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**INTERACTION BETWEEN LAW AND ADMINISTRATION IN THE REGULATION OF FOREIGN INVESTMENT IN THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN: AN EXAMINATION OF INFORMAL SECTOR IN CHINESE LEGAL DEVELOPMENT**

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TO ALL WORKERS,  
ESPECIALLY THOSE MIGRANT,  
WHO HAVE BEEN STRUGGLING FOR LIFE DAY AND NIGHT  
IN EVERY EXPORT PROCESSING ZONE

\*

"[In China's coastal areas] the majority of those concubines held by Taiwanese businessmen are their employees or workers. There are always jewelry and gifts given for their concubinage, in addition to four hundred People's Dollars every month which amounts to one thousand Taiwanese Dollars something [or £22-£25], that is, the cost of a dinner only in Taipei. It is so common for these girls to struggle and fight with each other for the status of a concubine. If nothing is serious, Chinese local governments usually keep silent."

From: The Nineties, (May, 1992, Hong Kong): 54.

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## ABBREVIATIONS

(461225)	The promulgated, or adopted, date of legislation; (19)46-December-25th.
BR	Beijing Review
CDN (IE)	Central Daily News (International Edition)
CHC	The Cambridge History of China
CITIC	China International Trust and Investment Corporation
CJV	Contractual Joint Venture
CPC/CCP	Communist Party of China
CPPCC	The Chinese People's Political Consultative Conference
CSC	Central Standing Committee
CLP	China Law and Practice
DPP	Democratic Progressive Party
DT.L	Daily Telegraph, London
EAER	East Asian Executive Reporter
EJVL	Equity Joint Venture Law
EPZs	Export Processing Zones
ETDZs	Economic and Technological Development Zones
FDI	Foreign Direct Investment
FE	Foreign Exchange
FEITC	Foreign Enterprises Income Tax Law
FIA	Foreign Investment Approved
FCJ	Free China Journal
FFYP	First Five-Year Plan
FYP	Five-Year Plan
FLDCC	Fundamental Legal Documents of Communist China
FZRB	Fazhi Ribao (Legal Daily)
GLF	Great Leap Forward
GMD	Guo-ming-dang; KMT; Kou-ming-tang

<b>HKLJ</b>	<b>Hong Kong Law Journal</b>
<b>IC</b>	<b>The Investment Commission</b>
<b>ILLR</b>	<b>Important Labour Laws and Regulations (of the PRC)</b>
<b>ITL</b>	<b>Income Tax Law</b>
<b>ISBN</b>	<b>International System of Book Number</b>
<b>JJF-400-ALX</b>	<b>Jing-Ji-Fa-400-An-Li-Xi</b>
<b>JJRB</b>	<b>Jing-ji Ri-bao (Economic Daily)</b>
<b>JV (L)</b>	<b>Joint Venture (Law)</b>
<b>MNCs</b>	<b>Multinational Corporations</b>
<b>MoEA</b>	<b>Ministry of Economic Affairs</b>
<b>MoF/MOF</b>	<b>Ministry of Finance</b>
<b>MOFERT</b>	<b>Ministry of Foreign Economic Relation and Trade</b>
<b>NPC</b>	<b>National People's Congress</b>
<b>NSC</b>	<b>National Security Conference</b>
<b>NT\$</b>	<b>New Taiwanese Dollar</b>
<b>OIU</b>	<b>Overseas Investment Utilization</b>
<b>PBC</b>	<b>People's Bank of China</b>
<b>PRC</b>	<b>The People' Republic of China</b>
<b>PSEIT</b>	<b>Profit-Seeking Enterprise Income Tax</b>
<b>RMB</b>	<b>Ren-Min-Bi (People's Dollar)</b>
<b>RMRB</b>	<b>Ren-Min Ri-Bao (People's Daily)</b>
<b>ROC</b>	<b>The Republic of China</b>
<b>SAEC</b>	<b>State Administration of Exchange Control</b>
<b>SAIC</b>	<b>State Administration of Industries and Commerces</b>
<b>SC-NPC</b>	<b>Standing Committee of the National People's Congress</b>
<b>SEI</b>	<b>Statute for Encouragement of Investment</b>
<b>SEZs</b>	<b>Special Economic Zones</b>
<b>SIFN</b>	<b>Statute for Investment by Foreign Nationals</b>
<b>SIOC</b>	<b>Statute for Investment by Overseas Chinese</b>

SIP	Science-based Industrial Park
STC	Statute for Technical Cooperation
SUI	Statute for Upgrading Industries
U.K.	The United Kingdom
U.S.	The United State
U.S.S.R.	Union of Soviet Socialist Republics
WFOEL	Wholly Foreign-Owned Enterprise Law
ZJZ Record-A	Zhong-hua-ren-min-gong-he-guo Jing-ji Zuan-ti-da-shi-ji (The Record of the Important Economic Events in the PRC).

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<sup>1</sup> As to the Romanization of Chinese names in this study, the *pin-yin* system in the PRC has been mainly used, with the necessary reference of the traditional terminologies and the common practice in Taiwan. For instance, Confucius is used, not *Kon Fu-tsi*; *Jiang Jing-guo* is unknown to people in Taiwan as President Chiang Ching-kuo; *Teng Hsiao-pin* is unknown to people in the PRC as Comrade Deng Xiao-ping. We find no reason to disregard the tradition and people's custom in language. Secondly, in Beijing, *Zhong-Hua* Publication House [中華書局; 北京] has been using traditional Chinese writing to publish a rich body of Chinese documents, which has been the same case of *Shanghai Gu-Ji* Publication House [上海古籍出版社] in Shanghai. Moreover, given the fact that even *Overseas Edition of People's Daily* [人民日報海外版] has used the traditional characters, Chinese terms used in this study have all followed this style. However, this study still provides a "*Glossary of Chinese Terms*" in the final part.

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## ABSTRACT

This study focuses on the interaction between the state law and administrative practice in the regulation of foreign investment in China since the late imperial time. From the incorporation of modern capitalism into China in the mid-nineteenth century, the analysis develops along the changing relationships between the state legal modernization and survival of traditional law during the process of the end of the old order. Following the explanation of the failure of bureaucratic capitalism in the Republican period (1911-49), a discussion on the socialist transformation expelling foreign investment (1949-78) is elaborated. Hence, an overview of the limits of state law in Chinese political economy can be estimated, with some degree of accuracy.

After 1949 one party-state was established in the People's Republic of China (the PRC) and Taiwan. This study explains the interaction between the systems of formal law and informal law, and the process of rationalization of legal procedures for the control of foreign investment in both regimes. Then, even after the Cultural Revolution in the PRC and the impact of industrialization in Taiwan, a continuing tension between traditional Confucian ideology and the state in both regimes remains clear in the dual characters of both law and bureaucracy.

A close examination of law and administrative practice of foreign investment in the PRC and Taiwan shows that the statutory law has its positive and formal existence with the limited function. The state law has assumed its role in initial attempting to liberalise the economy to foreign investment, which develops the First Wave of the Encouragement of Foreign Investment. However, the major contradictions in the process of liberalisation come out of the administrative and business practices, which require a further opening up the economy and the statutory guarantee.

Consequently, the legal mechanism is better equipped in the Second Wave of the Encouragement of Foreign Investment through the rationalisation of both legislation and

procedure. Nonetheless, the reaction from both administrative discretions and business practices explores the limits of the state law. This study concludes that the over reliance on informal relationships predates the party-state system in both the PRC and Taiwan, or the party-state structure has not diminished their role but reinforces it.

## INTRODUCTION

The theme of this study is to examine the interaction between formal and informal law, or state law and administrative practices in the process of constructing a market economy. Using Mainland China and Taiwan as research cases, the focus of this study will be particularly on explaining the role of law and administration in the process of opening up the economy to foreign investment. To a certain degree, this study helps to discover whether the authoritarian rule of the party-state can use both foreign capital and technology in national development, and how far the national law can assume an effective role in balancing the interests between the internationalization of capital and national development.

However, the major contributions of this study could be not only a better understanding of the subject-matter itself, i.e., the Chinese law and its practice, but also a more manoeuvrable methodology to foreign scholars. The research strategy of this thesis will aim at searching for institutional functions while widening the study of Chinese law to include Chinese legal culture. Through the whole work, it is thus suggested that both aims together are essential to a better approach to Chinese legal study.

The originality of this study lies in the consideration of four fundamental difficulties related to the topic. The first difficulty has been a contradiction among legal scholars: while, on the one hand, advocating that there is only one China, on the other hand, they ask, 'how can we compare the two, geographically, or economically?' It is "comparative law", which has been lacking in the previous works on these themes that will be analysed in this work. Secondly, the case study here concerns the regulation of foreign investment, within which more formality and statutory guarantees are generally deemed necessary, focusing on a novel way on the informal practice under the statutory framework. The third difficulty has been the long term continuity and change of the law in development in China. Especially, in the field of business and economic law, this study questions for the first time: as some people have claimed, whether we should forget about the effects of traditional law (in Chinese modernization)?

Finally, the fourth difficulty is how to penetrate the reality of ruling Party-State, both in the People's Republic of China (the PRC) and in Taiwan, which has relied heavily on informality by nature. How to figure out the role of law under the two Party-States, and their similarity and difference, has been missing in the comparative legal studies and in Chinese legal research. Given the politics today in the PRC and Taiwan, a price will be paid, sooner or later, to touch this "untouchable" stone of the Party-State. This is the long nightmare behind this pioneering study.

These major issues of the concept and functions of law in the PRC and Taiwan will be posed within the complicated context of the modernization programme, social change and cultural attitudes in Chinese society.

### *Issues of the Object of Chinese Legal Study*

Up to the date, the major obstacles to Chinese legal study are indeed created by the object of study itself. In the words of a famous contributor, Professor Stanley Lubman, who has developed his Chinese legal study more than three decades:

"China does not yet have a legal system; the continued relationship between law and politics remains obvious; law is often treated formalistically. Values derived from a Chinese culture that is itself in the course of change continue to shape both the outlines and activities of institutions, but are difficult to identify clearly in practice. Meanwhile, China itself remains closed to the student of law in practice. [Lubman (1991): 294]".

Indeed, it is from that "law is often treated formalistically" as a basic methodological base, this thesis starts to explore why "the continued relationship between law and politics remains obvious", and why "values derived from a Chinese culture" continue to "shape both the outlines and activities of institutions", in the course of Chinese capitalist and socialist transformations.

Moreover, it is also from that "law is often treated formalistically" mentioned, this thesis reaches the issues of the relationship between two different categories of Chinese rules, in both the PRC and Taiwan: published legislation, and internal (*neibu*, 内部) or restricted regulations, which will be discussed in the later chapters. Even when published rules and regulations are accessible to foreigners, they form only a part of the legal framework

governing business transactions in China [Moser (1987): 3]. One of the major difficulties facing foreign lawyers and investors in China, as usually emphasized, is the frequent recourse by Chinese bureaucrats to these "internal rules" held in strict confidence from outsiders [Leng (1990): 751]. The functions of these internal rules have been crucial in Sino-foreign economic activities:

"Most of these internal rules consist of directives which must be followed by Chinese negotiators in interpreting and implementing statutory law. Some herald the introduction of new policies which may in time find their way into published law. Others are simply a formalization of practices which have developed as a product of experience gained in similar or related transactions [Moser (1987): 3]".

However, at least up to the end of 1990, through an examination by Professor Shao-chuan Leng, there has not been any announcements, in the *State Council Gazette* or any newspapers, of stopping printing or of publicly distribution of these internal rules [Leng (1990): 751].

As to our theme of interaction between law and administration in this study, an active role assumed by the informal law has existed between published legislation and internal rules. A close examination of this informal regulation is necessary, because:

"Whatever their source, internal rules complicate the elucidation and definition of China's legal system and as such pose constant pitfalls in the way of attempts to understand the nature and operation of the rules regulating commercial transactions [Moser (1987): 3]".

### *Interaction between Formal and Informal Law*

Not only Michael J. Moser, who once was a legal sociologist in Southern China, has his cautious views above, but also these business lawyers, such as D. Hayden, M.T. Jones III, and Dennis Campbell, are practically concerned with legal attitude behind their Chinese counter-partners<sup>1</sup> [D. Campbell (1991), the PRC: 1]. Indeed, why "the continuous vitality of Chinese traditional values which affect the attitudes of those in positions of authority", claimed by them, has survived in both the PRC and Taiwan is the major concern of this study (cf. Chapter I). Since law does matter in China today [C.J. Lee (1991b)], the interaction

<sup>1</sup> From the viewpoints of practically business lawyers, the foreign businessman will encounter these three factors in "all of his dealings" with China: "(1) economic scarcity caused by a densely populated agrarian nation; (2) the continuous vitality of Chinese traditional values which affect the attitudes of those in positions of authority; and (3) characteristics of a socialist system which will appear unfamiliar to the foreigner. D. Campbell (1991), the PRC: 1.

between formal and informal law should be taken into proper consideration by foreign investors. The dialectics of China's two legal traditions, from professors T.T. Chu, Victor H. Li, S.C. Leng, to James P. Brady, have been commonly recognized. However, it is still doubted whether we should follow V. Li's two "Models" of law (1975, 1977), "external" and "internal", or J. Brady's "bureaucratic justice" and "popular justice" (1982: 9).

A third domain will come out from Brady's dialectical convenience: where is the "judicial" justice,<sup>2</sup> without which one cannot evaluate the bias each from bureaucratic and popular justice?<sup>3</sup> Furthermore, Li's "Models" have created more confusion in the case when two models of law "in a combination of harmony and competition" or in "interaction", as claimed by himself: how can one Model retain its particular type with the elements from other Model? For his "convenience", the external model of law called by Li is the formal law of itself in fact,<sup>4</sup> while the internal one, informal law.<sup>5</sup> They could be better named by legal "systems", with/without formality, as described Brady<sup>6</sup> and Li<sup>7</sup> himself. This study simply call these two systems of law as formal and informal, as commonly used by people.

Whether the living law, customs, convention, or informal law can be named as law is concerned with different degree of the coercive measures, forms and rationalization under the state law [cf. Cotterrell (1984); Weber (1966); Allott (1980)]. The core is the "form", or formality, of law, not the question whether which body of "law" is really law can be answered. The discussion of the Nuremberg Trial of the Major War Criminals and the limits of positivism is out of space here, and the Hart-Fuller debate on the activity theory of law as well [cf. Posner (1990): 220-244]. While in the PRC in the early 1980s, before the formal

<sup>2</sup> I owe this point here to Picciotto (1979) and Holloway & Picciotto (1978).

<sup>3</sup> However, the fact that judicial independence was lacking in Chinese legal tradition has been discussed in the works of these professors mentioned.

<sup>4</sup> Li has described, "The first model (for convenience, I will called it the "external model") is based upon the establishment of a formal, detailed and usually written set of rules, that is, a legal code which defines permissible and impermissible conduct". V. Li (1975): 72.

<sup>5</sup> Li has noted the second model of law (the "internal model") as, "Proper modes of behaviour are taught not through written laws, but rather through a lengthy and continuing educational process whereby a person first learn and then internalizes the socially accepted values and norms". V. Li (1975): 73.

<sup>6</sup> Brady has analysed, "not one but two judicial systems, a formal one based upon the centralized state and an informal one rooted in community associations". Brady (1982): 12.

<sup>7</sup> As part of their cultural heritage, the Communism, analysed by V. Li, possessed some familiarity with a formal legal system and with centralized bureaucratic government. V. Li (1975): 73.



state laws on particular forms of foreign investment were enacted, both administrative and judicial authorities had decide even the most difficult cases as best they can, provided the cases are real cases and within their jurisdiction [cf. Chapters V and VII]. This implies that any consideration relevant to deciding the case, whether drawn from positive law or natural law sources, such as customs, convention or business practice, is a legitimate input in the manufacture of "law", and that the government's decision - though of course not immune to criticism - will have to be pretty crazy before it can fairly be called "lawless" [cf. Posner (1990): 232]. There is always a law, formal or informal or, if one prefers positive or natural.

Thus, following the definitions of two systems of Chinese law by V. Li (1975), this study avoids his use of "Models" of law. Given the various terminologies used by different scholars, the focus of this study lies in the changing relationship between "formality"<sup>8</sup> and its counterparts. Unless one follows a Chinese saying - "attempting to pick up a bone inside the egg", and asks, can informal law be called law? Instead of going back to Nuremberg and ask how the legal principles can be administered by the Court then, we examine the Chinese effort in improving Chinese legal mechanism to regulate the foreign investment.

Usually the most important thing is to resolve the issue and dispute. Not always; sometimes the best resolution, especially when the rules are unclear, is to let the dispute simmer awhile. Many disputes, however, have to be resolved at once, even if the rules are unclear or have to made up on the spot; and then the Chinese authorities do the best they can, using whatever information and insight that both Chinese and foreign parties give them or that they can dredge up out of their own reading and experiences. This untidy, un-rigorous process we call "informal law". It may influence, more or less, the development of "business practice", while in turn, business criticisms of governmental decisions may cause the government to change legal doctrine; so there is a complex interweaving of formal and informal law or, if one prefers of state law and administrative practice. This is the evolution of two Waves of Encouragement of Foreign Investment in both the PRC and Taiwan.

<sup>8</sup> The word "Formality" refers to the conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity. Cf. Black's Law Dictionary (1990).

All these counterparts of formal law, such as administrative conventions, business practice, customs form the traditional influence, constitute a framework of the informal practice, sector, domains and informal law, for they all are deficient in legal form. This study takes the importance of formal law, while arguing that the informal law remains as the key in the regulation of foreign investment. It is not necessary for this study to condemn, or judge, the over active part of informal law in China [cf. V. Li (1975): 110-111]. Given the fact that President Chiang Ching-kuo highly used the informal law to promote democratization and liberalization in his final years in Taiwan, it seems that Mr. Deng Xiao-ping in 1992 has utilized this informal mechanism to further stimulate his reform and open policy in order to get rid of the shadows of the disintegration of the former USSR (cf. Ferdinand (1992)).

In short, from the values derived from Chinese culture to the internal rules of the institutions, the research strategy suggested by this thesis is to explore the interaction between the state law and administrative practices, and to figure out the role of informal law under Chinese bureaucratic tradition. Any research by simply reading law texts can not be able to reach these aims of a deeper analysis.

#### *From the Foundation of Understanding Chinese Law to the Methodology*

Adopting a "Sinocentric" approach as the best way to explore these issues of the Chinese law and their environmental context has been highly recommended:

"This means that a Western observer should analyze the Chinese legal system without any preconceived notions. The law should be appreciated within the context of China's rich and diverse influences and ideas." [Goossen (1989): 94]

However, even precluding these notions, one cannot go through this analyzing process without any foundation of understanding. In contrast, one, to a great extent, will unavoidably need some predicative ideas: First of all, the Chinese understanding of the traditional Chinese law itself, second, the Chinese understanding of modern (including Western) law, and third, the Chinese resolution in adjusting both the traditional Chinese law and the modern law into Chinese political-economy. These understandings will be discussed repeatedly within this thesis. Thus, the "Sinocentric" approach is based upon the Chinese understanding, in both

the Beijing and Taipei regimes, of both the traditional Chinese and modern legal systems. It is believed that on this foundation we can explore these issues in a more detailed framework.

Furthermore, the Chinese understanding of law or the legal system, emphasized in this paper, implies that the Chinese legal system since the 19th century is not unique in the world, but is a developing system with an *interaction* of both traditional Chinese and modern law, especially the influence of Western law. It thus admits that, on the one hand, it is difficult for one to draw out a pure Chinese traditional concept, and that, on the other hand, Chinese law today is a mixture product of both the traditional Chinese and modern concepts of law. Moreover, this premise accordingly provides a basis for comparative legal studies and for examination of legal developments in China.

### *The Theme of this Study*

Focusing on the legal framework of foreign investment in both the PRC and Taiwan, this thesis analyses the role of bureaucracy in state intervention on both domestic and foreign business activities, and to examine the use of the administrative discretion by the bureaucracy in balancing the group interest, or personal interest, against national interest. Therefore, at least two questions shall be the focus in this thesis: Does law, both statutory and administrative, in the PRC and Taiwan promote foreign investment? And, is law effective in terms of regulating foreign investment in the PRC and Taiwan? Although there exist many differences of the political-economy between the PRC and Taiwan, such as the size of the economy and administration, the different degrees of international dependence, the different degrees of industrialization, and so on, there remain some common interests. Especially, the party-state, the historical heritage of Chinese bureaucratic characteristics, and a Confucianist cultural context emphasizing the personal connections and the code of behaviour all consist with the core issues in this study.

Hence, in light of the changing relation between the state and society, several aspects of economic development will be taken into account [cf. Selden (1988)].<sup>9</sup> In the views of

<sup>9</sup> What are the general features of socialist development since 1949 in the PRC? Do these features derive from the class interests of the working classes as the dominant classes. Can the general features of socialist development be applied to the sector of foreign investment in question, and to the class interests of workers and peasants in particular? Can these interests provide the benchmark

Chinese leaders, China is not developing capitalism, but constructing socialism with Chinese unique characters. In order to maintain the socialist project, whether these contradictions of the socialist transformation before 1978 have been resolved is one of our concerns of the functions of law.<sup>10</sup> However, the reform programme generates new contradictions today that will have to be resolved in their turn if the transition to socialism is to be sustained.<sup>11</sup> Interestingly, the relation between economic control and social change in Taiwan provides a comparison for our understanding to these questions mentioned.

The thesis will investigate the extent to which the development of the regulation of foreign investment has conformed to the class interests, and to the imperatives of socialist development generally.<sup>12</sup> Initially, we shall analyse the contradictions within the socialist development with/without *foreign investment* and the contradictions of the *market* system under socialism: Is it correct in practice that socialism does not need any market, or any foreign investment? Furthermore, can the "deficiencies" in the socialist development before 1979 be viewed largely as a consequence of the "party-state" cadres and bureaucrats placing their own interests and priorities ahead of those of the working classes? Moreover, can this be examined in a simple venal sense, or in the sense that their "access to the power and resources of the state" gave them "a set of priorities" and "a view of the world" that differed from those of the mass classes they purported to represent? More precisely in this thesis, we shall discuss the role of foreign investment inside the reform programme, the relationship between foreign investment and the class interest of the party-state cadres and bureaucrats, and the functions played by both law and administration since then.

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against which actual development record can be assessed? Then, can a discussion of the main features of capitalist and "statist" development throw the socialist features into relief? Moreover, what is the part of law and bureaucracy within this discussion?

- 10 And, as to those contradictions, for example, the overwhelming emphasis on capital accumulation at the expense of higher living standards and the leadership's arrogating of the right to define "correct thought" clearly infringe on the rights of the working classes, a review is necessary and crucial. Were these contradictions incompatible with the socialist development model? Then, we will understand why the transfer of the "specialist" bureaucracy into the "red" bureaucracy did not able to remove the contradictions before 1978 in China.
- 11 For instance, although incomes generally have risen strongly in the reform period, some have risen spectacularly, generating new forms of income inequality. Whether or not such newly emerging contradictions will be successfully resolved remains a matter of conjecture at this time. Nevertheless, is, or is not, the emergence of contradictions from the reform programme *per se* sufficient grounds for condemnation?
- 12 But a major question then would be: were there, since 1949 in China, any substantive deviations in the direction of a "statist" model present, deviations which if left uncorrected would have brought the socialist project to an end? To a certain content, the reform programme, adopted from the end of 1978, has been viewed in part as an attempt to remove the "deficiencies" in socialist development revealed in the period of 1949-78.

To sum up, it is through the Sinocentric approach, based on both historical form of development and structure suggested in Section I.3, that we will examine the law, administrative procedure and the forms of foreign investment in the PRC and Taiwan. The interaction between both formal and informal law, and that between both law and the bureaucracy, help to explain, in the case of Taiwan in Chapters II, IV and VI building-up of the party-state and economic control; the planting of the legal system and its localization; the first wave of liberalization of economic environment, and the failure of law and policy; the impact of both administrative legislation and procedure on the development of foreign investment; the second wave of liberalization of economic environment, and the challenges of law and policy; and, as a whole, the role of bureaucracy and foreign investment in Taiwan's development in the period of 1949-91. In contrast, in the case of the PRC in Chapters III, V and VII, this interaction is to analyse: the reform programme and its challenge; the role of party-state in both economic and legal constructions; the first wave of encouragement of international economic co-operation, and the limits of law and policy; the impact of both administrative legislation and procedure on the development of foreign investment; the second wave of encouragement of foreign investment: the recent legislation and policy; and, finally, the role of bureaucracy and foreign investment after 1978.

## **CHAPTER I. PERSPECTIVE, APPROACH AND THE COMMON INTERESTS OF INFORMAL LAW**

### **I.1 INTRODUCTION**

The task of this Chapter is to examine the conception of law and its codification in early imperial time and to analyse the special characteristics, the genesis and change, of Chinese law and administration. It also intends to draw out the main theme of the impact of informal law on China's legal modernization since the turn of the century, as discussed in the late chapters. The particular focus of this Chapter will be the role of informal regulation, especially within the governing by bureaucracy before the collapse of Chinese old order, in conjunction with a close examination of the role of law in pre-1911 social development.

Indeed, a comparison based on Chinese legal development, from the tradition towards the process of modernization, between Mainland China and Taiwan produces a great interest now and in the near future. In this work, a close examination on interaction between law and administration, from the points of institution to those of legal attitude, shows that although being not the core of Chinese system in fact, Taiwan provides a constructive base for the "comparative" studies on Chinese law.

### **I.2 THE THEME AND THE SETTING**

To ignore Honk Kong and Taiwan as the comparative loci for Chinese legal studies is to reject the interests of both change and continuity of Chinese legal tradition and customary values, and to miss the future legal development among these "*liang-an-san-di*" (three places and two coasts between the Taiwan Straits).

#### **I.2.A. "Chineseness" and Comparative Legal Studies**

If Hong Kong provides a good base for those studies on Chinese customary law under the influence English law (e.g., H.D.R. Baker (1968); J.M. Potter (1968)), Taiwan shall be qualified as a better forum for a comparative study on "both change and continuity" in Chinese legal development, not only from the viewpoints of Chinese traditional context and bureaucratic succession but also from the process of reception of foreign law. One finds no

reason to exclude from Chinese legal studies those good works analysing Chinese law in Taiwan by Western scholars, such as E. Ahern (1972), M.L. Cohen (1976); N. Diamond (1969); B. Gallin (1966); Michael J. Moser (1982); and B. Pasternak (1972).

'At the outset, it is appropriate that at least a brief word be said about the "Chineseness" of Taiwanese society [Moser (1982): 2]'. To take both Taiwan and the PRC as a case study in this work, Michael J. Moser's words remind us of the base of a comparative study on law and social change in these two Chinese communities:<sup>1</sup>

"Despite Taiwan's rather turbulent political career, culturally at least it has been and continues to be thoroughly Chinese [Moser (1982): 2]."

Thus, in the light of the history, and in order to understand China's legal development from the past to the present, Taiwan is qualified as a comparative case better than any other communities or countries in the world. From the views of academic points,

"while one cannot claim that Taiwan (nor any other Chinese province for that matter) is capable of representing "Chinese society" as a whole, the study of culture and society on Taiwan can yield important insights into Chinese culture and society in general [Moser (1982): 2]."

Furthermore, from both the continuity of Chinese law and reception of western law, Taiwan has occupied an inoculating part of the history of Chinese law, which shows "four clearly distinguished phases"<sup>2</sup> which coincide with profound changes in the political systems [Cf. Bunker (1981)] From this long continuity, a comparative legal study between the PRC and Taiwan not only has a very historical interest, but also provides a better and wider survey based on the comparison.

<sup>1</sup> M. Moser has used a long statement to analyse: "The vast majority of the island's present-day inhabitants are descendants of immigrants from mainland China who began to arrive in Taiwan during the 1600's. Governed as a part of the Chinese empire (first as an administrative subdivision of Fujian province and later as a province in its own right) until the end of the nineteenth century, Taiwan was ceded to Japan in 1895 under the Treaty of Shimonoseki. Following approximately fifty years of colonial rule the island was restored to Chinese sovereignty and since 1949 has been the seat of the Republic of China, the Nationalist Chinese regime expelled from the mainland by the forces of Mao Zedong. Despite Taiwan's rather turbulent political career, culturally at least it has been and continues to be thoroughly Chinese [Moser (1982): 2]."

<sup>2</sup> (1) The period of pre-state law before the centralized unitary state of the *Qin* (*Ch'in*) in the third century B.C.; (2) The long period of the Empire with its legal positivism, but also with large subject-areas untouched by law, from the third century B.C. until 1911; (3) The relatively short period of "the reception of European law" which began at the turn of the 20th century and ended with the foundation of the PRC in 1949, although this era "continues in Taiwan"; and, (4) The period since 1949, which will be discussed in more detail in the later sections and chapters and be separated further into several phases.

**I.2.B The Theme: Informal Law and the Administrative Sector in Chinese Culture**

As to the impact of traditional law in the political economy and social ideologies in Chinese history, the importance of both informal law and administrative sector will be particularly under our focus in this work, while several points can be drawn out (cf. Section I.3.D). *First*, although law in imperial China was a tool of state control, there was always a limit to state intervention. Beyond this border line, state law must always make a concession to the other social institutions.

*Secondly*, the state must in some "relatively private" sectors (, even inside the personal connections of the state administrators,) respect the "informal regulation" of Chinese society itself. Law in imperial China helped to define the clear interaction between public and private life. Nevertheless, this very fact provided a possibility of the existence of the informal or societal form of law in Chinese tradition. In addition to government by the state, a social hierarchy enforced socially approved norms and values, which were inculcated by political socialization and practised by *extra-judicial apparatuses* consisting of both administrative agencies and social organizations, including family, clan, village, guild, and district or neighbour-policing units [Cf, T.T. Chu (1965)]. The co-existence of both the formal and the informal systems of law has been a long tradition of Chinese law.

*Thirdly*, under its traditional conception, law in China is, however, over-emphasized by its administrative function and coercive nature which are not the sole characteristics of formal law in the western world. Nevertheless, the *fourth* picture of the role of law in traditional China showed that the authority of the state was *never* "totalitarian" or "absolute", although it remained "authoritarian" in nature [Cf. Tsou (1986): xxii-xxiv]. *Finally*, to a great extent, law and its institute-setting in China must cope with Chinese knowledge of tradition and social philosophy. In other words, the success of law as an instrument for social change depends on the extent of people's tolerance and social ideologies.

The fact of codification of *li*, or rites, in traditional China (Section I.3.D), retained the influence of *li*, in the form of the informal law, inside the legal attitudes and knowledge of Chinese people. So far as bureaucracy, or administration, is concerned in this study, to a great extent, the importance of *li* in governing was emphasized in traditional China with a



long history of legal privileges of *Shih* (the upper class, in contrast to the lower class, *Shu*) whose core was bureaucrats [T.T. Chu (1965): 239-241].

Here, Chinese traditional law provided an understanding for us that in addition to the formal form of law, *li*, the informal form of law, plays an important part as a governing instrument with no less importance for Chinese government in any period. In Chu's words, "[the] so-called '*governing by li*' is much more than application of abstract ethical and moral principles" [Chu (1965): 241]. Furthermore,

"*Li* and law, while separate entities, were supplementary to each other. As the norms were simultaneously sustained by both social and legal sanctions, they imposed a strong compulsion on the members of the society." [Chu (1965): 279]

This will also be a basis for our understanding of both law and bureaucracy in China and Taiwan in later Chapters. Moreover, the co-existence of both the formal and informal forms of law in China has interested legal scholars even in relation to contemporary Chinese legal studies.<sup>3</sup>

It is never difficult for one to find out some examples of contradiction and cooperation of both formal and informal law. Of course, the formal law has its important contribution to the development of Taiwan after 1949. For instance, the Statute for the Encouragement of Investment (1960) has proved an effective instrument which circumvented those obstacles to investment found in Nationalist laws of the 1920s and 1930s. Law as a means to further economic development and social progress also is evident in the Nationalist's land reform programme.<sup>4</sup> But, their success relied heavily upon the informal law, given the process of negotiations and compromises of interest exchange between the ruling state and the landlords or entrepreneurs.

Similarly, before 1957 in a mutually-complementary way both the juridical form (such as formal laws) and the societal form (such as the mass campaigns) of law fundamentally provided the practical instruments for the consolidation of the new regime in

<sup>3</sup> E.g., V. Li (1970) and (1977); Leung (1977); and, Brady (1982).

<sup>4</sup> It is generally agreed by most scholars, these three land laws in early 1950s have helped not only to initiate the economic growth and expand landlords' role in business but also to strengthen social stability in Taiwan over the past few decades. Cf. Chapter II.

Mainland China. There were many basic social units in the traditional China, such as family, clan, guild, the sworn-brothers society, village, and "*bao-jia*" (the traditional local-police administration). Up to the 1950s, all of the customary social institutions were "replaced or restructured" by socialist settings, including the People's Commune, the Trade Union, the street-neighbour-committee, the production team, and the Communist branches.<sup>5</sup> Within these, without the support from informal law incorporated inside the mass movements, for example, the 1950 Trade Union Law could not itself complete its functions<sup>6</sup> in China's economic construction.

### 1.3 THE PERSPECTIVE OF THIS STUDY AND THE SINOCENTRIC APPROACH

Although based on a Sinocentric viewpoint, this paper takes into account more different historical conditions of legal development than those of ideological or theoretic arguments. For instance, to understand the impact of traditional law on the economic modernisation in China today, one has to confront the debates about the Chinese traditional conception of law and its role in the relationship between the state and society. In the long history of imperial China, the vague arguments of political ideologies and philosophies created many difficulties in analysing the nature and functions of Chinese traditional law. This paper attempts to avoid those commonly-accepted ideological and political views of Chinese legal ideas, and to examine the role of law in the *changing relation* of the state and society in ancient China. Then, a picture of the impact of traditional law on economic modernization in China from the last century will be drawn out from the changing role of law within the framework of the modern state and Chinese society [Cf. Chapters II and III].

<sup>5</sup> In the reconstruction phase (1949-53), in the countryside strictly controlled by the Communist, Land Reforms and mass movements did effectively abolish the feudal-patriarchal forces of the old clans, landlords, and other social groups. In the cities, a more important role than that of the non-Communist groups was played by the mass organizations, among which was the Trade Union Congress.

<sup>6</sup> The trade union, assisted by the Communist organs inside the enterprise, changed the traditional social structure at the lowest level, in which the majority of workers were previously dominated by the patriarchal guilds or the secret societies.

**I.3.A. Law and Social Change: From the Historical-Structural Survey to Legal Attitudinal Analysis**

In short, the analytical approach in this paper is based on both "legal attitude" behind formal/informal duality and a "historical-structural" framework. This paper examines the role of Chinese law at those "turning-points" of magnificent political and social changes in the history of China. Furthermore, the analysis of the functions of law and its development will manoeuvre through an examination of those institute-settings and structural changes of Chinese state and society. Accordingly, through this framework there arise several different understandings and arguments from those popular views of the works on Chinese law. For example, on the development of the relationship between the state and society, this paper emphasizes more the importance of informal law and the influence of the bureaucracy and its class interest in the political-economy and the legal developments in China.

Indeed, the phrase "*Chinese law*" as commonly used implies internally that there are certain differences (as well as similarities) between the Chinese law and the western ones. However, it is specious that this distinction of the word "Chinese" is based on a geographical, jurisdictional, jurisprudential, or social attribute. Law inevitably reflects the social relations in a certain society, and cannot exist outside its own society. The understanding of Chinese law in this paper, *both the State law and the living law, or the formal law and the informal law*, is based on those attributes of social-legal context within the Chinese political-economical structure during particular historical periods.

As to contemporary Chinese society, I am convinced that four historical events provided a contextual framework for our studies of Chinese legal theory and its practice. However, if a crisis means a structural turning-point in history, my perspective of each turning-point in this paper means "a period of a changing process", not occurring in any particular year. Accordingly, the *first* turning point is the end of the old order during 1911-49, which saw the collapse of both the imperial government and its socio-economic and legal structure.<sup>7</sup> However, the last dynasty, the Qing (Ch'ing) fell in 1911. The traditional Chinese

<sup>7</sup> As analyzed by one of Chinese legal scholars, the traditional social context of Chinese law was as the follows: "China was a society that significantly elevated morality above law and fused the two. It was also a society with a highly developed and complex bureaucracy and system of administration. The foreigner is likely to grossly underestimate the volume, the antiquity and the systematic detail of legislation, codification, legal commentary and legal treatises published under the emperors of China. ... However complex and sophisticated these codes were, they created no rights of citizens, no general legal framework independent of the state and no body of civil law as distinguished from criminal law. They were instructions to officials". [Tay (1987): 562-563]

law (as "instructions of officials" mentioned above) lost its explicit role in Chinese society, but with immense implicit influence which shall be always born in mind by the legal academics.

The *second* important event is the period of taking the socialist road in China during 1949-65. The *third* one is the failure of Mao's Cultural Revolution (1966-76) which meant the return of Chinese traditional culture which still plays an inalienable part in its society today (cf. Chapter III).

Finally, the *fourth* important historical event, after the failure of China's several development programmes during the past hundred years, is Deng's Modernization programme and his pragmatism which opened Chinese society towards the outside world and injected numerous new elements into China since 1979. To attain "the four modernizations" (cf. Chapter VII), China must have "rules and regulations" and an orderly political-economic environment. At the December, 1978, plenary session of the Chinese Communist Party, (which is generally seen as marking Deng's ascension to the position of the top leader,) the Party's top leadership clearly accepted this view and its implications for legal development (cf. Chapters III and V). From then on, the issue of how to link success in achieving the four modernizations to the construction of a "socialist legal system" made an new epoch of legal development in China.

In contrast, the development of law and foreign investment has been much simpler in Taiwan, where after the Second World War there could be found only one crisis parallel to the Chinese Civil War,<sup>8</sup> the period of 1945-49 (Cf. Chapter II).

### **1.3.B. The Flowing Interaction of Legal Development and Its Various Historical Forms**

In the light of the political-economy as the context of law, there exists "Chinese" law that geographically and jurisdictionally operates in the China, both Mainland and Taiwan, with those social attributes of Chinese tradition, ideological principles, and pragmatism of its modernization programme. Within the political-economic and social context, Chinese law

<sup>8</sup> Since the Korean War, Taiwan has been under the umbrella protection of United States of America's security defence alongside the East Asian countries. It is hard to accept the advocacy of a "national crisis" by the Nationalist government.

provides itself, in comparative terms, the distinctively legal contrasts "between tradition and modernity", "between socialism and capitalism", "between pragmatism and ideology", and, surely, "between Chinese and other cultures".

With those legal contrasts, the studies of Chinese law can, therefore, be achieved through two approaches: the self-examination of the evolution, and the comparative legal studies. As a result, the word "Chinese" does *not exclude* the possibilities of any migration of foreign legal factors into Chinese law. As a relatively comparative term, the element of "Chinese" is on the tide of a **flowing interaction** of modernity-tradition, capitalism-socialism, pragmatism-ideology within the growth of Chinese law. With this nature of a flowing interaction, the comparative examination of the growth of Chinese law, accordingly, neither denies the criticism from a Western legal perspective.<sup>9</sup> In addition, it is also through this flowing interaction that we can link the subsequent historical stages together into a long term survey.

### I.3.C. Informal Regulation Refined under the Structure of the Party-State

Sociologically, Communist China can be described as a Party-State. This is also the case of Taiwan. However, this raises a question whether the Party's intervention, "through informal mechanism", dominates the government system within the State. Theda Skocpol compares State-building in three revolutionary countries.<sup>10</sup> The PRC state and society after the 1949 revolution exhibited particular features:

As a corollary, the Chinese New Regime (compared to the France or Russian) has been less amenable, though by no means immune, to professionalism and a stress on formal rules and unitary hierarchies of routinized command. Furthermore, the Chinese Communists have uniquely made recurrent attempts to reduce or prevent the unchecked growth of inequalities of rank and reward in state and society [Skocpol (1979): 163].

<sup>9</sup> Therefore, again I do not agree here what Goossens said, "[examining] the Chinese legal system from a Western perspective may shed some benefits of comparative analysis, but may not reflect the merits of the Chinese approach to law" [Goossens (1989): 100].

<sup>10</sup> "Yet, of course there were also important variations in the outcomes of the French, Russian, and Chinese Revolutions. ... The Russian and Chinese Revolutions gave rise to party-led state organizations that asserted control over the entire national economies of the two countries and (in one way or another) mobilized the populace to propel further national economic development. ... In contrast to France, Soviet Russia and Communist China resembled each other as development-oriented party-state...." [Skocpol (1979): 163]

As a fact, under both Nationalist and Communist rules there are parallel party and state structures at all levels--national, provincial, county, municipal, and district. This ensures firm party control. However, it is one of our focuses in the study of the development of foreign capital that how far has the interaction between the formal law and informal law changed the relation between the party-state and the society. At least, the co-existence of both the party-state and the Confucianist bureaucratic context has shortened the social gap between Socialist China and Capitalist Taiwan, of which has usually been thought of as being very great.

Indeed, informal law has assumed a key part in the transformation of the nature of Taiwan's development. For example, even with the President's emergency powers and mechanism of the *Temporary Provisions* (480510), President Chiang Ching-kuo explicitly stated, in commemorating the 1985 anniversary<sup>11</sup> of the ROC *Constitution* (461225), the political succession in Taiwan would be carried out "according to the Constitution" [Clark (1989): 138]. This clearly shows, in my view, how the party-state made a compromise with its society especially with the gradually strengthening middle-class. President Chiang Ching-kuo used the informal law to supplement the formal law, and to support his cumulative reform towards political liberalization and democratization since he became Premier in 1972. And this was the will of a family head, a directive from the state leader, and an order from the party chair. In addition, at least two more moves beyond the rigidities of formal law were exhibited. First, in order to guarantee democratic progress and competition<sup>12</sup> and to set the stage for the more far-reaching reforms led by himself, "President Chiang personally intervened when the Election Commission seemed ready to press charges against an opposition candidate for defaming him" [Clark (1989): 135-136]. Secondly, on 28th September 1986, President Chiang again defused charges filed by the Ministry of Legal

<sup>11</sup> In that anniversary, President Chiang announced clearly, succession to the presidency or top leadership position by a member of the Chiang family or a military coup "cannot happen and will not happen," although the law does not prohibit any young Chiang to be a presidency candidate.

<sup>12</sup> In the 1985 elections, the GMD won its usual 70 percent of the popular vote, which the opposition *Tangwai* (literally, "outside the party") won some satisfying victories.

Affairs against the Democratic Progressive Party<sup>13</sup> under the Temporary Provisions, and announced that "martial law would be ended and that new political parties could be formed as long as they support the ROC Constitution and renounced communism and Taiwan Independence" [Clark (1989): 137]. Precisely, the accompanying restrictions from *martial law* and the *Temporary Provisions* on political activities had been increasingly unenforced by political-social norms and democratic values behind the societal part of legal mechanism operated by its party-state leader. Facing both law and bureaucracy within an one-party authoritarian regime, this party-state leader was well aware of the function of informal law in driving a "quiet revolution"<sup>14</sup> towards democratization. In fact, these examples explain that within the hierarchy of the party-state in Taiwan the political-economy of law retains a major field of the discretion of the authority.

Indeed, it is through the interaction of both informal and formal law under the structure of the party-state that bureaucracy, both in the PRC and Taiwan, consolidate their ruling status. After the liberation, the secret societies were still one of the force resisting the Communists until 1954.<sup>15</sup> In the reconstruction phase, two major political tasks<sup>16</sup> were then left for the Trade Union Congress to fulfill. One of the economic impact of the 1950 *Trade Union Law* (500628) was that it provided the legal base for the unions "to protect public property, oppose corruption, waste and bureaucracy, and fight against *saboteurs* in enterprises operated by the state or by co-operatives and in institutions and schools" [Article 9(C)]. However, the period 1949-50 was characterized mainly by the "reorganization of the trade-union from the bottom up":

"At this level the trade unions had at first to succeed with the secret societies in which some of the workers were organized." [Kraus/Holz (1982): 31]

<sup>13</sup> On 28th September 1986, the opposition seemingly threw down the gauntlet to the regime when it declared the formal formation of the Democratic Progressive Party (DPP) at a meeting that had been called to state candidates.

<sup>14</sup> "President Chiang continued to push the top party leadership in a more liberal direction, which guaranteed the policy changes. In the spring of 1986 there was a turnover of four members in the CSC which made it slightly younger and almost one-half Taiwanese in composition (as opposed to only a quarter five years earlier)." [Clark (1989): 140].

<sup>15</sup> Even in mid-1950, Mao spoke of more than 400,000 "bandits" scattered in remote regions of the liberated area that had not yet been wiped out [Taiwan, CHC (1987): 70].

<sup>16</sup> To represent the immediate interests of their members and to aid in the consolidation of the new system in those professional and social strata that "were not yet accessible to the influence of the political parties" [Kraus/Holz (1982): 30-31].

That is, the mass movements were driving the new regime to abolish the traditional helm-broking system and to attack the "*bao-tuo*" (the helm-head, or the helmsman of a group of workers) and "*luo-bao*" (the broker of the transport workers) [Cf. *ZJZ Record-A* (1989): 6-10, 14, 18]. For instance, in September 1951, it was reported that in 177 cities the "feudal-broking" system was already abolished, and in another 27 cities the movements were proceeding [*ZJZ Record-A* (1989): 22-23]. After these political movements, the social stratum of the working class was released from the traditional guilds and secret societies, but unavoidably into the coercive guardianship under the Communists. Hence, it was through the interaction of formal law and informal law that the authoritarian structure of the party-state was created. It has also been within this structure that the law has developed.

#### **I.3.D The Administrative Influence and Informal Sector from Pre-1911 Traditional Chinese Concepts of Law**

The conception of law in early imperial China is a long process within which the political authorities made at least two major compromises with society, and those different social and intellectual forces made compromises with each other as well. As a result, the Chinese imperial governing system was consolidated by a hierarchy based on class differentiation, a cosmic ritualism modified by the Confucianists, with an expansion of administration, in which the bureaucracy and Legalist quasi-law played the key parts.

##### **(i) Dual Systems of Chinese Traditional Law**

In traditional China, the social hierarchy and relations were based on a *philosophy of cosmic harmony* with "a centripetal orientation towards a central point and a corresponding ordering of ranks" [Bunger (1981): 68]. However, the political demands from the pre-state governing system, the feudal authorities of the *Zhou (Chou)* dynasty, led to the *first compromise* with the then society, that is, *Chinese ritualism*--a set of practices and ritual obligations complying with the philosophy of cosmic harmony. Then, people were persuaded to subject themselves to *rites (li)* by the prestige and the imposing forms of the greatest ceremonies, and by the ascendancy, and the example, of the highest personages of the social hierarchy [Bunger (1981): 74]. However, Chinese ritualism did feel the need for a mechanism of a juridical



type. This is shown in T.T. Chu's distinctive analysis of the meanings of *li*.<sup>17</sup> Thus, Chu has defined *li* as rules of behaviour which are different from rites and ceremonies [T.T. Chu (1965): 230-231, *footnote 11*].

Being purely formal norms of conduct, *li*, described by K. Bunge as one kind of "pre-state law",<sup>18</sup> in traditional China, had been supplemented by a system of obligations imposing or proscribing certain deeds, a system enforced by the coercion of the state apparatus. The fact of codification of rites did not set up any actual positive laws like those in the western juridical tradition. Undoubtedly, as has commonly been pointed out by several western scholars, East Asian law had no term for subjective right, until it came into contact with European law [Bunge (1981): 86-88; Vandermeersch (1985): 13-14]. This co-existence of both jural and societal systems of law can be further explored through the social and political functions of *li* as a complex set of "institutions" in Chinese society, which associates *li* with marriage, kinship, government, official system, court audience, archery, chariot-driving, hunting, military ceremonies, funerals, sacrifice, etc. [T.T. Chu (1965): 231, *footnote 11*]. With its institutional effects, *li*, being a powerful social norm, still relied heavily upon persuasion and education rather than force, and upon the use of social pressure rather than governmental power [T.T. Chu (1965): 279]; in that respect *li* has the attribute of informal law. Similarly, *li* stressed the importance of internalizing the rules of conduct and pointed out the ineffectiveness of using fear of punishment to make people behave, and so does the informal form of law.<sup>19</sup>

<sup>17</sup> The principles of a ritual order of this kind are altogether different from those of the juridical order, though the former still imposes some obligations upon individual liberty. cf. Vandermeersch (1985): 13; also, cf. T.T. Chu (1965): 230-231, *footnote 11*.

