When proposed regulatory documents impact major public interests, in-depth investigations and studies through such channels as workshops, expert appraisal meetings and site visits must be undertaken to adequately obtain input from stakeholders
- State Council also issued specific instructions in December 2018 regarding legality review of regulatory documents, especially those impacting the rights and obligations of the public
 - Public's comments and their adoption are among the materials to be reviewed

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GOVERNMENT DECISION-MAKING PROCESS

- Distinct area of government action, involving major policymaking, planning, project decisions, etc. [重大行政]决策]
- Goal is “scientific and democratic” decision-making
 - Example is more public participation (PP) in drafting 13th five-year plan
 - Another is PP in environmental impact assessment process (garbage incinerators, chemical plants)
- Has been handled *ad hoc*, with great leader discretion and frequently unhappy local residents
- Leading to many protests, failed decisions, waste and environmental degradation

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GOVERNMENT DECISION-MAKING PROCESS

- CCP and State Council have issued series of opinions to standardize
- State Council published Draft Interim Regulations for comment in 2017, which the Law-Based Governance Commission recently approved, calling for more legalized procedure, with:
 - public participation [公众参与]
 - expert “justification” or appraisal [论证]
 - risk assessment [风险评估]
 - legality review [合法性审查]
 - collective decision-making after deliberation [集体讨论决定]
- Plus transparency throughout and retrospective evaluation with accountability
- Awaiting their publication as of March 20, 2019

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