<sup>18</sup> The pre-state law was characterized as followed: 1) ... its norms were the work of man, and therefore certainly not of divine origin; 2) ... back to the actual writing on li, they arose from "customs" ...; 3) They stipulated duties and responsibilities, but not rights. ... not an individualist ethic ...; 4) They drew their justification and their authority from the fact of tradition; they were good because they were old, ...; and 5) Criminal justice is conspicuous for several functioning regulations which for the early period, are very "modern". See Bunge (1981): 74-76.

<sup>19</sup> The relation between both the jural and societal systems of law, *li* and law in China, was obviously close, as Chu pointed out, "The ancient people frequently mentioned *li* and law together, and such term as *li fa* or *li lu* (*li* and law) were common in their writings" [T.T. Chu (1965): 279]. And, "We may say that originally *li* were enforced by social sanction, later by legal sanction [T.T. Chu (1965): 279]; both *li* and law are overlapped in traditional China [T.T. Chu (1965): 279].

(II) Special Characteristics of Chinese Law

China had a long history of codification in its imperial time, from the first unitary state, the *Qin*, down to the final dynasty *Qing* (*Ch'ing*), which promulgated on the one hand the *Da Qing Lu-li* (Statutes and Sub-statutes of the Great Qing) in 1740 (after several editions of the statutes); and on the other hand a series of editions of *Da Qing Hui-dian* (Constitutions of the Great Qing) in 1690, 1733, 1763, 1818, and 1899 [Vandermeersch (1985): 13-20]. From the very beginning, the extraordinary penal apparatus built up in the *Qin* was designed and operated "to force all social activity into channels which served the ends chosen by those in power, by which the state was to increase its wealth and expand its empire" [Vandermeersch (1985): 14]. However, throughout Chinese imperial history, these statutes still remained a set of *administrative regulations* in the field of public order.

Also, they retained "the exclusively penal character inherited from their *Qin* prototype; for the Chinese never in fact established, following the overthrow of the Legalist regime, a truly juridical system, which would have been altogether foreign to their traditions" [Vandermeersch (1985): 16]. Bunge has analysed these questions with different explanations<sup>20</sup> from those given by Vandermeersch. Furthermore, Bunge even listed many benefits<sup>21</sup> for large parts of the population brought by the legal order of the *Qin*, and pointed out that "cruel penalties, as has been reported, were repeatedly enforced before and after the *Qin*, without resulting in a general resistance among the population" [Bunge (1981): 76-77]. Because of these facts, Bunge argued:

"It is therefore obvious to perceive the reasons for the resistance against the *Ch'in* (*Qin*) style of government not only in the harsh penalties, but primarily in the

20 In Bunge's view, "... However, the Han dynasty kept the promise [of the repeal of a large part of the *Qin* (*Ch'in*) criminal code] for about twenty years only. Then began a considerable increase in legislation, even in the field of criminal law. Its bulk is indicated to us by its 26,272 articles, surely a notable number for those days. The hard facts of politics had taught the Han emperors that such a widely stretching country as China could not be ruled without a uniform legislation and a uniform system of administration. Down to 1911, none of the succeeding dynasties could change this." [Bunge (1981): 77]

21 E.g., "for the farmers, the statutory recognition of private property in land; for the general citizen activity and especially for wide-ranging commerce, the standardization of the coinage, measures and weights, and wheel tracks; all significant and far-reaching innovations". In addition, "many public order measures were issued, and surprisingly we learn of cleanliness in the streets and the decrease of burglary and violent crimes". See Bunge (1981): 76.

precipitate introduction of the new statutes in most parts of the Empire and in that feeling of uncertainty created by the loss of security in a familiar order."<sup>22</sup>

Partly because of that "feeling of uncertainty created by the new statutes", and partly because of the intolerable nature of the coercion in the Qin regime [cf. Vandermeersch (1985): 14], a *compromise* was established between Legalism and ritualism, which then symbolized the familiar old order; this is the *second time* that the state made a necessary compromise with society based on the philosophy of cosmic harmony. Thereafter, the repressive interventionism of the administration was kept to the **indispensable minimum**, and a major scope of social relations was left apart from state intervention to spontaneity educated by ritual [Bunger (1981): 16]. Thus,

"This is why the whole sphere of what we call contract law, and all the procedures of commercial practices, remained in China entirely the affair of the partners involved, except where the administration was able to find a 'public order' pretext for seizing hold of this or that sector, which then fell *ipso facto* into the penal domain." [Vandermeersch (1985): 16]

However, after the compromise between legalism and ritualism, the first tendency was towards the limitation and simplification of the statutes. The second tendency was for a mass of new regulations to spring up alongside the fixed statutes of tradition [Vandermeersch (1985): 17], that is, the administration continued to grow more extensive and more complicated. Through those dynasties, Chinese state administration developed, as a fact, in the realm of public order as discussed, a multitude of bonds which connected it with its subjects, such as the fiscal system, military service, the ordering of the great public services, the organization of education, the official examinations, the planning of liturgical celebrations, and so on. This is how one can explain that, under the later Qing (*Ch'ing*), the number of provisions of the "statutes" was eventually to fall to 436 articles only,<sup>23</sup> while the figure of

<sup>22</sup> Bunger himself even noted: This explanation is consistent with Arnold Gehlen's observations and theory. It would further corroborate F.A. Hayek's legal-historical view (1973, pp. 72 and 162) agreeing with B. Rehfeld, which characterizes the invention of the art of legislation as "probably the most momentous ever made - more momentous than [the invention of] fire or gunpowder". *Ibid.*, p. 77.

<sup>23</sup> According to Tay, *Da Qing Lu Li* was "a code of punishments listing 3987 punishable offences", and was arranged "in 436 statutes [far less than 502 articles of the last *Tang Code* of A.D. 651,] with 1409 supplementary regulations that grew to 1892 by A.D. 1870". See Alice E.S. Tay (1987): 562-563. Also cf. Vandermeersch (1985): 17.

codified administrative regulations<sup>24</sup> extended [Vandermeersch (1985): 19-20]. Undoubtedly, this procedure represents the most sophisticated development of the administrative function, not the legislative function, "to be found in the whole of world history before the contemporary period [Vandermeersch (1985): 19].

Thus, Chinese traditional law had several special characteristics. First of all, a major area of social order combined with a *relatively minimal legal order* into a dual system of social harmony in traditional China. And the legal order was a public order dominated by *administration and its regulations*, and thus very different from the liberal legal system which developed later in western countries. Secondly, the traditional Chinese state law had a limited role under the limited authority of the "state", because of the active philosophy of the *cosmic harmony of society*. Therefore, most of private economic life and those commercial practices were *beyond* the scope of the formal law and left in the field of social customs.

Finally, the legitimacy of the government or the state was based upon a traditional harmonious order and the consent of society. The success of governmental policies depended upon the *acceptance of society* and the *concessions made by the state*. For instance, even within the public dominance of administrative rules, the growing number of tenants of the landed gentry during the Former Han period, about the first century A.D., "paid neither poll tax nor land tax to the government, but a land rent to their landlords" [Hulsewe (1986): 537]. It is clear, however, that the relationship between the state and society decided the role and functions of law in ancient China. Without surprise, in more westernized and industrialized Taiwan in June 1991, several officials and mayors, after the long dry months, still have to take the informal duty for the traditional "worship of heaven for rain" (*sher-tan chi-yu*),<sup>25</sup> which has changed little from the picture of rain ceremony by the Emperor *Wan-li* of *Ming*

<sup>24</sup> *Da Qing Hui Dian* was a constitutional or administrative code creating a highly complex system of administrative government. With regular revisions both *Da Qing Lu Li* and *Da Qing Hui Dian* remained the law governing China until the westernizing legal reforms which were initiated in the last years of the *Qing* dynasty and enacted only after the Revolution of 1911. See Tay (1987): 563.

<sup>25</sup> *Asiaweek* (*Ya-zhou Zhou-kan*, Hong Kong) (Vol. 5:24), (23/06/91): 19.

dynasty, for example, in 1585.<sup>26</sup> This underlines the point that the informal ritual norm and a traditional harmonious order are still the foundation of Chinese ruling and administration.

### (III) Bureaucracy and Informal Regulation in Traditional and Modern China

The expansion of administrative regulation in the interaction between the state and society made Chinese bureaucracy the key to the government, especially given the huge size of the country. At the same time, both the informal norms and formal law further strengthened the bureaucrats' several legal privileges and their great discretion, so that the bureaucracy was an administrative mechanism dominating politics, and even the sovereign [Cf. Huang (1981): 85-86].

In fact, over-emphasis of both moral and normative values, the rules of conduct, and informal law has caused an *endless tension* in Chinese tradition and in the interaction between the state and society.<sup>27</sup> An understanding of this tension of Chinese tradition, between ritualism and the legal mechanism and between the Confucian ideology and the power structure, is crucial for a full appreciation of the role of bureaucracy, beyond the static views given in the Confucian books or law textbooks.

For instance, the contradiction between *li* and law, has explicated the problems of the legal privileges of bureaucracy in traditional China. In feudal times as discussed above, the so-called *shih-ta-fu*, the ruling class, did not fall under the jurisdiction of law which was the instrument for ruling the people [T.T. Chu (1965): 170-176]. This was based on the class nature of the ritualism as "*Li is not applicable to the common people, punishment is not applicable to the ta-fu (officials) [Li Ji].*" Hence, both Confucianism and the law [from the Wei dynasty (about A.D. 2nd century)] recognized privileged groups over and above the

<sup>26</sup> The importance of tradition ceremony for rain can be found: "The emperor was deeply worried by the knowledge that the daily life of the general population was threatened. He had already ordered local officials to pray for rain, but with no results. The emperor then decided to perform the ceremony himself in the presence of the entire court. ... For many residents of Peking, this was the one time in their lives they ever saw the Son of Heaven in person. ..." For the process of this ceremony; see R. Huang, "1587, A Year of No Significance: the Ming Dynasty in Decline", (1981: Yale Un. Press), p. 118.

<sup>27</sup> James T.C. Liu is correct in his analysis of relation between the Confucianism and Chinese state: "Confucianism is a morally-oriented body of thought, whereas the state is a power structure. The Confucian emphasis on moral qualities is more readily applicable to the face-to-face social relationship of primary groups such as the family, the clan, and the small community than it is to the impersonal and complex political institutions of the state, which are never predominantly moral, are in many respects amoral, and in some respects immoral". [J.T.C. Liu (1959): 181]

commoners: a privileged class which included those who qualified under the institution of "pa-i; eight conditions for consideration",<sup>28</sup> and certain other officials not included in the above category as well as the family members of the nobles and officials [T.T. Chu (1965): 177-185].

Furthermore, in most cases neither the investigation nor sentencing of a noble or official rested with judicial authorities, but was entirely upon the will of the sovereign [T.T. Chu (1965): 177-180]. There is a striking parallel with the position of party officials, and the position that the decision made by the Central Committee of the Party carries more practical weight than a judicial one within the party-state nowadays in China and Taiwan.<sup>29</sup> In the 1970s in China, the death sentence of "the Gang of Four", the former top officials of the party-state, was "suspended" without any limitation. In the 1980s in Taiwan, in the notorious business scandals the resignation or departure of the top official, including the Minister of Finance, the Minister of Economic Affairs, the Mayor of Kao-shiung City, Minister of Legal Affairs, and Minister of Communication, meant the end of the cases and of any judicial procedure.<sup>30</sup> Class consciousness of the bureaucracy, of course, plays a significant role in the operation of the law in both traditional and modern Chinese societies.

Furthermore, bureaucratic corruption also emerged from the tension of the moral and structural mechanisms in China. Ironically, however, the Ching government, tried to use this same tension to combat corruption [C. Lau & R.P.L. Lee (1979): 131]. It is interesting that three reasons listed in Lau and Lee's report as sources of bureaucratic corruption in 19th century China were: the unrealistic salary scale; the dependency of clerks; and, law and official power [Lau & Lee (1979): 121-128]. With regards to law, the "discretionary powers"

<sup>28</sup> The *pa-i* "the eight conditions for consideration", which are found in *Zhou Li*, included: 1) Those who were the relatives of the sovereign; 2) Those who were old acquaintances of the sovereign; 3) Those who were of great virtue; 4) Those who were of great ability; 5) Those who were meritorious; 6) Those who were high officials; 7) Those who were exceptionally zealous of government duties; and, 8) Those who were the guests of the sovereign (the descendants of the preceding imperial families). According to T.T. Chu, this system was introduced into the law in the Wei dynasty (220-265) and was then followed by all later dynasties. Cf. Chu (1965): 177, footnote 34.

<sup>29</sup> Moreover, in traditional China: "No matter whether the official was the plaintiff or the defendant, he was not required to appear before the court with the opposing party if the latter was a commoner. Under no circumstances was a commoner permitted to accuse an official to his face nor was an official required to defend himself before the court". [T.T. Chu (1965): 184] Obviously, the similar judicial practice explains the difference of classes both in China and Taiwan.

<sup>30</sup> E.g., Clark (1989): 208; Gold (1985): 118, 145 (footnote 138); *Asiaweek* (Ya-Zhou Zhou-Kan): (5/May/91): 62; (9/June/91): 30.

were the most contributing factor, while the likelihood of misusing the power by the pressures from both within and without the administrative office was the next [Lau & Lee (1979): 127]. Similarly, the system of collecting fees and surcharges, i.e., *lou-kuei* [or the corrupted routine] was developed into the "organized corruption" which remained prevalent through the Empire up to this century. This is a reminder that "structural corruption" is of no less importance than the individual "behaviour corruption" in China, as Lau and Lee have pointed out, since the "system would force the officials to cover up each other and to recruit as many officials as possible into network" [Lau & Lee (1979): 128].

Furthermore, this system of organized corruption was exacerbated by the "dual character of bureaucracy" which originated from the internal tension of the Confucian state. Since there existed clearly a network of personal ties within the bureaucracy as "a necessary evil of the centralized administration", "with little exaggeration one could say that the administration was accumulating every sort of ambiguity and anomaly from the bottom up" [Huang (1981): 57]. Hence, in any political and legal disputes,

'Technically it would be too difficult to investigate more contributing factors and to trace responsibility to persons other than the immediately involved officials. Understandably, once such "side issues" were admitted to the inquiry, the case could be argued endlessly, and the postponement of a settlement could be paralysed the operation of the entire bureaucracy'. [Huang (1981): 58]

In fact, this explained that the privileges of bureaucracy in traditional China arose not only from the ritualism and law discussed, but also from the centralized administrative structure [cf. Huang (1981): 63]. In 1990, Helena Kolenda has titled her article as "One Party, Two Systems" on Chinese corruption [Kolenda (1990)].

Eventually, both the group interest and the loyalty to Confucian principle produced the dual character of Chinese bureaucracy,<sup>31</sup> and placed this group in a privileged position between the dual systems of traditional law. Lau and Lee have pointed out that the abuse of power by Chinese bureaucrats was "by nature both judicial and executive" without cross-checking mechanism [Lau & Lee (1979): 126]. From our foregoing analysis, the legal and

<sup>31</sup> Lucian Pye has used the psycho-political view to analyse China's two cultures and the dual characters of the mandarin and the cadre. Pye (1988): Chapter II, 36-74.

social privileges of bureaucracy, however, were based on legislative, executive, and judicial preferential treatments.

In my view, the legal privileges not only existed in the over-expansion of administrative discretion and overlapped powers, but also covered the exemption from the legal control in general. However, the traditional Confucianist-Legalist law and institutions on the one hand released bureaucracy from the equal treatment under law, and on the other granted officials major discretionary power.

In short, in the light of interaction between the administrative behaviour and the formalistic rules, the tension between the Confucianism and the state has explained the contradictory character inside both law and administration, and the contradictions of informal regulation, in traditional China.<sup>32</sup> For instance, under the principle of formalistic impersonality, no administrative head was allowed to govern the district of his own origin; but this was seriously disrupted by the constant pressure of bureaucrat's *informal* social and personal relationship. In the later chapters, we shall discuss the tension between the dual character of law and bureaucracy has reproduced this "structural corruption" in the form of economic "protectionism" inside the party-state in China and Taiwan.

#### 1.4 CONCLUSIONS

Since the theme in this study is to examine the informal sector in Chinese legal development, a crucial issue comes out of the decline of the central administrative authority at the end of the old order<sup>33</sup> -- the last dynasty, Qing (*Ching*) or Manchu, in decline; the revolutionary movement aimed at destroying the traditional Chinese polity and inaugurating

<sup>32</sup> Professor C.K. Yang has analysed, "The need for a standardization in operating a bureaucracy administering a vast empire led to the development of an operational framework based on a set of formal rules. But, because of the functional importance of informal norms in a society oriented to the primary group, the system of informal moral norms also played a prominent and often a contradictory part in bureaucratic conduct". [C.K. Yang (1959): 163]

<sup>33</sup> For the collapse of the old order, Cf. Feuerwerker (1980): 1-69; especially, 58-69; I.C.Y. Hsu (1980): 70-141; P.A. Kuhn (1978): 301-307; *Foreign Involvement*; C.M. Wilbur, (1983): 527-721. To compare the role of warlords before and after the Northern Expedition, see J.E. Sheridan (1983): 317-321; *Warlordism and Chinese Society*; and, L.E. Eastman (1986a): 124-130, and 141-147. For the interaction between the GMD, the Communism, and foreign forces, Cf. Eastman (1986a); *ibid.*; A. Iriye (1986): 519-530; for China and Japan in the Second World War, pp. 530-540; and, S. Pepper (1986): *The demise of the KMT government and failure of American policy*, pp. 782-788, especially, pp. 785-788.



a new system<sup>34</sup>; the rise of Guo-Ming-Dang (GMD, or Kuomintang, KMT; the Nationalist Party); and its involvement in a complex set of negotiations with the Soviet Union, several Russian advisers, and the *Chinese Communist Party (CCP)* under a "united front" [J. Chen (1983): 518-526] and their open break in March 1927; the "warlordism" in the new Republic [Eastman (1986a): 124-130; 141-147]; the international and the civil wars; and, the Communist troops overran the mainland during 1948-49. Has the importance of informal law in Chinese ruling disappeared or decreased after the end of Chinese old order?

Historically, in 1911 the Qing dynasty fell under the onslaught of a national and democratic revolution. "The crisis that came at the turn of the twentieth century was no longer solely a dynastic crisis", argued F. Michael. It was a crisis of "the whole social and cultural tradition" [Michael (1962): 132]. The first reception of European law in Chinese history started in this uncertain environment.<sup>35</sup>

Furthermore, in the longer term, and as will be analysed in the later chapters, this "great attempt" just mentioned came to naught, and the "complete break" did not occur. At least, this work will argue: within the context of foreign investment and the development of modern law in Mainland China and Taiwan, there saw the active part played by Chinese traditional values, tradition-based societal reactions, and the legal attitudes based on customs. In my view, these elements should be taken into account no less than political changes, class interests, and business nature within the context of law and foreign investment.

<sup>34</sup> Then, Dr. Sun Yat-sen, a dominant figure during the movement, provided a philosophy and ideology that would help to transform China: "The Three Principles of the People (*San-Mi-Zhu-I*): "Min-zhu" (or nationalism); "Min-qung" (or democracy); and "Min-sheng" (people's livelihood).

<sup>35</sup> The difficult role of the tradition was said, "As the Chinese leaders began to realize the new problems of the modern world, their trust in classical education was waning. The great attempt to reform this tradition without losing its essence came to naught, and a complete break with the past occurred." [Michael (1962): 132-133]

## **CHAPTER II. INTERACTION BETWEEN LAW AND ADMINISTRATION IN NATIONALIST CHINA**

### **II.1 INTRODUCTION**

The reasons for the rise and fall of the Nationalist Party, or the **GMD**, in China before 1949 remain highly controversial among detached historians. This chapter will focus on the interaction between law and administration under the Nationalist regime in two historical stages: in Mainland before 1949 (Section II.2) and in Taiwan after 1949 (Section II.3). It first intends to draw out the main theme of the impact of traditional law, especially that of informal law, on China's modernization programmes, and also on development of foreign investment, from the turn of the century to the Communist Revolution. Then, the second step analyses the role of both law and administration under the party-state in Taiwan's development after the Second World War to the present day. Finally, this chapter reviews the interaction between the formal and informal law under the Nationalist regime.

### **II.2 TRADITIONAL LAW, INFORMAL REGULATION AND FOREIGN INVESTMENT AT THE END OF THE OLD ORDER DURING 1911-49**

During the transition period of 1911-49, the poor economic structure and the dominance of the bureaucratic class continued, although the Chinese old order ended. This changing period saw a strong alliance between the gentry and the military with varying degrees of tolerance of commercial and industrial interests and of social reformers, attempting to preserve Confucian traditions and ruling class interests.

#### **II.2.A. Bureaucratic Capitalism and Foreign Investment**

In terms of the putative ideological goals of the GMD itself, set out in "*The Three Principles of the People*" by Sun Yat-sen, the decade of Nationalist government, from the end of the Northern Expedition in 1928 to full outbreak of the Sino-Japanese War in 1937, is

generally considered a failure. For instance, in addition to both *Nationalism*<sup>1</sup> and *Democracy*,<sup>2</sup> in the area of promoting "the people's livelihood", the GMD lacked the populist commitment to helping those at the bottom of society, especially the peasants, workers, and small merchants to whom their ideology had initially appealed [Cf. Eastman (1986a): 163-167]; as analysed in more detail in this section.

### (i) *The Rise and Fall of Bureaucratic Capitalism*

On the question of bureaucracy and administration in the Republican period, the Nationalists themselves were riven with *factionalism*. The new Republican government was established under the *Organic Law of the National Government of October 8, 1928*.<sup>3</sup> In correspondence with Dr. Sun's outline, the government consisted of a president and five formal branches, called "Yuans" (House, Court) - the Executive Yuan, Legislative Yuan, Judicial Yuan, Control Yuan, and Examination Yuan, each with its own president [Wilbur (1983): 716-717]. Resulting from the Northern Expedition and its politics, the holders of all these positions, including the Legislators, were appointed by the dominant GMD party. However, the serious factional conflicts were exacerbated by the fact there was hardly any improvement in the administrative bureaucracy [cf. Eastman (1986a): 116-134].

Secondly, political factionalism thus brought a "court politics" on the one hand, and *political repression* on the other. As to the former, most of the bureaucrats from the warlord period kept their jobs, and many of the new ones were chosen by political criteria, and even cronyism and bribery [Eastman (1986a): 124-130; 141-147]. Although they made significant contributions to the Republic during the 1930s in terms of economic policy, planning and financial reform and stabilization, financiers *T.V. Soong* and *H.H. Kung*, the brothers-in-law

<sup>1</sup> With regard to *nationalism*, the first principle, China was not in reality unified and continued to suffer serious humiliations at the hands of foreign powers, especially during the 1930s culminating in the occupation of northern and eastern China by the Japanese. Cf. Inye (1986): 519-540.

<sup>2</sup> The second principle, the goal of *democracy* failed as well, as the bureaucracy remained through these decades inefficient, imperious, and corrupt, with the collapse of administrative reforms. Cf. Eastman (1986a): 123-130, 163-167; Pepper (1986): 737-751.

<sup>3</sup> For the first time in Chinese history, the *Organic Law (281000)* modelled the *party-state* into Republican law after the Northern Expedition, and, as Wilbur has pointed out, "made it quite clear that the [GMD], through its National Congresses and its Central Executive Committee, exercised sovereign power during the period in which the Chinese people were being prepared for democratic life. The [GMD's] Political Council would guide and superintend the national government in the execution of important national affairs, and the Council might amend and interpret the Organic Law". Wilbur (1983): 716.

of Chiang, were accused of massive corruption.<sup>4</sup> As L.E. Eastman has pointed out, "The growing entrepreneurial role of the National government was actually, therefore, a re-assertion of a traditional mode of political behaviour" [Eastman (1986a): 160]. On the other hand, growing political repression followed the factional conflicts.<sup>5</sup>

In economic development, the economic strategy of the Republican government was based on "*bureaucratic capitalism*" and on the leading role of "private but quasi-state monopolies" controlled by top officials, such as T.V. Soong and H.H. Kung already mentioned.<sup>6</sup> Part of government was thus engaged in nearly open extortion to extract revenues from the business sector [Pepper (1986): 743]. However, extracting revenues and the control of inflation could be the explanation of the *inefficiency of administration* of the regime. The Nationalist government had precipitated the inflation through its deficit financing of the war,<sup>7</sup> only a minuscule portion of which was covered by the sale of bonds or other non-inflationary means. The regime was "unwilling or unable" to restructure the tax system to finance the war against Japan or against the Communist [Lardy (1987): 149].

As a result, the share of government outlays financed through monetary expansion rose steadily, when military expenditures increased in the 1940s. The hyper-inflation was such as that,<sup>8</sup>

<sup>4</sup> The trend was named by M. Bergere as "the return of bureaucracy and decline of bourgeoisie". See Bergere (1983): 822-823.

<sup>5</sup> Other Nationalist leaders such as Hu Han-min and Dr. Sun's son and wife, Sun Fo and Soong Ching-ling, highly criticized the regime [E.g., Eastman (1986b): 547-608; 606-607; Eastman (1986a): 129]. Also, a number of political murders were linked to fascist groups, such as the "Blue Shirt Society" (藍衫社, *Lan-i-sher*) and secret societies, such as the "Green Gang" (青幫, *Qing-bang*) which was the most important criminal organization during 1930s-40s in Shanghai [Eastman (1986a): 116, 131, 133, 143-145].

<sup>6</sup> As S. Pepper has pointed out, "The [GMD] government was vulnerable to the charge that instead of promoting economic development it encouraged bureaucratic capitalism, meaning the use of public office for personal enterprise and profit. Government officials and their associates used their connections to obtain foreign exchange, import commodities, and gain other advantages not readily available to the ordinary entrepreneur". Actually, the *hyper-inflation* during the period was accelerated by "*bureaucratic capitalism*" as well, since "a scandalous government loan in 1946 to Shanghai rice merchants, who used it, apparently with official connivance, for speculative purposes, causing a further rise in the price of rice". Pepper (1986): 743.

<sup>7</sup> Price, according to Lardy, had began rising as early as 1935 and accelerated after 1938 when the government lost control of the industrialized coastal areas to Japanese forces and moved the seat of government to Szechwan Province in the Southwest. Lardy (1987): 149.

<sup>8</sup> By 1945 in excess of 80 percent of outlays were financed through monetary expansion and, according to official government data of the period, the price level by the end of the year was 1,632 times the pre-war level. No systematic efforts were made to restructure the tax system after the conclusion of the Sino-Japanese War and, after a brief respite, the deficit rose to 70 and 80 percent of expenditures, respectively, in 1947 and 1948. Lardy (1987): 149.

"Just prior to the collapse of the domestic currency in August 1948, the wholesale price index in Shanghai reached a level 6,600,000 times that of 1937." [Lardy (1987): 149-150]

Historically, this lesson also explained why both the GMD and the CCP governments emphasized both administrative efficiency and inflation control after 1949, respectively, in Taiwan (Cf. Sections II.3 & II.4) and in Mainland China (Cf. Sections III.2.B. & III. 3.). However, should we remind ourselves that bureaucratic capitalism before 1949 provided the urban-based Nationalists an important experience of international economic cooperation, while the Communists mainly developed their administration within the rural Soviets located in the inner China.

Moreover, from the lessons of *factionalism* and inefficiency of administration before 1949,<sup>9</sup> a party-state was gradually built up later in Taiwan. The National Assembly is elected by the people directly for a six-year term; the Assembly in turn elects the chief of State, the President, also for a six-year term [Arts. 25-34, the *Constitution* (1946)]. Since April 1948, with the enactment of *Temporary Provisions for the Duration of Mobilization to Suppress the Rebellion* (cited as *the 1948 Temporary Provisions* (480510)), the President has been granted a wide range of emergency powers.<sup>10</sup> Basically, there are five branches of the national government, as those before 1949.<sup>11</sup> The Executive Yuan is the Cabinet, with a range of ministers and commissions, which is appointed by the President and whose own head is the Premier. Furthermore, its Executive Council formulates policy and decides which laws, bills, and other matters are to be submitted to the Legislative Yuan for approval.<sup>12</sup> After the retreat in 1949, the Nationalist co-ordinated these government agencies with a central-controlled party mechanism (Section II.3.B. below).

<sup>9</sup> The role of bureaucracy in the pre-1949 economic development has been summarized by V. Lippit as follows: "... China remained an under-developed country in the first half of the twentieth century because the class structure and relations of production remained largely unchanged. As Balazs states, 'The nationalist bourgeoisie of the Kuomintang [the GMD] equalled the officials of the Colonial Empire in corruption, nepotism, bureaucracy, and inefficiency, and it was only to be expected that this national-socialist police state should firmly restore Confucianism and inscribe the ancient Confucian virtues upon its flag'." Lippit (1987): 98.

<sup>10</sup> Promulgated on 10 May, 1948; 11 provisions in total; amended on 11 March, 1960; on 19 March, 1966; and on 17 March, 1972.

<sup>11</sup> Including: (1) The Executive Yuan [Arts. 53-61, the *Constitution* (1946)]; (2) The Legislative Yuan [Arts. 62-76]; (3) The Judicial Yuan [Arts. 77-82]; The Examination Yuan [Arts. 83-89]; and (5) The Control Yuan [Arts. 90-106].

<sup>12</sup> Art. 58, the *Constitution* (1946); Kwang-Hwa Pub. Co., *Government System, the ROC*, (Taipei: 1981), p.10.

(ii) *The Development of Foreign Investment*

As far as the role of foreign investment is concerned in this study, a historical analysis is necessary. In fact, the spread effects from treaty-port industrialization, especially foreign investment and its operation, as discussed below, were limited before 1949. Since the beginning of the nineteenth century, the *opium trade* and forced concessions and reparation had drained Chinese resources, while the provisions for "extra-territorial" areas (mainly the "treaty-ports") in which Chinese laws did not apply were viewed as a national humiliation by China which considered itself historically the "*Zhong-Guo*" (the Middle Kingdom). The impacts of western imperial-colonial activities on China, directly or indirectly, were mixed [Cf. Cao (1991): 1-17].<sup>13</sup>

The developmental stories of different sectors of economy have been told elsewhere,<sup>14</sup> but taking the whole Republican era (1911-49) into account, China's economy was largely "*premodern*",<sup>15</sup> at least before the outbreak of the Sino-Japanese War in 1937.<sup>16</sup> This economy was further destroyed by World War II which ended in 1945, more than one century after the opening of "treaty-ports", such as Guangzhou, Xiamen (Amoy), Fuzhou, Ningbo, and Shanghai, under the "unequal" Sino-British Treaty of Nanjing (1942).

Historically, a set of similar unequal treaties, in addition to the British, followed with the USA, France, Belgium, Sweden, Norway, Portugal, Russia, and Prussia.<sup>17</sup> However, up to the 1860s, these western powers were interested mainly in extending "*trade*". After that, they were more concerned with obtaining colonial territorial concessions. For instance, the

<sup>13</sup> There are some favourable impacts: The treaty-ports, for instance, were sources of new technology, centres for investments, facilitators of the development of Chinese and foreign enterprises, and were sources of moderate stimuli through linking relations with the rest of China's economy. On the other hand, many negative impacts included: the fact that the western powers forced opium on China [Lippit (1987): 44], prevented a rational trade policy, damaged some handicraft industries, and diverted resources to defense and later to indemnities.

<sup>14</sup> E.g., Bergere (1983); Pepper (1986): 737-751; and, Myers (1986): 230-260.

<sup>15</sup> This premodern character of the economy is confirmed by the composition of output and the allocation of the labour force as analysed by N.R. Lardy in the follows: "Almost two-thirds of output originated in agriculture, less than one-fifth in industry. Moreover, since most industrial output was produced by traditional handicraft methods and most services were traditional as well, under 10 percent of aggregate output was produced by modern means. Similarly, more than 90 percent of the work force was dependent on traditional technology." [Lardy (1987): 145]

<sup>16</sup> Annual per capita national income in the 1930s ranked near the bottom of the world scale, about 58 yuan or 15 US dollars per capita (1933 prices). Cf. Lardy (1987): 144.

<sup>17</sup> J.K. Fairbank (1978): Ch. 5, pp. 213-263; Hsu (1980); A. Feuerwerker (1983b): Ch. 3, pp. 128-208.

phrase "German China" was commonly used to refer to Shangdong Province at the turn of century [Feuerwerker (1983): 144-145]. It was only after the first Sino-Japanese War (1894-85) that Japan won the right to establish manufacturing facilities in the treaty-ports. Furthermore, the *most-favoured-nation clause* provided in these treaties from 1843, extended this right "automatically" to all the other powers, since this clause stipulated that any right China should grant to other nations in the future would automatically be extended to the signatory country [Fairbank (1978): 221-222; 225]. Previously, except for missionary houses, foreigners were never permitted to own real estate outside the treaty-ports. Informally, manufacturing by foreigners was the business practice beyond the legal domain. Thus, after 1895 direct foreign investment became legal for the first time.<sup>18</sup> In fact, up to the end of the nineteenth century, the foreign economic impact in China developed primarily through trade rather than through direct investment [Cf. Cao (1991): 78-209; Chs. 3 & 4]. On the other hand, it was also not until the end of that Sino-Japanese War that the strain of foreign borrowing<sup>19</sup> by China became steady and severe.<sup>20</sup>

At the same time, Chinese-owned industry expanded at a rapid rate, although after 1895 direct foreign investment expanded rapidly<sup>21</sup> and took a dominant role in several sectors such as exports and imports, banking and finance, transport and communications, real estate and public utilities at the treaty-ports [J. Chen (1979): 363]. For instance, by the mid-1930s domestic producer goods, especially in the engineering sector, supplied a significant share of investment demand [Lardy (1987): 147-148]. Clearly, the evidence has indicated that Chinese-owned enterprises were not as a group replaced by foreign ones before 1949, but

<sup>18</sup> In a strict sense, according to the historians, "manufacturing by foreigners was illegal under the treaties; but it existed nevertheless, for the most part in the Shanghai foreign concessions with a smaller number at other treaty ports. Prior to the 1880s the Chinese government did not interfere with the establishment of these petty foreign factories". A. Feuerwerker (1980): 28-29.

<sup>19</sup> Foreign borrowing by the Chinese government, according to Lippit, was limited prior to the Sino-Japanese War, although "indemnity payments" resulting from the wars launched by the foreign powers or imposed by force following attacks on foreigners at times put a serious strain on the imperial budget. Later, during 1920-34, loans and indemnity payments accounted for between 31.8 percent and 40.5 percent of national budget expenditures under the Republic. Cf. Lippit (1987): 45-46.

<sup>20</sup> The financial difficulties of the Ch'ing government was getting worse: "The Russian won the gratitude of the Chinese by their intervention, and by their offer of loans to pay to the Japanese an indemnity amounting to 100 million taels in the first year of payment. With an annual revenue of 89 million taels, the Ch'ing court was hardly in a position to pay such an indemnity." Hsu (1980): 110.

<sup>21</sup> According to J. Chen, up to the 1930s, the total foreign investment in China was U.S. \$3.5 billion. See J. Chen (1979): 363.

grew apace with them.<sup>22</sup> As a result, in 1933 Chinese-owned industry accounted for 66.9 percent of whole industrial output in China as a whole [Lippit (1987): 46], including the industry in the most advanced Northeast (or Manchuria, completely occupied by Japanese in 1931) which was entirely foreign-owned. Nevertheless, prior to the second Sino-Japanese War in 1937, the growth of industry (including Manchuria, but excluding handicrafts) had been established as 7.5 to 9.4 percent per annum during the major Republican era [Lardy (1987): 147].

However, this rapid industrial growth did *not* lead to sustained growth of national output. This was for two main reasons. First, because it was *regionally over-concentrated*, and second because of "*sectoral imbalance*" of investment. *Initially*, irrational management of foreign investment and capital shortage indeed limited the contributions of foreign capital in China before the 1950s from several considerations. Five factors were seriously involved.<sup>23</sup>

Regional fragmentation was the other major problem which confronted China's sustained industrialization before 1949. In addition to Manchuria, both Chinese and foreign-owned factories, mainly textiles, processed foods, and cigarettes industries, developed only in Shanghai, Tienjin, Qingdao, Hankow, and other coastal and riverline treaty-port cities [Lardy (1987): 147-148]. The small size and weak linkages of the modern sector meant that it was too weak to stimulate aggregate growth.<sup>24</sup> Therefore, even with the rapid growth of both

<sup>22</sup> "By 1912, there were 20,749 Chinese factories employing seven or more workers. Even in 1933, after the peak of direct foreign investment, Chinese-owned factories in the modern manufacturing sector outnumbered foreign-owned factories by more than ten to one" (Dermerberger 1975, 41). To evaluate the importance of foreign-owned factories by their relative number, however, would be highly misleading, because the average foreign factory was much larger than its Chinese counterpart. Even allowing for this, the data presented ... indicate that Chinese industrial output was produced mainly in Chinese-owned firms in 1933'. Lippit (1987): 46.

<sup>23</sup> First of all, behind the impression of growing governmental loans and foreign investment since 1895, China was in fact a *capital-exporting country and short of funds* for further industrialization. This was because of the siphoning off of capital in indemnity and loan payments. Cf. M. B. Rankin, J.K. Fairbank & A. Feuerwerker (1986): 52.; A. Feuerwerker (1983a): 121, 126; Feuerwerker (1983b): 179, 206. The *second* problem was that of the foreign loans only 6 percent, and only 19.6 percent of foreign direct investment went into manufacturing industries [J. Chen (1979): 363]. *Thirdly*, in spite of the amount of foreign capital, these industries themselves failed to attract the domestic funds of Chinese landlords, pawn-brokers and rural money-lenders. One of the reasons, according to J. Chen [(1979): 363], was that the profits rates offered by the manufacturing industries compared *unfavourably* with "the prevailing rates of interest, rent and commercial profits", and this made industrial investment singularly unattractive to landlords and money-lenders in villages. *Fourthly*, even with the emergence of a modern money market [Feuerwerker (1983a): 39; (1983b): 101] in Republican China, financing for industrialization or manufacturing had never been the major function for either foreign or local banks [Feuerwerker (1983b): 199]. The foreign banks were mainly founded to facilitate *trade* and other *international operations* (such as foreign exchange, land speculation at the treaty-ports, and of course acting as the bankers of Chinese banks and money-shops) [Feuerwerker (1983b): *ibid.*], while Chinese banks accepted deposits from businesses and wealthy individuals to be invested in *government bonds, commerce, land and other banks* [Feuerwerker (1983a): 101; Bergers (1963): 749-750]. *Finally*, the small amount of capital available and its "misuse for administration, warfare, commerce and excess consumption" further aggravated the imbalance of the invested sectors [J. Chen (1979): 367].

<sup>24</sup> For instance, under the Japanese embargo, the Northeast, during its most rapid growth in the 1930s, became an enclave "with no significant economic linkages" to China proper [Lardy (1987): 148]. However, from the historical perspective, these former treaty-



Chinese and foreign enterprises, the modern sector in China before 1937 was too weak.<sup>25</sup> Unfortunately, international and civil wars, from 1937 to 1949, seriously exacerbated these long-term structural problems [Cf. Lardy (1987): 144-150]. As a result, China's pre-modern economy was near collapse, when the Communist took control of China from the Nationalists in 1949.

### II.2.B. THE DEVELOPMENT OF LAW UNDER THE PRE-1949 REPUBLICAN GOVERNMENT

Legal reform during the period had positive effects on the interactions of formal and informal regulation, and accordingly of the state and social relations. Because of the politic-social elements previously mentioned, most of the government's energies, however, were to be absorbed in the suppression of the warlords in favour of a central administration [cf. Tay (1987): 564], even after it was established in Nanjing in 1927. This picture explains the difficulty in re-building the Chinese state earlier in this century.

#### (i) *Neglect of Chinese Reality in Formal Legislation*

It was also the humiliating defeat of the 1895 Sino-Japanese war which awakened China's consciousness of her sovereign rights and therefore the necessity of modern law reform.<sup>26</sup> But at this stage, the newly drafted codes could be deemed to have "unwisely neglected the realities" of Chinese practice and therefore were of little value [J. Chen (1979): 326]. However, before the fall of the dynasty in 1912, the civil code, the criminal code and the code of criminal procedure compiled and promulgated still show the strong influence of the old Confucian views,<sup>27</sup> such as the dignity of the throne and the respect owed to elders by

port cities provided the industrial bases for China's further economic modernization, as discussed in later Chapters, during 1950s and even 1980s. Accordingly, these imbalanced development and regional fragmentation were repeated in modern Chinese economic history, and were one of major challenges for economic planning and management.

<sup>25</sup> The modern sector in China before 1937, "was only a thin overlay on the traditional economy and a portion of it was also enclave-like, with raw materials imported from abroad and finished goods, such as cotton textiles, exported to international market. In short, most of China was almost untouched by modern industry" cf. Lardy (1987): 148.

<sup>26</sup> Externally, Japan's success in cancelling all consular jurisdiction within her territory soon set an example for China. Domestically, the waning Qing imperial authority after the Boxer War softened the resistance to law reform. J. Chen discusses how a new Bureau of Legal Reform, which later naively copied Japanese laws on corporation, navigation, stocks and bonds, bankruptcy, etc., was created during 1901-02. Cf. J. Chen (1979): 326.

<sup>27</sup> The liberal trend in modern law reform, e.g., before 1907 two ministerial memorials advocating the abolition of torture before trial and the extremely cruel penalties, was attack by conservatives, as they argued in defence of the Confucian tradition which they called the "special conditions of China". Cf. J. Chen (1979): 327.

the young and to man by woman [Cf. J. Wang (1988): 23-41]. After the victory of the revolution, the codes mentioned remained in force [Cf. *Deutsch-Chinesische Rechtszeitung* (1911-13); *Chinesisch-Deutsche Gesetzssammlung* (1912-13), only the parts "which obviously contradict the republican polity" being deleted [J. Chen (1979): 327], in the period of transition from 1912 to 1915. It was only between 1929 and 1935 that the Nationalist government brought to fruition the work on various drafts and provisional codes. However, the government paid the price for the historical credits of the uncompleted law reform under the late Qing dynasty and the warlord-related regimes.

For example, the *Civil Code*, largely based on the Swiss Code of 1907, won special praise from Roscoe Pound when he acted as an adviser to the Nationalist Ministry of Justice in Nanjing in 1946 [Tay (1987): 564-565]. However, the neglect of Chinese reality mentioned above remained a major legislative problem. Pound himself in fact did not promote the direct adoption of Western legal principles in China. In contrast, he argued that the Chinese should experiment with Chinese materials for solutions to Chinese problems [X. Yu (1989): 34]. Thus, as regards the legal construction during the period, it is clear that the government and other revolutionary regimes paid more attention to the *power structure of the state* than to the structural changes of the society, and more to the *ruling and administration of the state* than to the relationship between the state and society. The bureaucracy within the transition only proposed legislation by taking over existing proposals of the last regime. Another example was the repeated changes in the various constitutions before 1937 due to different political uncertainties. Thus, the background of the Republican legislation provided an uncertain concept of rights and duties of the citizen, as espoused by "nationalism" - the laws of GMD government protected "only those individual interests which did not run counter to the interests of nation as a whole" [J. Chen (1979): 328]. Therefore the legislative techniques used in the earlier century have been criticized as well.<sup>28</sup>

<sup>28</sup> J. Chen has criticized, "what were the interests of the nation as a whole and who could define them? Without a constitution, the process of legislation was unavoidably anomalous. This was the case with all the legislation of the Peking [Beijing] as well as of the Nanking [Nanjing] governments". [J. Chen (1979): 328]

### (ii) *Influence of Informal Norms of the Confucian Tradition*

On the other hand, the *legal practice and judicial independence*, although making significant achievements, also confronted serious challenges. As J. Chen has explained the picture under President Yuan Shih-kai's regime: "the modern courts accepted bribes and bent the law, turning judicial independence into a farce" [J. Chen (1979): 329], because of a serious shortage of trained personnel<sup>29</sup> and of financial resources<sup>30</sup> which might help keep the personnel above corruption. Another serious and continuing influence since the President Yuan period in 1912 was that he attacked the principles of judicial independence on moral and pragmatic grounds and hoped to strengthen the control of the leader himself [J. Chen (1979): 329]; this thereafter brought back the reign of virtue of the Confucian tradition even after the revolution.

Since the *1912 Provisional Constitution* after the Republican revolution, all Chinese citizens, in theory, were equal before the law, but in practice, the Confucian reign of virtue and ethics continued to play its role in both legislation and administration of justice. For instance,

"During both the Peking and Nanking government periods, people who possessed power or social status, like the gentry under the old system of justice, were treated leniently by the law; this leniency usually took the form of suspended sentences when other people of power and social status were willing to *pao* [*bao*] them (a form of bail without paying money and guarantee of good conduct in order to secure the release of the convicted)." [J. Chen (1979): 330]

Nevertheless, an eye-witness, the jurist F. Michael, made certain positive comments on the legal development during the period.<sup>31</sup> However, it is still difficult to prove how far the reach of these effects were.<sup>32</sup>

<sup>29</sup> This would be a serious problem in Chinese legal reform for the past hundred years given the huge size of the country: (According to Wang Chung-hui's statistics,) China had less than 1000 trained judges by 1926, and (according to the *Shanghai Year Book of 1936*,) there were only 1174 practicing lawyers (including sixty-six foreigners) in that treaty port where most Chinese lawyers were concentrated [J. Chen (1979): 328]. Furthermore, many of them educated at institutions other than the law schools, were poorly qualified and described as "disorderly" [ibid.].

<sup>30</sup> E.g., sometimes even a strike by the judicial staff happened. As J. Chen pointed out: "Like other government employees, the judges were not paid regularly, and so in November 1921 they and their colleagues went on strike." See J. Chen (1979): 329.

<sup>31</sup> F. Michael has noted, "... Orderly legal administration was growing, and in time the remnants of traditional moral beliefs might have been fused with the interpretation of modern law." Cf. Michael (1962): 134.

<sup>32</sup> History then left some unanswered questions as to legal development: "Perhaps the most important accomplishment of the Nationalist Government was the creation of a system of modern law codes, codes of procedure, and a system of law courts, which began to

### II.2.C. The Survival of Traditional Legal and Social Institutions

Considered overall, judged by most scholars, the reception of European law in China until the expulsion of the Nationalist government in 1949 was not a success.<sup>33</sup> However, this left a good question for examination in relation to the development of the reception of Nationalist law in Taiwan after 1945 (Cf. Sections II.3 & II.4). Nevertheless, the new legislation and institutions set up in the period still had their impact on the later legal development in China.

In addition to *class interest*,<sup>34</sup> three basic social and political elements had decisive roles in the development of the legal reform before 1949. The first was *the factor of foreign policy*.<sup>35</sup> Historically, a decisive shock was given, as already mentioned, in 1895 by the defeat in the war with Japan, a country which had recently adopted a new constitution and a legal system *based on western models* [Bunger (1981): 70]. Because of those influences from foreign policy, those in power did *not* take *the nature of China's society and its social structure* into account when they proposed any legal reform [Cf. Section II.2.B, also Bunger (1981): 70-71].

Secondly, during those warring years before 1949, large parts of China were governed by *warlords* in defiance of the supposedly national authorities and without reference to the new laws they had promulgated [Gellhorn (1987): 4], and this criticism is made by the PRC scholars today of the legal system during 1911-1949 [E.g., Wu Jianfan (1983): 4-5].

Finally, the third social element of the legal reform during the period was the *divorce of the rural areas from the urban areas with more industrial bases, and of legal implemen-*

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function and grew in importance, and, if given time, might well have led to the establishment of a society based on the rule of law." F. Michael (1962): 133.

<sup>33</sup> E.g., F. Michael (1962): 132-134; also A.E.S. Tay (1987): 564-568; and, K. Bunger (1981): 69-71.

<sup>34</sup> China became an under-developed country in the late imperial era, "because the interest of the gentry class was in preserving the *status quo*, because the economic and social changes associated with economic development would have undermined the social order that provided everything it wanted" [Lipitt (1987): 98].

<sup>35</sup> The idea of reorganizing the political and legal system upon a Western model, during the later years of the Qing dynasty, was triggered in China solely by its situation in foreign relations, for the military defeats after 1840 combined with the uncontrolled settlement and activity of foreigners in the country had their effects.

tation from the social reality. On the one hand, the Nationalists unified China only in name because of the military reality; and, on the other hand, the rules of the Nationalist modern codes were not always accepted by the Chinese people. Though no longer preserved by an educational system and an elite brought up in it, practices based on the moral code, or the traditional *li* (rites), before 1911 lingered on even in the cities. In fact, modern legal stipulations which ran counter to customary rules were simply not applied because of social disapproval. For example, the law of inheritance and other rules,<sup>36</sup> especially in the fields of traditional family law. This social context is generally accepted by scholars. Thus, during this period of Nationalist rule, China did not have a unified legal system, and surely, not an effective one, either [E.g., Wu (1983): 5]. Nevertheless, in the background during this transformation period, the serious contradictions between the formal and informal systems of law, and between the modern law and the traditional legal-social ideologies, were obvious.

These three political-social elements explained the setbacks faced by the authorities of government, the inefficiency of its legal reform, and the lack of modern legal consciousness of the people. Thus, from the Opium War (1839-42) to the Liberation in 1949, Chinese society and its living conditions were certainly no better.<sup>37</sup> Indeed, after the fall of the old order, citizens did not become any more aware of citizens' rights under the law of the 1911-49 period [Michael (1962): 134], while the social structure and social relations remained in a continued uncertainty,<sup>38</sup> including the same "*feeling of uncertainty from the new statutes*", which were the feature of the Qin's Legalist regime (cf. Section I.4.B). In addition to this uncertainty, the lack of legal consciousness among the working classes also expressed a serious strain, as described--"Justice was a luxury of the well-to-do, and in every sense the poor and landless peasants were victims" [Lippit (1987): 49]. Thus, by 1949, China not only

<sup>36</sup> Michael analysed this clearly: "Escarra, the French jurist, who wrote the best known book on Chinese law, gives examples on the law of inheritance and other rules that could not be applied because of social disapproval". F. Michael (1962): 134.

<sup>37</sup> Lippit has noted, "Life for a majority of the peasants remained marginal, famine remained endemic. Bandits roamed the countryside and in some areas were so well organized and powerful as to place a tax on the harvest" Lippit (1987): 49.

<sup>38</sup> However, up to 1949, China remained as a country with under-development characteristics, as analysed by Lippit, "Given a succession of weak and corrupt governments, warlords dominated various regions; in such places as Sichuan they collected taxes many years in advance (Buck 1968, 328). The central government continued to rely heavily on tax farming for its revenues; in view of its weakness, those who obtained the rights would squeeze whatever they could obtain from the peasantry, remitting only a small percentage to the government (Chen 1973, 74). In much South China at least tenancy appears to have been increasing." Lippit (1987): 49.

had acquired all of the characteristics associated with under-development, but also was confronted with the inefficiencies of the legal modernization and the serious lack of legal consciousness.

Unfortunately, from the turn of the century, through the building of the first Republican state in Asia in 1912, until 1949, the copying or importing of western law hastened ahead of any hopes for modernization of China, without any caution as to whether the step was justified or even necessary.<sup>39</sup> Thus, the end of the Chinese old order during the 1911-1949 period also resulted in the fall of the legal reform established since the later years of nineteenth century.

### II.3 ECONOMIC CONTROL, FOREIGN INVESTMENT AND LAW AFTER TRANS-PLANTING THE PARTY-STATE TO TAIWAN IN 1949

At least two points in post-1949 history of the Nationalist regime in Taiwan have been different from that of pre-1949 in Mainland. The need of re-building a strong central administration came first of all from the lessons of the defeat in the civil war. Secondly, for both coercive control and efficient administration, informal governing through a party-state mechanism has played a more active part than ever before 1949.

After the Second World War, Taiwan's economy was roughly restored to the pre-war (Japanese colonial) level by 1952. From 1952 to the end of 1990, the economy was transformed from predominantly agricultural to manufacturing and services based, while keeping its foreign debt very low and improving its distribution of income. Exports have been the prime engine of economic growth (thus up to 1988, Taiwan's foreign-exchange reserves exceeded \$75 billion--the largest after Japan's in the World--and its foreign debt was a meagre \$2.9 billion).<sup>40</sup> At the end of 1991, foreign-exchange reserves of Taiwan has

<sup>39</sup> As the historian J. Chen put it: "Without exception, the gentry-military alliance laid bare in its important policy statements a diamaying ignorance of the politics and law of China and the West. When this intellectual deficiency was linked up with practical interests and power, the opposition of the alliance to what it regarded as unacceptably new hardened to become a stumbling block in the way of China's progress towards modernity" [J. Chen (1979): 331]

<sup>40</sup> See *The Economist* (London), 5-11 Mar., 1988, 'A Survey of Taiwan'.

further exceeded beyond \$100 billion as the number one in the world, while Taiwan has not been a member state of the General Agreement of Tariffs and Trade.

Furthermore, although the ROC was established as a constitutional democracy [Cf. the *Constitution* (1946)], for the sake of the survival and development of the ROC, the Nationalist government in Taiwan has, over the past 45 years, remained both *authoritarian* and *flexible* in nature. Moreover, it has achieved this development against a background of international diplomatic isolation. The prosperity of Taiwan, and the fear of Chinese reunification under Communist sovereignty, has assured the Nationalists of a measure of continued popular support.<sup>41</sup> Especially, in the domain of economic development, the authoritarian administration has still assumed its leading role through the informal regulation behind, and beyond, the statutory framework.

### II.3.A. Administration and Task of National Survival

The origin of industrialization on the island and the changes in the relationship between the different regimes and the society, both before and after the wars, were interesting in themselves in explaining Taiwan's economic development. Among these, the high degree of "flexibility" in developing these political, social, economic and legal mechanisms plays the key part in Taiwan's national development.

#### (i) *The Need of Re-building of the Central Administration*

During the Japanese colonial period, 1895-1945, the foundations were laid for Taiwan's rapid economic growth and the relatively smooth structural change of its post-war economy [cf. S.F. Lee (1991): 191-198].<sup>42</sup> It was also during this period that social, political and economic conditions [Gold (1986): 32-46; S.F. Lee (1991)] were created by means of

<sup>41</sup> This popular support for the KMT (Nationalists) has been gradually declining, especially in the past three years. It is worth mentioning that in the December 1986 elections, the fledgling opposition party, the Democratic Progress Party (DPP), did secure almost one quarter of the votes cast, with a significant improvement on the 'taangwain' (literally 'those outside the KMT Party') showing in the last elections in 1983. See *FT.L* (London), 15 June, 1988, 'Taiwan wrestles with reform of democracy'; also, *The Economist* (London), 5-11 Mar., 1988, 'A Survey of Taiwan'.

<sup>42</sup> L. Reynolds has asserted, that the Japanese colonial policies were much more development-oriented compared with those of other colonial powers; L. Reynolds, 'The Spread of Economic Growth of the Third World, 1850-1980', (1983) *Jl. of Economic Literature*, 21(3), pp. 941-80.

which Taiwan was able to pursue an outward-oriented strategy of development in the 1960s and 1970s [S.F. Lee (1991): 187-198; also, Li (1976): Chapter 2, pp. 12-19; Li (1990): 3]. In short, Japan created the basic mechanism [cf. Gold (1986), pp. 43-46] by which the Nationalist government was able to take over and manage effectively the agricultural development of Taiwan. The rise in productivity during this period also provided a source of wealth which could be utilized by the government in its drive to Taiwan's post-war industrialization. On the other hand, the Nationalist government took over the then existing rural infrastructure and an initial industrial base, but later introduced changes and refinements to make the system respond to "Taiwan's own needs" more than, of course, Japan's.

Since 1949, when the Nationalist central government was defeated in China's civil war and moved itself to Taiwan, the ROC has been engaged in a continuous struggle for survival. Internally, it faces potential resistance from the Taiwanese islanders (80-85% of the total population<sup>43</sup>) whose ancestors migrated from the Mainland to Taiwan about four hundred years ago, and a potential military threat from the mainland Communists as well. Externally, besides a constant challenge by the Communist regime to its legitimacy, the ROC has faced a serious crisis of "international de-recognition",<sup>44</sup> particularly after October 1971, when the ROC was expelled from the United Nations, of which it was an original member, and replaced by the PRC. Subsequently, the ROC (Taiwan) has also lost its seat in international organizations such as the International Monetary Fund and the World Bank. One notable exception is the *Asian Development Bank*, where Taiwan (the ROC) and China (the PRC) are both members.<sup>45</sup>

<sup>43</sup> More than 1.5 million people under General Chiang Kai-Shek fled in the two years period that culminated in the foundation of the Communist People's Republic in the autumn of 1949. Then they joined an existing population of about 6 million Taiwanese. Cf. *The Economist* (London), (5-11 March, 1988): "A Survey of Taiwan"; see also Gold (1986): 54-55.

<sup>44</sup> Toward the end of July 1991, the ROC only maintained full diplomatic relations with about twenty-nine countries, most of them small and unimportant, except South Africa and South Korea. Cf. *Anawak* (Ya-Zhou Zhou-Kan), (28/July/91): 25. Moreover, none of those countries can be guaranteed never to switch.

<sup>45</sup> Up to 1988, according to the Nationalism, the ROC still maintains its seat in only ten inter-governmental organizations. See *Chinese Yearbook of International Law and Affairs (Taiwan)*, Vol.6 (1986/87), Taipei, p. 322. As to the case of the Asian Development Bank, Taiwan had, since China's accession, boycotted meeting until March 1988, when the government (President Tseng-Hui Lee) announced its decision to send representatives to participate in the 1988 Annual Meeting in late April. See 'Official Transcript of the Press Conference of President Lee on 22 Feb., 1988', Government Information Office, Taipei.



In sum, the efficiency of a military-economic running authority is the first task for the Nationalists after the civil war. Despite its shortage of diplomatic partners, Taiwan is by no means restricted in its economic dealings. On the contrary, the diplomatic setbacks prompted the initiation of a "*self-reliance*" campaign, in which both the government and the private sector joined in a concerted effort to promote strength and stability through economic development and progress.

### (ii) *Importance of Informal Regulation*

The operation of the economic strategy indicates that the ROC's foreign policy has been transformed under the notion of "*economic development first*",<sup>46</sup> this provides a parallel contrast to China's strategy since 1976. As a foreign policy instrument, Nationalist China's economic strategy has two main types of objective: 'political objectives'<sup>47</sup> and 'economic objectives'<sup>48</sup>.

Also, benefited from this economic strategy for survival, the importance of informal regulation and norms have greatly increased. Internally, this economic strategy was to build Taiwan up as 'a model province of China'<sup>49</sup> based on Sun Yat-sen's The Principle of Livelihood [Cf. Section II.2.A], and externally, to reach the status of a developed country. It is only through the understanding of these objectives that one can explain why a military and authoritarian regime had to make long term *compromises* with the unarmed population, given the fact that strength of the GMD regime vis-a-vis its own society contrasted greatly with its

<sup>46</sup> This economic strategy was not an entirely new device introduced after the UN debacle already mentioned; however it was only as a result of the de-recognition crisis that the full range of this strategy was envisaged. On the contrary, it can be traced back to the 1960s when Taiwan, with its increased economic capability, began to launch its 'Overseas Development Assistance' programme, directed at the less-developed world. However, the economic strategy of the 1970s envisaged exchanges, not only with the less-developed countries but also with the 'developed' ones, having the clear purpose of achieving a dynamic flow of trade inter-dependence.

<sup>47</sup> The political objectives of the economic strategy are at least four in number after 1949: how to safeguard the survival of the ROC as well as of the mainland emigrants on Taiwan; and how to safeguard the physical existence of Taiwan island as an independent entity free from outside (especially Communist Chinese) influence are two main objectives for the Nationalists. Then, how to preserve the traditional Chinese way of life, namely, the continuation of Chinese culture and history, and the standard of living that had been built up in Taiwan is the ideological issue. Finally, to promote the possibility of any future political contacts (official ties) between Taiwan and its trade partners, through the existing (unofficial) *trade* relations. Obviously, the last objective is a mixture of political and economic goals.

<sup>48</sup> Closely intertwined with these political aims, the economic objectives of the isolated island were: to promote Taiwan's economic strength, stability and growth, and to upgrade its industrial structure, and to reach economic self-sufficiency, by attracting foreign investment and technology in more sophisticated industries.

<sup>49</sup> However, the movement of 'Taiwan's Independence' from China has been seriously prohibited by the Nationalist government since 1949. Cf. Art. 2 of the 1987 *National Security Law*.

weakness and dependency in the international sphere; and why the flexibility of development policy and efficiency of its bureaucracy are necessary.

### II.3.B. Authoritarian Rule and the Informal Regulation: Re-Building of the Party-State

To the Nationalists, the way to settle the dilemma between the formalization of a strong central government and an efficient ruling was to expand informal sector in administrative operation beyond the constitutional limits. In the organizational context, the exercise of state power takes place through an institutional framework which pervades the society far beyond the 'government', the "party-state (*dang-guo*)", in which both the political and economic spheres are under the control of an executive authority.<sup>50</sup> The role of the ROC 'government' is to give formal legitimacy to its economic legislation, which is lacking in the purely party mechanism.

Among the five *Yuans* of the central government, the posts of both President and the Premier are the key parts of the administration of the party-state. Since April 1948, with the enactment of the *1948 Temporary Provisions* (480510) mentioned earlier, the President has been granted a wide range of emergency powers. The Executive *Yuan* is the Cabinet, with a range of ministers and commissions, which is appointed by the President and whose own head is the Premier. Furthermore, its Executive Council formulates policy and decides which laws, bills, and other matters are to be submitted to the Legislative *Yuan* for approval.<sup>51</sup>

The Legislative *Yuan* is responsible for legislation, approving the budget, supervising government officials, and so on. Thus, the Executive *Yuan* must gain the Legislative *Yuan*'s approval for all substantive laws needed to govern the country, according to the Constitution

<sup>50</sup> Thus, T. Skocpol's definition of the State comes close to this reality of Taiwan: the state is "a set of administrative, policing and military organizations headed, and more or less well coordinated by, an executive authority" that controls a specific territory. See T. Skocpol (1979): 29; also cf. Section 1.3 of this study.

<sup>51</sup> Art. 58, the *Constitution* (1946); also Cf. Kwang-Hwa Pub. Co., *Government System, the ROC*, (Taipei: 1981), p.10.

(Article 57). However, the Executive Yuan, in reality, can gain the Legislative Yuan's approval with ease through the "party-state" structure.

Under Nationalist rule there are parallel party and state structures at all levels--national, provincial, county, municipal, and district. This ensures firm party control. Thus, according to T.B. Gold, in Taiwan all major governmental policy decisions, including legislative decisions, are generated or approved by relevant party organizations [Gold (1986): 59]. The best example of these "party-state" relations is the *National Security Conference* (the NSC), a coordinating body for administrative, policy, military, and security organizations, directly under the President of the ROC. In reality,<sup>52</sup> and according to the law,<sup>53</sup> the National Security Conference is the highest government decision-making body. Furthermore, in order to harmonize decision-making and policy-execution, the membership of the NSC, the five branches (*Yuans*) and the ministers overlaps extensively.<sup>54</sup> The same people appear often in more than one of these institutions. Moreover, for the same reasons, the incumbents of these offices are also members of the powerful *Standing Committee of the Central Committee* of the GMD (Nationalists), which plays a key role in the party-state structure. After 1949, with their enormous party and state bureaucracies, military machine, security network, industrial assets confiscated from the Japanese, and with the American government insulating them from external enemies, the Nationalists controlled the situation in Taiwan to a degree they never approached on the mainland [Gold (1986): 64]. More importantly, there is a high degree of coordination in the different social control functions exercised by the different institutions under the central party-state.

Throughout the ROC's history, the *Legislative Yuan* has generally had the role of legitimating the Nationalists rule. It is only by the 1980s that this Yuan began to assume a greater importance in monitoring the administrative activities of the executive, and gained

<sup>52</sup> E.g., on 27 February, 1991, the 1992 General Budget of the Central Government proposed by the Executive Yuan was sent to the National Security Conference for its examination and approval, which resulted in four decisions made by the Conference. *Central Daily News (IE, Taipei)* (1st March, 1991): 1.

<sup>53</sup> Provision IV, *Temporary Provisions* (1948).

<sup>54</sup> E.g., *Central Daily News* (1st March, 1991): 1.

some limited but increasing law-making rights. However, in most cases, these limited law-making rights of the Legislative Yuan are no more than those of "approval", or "approval with amendment",<sup>55</sup> not "initiation". There are several reasons for this. First, as T.B. Gold has argued, the Nationalists have maintained their dominance by freezing the membership of three parliament-organs [Gold (1986): 61]. In fact, up to the end of 1990 there have been no general elections (only a few partial elections) in Taiwan for four decades. Secondly, the party members in the Legislative Yuan, which hold the majority of all seats, have to support decisions made by the *Standing Committee of Central Committee*. The final reason is that the expert drafters are within the party and state legal bureaucracies [Cf. Articles 57, 58, and 63 of the *Constitution (1946)*]; while such expertise is lacking in the Legislative Yuan before the mid-1980s.<sup>56</sup>

### II.3.C. An Institutional Analysis of the Interaction Between Law and Economic Administration

Up to the 1990s, the government has succeeded in piloting Taiwan to levels of economic development that are almost unparalleled in the region, and certainly beyond the reach of even the most advanced of Mainland China's special economic zones. A framework of economic laws and institutional settings, from a historical-structural view, have been the vehicles of economic development, through five distinct phases since 1945. However, a type of economic *discretion* has been developed emphasising administrative, discretionary, and conventional controls, while formal regulation based on explicit legal powers plays a relatively little role.

<sup>55</sup> One notable example was the *Amendment of the Banking Law* on 10 May, 1984. In this case, the struggle between 'interest group' and 'anti-interest group' among KMT (Nationalist) legislative members led to a mass of debating and negotiation on the draft. Finally an Amendment came out after this struggle. See *Economic Daily News* (Taipei), *Economic Yearbook of the Republic of China (1986)* (in Chinese, cited as *Economic Yearbook 1986*), pp.7-8.

<sup>56</sup> Cf., K.T. Li (1976), Ch.2, 'Law and Economic Development', pp. 12-19; Gold (1986), p. 59; and *Economic Yearbook 1986*, pp. 7-14.

(i) *Emergency Measures Increasing during Rehabilitation, 1945-52*

In the early days of Taiwan's post-war rehabilitation, when agricultural and industrial production had not yet been restored, there was a serious shortage of goods, and inflation was rampant.<sup>57</sup> With the rapid population increase, there was also an extremely serious unemployment problem. In the face of this threatening situation, the government shifted its priority to price stabilization in order to combat inflation.<sup>58</sup>

After the Japanese surrender in 1945, the Nationalist Government sent forces to take over the island of Taiwan, and has since ruled the island as a province [W. Cheng (1991)]. Accordingly, all the ROC's statutes and regulations enacted from 1920s to 1940s were 'suddenly' thrust upon Taiwanese islanders after Japan's fifty-year period of rule had ended. These laws imposed from above continued in force after the Nationalist Government relocated itself in Taiwan in 1949. A number of laws of an economic nature were thus introduced into the island.<sup>59</sup>

In addition to the imposition of those laws, the other main legal characteristic of this phase was *the increase of the state's emergency measures*, including both legislative and administrative measures, because of the continuing civil war. Special regulations governing agriculture, mining, industry and commerce during the period of the civil war were effected in order to stabilize the economy. So were several administrative agencies.<sup>60</sup> The expansion of administrative regulation of business was obvious during the period.

<sup>57</sup> Commodity prices sky-rocketed by as high as 33% each year earlier in this phase. 'Inflation' has been regarded as the first enemy in the Nationalist development policies, for an uncontrollable and sky-rocketing price was the main reason for KMT's defeat in China's civil war in 1949. Today, Taipei is proud of its control on commodity prices as the head of the world. See *Central Daily News (IE)*, (21 May, 1988), p.1.

<sup>58</sup> Every effort was made to achieve post-war rehabilitation. Currency issues and government budget were placed under strict control, and by 1952, agricultural and industrial production were already restored to pre-war levels.

<sup>59</sup> Including the *Civil Code* (1929) (290523); the four special laws regarding Civil Matters—the *Company Law* (1931) (291226), the *Law of Negotiable Instruments* (1929) (291030), *Maritime Law* (1929) (201230), and *Insurance Law* (1929) (291230); the *Trademark Law* (1930) (300506); the *Patent Law* (1944) (440529); the *Banking Law* (1931) (310328); the *Income Tax Law* (1943) (430217). Other regulations governing mines, forestry, water, fishery and land were also introduced [Cf. *Appendix B*].

<sup>60</sup> Including the *Taiwan Production Board (TPB)*, the *Sino-American Joint Commission on Rural Reconstruction (JCRR)* were established in 1948-9 to stabilize the changing programmes of economic development [Clark (1989): 162; Gold (1986): 65-66]. For the same reason, the *Economic Stabilization Board (ESB)* was established as a macro-economic control body in 1951 on American advice [Gold (1986): 68-70].

(ii) *Dominance of the Party-State: Land Reform and Import-substitution Policies, 1953-60*

A series of land reform measures created a system of small-holder private agriculture in the early 1950s. In order to utilize its limited resources efficiently,<sup>61</sup> the government commenced from 1953 a series of **Four-Year Economic Development Plans**, of which two during this phase boosted agricultural and industrial production. In this phase, the government adopted a policy of "import-substitution" since most equipment and raw materials required for industrial construction were largely imported.<sup>62</sup> The exports in this phase were chiefly agricultural products and processed agricultural products. Foreign trade was constantly in deficit.

The success of the land reform programme carried out in Taiwan was based on three laws.<sup>63</sup> Along with this programme in the critical 1950s, the Nationalist regime, guided and supported by the USA, institutionalized the structure of the "Party-State" within which Taiwan's economy, society, and politics would evolve. The Nationalists penetrated society to the level of the residential neighbourhood, village, school, and large work unit [Gold (1987): 59-64]. As a result, the party-state dominated the economy, and also controlled relations with the outside world. Accordingly, it selected its "cronies" to become industrialists and made sure that they depended on the state for capital, foreign exchange, equipment, raw materials, energy, and docile labour (Cf. Sections V.3.B. & V.4.B. below).

Meanwhile, in addition to the land reform programme, the influence of the US aid mission through the JCRR programme<sup>64</sup> created a favourable climate for private investment by liberalizing economic controls and reducing bureaucracy [Clark (1989): 162-163; Gold (1986): 65-66]. Subsequently, *the Statute for Investment by Foreign Nationals (the 1954*

<sup>61</sup> With American financial aid amounting to US \$100 million on average each year (1951 to 1965), in conjunction with the financial and economic coordinative measures taken by the government, commodity prices gradually stabilized [Clark (1989): 168 and 170-171; Gold (1986): 68-70].

<sup>62</sup> For a detailed discussion of the background of this policy, see Shu-chieh Tsiaang, *Lessons from the Economic Development of Taiwan*, (1985: Commonwealth Publishing Co., Ltd., Taipei): p.154.

<sup>63</sup> These were: *the Statute for Reduction of Farm Rent to 37.5 Percent (1951) (510607)*; *the Land-to-the Tiller Statute (1953) (530126)*; and *the Statute for the Equalization of Urban Land Rights (1954) (540826)*.

<sup>64</sup> The essence of the two plans of the ESB in this phase was the linking together of applications for finance from the U.S. Agency for International Development (AID). AID also gave in advice and backing to the economic institutions established by the government.

*SIFN*) (540714), the *Statute for Investment by Overseas Chinese (the 1955 SIOC)* (551119) and the *Statute for Encouragement of Investment (the 1960 SEI)* (600910) were promulgated in order to promote this investment climate and economic development. The Nationalist Government tried to induce development by enactment of these conveniently-made laws and administrative measures, such as a *19-Point Programme for Financial and Economic Reform* [Clark (1989): 174-175; Gold (1986): 77-78].

### (iii) *Protectionism and Exports, 1961-72*

The 3rd (1961-64), 4th (1965-68), and 5th (1969-72) Four-Year Economic Development Plans were fulfilled during this period of "self-sustained growth" pursuing "stable but rapid" economic development. However, this did not entail abandonment of the tight controls of imports. In order to restrict the possible adverse impact of the termination of American aid in June, 1965,<sup>65</sup> the government took a variety of renovating measures in addition to those already implemented in the late 1950s. These administrative measures could be seen to have been the origin of the later-criticized "protectionism" [M. Hsing (1991): 78-81]. This expressed the contradiction between short-term economic perspective resulting from administrative convenience rather than a long-term structural perspective.

Meanwhile, the government encouraged savings, foreign and domestic investment and exports.<sup>66</sup> The Third Four-Year Economic Plan (1961-4) incorporated the *19-Point Programme* as well as the *1960 SEI*, which offered incentives to stimulate private investment. The State took other measures to promote the private sector, such as establishing the *Industrial Development and Investment Centre* and the *China Development Corporation*, which also had the GMD's party capital invested in it [Gold (1987): 78]. Furthermore, during

<sup>65</sup> According to Professor Tsiang, the accumulation capital in Taiwan before 1963 relied heavily on foreign aid and foreign capital: before 1962 foreign capital was between 30%-50% of total capital. Tsiang (1985): 165.

<sup>66</sup> With rapid economic growth and ample labour supplies, productivity sharply increased and, in turn, labour costs, which provided Taiwan an "international comparative advantage" until the 1980s, dropped. Stability in international commodity prices further stabilized the commodity prices in Taiwan. Also, inflation no longer constituted a threat to the island economy, thereby enabling industry to plan ahead and make long term investments in accordance with the principles of sound business. This factor has contributed significantly to the rapid economic growth Taiwan has experienced in the recent past.

this Phase, those laws of an economic nature already mentioned were amended;<sup>67</sup> to symbolize the government's implicit acceptance of the fact that "*Taiwanization of the Nationalist laws through limited revisions*" would be necessary for further economic development. *A wide range of legal reform, in both the civil and commercial fields, had been lacking even after two decades since 1949.*

In September 1963, to prepare for AID's impending withdrawal (moved up to 1965), the government merged the Council on US Aid (CUSA) into the new *Council for International Economic Cooperation and Development (CIECD)* under the Premier [Gold (1986): 78]. The CIECD continuously improved the investment climate as the situation demanded. The *1960 SEI*, a useful mechanism, had been revised thirteen times by 1985 [cf. *Chapters IV and V*]. It was supplemented by frequently updated categories and criteria of strategic productive enterprises singled out for special encouragement under the executive authorities. In addition, the *Statute for Technical Cooperation (the 1962 STC)* (620808), the *Securities Exchange Act (1968)* (680430) and the new *Income Tax Law (1968)* (571230) also promoted favourable changes for Taiwan's economic environment during the 1960s.

### *(iv) Expanding Administration and Industrialization, 1973--1985*

During this period, three Economic Development Plans were implemented (1973-76, 1977-81, and 1982-85). However, the 1973 oil crisis had an extremely adverse impact on the exports of Taiwan. Meanwhile, commodity import prices rapidly reached even higher levels. Declining exports and decreased interest in private investment seriously threatened economic growth. As a result, on the one hand, the government commenced the *Ten Major Construction Projects* in 1974, whereby the investments by the government and government corporations considerably increased, partly making up for increasing exports and private investment. On the other hand, as commodity prices stabilized, the government took

<sup>67</sup> Cf. Herbert H.P. Ma, "General Features of the Law and Legal System of the ROC", in Ma (ed.), *The Legal and Economic Environment in the Republic of China*, (1985: 2nd Ed.; Academia Sinica, Taipei), pp.1-53; pp.17-20.



measures to stimulate the economy [Clark (1989): 192-193; Gold (1986): 100-101]. Still, in this phase, state intervention in business played the key part in Taiwan's economic growth.

Compared with the first oil crisis, the government well demonstrated its strengthened capacity to deal with energy crises and recession in the second oil crisis triggered by the Iran-Iraq war of the late 1970s. In 1984, as the world economy appeared to pick up, Taiwan again greatly increased its exports. The substantial economic growth increased to 8.9 per cent and commodity prices had remained stable based on inflation which averaged about 6.5% between 1953 and 1989 [K.T. Li (1990): 1-2]. An important impact of this phase on the late development of Taiwan was the expansion of the reserve of foreign exchange. Being quickly accumulated, this reserve caused the increase of domestic currency-issue and high inflation after 1985 [Hsing (1991): 79].

Facing the different tasks already discussed, the macro-economic control bodies within the bureaucracy had been repeatedly re-structured since 1948-49, such as the Council for Economic Planning and Development (CEPD) in 1977.<sup>68</sup> In fact, the *Industrial Development Bureau* under the Ministry of Economic Affairs (MoEA) has detailed power over sector planning and execution.

After 1980, the CEPD began shifting the emphasis in industrial restructuring and trade liberalization. In 1980 the State established a new type of industrial zone, the Science-Based Industrial Park in Hsin-chu, which was designed as Taiwan's 'Silicon Valley', to offer the same incentives as the 1960 SEI plus additional sweeteners [Cf. Section IV.4.A. below]. To restructure Taiwan's economy and to induce its trade and industrial changes, there are frequent legislative amendments of economic laws [Cf. Sections IV.3; V.2], especially in the fields of investment, intellectual property, and in 1987 deregulation of foreign exchange

<sup>68</sup> In 1973, the then Premier Chiang Ching-Kuo replaced the CIECD with the Economic Planning Council (EPC). Later, however, the real policy-making power shifted to a new, five-man Finance and Economy Small Group of the Executive Yuan, headed by the Central Bank Governor under the Premier. In 1977, the government terminated the EPC and the five-man small group and established the Council for Economic Planning and Development (CEPD), which re-centralized power, taking responsibility for macro-planning, setting priorities, coordination, and evaluation.

control.<sup>69</sup> However, up to the end of this period, the continuing of high exports and competition from other Southeast Asian countries explained the failure of the policy of upgrading industries.

*(v) Administrative Authority at the Crossroad, 1986-Present*

Indeed, the unprecedented international context accelerates Taiwan's changing steps. Even the issues of labour welfare and trade unions were pushed by American trade pressure.<sup>70</sup>

During this stage the governmental further developed its new capital and technology-intensive industrial strategy, which has been not deemed so successful since the early 1980s, based upon the principles of "zi-you-hua, guo-ji-hua, zhi-du-hua" ("*Liberalization, Internationalization and Institutionalization*"). The requirement of "Institutionalization" has shown the contradictions of administrative dominance in the past. The country had completed its 9th Development Plan (1986-89), which focused on two major priorities: expanding domestic demand and reducing the trade surplus [F.F. Chien (1989): 187]. It was reported that in 1988 in correcting both of these macro-economic imbalances Taiwan achieved substantial progress. For further development, the *1990 Statute for Upgrading Industries (the 1990 SEI)* (901228) was promulgated to replace the 1960 SEI.

At the beginning of 1991, a Tenth Development Plan (1990-93) was surprisingly and quickly replaced by a new *Six-Year Development Plan (1990-96)*, which has set up not only economic but also social, cultural and educational goals, including a "comprehensive national health insurance programme, enhancement of social welfare and security programmes, and improvement of environment protection, pollution control and ecological conservation"

<sup>69</sup> The Investment Centre of MoEA, *Manual of Investment by Overseas Chinese and Foreign Nationals in the ROC (Hua-chiao Wai-kuo-jen Lai-hua-tou-zi Yao-lan)*, (1989: published by Jin-jih Wen-hua Press, Taipei) [hereinafter cited as 1989 Manual (Taiwan)], pp. 183-185 and 214-215.

<sup>70</sup> E.g., the open of more than one trade union in one company was one of the labour issues of Taiwanese-American trade negotiation. Council for Economic Construction & Planning (The Executive Yuan, Taipei), *A Study of Legal Issues of Taiwanese-American Trade Negotiation* (August, 1987; No. (76) 567-42), pp. 536-537.

[*FCJ*, (17 January, 1991): 5]. It has been pointed out by a top official that "reconstructing economic and social order" is an essential part of the plan in the next six years, and that promoting Taiwan as a major financial, transit, and high-tech centre in the Western Pacific is the first goal [*FCJ*, *ibid.*].

### II.4 THE FORMAL AND INFORMAL LAW UNDER THE NATIONALISTS: CHANGE AND CONTINUITY

In Taiwan since 1945, law constitutes not only an ideological device for creating legitimacy, but also provides the essential channels to induce social changes and institutional transformation. An attempt to analyze the role of economic legislation in Taiwan's economic development is necessary to explain the basis of legitimacy and the role of law in Taiwan's economic development. Indeed, for the past decades after 1949, the Nationalist China has expanded the functions of informal regulation to a great degree to support the implementation of development strategy. However, the contradictions between formal and informal law have also produced many issues in the long term.

#### II.4.A. Combination of Formal and Informal Mechanisms in Legal Change

From our analysis (cf. Section II.3), the development of the legal framework of business in Taiwan after 1949 has been influenced by three main characteristics: the national development strategy; the localisation of the Nationalist laws; and, the influence of American commercial law. These three characteristics also explain the general nature of private business environment in Taiwan.

First, the task of national survival (cf. Section II.3.A) explains the ROC's policy: the "economy- and trade-first strategy", has aimed at placing Taiwan deliberately at the centre of trade relations between the developed and the less-developed world.<sup>71</sup> In this regard, the

<sup>71</sup> The reason for this strategy is to try and establish Taiwan's *indispensability* to many nations and economies and thus create an economic basis for continued *political independence*. It is through this strategy that the ROC is slowly setting up its own pattern of trade inter-dependence, linking itself and its future with the world economy while, at the same time, searching for a national self-sufficiency and an independent identity. President Lee indicated in the President Press Conference (22/Feb/88): 'the entire ROC economy is supported by foreign trade'. See the document of *Government Information Office* (1988).

Nationalist officials hoped that the absence of a diplomatic life for the ROC could be made *less harmful* to Taiwan's national economy and its aim of survival, since these could be complemented by the island's intensive "unofficial" contacts overseas.<sup>72</sup> Moreover, cross-investment, i.e., both foreign investment inside the country and overseas investment, are accordingly encouraged under Taiwan's diplomatic and economic strategy. The ROC's unorthodox methods of diplomacy have indeed served to compensate, to a significant degree, for its international isolation after the expulsion from the UN, and hence have ensured its survival and economic viability. No one, however, could be sure of what this economic strategy of the 1970s will achieve in the 1990s. Nonetheless, both international and domestic legal principles have been treated in a flexible and informal manner subject to the *overriding administrative considerations of survival of the regime*.

Secondly, the localisation of the Nationalist laws has been the main legal development since the end of the war. This was not only due to the change of the size of the economy (from the mainland into an island), but also because of the change of social structure from an agricultural-industrial mixture into a newly industrialised economy. Hence, the basic laws adopted in the late 1920s and the early 1930s under the Nationalist government had to be adapted to deal with the issues raised by international transactions, and commercial laws had to be adjusted to be more flexible and practical in relation to local conditions, especially in the field of foreign investment. This Taiwanisation of the Nationalist law has been expanding not only in the civil legal areas, but also in the commercial areas including patents, trademarks, copyright, the insurance and trading of securities, bankruptcy, land, water, mines fisheries, forests, compulsory execution of judgments, civil matters involving foreign parties, and arbitration.

Finally, given the fact that Taiwan depends closely on the U.S.A. in its external relationship, the localisation of the old laws has always been influenced by the economic co-operation and the trade partnership between two countries. Accordingly, the Anglo-

<sup>72</sup> For example, even in 1989-90 Taiwan has used this strategy to set up a closer business tie with many European and South-East Asian countries, in order to search for more foreign markets for Taiwan's goods and technology and to strengthen Taiwan's international trade contacts, that is, to diversify Taiwan's foreign markets from the USA. See *Asiaweek* (Ya-zhou-zhou-kan), (28/July/91): 24-26.

American legal experience has often been referred to in the legislative process, especially, in relation to the commercial laws and their amendments. Moreover, as we will discuss later, most of the changes of laws, under the influence of the bureaucracy, have been based on *amendment rather than an overall restructuring of existing laws; on an omnibus legislation accompanied by administrative rules to avoid a wide change of other related regulations.* Alternatively, special laws have been passed (such as (the 1960 SEI) (600910)) which included "omnibus" provisions covering a wide range of topics (e.g., acquisition and use of land; customs, duties and taxation; foreign exchange; intellectual property rights) but *without changing those related legal areas.* These three characteristics discussed also explain the general legal environment of foreign investment in Taiwan.

### II.4.B. Administrative Authority Assuming the Legislative Role

During the 1950s, the Nationalist government already became aware of the importance of the role of law in its development [Cf. Section II.3.C.(ii)]. Because of rapid economic growth, the existing laws had become inadequate and out-dated, creating great difficulties for business operations. Hence, two approaches to resolve the problems were adopted by the Nationalist government. These include a carefully planned programme for an overall revision of the general fields based on both civil and criminal law. It also covers the drafting of the laws and new regulations, omnibus or not, in specific areas, especially foreign investment.

Although ordinary legislation is left to the Legislative Yuan, the Executive Yuan, which is the practical administrative centre, is often the drafting body of legislation and may, in certain cases, with the approval of the President return a bill passed by the Legislative Yuan for re-consideration and revision [cf. Section II.3.B].<sup>73</sup> Therefore, in reality the Executive Yuan, the administrative centre, plays a crucial part in the process of legislation.

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<sup>73</sup> Bills returned by the Executive Yuan must be re-affirmed by a two-thirds majority of the Legislative Yuan in order to become law.

In practice, the real legislative power is actually in the hand of the administration under the central leadership within the party-state.

A model example of the legislative process in the ROC was *the 1985 Amendment of Trademark Law*. The Legislative Yuan approved it, although many members criticized the *Amendment* on the ground that it would protect foreigners more than the ROC nationals in relation to trademark litigation [*Economic Yearbook 1986*: 10]. The legislative policy-coordination was based on the ROC's economic strategy of that time--Taiwan had to get rid itself of the image of 'copycat' in the international community, in order to promote its trade.

Hence, as a result of the party-state relations mentioned, the legislative process in the ROC is as follows:

### 1. from the Executive Yuan:

Draft (the ministry or department appointed);

--> Coordination and Examination (Executive Council);

--> Legislative Proposal.

(The role of Party behind-the-scene is to coordinate the national interests and the party interests in the legislative proposal.)<sup>74</sup>

### 2. to the Legislative Yuan:

Examination in Commission (the relevant Committee), three times;

--> Legislative Procedure (the formal Yuan-meeting), three times;

--> Approval.

(The role of Party is to push the proposal through the Legislative Procedure with least difficulty.)<sup>75</sup>

### 3. to the President:

Promulgation.

<sup>74</sup> Cf. *Central Daily News* (International Edition, Taipei, cited as CDN(IE)), (01/Jun/88), p.1, 'The KMT Division of the Legislative Yuan to push through Five Legislative Proposals'.

<sup>75</sup> Ibid.

Nevertheless, in recent years there have been cases when legislative proposals have been amended or blocked by actions organised by the interest groups.<sup>76</sup> There have also some 'self-proposals' by Legislative Committeemen<sup>77</sup> within the legislative process. On the whole, however, the legislative process in Taiwan essentially consists of 'execution of development strategies' decided by the party-state machine of Nationalist China.

Recognizing that legislation has both preventive and promotive functions, the Nationalist officials have emphasized that "law is a means to further economic development and social progress" [Li (1976): 14]. To these economic officials, every policy they endorse they expect to legalize. Every law they propose, they expect to administer, to induce social changes towards economic progress. For example, the SEI (1960) [Cf. Chapters IV & V].

However, updating legislation is not an easy matter. The Nationalist government deems law revision the best way to induce organized change. Thus, the *Committee on Economic Law Revision and Unification* was set up by the Ministry of Economic Affairs in 1965 [K.T. Li (1976): 12]. Its task was to deal with the programme for the overall revision of those old economic laws enacted in mainland China and new ones. Consequently, a mass of revision of both new and old economic laws occurred in 1960s and 1970s, followed by the speedy economic growth of Taiwan.

Because of the "economic-development-first" strategy of foreign policy, and because of the close relations between the ROC and the USA, the influence of *Anglo-American law* has gradually increased through the revisions. Notable examples are the commercial laws such as Company Law, Law of Negotiable Instrument, Maritime Law and Insurance Law [Ma (1985): 17-20]. However these are old laws. These were originally enacted in 1929-31, but later amended in the 1960s and 1970s.

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<sup>76</sup> Eg., the Amendment of the Rules Governing Import Tax by the Customs dated 17 Jan., 1986, see *Economic Yearbook 1986*, pp.12-13. Also, the Amendment of the Banking Law in 1986, *ibid.*, pp.7-8.

<sup>77</sup> Eg., 'The Legislative Proposal for Legislative Assistant System', see *CDN(IE)*, (21/May/88), p.1.

## II.5 CONCLUSIONS

From our examination on the interaction between law and administration under the Nationalist ruling in two periods, before and after 1949, the majority of the functions and roles of the state law has been replaced by the informal regulation, or administrative measures. The impacts of informal norms of the traditional Chinese law and the political reality have weakened the supervision of the state law on administrative measures.

For two reasons, informal law has retained its active role under the Nationalist Party-State. For the national survival, administration, with less formality, has assumed the leading role in Taiwan's development. For instance, as a consequence of changes in the international political environment, Taiwan's foreign policy following the UN expulsion has demonstrated flexibility and adjustment. Through a societal-like, or "unofficial", approach of international legal mechanism, it was to set up Taiwan's international trade network of interdependence with both the developed and developing world, linking Taiwan and its future with other parts of the world.

Secondly, for the authoritarian rule of the party-state, the establishment of economic control has provided itself with the process of expansion of administration. As we will discuss in Chapters IV and VI, even in the domain of foreign investment, the authoritarian administration has still assumed its leading role through the informal regulation behind and beyond, the statutory framework.



## CHAPTER III. INTERACTION BETWEEN LAW AND ADMINISTRATION IN COMMUNIST CHINA

### III.1 INTRODUCTION

The establishment of the PRC on 1st October, 1949 was the starting point for a new era of China's modernization and legal development. This chapter examines whether the informal system of Chinese law, which has been remaining influential in the Nationalist regime since 1911, has disappeared. It thus discusses the interaction between formal and informal law in Communist China during four periods: before 1949; 1949-1965; from the *Great Proletarian Cultural Revolution* (1966-76) to 1978; and after 1979. The study then develops the analysis of their role and functions in the subsequent modernization programme.

Furthermore, an expansion of administrative control, following the building-up of the party-state after the unification of the Mainland, will be discussed. Also, the issues and contradictions of both foreign and domestic investments in the Communist modernization programme will be given analytical treatment in the case studies - nationalisation of western investment, compulsory divestment of the Soviet investment and autonomy of the enterprises.

Finally, after a review of formal and informal law before 1979, initial attempts to regulate foreign investment through legal reform and administrative restructuring, and also their contradictions, will be examined.

### III.2 FORMAL AND INFORMAL LAW BEFORE 1949

During 1921-27, The Chinese Communist Party (the CCP) had actively organized its revolutionary movements in some provinces such as Hupei, Hunan, Guangdong (Kwangtung), Jianxi (Kiangsi) and Fujian (Fukien) [cf. Wilbur (1983): 673-697]. After the open break of 1927 with the GMD [cf. Section I.4.C], those Chinese Communist "*soviets*" were set up in these same areas [J. Chen (1986): 174-175; 183-191]. Being the local "rebel"

governments, these soviets introduced social and economic reforms and suppressed the landlord class and "counter-revolutionaries".<sup>1</sup> In the administration of law under the Communist regime during 1927-37, a significant note has been made on its "judicial consideration to the exclusion of personal feelings".<sup>2</sup> From the legal-historical perspective, while the GMD's Republic was undertaking its most important programme of a codification of western-style law from the mid-1920s to mid-1930s, the CCP's soviets were establishing and experimenting with their own system of revolutionary justice.

This system combined both the formal and the *informal* systems of law through simple decrees with popular suppression campaigns. The Chinese soviets issued decrees and regulations to establish land reforms, to reduce interest rates, to prohibit opium-smoking and other anti-socialist activities such as gambling [J. Chen (1986): 179], and to safeguard the rights of women,<sup>3</sup> and initiated continuous movements against local bullies, and counter-revolutionary gentry and landlords. For example, the *Marriage Law* of December 1931 and *Labour Laws* were obviously designed to protect the masses, while the laws and acts controlling the activities of counter-revolutionaries, of 15 October 1933, were to safeguard the soviet regime [J. Chen (1986): 179].

With mass mobilization and class struggle in this period, justice could be deemed *unprofessional, informal and popular*,<sup>4</sup> although the jural system of law remained to certain degree. In reality, the quality of this justice would be a question,<sup>5</sup> while the formal law itself was never one of the foundations of a settled society within the revolutionary soviets. 'Education for everyone' was deemed as the core of policy implementation, through a

<sup>1</sup> The land investigation campaign was launching from June, 1933 [J. Chen (1986): 194]: "When it was resumed in January 1934, the aims of the campaign were no longer principally economic, not even for the food supply to the Red Army, but political. It became a campaign against counter-revolutionaries, a red terror against landlords and rich peasants. As such it was pursued till the collapse of the central soviet" [Ibid., 196].

<sup>2</sup> As J. Chen has noted, "However defective it may have been, the soviet judicial system impressed none other than the leading opponent of the CCP, General Chen Cheng (of the GMD): 'Its strength lies in its judicial consideration to the exclusion of personal feelings. Its beneficial consequence is shown in the scarcity of cases of embezzlement and corruption'". [J. Chen (1986): 179]

<sup>3</sup> Cf. L. Bianco (1986): 273-280, 285-287, 306; also J. Chen (1986): 178-179.

<sup>4</sup> As J. Chen has explained: "The hearings were therefore public under mass supervision, educating and warning the public at the same time". See J. Chen (1986): 179.

propagandized and organized network [J. Chen (1986): 178]. Nevertheless, in the similar way as the traditional Chinese gentry, clan heads and village elders, the Communist military leaders and party cadres assumed an important role in handling those matters requiring informal mediation or conciliation among comrades or revolutionary peasants and workers.<sup>6</sup>

Following the experience of the soviet period (1927-37), the Yen-an period (1937-45) [cf. L. Van Slyke (1986): 683-704] further developed similar judicial and political practice and provided indeed several basic characteristics of subsequent post-1949 Communist legal administration, as discussed in the later sections. In sum, these legal-administrative characteristics included: under a party-state regime the involvement of party cadres and governmental personnel with court administration and decisions; the integration of political, administrative and judicial interests through judicial committees under the party operating at all levels of the court hierarchy; the involvement of the masses in judicial decisions through elected assessors in the mass trials; during the political campaigns the use of trials as a form of propaganda; the achievement of conciliation under the guidance of the party or its cadres; and the emphasis on repentance through self-criticizing and educational reform under the traditional Confucian ideology.<sup>7</sup> These characteristics represented a combination of revolutionary Communist and popular traditional Chinese legal-social attitudes.

However, from this combination arose a fundamental contradiction in *the role of law under a revolutionary regime*: the extreme politicisation and populism of the informal law and its functions, *vis-a-vis* the concern with formal legality and the professionalization of legal administration. The *mutual complementarity and contradiction* between the dual systems of law, the formal and the informal ones, could be best explained below in the context of the civil war (1946-49).

<sup>5</sup> Here the interference should be taken into account: In the administration of the law inside these revolutionary bases, the masses must be clearly differentiated from their enemy and the laws made understandable to them. Therefore, more or less, "[is] the application of the mass line the regime became less concerned that justice be done than that justice be seen to be done". See J. Chen (1986): 179.

<sup>6</sup> A transition of dominance of traditional local leaders into the Chinese Communist cadres, and the relations between the peasants, the traditional gentry, and the Communists can be understood from the case study of *P'ang P'ai and the peasants of Hai-Lu-fang* (1922-8)<sup>o</sup>, in Bianco (1986): 307-322.

<sup>7</sup> There remained a permanent trait of Mao Zedong's thinking that was the importance of self-awareness (*tsu-chueh*) and individual initiative (*tsu-tung*) inspired from the Confucianist ideology. S. Schram (1986): 792-793.

The Communist conquest of China involved not only, in the socio-political sense of law, a wave of violence against the landlord class and counter-revolutionaries in newly occupied areas, but also, in the jural sense of law, a Communist assurance that the new regime stood for the "rule of law" and welcomed all those ready to join in the new social order. With regard to the former, those movements during 1945-49 made full use of popular justice, struggle meetings and accusation rallies following the military occupation. On the other hand, in order to provide legal order in the liberated areas, regional authorities, including the People's Liberation Army, the regional Military Committees, and the local People's Governments, issued directives and provincial regulations covering policy, organizational matters, public security and judicial work. At least, in 1949 both administrative and judicial organs were directed to guide themselves by the *Common Programme*, laws,<sup>8</sup> orders, regulations and resolutions [Cf. ZJZ Record-A (1989): 3-33]. Therefore, during the civil war period, the *combination of both the formal and informal mechanisms of law* enabled it to play a major in the victory of the Communist regime.

#### III.3 FORMAL AND INFORMAL SECTORS IN TRANSITION TO SOCIALISM, 1949-1965

After the victory of the revolution in 1949, following the socialist transformation period, 1949-56,<sup>9</sup> the PRC's **First Five-Year Plan (FFYP)** ended in 1957, and in that year also the last foreign firm left China, and Britain moved away from the American led embargo of Chinese trade [Thompson (1979): 60 & 66].

Informal legal mechanisms played the key parts of the nationalization of foreign investment in the PRC after the revolution. Two case studies will be discussed in this section: "informal nationalization" of the Western investment and "compulsory divestment" of the Soviet investment. Even with a policy of nationalization of foreign enterprises, the

<sup>8</sup> According to Brady (1982), a number of laws regulating the course of justice in the Communist controlled zones, such as the 1932 Temporary Regulations on the Organization and Procedure of Judicial Departments, the 1933 Organic Law of the Local Soviets, the 1934 Organic Law of the Central Soviet, the 1934 Judicial Procedure Act, the 1931 Organic regulations of the Political Security Bureau, and the 1943 Border Region Regulations on Conciliation Work. Brady (1982): 72-73.

<sup>9</sup> Cf. Lardy (1987): 150-155; Eckstein (1966): 121; and, Riskin (1987): 74.

leaders in the People's Government were clear in their mind that economic construction during the transformation period needed some external resources.<sup>10</sup> In fact, China's foreign trade rose steadily in the period of the nationalization policy.

However, after the nationalisation, the abrupt pull-out of Soviet advisers in the summer of 1960 was one major element contributing to an industrial collapse in 1961-62, in addition to those elements such as "the disorganization associated with the *Great Leap Forward* (GLF, 1958-60), the readiness to sacrifice maintenance activities for the sake of immediate output gains, and the collapse of agricultural production" [Cf. Riskin (1987): 130-131].

#### III.3.A. Nationalization of Western Foreign Investment

Contrary to what is often believed, nationalization, even by a revolutionary government, is not necessarily based on one single decree or legislation, or a prompt political control. In fact in the Chinese case, nationalization was accomplished through a long-term legal limitation gradually applied in the period 1949-56, and especially through indirect legislation and the administrative control of profit-making and marketing.

##### (i) "New Democratic" Theory: Chinese Way of Nationalization

After the civil war, the Communists took over the Nationalist state enterprises, most of which had been Japanese-owned before the end of the Second World War. Thus, even without widespread nationalization, the new regime immediately acquired a substantial portion of China's industrial capacity.<sup>11</sup> Furthermore, many private retailers served as

<sup>10</sup> For instance, some western studies suggested that China strategically used trade as a means of "increasing its investment rate" during this period, importing such "producer goods" as metal-cutting tools, forging-press equipment, and rolled steel in exchange for exports of raw and processed agricultural goods, textiles, and minerals. Eckstein (1966): 121; cited in C. Riskin (1987): 74. Furthermore, this growing rate of trade was even faster than gross national production (GNP), so that the ratio of two-way trade to GNP rose from about 6 percent in 1952 to about 9 percent in 1959; cf. Riskin (1987): *ibid.*

<sup>11</sup> By 1952, the share of state-owned industry rose to 56 percent of the value of gross industrial output. Also, the share of joint state-private enterprises, which produced according to state orders, rose to 26.9 percent, and the share of private enterprises working independently fell to 17.1 percent. According to Chinese own report M. Xue (ed. 1982), *Almanac of China's Economy, 1981* (Hong Kong: Modern Cultural Co., Compiled by the State Council of the PRC), (p. 22), cited in Lippitt (1987): 109.

distributors or commission agents for state wholesale dealers.<sup>12</sup> In sum, by the end of the recovery period, the state had assumed the leading role in industry and commerce. Land reform had essentially been completed, and industrial and agricultural output had been restored to the peak levels of the pre-revolution period. Therefore, by 1956 the *socialization of industry* was essentially completed,<sup>13</sup> with 67.5 percent of gross industrial output by value coming from state-owned enterprises and 32.5 percent from joint state-private firms.<sup>14</sup>

Three formidable problems on political and economic administration<sup>15</sup> were faced in the transformation period. However, there was indeed an uneasy relation between the objective of socialist transformation, on the one hand, and that of rapid restoration and growth of production, on the other. A strategy to complete these immediate tasks was provided by Mao Zedong's theory of the New Democracy.<sup>16</sup>

Accordingly, the essence of economic strategy under the "New Democratic" state was not only to permit private capitalism some leeway and motivation to encourage its productive potential, but also to harness it to the goals and priorities of the new state. These principles were embodied in the "*Common Programme of the Chinese People's Political Consultative Conference*" (the CPPCC), adopted on 29th September, 1949. Articles 26-31 of this temporary constitution (until 1954) spelled out the economic strategy of the new democracy, and divided the economy, according to "degree of public ownership", into four sectors [Cf. Blaustein (1962)]: (1) the state-owned economy;<sup>17</sup> (2) the co-operative economy;<sup>18</sup> (3) the

<sup>12</sup> The state also played a dominant role in wholesale trade, accounting for 63.7 percent by volume in 1952 (compared to only 23.9 percent in 1950), and a rising share of retail trade, rising to 42.6 percent in 1952 (from 14.9 percent in 1950).

<sup>13</sup> Under the FFYP, during 1953-57, state and joint state-private enterprises continued to grow, while the latter enterprises started in 1956 to pay their former owners fixed dividends of 5 percent which were eliminated only in 1967, during the Cultural Revolution [Lippitt (1987): 110]. Similar to foreign companies, although the former owners were able to retain managerial and technical positions within the firms, control of the firms eventually passed into the hands of state officials.

<sup>14</sup> Similarly, in the wholesale trade of the same year, both types of enterprise accounted for 97.2 percent of sales and in retail trade 95.2 percent.

<sup>15</sup> First, national administrative control had to be established and consolidated. Second, a war-torn economy had to be revived, and reconstruction and development had to be started. Third, in order to keep in line with Party's ideological beliefs and the expectations of its political base, the transition to socialist relations of production had to be developed.

<sup>16</sup> From the political perspective, this strategy was to gain the support of or to neutralize the intermediate groups that were seen as part of the alliance of the "people", in order to isolate the landlords and the representatives of "bureaucratic capitalism". From the economic perspective, the strategy aimed at fostering production and economic growth through protecting the private property of "nationalist capitalists" and small producers, including farmers.

<sup>17</sup> "... All enterprises vital to the economic life of the country and to people's livelihood shall come under unified operation by the state."  
(Art. 26)

private economy;<sup>19</sup> and, (4) the state-capitalist economy.<sup>20</sup> *The 1954 Constitution of the PRC* adopted on 20th September, 1954, retained these four sectors, with the addition of collective ownership and individual ownership, in the wording of Article 5. In reality, the clear trend mentioned already was that the state and joint state-private enterprises grew at a rapid rate during the following years.

*(ii) Informal Types of Nationalization*

As with the similar process of control of domestic companies, the Chinese nationalization was accomplished using its domestic legal powers to exert administrative control of private business. Although these domestic regulations were not specifically directed at nationalization. They still established the conditions for transformation of China's economy during 1949-56 and the basis of state control. It was as a result of such administrative intervention that foreign owners voluntarily closed their business. The second paradoxical feature was that the reverse payment of voluntary compensation was paid by the nationalized party. And, the third characteristic of Chinese nationalization was the long period covered--seven years long--from 1949 to 1956. During that period, what the PRC Government was primarily concerned with were the transformation of economy, the employment of workers, and sharing professional experience of technicians and managers by making suggestions for operation of commercial and industrial enterprises [Cf. Ecklund (1983): 247]. Finally, this long process also entailed the fourth characteristic of China's nationalization, that is, a process of centralization, which gradually limited the role of market and locality in economy, which will be discussed later.

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18 "... is of a semi-socialist in nature ... shall ... accord it preferential treatment." (Art. 29)

19 "... shall encourage the active operation of all private economic enterprises beneficial to the national welfare and to the people's livelihood and shall assist in their development." (Art. 30)

20 "... jointly operated by the state and private capital ... Whenever necessary and possible, private capital shall be encouraged to develop in the direction of state-capitalism, in such ways as processing for state-owned enterprises and exploiting state-owned resources in the form of concessions." (Art. 31)

In fact, the Communists, during the transformation era, kept their policy flexible.<sup>21</sup>

*The 1954 Constitution* provided:

The State protects the right of capitalists to own means of production and other capital according to law. [Article 10(1)]

The only PRC decree on nationalization was dated 28th December, 1950,<sup>22</sup> and was a turning-point for the different fortunes of American and British property under the PRC's nationalization measures. J.C. Hsiung has pointed out that the decree of 1950 avoided all references to "confiscation", "expropriation" or "nationalization", and generally gave the impression that the United States (U.S.) assets, both public and private, were to be held in trust. During the early 1950s, no compensation was paid to the U.S. for the "frozen" assets [cf. Hsiung (1972): 137].

The fate of British firms, as the main foreign investors next to American ones after the Second World War, under the PRC's nationalization policy had a more complicated and longer development. There were at least three non-legal reasons for this different development: first, the Korean war;<sup>23</sup> second, a "*modus vivendi*" hoped for by many British firms [Thompson (1979): 13, 46]; and, finally, employment and labour training [Cf. Lieberthal (1971): 28-52]. Obviously, this was affected by the ethos expressed by the theory of the "*New Democratic State*".<sup>24</sup> In opposition to the official Chinese view that nationalization of foreign business never happened, Thompson has argued cogently: "they are simply being disingenuous" [Thompson (1979): 63]. From the end of the revolution China completely controlled the business environment, as the People's Government could confidently wait for the firms to request permission for closure and the Chinese could in

<sup>21</sup> Despite the Communist ideology of the rulers of the PRC there was very little public discussion of nationalization in the period 1949-56, and only one decree which had this effect. After this period, there was one legal article in 1958 published inside the PRC on nationalization (but it said nothing on China's policy before 1979. Cf. Hsiung (1972): 143.

<sup>22</sup> Issued by Zhou En-lai as head of the Government Administrative Council, it referred to "the 16 December, 1950 announcement by the United States (US) government, which froze Chinese public and private assets in the US and forbade all ships registered in the US to sail into PRC ports." Cf. Hsiung (1972): 137.

<sup>23</sup> The Korean War was the direct cause for the US government freeze of Chinese assets and the decree by the PRC government mentioned above.

<sup>24</sup> China's leaders evidently realized that the old foreign-related firms could play a valuable role in helping to develop Sino-Western trade.



effect orchestrate that closure. Thompson outlined three steps of what he calls "hostage capitalism".<sup>25</sup>

However, some enterprises were nationalized directly and immediately by the Communists in China after 1949 [Cf. Lieberthal (1971)]. Also, some foreign enterprises were nationalized due to simple abandonment by the owners [Thompson (1979): 63]. Thus, it seems to us that there were "direct" and "indirect" nationalized enterprises during the Chinese Liberation era, and the closure of British enterprises was mostly of the indirect type.

#### (iii) *Changing Internal Structure of Enterprises*

Although foreign *ownership* of firms was legally retained, the internal *managerial structure* of those foreign enterprises under a new socialist government was significantly different from that before 1949. During the civil war era, private ownership of property by foreigners, as well by Chinese was legally retained. Some Communist leaders argued that the nationalized sector of the economy should be allowed to expand only very gradually, thereby posing no immediate threat to the economic interests of the private sector.<sup>26</sup> This originated from the needs of the Communists in 1949 to enlist private businessmen in the reconstruction of China [Ecklund (1983): 238], and the Communists' limited ability to manage economic enterprises efficiently [Ecklund (1983): 239]. Therefore, the aim was gradually to take over the ownership of foreign firms, without directly attacking the power of foreign direct investment [cf. J.K. Fairbank (1987): 1-47, especially 23-38].

In fact, there were no new company laws or investment enactments during 1949-56. Nevertheless, the 1954 *Constitution* forbade capitalists to engage in unlawful activities which injure the public interest, disrupt the social-economic order, or undermine the economic plan

<sup>25</sup> These steps were: (1) The People's Government refused to permit the closure of industry or business of any value to the nation's economy; (2) Chinese regulations ensured by way of various measures, wage and tax policies for example, that the firms would cease to be profit-making; and, (3) Until closure applications were approved by the People's Government, at least one of a firm's senior European executives was denied an exit permit to leave China. In order to meet obligations, and in order to even have the possibility of having a closure application considered, the firms had to remit funds from abroad to China. In effect, during the nationalization process a reverse compensation took place. Cf. Thompson (1979): 63.

<sup>26</sup> E.g., Liu Shao-chi, see Lieberthal (1980): 46, and Cf. Lieberthal (1971). Liu ranked second only to Mao Zedong in the Party hierarchy before the Culture Revolution.

of the State [Article 10(3)]. Moreover, the State maintained, in the public interest, the final right to buy, requisition or nationalize the properties [Article 13]. In practice, the transfer of ownership developed through both external and internal control. Apart from generating substantial funds for investment and development through fines and back taxes, the *Three-Anti* and *Five-Anti campaigns* greatly enhanced state control over private enterprises through new "loans" and "governments contracts" which capitalists found necessary in their financially weakened state [Teiwes (1987): 91] (cf. Section (iv) below). Then, a key measure was that:

"business with heavy fines to pay would meet their obligations by selling stock to the state and creating joint public-private enterprises--a process that result in sending state cadres to assume leading positions in the concerned firms." [Teiwes (1987): 91]

Although capitalist ownership was allowed by Article 5 of the *Constitution*, a highly significant movement from private to socialist enterprise still occurred in early 1956 [Ecklund (1983): 243-245; see also Riskin (1987): 95]. Meanwhile, most British firms in China received permissions of closure from the PRC Government [Thompson (1979): 49-57].

However, even where formal legal ownership was unchanged, the state could send its cadres to assume leading positions in some companies through loans and contracts. One peremptory element of Chinese legal control during the early 1950s was the curtailment of *management* prerogatives of enterprises. In particular, in 1950, the government decreed that dividends must not exceed 8 per cent of invested capital. Later, in 1953, all profits-before-taxes of private organizations were subject to state control and were divided into four categories.<sup>27</sup> Also, it was declared illegal for an enterprise to raise wages or to withdraw capital funds on its own initiative.

Secondly, control was extended also to *labour relations*. The Marxist perspective emphasizes the principle of workers control within the productive enterprise. Before the end of 1956, at least four important labour laws and one Decision of the Government

<sup>27</sup> Including: (1) the income tax, at a rate of 30 per cent for profits above 10,000 yuan; (2) enterprise reserve funds, to be used only for investment in the firm; (3) enterprise reward funds, to be used only for employee welfare; and, (4) the dividends to shareholders, limited to 25 per cent of profits-before-taxes. cf. Ecklund (1983): 239.

Administrative Council concerning labour in the PRC,<sup>28</sup> aggravated the decline of management authority. Thus, compared with the pre-1950s period, the average monthly expenses for labour insurance and medicine care, required by this legislation, had risen. Moreover, some specific industrial relations obligations were imposed on foreign firms.<sup>29</sup> Together with the strengthening of *trade unions*,<sup>30</sup> and the setting up of *Party branches* in many large and medium enterprises, the management of industrial relations was thus severely restricted for the private managers [Teiwes (1987): 91-92.].

Thirdly, after the 1949 revolution, the historic shift in relative power allowed the Chinese to collect from British firms--the *compensation* for what they viewed as a historic debt for past exploitation. In terms of both law and policy, the Chinese expressed little interest in the favourable reports of the foreign firms' own balance sheet's assets and liabilities, and government officials decided in what order these firms' holdings would be liquidated [Cf. Thompson (1979): 42].

Finally, in order to limit the expansion of the private sector as a whole, the People's Government attempted the drain off as much profit as possible through *taxation*. G.N. Ecklund concluded that, even though favoured industries under private operation were granted certain tax concessions, their overall profits were restricted by other features of the tax legislation.<sup>31</sup> Hence, a British business executive complained, for instance, "[This] (income tax for 1952) is too much to a firm that lost a great deal of money last year; there

<sup>28</sup> The 1950 *Trade Union Law of the PRC*; The 1951 *Labour Insurance Regulations of the PRC*; 1956 *Decision of the State Council concerning the Prevention of Danger from Silica Dust in Factories and Mining Enterprises*; The 1956 *Regulations on Factory Safety and Sanitation*; and, The 1956 *Regulations governing Safe Working Conditions in Building Construction and Installation Projects*. See *Important Labour Laws and Regulations of the PRC* (hereinafter cited as *ILLR*), pp. 1-71. See also *Fundamental Legal Documents of Communist China* (1962) (hereafter cited as *FLDCC*).

<sup>29</sup> First of all, for seasonal employees transformed into permanent employees; second, the courts ruled that it was illegal for any Chinese worker not to receive his wages or for his or her livelihood to be jeopardized in any way (a British executive was locked up for a week for this reason); and the third case was the high discharge fee demanded for closure of firms. Cf. Thompson (1979): 26, 35, 40.

<sup>30</sup> According to Art. 6 of the 1950 *Trade Union Law*, trade unions in private enterprises had the right to represent workers and staff members in conducting negotiations and talks with the owners of these private enterprises, in taking part in the labour-capitalist consultative conferences and in concluding collective agreements with the owners of these private enterprises. Cf. *ILLR* of the PRC. See also, *FLDCC*, p. 472.

<sup>31</sup> Such as: (1) taxing intermediate production processes at the same rate as end-products; (2) applying tax rates to state prices rather than to manufacturers' cost or sales prices (which were lower than state prices); (3) careful auditing by the Communist tax bureaux, which made tax evasion more difficult than in the past; and, (4) arbitrary methods of assessing taxes which sometimes proved to be confiscatory. cf. Ecklund (1983): 240-41.

should be no income [tax] on losses" [Thompson (1979): 45]. However, he was obliged to accept that fact and still paid the income tax.

#### (iv) *External Legal Intervention in Business Operation*

The political economy and its transformation in the PRC during 1949-56 gradually eroded the business operation of foreign direct investment. Firstly, both *sale and price* created the most important areas of difficulties.<sup>32</sup> The regime tightened its grip on the private sector by asking private firms to do business primarily with the government. In fact, the prices of many commodities were controlled by the State during this period, and most private firms were under contract to produce or sell for the government at fixed prices [Ecklund (1983): 241]. The government gave orders to private industry for processing jobs and for the manufacture of end-items, and signed contracts with private wholesale and retail firms for purchase and sale at fixed prices [Ecklund (1983): 239-40, see also Riskin (1987): 95-100]. *The 1954 Constitution* set down a gradual limitation of the market.<sup>33</sup> Obviously, *the 1954 Constitution* provided the People's Government the base of legal control on sale and price to transform the economy.

Secondly, the discrimination, e.g., different taxes analysed, between state enterprise and private enterprise destroyed *competition in marketing*. Very low rates of commodity taxes and generous deductions from profits taxes applied only to producers and distributors of "*necessary commodities*", such as iron and steel and machinery, whereas producers of non-essential consumer goods were penalized under the tax regulations. G.N. Ecklund has noted that these tax differentials (consisting of commodity tax rates ranging from 3 to 120 per cent and deductions from profits taxes of up to 40 per cent) would be sufficient to effect some relocation of resources [Ecklund (1983): 240].

<sup>32</sup> After the civil war, the People's Government was not primarily concerned with the profits of foreign firms but with production and the employment of Chinese workers. However, continued production without sales would only mean spoiling and throwing away the stock of companies.

<sup>33</sup> Art.6 provided that the state sector is the leading force in the national economy and the material basis on which the State carries out socialist transformation. Also, Art.10 pointed out that the policy of the State towards capitalist industry and commerce is to use, restrict, and transform them.

Also, state enterprises were exempt from the profits tax and had access to state subsidies when necessary, while cooperatives producing light industrial products were taxed under a more favourable rate schedule than private industry and often were granted complete tax exemption for several years [Ecklund (1983): 241]. Obviously, this discrimination weakened the competitive ability of foreign direct investment. Moreover, the Chinese press reported "favourable changes" in business operations after private firms were converted to public-private enterprises [Ecklund (1983): 242].

Thirdly, political campaigns during the period, affecting Chinese private firms, also limited the operation of foreign enterprises. The Communists desired to impress on businessmen the comprehensive range of the new government's authority. To achieve this they used a number of techniques early in the decade to extend their control over private business [Ecklund (1983): 239]. The "Three-Anti (or, *San-Fan*)" and the "Five-Anti (or, *Wu-Fan*)" campaigns against the private economic sector and corruption in public administration in 1951-52 [Cf. MacFarquhar & Fairbank (1987): Chs. 2 and 3] provided good examples.

However, within the process of the Chinese "indirect" nationalization, it seemed that political campaigns could both strengthen the State control of private business and enhance the "legitimacy" of the nationalization policy. The "people's" demands and the public interest created good conditions for negotiations by the government.<sup>34</sup> As a result of political campaigns, the Communist leaders had achieved a position where planned economic development was genuinely feasible.

Fourthly, after 1949, closure of business in China was not permitted without explicit permission from the People's Government. Thus, four steps were necessary for foreign firms to achieve closure: application, negotiation, permission and execution. Within these steps, foreign firms, not under the usual nationalization, faced three main difficulties: first, the

<sup>34</sup> As F.C. Teiwes points out: "Together with the strengthened trade unions, the setting up of Party branches in many large and medium enterprises, and especially the vast amounts of information gathered during the investigation of capitalist 'crimes' [during both Three-Anti and Five-Anti campaigns], this now gave the authorities a much greater knowledge of the internal working of the private economic sphere [Teiwes (1987): 91-92.]"

unprofitability of the firms assets; second, the issues of transfer of business [Cf. Thompson (1979): 51]; and, third, redundancy payments required by industrial relations law.<sup>35</sup>

However, these labour discharge requirements, entailed two characteristics in the Chinese nationalizing process. One is that it was the basis for the claim by the Communists, for **reverse compensation** in case of Chinese nationalization--the amounts due to the welfare were in a sense reverse compensation. The other is that these demands for discharge payments showed that the "*informal*" factors during the indirect nationalization had inspired the formation of the "*formal*" law, and seemed the origins of two then-new laws<sup>36</sup> at the end of the period of nationalization in China.<sup>37</sup> Through the experience of negotiation for the labour discharge requirements, Chinese bureaucracy improved the laws of industrial relations.

#### III.3.B. Compulsory Divestment through Formal Settlement: Case of Soviet Investment, 1954-55

The fate of the Soviet investment in China was ended as a case of "compulsory divestment" during 1954-55. For a number of reasons China became less involved with Western countries and more involved with the USSR after 1949. From 1957, a new era for Sino-Western import-export trade started [Cf. Riskin (1987): 77]. To China, the western trade remained as a source of certain materials, such as rubber, cotton, and chemicals, and especially, of foreign exchange. Consequently, since the 1950s Hong Kong has been the crucial market for earning foreign exchange, as well as a useful entrepot for hiding banned trade with these capitalist countries.

<sup>35</sup> Some demands, which the Chinese Government required to be accepted before serious discussion of closure could even take place, included: (1) one and one-third months of regular wages per year of service as severance pay to Chinese workers; (2) six months wages for termination of employment; (3) six months salary as discharge fee owing to closure of business; and, (4) a home-leave travel allowance to workers equal to ten per cent of the discharge fee. See Thompson (1979): 40.

<sup>36</sup> They were: "The 1957 Provisional Regulations of the State Council concerning the Retirement of Workers and Staff Members" (571116), and "The 1957 Provisional Regulations of the State Council concerning the Granting of Home Leave to Workers and Staff Members and Wages to Them on such Leave" (571116). See *Important Labour Laws and Regulations (ILLR) of the PRC*, pp. 72-82.

<sup>37</sup> It was until 1957 that the last British firm, Patons and Baldwins, was not allowed to cease operations and withdraw from China; however, both above provisional regulations were approved on 16th November, 1957 and adopted as amended on 6th February, 1958. See Thompson (1979): 60.

Generally speaking, without Soviet aid China's industrialization programme in the 1950s would have been considerably slower. After 1949, the PRC's industrialization strategy paralleled that of the Soviet Union in the 1930s in its preference for very large-scale, capital-intensive manufacturing. The core of the industrialization programme consisted of 156 Soviet assisted projects, which collectively absorbed about half of total industrial investment in the FFYP [Riskin (1987): 74]. For these 156 projects, the Soviets supplied design and technical assistance, advice on construction and installation, as well as machinery and equipment. First of all, for the FFYP as a whole, imports of machinery and equipment were the equivalent of 30 percent of total investment [Lardy (1987): 177]; and taking into account the 1958-61 period, about 45 percent [Riskin (1987): 74].<sup>38</sup> Also, almost all the Soviet-assisted plants were in the "producer goods" sector [Lardy (1987): 177]. Secondly, the availability of Soviet loans enabled China to run a trade deficit with the Soviet Union during 1950-55, tapping Soviet savings to supplement China's investment at a crucial point in time [Riskin (1987): 74]. Finally, technical assistance associated with these plants and their effects should be taken into account.<sup>39</sup>

However, with no visible alternative external resources for development under western restrictions on trade, western studies suggested that the relation to the Soviet Union could hardly be said to be a form of exploitation of China during this decade [Lardy (1987): 178-79]. At least, there was little evidence that the Soviet exploited China's "dependence" by manipulating the terms of exchange of this trade to their own advantage.<sup>40</sup>

Nonetheless, since the Soviets never provided aid in the form of grants, the Chinese had to pay for the goods and assistance they receive, except blueprints, licences, and technical documents [Riskin (1987): 74; Lardy (1987): 179]. Also, only a small share of the

<sup>38</sup> Most of these imports were paid for by means of current exports, but about 27 percent were financed with Soviet credits. Gurley (1976): 163-64; cited in Riskin (1987): 74.

<sup>39</sup> It was reported that about 10,000 Russian specialists worked in China during the decade, prospecting and surveying geological conditions, selecting factory sites, supplying technical data, and training Chinese personnel. During the same period, in addition to those participating in the 156 Soviet-assisted plants, 28,000 PRC technicians and skilled workers went to the Soviet Union for training. See Lardy, *CHC* (1987): 177-78. The number of these technicians cited by Riskin were different. Cf., Riskin (1987): 74.

<sup>40</sup> Except that the exchange rate over-valued the Soviet currency, some Soviet goods only reflected higher transport costs, compared to European countries, rather than price discrimination. Furthermore, western studies pointed out that China's treatment, when contrasted with the pattern of Soviet exploitation of the Eastern European states, appeared even more favourable during the decade. Lardy, (1987): 178-79.

Soviet assisted projects were made by credit, with only two small economic development loans from 1949 to 1954 under "relatively short terms".<sup>41</sup> As a consequence of the early repayment provisions, by 1957 Soviet credits ended (and were not renewed), and China's net credit position with the Soviet Union was *negative*, so China had to maintain a surplus in its balance of trade with the Soviet Union. From 1956 to 1965, when the debt was fully repaid, China's exports to the Soviet Union exceeded its imports [Lippit (1987): 160]. Conversely to the 1950-55 period discussed, China, as a net capital exporter [Riskin (1987): 76], was in effect financing Soviet development during this critical period. During the 1960s, China did not receive foreign aid but was a substantial donor of foreign aid [Lippit (1987): 160-161].

Furthermore, from the establishment of the *Sino-Soviet joint-ventures*,<sup>42</sup> the Chinese were sensitive to the Soviet use of the such joint stock companies as a mechanism of exploitation in Eastern Europe [Lardy (1987): 179-180]. Thus, although these joint-ventures were established to run for thirty years, by 1954 the PRC government requested that they be dissolved [Lardy (1987): 179]. It was said that, before then, Mao "apparently felt it was no longer appropriate for another country to hold a privileged position within China" [Lardy (1987): 179]. Fortunately for the Sino-Soviet alliance, the joint-ventures were 'formally' dissolved in January 1955,<sup>43</sup> but the Soviets insisted on payment for their capital contributions, valued at about \$400 million US dollars.<sup>44</sup> Obviously, this provides another example of the transformation of the enterprise in the PRC during its first decade of existence. The most important point to make here is that the ending of Soviet shares from those Sino-Soviet joint-ventures was happening in the same period as the nationalization of western foreign businesses before 1957, and the accomplishment of the practice of the New Democracy--the transformation of socialism.

<sup>41</sup> E.g., the 1950 loan, which consisted of trade credits dispersed at the rate of \$60 million per year during 1951-55, was to be repaid in ten annual increments, beginning in 1954. Cf. Lardy (1987): 179.

<sup>42</sup> The leading examples in the early 1950s were the *Dairen* shipbuilding company, companies for the mining and exploitation in *Sinkiang*, and an airline operating between two countries. Cf. Lardy (1987): 179-180.

<sup>43</sup> Another information said the year 1954. See Riskin (1987): 74.

<sup>44</sup> It was reported, in effect, the Soviets extended a loan by allowing the Chinese to pay for these transferred assets over a ten-year period. Cf. Lardy (1987): 180.



Although the period of Soviet economic aid only lasted for some ten years it had an important effect. In fact, despite the relatively short repayment terms mentioned, Soviet aid can not be deemed ungenerous.<sup>45</sup> First, its effort to transfer design capability has been characterized as "unprecedented" in the history of technology transfer [Lardy (1987): 178]. Secondly, some historical studies suggested that China appeared to have received the most advanced technology available from the Soviet Union, and "in some cases this was the best in the world". For instance, in the iron and steel industry the best blast furnaces during the 1950s in the world [Lardy (1987): 178]. Thirdly, the most powerful faction within the PRC's bureaucracy in the 1990s consisted of many Chinese students who studied in the Soviet Union during the 1950s (*lieu-xu-pai*, or faction of those who studied in the Soviet), including in 1990-92 the Premier Li Peng, and the General Secretary of the Party, Jiang Je-ming.

However, its chief cost to China was the "dependency" it created in the 1950s, although this was denied by Mao. The FFYP itself made clear that the Soviet-assisted projects were "the core of our industrial construction plans", and during 1953-57, as pointed out by historians, many PRC administrators and specialists dealing with the modern sector were too hastily adopting the Soviet model [Teiwes (1987): 96-97].

Later, during 1958-60 China attempted to bring about a "Great Leap Forward" in economic output aforementioned, as an alternative to the development strategy from the Soviet Union, this *de facto* decreased the authority of the many Soviet advisers and put some new strains into Sino-Soviet relations [Lieberthal (1987): 294]. An abrupt withdrawal of Soviet advisers in the summer of 1960 followed. Consequently, this cost of dependency created by Soviet aid became clear. Accordingly, to the PRC leaders an adjustment of policy was necessary. Thus, a new development strategy and the measures taken to restore production in the 1961-65 recovery period which were, generally speaking, successful on the eve of the Cultural Revolution [Riskin (1987): 149].

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<sup>45</sup> For instance, this aid, soon after the devastation of the World War II, provided goods and services badly needed by the Soviet itself. The importance of Soviet technical assistance and capital goods, it was emphasized, would be difficult to over-estimate.

### III.4 BUREAUCRACY AS THE KEY OF THE INFORMAL REGULATION BEFORE AND AFTER THE CULTURAL REVOLUTION

Basically, the Cultural Revolution was seen by Mao Ze-dong and the radicals of the party (*Lin Biao* and those later called "*Gang of Four*", Jiang Qing, Zhang Chung-qiao, Yao Wen-yuan, and Wang Hong-wen) as a struggle between two roads, one leading to socialism and the other to capitalism. The strategy under their vision included emphasizing equality and the mass line, eliminating the **three major differences** between "town and country", "industry and agriculture", and "manual and intellectual work", making serving the people rather than personal pecuniary gain the basis for individual action, and so on. In fact, the capitalists, landlords, and their like had been virtually eliminated as classes during the transformation period, 1949-56, while the Gang of Four still placed overwhelming emphasis on class struggle<sup>46</sup> as the key issue within the transition to socialism. The Cultural Revolution not only exploded beyond the constitutional framework, but also exacerbated the weak legal system in the PRC.<sup>47</sup>

#### III.4.A. The Impact of Administrative Intervention on the Autonomy of Enterprises

The impacts of the Cultural Revolution have explained the fact that decentralization or centralization of economic powers under the regime could not prevent the autonomy and management of enterprises from administrative intervention. In 1970 a decentralization of economic powers occurred [Cf. Lippit (1987): 205], the reform, like that of the later 1950s, not only shifted authority from one administrative level to another, but left the enterprises subordinate to the bureaucracy and *without* significant decision-making autonomy, for instance, the experience of the Beijing Television Picture Tube Plant.<sup>48</sup>

<sup>46</sup> For instance, peasants and cadres who resisted those anti-materialist tendencies in the Cultural Revolution found themselves labelled as "capitalist-roadsters" and were made the object of struggle [Lippit (1987): 118], although capitalists, during the 1950s, were no longer a meaningful social force.

<sup>47</sup> In my view: *First*, most people had no way to express their opposition, although there was widespread opposition in Chinese society to the Gang of Four and the restrictions it imposed on people's freedom. *Second*, those opponents to the Gang of Four within the top levels of the party and government also failed to halt the campaign drive by these radicals. *Finally*, although with some arguments, the problems arising from the Cultural Revolution were not so much from the "vision" of Gang of Four as the "means" they were prepared to sanction to attain their aims, means which often contradicted the very aims themselves.

<sup>48</sup> An example of enterprise management was given by Lippit: "The bureaucratization of production even with administrative control at the city level is expressed clearly in the experience of the Beijing Television Picture Tube Plant, which was forced to halt production for a total of three years and ten months during the seven-year span from 1973 to 1979 inclusive owing to its inability to rectify the

Also, the external links of enterprises was also created as another serious problem. "Self-reliance", as one of the major principles of Mao's development strategy of the Cultural Revolution, could still not exempt enterprises from administrative intervention. With the decentralization, self-reliance emphasized *local industrialization*; and then, inside enterprises, the "*comprehensive*" production unit for each enterprise itself, because of the need to self-supply materials and intermediate goods. Accordingly, the large and integrated enterprise was broken down into several 'specialized production units' through a division of labour.<sup>49</sup> Within this restructuring of production, it is unclear to what degree efficiencies of specialization were sacrificed in such enterprises. However, as industry developed and factories spread through the countryside, greater extensive division of labour among them became desirable. Thus, without demand and supply conditions permitting external specialization among the enterprises, institutional or administrative consideration from the various authorities inevitably intervened [Cf. Riskin (1987): 218].

More importantly, with no market and only skeletal planning, the only possible way to organize production would be through "comprehensive enterprises", not specialized ones. Because of capricious and undependable suppliers under external limitation, enterprises seeking self-reliance or self-sufficiency had to defensively and rationally insulate and protect themselves [cf. Riskin (1987): 219]. Therefore, in the 1970s, the result of self-reliance of industrial enterprises meant "a defensive posture of survival and growth" in an undependable macro-economic environment [Riskin (1987): 220].

Furthermore, the question of *participation*<sup>50</sup> within enterprises also explained the failure of the development strategy of the radicals, a gap between the theory<sup>51</sup> and practices.

quality deficiencies of its glass casing suppliers. Refused permission by the economic bureaucracy to manufacture the casing itself, the plant was forced to rely on outside suppliers, which were repeatedly re-designated, and it was never able to deal with these suppliers directly. ..." [Lippit (1987): 205]

<sup>49</sup> Cf. Riskin (1987): 218-220, 278-281; Lippit (1987): 202-205.

<sup>50</sup> Since the GLF (1958-60), China practiced a system of the "*two participations*", that is, workers participate in management and managers in physical labour [Lippit (1987): 146]. The "three-in-one committees" mentioned during the Cultural Revolution appeared to represent a successful attack on the hierarchical structures of authority. However, the lack of job mobility in industry and the dependence of the worker upon the evaluation of factory cadres for a variety of essential benefits created a major imbalance in power within the enterprise.

<sup>51</sup> Nevertheless, western reports indicated a "markedly small difference" between the wages of top administrative and technical personnel and those of ordinary workers [Cf. Riskin (1987): 251], since egalitarianism was a goal of the Maoist leadership.

Being the eternal mandarin in China, cadres have access to a variety of privileges--such as access to special goods or treatments--that lift their "real incomes" above their formal salaries.

After the 1968-69 border tension between China and the Soviet Union, the PRC leaders started changing both foreign and domestic policies, with the radical diplomatic expansion.<sup>52</sup> During the same time, the rehabilitated Deng Xiao-ping took over the daily responsibilities of running China's government. In January 1975, the Second Plenum of the Tenth Central Committee met, immediately followed by the Fourth National People's Congress (NPC), which adopted a new national *Constitution (1975)* [Kraus/Holz (1982): 222-223, 235-237], giving workers the right to strike (Article 28). Indeed, the overriding theme of that Congress was the need and task for unity after the revolutionary turmoil. Moreover, it was at this meeting that Zhou Enlai, the Premier for two and half decades, put forward his famous call for "*Four Modernizations*" by two stages.<sup>53</sup> While the leadership around Zhou and Deng moved to restore foreign trade and provide access for China to advanced technology and capital from abroad, this also added the need of the recovery in government and bureaucracy.

Taking the 1960s as a whole with political and economic disruptions, China's foreign trade stagnated below the peak level of 1959 [Cf. Riskin (1987): 157]. Thus, the early 1970s period was not only a turningpoint for the political restoration in the central government, but also for foreign contacts and trade.<sup>54</sup> After the fall of "the Gang of Four" in 1976, dramatically again, the reform-minded leadership in Beijing started to criticize its predecessor's unwillingness to make greater use of foreign economic relations [Wang &

<sup>52</sup> Beijing, in October 1971, replace Taiwan as representative of China in the United Nations. Furthermore, American President R. Nixon visited the PRC in February 1972, and signed the famous "*Shanghai communique*" acknowledging the existence of only one China "of which Taiwan was a part". In September of the same year, full Sino-Japanese diplomatic relations were established.

<sup>53</sup> According to Zhou, the PRC has, first, to build "an independent and relatively comprehensive industrial and economic system by 1980", and second, to "accomplish the comprehensive modernization of agriculture, industry, national defense, and science and technology" before the end of the century" so that China's economy will be advancing in the front ranks of the world. Cf. Riskin (1987): 189.

<sup>54</sup> During the second half of the Cultural Revolution decade China became more trade-dependent, since a rapid growth in trade followed the diplomatic ties. Imports were especially concentrated in a few industries, notably "fertilizers, petroleum refining, petrochemicals, ferrous metallurgy, and electric power," of which the major potential was to break bottlenecks and to introduce particular types of productive capacities needed; cf. Riskin (1987): 207 & 209.

Perry (1985): 5-6]. This was on the eve of a new era of reform. Gone with the wind the Cultural Revolution: with the then unfavourable international relationship and the xenophobic tendencies of some Beijing leaders, the disorganization of the 1960s decade imposed on the PRC a greater degree of "economic isolation" than was either desirable for growth or necessary for "self-reliance".

#### III.4.B. Formal and Informal Law under Communists before 1979: Change and Continuity

According to most Chinese scholars, the development of the PRC's socialist legal system can be periodised into the following five stages<sup>55</sup>: (1) the period of establishment (1949-53); (2) the period of development (1954-56); (3) the period when legal construction was subject to Left interference and ceased to develop (1957-65); (4) the period when the system was severely undermined (1966-76); and (5) the period of the restoration and further development (1977-present).<sup>56</sup> Following the periodisation sketched out, the development of the legal system in the PRC can be analysed into the inconsistent stages before 1977.

First, during the period of 1949-53, the *Common Programme* of the CPPCC served as a provisional constitution up to 1954. Followed by the regularization of administration, this was a period of internal consolidation and reorganization. Then the dual systems of law--the formal law and the informal one; or, traditionally *fa* (pseudo-positive law) and *li* (moral code) [Cf. Section I.4] - continued to interact in a complimentary but competitive way. As to the former, the Revolutionary government abolished all Nationalist laws and judicial organs at the very beginning. In their place, a two trial judicial system--the People's Court and the Military Court [Cf. Brady (1982): Ch. 5] - along with the procuracy were gradually established. Several important pieces of legislation were passed.<sup>57</sup> On the other hand, in the

<sup>55</sup> This division seems popularized in both PRC and Western legal articles on the PRC's law. A list of publication using this division can be found in H. Chiu (1982): 4, notes 2 and 3.

<sup>56</sup> This fifth period has been further divided into two stages: The period from 1977-78, and 1979 to the present. See S. Liu, On the Development of Legal System of New China and its Historical Experience, No. 3 *Zhong-guo Fa-xue* (China Jurisprudence), 1984 (Beijing): 45-53.

<sup>57</sup> Including the 1950 Marriage Law, the 1950 Land Reform Law, the 1950 Trade Union Law, the 1951 Act for the Punishment of Counter-revolutionaries; and, the 1952 Act for Punishment of Corruption.

informal form of law, *ad hoc* people's tribunals which conducted mass trials and dispensed revolutionary justice were set up for the widespread national mass campaigns, including the Land Reform, Three-Anti, Five-Anti, and the Suppression of Counter-revolutionaries Movements (1950-52) [Cf. Brady (1982): Ch. 5; Tsou (1986): Ch. 1].

Secondly, the period of 1954-56 started with the similar copying of the new 1954 Constitution (from the 1936 USSR Constitution), and the PRC closely modelled its projects of industrialization on the Soviet economy (cf. Section III.3.B). This was a further process of regularization and codification, which completed the central governmental structure and functions. Furthermore, the PRC promulgated the organic laws of the People's Courts and the People's Procuratorates in September 1954 [Brady (1982): 120-124]. All this underlined the new government's genuine attempt at institutionalization, and the Eighth National Congress of the Party in 1956 emphasized the need for further codification and observance of law [Cf. Tsou (1986): 64]. Unfortunately, this attempt failed at this turningpoint of the improvement of legal development.

Thirdly, the 1957-65 period saw legal construction subject to left interference and it ceased to develop. In the autumn of 1957, Chinese Communists launched an "*Anti-Rightist Campaign*" as a counter-attack against those strong criticisms of the Party and government evoked by "the Hundred Flowers Blooming and Contending Movement" of 1956-57 [Brady (1982): 136-137]. Then, the process towards a stable legal order since 1949 came to an abrupt end. This coincided in time with Mao's decision to abandon the Soviet-modelled economy in favour of the development of the GLF (1958-60) discussed above. Consequently, the impact on the legal field was a decisive shift from the formal system to informal social control, through a steady decline of the importance of the former. In addition, the previous growth of the legislative activities was obviously reduced, or stopped, in reality. Thus, the major enactments included only the 1957 *Regulations for Administration of Security and Punishment* and the 1963 *Regulations for Protection of Forests* [Zheng (1988): 4].

Fourthly, intended to rectify the bureaucratic establishment and to impose a radical vision on society, the Cultural Revolution was initiated and severely undermined the legal system during the 1966-76 period. With the impacts of this revolution, the formal legal structure received a most serious blow during this period, the denunciations such as those of Chairman Liu Shao-qi and his fellows were never developed as formal legal trials through the procedures of the constitution or any "formal" laws [Cf. Kraus/Holz (1982): 189]. The dismantling of the so-called "bourgeois" law following Mao's instruction to "*Zalan Gong-Jian-Fa* (to smash police, procuracy, and courts)", was enforced by the mass line of the Red-guards and the imposition of military control by the People's Liberation Army [Cf. Leng (1977): 356]. As a result, the courts survive the Cultural Revolution, but functioned only sparingly.

What emerged from the period was the clear ascendancy of the "informal" domain of law over the formal one and the complete dominance of the Party and the mass organizations in the administration [Cf. G. Young (1978): 56-61]. For instance, the new *1975 Constitution* (750117), adopted by the Fourth NPC, further declared its stress on political mass mobilizations and Party supremacy (Articles 14, 16), and expressly confirmed the leading role of the Communist Party over the NPC (Article 16). In particular, the 1975 Constitution confirmed the consistent decline of the formal system of law since 1957: abolishing the procuracy; deleting the procedural protections of the people's congress deputies from the 1954 Constitution; and reducing the list of citizens' fundamental rights; and, so on [Cf. Brady (1982): 233]. Since the informal system of law reached its high point, those extra-judicial institutions led by party committees and the party agents played a dominant role in Chinese legal life up to the end of the period.

#### III.5 INITIAL ATTEMPTS TO REGULATE FOREIGN INVESTMENT

During the past four decades, the PRC has faithfully followed a "self-reliant" development strategy relying on the mobilization of internal resources and domestic stimuli for national

growth. Thus, the PRC disassociated itself completely from the world capitalist system and achieved a certain measure of success in providing for the basic needs of the great majority of its people. It made considerable progress in reconstructing an articular and autocentric socio-economic structure and building up a solid scientific and technological base for further development. However, some major changes towards "selective" association with the world market and in international economic reforms have occurred since the late 1970s, especially along with both the Sixth Five-Year Plans (6FYP, 1981-1985) and the Seventh Five-Year Plan (7FYP, 1986-90) in the whole 1980s.

#### III.5.A. Role of the Administration in the Reform Programme

##### *(i) Re-shifting of Economic Policies*

In adopting a policy of opening to the outside world and promoting economic and technological intercourse with foreign countries, China has broken with the outmoded ideological bonds that closed the nation to the world and promoted old stereotypes. The policy of opening to the outside world is now long-term basic state policy, and has been solemnly provided for in the nation's *Constitution* of 1982.

It is remarkable in contemporary China how the abrupt swings in policy occur, when the locus of decision-making authority shifts from one set of leaders to another [Cf., R.H. Myers (1980): 245-246; and Perry & Wong (1985): 7-9]. In fact, to elaborate a proposal of modernizing China, with even more economic and political reasons, could be dated back much earlier, even to 1960s. However, the reform programme started only from 1977. The outcome of the ambiguous relations, conflict or cooperation, between the then Premier Hua Guofeng and Vice-Premier Deng Xiao-ping was certainly a boost for the spirit of reform [Perry & Wong (1985): 8]. Both Hua and Deng championed the Four Modernization by the year 2000; then, the origin of the open policy and a "great leap outwards" movement started. An attempt of integration into the international system, symbolized by subsequent normalization of relations with both Japan and the United States (see Section III.4.A.),



facilitated a dramatic change in China's economic strategy. Therefore, genuine reform, said by Perry and Wong, "began with the demise of Hua Guofeng's ten-year plan" [Perry & Wong (1985): 9]. In November 1982, the long awaited Sixth Five-Year Plan (1981-85) was announced, and it reaffirmed the leadership's commitment to "readjustment, reform and the balanced development of the economy" [Ho & Huenemann (1984): 10]. Following the successful result of that Plan, China furthered its Seventh Five-Year plan in 1986-90. Indeed, the decade of the 1980s witnessed notable advance in the PRC's policies of reform and the open policy.

In 1980, China implemented the open policy in the provinces of Guangdong and Fujian and set up the four **special economic zones (SEZs)** of Shenzhen, Zhuhai, Shantou and Xiamen. In 1984, a succession of fourteen coastal cities were opened including Tianjin, Shanghai and Guangzhou and the Island of Hainan, and in 1985, the delta areas of the Yangtze River, Pearl River and South Fujian were further opened, so that a preliminary open belt exited along China's coast. More flexible policies and measures have been adopted to encourage investment from abroad. More than 100 laws and regulations concerning foreign economic affairs were promulgated to protect the rights and interests of foreign investors. Preferential treatment such as reducing and remitting taxes have been given to foreign investors in SEZs and coastal development areas.

With a population of over one billion, China's large demand for imports and foreign exchange shortages are a long-existing contradiction. To increase exports and foreign exchange earning is a pressing task and is the focus of further reforms of the foreign trade system. The nation is doubling its efforts to bring technological innovations to enterprises that produce export commodities and improve the quality of export goods. For those international trade practices that help China maintain a balance in foreign exchange or increase exports and foreign exchange earnings, all kind of favourable conditions are being provided, such as allowing the products of China's trading partners into the Chinese market, giving priority to imports of advanced technologies from active trading partners and reducing or remitting some tariffs.

(ii) *The Need of Formalization of Economic Reform*

The key to the implementation of the new economic strategy has been the use of both economic and legal stimuli, and both internal and external stimuli. Internally, judging by what the Chinese leadership has said about "reform", contradiction of those practices in the Cultural Revolution era<sup>58</sup> and their corrections will play their arguable parts in the interaction of law and bureaucracy.<sup>59</sup> Chinese political economy traditionally does *not* provide any guarantee of stabilizing abrupt policy-shifts. Through out the Chinese history of three thousand years, there are only successful revolutions and failed reforms. Integration into the international economic system will not necessarily resolve China's "underdevelopment" before the year 2000.

However, the egalitarianism is another concern, and a new "*responsible contractual system*" has been introduced into Chinese individual and enterprise economies recently [Selden (1988): 175-179, 183, & 186-187]. As to the regulation of economy, *market mechanisms* has been promoted with the tax and enterprise reforms; enterprise autonomy has been guaranteed by the several new laws (Cf. Section VII.3.C.). In short, a changing political economy has emerged along with the Chinese project of modernizing China since 1978. Moreover, the principles governing the reforms and relevant policy measures are implemented at the *national, provincial, and enterprise levels*.

Given the development in the 1980s, all targets for both the *Five-Year Plans* indeed changed the PRC's financial and economic situation. From the beginning, economic reforms, especially in terms of a "contract responsibility system" mentioned, were first conducted in the rural areas to bring about a reformation of the previous irrational system and to unleash people's initiative and creativity. When the reforms proved successful in the rural areas, they

<sup>58</sup> That is, how to correct three practices primarily concerned by the Chinese was concluded as follows: 1) the tendency towards "absolute egalitarianism"; 2) the over-dependence on directive planning and administrative control; and, 3) the lack of enterprise autonomy. Ho & Huanemann (1984): 10.

<sup>59</sup> To a great extent, they will interplay in that continuing debate between the radicals and the conservatives of "productive force-productive relations, balanced-imbalanced growth, and directive planning-market mechanisms" from 1950s.

were then introduced to the urban areas. In fact, the bureaucracy with the central power assumed the leading role in the economic reformation and its co-ordination.

Following the reform of the rural sectors, several key elements were introduced into the PRC's urban reforms. Firstly, to invigorate the productive capability of enterprises, especially by delegating decision-making power to enterprise management, so that it can respond effectively to market situations [Cf. Selden (1988): 173]. Secondly, to establish a planned management system that uses market mechanisms, especially to decentralize the planning processes, and strengthen indirect macro-economic control. Thirdly, to restructure and readjust the irrational pricing system. Accordingly, the fiscal and monetary system needs to be overhauled, particularly the relationship between enterprises with the state regarding allocation of enterprise earnings. Also, some macro-economic measures, such as taxation and subsidies, must be used effectively to regulate the economy in the planned direction. Furthermore, to spur creativity in the production within the ownership structure, this cornerstone of the production relations of the society must be reformed and readjusted. The major shift is towards the multiple ownership by reducing the number of state-owned categories in favour of more collectively owned and privately owned enterprises, or by combining them in terms of sharing ownership under the joint ventures [Selden (1988): 153-180]. Basically, these changes will inject vitality and flexibility into the economic system. However, all of these reforms and the measures discussed constitute only the internal stimuli.

Externally, the PRC's open policy will complement the overall economic reforms by providing external stimuli. The open policy is concretely manifested in the establishment of SEZs and the coastal cities as conduits for imports of advanced technology, management and knowledge as well as training of personnel and developing export-oriented industries to increase foreign exchange earnings. Within these zones, more liberal ownership and administrative structures and special privileges are offered to attract foreign capital.

**III.5.B. Dilemma of "Neo-Authoritarianism": The Attempt to Re-build the Party-State**

In order to formalize the economic reform, there has emerged a conflict of roles between the Communist Party and the Government since 1979. The issues are not laid on the strong need of an efficient administrative authority, but on the locus of the power of this authority between Party and State, and between the central and the local [E.g., Y.P. Chen (1991): 13-15].

The 1982 Constitution reflects the Chinese leadership's concern to create a more predictable system **better equipped to implement the plans for economic modernization.**<sup>60</sup> For instance, to protect both foreign and private businesses. Meanwhile, the changes in the relation between the Party and State in the administration and economic reform programme is more directly concerned with foreign investors.

*(i) Party-State and its Legal Basis*

Sociologically, Communist China can be described as a Party-State as the case of the Taiwan [Cf. Chapters I & II]. However, this raises a question as to **whether the Party's intervention dominates the government system within the State**, although the role of Party is hidden in the texts of the 1982 Constitution. In fact, this Party-State of the PRC continued to the 1980s. In 1987, at the 13th National Congress of the CPC, Zhao Ziyang, the then Premier and deputy General-Secretary of the Party, addressed the problems of the Party-State relationship.<sup>61</sup> Although in terms of their political impact, the steps towards the democratization of the Party may be of fundamental importance, the separation of Party and State, which constitutes the first item in Zhao's seven-point programme for political reform, is perhaps even more crucial to the transformation and development of the economy. **The separation of the party from the state is manifestly indispensable in any attempt to introduce patterns of management adapted to the exigencies of a "planned socialist market**

<sup>60</sup> Before the promulgation of the present *Constitution of the PRC* on 4th December, 1982, there had been four constitutions and a draft constitution in Communist China after 1949: 1) 1949 Common Programme of the Chinese People's Political Consultative Conference; 2) 1954 Constitution; 3) Draft 1970 Constitution; 4) 1975 Constitution; and 5) 1978 Constitution.

<sup>61</sup> *Beijing Review* (9-15/November/1987): Document (Centrefold, I-VII), pp. III-VI.

economy", but there has so far been little success in achieving this. Nonetheless, since Zhao lost his power after the 1989 "Tiananmen Square Accident", he himself has been the target - the core of "Neo-Authoritarianism" - criticized by some Communist top officials<sup>62</sup> [Y.P. Chen (1991): 14-15].

The new 1982 Constitution had already reflected the attempt to free the State from the grip of the Party. It seemed to revert to the 1954 drafting approach in which the power of the Party was hidden in the Constitution. The only statement referring to the Communist Party of China (CPC) in the 1982 Constitution is the **Preamble**.<sup>63</sup> Under the present long-term Party-State structure, whether the Party will guide the State's activities to its own satisfaction without actually dominating the State remains to be seen. On paper, nonetheless, three months before the enactment of the Constitution, a new *1982 Party Statute* was adopted by the twelfth National Congress of the CPC on 6th September, 1982. In 1986, *Regulations of the CPC on the Work of Grass-root Organizations in Industrial Enterprises Owned by the Whole People (860204.1)* still shows the basic organization and influence of the Party deep-rooted in economic system of State.

The nature of State is stipulated by Article 1 of the 1982 Constitution, which refers to "a socialist state under the people's democratic dictatorship." However, although a number of specific provisions have been "formally" introduced to strengthen the State apparatus,<sup>64</sup> "promoting the Party's authority, especially collective authority of the central leadership (*zhong-yang-ling-dao ji-ti-de-quan-wei*)" is said very essential to the Chinese Communists in economic construction [Y.P. Chen (1991): 11].

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<sup>62</sup> Chen Yeh-Pin was the former Head of the Organization Department of the Chinese Communist Party, and a member of the Central Consultative Committee of the Party during 1989-1992. His article of 1991 in "*Qiu-Shu*" (formerly the Party propaganda, "*Hong-Qi*") was his speech in Party School of Hu-bei Province. See Y.P. Chen (1991).

<sup>63</sup> "Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought", the Chinese people will complete their historical tasks.

<sup>64</sup> For example, to increase the powers of the Standing Committee of the National People's Congress (Articles 58-59, 65-74); to resurrect the post of the President (Articles 79-84); to establish a Central Military Commission (Articles 93-94); and, to improve the relationship of the central and local government (Articles 95-111, 112-122).

*(ii) The Re-structuring of Government*

*A/ The Issues at the Centre*

*The National People's Congress (the NPC)*, according to Article 57 of the 1982 Constitution, is the "highest organ of State power". It is "composed of deputies elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces. In addition to legislative power, the NPC exercises fifteen functions and powers, including the power to amend and to supervise the enforcement of the Constitution (Articles 58, 62). Also, the NPC has the power to recall or remove the top officials in the central government, including the President and the Premier (Article 63).

The permanent body of the NPC, the *Standing Committee (SC-NPC)* is elected by its parent body to reflect its own composition. According to the Constitution, the SC-NPC exercises many more of the NPC's functions when the latter is not in session. For instance, under Article 67, it has twenty-one functions and powers. It can amend and supplement statutes enacted by the NPC and examine and approve partial amendments to national economic plans. Also, it alone enacts laws other than basic laws, interprets laws, and supervises the work of the State Council, Central Military Commission, Supreme People's Court, and Supreme People's Procuracy. The Constitution also gives SC-NPC power to *annul* laws and decisions of the State Council. It seems that the SC-NPC has grown considerably in power and prestige, and now has more practical importance than the NPC itself.

*The President* and the Vice-President (not the Chairman and Vice-Chairman as before) are the new names of the ceremonial Heads of State in the 1982 Constitution. A real personal power of the President seems to be that of recommending the Premiership of the State Council to the NPC (Article 62(5)), because all the other powers of the President are to be exercised in pursuance of the decisions of the NPC and its SC-NPC (Article 80).

Established by Articles 93 and 94, the *Central Military Commission (CMC)* is a new independent institution which has never had any equivalent in any previous constitution and seems to control the forces is to avoid the fusion of Army, Party and State as was the case in the past decades. The Chairman of the CMC is to be elected by the NPC and is to be accountable only to the NPC and its SC-NPC.

*The State Council*, that is, the Central People's Government, of the PRC is the executive body of the highest organ of State power; it is the highest organ of State administration (Article 85). *The Premier* has overall responsibility for the State Council, and is one of the most important positions of power in the PRC today. Others are the President, the Chair of the SC-NPC, the Chair of CMC and the General Secretary of the Party Central Committee.

However, the informal paramount of the Communist Party has still suppressed any authorities from the individuals or organizations. For instance, the trend of centralization of administrative authority to the reformist group led by Zhao Ziyang has been seriously criticized as "*Neo-Authoritarianism*" -- "whose advocates became those advocates of anarchism in the turmoil in 1989"-- by a speech in the Party School of Hu-bei Province Party Commission [Y.P. Chen (1991): 14-15].

#### ***B/ Local Government***

*People's congresses* and *people's governments* are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, township, nationality townships and towns. The trend has been for a considerable number of powers to be devolved from higher to lower State organs. For example, according to Article 100, significant new legislative powers have been given to the People's Congresses of provinces and municipalities directly under the Central Government. Also, under the recent Economic Reform programme, in order to facilitate the carrying out of the new functions and responsibilities, new Standing Committees have already been established in all but the lowest ties of local people's congresses (Article 96).

*Organs of self-government* are established in autonomous regions, autonomous prefectures and autonomous counties. Under Articles 116-122 of the Constitution, the organs of self-government in the National Autonomous Areas have likewise been given new *legislative* powers, as well as greater powers of independent *administration* in spheres such as finance and economic construction, education, health, and local public security forces.

In short, as regards the power structure, there have been two trends. The trend has been for devolution from the higher to the lower state organs for the economic management; but at the same time the party-state still plays a key role in China's further national development.

#### **III.5.C. Dilemma Between Formal and Informal Regulation: Reshuffling Administration in Economic Planning and Management**

In order to complete the goals of the open policy since the late 1970s, the Chinese leadership has been concentrating especially on at least two issues within the enforcement of the economic strategy. The first issue is obviously the institutional guarantee supported by a renewal of law (Cf. III.5.A & B), while the second one is how to tame a bureaucracy that has, however, deep-rooted and complicated personal ties with these Chinese top leaders themselves. Historically, China has impressed the West by the calm semblance of order and organization reflected especially in the Chinese bureaucracy: for example, the calmness of the official explanation of the recent "Tiananmen Square Massacre" on 4th June, 1989. However, behind the 'formal' facade presented to the foreigner, there always have been other informal systems and organizations controlling the society. There is always a question for each other when western tycoon of multinationals meets Chinese bureaucracy: How far has the counter side perfected the art of presenting order on paper; and how little does reality bear resemblance to the system the counter side officially promulgates?

In reality, the PRC's open policy in respect of foreign investment may be enhanced or weakened by the actions and attitudes of government officials at all levels. Both foreign investors and Chinese government officials complain about the bureaucracy in China and



regard it as one of the major problems foreign investors have to encounter. It is no surprise that, when a foreign investor makes a transaction, he has to go through several complicated and often repetitive procedures<sup>65</sup> which are the main theme in Chapters V and VII.

Therefore, in addition to improving the efficiency of administration, the re-organization of governmental structure is necessary, in the view of Chinese leaders themselves, especially in the field of economic affairs. Drafted and implemented since April of 1988 when the NPC was held, the re-organization of the Chinese government was reportedly completed by July in the same year. Twelve former ministries and commissions under the State Council were closed or merged at that time into 9 new ministries and commissions. This reshuffle of government structure, according to sources from the State Council, is one of the major steps of the entire reform programme of China's political structure [*China Economic News* (29/8/88)].<sup>66</sup>

China's enthusiasm for reshuffling its ministries and commissions demonstrates the government's determination to simplify the administrative structure and to grant greater autonomy to departments at lower administrative levels, particularly in the areas of economic affairs. Furthermore, in addition to structural changes, there are also functional changes for the branches of the State Council which are to be the essence of the entire programme. The decision-makers even disclosed that "the success of the ongoing reform will depend on how well and smoothly the governmental functions are transformed".

Another notable feature of this structural reform is *the separation of commercial functions from the government departments* [*China Economic News* (15/8/88)]. Under the official planning system the administrative intervention in investment, projects, materials

<sup>65</sup> Even if the project in question is to be located in the capital city of a province, the foreign investor concerned must first seek approval from the city government and then the provincial government, and sometimes back and forth. Cf. Section VI.4.

<sup>66</sup> Of the 12 ministries and commissions which were deleted, 10 dealt with the State's economic affairs, planning and management. They were: 1. the State Planning Commission (SPC); 2. State Economic Planning Commission; 3. Ministry of Coal Industry; 4. Ministry of Petroleum Industry; 5. Ministry of Nuclear Industry; 6. Ministry of Aeronautics Industry; 7. Ministry of Astronautics; 8. Ministry of Water Resources & Electric Power; 9. State Commission for Machine-building Industry; and, 10. Ministry of Electronics Industry. In turn, 8 out of the 9 newly established government departments take over the administrative functions of the 12 previous ministries and commissions in respect of economic aspects. These 8 economic agencies, in line with the unchanged three, are: 1. State Planning Commission (new); 2. Ministry of Materials; 3. Ministry of Energy; 4. Ministry of Construction; 5. Ministry of Aeronautics Industries; 6. Ministry of Astronautics Industries; 7. Ministry of Machine-building; and, 8. Ministry of Electronics Industries. Cf. *China Economic News* (29/08/88).

supply and enterprises will "be modified or even minimized". The reform of government functions, it is also emphasized, is not only designed for new ministries and commissions but also for existing ones. Even lower to the level of the counties and villages, "both economic and technical units" are proposed to separate from the administrative domain, and to transfer into purely economic entities. A reform programme in *Chang-yi* County in Shandong Province from 1984 has been reported as a successful case and praised by Premier Li Peng in February 1992 [*JJRB* (Economic Daily) (11/2/92): 1]. However, what this administrative structural reshuffling will achieve remains to be seen.

#### III.6 CONCLUSIONS

Similar to that under the Nationalist regime, law under the Communist regime has not served the function of an autonomous force for shaping the social order. Especially, the part of informal law in most cases translates the guiding principles of both governing Parties into the administrative framework through inter-related practices between Party leaders and State officials, and plays a more active role than formal law in political and economic reality.

In the 1950s, in addition to the difference between 'frozen' American assets and British informally-nationalized concerns, China seemed to adopt a discriminatory policy of nationalization, because some joint-venture enterprises under 'formal' agreements with the Soviet Union were expanding their operations;<sup>67</sup> and later the transfer of the Soviet shares of these joint-ventures to Chinese hands were through a governmental '*formal settlement*' much different from those with British businesses [Lardy (1987): 179-180]. However, in Chinese view, this would not be discrimination in the application of nationalization, since the nationalization of British firms rose from hostility to Imperialism [Cf. Nakajima (1987)]. Moreover, it would be a successful and flexible strategy of socialist transformation with a combination of both *informal* and *formal* political-economic and legal techniques.

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<sup>67</sup> Cf. T.G. Rawski (1980), "Choice of Technology and Technological Innovation in China's Economic Development", in Deraberg (1980) (ed.), pp. 191-229, especially "Soviet-Assisted Projects", pp. 200-204.

After the end of the Cultural Revolution, although a formalization of economic institutions has been developed, the importance of informal law has not accordingly declined. Any "neo" authoritarianism cannot exist within the executive institutions in government, either the State Council or the positive statutory framework, once it challenges the Communist Party as the "informal but final" locus of powers of decision-makings. Recent developments since 1979 in the interaction between law and administration, between State and Party, and between the formal law and informal norms, can be understood in Professor H. von Senger's analysis:

"A substantial change in the paramount importance of the Party norms is not apparent at present, since the contemplated withdrawal of the Party from the domain of executive work, especially in the governmental sphere, is, after all, coupled with renewed stress on the task of the supervision and implementation of Party norms which has recently been regarded as the Party's essential task. [von Senger (1985): 207]."

Thus, even giving up the stipulation - "Citizens must support the leadership of the Communist Party of China" -- in Article 56 of the 1978 Constitution, *Preamble* of the 1982 Constitution has set up the informal paramountcy for all laws, administrations, and activities for the four modernizations. That is, "under the leadership of the Communist Party of China", which is the very code of conduct for economic reform in the PRC, both the starting point and the end.

## CHAPTER IV. THE CONTRADICTIONS OF INFORMAL SECTOR IN THE REGULATION OF FOREIGN INVESTMENT IN TAIWAN: PROTECTIONISM UNDER ADMINISTRATION

### IV.1 INTRODUCTION

TAIWAN is at a turning point in its unique path of development. It was only in 1987 that the severely criticized martial law<sup>1</sup> was replaced by a new *1987 National Security Law* (870623). By then, the ROC on Taiwan has already scored well on all the usual tests of development: sustained growth and industrialization in the economic realm since the 1950s; "growth and equity", i.e., an improved standard of living and decreased income inequality over the 1960s and the 1970s; the emergence of a middle-class in the social sphere in the early 1980s; and gradual democratization and effective political liberalization during the 1980s. The year of 1992 has been termed as "a year of amendment of the Constitution", which will be the main task for the Nationalist government.

The main theme of this chapter - protectionism under administrative pragmatism - will be based on the case of control of foreign investment in Taiwan. In this focus, we shall analyse the contradictions caused by the actively informal regulation between the statutory framework, administrative measures, and business practice. For the four decades since 1949, the regulation of foreign investment in Taiwan can be examined through the following stages: the formal regulatory framework and the informal domains of foreign investment at the initial stage; the expansion of informal sector by using the formal statutes to encourage, and to control as well, both domestic and foreign investments; and, further expansion of informal sector that has, after liberalizing the rigid statutory framework of foreign investment, produced certain rigidities from overgrown administrative interventions. As a fact, from the external to the internal economic relation, with its flexibility the informal regulation penetrates the whole system of the Nationalist political-economy. Accordingly,

<sup>1</sup> The Nationalist (Guo-Ming-Dang, GMD, or KMT Party mentioned in the earlier chapters) government's rule was for many years legitimated by *1934 martial law* (341129), which had been re-promulgated during the Chinese civil war (1946-49) to modify the *1946 Constitution* ((461225); enacted on 25 Dec., 1946; promulgated on 1 Jan., 1947; and effective on 25 Dec., 1947). To date, because of legitimacy of the Nationalist government, the *1946 Constitution* has never been amended. However, from 10 May, 1948 on, its effectiveness was limited by *Temporary Provisions for the Duration of Mobilization to Suppress the Rebellion* (more detail below) for more than four decades.

the formal regulatory framework has been in nature flexible in the interaction between law, administration and business practices.

#### IV.2 FORMAL REGULATORY FRAMEWORK AND THE INFORMAL DOMAINS OF FOREIGN INVESTMENT

As a whole, the political-economy and the legal environment of business in Taiwan can be termed as "*Party-State Capitalism*"<sup>2</sup> under the informal dominance of the Nationalists. An essential technique to extend Party's control is through those "unofficial" and "semi-official" channels within any existing gaps between formal and informal regulation. Thus, this study will analyse the reasons why the protectionism behind administration has been the major obstacle to foreign investment, and why informal sector in "*Party-State Capitalism*" has obstructed the formal mechanisms to promote and protect foreign investment in Taiwan.

##### IV.2.A. "*Party-State Capitalism*": Penetration of Informal Sector in Formal Regulatory Framework

Indeed, behind all formal frameworks, the GMD's *Party-State Capitalism* can be analysed from four mechanistic levels<sup>3</sup> [Cf. S.M.S. Chen *et al* (1991): 23-24]. Through the process of legalization and the propaganda of "*Party-State Unity (Dang-guo-yi-ti)*", the majority of benefits and profits from economic development in Taiwan have been transferred from the State into the Party [S.M.S. Chen *et al* (1991): 24]. Under the *Party-State* structure, public enterprise provides the first and legal channel for the GMD to control and dominate the economy. Secondly, in the field of private economy, two channels have been used by the GMD: those "hiding" public enterprises under the covers of private ownership (*yin-chang-xin gong-ying-shih-yeh*); and the Party-owned enterprises (*Guo-min-dang dang-yin-shih-yeh*) [S.M.S. Chen *et al* (1991): 27-86; Chs. I and II]. Shih-Meng S. Chen and other five

<sup>2</sup> According to several professors in Taiwan, the "*Three-People Principle*" economic system [三民主義] under the Nationalists (the KMT) is never purely "*capitalism*", "*planned economy*", or "*mixed economy*". The best way to describe it, in their views, is the "*KMT-State Capitalism*". S.M.S. Chen *et al* (1991): 22-25.

<sup>3</sup> Including: (1) the overcoat is "*free economy*" which permits market operations and private economic activities, and covers those selective interventions under governmental control; (2) the underwear is "*capitalism*", by which the GMD has allied itself with both domestic and foreign capitalists to suppress the weaker groups; (3) the body is "*statism*" which makes the State to assume the role of economic giant not only to control the private economy but also to develop the major economic activities through the public enterprises; and (4) the heart is the "*totalitarianism*" under one-party dictatorship, which takes both market privileges, based on monopolies by legal mechanisms, and business organizations, based on special economic excuses, as the vehicles of *Party-State* ruling.

professors have called these two enterprises as "quasi-public" enterprises, because of their political-economic privileged status in reality.

In addition, three informal channels of those "hiding" public enterprises have been used by the GMD to control the lion's share of the whole economy of Taiwan under the covers of "false private-ownership, true State-ownership" (*jia-min-yin, jen-guo-yin*) [S.M.S. Chen *et al* (1991): 64-73]:

(1) Companies that are invested and controlled by the governmental agencies at different levels, although the official share-holding remains less than 50%: such as Chinese Paper-pulp (Taipei) Co. (44.38%); *He-Di* Chemical Co. (45%); Overseas (*Hai-wai*) Forestry Industry Co. (47.62 %); Taiwan Television Co. (TTC) (48.95%); and, Taiwan *Mi-Han-Na* Co. (49%) [Cf. S.M.S. Chen *et al* (1991): 77];

(2) Companies that are "re-invested" by the State enterprises and agencies, the official share-holding has thus reached more than 50%: such as Ju-Bai-Ear Fertilizer Co. (88.34%); United-Lands (*Lian-he-da-di*) Construction Consultancy Co. (62.5%); Chinese Stocks & Financial Co. (58.02%); and *Jiao-yun-tung* (Communication) Hire Co. (50%) [Ibid. (1991): 78]; and,

(3) Companies that are invested by State Departments, the financial corporate bodies and the Central Committee of the Nationalist Party, the total share-holding has reached more than 50%: such as Chinese Television Station Co. (CTS) (66.32%); *Chung-Mei-He* Co. (66.03%); International Information & Communication Co. (owned by two official-based television companies (TTC and CTS) and the Nationalists-owned television company- China Television Co. (CTC); China Carbide Chemical Co. (70%); China Steel Framework Co. (73.56%); United-Asian Electrical Manufacturing Co. (54.41%); Taiwan Petro-chemical Co. (56.82%); *Ta-tung* Construction Management Co. (83.3%); *Tao-Yuan* Air-Service Co. (100%); and, International Trade Building of World Trade Centre (100%) [Ibid. (1991): 79].

What is the size of both public and quasi-public enterprises in Taiwan's economy? Answering this question will provide people a better understanding of interaction between formal and informal sectors of law, economy, and political structure in Taiwan. According to the formal law,<sup>4</sup> only these enterprises in which one "individual" public entity controls more than 50% shares can be deemed as "public enterprises". Thus, in 1988 the total production of 26 State enterprises and 34 Provincial enterprises, listed under this strict and narrow definition, occupied already 15% of Gross National Production (GNP); and 25%, if their

<sup>4</sup> Article 2(iv) of the 1953 Statute for Privatization of Public Enterprises (of the ROC); a Chinese text of both the 1953 Statute and 1991 Proposal of Amendment of Statute can be found in S.M.S. Chen *et al* (1991): 258-264.

value of assets and expenditure included<sup>5</sup> [Chen *et al* (1991): 89]. However, a more experimental data shows that if the business "indirectly controlled" by the Party-State and "quasi-public enterprises" were included, the production under "official" control shall be beyond 30% of GNP of Taiwan [Chen *et al* (1991): 90]. Moreover, after a careful comparison with public sectors of most countries, six professors of the liberal "Taipei Society (Chen-Sher)" have concluded that:

"The economic structure of Taiwan, among the free-market-economy countries, has its own unique characteristic, that is, it is far different from the free-market-economy! [Chen *et al* (1991): 94-95]"

Unavoidably, foreign investment can only channelled into Taiwan where informal sector has been playing a rather active role from internal to external economic relation. Being analysed in Chapter II, as a consequence of changes in the international political environment, the ROC's foreign policy following the UN expulsion has demonstrated flexibility and adjustment. Instead of relying on the United States totally for national security and survival, the ROC has developed its own foreign policy strategy: a strategy of "economy-and trade-first diplomacy". This method placed emphasis on Taiwan's international economic, trade and other "unofficial" contacts rather than on the traditional diplomacy of political and/or official interactions.<sup>6</sup> Taiwan set up an informal international trade network of interdependence with both the developed and developing world, to compensate for its lack of formal legal status in the international community.<sup>7</sup>

However, alongside this *flexibility* there runs a continued unremitting ideological opposition to the Chinese Communists.<sup>8</sup> In order to resist a communist takeover and consoli-

<sup>5</sup> At the same time, the lands controlled by governments at the various levels occupied 68.4% of total lands in Taiwan; the formation of capital, beyond 40%. In 1989, the government and its agencies employed 940,000 people, occupied 11.4% of total labour power, 17.3% of the total employees in Taiwan.

<sup>6</sup> The motive behind the economic strategy is to use economic power and trade to make friends in order to back up the ROC's international and diplomatic position. In this regard, the economic strategy is a useful foreign policy instrument for the ROC.

<sup>7</sup> Consequently, the ROC's international trade and economic exchanges became the essential features of its external relations, replacing, to a substantial degree, the traditional form of diplomacy. Cf., *Financial Times* (London, cited as *FTL*) (21 Jan., 88), 'Taiwan to allow direct trade with E. Europe'; *Daily Telegraph* (London, cited as *DTL*) (02, Mar., 88), 'Taiwan eases ban on trade with Peking'; *FTL*, (12 Mar., 88), 'Taiwan to allow imports from mainland China'. Helped by the emergence of growing international interdependence since mid-1960s, Taiwan's economic strategy has proved to be meritorious.

<sup>8</sup> In operating an 'economic development first' foreign policy strategy, the prime motivation is to maximize Taiwan's external contacts and to further the survival of a non-communist Taiwan. However, the 'Three-Nos' policy of no contact, no negotiation, no compromise will continue to be ROC's basic policy towards the PRC. President LEE expressed the firm intention of the Taiwan government not to be officially involved in any type of contact with the mainland. See *President Press Conference* (22/Feb/88).

date the Nationalists' legitimacy, the ROC tried, in addition to an internal programme of political reform<sup>9</sup> and cabinet change,<sup>10</sup> to demonstrate to the world its vitality through its economic performance both at home and abroad, and so launched a vigorous campaign to compete with the mainland in international markets. The idea was to widen the economic gap between the two entities so that incorporation would be less beneficial for Beijing. The latter would either have to maintain Taiwan's tie with the world economy--meaning the acceptance of capitalism--or engineer the destruction of Taiwan's economic progress and relocate a sizable portion of the population.<sup>11</sup> Another related reason for the adoption of the economic strategy was that, according to the Nationalists, *economic relations* would be more difficult for the PRC to interfere with. Being private in orientation, the economic strategy would be less vulnerable to official Communist Chinese intervention.

To facilitate the implementation of its economic strategy, the Nationalist government has set up several semi-official institutes, such as the *China External Trade Development Council (CETDC)*; the *Far East Trade Service, Inc.*;<sup>12</sup> and the *Euro-Asia Trade Organization (EATO)*.<sup>13</sup> All these trade institutions, combining official administration and private orientation, work hand in hand with those of foreign affairs.

<sup>9</sup> That is, to increase the level of political participation by the local Taiwanese in the political system. This process of "Taiwanization (localization)" was adopted by the late president Chiang Ching-Kuo. See Gold (1986): 111-121.

<sup>10</sup> This was intended to absorb intelligent, well-educated and relatively young experts into top party and governmental positions formerly dominated by very old KMT members. Ibid..

<sup>11</sup> Moreover, the Nationalist leaders believed that a totally different economic system, with emphasis on advanced technology and sophisticated industry, would make the Communist rivals' plan to integrate Taiwan more difficult.

<sup>12</sup> The ROC established, in July 1970, the China External Trade Development Council (CETDC), and later in 1971, a supplementary institution, the Far East Trade Service, Inc. (FETS). Nominally, the CETDC is said to be a non-profit-making private organization which has the purpose of promoting sales of commodities made in Taiwan and of developing the two-way trade of the ROC. *The China Yearbook (1980)* (Taipei): 332.

<sup>13</sup> Similarly, to promote Taiwan's substantive trade relations with European countries, another non-profit-making private organization, the Euro-Asia Trade Organization (EATO), was set up in November 1975. Its purpose is to provide a wide range of free services for the development of Taiwan's trade with Europe. Cf. EACD ed., *Euro-Asia Trade Organization* (1981: Taipei), p.2. In addition to the organization, unofficial trade consultations between Taiwan and the EEC have been held three times during 1982-87. See Board of Foreign Trade (of Ministry of Economic Affairs (MoEA)) ed., *Taiwan Eyes Europe: A Trading Partner of Growing Importance in the Next Decade* (Nov., 1987).



#### IV.2.B THE LEGAL FRAMEWORK AND INFORMAL DOMAINS OF THE DIFFERENT FORMS OF FOREIGN INVESTMENT

As we will discuss below, an argument of the sector-directing policy in stimulating foreign investment in Taiwan (Cf. Sections IV.3. and IV.4.) has failed to explain how far foreign investment was adequately integrated with the overall economy and why Taiwan, despite the famous "Taiwan Miracle", is still lacking a powerful position in terms of global technological and marketing dominance. Also, more importantly, it is indeed difficult for one to establish the real price Taiwan has paid and/or will pay for its past successful "control" of the foreign investment. For instance, the problem of efficiency in many public enterprises was the origin of the developing privatisation programme. Furthermore, infant industries, such as automobile assembly and insurance, have not developed soundly after the four decades of protectionism. Comparatively, the regulation of foreign investment has provided not only "promotive" but also "limitative" effects within the interaction among the Nationalist regime, domestic and foreign enterprises.

##### *(i) The Legal Framework of Foreign Investment*

The corporation law in Taiwan permits foreign investors to wholly-own a Taiwanese company. Hence, this opens a question that foreign investors can highly use the technology *without any obligation to transfer* it into local economy. Both forming a new entity<sup>14</sup> and purchasing an existing one are permitted. The *1929 Company Law of the ROC* (291226) is a comprehensive piece of legislation originally modelled on Continental commercial codes before the war and gradually revised to follow Anglo-American ones within Taiwanese local context [Ma (1985): 17]. The Law recognises four types of business organisations [Article 2], including: (a) companies-limited-by-shares;<sup>15</sup> (b) unlimited companies;<sup>16</sup> (c) limited

<sup>14</sup> Capitalisation of technology only by an incorporator may be one of the major reasons for forming a new entity rather than acquiring an existing one. Cf. Article 156 of the *1929 Company Law*, and "Measures for the Use of Patent Rights and Technical Know-how as Equity Investment" (680603).

<sup>15</sup> The company must have at least seven incorporators, more than half of whom must be domiciled in the ROC; see Articles 128-356, the *1929 Company Law*.

<sup>16</sup> The companies which resemble partnership in that their shareholders have unlimited joint and several liability for the debts of what are however separate legal entities. Cf. Articles 40-97, the *1929 Company Law*.

companies;<sup>17</sup> and, (d) companies with shareholders of unlimited and limited liability (or, the mixed companies).<sup>18</sup> In the legal view, any form could be taken by foreign investors. However, none of these forms except *companies-limited-by-shares* have attracted significant interest from foreign investors [F.S.L. Wang (1985): 522], primarily because they do not fall within the definition of a 'Productive Enterprise' under the 1960 SEI (Article 3), as detailed below.

In fact, in order to benefit from the status of '*foreign investment approved*' under the relevant statutes, foreign investors must apply to the *Investment Commission (IC)* for approval prior to acquiring shares of the existing companies.<sup>19</sup> This administration of approval explains the importance of policy in the interaction between law and administration of foreign investment. There is no special legislation governing foreign investment in existing enterprises, except some restriction of sectors, such as inland transportation, public utilities and certain defense-related industries.<sup>20</sup> With regards to the requirement of "at least seven" incorporators who may be *nominal* only in the company-limited-by-shares, this flexibility could be favoured by foreign investors in case of business control (despite that several restrictions waived by authorities).

These restrictions under the 1929 Company Law are: (a) domicile of the incorporators;<sup>21</sup> (b) shares transfer;<sup>22</sup> (c) citizenship and domicile of management;<sup>23</sup> (d)

<sup>17</sup> The companies which are akin to small closely-held corporations. Cf. Articles 98-113, the 1929 Company Law.

<sup>18</sup> Cf. Articles 114-127, the 1929 Company Law. The companies resemble limited partnerships.

<sup>19</sup> Cf. Articles 4(2) and 8, The 1954 SIFN; Articles 4(2) and 7, the 1955 SIOC.

<sup>20</sup> However, restrictions on foreign investments in 'inland transportation' are found in law, while the other sectoral restrictions are not officially published, but the policy under the Investment Commission. Cf. Article 35, The 1971 Public Highways Law (710201), amended on 23rd January, 1984.

<sup>21</sup> That is, not fewer than half of the incorporators of a company-limited-by-shares should be domiciled within Taiwan (Article 128, 1929 Company Law).

<sup>22</sup> Under the Law, for at least one year following incorporation, the incorporators may not transfer their shares (Article 163, 1929 Company Law).

<sup>23</sup> That is, both the chairman and the vice-chairman must be Chinese citizens who must, as well as at least half of managing directors of the company, be domiciled within Taiwan (Article 208, 1929 Company Law).

domicile of auditing-supervisors;<sup>24</sup> and, (e) shareholder diversifications and financial reporting.<sup>25</sup> However, these requirements may be *waived* by the Investment Commission, in case that an application for waiver is made pursuant to the provisions of the Statutes for foreign investments. For instance, most foreign invested companies are legally permitted [P.S.P. Hsu (1985): 277-278], and accordingly the wholly foreign-owned here. These are major difference<sup>26</sup> between the investment through the Company Law and through the special Statutes relevant, i.e., the 1954 SIFN, the 1955 SIOC, and the 1960 SEI.

#### (ii) The Forms of Foreign Investment, Their Legal Status and Informal Domains

A very flexible framework of forms of foreign investment has been provided by the Nationalist government. Thus, foreign investors are permitted to acquire shares in an existing domestic company, or to form a new company in Taiwan, or to register a branch office of their foreign corporation.

##### (i).(a) Joint Ventures and the Dominance of Informal Practice

In practice, most foreign investment in Taiwan prefers the form of joint venture between foreign and domestic participants, because the government clearly encourages investment involving local partners. However, this preference is not expressed in legislation but rather is apparent from the pattern of the Investment Commission (IC) approvals of foreign investment applications: nearly *three quarters* of *Foreign-Investment-Approved* enterprises on Taiwan are joint ventures having local participation.<sup>27</sup> In contrast to the PRC, in Taiwan there is no specific legislation to deal with joint ventures. Thus, joint ventures not

<sup>24</sup> The Law requires that at least one of the elected auditing-supervisors (or, independent auditors inside company) must be domiciled within Taiwan (Article 216, 1929 Company Law).

<sup>25</sup> Under the Company Law, a company with paid-in capital of New Taiwan Dollars \$200 (N.T.\$) million or more must apply to offer its shares to the public and comply with certain requirements regarding shareholder diversifications and financial reporting prescribed by the Securities and Exchange Commission (Article 156, 1929 Company Law). Also see, Articles 22-1, 28-1 and 36 of the 1968 *Law of Securities Transfer* (680430), amended on 29 January, 1988.

<sup>26</sup> In addition, without the application through administration under these Statutes, foreign investors cannot enjoy the visa of multiple entrances, and overseas Chinese cannot benefit from the exemption of tax of heritage on the investment. Cf. 1989 *Manual (Taiwan)*: 190-191.

<sup>27</sup> P.S.P. Hsu, K. Li, and P.S.L. Wang, Joint Ventures in the ROC: A Study in International Business Cooperation, in Ma (1985): 551-588.

only can adopt any of the four types of corporate-structure recognized by the 1929 Company Law, but also take the form of a contractual joint venture or simple partnership. Even without contributing capital, capitalization of technology by foreign partners is permitted accordingly.

Due to the encouragement based on the forms of business, it is likely that joint ventures involving foreign investment are frequently organized as "companies-limited-by-shares (*yuo-shieng gu-feng kong-si*)"<sup>28</sup> in order to make the enterprise eligible for incentives under the 1960 SEI or the *Science-based Industrial Park Statute* (790727) (the 1979 SIP Statute). Accordingly, the exemption from the shareholder and director nationality and domicile requirements available to a wholly foreign-owned subsidiary is also available to a joint venture in which 45 percent or more of the enterprise is owned by foreign investors, subject to approval by the Investment Commission of an application made under the 1954 SIFN (540714). The particular considerations of influencing foreign investors to make use of a "company-limited-by-shares" to foreign investors will be analysed as below.

With regards to "companies-limited-by-shares", the 1929 Company Law requires "at least seven" incorporators and the company must maintain at least that number of shareholders. In fact, the social practice may be benefited from this legal text: because there is no individual minimum shareholding required, six of the seven shareholders may be nominal only.<sup>29</sup> For instance, when Tainan Textile Corporation was set up, as the first company-limited-by-shares of the Tainan Corporate Group, in March 1955, 40% of shares was owned by Huo Yu-li personally, while his sons, sons-in-law and himself assumed 5 of 13 directors of the company [K. Hsieh (1991): 278]. This flexibility could be favoured by foreign investors, although several restrictions on foreign involvement can be found but be waived by authorities in charge of approval.

<sup>28</sup> Cf. Art. 3(1) of the 1960 SEI; and Art. 3 of the 1990 SUI.

<sup>29</sup> The popular form of "family enterprise" can be explained here: to have the nominee shareholders, the members of family or local kinship, in a family-formed or local-kinship-formed company. For instance, several companies of the Tainan corporate group (*Tainan Gang*); cf. K. Hsieh (1991): 278-292. Similarly, foreign investors can ask the nominee shareholders sign declarations of trust assigning their shares back to their foreign nominators. Although this could cause legal uncertainties, but other economic and technical powers can guarantee this widespread practice for the foreign investors.

*Informal Domain I: The Significance of 'Contractual' Joint Ventures in Business Practice*

The form of contractual joint venture contract itself provides a good example for discussing the interaction between law and administration of business. First, under the formal law, where a foreign corporation is a party to any contract signed within Taiwan, it must comply with the **1929 Company Law** provisions requiring *registration* of foreign companies in administration of the MoEA. However, registration is not necessary, when the foreign company is not itself engaging in business in Taiwan.<sup>30</sup>

Secondly, with the Company Law as a general base for private businesses in Taiwan, *contract* can be developed in a flexible framework. Accordingly, entrance of a 'package' foreign investment into comprehensive joint venture contracts can be a business practice. Furthermore, contracts may be written in a foreign language and be subject to a choice of foreign governing law.<sup>31</sup>

Another business practice carried out through contract suggests the prevalence of the informal law. Formally, the inclusion of restrictions on share-transfers in the *articles of incorporation* of a Taiwanese company is prohibited by the 1929 Company Law (Article 163). However, 'shareholder agreements', including such restrictions, are permissible in business practice.<sup>32</sup> Finally, the selection of a joint venture partner is left to the foreign participant from the formal law. *Since several governmental agencies can assist in match-making, the interest of the key administrative officials assumes its importance.* For instance, in the case of "McDonnell Douglas--Taiwan Aerospace Corporation" joint venture, the role of the top officials of MoEA have been repeatedly questioned in 1991-92.<sup>33</sup> As pointed out

<sup>30</sup> Under the Article 40 of the *1935 Civil Procedure Law* (350201) (Amended on 25 April, 1986), even an un-recognised foreign corporation may litigate to enforce a contract.

<sup>31</sup> Generally, these contracts will be enforceable in the local courts first, while certain clauses thereof, such as those dealing with share-transfer and non-competition, may be controversial under private international law.

<sup>32</sup> Even under the *1929 Civil Law* (290523) (amended on 1 July, 1982), these agreements are not capable of specific performance, and the only remedy for breach is to seek damages, since Article 227 provides that only in certain cases is it possible to compel a seller to perform a contract of sale.

<sup>33</sup> In the disputes of "McDonnell Douglas - Taiwan Aerospace Corporation" case, the Minister of Economic Affairs has been questioned and forced to withdraw the shares of governmental investment in the joint venture; see *Independent Weekly* (Taipei, 06/12/91): 2;

#### IV. Taiwan: Informal Law and Protectionism

by S.M.S. Chen and other five professors, Taiwan Aerospace Corporation is invested and controlled by the Nationalist Party [Chen *et al* (1991): 80]. Therefore, both in law<sup>34</sup> and in practice, a small local partner has difficulties to participate in a major project.

##### *Informal Domain II: Company Control through Private Economic Practice*

The Nationalist government influences the policies of joint venture companies mainly through policy-guidance rather than law, through local participation rather than administrative intervention. First, in addition that control follows ownership on a one-share one-vote basis, the Company Law provides an exception of the existence of 'preferred-shares' and 'differentiation in voting power' (Articles 157 and 179). From the view of business, in order to maintain control of a joint venture, foreign participants have normally taken a majority equity position, not through the issue of preferred-shares.<sup>35</sup> In this regard, not only the formal law remains silent, the administrative authorities yield to conditions of private arrangements by participants.

Secondly, both law and administrative practice allow foreign investors to appoint of the chairman, who has decisive powers as the statutory representative<sup>36</sup> of the company. Thus, in business practice, the use of the 'private contracts' even allows the foreign participants to designate the initial chairman in the articles of association of the company. Eventually, this provides the channels of the hidden dominance of Japanese and American multinationals in the top personnel management in Taiwanese companies. Thirdly, this use of private economic practice also extends to the set-up of a 'preparatory office for the negotiation' without a legal personality and legality of juristic acts, as permitted by the

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Independent Evening Post (Taipei; 06/01/92): 3; United Evening News (Taipei; 06/01/92): 3; and, "Taiwan: Asia Newswest Banker", *Time* (USA) (January 13, 1992): 15.

34 A company in Taiwan, except an investment or venture capital company, is prohibited from investing an amount in excess of 40 percent of its paid-in capital in another company (Article 13 of the Company Law).

35 Because of the uncertainties about how 'preferred-shares' would be treated by the courts, and the general concerns by the Investment Commission in case that control may be shifted by use of these shares, these shares in practice are rare.

36 Being a statutory representative, the powerful chairman may commit his duty despite internal agreements to the contrary (Article 192-215 of the Company Law), which agreements however may not be invoked against *bona fide* third parties (Article 36).

*Enforcement Rules of 1960 SEI* (610111) (Rule 66). This preparatory office is essentially used to prepare the main contents of the joint venture contract in detail.

*Informal Domain III: Tolerance of Formal Law in Management*

Another important question for foreign investors in Taiwan is the use or abuse of *quorum* and voting requirements for management decisions of the joint ventures. The 1929 Company Law specifies<sup>37</sup> clear and strict quorum the requirements for several 'important actions', among which are transfers of all or a substantial portion of a company's *property* and significant acquisitions of property that may substantially affect a company's business. Furthermore, at shareholders' meetings, the Company Law requires a three-quarters of issued and outstanding (for instance 'preferred-shares'), shares in cases of decisions of dissolution or merger (Article 316). However, the Law is flexible and permits participants to set up *higher* quorums under the articles of association for shareholders meetings in regards to important decisions or dissolution (Articles 185, 277, and 316).

*(ii).(b) The Wholly Foreign-owned Company and Its Active Informality*

None of the other forms except companies-limited-by-shares, as analysed, have attracted significant interest from foreign investors, primarily because they do not fall within the definition of a 'Productive Enterprise' (Article 3, the 1960 SEI), although the corporation law in Taiwan permits foreign investors to wholly-own a Taiwanese company by both forming a new entity and purchasing an existing one are permitted.

Although the 1929 Company Law provides simply in itself a whole ownership of a company by foreigners in Taiwan, three other considerations should be paid more attentions including financial, managerial, and labour requirements.<sup>38</sup>

<sup>37</sup> A company may carry out certain 'important actions' only where (a) the action has been proposed in a resolution passed by the board of directors at a meeting attended by two-thirds or more of the members of the board or their proxies; and, (b) a majority of the shares voted at a shareholders meeting attended by shareholders or their proxies holding at least two-thirds of the total number of issued and outstanding shares approve a resolution to carry out the action. Cf. Articles 185 and 277, the *Company Law*.

<sup>38</sup> Also Cf. *1989 Manual (Taiwan)*, pp. 190-191.

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In matters of *finance*, a foreign wholly-owned company in Taiwan may have different considerations of capitalisation and fund-reserve from those of domestic companies. For instance, if a wholly foreign-owned company wants to qualify as a "*venture capital company*"<sup>39</sup> under the 1960 SEI, a much higher standard of capitalisation than that under the Company Law will be applied.<sup>40</sup> In a usual case, unless the built-up legal reserve is equal to the total capital of the company, 10 percent of the annual net income of the company should be set aside as a 'legal reserve' under the Company Law (Article 237). On the other hand, a foreign parent corporation may extend its investing-loan to its subsidiary in Taiwan, subject to approval by the Investment Commission and certain administrative policy restrictions.<sup>41</sup> These restrictions have been imposed by the policy of currency and administration of the Central Bank of China (in Taiwan). However, given the fact that Taiwan suffered much from the "Hot-Money" influx in the late 1980s [Cf. Clark (1989): 208], these administrative measures limiting the lending by parent corporation from the abroad were not effective.

Furthermore, as mentioned already, a period of one year following the incorporation of a company-limited-by-shares is a restriction on share transfer by the Company Law (Article 163). The administration of the Investment Commission regulates this more closely: any transfer of shares in a 'company with foreign-investment-approved' is subject to administrative approval,<sup>42</sup> under which the IC will scrutinize any possible damage of the invested project. Another administrative regulation is under the tax authorities which focuses on a '*securities-transaction-tax*' of 0.3 percent of the value of the shares transferred.<sup>43</sup>

<sup>39</sup> The minimum capitalisation is N.T.\$200 million, with the entire amount paid in cash upon registration. See Article 8 of the 1960 SEI; see also Article 3 (definition of a venture capital enterprise), Article 7 (requirements of capitalisation) of *Regulations Governing the Administration of Venture Capital Investment Enterprises* (831124); amended on 26th January, 1987.

<sup>40</sup> The 1929 *Company Law* requires that a company-limited-by-shares must have a minimum capital base of N.T.\$1 million, with at least that amount plus 25% of any authorized capital in excess of N.T.\$1 million to be paid-in upon registration (Article 156). Also Cf. *Minimum Capitalisation Standards for Limited Companies and Companies-Limited-By-Shares* (690531), amended on 15th October, 1980.

<sup>41</sup> These restrictions include: (a) the loan, absent special approval from the Central Bank of China, must 'not exceed an amount equal three times' the parent's equity investment in the subsidiary; (b) the loan may be used for offshore procurement only and may not be converted into ROC currency, i.e., N.T. Dollars; and, (c) the loan shall be for a period of 'not less than two years', although the rate of interest may be fixed or floating. *East Asian Executive Reporters*, December 1987, p.18.

<sup>42</sup> The approval requires a submission of a joint application by both the transferor and its transferee.

<sup>43</sup> Article 2 of the 1946 *Statute for Securities Transfer Tax* (781127), amended on 27 November, 1978.



Also, the *management* of foreign wholly-owned company shall be considered. A special requirement for the local residency or domicile of managers, under Article 29 of the 1929 Company Law: must before them registered as officers of the company in Taiwan. Even for a company with foreign investment approved, there is no exemption from this requirement, despite certain exemptions for directors and shareholders by waiver mentioned earlier. On the other hand, the flexible framework of the Company Law requires only a 'minimum of three directors' (Article 192), not maximum. Legally, the indemnification of the directors by the company for liabilities incurred by virtue of their service as directors is permitted. For a foreign wholly-owned company in Taiwan, law does not require board meetings be held necessarily in Taiwan. Furthermore, although 'a director may not act as proxy for more than one absent director', and the appointment of a shareholder requires 'registration' with the *Commercial Registrar* in the MoEA, directors not resident in Taiwan may appoint shareholders or other directors as proxies to attend meetings of board (Article 205).

Finally, the *industrial relation* is also important for a foreign wholly-owned company. The 1929 Company Law, in case that new shares issued by a company-limited-by-shares, stipulates **employees' pre-emptive rights to purchase** at least 10 to 15 percent of new shares. However, in case that new shares are issued to existing shareholders by capitalising reserves or capital surplus arising as a result of 'asset re-valuation', the rule does not apply; neither in case of the insurance of shares pursuant to 'a merger or the conversion of existing debt into equity' (Article 267). *The formal law also does not prohibits a common business practice* that a company in Taiwan can make new employees 'waive' their pre-emptive rights to purchase shares 'at the time of commencing employment'. Furthermore, another business custom in Taiwan is that a company may pay employees a year-end bonus, paid out of 'pre-tax profit' and deductible as a business expense. Nonetheless, the articles of association of a company must, as required by the 1929 Company Law, specify an amount to be allocated out of 'after-tax profits' to an employee bonus fund, such allocation to occur at the outset of

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operations and on a monthly basis thereafter (Article 235). The relevant labour legislation<sup>44</sup> also stipulates formally the reserve of employee bonus and the withholding portions for contribution of fund. Pursuant to rules promulgated by the Ministry of the Interior,<sup>45</sup> the fund mentioned are to be administered by committees formed by both employees and management within each enterprise.

##### *(ii).(c) Branches of Foreign Corporation and Their Quasi-forms as "Company-limited-by-shares"*

In Taiwan, foreign corporations have to file applications to establish their branch offices with the MoEA, which examines that applicants are duly constituted and authorized to do business in the country of incorporation.<sup>46</sup> The only restrictions may lie on, (as referred in the 1929 Company Law (Article 373)), the fact that corporations organized in countries that do not grant recognition to companies organized in Taiwan may not be permitted to establish branches there. However, once legally recognized, a branch office is, with minor exceptions,<sup>47</sup> entitled to the same treatment of companies incorporated in Taiwan. Since a branch is not a separate legal entity, the presence of a branch on Taiwan will accordingly subject 'the head-office and all other branch offices of the foreign corporation' to the jurisdiction of the local courts and government authorities.

Being recognized by the MoEA, a branch must have an "operating-fund placed at the exclusive disposal" of the branch, the amount of which is prescribed by the regulations that differentiate according to the nature of the company and its line of business.<sup>48</sup> This

<sup>44</sup> Each enterprise must allocate to this fund 1 to 5 percent of total capital at the time of establishment of the enterprise, and 0.05 to 0.15 percent of monthly revenues thereafter. Also, the enterprise is required to withhold 0.5 percent of each employee's monthly wages for contribution to the fund as well as allocation thereto of 20 to 40 percent of the proceeds when the enterprise sells its waste materials. See, Article 2 of the 1943 Statute on Employee Welfare Funds (430126), amended on 16th December, 1948.

<sup>45</sup> Article 5 of the 1943 Statute on Employee Welfare Funds (430126).

<sup>46</sup> Cf. Article 371, the 1929 Company Law (Amended on 7th, December, 1983).

<sup>47</sup> Article 375, the 1929 Company Law.

<sup>48</sup> Article 372, the 1929 Company Law.

operating-fund will be regarded as "paid-in capital" for the purposes of computing incentives available under the 1960 SEI (Article 3).

To establish branches by foreign corporations is further encouraged by the Nationalist government, given the fact that the definition of a Productive Enterprise was revised with an inclusion of branches; and on fact that additional provisions has permitted a tax-free exchange when a wholly-owned subsidiary is transformed into a branch having an organizational form similar to that of a 'company-limited-by-shares'. Nonetheless, the government even allows the new branch to enjoy any income-tax deferrals accrued by the subsidiary.<sup>49</sup>

#### IV.3 THE EXPANSION OF INFORMAL SECTOR AND ITS IMPACT

The discussion of the macro legal framework for foreign investment will be based on not only the statutory but also administrative mechanisms in connection with the regulating foreign investment. The best way to develop this analysis lies on a process from each major statute relevant then into the administrative networks under that law. A clear macro valuation of the role of the administration will be given a more cautious treatment in the later sections.

##### IV.3.A. Initial Release of Administration Discretion from the Formal Law: The Statutes for Foreign and Overseas Chinese Investment

As mentioned, both the 1954 Statute for Investment by Foreign Nationals (the 1954 SIFN) and the 1955 Statute for Investment by Overseas Chinese (the 1955 SIOC) built up the foundation of the legal frameworks for foreign investment in Taiwan. Accordingly, the laws provide guarantees and incentives for projects with foreign investment that are approved by the Investment Commission (IC) mentioned under the MoEA. However, the 'coverage and

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<sup>49</sup> Articles 38 and 38-1, the 1960 SEI.

criteria of the projects' stipulated within both statutes are rather vague,<sup>50</sup> and shall be refreshed out from time to time by "*directives from the Executive Yuan*" as to the particular kinds of projects then in demand. In such a legislative framework, government policy can be channelled into the administrative guidance of foreign investment. For instance, the encouragement of electronics, high-technology sectors, and large-scale heavy industries has been the policy of the 1990s. However, this legislative mechanism can not explain the failure of the proposed joint venture of automobile industry, in contrast to the popular existence of western investment on soft-drinking manufacturing in Taiwan.

As discussed already, the forms of foreign investment eligible under the law are within a flexible context,<sup>51</sup> for instance, even a simple lending to existing enterprises or the simple purchase of stocks or bonds of domestic companies [Section IV.2.B]. Furthermore, in addition to the 'national treatment' in all respects, certain *privileges* unavailable to purely domestic investing activities have provided by the statutes to an 'approved-investment-project' (Article 20, of the SIFN and the SIOC respectively). Especially, within the economic legal regime, the Nationalist government provides many legal frameworks to guarantee these privileges. For instance, before 13 July, 1987 the date of relaxation of foreign exchange control in Taiwan, the privileged access to foreign exchange for companies with 'foreign-investment-approved' status, under the *1948 Statute for Foreign Exchange Control* (481231) by the Central Bank of China, was the *sine qua non* of most foreign investment.

Nonetheless, several other privileges offered shall be taken into account here. First of all, the foreign investors have the right to apply for "immediate repatriation" of their shares of net profits or interests accrued from the foreign-investment-approved, and the right to apply for repatriation of the "total amount of foreign invested capital", one year following

<sup>50</sup> Widely, the projects can be approved by the Investment Commission are that: (a) will produce goods or services that are needed within the country; (b) have an export market; (c) will contribute to the development of important industrial, mining, or communications enterprises within Taiwan; (d) are engaged in scientific research and development; or, (e) are beneficial to national social and economic development. Cf., Article 5 of the 1954 SIFN and Article 5 of the 1955 SIOC.

<sup>51</sup> Under Taiwanese law, the forms of permissible capital contribution to an enterprise with foreign investment include (a) foreign exchange cash; (b) domestically-needed machinery and equipment or raw materials, imported for use by the project; (c) domestically-needed goods or materials, imported for domestic sale to raise working capital; (d) proprietary technology and patent rights; and, (e) capital gains on other investment in Taiwan (other than those accruing from re-appraisal or disposition of land) which are eligible for remittance abroad. Cf., Article 3 of the 1954 SIFN and Article 3 of the 1955 SIOC.

commencement of business by the enterprise concerned (Cf., Article 13, the SIFN; and Article 12, the SIOC). Secondly, in case that 45 percent or more of the foreign-investment-approved enterprise is owned by foreign investors,<sup>52</sup> both the statutes guarantee its freedom from expropriation for twenty years following the establishment of business (Article 16, the SIFN; Article 15, the SIOC).

A third interesting privilege enjoyed by the foreign-investment-approved enterprise is the "exemptions" from the several requirements of the *Company Law*. For example, again in case of '45 percent or more of the foreign ownership', the enterprise with foreign-investment-approved may exempt from the requirement that companies with paid-in capital of 200 million N.T. dollars or more (at the end of the effectiveness of both the statutes in December 1990, approximately U.S. \$ 7.4 million) shall publicly issue their shares. Also, requirements within the *Company Law* regarding the 'nationality and domicile' of the shareholders, directors, and supervisors, all enterprises with foreign-investment-approved are exempted by both the SIFN (Article 18) and the SIOC (Article 18). Moreover, the formal law itself provide the further possibility of administrative grants of exemptions. For instance, certain requirements for the "acquisition of land and mining rights" can be exempted in favour of qualified enterprises through their application to the Executive Yuan. The requirements of registration are applied to ships or aircrafts owned by Chinese nationals, that is, a set number of shareholders and directors of the company. However, while foreigners can be exempted from these requirements, *the Overseas Chinese are not*. It therefore means that this privilege is only accorded to approved-foreign-investment enterprises by foreign nationals under Taiwanese laws (Article 19, the SIFN), and this makes the difference between the two statutes in fact.<sup>53</sup>

<sup>52</sup> In cases of other enterprises (not exceed 45 percent of foreign ownership), a reasonable compensation for the expropriated assets will be paid. Cf. Article 15, the SIFN; Article 14, the SIOC.

<sup>53</sup> A further distinction between "Overseas Chinese" and "Foreign Nationals" includes the following points: (1) Foreign nationals include both the legal persons and the physical persons, but Overseas Chinese covers the later only; (2) Protection and the encouragement are equal under the law; (3) Only Overseas Chinese can invest in the industries beyond Article 5 of the 1955 SIOC if the investor gives up the privilege of foreign exchange by Article 19 therein; and, (4) In the light of the "dual nationalities" admitted, Overseas Chinese can apply for the 1954 SIFN. 1989 Manual (Taiwan): 189.

**IV.3.B. Towards the First Wave of Liberalization: The 1960 Statute for the Encouragement of Investment**

The first law in Taiwan providing comprehensive schemes, for instance, including tax incentives as an integral part, for the promotion of foreign investment has been the 1960 SEI (600910). Based on the Company Law as the main regulating mechanism for private economic entities, the statute is drafted following practical considerations to avoid many obstructive provisions for administration to promote both domestic and foreign investment. I will call this newly legal setting the "*First Wave of Liberalization*" of economic and commercial environment in Taiwan. But, a contradiction inside this wave has been the **over-expansion of administrative intervention and economic inequality set up by both law and administrative provisions.**

First, the convenient nature of the law explains why the duration of this law extends until the end of 1990, three times of its originally scheduled-term [CEI (Taipei) (1988): 1; also CEPD (1987b)]. Following the drafting technique of "foreign investment approved" in both the 1954 SIFN and the 1955 SIOC, the 1960 SEI provides incentives to an entity located in Taiwan qualified as a "**Productive Enterprise**" through an administrative examination. Similarly, from time to time the *precise package of incentives* available under the 1960 SEI has been altered. Secondly, the flexibility within the statute make the many uses of the discretion of executive authorities such as the Executive Yuan, the MoEA, and the MoF, as analysed below. Finally, the definition of a Productive Enterprise is wide enough [cf. CEPD (1987b): 1-12],<sup>54</sup> but was limited originally only for domestic companies-limited-by-shares. In practice, this of course does *not exclude* the application of foreign investment incorporated into this organisational form. On 26th January 1987 [CEPD (1987b): 10-12], the definition was further extended to 'branch offices of foreign corporations' and 'venture capital enterprises' that conform to MoF regulations for such entities, despite of their corporate form

<sup>54</sup> A Productive Enterprise has been defined as one entity that 'is engaged in the production of goods or the rendering of services through manufacturing, handicraft, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing, public utilities, public facility construction and development, public housing construction, technical services, hotels, or heavy machinery construction'.

(Article 3). In my view, this release of business forms has explained *a more emphasis on operation functions of investment*.

As mentioned earlier, a Productive Enterprise which engages in an 'encouraged line of business', as specified from time to time by the Executive Yuan,<sup>55</sup> may either (a) enjoy a five-year exemption from the *Profit-Seeking Enterprise Income Tax* (PSEIT), with the commencement of the exemption period in some cases deferrable for up to four years following the establishment of the enterprise, or (b) accelerate depreciation of its machinery and equipment (Article 6). With certain limitations under the same provision,<sup>56</sup> the same alternatives mentioned are available in connection with the 'expansion' of an existing Productive Enterprise. Furthermore, another case of corporate income tax reduction also depends on the administrative regulations. A Productive Enterprise engaged in a line of business singled out for "special encouragement" by regulations, issued from time to time by the Executive Yuan,<sup>57</sup> can be qualified as a "big trading company"<sup>58</sup> or a "venture capital enterprise"<sup>59</sup> and assumes a 20 percent for its maximum PSEIT, which in cases of other Productive Enterprises is 25 percent (Article 15).

More preferences for foreign investment are granted through the *administration and discretion*. By decree, the Executive Yuan may permit Productive Enterprises to credit against PSEIT liability 5 to 20 percent of the amount invested by them in production equipment during the tax year,<sup>60</sup> subject to a maximum credit of 50 percent of any PSEIT

<sup>55</sup> Cf., *Categories and Criteria of Productive Enterprises Eligible for Encouragement* (711111), promulgated on 11 November, 1971 and amended on 26 November, 1986.

<sup>56</sup> In such a case, the exemption from PSEIT will be limited to the income derived from the expansion, or the accelerated depreciation will be limited to new machinery and equipment acquired in connection with such an expansion depending on the situations.

<sup>57</sup> That is, *Categories and Criteria for Special Encouragement of Important Productive Enterprises* (761006), promulgated on 6 October, 1976; amend on 27 October, 1981.

<sup>58</sup> For the reference of a 'big trading company', which is tied to the value of its transactions, amount of paid-in capital, corporate form and number of branch offices, see Article 2 of *Criteria for Big Trading Company by Overseas Chinese and Foreign Nationals* (840419), promulgated on 19 April, 1984 and amended on 17 October, 1986.

<sup>59</sup> For the reference of a 'venture capital enterprise', see Article 3 of *Regulations Governing the Administration of Venture Capital Investment Enterprises* (831124), promulgated on 24 November, 1983 and amended on 26 January, 1987.

<sup>60</sup> Furthermore, any credit 'in excess of the maximum' may be carried over for application in the ensuing five tax years, although the same 50 percent ceiling will apply in each tax year.

payable (Article 10).<sup>61</sup> Similarly, the 'research and development expenses' of a Productive Enterprise may be deducted from income in the year of expenditure, and 'equipment' relevant to 'research and development' and 'quality control' having a useful life more than two years may be eligible for accelerated depreciation (Article 34). In case the total expenditure on research and development in a single tax year exceeds the 'highest research and development expenses' incurred by the same Productive Enterprise during the preceding five-year period, then it may take 'an amount equal to 20 percent of the excess' as a credit against income tax liability for the current year, provided that the amount credited may not exceed 50 percent of the PSEIT otherwise payable in that tax year. For five years these surplus credits may be carried over (Article 34-1).<sup>62</sup>

A Productive Enterprise operating in a *strategic industry*, as again determined by the Executive Yuan,<sup>63</sup> may 'retain earnings' up to a ceiling of *twice*<sup>64</sup> its paid-in capital (or its working capital, in the case of a branch office). Where these limits are exceeded, the excess amount will be subject to PSEIT at a rate of 10 percent (Article 41, the 1960 SEI), but not the more stringent rules of the Income Tax Law (420217) (Article 76-1) governing taxation of retained earnings. Later, if a Productive Enterprise invests 'retained earnings' in an expansion project,<sup>65</sup> or if a 'venture capital company' uses 'undistributed earnings' to increase capital base of the company, stock dividends issued to shareholders, as a result of the capital increase, may be deferred from inclusion in their 'personal income' for tax purposes until the dates on which the shares are transferred by each shareholder. In the case of an expansion project, this income tax deferral is also applied for foreign branch offices, until such time as

<sup>61</sup> See also *Measures Governing the Deduction for Investment in Procurement of Machinery and Equipment by Private Productive Enterprises* (850629), promulgated on 29 June, 1985 and amended 29 June 1986.

<sup>62</sup> Also Cf., *Measures Governing the Deduction for Investment in Research and Development Expenses by Productive Enterprises* (850918), promulgated on 18 September, 1985.

<sup>63</sup> Cf., *Applicable Scope of Strategic Industry* (820821), promulgated on 21 August, 1982 and amended 23 December, 1987.

<sup>64</sup> An ordinary Productive Enterprise may retain earnings in an amount equal to its paid-in capital only.

<sup>65</sup> Including the purchase or renovation of production machinery and equipment or transportation facilities used for the production of goods, rendering of services, research and development, quality control, pollution control, conservation of energy, or improvement of safety. Article 13, the SEI.



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the working capital is reduced or the branch is closed by the foreign company or the government (Article 13, the 1960 SEI).

In similar cases of the deferral of customs duties, administrative approval by the Investment Commission is the key point (Article 21). With this approval, payment of customs duties on machinery or equipment imported for use by a Productive Enterprise may be paid in instalments, with the first payment deferred 'until one year after the machinery or equipment is put into use'.<sup>66</sup> Furthermore, after this approval, machinery or equipment not manufactured within Taiwan imported for use by 'an industrial or mining enterprise'<sup>67</sup> may be exempted from customs duties. Moreover, the administration is allowed by the 1960 SEI to re-assess such duties, if the machinery is transferred or if the enterprise reduced its capital within five years following importation of the machinery or equipment. Finally, for the purposes of research and development of new products, improvement of quality standards, conservation of energy, or environmental protection, the importation of 'quality control inspection equipment' not produced within Taiwan is duty-free.

The 1960 SEI extends its preference to foreign personnel in terms of income tax. Inside a Productive Enterprise with foreign-investment-approved in which the foreign entity is an investor, when this foreign investor assigns personnel to work in Taiwan "on a non-permanent basis", salaries and other remuneration paid to such personnel by their foreign employer outside of Taiwan shall not be considered as Taiwanese-source income subject to local income tax, provided that such persons are not physically present within the country for more than 183 days, i.e., six months, in a tax year (Article 18). Secondly, a non-resident shareholder in a Productive Enterprise with foreign-investment-approved will be entitled to a 20 percent rate of 'withholding on dividend income remitted abroad' (Article 16).<sup>68</sup> If that the tax paid in Taiwan will not be creditable against the tax of the payer's home country can be

<sup>66</sup> Cf., *Enforcement Measures Governing Payment in Installments and Exemption from Duties and Dues Chargeable in respect of Machinery and Equipment Imported by Productive Enterprises* (711105), promulgated on 5 November, 1971, and amended on 27 May, 1988.

<sup>67</sup> Cf., *Criteria for Encouragement of Establishment or Expansion of Industrial and Mining Enterprises* (750312), promulgated on 12 March, 1975 and amended on 30 November, 1987.

<sup>68</sup> In contrast, the rate applicable to dividends of a Productive Enterprise without foreign-investment-approved is 35 percent.

approved by the foreign investor, an application may thus be made to further reduce withholding to 15 percent. To dividend income received by a non-resident individual who is involved in the management of a Productive Enterprise with foreign-investment-approved, the rate of 20 percent will also be applied, even if the individual is physically present within Taiwan for that purpose for more than 183 days in a taxable year. The Amendment of the 1960 SEI (Article 16) in January 1987 grants a '20 percent of withholding on profits remitted to its head office overseas' to a branch office of a foreign corporation.

**In short, at the administrative levels, the coverage of the preferential treatments and incentives provided by the 1960 SEI can be better realised within its flexible and encompassing administrative frameworks.** For instance, a huge number of other incentives in connection with business practice, such as simplified import procedures, the public listing of shares of an enterprise, acquisition and sale of land, allocation of foreign exchange reserves and etc., depend upon application made by foreign investors themselves.<sup>69</sup>

#### IV.4 FURTHER EXPANSION OF INFORMAL SECTOR AND ITS IMPACT

Although the 1960 SEI was the major vehicle to lift the statutory rigidity for investment in Taiwan before 1960, the later tendency was a radical expansion of administrative measures. These administrative measures gradually built up a network of administrative intervention, which themselves became the new rigidity for foreign investment in Taiwan.

##### IV.4.A. Expansion of Administrative Discretion under Other Relevant Regulations of Foreign Investment

Three sets of regulations of foreign investment shall be taken into account with the further expansion of administration regulation of foreign investment. The 1962 Statute for Technical Co-operation (620808) (amended on 29 May, 1964; the 1962 STC) was an example of expansion of administration through functional mechanism, while both the 1965 Statute for

<sup>69</sup> E.g., *Key Points of the Simplified Procedure for the Importation of Machinery and Equipment by Overseas Chinese and Foreign Nationals in Productive Enterprises* (820819), promulgated on 19 August, 1982.

the Establishment and Management of Export Processing Zones (650130) (the 1965 EPZ Statute) and the 1979 Statute for Establishment of Science-Based Industrial Park (790727) (the 1979 SIP Statute), through both functional and locational mechanisms.

*(i) The 1962 Statute for Technical Co-operation*

As analysed in Section IV.2.B.(ii).(a) already, without contributing capital, foreign companies have access to the domestic market of Taiwan simply by capitalization of technology. In accordance with international business practice, foreign investors may contribute technology as a component of their equity investment, and/or license their propriety technology to the enterprises in Taiwan. Under both the 1954 SIFN and the 1955 SIOC, capitalization of technology in a local company is permitted, but subject to rather reserve restrictions. The major rules are found in regulations issued by the MoEA, although the 1979 SIP Statute also contains provisions concerning capitalization of technology in companies within the Hsinchu Science-Based Industrial Park (SIP). Generally speaking, patent rights and technical know-how may be contributed to capital only when such technology can be used "for production of goods not yet produced in Taiwan" or when the technology can be used "to reduce production costs or improve the quality of goods already being produced".<sup>70</sup> The definition of patent rights thereof extends only to rights granted under the 1944 Patent Law (440529), while technical know-how is defined as "newly-developed technology, having economic value, required by the enterprise and not previously in use" in Taiwan.<sup>71</sup>

Pursuant to the two foreign investment statutes mentioned, the 1962 STC was enacted to provide a basic legal mechanism for direct transfer of technology, in addition to the capitalization of technology mentioned. The term "technology co-operation" refers to the furnishing of rights to use patental technology or non-patental technical know-how by a foreign party (as "Technician") to a party located in Taiwan ("Co-operator" referred) in exchange for payment of royalties (Articles 3 and 5). While the detailed framework under

<sup>70</sup> Article 4 of "Measures for the Use of Patent Rights and Technical Know-How as Equity Investment" (published by MoEA on 3 June, 1968).

<sup>71</sup> Ibid., Articles 2 and 3.

#### IV. Taiwan: Informal Law and Protectionism

the 1962 STC may be out of space here, two issues shall be discussed especially for our main theme. Similarly, the 1962 STC not only provides another example that the simple text of a law have been connected with several complicated sets of administrative regulations and administrative measures, but also explains the fact that administrative means may *overtake* the application of law. For instance, the 1962 STC does not stipulate the licensing of trademarks at all. However, MoEA promulgated in 1970 a set of special regulations, "*Criteria for the Handling of Trademark Licensing by Foreign Enterprises*" (700616) (amended on 3 June, 1985), to permit licensing of a trademark owned by a foreign enterprise and registered in Taiwan in four situations.<sup>72</sup>

However, in the light of functions of the 1962 STC, the relation between law and bureaucracy provides a *negative lesson in understanding the economic development of Taiwan*. Although the Nationalist government had established a legal regime for protection of intellectual property before the Second World War, before the mid-1980s Taiwan had a bad reputation in the world for protection of foreign intellectual property, that is, two decades after the enactment of the 1962 STC. After their awakening since 1985, the bureaucrats have been busy on the amendment of old legislation;<sup>73</sup> for instance, the 1944 Patent Law (440529), was amended on 24 December, 1986. At the same time, Article 317 of the 1935 *Criminal Code* (350101; amended on 26 December, 1969), which provides fines or imprisonment of not more than one year as sanctions for "disclosure of confidential industrial or commercial information", has been more invoked and reminded by the administration. There may exist three reasons for this delayed legislative action for protection of intellectual property by the bureaucracy. The amendment of the relevant regulations is a heavy task; expanding export without costs of intellectual property; and, Taiwan has been long staying outside international legal regime for intellectual property protection. Nevertheless, it

<sup>72</sup> These four situations include: (1) in connection with goods manufactured by an foreign-investment-approved (FIA) enterprise in which the trademark owner has contributed 20% or more of invested capital (Art. 2 of the Criteria); (2) in connection with goods manufactured by an FIA enterprise in which the parent or subsidiary of the trademark owner has contributed 20% or more of invested capital (Art. 3); (3) where the trademark relates to goods produced in connection with an approved technical co-operation contract, provided the term of the trademark license contract does not extend beyond that of the technical co-operation contract (Art. 4); and, (4) where the goods are of superior quality and have an export market, provided the licensor exercises quality control (Art. 5).

<sup>73</sup> Such as the 1928 Copyright Law (280514) was amended on 10 July, 1985; the 1928 Enforcement Rules for the Copyright Law (280514), on 16 June, 1986; the 1930 Trademark Law (300506) was amended on 29 November, 1985; the 1930 Enforcement Rules for the Trademark Law (301230), on 19 October, 1987; the 1944 Patent Law (440529), on 24 December, 1986; the 1947 Enforcement Rules for the Patent Law (470924), on 10 July, 1987.

remains to see the effects of the recent reform without further institutional setting and improvement, *because the amendment of law may be an excuse used by the bureaucracy.* However, the social-economic cost of bad reputation under the huge reserve of foreign exchange makes the "Taiwan Miracle" cheap.

*(ii) The 1965 Statute for the Establishment and Management of Export Processing Zones*

The law governing three Export Processing Zones (EPZs)<sup>74</sup> in Taiwan is another example of a simple statute supported by a complex set of administrative measures regulating a special domain of activities of foreign investment. Under the 1965 EPZ Statute mentioned, the EPZs were built up as combinations of free ports and industrial parks. The first character of these Zones is that ownership of land is vested in each EPZ authority, which can lease the land to enterprises operating there, with different arrangements of standard factory buildings.<sup>75</sup>

In addition to the mechanism of encouragement constituted by the acquisition of land and factory buildings for industrial use, several special tax benefits have been offered under the authorities of the EPZs; for example, a duty free for import machinery and raw materials for export processing. Similar to many examples already discussed, a basic qualification by the administrative authorities for further tax benefits has been the application of a set of administrative measures, in this case, the *"Categories and Criteria of Productive Enterprises Eligible for Encouragement"* (711111) (amended, on 26 November, 1986) published by MoEA. For an enterprise with a best treatment, that is, foreign-investment-approved (FIA mentioned) status combined operation in line of business encouraged, will enjoy exemption

<sup>74</sup> Kao-hsiung EPZ was established at the end of 1966; Tan-tze EPZ (in Tai-chung) and Nan-tze EPZ (also in Kao-hsiung), in 1971.

<sup>75</sup> According to *Criteria for Allocation of Land for Lease in the Export Processing Zones* (700925), promulgated on 25 September, 1970 and amended on 23 November, 1972, an option is available for the enterprises to lease or purchase 'standard factory buildings' constructed and maintained by the EPZ authority.

from PSEIT; repatriation preference; exemption from commodity tax; and business tax assessed on export products at a zero rate.<sup>76</sup>

According to the original purpose of the legislation, an enterprise within an Export Processing Zones is to export all of the goods it produces. However, *upon approval by the MoEA, an access to the domestic market is permitted*,<sup>77</sup> being liable, of course, for payment of customs duties on goods sold domestically. Compared with the enterprises outside these zones, the business within the EPZs are under a high degree of administrative control, and less statutory regulation, directed by the authorities therein.

*(iii) The 1979 Statute for the Establishment of the Science-Based Industrial Park*

The Hsinchu SIP established in 1980 provided another case of further expansion of administrative sector in the regulation of both foreign and domestic investment. The functional encouragement focuses on attracting high-technology enterprises into a special administrative location, the SIP, within a boundary set up by a statute (the 1979 SIP Statute (790727)), and offers investors a package of incentives<sup>78</sup> in addition to those otherwise available under the 1960 SEI. As to the lease of land as an incentive, in special cases with the contribution of very advanced technology, the payment of land rental can be exempted for up to five years (Article 19).

As a fact, the administrative sector expands to degree that SIP authorities are empowered to issue "import and export licenses" directly to enterprises located therein (Article 17), in other words, the Park is also a customs-bonded area. Similar to that in the EPZs a special approval is needed for the access to domestic market, while there is *no*

<sup>76</sup> Cf. Article 13 of the 1965 EPZ Statute (amended on 24 December, 1979); and Article 7 of 1931 Business Tax Law (310613) (amended on 15 November 1985).

<sup>77</sup> The ceiling on domestic sales by these enterprises is 20% of total amount. Cf. Articles 5 and 14 of the 1965 EPZ Statute.

<sup>78</sup> These include (1) duty-free importation of raw materials, machinery and equipment (Art. 17 of the 1979 SIP Statute); (2) exemption from PSEIT for a period of five years, the commencement of which can be deferred for up to four years following the establishment of the enterprise; (3) a maximum PSEIT rate of 22%; (4) an investment tax credit of 15% of the cost of new equipment obtained as part of an expansion project (Art. 15); and, (5) an option to lease or purchase standard factory buildings constructed and maintained by the SIP administration or authorization to construct a factory building (Art. 13).

*ceiling* on domestic sale applicable to enterprises inside the Park (Article 18), being unlike those in EPZs which may sell no more than 20 % of their total products as discussed.

In accordance with the high benefits of incentives, the degree of administrative discretion and screen procedure increases as well. Accordingly, before an enterprise can be established, investors must meet several strict requirements, such as demonstration of feasibility studies and a viable plan of business; standard of advanced technology and research and development contributed; a training of local personnel; and, a significant contribution to economic development. Furthermore, certain restrictive requirements are applicable to enterprises within the Park only, such as investment in equipment used for research and development; quotas for employment of local technical personnel; and, payment of an administration fee tied to gross sales (Articles 3, 27 and 29). However, Article 2 of the 1979 SIP Statute is a "best treatment" provision by which an applicant wishing to invest in the Park may request "the most favourable treatment available" under either the 1960 SEI or the 1979 SIP Statute itself. Nonetheless, for foreign investors, the 1979 SIP Statute, unlike the 1960 SEI, limits eligibility for incentives only to a company-limited-by-shares which shall be organized in Taiwan (Article 3), *excluding* the branches of foreign enterprises.

#### **IV.4.B. The Contradictions of the First Wave of Liberalization: Protectionism under Bureaucracy?**

To sum up, the First Wave of Liberalization of business and economic environment in Taiwan, from 1960 to 1990, in itself was a practice of **Pragmatism**. As we have analysed, the 1960 SEI provided an approach to understand the first wave of liberalizing investment environment in Taiwan, through both newly omnibus legislation and an expansion of administrative legislation and discretion. Then, a contradiction between these policy mechanisms dominated by administration, for instance, an incomplete market under a great interference, has been a serious crisis for Taiwan's further development.

Moreover, a sub-product of this administrative pragmatism has been the "protectionism" for more than three decades in Taiwan to promote the exporting while limiting the importing to an extreme degree. Accordingly, law and administrative procedure set up for both promotion and regulation of foreign direct investment has been eroded by two mainstreams of this pragmatism, that is, *both the strict control of importation and a sector-limited market*, which have originated from the policy of protectionism.

For example, from the 'coverage and criteria of the projects' stipulated within the 1954 SIFN, the 1955 SIOC, and the 1960 SEI, to the general provisions thereof for the encouragement of investment, a framework based on 'positive' treatments of preference for both domestic and foreign investors. However, a 'negative' unequal treatment can be found in the administration. The IC uses an administrative discretion to prohibit and to limit Overseas Chinese and foreign nationals to invest in several sectors by a "Negative List of Investment by Overseas Chinese and Foreign Nationals: Items of Industries Prohibited and Limited from Investment by Overseas Chinese and Foreign Nationals".<sup>79</sup> A recent amendment of the List was in May 1990, of which 53 items of industries were prohibited, including those of chemical, petrochemical, petroleum, transportation, construction, and real estates, and 55 items were limited for investment under the special approvals, including those of pharmacy, communication, transportation, banking, securities, insurance, medical service.<sup>80</sup> The List and its amendment was ratified by the Executive Yuan on 11th July, 1990;<sup>81</sup> and has remained as effective up to August 1991, when the Investment Centre under MoEA formally published it again. Hence, within this wave of liberalization of economic circumstances, the major beneficiaries in Taiwan are the domestic entrepreneurs under the governmental sponsorship.

<sup>79</sup> See Investment Centre of the MOEA, "Hua-chiao Wai-kuo-jen Lai-hua-tou-zi Yao-lan" (1989 Manual (Taiwan)), pp. 163-164.

<sup>80</sup> Investment Centre of MOEA, "Industrial Investment News" (Kong-Ya Tou-Zi Jan-Shun), No. 101, (31 May, 1990), p.1.

<sup>81</sup> By the Executive Yuan Letter of (79) Jin-Zi No. 18641. (Hsien-Zang-Yuan (79) Jin-Zi Di-18641-Hau Han); See Investment Centre of MOEA, "Industrial Investment News", No. 102 (30 June, 1990), pp. 2-7. A new copy has been published in August 1991 by the same department.



To the pragmatic authorities, Who have been concerned with practical results of immediate exporting surge and the expansion of foreign exchange, technology transfer and upgrading industrial structure are secondary to the protectionism. To foreign investors, in contrast, the investment market in Taiwan has been lacking a fair competition under administrative intervention, and an incomplete market limited by both the sector-directing policy and the discriminatory legal framework. Moreover, this failure of incentive policies has been accorded with the recent empirical study [E.g., Tsai (1991)], despite we will discuss these issues within a social-legal context in this Chapter later.

#### IV.5 CONCLUSIONS

In short, this Chapter has examined the active role of informal law in the formal regulatory framework of foreign investment in Taiwan. Inside the Party-State Capitalism as a general environment, the informal domains, existing along the growing statutes for foreign investment since 1949, have been providing channels for administrative intervention on business.

Indeed, several points on the role of administrative intervention and the development of foreign investment have been analysed in this Chapter as reasons behind the so-called "Taiwan Experience". However, since the policy of foreign investment in Taiwan has been controversial, and accordingly cannot be deemed as a fully successful experience, some questions left shall be envisaged within the legal framework of foreign investment. First, what has the *legal mechanism* been used by the domestic enterprises as a tool for counter-foreign-capital in Taiwan? Second, what are the administrative measures for the executive authorities to construct the protectionisms in Taiwan, or to avoid the denationalization by foreign MNCs?

While the protectionism may exist in the administrative framework, another contradiction comes from the business practice within the legal context. To a great degree, foreign investors in Taiwan benefit from the stipulation of contract written in foreign

#### IV. Taiwan: Informal Law and Protectionism

language and subject to foreign law [as analysed in IV.2.B.(ii).(a).I]. Furthermore, capitalization of technology permitted in a foreign wholly-owned company opens the access to domestic market without requirement of capital contribution [analysed in IV.2.B.(ii).(a) already]. Hence, for a foreign investor it is neither necessary to contribute any huge capital into Taiwan, nor to transfer technology. Hence, in case that the private companies are wholly-owned by foreigners, law in itself leaves a question for the regime to intervene in business operations, especially these with advanced technology.

However, although law cannot exist on its own, this Chapter has explained at least that formal law has limited but key role in the relation between foreign aid, trade, and foreign investment. As analysed earlier, this limitation of formal law has come from the effects of an active informal sector under the Party-State Capitalism, of which the interaction between two shall be discussed more in Chapter VI.

## CHAPTER V. THE CONTRADICTIONS OF INFORMAL SECTOR IN THE REGULATION OF FOREIGN INVESTMENT IN THE PRC: BUSINESS PRACTICE AND ADMINISTRATION UNDER LEGALIZATION

### V.1 INTRODUCTION

Compared with Chapter IV on Taiwanese legal framework of foreign investment, and given the huge size of the economy and the administration in the PRC, we will analyse the difference and similarity of the statutory framework, administrative practice, and the role of informal sector under the Party-State. Thus, in this chapter we can take into account the huge size of administration and the wide legislative framework of foreign investment in the PRC as the first major difference in the characteristics of Taiwan and the PRC. The second focus on which attention shall be paid is the relationship between the central and local administration. Since Taiwan is only a small island economy and the central government takes charge of all the external relations, the legal framework of foreign investment has been simply based "more" upon the central administration. In contrast, the relationship between the local and central governments in the PRC remains an interesting, or sometimes conflictive, issue in the regulation of foreign economic activities.

Furthermore, since the late 1970s, the legal framework of foreign investment in the PRC has been in the state of flux [cf. Moser (1987a); C.T.J. Lee (1987)]. As we will show here and in Chapter VII, special legislation, for either particular form of foreign investment or particular economic locus, always comes into the scene first, then a general law with nationwide co-ordination follows.<sup>1</sup> Later, under the requirements of local special circumstances, new administrative regulations and measures are allowed to retain the flexibilities and specialities within the local administration of foreign economic activities. The interaction between and the importance of both special and general, and both central and local, laws and administrative regulations provide the third salient character of the PRC.

<sup>1</sup> This legislative movement has been similar to the legislative movement for the control of technology transfer which the nationwide general statute came after those indirect and local regulations before 24th May, 1985. Cf. C.T.J. Lee (1987): Chapter II.

Since Communist China was established in 1949, the legal, administrative and political history of the post-revolutionary period has indeed been as complex as its prehistory (Cf. Chapter III). If there was a New China established in 1949, obviously, another was established in the decade of 1976-85 with the death of Mao Ze-dong and the sequent fall of the Gang of Four in 1976. However, the Leninist structure and the role of the Communist Party and its social control have not been abandoned. Thus, the role of Party-State and its informal sector provide a common base for our comparative legal studies. As it has been mentioned from the very beginning of this study, to ignore Hong Kong and Taiwan as the comparative loci for Chinese legal studies is to reject the interests of both change and continuity of Chinese legal tradition and customary values, and to miss the future legal development among these "*liang-an-san-di*" (three places and two coasts between the Taiwan Straits).

### V.2 THE FORMAL REGULATORY FRAMEWORK AND THE INFORMAL DOMAINS OF FOREIGN INVESTMENT

The implication of China's open policy (*kai-fang zhengce*)<sup>2</sup> in the past decade are best understood in the context of China's development strategy since 1976 and of the problems that led the Chinese to believe that the recent policy-shifts were necessary. In 1976, a new policy--open policy--was emerging as a result of considerable controversy [cf. Section III.5]. As the Chinese themselves put it, the "historic turning point" for this open policy came in December 1978, at the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China (CPC).<sup>3</sup> Accordingly, China would be "actively expanding economic co-operation on terms of equality and mutual benefit with other countries" and would be "striving to adopt the world's advanced technologies and equipment".<sup>4</sup> Indeed, the

<sup>2</sup> The Chinese "*kai-fang zhengce*" cannot be translated as the open-door policy, not only because there is no word of "door" in the phrase, but also because the "open-door" is often to remind Chinese people of the memory of this early century that western powers exploited China through the policy.

<sup>3</sup> The policy-shifts can be summed up in the conclusions pointed in its communique. On the one hand, the state intended to give top priority to modernization of China--the Four Modernizations of agriculture, industry, defense, and science-technology, and terminate the large-scale nationwide mass movement "to expose and criticize Lin Biao and the Gang of Four". See *The Communique of the Third Plenary Session of the 11th CPC Central Committee* on 22 Dec., 1978, in *Beijing Review (BR)*, 29/12/78, Vol. 52, No. 6, p. 16.

<sup>4</sup> *Ibid.*

open policy started to open a gateway to newly emerging economic and legal institutions in China from the late 1970s. However, similar to the structure of Taiwan, the Party-State in the PRC has been still dominating the major economic activities. We shall analyse the contradictions of the informal sector within the Chinese Party-State Socialism.

#### V.2.A "PARTY-STATE SOCIALISM": PENETRATION OF INFORMAL DOMAINS OF FOREIGN INVESTMENT

A common factor within the political structure between Taiwan and the PRC is the mechanism of the Party-State. Accordingly, several domains of informal sector has been existing actively under the ruling systems, the Party-State Capitalism in Taiwan, and the "Party-State Socialism" in the PRC. Only through this analysis that we can further understand the interaction between both formal and informal regulatory mechanism of foreign investment in a more explicit picture.

The institutional settings of the reform programme can be understood as expanding formal regulation from the development after 1978, including settings for political stabilization, for consolidation of the economy,<sup>5</sup> and for cooperation with the west. These three dimensions of China's modernization explain the importance of both the institutional settings and the new legal system--as a political weapon to break with Maoist radical tradition, and as an economic vehicle to upgrade Chinese economic performance. However, the ceiling for both institutional and legal development is the informal ruling by the Party-State itself.

The phrase of "*liang-tiao-tui-zou-lu*" (walking on two legs) not only can describe the current interrelation between the socialism and the capitalism in China, the interaction between the state law and the Party norms ("*zhengce*"), between the formal law and informal sector, but also the role of foreign investment under the present Party *zhengce*.

<sup>5</sup> In the field of economic performance, two steps are basic for the better arrangement of structural changes: the restructure of production itself which includes problems of balance relating to inter-sectoral changes and intra-sectoral changes; and the restructuring of administration. The restructuring of administration includes the re-organization of administration, the re-distribution of decision-making, and the re-arrangement of the ownership system.

## V. The PRC: Informal Sector and Legalization

Two famous Chinese legal scholars, Wang Shuwen and the late Zhang Youyu have analysed how two legs - the Party norms and the state law - can walk together:

"The written law of our state is a vehicle for putting into practice the political norms (*"zhengce"*). The written law of our state is promulgated on the basis of the Party political norms. .... As far as the enforcement of statutory law is concerned, one can comprehend the spirit and nature of the statutory law and use this instrument (*"gongju"*) correctly only if one understands and has a command of the Party political norms. ... [Zhang & Wang (1980): 74-75]"

Thus, "the spirit of the statutory law and political norms is identical", although the formal law is "not the only *gongju* (tool)" [Zhang & Wang, *ibid.*]:

"... Not only statutory law, but also *"jueding"* (resolutions) and *"zhishi"* (directives) by the Party, or *"shelun"* (editorials) in the Party press can express Party political norms [Zhang & Wang, *ibid.*]"

Unavoidably, the PRC's enacted laws of foreign investment only play the role of a vehicle for putting into practice Party norms, or Party policy, *"zhengce"*.

However, which Party line being prevailing will decide the future of these laws and foreign investment thereunder, because there have been always a duality of the Party line itself in the PRC's history [cf. Chapter III]. For instance, since 1979 there has been a duality norm under the open policy in the transformation of "Socialism with Chinese unique characteristics", surnamed *"zi"* (capitalist) or surnamed *"sher"* (socialist) [*xin-zi huo xin-she*]:

"The proportion of state planning or market is not the essential distinction between the socialism and the capitalism. Planning economy is not equal to the socialism, while the capitalism has state planning as well; nor is market economy equal to the capitalism. .... In short, in order to make the socialism relatively superior to the capitalism, we must absorb and utilize all civilized achievements in the human societies -- absorb and utilize every advanced managerial method and productive approach, which can reflect the productive rule in the modern societies, from all countries of the world, including those capitalist developed countries. [*Zhong-fa* (1992) No. 2 Document: 43-44]"<sup>6</sup>

These words above from Deng Xiao-ping in the Spring of 1992 have focused on the contradictions of duality of the Party *zhengce*: socialist (*she*) or capitalist (*zhi*)? Facing the strong "Anti-Bourgeois Liberalization" and "Anti-Western Peaceful Transformation"

<sup>6</sup> The Central Committee of the Chinese Communist Party, "*Zhong-fa* (1992) No. 2 Document -- Summary of the Speeches by Comrade Deng Xiao-ping in Wuhan, Shengzhen, Zhuhai and Shanghai (18th January--21st February, 1992)" [cited as *Zhong-fa* (1992) No. 2 Document] has been delivered down to all Chinese organs at the county level on 28th February, 1992, in order to promote further holding the lines of open policy. A copy of the document was published in *The Nineties* (April, 1992), Hong Kong, pp. 42-47.

movements from those conservatives in the Party after the 1989 Tiananmen massacre, Deng has to call for holding the open policy by himself again. Cannot the environment of foreign investment in the PRC guaranteed by the statutory law only? Or, can this be guaranteed by a common Communist member, Deng, who holds no post in both Party and government in 1992?

In short, all these contradictions of the duality between *zhengce* and law, between *zhengce* itself - "*fang*" (let bloom) or "*shou*" (rein in), and between the State and Party have come from "*walking on two legs*" - utilization of capitalism under the Party-State socialism [cf. *Beijing Review* (23-29/3/92): 17]. Once this "utilization" changes, some words from Professors Zhang Youyu and Wang Shuwen may remind people of the consequent changes of formal law:

"If contradictions between statutory law and political norms arise, then the state shall repeal or revise statutory laws, or promulgate new statutory law [Zhang & Wang (1980): 75]."

Unless admitting the existence of penetration of informal ruling in the PRC today, we cannot seriously consider the question: on what do both China's development and foreign investment depend - the state law, or the Party politic norms?

#### V.2.B. The Legal Framework and Informal Domains of Different Forms of Foreign Investment

Generally speaking, the regulation of foreign investment in the PRC since 1979 has been "walking on two legs", one is the business practice under the guidelines the open *zhengce*, the other is the growing state law. One after the other, they walk towards a better development of Sino-foreign cooperation. Although the state law chooses its favoured forms of foreign investment, it remains silent, to a great content, to several active business practice of foreign investors.

Similar to the case of Taiwan, the legal framework of common businesses provides a wider circumstance of economic activities, while the particular mechanism of foreign invest-

ment can explain the degree to which the PRC government permits the international economic co-operation. However, in the PRC the difference between statutory and administrative regulations on the issue of foreign investment can also provide an understanding of the interaction between the central and local governments.

Under the "selective" approach for international co-operation, for example, the SEZs set up, and according to the nature of the laws relevant to business operations, the PRC's legislation may be characterized into: **domestic** and **foreign-related**.<sup>7</sup> And either set can be further separated into **general laws** and **special legislation**.<sup>8</sup> Contract law in China now is the best example of this distinction of domestic and foreign-related law.<sup>9</sup> However, the general laws indirectly governing foreign investments include the 1982 Constitution, the General Principles of the Civil Law of the PRC (860412), the Civil Procedure Law of the PRC (910409), Criminal Law of the PRC (790702), etc. Nonetheless, a general code of company law has been lacking to date.

In contrast, foreign-related legislation on foreign investments includes general laws dealing with such matters as registration of business, labour and management, taxation, exchange control, financial matters, customs duties, etc. These general laws have been, similar to the domestic set, supported by a complex framework of special *delegated legislation*. However, this set has existed at the levels of both national and local legislation which will be analysed in detail below. In short, foreign-related legislation constitutes a relatively special, or exceptional, domain of the domestic legal system, while administrative legislation provides a further special enforcement structure for the general foreign-related laws. This basic legal inequity must always be taken into account.

<sup>7</sup> As to the foreign-related set, the PRC has adopted a number of statutes applicable exclusively to Sino-foreign joint ventures, Sino-foreign co-operative ventures (or contractual joint ventures, contractual co-operative enterprises), foreign enterprises or other forms of Sino-foreign economic co-operation.

<sup>8</sup> Another category of special regulations with local effect is enacted by the local governments, such as the Shanghai Municipality, the Special Economic Zones, etc.

<sup>9</sup> On the one hand, the [Domestic] Economic Contract Law of the PRC (811213) regulates contracts between domestic enterprises; and on the other, The Foreign Economic Contract Law of the PRC (830321) governs contracts between Chinese and foreign enterprises, and individuals as well.



*(i) Legalization of Foreign Investment: The First Wave of Encouragement*

To provide a background against which to assess significant aspects of foreign investment in China, it is important to consider the statutory framework. An analysis based on a chronicle of legislation on foreign investment can explain the evolution of improvements in the legal framework, as well as the expansion of administrative regulation of foreign investment thereunder.

This process of 'legalization' of business practice has been supported with the encouragement of foreign investment, through a qualification based on "both forms and functions" of business operation, similar to the long wave in Taiwan during 1960-90. Thus, I refer to this legalization process before the enactment of the 22 Articles in October 1986, as "the First Wave of Encouragement of Foreign Investment" in the PRC. Along with this process, the formal law has been expanding its role, even as the guidelines for the informal conciliation. For example, in *German G.S. Ltd. Co. v. X City Foreign Trade Co.* (28/September/84), the Court protected the foreign investor, and decided that if the negotiation outside the Court is obviously unjust and against the spirits of law, the Court will not support this negotiation [Din *et al* (1988): 268-273].

*(i).(a) The Need of Formality and the Constitutional Guarantee*

The latest Constitution of the PRC (1982) (821204) provides the legal basis for the open policy, foreign investment and Sino-foreign economic cooperation [Cf. Section III.5]. Rooted in an amendment to the Constitution of 1978, Article 18<sup>10</sup> was a breakthrough in modern Chinese history because it sanctioned foreign investment in China. Article 18 intends to allay the fears of foreign entrepreneurs who believe that without such

<sup>10</sup> Article 18 of the *Constitution* stipulates that China permits foreign enterprises, other economic institutions as well as individuals to engage in economic cooperation with Chinese enterprises and other economic institutions in various forms in accordance with the law of China. The legal rights and interests of those foreign enterprises, institutions and individuals are protected by the law of the PRC and the economic activities which they carry out in Chinese territory are governed by the PRC law.

constitutional protection, foreign investment could be constitutionally outlawed. Thus, the PRC is one of the few countries to declare such legal protection in its supreme law. Article 18 reflects the PRC's attitude and confidence towards foreign investment. However, there is no procedure for enforcing this right and there is not yet any precedent for such a constitutional case.

*(i).(b) The Equity Joint Venture Law*

The 1979 Equity JV Law (790701) provides the first law governing the operation of foreign investment after the Cultural Revolution. The law stipulates that the PRC permits foreign companies, enterprises and other economic entities or individuals to incorporate themselves in establishing joint ventures with the Chinese corporations, enterprises, or other economic organizations within the territory of the PRC.<sup>11</sup>

Four years later in September 1983, the State Council, in order to define issues relevant to joint ventures, enacted *1983 JV Implementation Regulations* (830920). During the same period, the administrative authorities in charge have formulated a series of administrative regulations and measures concerning various aspects of joint ventures such as registration, labour, taxation, financing, and foreign exchange control. Both laws and administrative legislation provide a basic legal framework for the establishment and operation of Sino-foreign joint ventures and to improve the environment for foreign investment.

Secondly, for other forms of foreign investment apart from joint ventures, the Joint Venture Law has itself provided *guidelines* for State control and business regulation. For example, before the law of contractual joint venture was enacted, a case of "Developing Black-Clay Contract" on 21 January 1980 was settled by the way of "elaborate explanation of the legal system of the PRC (*xiang-xi-xuan-cuang-jei-shi guo-jia-fa-lu-zhi-du*)" by the Court

<sup>11</sup> The purpose has been accomplished in accordance with the principles of 'equality and mutual benefit' and subject to the authorization of the PRC government. Accordingly, by the legislation in force, the PRC government protects the investment made by a foreign participant in a joint venture, including profits due pursuant to the agreements, contracts, and articles of association approved by the government agencies, and other lawful rights and interests as well.

[JF-400-ALX (1988): 387-390]. Another case happened before the enactment of law of foreign-related contract, the disputes of a "*lai-liao-jia-gong he-tung* (Contract for Importing Materials for Processing and Assembling of Products)", signed on 5th December 1981, between companies of Shengzhen and Hong Kong, were settled by the Court "according to the relevant law and *zhengce* (policy) of the PRC (*yi-ju wuo-guo-you-guang falu-he-zhengce*)" [People's Courts Press (1990): 250-251].

The further amendment of the 1979 law in April 1990 (*1990 EJVL Amendment*) has again brought it into line with business practice during the 1980s. Thus, the PRC's legal experiment within the regulation of foreign economic activities has benefited much from this legal framework.

**(i).(c) Wholly Foreign-Owned Enterprises Law**

The 1986 WFOEL (860412) clarified within a statutory framework that the PRC permits foreign enterprises and other economic organizations or individuals to set up an enterprise exclusively with foreign investment. As long as this sort of enterprise abides by the PRC laws and regulations and does not harm the social and public interests of the PRC, its lawful rights and interests accordingly will be protected by the laws of PRC. For instance, *Xin-Nan Dyeing Co.*, a wholly foreign-owned enterprise set up in June 1980 in Shengzhen, was deemed as a Chinese legal person by the Court and protected by Chinese law [Zhang et al (1990): 280-283].

**(i).(d) Contractual Joint Venture Law**

The form of the contractual co-operative enterprises has provided the best example that *a business practice, of which the contract and negotiations play the major parts, may become a base for a legal framework regulating a set of particular business activities.* On 13th April, 1988, the 1st session of the 7th NPC promulgated the long-awaited law governing contractual joint ventures, the 1988 Contractual JVL. The product of eight years of

discussion and a number of drafts, the contractual joint venture law with 28 articles provides a basic regulatory guidelines for the development of contractual joint ventures in the PRC.

Emerging from foreign-related business practices, *before and after* the publications of 1979 Equity JV Law and 1986 WFOEL, the 1988 Contractual JVL has been adopted with more flexibility, while many legislative inspirations can be traced back to the previous laws. Especially, when compared with the regulations of equity joint ventures, the 1988 Contractual JVL summarizes business practice and experience, while the former ones were based on models derived from foreign legislation. Being a statute, the 1988 Contractual JVL provides investors with greater legal certainty, while the nature of this type of foreign investment requires an 'informal' domain within the formal law to maintain the flexibilities of business practice, as discussed below. Therefore, this law also provides a better understanding of the interaction between the state law and social practice.

In short, from a chronological examination, it is unfair to say that there was no any elaborated efforts by both legislative and administrative branches in the regulation of foreign investment. However, there has co-existed an expansion of administrative control of foreign investment.

***(ii) The Forms of Foreign Investment, Their Legal Status and Informal Domains***

Since the late 1970s, the tendency of foreign investment in the PRC has shown that the forms of business and their operation in practice may extend *beyond* the existing legal framework, as the cases discussed in the last sections. However, the PRC government has developed a rapid legislative programme to improve its control and regulatory framework. Foreign corporations, in order to invest in China, should be aware that there are several major commercial structure designed to attract foreign capital and advantageous technology, on the one hand, and to provide many preferential treatments, on the other. Generally speaking, foreign investment may take one of the following forms.

**(ii).(a) Equity Joint Ventures and Business Benefits**

Like most developing countries, and also the Eastern European countries, the PRC favours the 'equity joint venture' as one of the major vehicles for absorbing direct foreign investment, because the form permits local capital to participate more fully in the benefits of economic development [Cf. UNCTAD (1990); UNCTNC (1988a) and (1988b)]. For instance, the equity joint venture promotes the transfer of technical, managerial and business know-how more rapidly and effectively than other forms of ventures. The production of *Zhongguo-Xunda* Elevator Co., a Sino-Swiss joint venture, was increased at a double rate after the joint operation [JF-400-ALX (1988): 376].

According to Chinese resource, *Beijing Air Catering Ltd. Co.*<sup>12</sup> was the first Sino-foreign joint venture set up under the formal law [JF-400-ALX (1988): 375]. Under the 1979 Equity JV Law (790701), an equity joint venture takes the form of a 'limited liability company' in which Chinese and foreign partners jointly invest and manage operations.<sup>13</sup> Since a joint venture under the PRC law is a 'limited liability company', each participant is liable to the joint venture only up to the limit of the subscribed capital. However, the joint venture is a legally independent entity, with legal status as a Chinese 'legal person' and accordingly subject to the jurisdiction and protection of PRC law.

**(ii).(b) Wholly Foreign-Owned Enterprises and their Informal Origin**

The emergence and existence of wholly foreign-owned enterprises *before* the enactment of their regulating law shows that the equity joint venture is not the sole form of foreign investment favoured by foreign investors in the PRC [Cf. G. Wang (1988): 19]. Foreign investors may establish wholly foreign-owned enterprises in the PRC, using their

<sup>12</sup> The joint venture was set up by Beijing Administration of Civil Aviation and Hong Kong Air Catering Co. cf. JF-400-ALX (1988): 375.

<sup>13</sup> According to the proportion of investment contributed by each party, profits, risks and losses are shared. Property rights and land-use rights can be taken as part of the assets invested. Foreign parties should own no less than 25 per cent of the equity, but the maximum amount of foreign ownership is not stipulated in the law. Finally, neither party is allowed to withdraw its investment during the agreed period of the joint venture.

own capital and independent accounting.<sup>14</sup> All or most of their products must be produced for export. Moreover, they are not permitted to conduct business operations in the areas of domestic commerce, foreign trade, and banking, except in special economic zones or areas permitted by the PRC government [B. Chu (1986): 13].

As mentioned above, the wholly foreign-owned 'enterprise' refers to an enterprise established in the PRC, it thus **exclude branches and residential offices** set up in the PRC by foreign enterprises and other economic entities. According to the 1986 WFOEL, a wholly foreign-owned enterprise is qualified as a 'Chinese legal person' (Article 8) if it meets the requirements for a legal person under the General Principles of the Civil Law. Without such status, the enterprise will find it difficult to engage in general economic and civil activities.

*(ii).(c) Business Practice and Contractual Joint Ventures*

The final part of the so-called "trinity of foreign investment" in the PRC is the contractual joint ventures. In a contractual joint venture, sometimes called a co-operative joint venture, the liabilities, rights and obligations of the two parties are specified in a joint venture 'contract' after consultation and negotiation. This kind of arrangement is 'more flexible' than an equity joint venture. Unlike the equity joint venture, a contractual joint venture needs not be formed as an independent economic entity. This allows Chinese and foreign parties to co-operate as separate legal persons. Generally speaking, foreign participants provide capital, advanced technology, equipment and materials, while the Chinese parties provide contributions in kind, such as land, real estate, natural resources, labour and services. In practice, however, some contractual joint ventures have taken the form of limited liability companies [Cf. H.R. Zheng (1988): 236]. In addition, profits and losses are shared according to the provisions of the contract rather than in proportion to their contribution of assets.

<sup>14</sup> As Chinese legal persons, wholly foreign-owned enterprises are restricted to those businesses which the PRC government considers beneficial to the development of the national economy and which use advanced technology and equipment (Article 3 of the 1986 WFOEL (860412)).

For example, the greatest Sino-foreign joint venture, *Ping-Shuo An-Tai-Bao Coal Co.*, has taken the form of a contractual joint venture [Zhang *et al* (1990): 273-277]. Under the thirty-year contract, China Coal Development Co. contributes 42%, American West Oil Co. 58%, of the US \$0.6 Billion. Before making profits, products are shared by both parties equally, and after making profits, Chinese side has 60% of products, American side, 40% [Zhang *et al*, *ibid.*].

More flexibility exists within both the form and the legal status of a contractual co-operative enterprise, compared with those of an equity joint venture, and provide legally many qualifications<sup>15</sup> of a contractual co-operative enterprise to be a PRC legal person. Therefore, a possibility exists whenever a contractual joint venture without creating a new economic entity is not qualified as a PRC legal person, because the 1988 Contractual JVL (880413) itself does not require a specific form for the contractual joint venture.

Therefore, with or without creating a new economic entity, the participants may determine the forms of operation through negotiation. For instance, they can operate in the form of an 'economic association' as mentioned under the PRC Civil Law.<sup>16</sup> In the view of business practice, the participants normally bear only 'limited liability within their contributions' rather than unlimited joint liability.

*(ii).(d) Compensation Trade and its Informality*

From the Chinese point of view, compensation trade is a form taken by direct foreign investment through which the Chinese party purchases equipment and technology from foreign investors on credit, and pays back the principal and interest of the purchase price by instalments or on deferred terms using the products produced [*cf.* Zhang, Wang & Sun (1990): 208-209]. Usually, the products used for compensation should be those produced

<sup>15</sup> A legal person, according to the *General Principles of the Civil Law* (860412), must possess: (a) the establishment in accordance with the law; (b) the necessary property of funds; (c) its own name, organization, and premises; and, (d) the ability to independently bear civil liability.

<sup>16</sup> Article 52 of the *General Principles of the Civil Law* (860412) reads: "If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualification of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties assume joint liability".

directly with the imported technology and equipment, but other products may be used if the parties agree and the relevant Chinese authorities approve.

*(ii).(e) Other Forms of Foreign Investment*

In addition to the forms of direct investment aforementioned, foreigners may take advantage of other forms of investment, such as technology licensing; representative office; processing and assembly; and lease financing [Cf. Zhang, Wang & Sun (1990): 209-218]. First, technology licensing can be another popular way for foreign investment, given the fact that technology is one of core concerns of the open policy and China enacted Trademark Law in 1982 and Patent Law in 1984. However, technology transfer contracts in excess of 10 years are prohibited under two pieces of relevant legislation.<sup>17</sup> After expiration of the contract period, the licensor cannot prohibit the licensee's use of the technology.

The simplest way for foreign investment can be through the 'representative offices', which, once registered<sup>18</sup> in the PRC, can import cars and office equipment and hire staff (employed through the Foreign Enterprises Service Corporation).<sup>19</sup>

'Processing and assembling of products' using materials and parts from foreign suppliers is by far the most popular form of economic exchange taking place in the SEZs. In this type of arrangement, foreign investors supply raw materials, the components or parts to be processed or assembled in accordance with their design and specifications, as the case of "lai-liao-jia-gong he-tung" (5 December 1981) mentioned in Section V.2.B.(i). The Chinese enterprises charge fees for the processing and assembly.

In recent years, 'lease financing' has grown rapidly in the PRC, particularly through joint ventures with foreign banks and leasing corporations. One of the major forms of leasing

<sup>17</sup> The 1987 Regulations of the PRC on the Administration of Technology Acquisition Contracts (870623); and the 1987 Procedures for Examination and Approval of Technology Import Contracts (880120).

<sup>18</sup> Cf. the 1980 Interim Provisions of the PRC Concerning the Control of Resident Offices of Foreign Enterprises (801030); and, the 1983 Provisional Regulations for the Establishment of Representative Offices in China by Overseas Chinese and Foreign Financial Institutions (830201) (promulgated by SAJC).

<sup>19</sup> Accordingly, representative offices are taxed under both the 1982 Foreign Enterprise Income Tax Law and the 1958 Consolidated Industrial and Commercial Tax Law (payment of 5.05% of taxable income).



## V. The PRC: Informal Sector and Legalization

in the PRC is 'financial leasing' of equipment, although 'operational leasing' also exists. Financial leasing may be **integrated** with equity investment, compensation trade, or processing and assembly with materials and parts supplied by foreign firms. The leasing business generates certain advantages for Chinese enterprises. It decreases the need for foreign exchange, reduces import approval, and eliminates problems with equipment obsolescence and technology development. The leasing market in the PRC may provide numerous opportunities for foreign investors.

### V.3 STATE LAW AND BUSINESS PRACTICES

Although the administrative procedure presents a different picture, the PRC government has so far provided an extensive legislative framework to regulate and protect the operations of foreign investment. At least, the regime has been attempting to provide every form of business, especially in foreign investment, with an appropriate legal base, in order to make "two legs"- both business under the open policy and legal mechanism - walk.

Some prevailing business practices and considerations have been simply favoured by both foreign investors and the Chinese authorities. Learning from doing, the PRC's legal regime has been improving its regulatory mechanism through a long process of interaction between new state law, administration and business practice.

#### V.3.A. "Qualification for Encouragements"

No special qualification of the foreign participants has been mentioned in the *1979 Equity JV Law*: companies, enterprises, other economic entities, or individuals are permitted. While on the Chinese side, Chinese individuals have been not mentioned, that is, only after 1988<sup>20</sup> Chinese private enterprises were 'legally' able to be participants in any Sino-foreign joint

<sup>20</sup> Prior to two legislative provisions, the Chinese participants were only the state and collective enterprises: the *Amendment of Article 11 of the 1982 Constitution* (880412); and, the *Provisional Regulations of the PRC on the Private Operated Enterprises (Private Enterprises Regulations)* (880625).

ventures.<sup>21</sup> Thus, private enterprises<sup>22</sup> have been allowed to operate joint ventures with foreign participants in accordance with stipulations of the laws and regulations of the PRC.

Secondly, based on the form of enterprises, the 1986 WFOEL has emphasized more the operational functions of foreign investment. In accordance with the open policy, the 1986 WFOEL stipulates that the establishment of this kind of enterprise must benefit the development of the PRC's national economy (Article 3). Hence, the first of two types of enterprises allowed to operate has been **enterprises using advanced technology and equipment**, which are permitted 'if they manufacture products that are important in the PRC's national economy and products that the PRC cannot produce at that time.' Secondly, **export enterprises** 'exporting all or a large portion of their products to help settle the enterprise's problems of foreign exchange' also permitted. The obvious advantages behind these two types of enterprises explains the PRC's interests in foreign investment, and also later developed into the cornerstone of the improved legal framework for the encouragement of foreign investment since late 1986 [Cf. Section VII.2.A.].

Finally, compared with the equity joint venture,<sup>23</sup> an extra-preferential treatment exists within the practice of the contractual joint venture. As agreed upon by both the PRC and foreign participants in the contract, if ownership of all the 'fixed assets of the contractual joint venture' remains with the PRC participant on expiration of the term of co-operation, the foreign participants may recover their share of the investment during the term of co-operation. To a more precise degree, the participants may, in practice, contractually limit their respective liability for the debts of the contractual joint venture in accordance with the relevant laws.

<sup>21</sup> The importance of the 1988 Amendment of 1982 Constitution was to legalize the rights and interest of the private economy. Furthermore, the importance of the Private Enterprises Regulations (880625) lay in enabling the PRC to be a more open market.

<sup>22</sup> Three kinds of private enterprises have been stipulated by the Private Enterprises Regulations: (a) sole proprietorship enterprises; (b) partnership enterprises; and (c) limited liability companies.

<sup>23</sup> In an equity joint venture, the investors may not recover their share of the investment before expiration of the term on the joint venture except 'by assigning their investment to the other party or to a third party' according to the law.

## V. The PRC: Informal Sector and Legalization

### V.3.B. Capitalization and Its Business Considerations

According to Chinese resource, there was a case of capitalisation of an old ship, fixed at US \$200,000, by foreign investor in a joint venture. However, the ship could not operate, so did the joint venture later [Zhang *et al* (1990): 233-237].

The PRC law requires that when the joint venture is registered with the administrative authorities the 'registered capital' shall be declared in the 'total amount of investment', including both capital construction funds and circulating capital. The legal form of the joint venture embodies general principle of the 'registered capital' which includes the total amount of capital subscribed by the participants to the joint venture, and cannot be reduced during the term of the joint venture. In practice, this leaves the unknown questions to loans of the joint venture.

The major concern of the administrative authorities as to the registered capital can be explained from the '*schedule of proportion*' to be strictly followed by enterprises, required by the administrative legislation, for instance, the State Administration of Industry and Commerce's (SAIC's) 1987 *SAIC Capital Regulations* (870301)<sup>24</sup>, which will be analysed in detail in the parts on Administrative Procedure in Sections VII.3.A and VII.3.B below.

Furthermore, the 1979 *Equity JV Law* required that foreign investment in a joint venture should not be less than 25 percent of the 'registered capital', but not of the total amount of investment. Therefore, in business practice, the proportion of the investment between the Chinese and foreign participants is, usually, fifty-one and forty-nine percent respectively. The investment contributed by each side to a joint venture includes cash, capital goods, industrial property, etc. The Chinese party also may include the right of the land-use, while foreign party, the technology or equipment qualified as truly advanced and appropriate to the PRC's use. However, the business practice has been more flexible than the requirements of the formal law. For instance, *Fu-Ri Television Ltd. Co.*, a Sino-Japanese

<sup>24</sup> *Provisional Regulations for the Proportion of Registered Capital to Total Amount of Investment of Joint Ventures Using Chinese and Foreign Investment* (01/03/87, by the State Administration of Industry and Commerce); hereinafter cited as *SAIC Capital Regulations*.

Joint Venture, was set up in June 1981 [Zhang *et al* (1990): 237-241]. Under the contract, the products will be for domestic selling for the first three, after then, for exporting. Also, 50% of investment by Chinese party is through capitalisation of "factory, equipment, and welfare facilities", while other 50% by Japanese through capitalisation of "equipment and technology". Moreover, both Chairman of the Board of Directors and General Manager are Chinese [Zhang *et al, ibid.*].

Secondly, in contrast, since the wholly foreign-owned enterprise by its nature is owned entirely by the foreign investors, the 1986 WFOEL does not stipulate the form of capital invested or its proportion or amount. The law only requires that unless foreign investors make their contribution 'within the time limit approved' by the authorities in charge, the business licenses of the enterprises will be revoked. Finally, with its flexible nature, the 1988 Contractual JVL does not require a fixed proportion of investment.<sup>25</sup> Accordingly, the proportion of investment and the kinds of contribution depend upon negotiation between the participants.<sup>26</sup>

### V.3.C. Autonomy and Structure of Enterprise, Labour Issues, and Profit Operation

Forms of business also involve different degrees of autonomy, power of management, and profit operation of foreign investment in the PRC. First of all, in the case of equity joint ventures, the board of directors is the highest authority of the joint venture, which decides all major issues concerning the operation. The chair of the board, who shall be appointed by the Chinese participant, is the 'legal representative' of the joint venture. It is only after the 1990 Amendment of the Equity JV Law, that a foreigner can be appointed as the chair. On the other hand, a joint venture has the right to operate 'independently and autonomously', although the influence of Chinese authorities remains in reality inside the joint venture

<sup>25</sup> As analysed earlier, the 1979 Equity JV Law requires that no less than 25 percent of the registered capital should be contributed by the foreign side.

<sup>26</sup> In practice, the investment, or conditions for cooperation, contributed by participants may be provided in cash or in kind, or may include the rights of the use of land, intellectual property rights, non-patent technical expertise, or other property rights.

through the local participant. For example, changes of Chinese-side managers happened. At least, administrative authorities cannot issue 'directive plans' to a joint venture. A joint venture also has the right to export its products and may set up affiliated agencies outside the PRC in case of necessity. This autonomy of enterprise has improved since the era of the Cultural Revolution. Even the managerial power to dismiss unqualified or misbehavoured workers is guaranteed by the law in the first joint venture in Shanxi Province, *Hua-Jie Electronic Co.* [JF-400-ALX (1988): 384]. In 1988, this has been followed by the case of *Fan (Mr.) v. X Air-Condition Equipment Ltd. Co.* (16/May/88) [People's Court Press (1990): 58-61].

Indeed, the labour issue is also essential for the operation of foreign investment. For instance, *Beijing Jeep Ltd. Co.*, on 8 October 1986, decided to take 10% of yearly profits (based upon US \$9,000,000 invested) as the funds of labour welfare in this Sino-American joint venture, in addition to adoption of 213 of 306 suggestions by the workers [JF-400-ALX (1988): 383-384]. It is also *Beijing Jeep Ltd. Co.* that explained the difficulties of balance of foreign exchange. Because of these difficulties, Beijing Jeep stopped operation for two months in 1986, until Beijing Administration of Foreign Exchange transferred US \$2,500,000 from *Chang-Cheng* (the Great Wall) Hotel to Beijing Jeep on 18 November, 1986 [Zhang *et al* (1990): 250-253]. In this case, the administrative practice assumed the role as a bridge between the state law and business operation.

After a payment of the ten percent income-tax levied on the remitted amount,<sup>27</sup> all profit shared by the foreign participant in a joint venture may be remitted abroad. Furthermore, all net assets or remaining property shared by the foreign investors may be remitted upon the winding-up of the enterprises. The portion that 'exceeds the registered capital'<sup>28</sup> may also be remitted abroad after paying the income tax. Finally, after the payment of 'individual Chinese income-taxes' and after the 'deduction of expenses in the PRC', foreign

<sup>27</sup> Article 4 of the 1981 Income Tax Law of the PRC on Joint Ventures Using Chinese and Foreign Investment.

<sup>28</sup> Article 10 of the 1979 Equity JV Law; and Article 106 of the 1983 Equity JV Implementation Regulations.

personnel and employees of the joint venture, including citizens of Hong Kong and Macao, may remit their remaining portion abroad.<sup>29</sup>

Secondly, the 1986 *WFOEL* is the first law in which the PRC has announced publicly that it shall '*neither nationalize nor expropriate*' a wholly foreign-owned enterprise set up within the territory of the PRC.<sup>30</sup> Nevertheless, in special cases, based upon 'the need of the social public interest', the enterprises may be expropriated, but still with a commensurate compensation in accordance with legal procedures, as emphasised by the present Chinese leadership.

Profits constitute another focus for foreign investors in addition to their rights.<sup>31</sup> A foreign investor of a wholly foreign-owned enterprise, remitting its share of profit outside the PRC, does not owe income-tax on the remitted share of profits, being different from the ten percent of an income-tax levied on the remitted amount by the 'foreign participant within a joint venture'.

Finally, while the new law has imposed many coercive measures on the long-time business practice of contractual joint ventures, it also protects the management autonomy of the joint venture from administrative interference.<sup>32</sup> Different from the form of a joint venture, a contractual joint venture will be run by a board of directors only if a new independent economic entity is created. Flexibly, the contractual joint venture can operate by a 'joint management organ' arranged by both participants under the contract and relevant regulations. Either the board of directors or the joint management organ, of which the chair

<sup>29</sup> Article 79 of the 1983 *Equity JV Implementation Regulations* (amended 1986).

<sup>30</sup> This legal guarantee applies even where there does not exist a bilateral agreement for the protection of investments between the foreign investor's state and the PRC.

<sup>31</sup> The Income Tax Law of the PRC Concerning Foreign Enterprises (1981 *Foreign Income Tax Law*) (811213) had before July 1991 governed the taxation of a foreign-owned enterprise. Accordingly, this enterprise enjoys preferential tax treatment of 'exemption and reduction' under the relevant laws, regulations, and provisions. Furthermore, the enterprise may apply, in the case of re-investment of the taxed profit within the territory of the PRC, for a refund of the portion of the income tax already paid on the re-invested portion.

<sup>32</sup> In order to protect the legitimate rights and interests of parties to joint ventures, the State Council in 1987 approved the *Provisions on the Contribution of Capital by Parties to Joint Ventures Using Chinese and Foreign Investment* (880101), which was promulgated by the MOFERT and The State Administration of Industry and Commerce on 1 January, 1988. Article 10 of the Provisions states that matters concerning the contribution of capital by parties to 'Chinese-foreign co-operative joint ventures' shall be handled with reference to the present Provisions.

is not necessarily appointed by the PRC side,<sup>33</sup> is responsible for making major decisions of the joint venture.

Furthermore, the autonomy of the contractual joint venture also lies in the distribution of earnings or products, the sharing of risks and losses, and the ownership of the assets at the time of the termination of the enterprise depend upon the **agreements negotiated** by the participants and prescribed in the contract. Within the legal text, the *1988 Contractual JVL*, widely different from the regulations on equity joint ventures,<sup>34</sup> provides no requirements with regard to these issues.

#### **V.3.D. The Duration, Governing Law, Relevant Business Considerations and Environmental Disputes**

First, whether business operations will continue for the duration of an equity joint venture, which is normally within ten to thirty years, depends on the actual conditions of the particular projects. However, a joint venture may be extended, on a case-by-case base, to fifty years on projects requiring large amounts of investment, long construction periods, and low interest rates or funds, which either 'produce highly sophisticated products with advanced or key technology supplied by the foreign partner' or 'produce competitive products for the world market' (Article 100 of the *1983 EJVL Implementation Regulations*). Since 1986, in order to promote these two operational "functions" mentioned, the PRC has change regulations to encourage long-term economic co-operation. The duration thus may be extended to **more than fifty years**<sup>35</sup> upon special approval by the State Council. An Amendment for further extension of the duration has been permitted in 1990 [Cf. Section VII.2.B].

<sup>33</sup> The business practice of the contractual joint ventures suggests that the chair of the board is appointed by one of the partners and vice-chair by the other.

<sup>34</sup> In the joint ventures, the profits, risks and losses shall be shared by the parties, according to proportion to their contributions to the registered capital.

<sup>35</sup> The amendment of Article 100 of the *1983 Equity JV Implementation Regulations* (860115), on 15 January, 1986, by the State Council, which extended the duration of a joint venture from 30 years to 50 years.

For the duration of the joint venture, the settlement of disputes arising from the contract, according to the **Foreign Economic Contract Law**, must be governed by the laws of the PRC because it is performed within the PRC. Where the laws of the PRC do not have a relevant provision, then international practice will apply.

In contrast, based upon the nature and requirements of the business, the duration of operation of the wholly foreign-owned enterprise can be decided by the foreign investors. However, it must be declared in both the 'feasibility study report' and the 'application' for establishing the enterprise. The authorities will determine whether the duration is appropriate, when these documents are filed for examination and approval. Based on the practical needs, the operation may be extended by 'filing an application with the examination and approval authority' 180 days, prior to expiration.

Furthermore, in contrast, the term of co-operative joint venture, under the principle of the **1988 Contractual JVL**, depends on agreement by the Chinese and foreign participants. Accordingly, the law permits both parties to extend the duration if an agreement for extension has been reached between them, and hence provides maximum flexibility.

Finally, a famous environmental dispute of a wholly foreign-owned enterprise, *Hong Kong Kai-Da Co. (14/July/84)* was decided by the Court as against the PRC's Environmental Protection Law (790913) (Articles 6, 16, and 32) [Din *et al* (1988): 262-266; also Zhang *et al* (1990): 277-280].

#### V.4 THE ROLE OF INFORMAL SECTOR UNDER THE ADMINISTRATIVE VEIL IN THE REGULATION OF FOREIGN INVESTMENT

With no exception to Taiwan's case, a reaction of administrative intervention comes after the legalization of business practices through the formal law. To a great degree, the statutory framework of foreign investment in the PRC is supported by the coercive measures, from both the delegated legislation and administrative discretion, of the administrative authorities at all levels. Both administrative legislation and procedure provide close control by the



central government over the foreign investments that have been developing in different areas within the PRC.

#### V.4.A. The Expansion of Administrative Sectors

From a practical viewpoint, categories of statutes and regulations of the PRC have, to a great degree, confused not only foreign investors but also Chinese legal scholars. Also, the existence of administrative legislation opens an interesting question about the interaction between foreign investment and bureaucracy, between private economic activity and the state authorities. As a fact, the contradictions of administrative veil have been far beyond the purpose of the liberalization of investment conditions through the formal law in the PRC, this has been the exact case of Taiwanese law of foreign investment.

##### (i) *The Function of Administrative Legislation on Foreign Investment*

It is the function of administrative legislation that produces the contradictions of administrative intervention on foreign investment. The duality of both "*fang*" (let bloom) and "*shou*" (rein in) - "walking on two legs" - has existed within the "*delegated legislation*".

In some cases, the Notice (*tong-zhi*) issued by the administrative authorities has directly implemented the national policy (*zhengce*), and has more effects on the foreign economic activities. For instance, in *Zhongguo-Wujin-Kuangchian Co. (China Metallic Mining Co.) v. Hog Kong S.F. Shipping Co.* (9/April/84), the MOFERT's "*Notice on Re-announcing No Trading with South Korea, Israel and South Africa*"<sup>36</sup> was the key. The steel materials were shipped, not from Mozambique under the contract, but from the Elizabeth Harbour in South Africa, which was accordingly illegal under the PRC's policy.

<sup>36</sup> "Guanyu Chongzheng Butong Nan-chao-man, Yi-ter-lue he Nan-fe Jinmin-maoyi zhi Tong-zhi", cf. Dia, Li & Xu (1988): 251-255.

(i).(a) *The Legal Base of Administrative Legislation and the Rise of Local Legislation*

Basically, administrative regulations<sup>37</sup> adopted by the State Council, ministries and by local governments are for the implementation of the Constitution and the laws and policies adopted by the NPC. Generally speaking, most of the laws adopted by the NPC are general in nature and are therefore usually 'supplemented' by more detailed rules and regulations promulgated by the State Council or relevant ministries thereunder. According to Article 6 of the *Organic Law on Local Congress and Local Government of the PRC* (790701) (July 1, 1979; amended December 10, 1982), local congresses and governments at various levels are permitted to enact laws 'sutable to local conditions', provided that such laws and regulations do not contravene the Constitution, or the laws or policies adopted by the central government. The best example is the so-called "22 Articles": as soon as they were passed in October, 1986, many provincial and local governments promulgated similar regulations to give foreign investors more incentives.<sup>38</sup>

The decentralization of legislative, following the expansion of administrative power, was further empowered by a "Decision of the 3rd Session of the 6th NPC of the PRC on the Authorization of the State Council in the Formulation of Interim Provisions or Regulation Concerning the Economic Structural Reform and Economic Opening to the External World (850410.1)". Nonetheless, given the rise of the local legislation, this implies that the State Council has more power to harmonize its interim provisions, ministerial provisions and local regulations. Thus, the administrative office of the State Council published a Notice (*tong-zhi*) on 7 March 1987, which requires both local governments and ministerial departments to report their new "administrative regulations", with twenty-five copies of one form, within 30 days after ratification [*Law Yearbook of China* (1988): 137-138]. Furthermore, both administrative offices of the Standing Committee of the NPC and the State Council, issued a

<sup>37</sup> From the survey of the documents, Chinese legislation can be subdivided into three categories, namely, (1) laws (*fa-lu*) and regulations (*biao-li*); (2) ministerial provisions (*que-din*) and administrative rules (*hui-zhen fa-gue*); and (3) local regulations (*di-fang hui-zhen fa-gue*). Laws are superior to administrative rules and local regulations.

<sup>38</sup> For example, a set of regulations have been published since then, including "Provisions of the Shanghai Municipality for the Encouragement of Foreign Investment" (861011), adopted on 11 October, 1986, promulgated on 23 October, 1986. *Shanghai OIU Manual* (1988).

Notice on 25 May 1987, with the same requirements on the "local legislation" for fifteen copies of one form [*Law Yearbook of China* (1988): 137]. In short, the PRC government makes major efforts in *rationalization* of the legalization process and legislation of economic activities.

*(i).(b) The Relationship between Administrative Regulations and Statutes*

Indeed, under the laws adopted by both the NPC and the State Council there exist in reality two branches of administrative regulations: ministerial provisions and local legislation. The fact that these two branches are not combined into one single legislation also shows that there exist both practical needs and the possibilities of conflicts, as analysed below.

*Ministerial provisions*, within the category of administrative regulations, are more limited in nature and their application is generally within the sphere of the "function" of the ministry in question. Basically, the ministerial provisions are intended to supplement and implement regulations adopted by the State Council. These ministerial regulations have a nationwide application and may be supplemented by '*local legislation*' which takes into account the conditions and circumstances in the local areas. After the "22 Articles" were promulgated in October, 1986, for instance, the MOFERT, the People's Bank of China, and the MOF etc. subsequently issued implementing rules covering such areas as examination and confirmation of export-oriented enterprises and technologically-advanced enterprises with foreign investment, import and export licences, loans in Chinese currency and taxation. Also the Ministry of Labour and Personnel issued labour and wage rules<sup>39</sup> for the implementation of the "22 Articles".

Nevertheless, there were some ministerial provisions or administrative regulations promoted later, by virtue of their importance in practice, towards the higher grade as laws

<sup>39</sup> "Provisions of the Ministry of Labour and Personnel of the PRC on the Rights of Autonomy of Enterprises with Foreign Investment in the Hiring of Personnel and on Wages, Insurance and Welfare Expenses of Staff and Workers", an English text in *Shanghai OIU Manual* (1988): 257-260.

and regulations by the State Council. This flexibility explains how the administration has its important part to play in the practical modelling of foreign investments. Furthermore, in the light of interaction between the legislative and administrative powers, to what degree the Standing Committee of the NPC, especially its Working Committees, to cooperate with the State Council and various ministries to research and draft legislation for the implementation of the economic policies of the PRC remains interesting. However, the rapidly increasing amount of administrative legislation reflects that the State Council's delegated-legislative power has been increased.

As to the conflicts of both ministerial provisions and local legislation, a Notice was issued by the Supreme People's Court, on 9 December 1985, with some guidance to lower courts that if local legislation conflicts with either the Constitution, national laws (by the NPC and its Standing Committee) or administrative regulations (by the State Council), the courts should "report" the conflicts to the local People's Congress and its standing committee.<sup>40</sup> Both the Notice and the 1989 Administrative Litigation Law of the PRC (890404) have not specified how the courts should act or what the result might be reached. The only reference of the November 1988 draft of the 1989 Law above provided that in such case the national law would be of precedence [Finder (1989): 26]. Thus, in practice, the State Council's coordinating function shall settle the disputes.

However, the recent trend following the rise of local legislation has shown that several administrative and judicial problems are getting serious, such as contradictions from legislative "*bei-erh-bu-shen*" (recording without checking) [G.X. Xu (1990): 39], "*di-fang-bao-hu-zhu-yi*" (local protectionism) in economic litigations [Lian (1991)]. In his report to the NPC on 29 March, 1990, Ren Jian-xin, the Head of the Supreme People's Court, pointed out that the major obstacles in economic dispute settlement have come out of the "local protectionism" and "*ben-wei-zhu-yi*" (selfishness), which should be stopped.<sup>41</sup>

<sup>40</sup> "Guanyu Jiaqiang Jiaji Shupen Gongzuo de Tongzhi" (9/12/1985), reprinted in Yin Songnian (ed.) "Xingzheng Xueong Zhishi Shouce" (1988) (Handbook of Knowledge of Administrative Litigation), pp. 206 and 209; cited in S. Finder (1989): 25.

<sup>41</sup> Report on the Work of the Supreme People's Court (29/March/1990), by Ren Jian-xin, published on People's Daily (Beijing) (10/4/90): 2, reprinted in *Fame* (D41), 1990 No. 3, pp. 47-56; pp. 54-55.

*(ii) Authorities in Charge of Foreign Investment*

From the structure of the administrative system regulating foreign investment, we can see that before the 'formal' establishment of a foreign-invested enterprise there existed two procedures under a same set of authorities at all levels [cf. Zhang, Wang & Sun (1990): 231-233; Wang, Xu & Zhou (1984): 325-333]. Normally, within the first procedure, foreign participants, or with their Chinese participants together, have to receive a certificate of approval. Secondly, the authorities, especially the MOFERT, retain the final *discretion* and powers of intervention between the registration and the final report for the record.

*(ii).(a) Authorities in charge of Registration*

Although mainly procedural, the *Administration of Enterprise Legal Person Registration Regulations Implementing Rules*<sup>42</sup> (881103) (hereafter cited as the "Registration Rules") provide many instances of substantive corporate law which is lacking in the PRC today. For example, Rule 31 requires that the registered capital of an enterprise shall, in general, be equal to the amount of funds possessed by the enterprise at the time of registration. Basically, the Registration Rules apply to two broad types of 'non-government entity': "legal person entities" and "enterprises without legal status".<sup>43</sup> Rule 73 requires that "the administration of the registration of enterprises from foreign countries (regions) which engaged in operations in the PRC shall be handled in accordance with special regulations. This, then, suggests that the Registration Rules do not apply to representative offices.

<sup>42</sup> Promulgated by the State Administration for Industry and Commerce on 3rd November, 1988, and effective from 1st December, 1988; and enacted pursuant to Administration of Enterprise Legal Person Registration Regulations (880513) ("Registration Regulations").

<sup>43</sup> The first type covers legal person entities, such as enterprises with foreign investment, state, collective and private enterprises (Rule 2). The second type includes "enterprises which do not qualify for legal status", including branches and offices of enterprises with foreign investment (Rule 3).

The Registration Rules provide that the Administration for Industry and Commerce authorities led by the State Administration for Industry and Commerce (SAIC, included) are the authorities in charge of registration<sup>44</sup> [cf. Section VII.3].

*(ii).(b) Authorities in charge of Approval*

State intervention in the foreign investment approval process can be understood within the context of the PRC's economic development programme. To prevent the implementation of unauthorized investment projects, and to confirm that authorized projects will be carried out within the scope originally set by the State planning, all projects must be approved by the relevant government authorities before the contracts and agreements may be considered legally binding. In practice, what level of approval, local or central, is required for different types of projects has been the source of much confusion for foreign investors [Wang, Xu & Zhou (1984): 332-333].

The reason for this uncertainty lies in the fact that there is so far no national legislation regulating the approval procedures for foreign investment projects. The only existing relevant legislation is the 1979 *Joint Venture Law* which requires, in Article 3, that equity joint ventures be approved by the Foreign Investment Commission, now a merged part of the MOFERT, functioning under the new similar Foreign Investment Bureau. In 1983, however, this provision has been amended by the 1983 *EJVL Implementing Regulations*. Article 8 of the Regulations provides the MOFERT may in certain circumstance entrust its approval powers to other authorities, but the Regulations do not specify who these entrusted authorities may be. Nor do these regulations address approval matters relating to forms of investment other than equity joint ventures [also cf. Section VII.2.B].

<sup>44</sup> As to enterprises with foreign investment, these administrative regulations have required "regional Administration for Industry and Commerce authorized by the State Administration for Industry and Commerce" which shall be responsible for administering the registration (Rule 12). First, therefore, the registration of enterprises with foreign investment which are approved by "the People's Government of a province, Autonomous Region or Centrally Governed Municipality or an authority authorized by the government" and those which are approved by "the examination and approval authority at a higher level to which such People's Government or authority submitted for approval", shall be administered by the Administration for Industry and Commerce of "the relevant province, Autonomous Region or Centrally Governed Municipality" authorized by the SAIC. Secondly, the registration of enterprises with foreign investment which are approved by "the People's Government of a municipality or an authority authorized by the government", and those approved by "the examination and approval authority at a higher level to which such People's Government or agency submitted for approval", shall be administered by the Administration for Industry and Commerce of the relevant municipality" authorized by the SAIC.

Therefore, for information concerning the current status of Chinese policy regarding foreign investment approvals, evidence gleaned from Chinese practice and the advice from Chinese counterparts are relatively important. So far, some basic criteria developed from the administration, such as the amount ceiling of the investment, national importance of the project, and the special regulations, have been used by the authorities in determining the approval of foreign investment.

On the other hand, the scope of authority granted to local organs for the independent approval of investment projects has widened considerably in recent years [cf. *NBDC-II*,<sup>45</sup> in *The Nineties* (May 1992): 55-56; Shambaugh (1992): 31]. This is permitted under the 1983 *EJVL Implementing Regulations* aforementioned, while contracts approved by the local agencies pursuant to a valid exercise of authority must still sent to the MOFERT in Beijing "for the record (*bei an*)" (Article 8). However, the result of the local approval has been reported as "*chong-fu-yin-jin*" (over-repetition of attraction of foreign invested items) in different areas [*NBDC-II*, *ibid.*].

This trend of the "decentralization of approval authority" in recent years has been towards the development at the local level of rules regarding the approval procedures for investment projects. Many of these are classified as "*nei-bu*" (internal) rules, for use only by Chinese organizations, while others have been made public. A best example of the public ones is the 1984 *Procedures (for Trial Implementation) of the Shanghai Municipality Concerning the Negotiation and Procedures for Application and Examination for Establishing Chinese-Foreign Joint Ventures and Accepting Foreign Investment in Self-Run Enterprises* (840701.1). Later, an omnibus legislation<sup>46</sup> for the application and approval of foreign investment was enacted in Shanghai in 1986.

<sup>45</sup> "*Nei-Bu-Diao-Ce*" (Internal Investigation on the Development of the PRC) by China Association of Management Administration [*Zhongguo-qiyeh-guanli-xuehui*], China Association of Foreign Invested Enterprises [*Zhongguo-waishang-touzi-qiyeh-xuehui*], and Institute for Economic Institution and Administration under Committee of Institutional Reform of the PRC [*Zhongguo-tigaiwei Jingji-tizhi-yu-guanli yan-jiu-shuo*], Part I (cited as *NBDC-I*) published in *The Nineties* (April, 1992, Hong Kong): 36-39; Part II (cited as *NBDC-II*), *The Nineties* (May, 1992, Hong Kong): 55-57.

<sup>46</sup> "*Provisions of Shanghai Municipality on Application and Approval of Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Cooperative Ventures and Enterprises Operated Exclusively with Foreign Capital*", adopted by the 22nd Session of the Standing Committee of the Eighth People's Congress of Shanghai on 20 June, 1986. An English text in *Shanghai OIU Manual* (1988), pp.353-361.

#### V.4.B THE CONTRADICTIONS OF INFORMAL SECTOR

With a formal statutory structure, there are still some key legal and extra-legal issues that continue to affect the process of negotiating and operating foreign investments. For instance, in addition to the problems of the approval process of foreign investment, other difficulties include the management of labour, balancing of foreign exchange and operating costs, administrative control both from the officials and regulations, and all these legal-administrative problems remain a crucial issue for foreign investment in China [cf. Wang, Xu & Zhou (1984): 340-343].

##### *(i) Bureaucracy as the Gatekeeper for Foreign Investment: Legal Vs. Extra-Legal*

The administrative veil under the law remains crucial to foreign investors, although law has assumed a more important role since 1979. In those provisions of the earlier legislation, almost everything--even the tax rate to be applied to a joint venture--was left to later negotiations and decisions.<sup>47</sup>

However, the most important aspect to be considered in examining the legal regime governing foreign investment is the Chinese *attitude*, especially that of the Communist old leaders, towards law itself. When the renaissance of the PRC's modern legal system was initiated in 1978, the Chinese leadership viewed law,<sup>48</sup> rather than administrative orders, as an effective instrument for regulating social and economic affairs [Cf. Sections V.2.A]. This view was reiterated at a recent conference of the NPC in April, 1991.<sup>49</sup> To create satisfactory investment conditions in China, including the availability of '*fair and equitable treatment*'

<sup>47</sup> To be sure, the PRC has not produced legislation on every point of concern in the negotiation of foreign investment, nonetheless, the statutes catalogued above in the earlier sections, other laws that specifically govern joint ventures, and numerous pieces of general legislation that affect joint ventures as well as other types of foreign business projects, constitute a rich body of law to which foreign investors may refer in planning and negotiating foreign investment projects in China.

<sup>48</sup> Although the quality of legislation and administrative measures remain questionable, the PRC has made substantial progress in its modern legal system since 1979, especially following the 1982 constitutional legislation. The National People's Congress, the State Council and other prominent legislative bodies have promulgated about 100 laws and regulations relating to foreign economic relations. Cf. Section VII.2.B.

<sup>49</sup> *Beijing Review* (15-21/April/91): centrefold, p. XIV.



## V. The PRC: Informal Sector and Legalization

and legal protection for foreign investment, the PRC government has attached great importance to the establishment of a comprehensive and sophisticated legal framework for foreign investment.

For instance, in the case of *Nio-tuo-zi-cung v. Ta-zhong Co.* (30/10/1986),<sup>50</sup> the Appeal Court of the PRC decided that the *Nio-tuo-zi-cung* Village Residence Committee must complete the obligations under the contract of leasing land with the Sino-Japanese joint venture [Din, Li & Xu (1988): 266-268; JJF-400-ALX (1988): 382-383]. However, although the joint venture was protected under the law and could start its business operation, three further problems shall be taken into account here: the disputes came from the Chinese local authorities unexpectedly, the cost and troubles caused by the administrative intervention, and the difficulties of the long-term neighbourhood.

However, with regard to the implementation of the economic strategy, the *enforcement of law* remains uncertain. The problems of *administrative intervention* in business has been one of long-historical issues in Chinese domestic and foreign economic activities. Even in the late 1980s unreasonable administrative intervention in business by officials without regard to the law was criticized by the PRC government itself.<sup>51</sup> The extra-legal effects from the Chinese administrative system has been pointed out in a Chinese book:

"Our country develops the planning economy, one enterprise transfers itself from the state enterprise into a Sino-foreign enterprise, or sets up a Sino-foreign equity joint venture, must have a series of arrangements, and the consistent opinions on every question between the upper authorities and the lower units... [Wang, Xu & Zhou (1984): 340]"

Furthermore, the problem of the *efficiency* of the bureaucracy has been the second question. These problems arose because government officials have little understanding of

<sup>50</sup> A contract of leasing land between *Ta-zhong* (a Sino-Japanese pharmacy equity joint venture) and *Nio-tuo-zi* Village Residence Community, near Tianjin City, was signed on 10th October, 1981, for the company to construct the factory. However, after the building-up on 21st March, 1984, the Village Residence Committee immediately asked the company to restore the land for agricultural use. However, on 30 October, 1986, the Appeal Court dismissed with the charges of the *Nio-tuo-zi* to change the contract. The case was reported in *Ren-min Ri-bao* (People's Daily) on 20th November, 1986; analysed by two books referred above.

<sup>51</sup> E.g., when an article in the *Asian Wall Street Journal* (20/10/87) pointed this question out, a PRC State Councillor Gu Mu commented that 'there are many departments responsible for the enterprises with foreign participation but no one can solve their problems.' Gu also said that in some places officials either do not follow the law or simply regard their own words as law. Cited in G. Wang (1988): 34.

international economic relations, foreign investment and the attitudes of foreign businessmen.<sup>52</sup> The structural impact on efficiency has been obvious:

"At this moment, so many units are related with the Sino-foreign enterprises. Some Chinese participants need the ratifications from more than ten authorities, ... foreign investors accordingly complain this repeatedly... [Wang, Xu & Zhou (1984): 332-333]"

Also, *corruption* presents another problem [Riskin (1987): 336]. It is reported that the lack of a sound supervision and control system of bureaucracy created one of the major difficulties of the economic reform.<sup>53</sup> The State Council, as G. Wang has pointed out, has prohibited presentation or acceptance of gifts in the course of foreign trade or other economic relations.<sup>54</sup> Nevertheless, economic crimes are still committed by government officials involved in foreign economic activities and this is detrimental to foreign investment in China [Riskin (1987): 336]. Such behaviour by government officials as well as managerial staff members is harmful to the improvement and development of Sino-foreign economic relations and increases the general feeling of uncertainty and the expense which foreign investors have to bear. Although they are not strictly part of bureaucratic or administrative interference in foreign investment, they are bureaucracy-related and destructive to foreign investment. But, it is the powers given to the bureaucrats that put them in a position to make such demands. Finally, the increasing tension between the local and central administrative, along with economic development, has caused other uncertainties for the foreign investors.

#### (ii) Issues of Legislation and Legality

The growth of legislation on foreign-related economic law since the late 1970s explains the increasingly important role of law in Chinese economic development. This is

<sup>52</sup> 'In fact, in some places, government officials understand neither international business transactions nor China's open policy. They may interrupt the normal business operations of enterprises involving foreign participation and, in particular, look disapprovingly on successful ventures. As a result, even those who are satisfied with China's investment climate are afraid of telling the true story, because by doing so they may fall prey to the jealousies of local authorities, provoke allegations of profiteering, or encourage appeals for "donations" or suffer price rises by suppliers'. G. Wang (1988): 35.

<sup>53</sup> *Asiaweek* (Ya-Zhou Zhou-Kan) (19/May/91): 12-13.

<sup>54</sup> 'The prohibition extended to all kinds of gifts except articles of educational value, such as books and scientific data, commercial samples and non-consumer-type souvenirs exchanged during friendly activities. Some Chinese officials involved in foreign investment favour a foreign partner who sponsors overseas trips, frequently under the guise of "study" or "training" tours. Some of them even solicit bribes from foreign counterparts'. G. Wang (1988): 36-37.

also true of the issues of legitimacy and legality. The foreign-related statutes, rules, and legal documents in the PRC are sometimes called "*laws*", "*regulations*" at the statutory level, and other times labelled "*regulations*", "*measures*", "*announcements*", "*rules*" and "*circulars*" at the administrative-legislative level.<sup>55</sup> The legislative process for these statutes and rules exists at different levels within the Party-State administrative and legislative organs.

(ii).(a) *The Requirement of Legality in the Administrative Legislation*

The supreme level of the formal legislative process in the PRC is legislation by the NPC and its Standing Committee [cf. Sections III.5.A and III.5.B]. Hence, the Constitution of the PRC is the supreme legal instrument, and according to Article 5(2) of the Constitution, "no laws or administrative or local rules and regulations may contravene the Constitution". The "laws", or "basic statutes", rank second in the levels of legislation, and they can be enacted and amended by the NPC, under Article 62(3) thereof. Next are statutes enacted by the SC-NPC according to Article 67(2) of the Constitution.

The second level of the legislative process is through the functions of the *State Council*. The State Council, according to Article 89(1), exercises the power "to adopt administrative measures, enact administrative rules and issue decisions and orders in accordance with the Constitution and statute". Although under Article 67(7) of the Constitution, the SC-NPC can exercise the power "to annul those administrative rules and regulations, decisions or orders of the State Council which contravene the Constitution and the law", in reality the *Party-State mechanism* coordinates and smooths the legislative process by the State Council. So far, no annulment case has ever arisen.

There has been a trend of the rise of local legislations since 1982 [cf. Sections V.2.B and V.4.A.(i)]. Below the State Council there is a lower legislative level. *The provincial and municipal people's congresses directly under the Central Government* also have the power, as

<sup>55</sup> For example, the legal documents listed in *Shanghai Overseas Investment Utilization Manual* (Shanghai Translation Press, Shanghai: March, 1988; ISBN: 7-80514-118-5/D.11); hereinafter cited as *Shanghai OIU Manual* (1988).

mentioned earlier (*Article 100* of the Constitution), to adopt "local regulations, so long as these do not contravene the Constitution, the law, and administrative rules and regulations, and they shall report them to the SC-NPC for the record". However, under *Article 67(8)* of the Constitution, the SC-NPC has the power to annul those regulations if they contravene the Constitution, statutes, or the administrative rules and regulations. Since 1982, *Article 116* of the Constitution provides the organs of self-government of national autonomous areas greater legislative authority.<sup>56</sup>

These three legislative levels within the governmental system complete the legislative process in the PRC today. To sum up, under the 1982 Constitution the legal system is better equipped with both legitimacy and legality, in contrast to the pre-1979 legal situation. Therefore, we shall be more concerned with enforcement of the law.

*(ii).(b) The Role of Party-State and the Contradiction of Both Legitimacy and Legality*

Nonetheless, in the early 1980s, some works and publications have pointed out that in China, "the power to make law principally rests with two authorities: the SC-NPC and the Standing Committee of the CPC". This further reminds us of these political norms of *zhengce*, *jieding*, *zhishi*, *shelun*, referred by Zhang Youyu and Wang Shuwen, at the beginning of this Chapter. A serial collection of the PRC laws includes decisions or decrees of the Standing Committee of the Central Committee of the CPC, because "decisions or decrees of that organ sometimes have the power of law".<sup>57</sup> The editor of the collection explains that these decisions and decrees often appear "as broad principles or policy guidelines that the State Council would follow for fabricating regulations for their implementation".

<sup>56</sup> Article 116 of the 1982 Constitution reads, "People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record."

<sup>57</sup> Tai Dao (H.K., 1983): Preface, p. V.

Indeed, for instance, *the 1984 Decision of the Central Committee of Communist Party of China on the Reform of the Economic Structure (841020)* is believed to be one of guidelines for the State Council's economic administration, and was collected in another publication of PRC statutes. Another good example is *the 1986 Provisions of the Central Committee of Communist Party of China and the State Council on Further Checking the Party and Administrative Organs and the Cadres Therein from Engaging in Business and Running Enterprises (860204.1)* enacted jointly by both the Party and the State Council. Therefore, although the Party-State mechanism can coordinate and smooth the legislative process within the government system, the PRC still faces the dilemma of how to justify the legitimacy of the State and the Party and their relationship.

These two examples of regulations passed by the CPC demonstrate a fundamental paradox. Their intention clearly seems to be to reduce bureaucracy and encourage the rule of law by emphasizing legality and legitimacy. However, the regulations themselves are an emanation and embodiment of bureaucracy.

### V.5 CONCLUSIONS

Since 1979, China has been moving, "*walking on two legs*", towards a mixed economy where planning and market co-exist, with the bulk of the state enterprises and the more important industrial sectors managed by planning and with the remaining parts of economy regulated by the market. The Party-State mechanism, like the equivalent in Taiwan, has itself provided many structuring flexibilities, and informal sector accordingly, in this long transformation period of integrating both domestic and international markets. This Chapter has discussed the role of duality of Chinese state law and its informal domains under the open policy.

It has shown, following the elaboration of improvements of legal frameworks of foreign investment, there has been an expansion of control of business practice by both administrative and legislative authorities. During the First Wave of Encouragement of

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Foreign Investment, these actions, reactions, and interactions between "state law", "administrative measures", and "business practice" have been actively progressing. With a comparison of these interactions in Taiwan during 1960-1990, the Party political norms, *zhengce*, has first come to urge private investment to national development, the state law has then assumed the role of a vehicle for putting these Party political norms into practice. Furthermore, the administration has played the part as a bridge between the state law and business practice, which has been in nature moving faster than the changes of the formal law. Then, the changing elements of *zhengce*, administration and business practice again lead the direction of legal changes and the later legislation. Thus, a clear picture has co-existed in both Taiwan and the PRC, that is, the formal law remains as *gongju* (instrument) of *zhengce* (policy), on the one hand; and faces the challenges from informal sector within both administrative discretion and business practice, on the other hand.

Nonetheless, during the First Wave discussed, state law still has its positive but limited role to play. At least, up to the enactment of the 1988 Contractual JV Law, a process of "legalization" of foreign-related business practice has developed. However, this plethora of legislation has itself created both legal and extra-legal problems within the general environment of foreign investment regulation, which will be further discussed in Chapter VII.

For the legal problems concerned, due to the differences which exist between national laws and local regulations, foreign investors may be confused as to which law should prevail when local regulations conflict with the national laws. Generally, relationship between the general laws and the administrative legislation remains uncertain through the co-ordination of the State Council [Section V.4.A.(i).(a)]. This is especially so, given the importance of the various forms of foreign investments and local circumstances.

Indeed, in contrast to the period before 1979, the PRC's economic policy now gives the first priority to economic construction, while the socialist transformation of productive relations decreases its importance. The price to be paid for this policy-shifting has been economic disorder, such as inflation, an increasing unemployment, unbalanced distribution of

materials and resources, and economic injustices, which are the major reasons behind the 1989 Tiananmen demonstration [cf. *Zhong-fa* (1992) No. 2 Document]. Furthermore, the change of development strategy has focused on the "selective" approach to vigour the economy, such as using both foreign technology and capital, opening the SEZs and other open coastal ares, and, in law and business regulating various forms of business with individual legislation and administrative regulations.

Indeed, behind China's rich body of law, administrative practice still plays an important and semi-concealed role. While the emergence of this increasingly complete legal system has eliminated the need to muddle away on numerous basic issues, it has by no means made both the negotiation and the operation of foreign investment a smooth or routine process. Nor has it necessarily shortened the average time required to bring a project from the initial letter of intent or other preliminary document, over to the final contract, then through to practical operation. Thus, we shall develop our analysis of the interaction between law and administration, between the statutory framework, administrative procedure, and business practice of foreign investment during the Second Wave of Encouragement in Chapter VII.

## CHAPTER VI. FURTHER PROMOTION OF FOREIGN INVESTMENT IN TAIWAN THROUGH FORMAL LAW

### VI.1 INTRODUCTION

After the 30-year enforcement of the 1960 SEI, the recent legislation of the 1990 Statute for Upgrading Industries (SUI) has explained the fact that the bureaucracy of the Nationalists is highly flexible and efficient in administration of business regulation, but conservative and inefficient in the legislative activities and liberalizing general economic structure of Taiwan. In October 1988, a report by the Chinese Economic Institute (Taipei) for the Industrial Department under MoEA put five suggestions<sup>1</sup> on the review of the 1960 SEI for the directions of the proposed SUI. The most crucial point thereof has been the changes of encouraging policies have been put in the hands of "administrative manipulation" [*xin-zhen-bu-men zi-yuo-cai-zhong*] through legal empowering technically [CEI (Taipei) (1988): 18]

Indeed, only through the cautious examination of the 1990 SUI, can we understand that the problems of upgrading industries in Taiwan and other relevant social issues, such as inflation and high price of land, were caused by the mistakes of policy-making of bureaucracy during the 1950s-1970s, by the conservative attitude of the economic bureaucrats, and by the unreasonable relationship between domestic entrepreneurs and bureaucrats. Thus, when we envisage the relationship between law, administration and foreign investment, the so-called "Taiwan Miracle" praised by the bureaucrats themselves needs a reckoning.

Taiwan faces both internal and external challenges in its development towards greater prosperity. For instance, in spring of 1988, a succession of farmers' demonstrations and labour strikes occurred for the first time in Taiwan since 1949. The economic growth rate since then was higher than expected, so was the desperate demand for economic rights to development from the farmers and labour. Furthermore, despite Taiwan's internal tensions, the

<sup>1</sup> (1) the 1960 SEI has over empowered administrative authorities; (2) both tax and financial encouragements have been too excessive; (3) the tax encouragement have got exactly the opposite effects of competition; (4) the tax encouragement has been over complicated; and, (5) the serious problems of tax avoidance and erosion have been long existed under the 1960 SEI [cf. CEI (Taipei) (1988): 18-20].



United States has expressed dissatisfaction over her trade deficit with Taiwan. The Taiwanese side has tried hard, but largely unsuccessfully to explain to the US delegation the political, economic, and social effects of the US demands on its internal situation. In this Chapter we shall develop our analysis of law, administration and foreign investment from the comparison between the 1960 SEI and the 1990 SUI within the context of development of Taiwan.

#### **VI.2 PROTECTIONISM VS. LIBERALIZATION WITHIN THE FORMAL LAW: THE 1990 STATUTE FOR UPGRADING INDUSTRIES AS THE SECOND WAVE**

From 1st January, 1991 on, the 1990 SUI has replaced the 1960 SEI as the major legislation of both domestic and foreign investment in Taiwan [cf. *Taiwan Industrial Panorama* (IDIC) (January 1991): 1]. However, only after one year the Director of Industrial Department of MoEA has announced that,

"It seems necessary that in order to prevent foreign high-tech enterprises losing their confidence in the investment environment of Taiwan, we must review in all the 1990 SUI. [CDN (IE) (10/4/92): 7]"

The 1960 SEI was an omnibus legislation which came out of the economic circumstance of Taiwan during the 1940s and the 1950s [cf. Chapters II and IV]. The old economic circumstance included the problems of the lack of a sound system of taxation; overlap of taxation; difficulties of purchasing land for industrial use; and difficulties for amendment of a huge number of relevant laws and their measures. Then, the temporary special legislation was proposed for a duration of ten years only, which actually had been postponed for 30 years in total. However, the legislative background of the 1990 SUI has been cumbered by these *same* problems mentioned for the investment, and the Statute has been proposed to overcome these problems as obstacles for upgrading industries. At least, the bureaucracy of the Nationalists did not improve the relevant economic legislation to resolve those problems for three decades. Thus, this section will analyse the 1990 SUI, compared with the 1954 SIFN, the 1955 SIOC and the 1960 SEI, from the following points.

**VI.2.A. Discriminatory Base of Qualification under the Statute**

The legislative purpose of the 1960 SEI was for "encouraging investment and accelerating economic development", while that of the 1990 SUI has been for "furtherance of industrial upgrading and betterment of economic development" (Article 1, respectively). The former was clearer than that in the 1990 SUI of which the controversy of "industrial upgrading" has been existed long. Thus, some functional indications, such as promotion of research and development, improving technology transfer, upgrading productive efficiency, improving quality and image of products, and control of environmental pollution, lacked a clear claim under the cover of betterment of economic development. Accordingly, the ambiguity of the legislative purpose opens the discretion of administration and more questions left for further administrative legislation. Behind this, three possible reasons may exist: a legislative pragmatism followed by bureaucracy since the 1950s; a lack of awareness of social-environmental considerations of "development" by the bureaucrats; and a continuing legal base needed to succeed the 1960 SEI. The existence of any reasons mentioned explains the fact that the administration under the Nationalists are not ready for the programme of upgrading industries. For example, the Six-Year Development Plan (1990-96) analysed already, which covers six of seven and half years of the enforcement of the 1990 SUI (Article 44), has only passed until March 1991 to provide a macro guidance for national development.

Also, the structure of law also opens some issues.<sup>2</sup> The omission of 'co-operation of public enterprises' has been replaced by 'establishment and utilization of development fund', because of the uncertain status of public enterprises during the recent transition of the privatisation programme. But there is only one article with a rather general wording stipulating the establishment and utilization of development fund, while further regulation "shall be prescribed by the Executive Yuan" (Article 21).

<sup>2</sup>

The main body of the 1960 SEI covered three of five sections, including 'tax benefits', 'acquisition of land for industrial use', and 'co-operation of public enterprises'. However, the main body of the 1990 SUI has been lying on four of six sections: tax benefits (Chapter II); establishment and utilization of development fund (III); technical assistance (IV); and establishment of industrial districts (V).

Furthermore, other imbalances of the structure of law exists in the fact that only one article regulates 'technical assistance' (Article 22), and twenty articles deal with 'establishment of industrial districts' (Articles 23-42), among forty-four articles in total. Whether there exists a direct relation between the problem of industrial use of land and upgrading industries in reality remains a question. However, the overemphasis of 'establishment of industrial districts' has explained that a separate administrative legislation of 'Regulations for Establishment of Industrial Districts' is needed and the imbalanced drafting of the 1990 SUI by the bureaucracy.

Finally, the structure of the 1990 SUI provides a discriminatory base for the qualification of encouragement and application for law. Basically, the qualification of encouragement under the 1990 SUI is an interference of the state on market and competition of enterprises. Enterprises, based on profit-making, will choose the most 'appropriate' forms of management and business organisation, such as exclusive ownership (*du-zi*), partnership, and various forms of companies. However, the 1990 SUI, in Article 3, only applies for "any company which is incorporated in the form of a company limited by shares under the Company Law". Accordingly, *this provision excludes the majority of small and medium enterprises taking the forms of either 'exclusive ownership' or 'partnership' which has occupied beyond 60 % of the total work force and 50% of GNP (gross national product), are the most assistance-needed group for upgrading industries in Taiwan at this stage.*<sup>3</sup>

Theoretically, the small and medium enterprises should be benefited from the policy of upgrading industries, once their operation accords with the items of encouragement functionally, such as promotion of research and development, environmental protection, and energy saving etc. [Cf. *Taiwan Industrial Panorama* (IDIC) (January 1991): 1]. But, the limitation of 'the form of business', that is, the company-limited-by-shares under the 1990 SUI, not only deprives the opportunities for upgrading industries of small and medium

<sup>3</sup> The importance of small and medium enterprises (SMEs) has been reported as: "These nearly 780,000 entrepreneurial establishments constitute a great reservoir of business savvy, and their pioneer spirit remains vital to Taiwan's future economic growth.... In the past decade, they have accounted for 63 percent of total exports. The companies and their employees have also paid 69 percent of the total taxes in Taiwan". *Free China Ji*. (21/January/91): 5 "SMEs face New Challenges". For the decline of SMEs in Taiwan, see *Asiaweek* (Ya-Zhou Zhou-Kan) (21/01/90): 46.

enterprises, but also distort the basically functional qualifications provided by the Statute itself. Given the popularity of 'family-enterprise' in Taiwan, it may not be difficult to find other six persons to organize a company-limited-by-shares; but the limitation of family-enterprise and the past criticism of its economic disputes could jam upgrading industries for the relevant companies.

#### VI.2.B. Informal Domains within the Mechanism of Encouragement

##### (i) *The Major Mechanism of Encouragement and its Contrary Practice*

With regard to the mechanism of encouragement, the 1990 SUI provides only a modification of old stipulations. The 1990 SUI emphasizes 'acceleration of assets depreciation' (Article 5), 'investment credit against tax' (Articles 6-9), 'relaxation of limits of retained earnings' (Articles 15-16), and 'utilization of development fund' (Article 21) as the main mechanism of encouragement for upgrading industries. In fact, the 1990 SUI has abolished several methods of encouragement under the 1960 SEI before.<sup>4</sup> This simplification of both the mechanism and regulations of encouragement has been a major improvement of the new law. Especially, the abolishment of "*Categories and Criteria of Productive Enterprises Eligible for Encouragement* (amended on 26 November, 1986)" under Article 3 of the 1960 SEI has been a great step towards the simplification and transparency of administration on business regulation. Generally speaking, those major methods of encouragement mentioned under the 1990 SUI has been positively limited in the 'functions' of upgrading industries, such as research and development; energy saving or alternative energy sources; adjustment of industrial structure and improvement of scale of operations and methods of production under the benefits of "acceleration of assets depreciation" (Article 5).<sup>5</sup>

<sup>4</sup> Such as 'tax holidays (exemption for five or four years)' (Articles 6 and 7, the 1960 SEI), 'deduction of tax payment' (Article 10, the 1960 SEI), 'exemption or instalments of import duties' (Article 21, the 1960 SEI), and 'the reserve for loss of export or foreign exchange' (Article 31, the 1960 SEI).

<sup>5</sup> Paragraph 1 of Article 5 of the 1990 SUI reads: "Service life of fixed assets of a company may be accelerated in accordance with either of the following criteria provided, however, that if there is any under depreciated value during the accelerated service life, assets depreciation may continue in one year or several years within the service life of such assets as specified in the Income Tax Law until permissible depreciation is fully made: 1. Service life of instruments and equipment for exclusive use in research and development purposes and/or inspection of pilot products, or machinery and equipment used for energy saving purposes or as alternative energy sources may be accelerated by two years; 2. Based on the requirements for adjustment of industrial structure and improvement of scale of operations and methods of production, depreciation of the machinery and equipment of specifically

Also, the funds used for automation of production or production technology, for pollution control equipment or technology, and for research and development, professional personnel training and creation of internationally acceptable brands of products will be beneficial by 'investment credit against tax' (Article 6).<sup>6</sup> Thus, through these 'functional requirements', the major mechanism of encouragement in the 1990 SUI is a progress of the legislation. But, several definitions and requirements of the functions remain some issues. For instance, since 'automation of production' is not necessarily equal to 'upgrading industries', can an automatized production without any improvement of technology apply for the benefits mentioned? Also, benefits for pollution control equipment could promote more polluted production under a sort of 'subsidies', from a contrary viewpoint in practice.

Nonetheless, these preferences can be used by foreign investor to enlarge their profits. Foreign companies, on the one hand, can capitalize their technology without contributing capital, on the other hand, can use the technology as the key to widen their profits from tax benefits and those preferences discussed above, such as loan credits, plus the payments of intellectual rights and technician fees.

*(ii) Vague Interrelation between other Methods of Encouragement*

Investment credit against tax is also provided by the 1990 SUI for promotion of the investment in "an area with scanty natural resources or with slow development" (Article 7) and of intellectual property "provided or sold to a company for use in the Republic of China" (Article 9). The former could be less applicable in practice, since the enterprises can find other tax benefits under the Statute and not necessarily to invest in those areas where have been considered as not suitable for production. In case that other tax benefits were abolished, this provision could be more meaningful for the balance of regional development in Taiwan.

designated industries may be accelerated by one half of the number of years of the service life of fixed assets as prescribed in the Income tax Law; and if the residual period after depreciation is less than one year, then such residual period shall not be counted."

<sup>6</sup> Paragraph 1 of Article 6 of the 1990 SUI reads: "To meet the requirement of industrial upgrading, a company may credit five to twenty per cent of the amount of fund disbursed for any of the following purposes against the amount of profit-seeking enterprise income tax payable for the current year. In case the amount of profit-seeking enterprise income tax payable for the current year is less than the deductible amount, the balance of such deductible amount may be used to deductible the profit-seeking enterprise income tax payable within the ensuing four years. 1. The fund invested in equipment for automation of production or production technology; 2. The fund used in purchasing pollution control equipment or technology within five years from the effective date of this Statute; and, 3. The fund used in research and development, professional personnel training and creation of internationally acceptable brand(s) of product(s).

As to the royalty payment paid by the said company mentioned in Article 9, this provision may open a way for some enterprises to avoid tax, given the reality that there exists a possibility of price setting.

On the other hand, in response to the "government policy", for the "outwards investment" made by a company with the approval of the authority in charge of the end enterprise concerned, an amount up to twenty per cent of the total amount of such outwards investment may be set aside as the reserve for loss in outwards investment so as to cover the investment loss upon its occurrence (Article 10(1)). Again the "government policy" remain unclear in text, and the requirement of the "outwards investment" creates another discriminatory base for financially powerful enterprises. Accordingly, for the risks of investment, the outwards investment can receive the distribution of risks and loss of investment, while the domestic investment cannot be beneficial even with projects of high technology and high risks concerned. Thus, discriminatory encouragement based on functions has been distorted by the discriminatory distribution of risks under the 1990 SUI itself.

Many other tax benefits are out of space here to be paragraphed out; but, these tax benefits eventually create both discrimination of tax base and unsuitable encouragement or intervention. For instance, in business practice the enterprises use the merger of companies only under the profit-making consideration. But the 1990 SUI adds some exemptions and deductions of income tax, stamp tax, deed tax, and the land-value increment tax (Article 13). This provides another argument that the 1990 SUI is more beneficial for big enterprises with strong economic power.

Also, following the 1960 SEI, the 1990 SUI provides a major tax benefit for the "venture capital investment enterprise" (Article 20). For a company making investment in such an enterprise, there shall be 80% of the income derived from its investment excluded from its taxable profit-seeking enterprise income in the then current year.

## VI. Taiwan: Liberalization through Formal Law

With respect to foreign investment, two tax benefits shall be taken into further account. Where a non-resident individual or a non-resident profit-seeking enterprise, having been approved to make investment in Taiwan under the 1955 SIOC and the 1954 SIFN, receives dividend distributed by a company located in Taiwan or profit distributed by a partnership in Taiwan, the income tax payable thereon by such individual or enterprise shall be withheld at the time of payment thereof by the tax withholder as specified in the Income Tax Law at the rate of 20% of such distribution, and the provisions provided in the Income Tax Law for filing final income tax return shall not apply (Article 11(1)). Furthermore, where a non-resident individual, having been approved to make investment in Taiwan under both Statutes mentioned, holds the position of director, supervisor, managerial officer of the enterprise in which he invests, the provisions stipulated above shall apply to the dividend distributed to him by the said invested enterprise, if he has resided in Taiwan for managing or administering the enterprise in which he invests for more than 183 days in a taxable year as prescribed in Article 7:2(2) of the Income Tax Law (Article 11(2), the 1990 SUI).

Equally, where a foreign profit-seeking enterprise mentioned has dispatched its directors, managerial officers or technical personnel to Taiwan for performing temporary work such as investment making, plant construction or market survey, and has had them to reside in Taiwan for a period of less than 183 days "in aggregate" in a taxable year, their salaries paid outside Taiwan by the said foreign profit-seeking enterprise shall not be considered the income in Taiwan (Article 12). Nevertheless, although with these benefits, foreign investment still has to face the protectionist mechanisms within administration and policy of the government.

### VI.2.C. Limiting or Expanding Administrative Intervention?

With a less public assistance than that in the 1960 SEI, the 1990 SUI provides three scopes of co-operative actions from the public sector: technical assistance; establishment of industrial districts; and establishment and utilization of development fund mentioned.

Similar to Article 84 of the 1960 SEI, a "development fund"<sup>7</sup> shall be established by the Executive Yuan under the 1990 SUI (Article 21). The development fund can be used for six purposes,<sup>8</sup> of which several definition of terms remain unclear in the provisions, including "in line with the government industrial policy", "to take co-ordinate action", and "other purposes as specifically approved by the Executive Yuan". These issues may be defined after the further practice and Regulations governing the management and use of the development fund prescribed by the Executive Yuan in the future (Article 21(3)). Secondly, the 1990 SUI stipulates that technical assistance organizations formed "with the contribution of Government" shall provide appropriate technical assistance as required. Similarly, the further regulations relevant will be enacted by the Executive Yuan (Article 22).

Finally, the establishment of industrial districts is the third public co-operative action with over detailed provisions, in Articles 23-42, which can actually constitute a separate legislation. For the furtherance of industrial upgrading, the central authority in charge of industries may, according to the requirements of industrial development and taking into consideration of the social, economic and actual conditions of various areas, work together with the authorities in charge of consolidated development plan and regional plan to formulate a programme for the establishment of industrial district and submit the same to the Executive Yuan for approval (Article 23).

Generally speaking, these provisions are only a legislative succession of those of acquisition of land for industrial use, Articles 50-81 of the 1960 SEI. However, among the relevant provisions, there are two new creative stipulations. Being different from Article 60 of the 1960 SEI, the 1990 SUI provides, for development of an industrial district, the au-

<sup>7</sup> The financial source of the development fund shall be the appropriations from National Treasury. In addition, the operating balance of the development fund, if any, may be turned over to the fund, through budgeting procedures, for use as a revolving fund (Art. 21(2)).

<sup>8</sup> The six purposes in the 1990 SUI are: (1) To participate in the investment in important enterprises or plans (projects) relating to industrial upgrading or improvement of industrial structure which are beyond the capability or financial ability of private investors; (2) To provide financial facilities to important enterprises or plans which are relating to industrial upgrading or improvement of industrial structure but with insufficient capital; (3) To provide loans in line with the government industrial policy for assisting the sound development of industries; (4) To set aside an appropriate percentage of development fund in support of the plans relating to providing necessary assistance to the development of medium and/or small enterprises; (5) To take coordinating actions in the furtherance of the plans initiated by competent authorities concerned for acquiring of advanced technologies from abroad, promotion of research and development, training of personnel, pollution control, acceleration of improvement of industrial structure and/or betterment of economic development; and, (6) Other purposes as specifically approved by the Executive Yuan (Art. 21(1)).



thority in charge of industries may entrust the operations of development, sale/lease and administration to public or 'private owned' enterprises (Article 29). Indeed, Industrial Department of MoEA has entrusted Rong-min Construction Administration to build up two industrial areas in *Chong-li* City and *Duo-liu* Town in 1992 [CDN (IE) (11/4/92): 8]. Article 30 for the construction of 'an exclusive harbour' is the other new stipulation of the 1990 SUI here. However, the authority in charge of industries may terminate the lease agreements and repossess the land within the industrial harbour zone "on account of policy requirement" or failure of the leasee to make use of such land in accordance with the approved plan (Article 30(3)). Nevertheless, the ambiguity of the phrase of "policy requirement" may damage the interests of investors. Moreover, an interesting case occurred in the industrial district of *Duo-liu* mentioned on 27 March, 1992 has shown that the officials do not necessarily refer first to the statutory stipulations in practice. The business custom of casting lots for 52 enterprises to decide the purchase of three lands for industrial use,<sup>9</sup> in front of the officials of Industrial Department, has explained that the policy of upgrading industry is not the first priority in decision-making.

#### VI.2.D. Practical Contradictions Left by the Legislation

From the mechanism within the 1990 SUI, there obviously exists a debate whether the encouragements could be an interference of market or an adjustment for market failure. However, another argument may lie on the question whether the state intervention is necessary for these functional encouragements, such as research and development, training for professional personnel, establishing internationally acceptable brands, automation of production, pollution control, energy saving, and adjustment of industrial restructuring [J.Q. Wang (1991): 123-127]. After three decades of encouragements by the 1960 SEI, the fact that several business operations mentioned remain under the protection of state administration explodes the failure of upgrading industrial levels under this protectionism.

<sup>9</sup> In addition to the problem of over-crowded Hsinchu SIP [cf. Section VI.3.A.(i).(b) below], the difficulty for acquisition of lands for industrial use in Taiwan can be found from *Chong-li* and *Duo-liu* where the number of enterprises interested in investment far more than the number of the lands available. Cf. the same news resource under the Hsinchu SIP on CDN (IE) (11/4/92): 8.

Furthermore, the mechanism of encouragement shall be taken into account. In fact, after the amendment of the 1960 SEI on 26th July, 1977, the mechanism was shifted towards "functional encouragement" within an encouragement policy "based on forms of business, supported by functions of operations" [cf. CEPD, Taipei (1987b)]. However, this move towards functional encouragement has not completed after the enactment of the 1990 SUI of which the encouragement policy only reaches the stage of encouragement "based on functions of operation, supported by the forms of business". Several instances can be found: an acceleration of assets depreciation is based on "specifically designated industries" (Article 5); an investment credit against tax by the registered stocks depends on application of "important technology-based enterprises", "important invested enterprise" and "venture capital investment enterprise" (Article 8); a relaxation of limits of retained earnings is based on the "important productive enterprises" (Article 15). These discriminatory preferences based on the forms of business have eroded the equality of functional encouragement, in addition to another requirement of the company-limited-by-shares analysed before. Therefore, even certain enterprises that develop their operational functions for upgrading industries may fail to apply for the encouragement mentioned, simply because their forms of business are different from those in provisions.

### **VI.3 THE ROLE OF INFORMAL LAW AND ADMINISTRATIVE SECTOR IN THE REGULATION OF FOREIGN INVESTMENT**

In this section we shall analyse how far the governmental involvement through administrative control on business, especially foreign investment, is, and what the reality of political-economy behind this administrative mechanism has been. The administrative procedure shall be taken into account first, then the state intervention of production and political structure will be under a close examination as well. Therefore, we will see how the Nationalists maintain their ruling since the 1949 within the legal, economic, social, and political context in an integrated picture.

**VI.3.A. The Functions of Administrative Authorities in Charge of Foreign Investment and Administrative Procedure**

From the views of the bureaucracy, the regulation of foreign investment may be released from the general limits of the relevant statutory framework. But, from the views of foreign investors in Taiwan, the high degree of the governmental involvement into the business and investment process means, to a great content, a high degree of bureaucratic nature. Although there exist various authorities, general and special, at the different levels, central, local and special zones, we shall discuss the administrative procedure from the view of foreign investors, that is, approval procedure before operation of investment, and approval procedure thereafter. While the status of "foreign-investment-approved" (FIA) is the *sine qua non* for most foreign investment to enjoy the best treatment as analysed already, the approval procedure of the FIA shall be more considered here than other general description of administration.

Generally speaking, the major government agency deals with the approval of foreign investment is the *Investment Commission* (IC)<sup>10</sup> in which the Vice-Minister of Economic Affairs holds the Chair, in addition to a number of relevant government entities thereof at both the national and local levels, such as Ministry of Finance; Central Bank of China (in Taiwan); the National Bureau of Standardization; the Board of Foreign Trade; the Commercial Registrar;<sup>11</sup> and various central and local authorities<sup>12</sup> responsible for taxation, registration of incorporation, business licenses, labour and land use.

<sup>10</sup> The Investment Commission, located in 8th-10th Floor, 7 Roosevelt Road, Section 1, Taipei, is an inter-department commission under the MoEA.

<sup>11</sup> These entities, which have different functions and tasks. For example: the MoF, which has responsibility for foreign exchange control policy, supervises customs and handles applications for tax reduction or exemption; the Central Bank of China, which administers foreign exchange control; the National Bureau of Standardization, relevant to registration and licensing of patents and trademarks; the Board of Foreign Trade, responsible for issuing import and export licenses; the Commercial Registrar, responsible for issuing certificates of incorporation and for recognizing foreign branches.

<sup>12</sup> These entities include: the national and local tax bureaus; the provincial or municipal departments of reconstruction, which issue business licenses and register branches of foreign corporations; the administrative authorities of special zones, who act together with and sometimes in place of other authorities in supervising enterprises located within their borders; and various local authorities responsible for factory licensing, labour, and land use under the direction of the central or provincial governments.

*(i) "Policy-level" Discretion within the Approval Procedure Before Operation*

For administration of the approval of a foreign investment proposals, the IC has prescribed a set of application forms<sup>13</sup> which require the detailed informations of the proposals.<sup>14</sup>

*(i).(a) General Approval Process*

Five issues within the general approval procedure shall be taken into account by foreign investors. These are: procedure timing; preferential treatment; protection from domestic competition; revision of proposal; and, effects of the approval. As to the efficiency of the decision-making, following filing the IC will process application within two months and make a decision within about six weeks.<sup>15</sup> Secondly, as to the preferential treatment, it depends on the parts of the foreign investors to specify each item of exemptions desired and preferential treatment preferred under the mechanism of the 1954 SIFN, the 1955 SIOC, and the 1990 SUI from 1991 (the 1960 SEI before).

Thirdly, whether this preferential treatment extends to the protection of domestic competition remains a bargaining question in practice. For instance, whether to open the domestic competition for the "automobile" industry will benefit promotion of the national industrial and technological levels or damage the infant industries remains a debate. In Taiwan, the domestic "soft drinks" industries have been seriously humbled by the American investment of soft drinks industries, such as Coca Cola and Pepsi Cola; while the infants industries of automobile and insurance remain as the infants for four decades. In the context for the national development as a whole, it seems difficult for the bureaucrats themselves to

<sup>13</sup> Except for "technical appendices" which may be necessary in foreign languages, the application forms of the IC must be in Chinese.

<sup>14</sup> Especially: a) for capital: the total capital requirements, foreign exchange requirements, and a general outline of the proposed capital structure for the venture; (b) for business operation: a description of proposed products or services, output capacity of the proposed facility, production plans, and domestic and export sales forecasts; (c) for technology of production: detailed information about the machinery, equipment, or raw materials to be imported in connection with the project; and, (d) for benefit of the project: assessment of the economic benefit of the project to Taiwan, including transfer of technology and training of local personnel. 1989 Manual (Taiwan), Ch. 1, pp. 1-12, and Appendix, pp. 283-310.

<sup>15</sup> "Supplementary Measures for the Company Registration in respect of Overseas Chinese and Foreign Investments" (750422) (1975 Foreign Company Registration Measures), amended on 28 July, 1982.

explain why the competition for upgrading industries, such as automobile and insurance mentioned, cannot be applied for foreign investment.

Fourthly, being an inter-department entity, the IC will review the applications for FIA status of legislative encouragement and the technical co-operation contracts through the relevant assistance of other governmental agencies therein. In order to follow the "prevailing governmental policies", which remain unclear within the text of statutes, these governmental agencies have rights to suggest revisions of a plan and condition the approval "on implementation of such suggestions". Again, the content and the approach of such suggestions remain a question in practice. For instance, the IC may use the "trade imbalance" (of countries from which imported machinery, equipment, or raw materials may be supplied) to suggest the use of local suppliers, while Japan remain as the biggest country for both "machinery and equipment resource" and "trade imbalanced" country to Taiwan.<sup>16</sup> Other significant cases can be found easily, such as importation of apples permitted only from the U.S.A.; importation of ginseng, only South Korea; and importation of small automobiles, only the U.S.A. and Europe, while that from Japan has been prohibited [M.J. Liu (1991): 116]. The practical difference between suggestions, revisions and operation of foreign investment exists as another problem.

Finally, the effects of the approval made by the IC shall be taken into account. The approval is valid for six months and may be renewed upon application for a further period of six months. In other words, the approval from the IC does not obligate the investors to proceed with the investment plan. However, prior to certain actions within the approved plan taken by the investors, such as the importation of machinery and equipment, reports to the IC are required<sup>17</sup> as a close control under the administration. Nevertheless, recently the effects of the approval under the IC have been uncertain in the problems of the location of operation of the high-polluted industries, viewing the demonstration and boycott from the envi-

<sup>16</sup> Trade imbalance between Taiwan and Japan in 1990-91 has reached about US\$ 9 billion, close to the same amount of USA to Taiwan. *Amiweek* (Ye-Zhou Zhou-Kan) (2/June/91): 44-45.

<sup>17</sup> 1989 Manual (Taiwan): 219-253.

ronmental protection.<sup>18</sup> Therefore, there exists another problem between the investment proposals, the decision-making of bureaucracy and the demand of the society, or the right to development of the people.

*(i).(b) Approval Process Under EPZs and SIP Authorities*

As to the super-preferential treatments in the EPZs and SIPs [cf. Section IV.4.A. (ii) & (iii)], an interesting case has occurred in Spring 1992. In order to enjoy the five-year exemption of tax and preferences under the 1979 SIP Statute, both Overseas Chinese and foreign investors have to put their names on the long list and wait for the result only [CDN (IE) (11/4/92): 8], because the Hsinchu Science-based Industrial Park has been full already.

For the reasons of functions and location of administration, the authorities of the EPZs and the SIP in Hsinchu assume the position of the IC within their domains. In addition, four characters are considerable in expansion of administrative power. First of all, except for their own "criteria" for the screening of investments, the application procedure in each special zone is similar to that for investments outside the EPZs and SIP, in return more incentives are provided therein [cf. Section IV.2.C]. Secondly, exceptional administrative structure has arranged. Accordingly, the *Export Processing Zone Administration* under MoEA is empowered with the rights to examine and approve foreign investments, technical co-operation contracts, trademark licensing contracts (in place of the National Bureau of Standardization) for enterprises located within one of the three EPZs. These rights also allow the Administration to issue "business and factory licenses", and "import and export licenses", which are normally issued by various agencies connected with the IC as analysed.<sup>19</sup> With the similar functions, the *Science-Based Industrial Park Administration* under the National Science Council assumes the role of administrative authority within the Hsinchu SIP.

<sup>18</sup> Aslawenk (Ya-Zhou Zhou-Kao) (4/August/91): 20-22; and, (19/May/91): 46.

<sup>19</sup> Cf. Art. 8 of the 1965 EPZ Statute; Art. 3 of "the 1975 Foreign Company Registration Measures"; Art. 7 of the 1979 SIP Statute.

These administrative arrangements make the third special character of these zones, that is, encouragement of investment is more emphasized on "operational functions", such as promoting exporting and upgrading science and technology, than on the forms of enterprises. For instance, the operational functions of business can be illustrated from the major difference between investment in the SIP and investment elsewhere: a "bond", which is subject to forfeiture if the proposal plan is not completed, must be deposited with the SIP authority by the investor who wish to invest in the Park (Article 10, the 1979 SIP Statute).

Finally, the existence of both special administrative domains and their incentive mechanism constitute a "sub-exception" to the special administrative framework (based on the 1954 SIFN, the 1955 SIOC, the 1964 STC and the 1990 SUI replaces the 1960 SEI), because both foreign and domestic investments have been of itself an "exception" deviated from the general framework of business. Therefore, in addition to the economic inequalities, administrative mechanism further constitutes the legal inequalities between the various enterprises through a public intervention in the field of private business.

Then, what are the attractiveness of these economic inequalities for foreign investors in the case that the 1990 SUI meets the 1979 SIP statute in reality? Liu Kwong-rong, an Accountant of Taiwan has pointed out:

"In order to set up the factory for manufacturing the computer materials, our foreign investing clients wish to enjoy the preferences under the 1979 SIP Statute, and accordingly to benefit not only from the encouragement under the 1990 SUI, but also from five-year tax exemption there. However, the reality of the overcrowded Hsinchu SIP makes this impossible. [CDN (IE) (11/04/92): 8]"

In addition to the difficulties of acquisition of lands for industrial use, the fact that several sub-statutes and procedural regulations, such as those on how to apply for purchase of automatic-production equipments, has been criticized as the major obstruction for foreign investment after the implementation of the 1990 SUI for one and half years [CDN, *ibid*].

*(ii) Over-flexibility of Discretion within the Approval Procedure After Operation*

In general, after the commencement of business, the IC still has its control on three areas of the foreign investment: remittance of profits; the fulfilment of the proposal plan; and the sources of profits. As mentioned, on an annual base, foreign investors may apply to the IC for permission to remit profits and dividends from enterprises with *foreign-investment-approved* (FIA) status. However, this approval procedure has proved flexible in practice. For example, if remittance is deferred beyond six months after the tax assessment, the IC will require an "application for deferred remittance", which is not in practice strictly enforced. The famous "hot-money wave" in and out of Taiwan before and after 1987<sup>20</sup> further explained the ineffectiveness of administrative control on foreign exchange, which in the past only affected the small and medium enterprises unequally. However, in administration the Central Bank of China grants permission for remittance on the base of approval of the IC. As discussed already, repatriation of capital, as a privilege, by foreign investors in an FIA enterprise can be claimed one year after commencement of business. In order to preserve this privilege, a foreign company is required by the IC to route the remittance through the one of the 'designated foreign exchange banks' and 'report' to the IC for investment appraisal and recordation, in case of remitting capital to its 'preparatory office bank account in Taiwan'. For the same administrative screening, foreign investors should also submit documents supporting their valuation of 'non-cash capital contributions sourced abroad' to the IC. From a practical view of business, after 13 July, 1987 the privilege of relaxed foreign exchange control under the status of FIA lost its importance as before, but this administrative procedure remain necessary.

The 1960 SEI permitted the FIA enterprises to remit abroad all capital gains in foreign currency not resulting from "appreciation of capital of land values" (excluded by Article 19). Given the fact that the rocket-riding price of the land<sup>21</sup> dominated by Japanese and

<sup>20</sup> Within the process of appreciation of New Taiwanese Dollar from NT\$ 40: US\$ 1 to NT\$ 27: US\$ 1 during 1985-90, the problem for Taiwan is the in-flow (of the currency speculation), not out-flow, of the money as a financial burden. On 26 June, 1987, *Statute for Foreign Exchange Control* (481231) was amended to release the foreign exchange control, which was actually only to legalize a long practice of business only. Accordingly, from 13 July, 1987 on, remittance of less than US \$5 million per annum and less than US \$1 million per remittance will not require prior approval. Also Cf. Clark (1989): 208.

<sup>21</sup> *AsiaWeek* (Ya-Zhou Zhou-kan) (01/Sept./91): 31-32. Up to April 1992, how to control the prices of housing, lands and products remain the crucial task for the Nationalist government, cf. CDN (IE) (11/4/92): 7.



American-based Overseas Chinese companies, the stipulation above is meaningless in practice; the 1990 SUI has no relevant provisions. Furthermore, as to the capital gains from 'sales of securities' (other than those security listed on the Taipei Stock Exchange) and from the 'sale of machinery and equipment', remittance is permitted on the application to the IC within six months of their realization, submitting evidence of relevant tax clearance.<sup>22</sup>

### VI.3.B. Administrative Practice and the Role of Bureaucracy

The legal framework of foreign investment, as we have analysed above, produces a discriminatory mechanism between the foreign and domestic enterprises, such as the use of the 'directives of criteria' and 'negative lists of limitation' of investment, and between the big and 'small and medium' enterprises, such as the form of the company-limited-by-shares and the requirement of minimum ventures. Now, we shall analyse the role of bureaucracy and foreign investment in the prosperity of Taiwan, then find out their relationship in the general context of the regulation of foreign investment under the common interpretation of the development of Taiwan. However, as I will argue later, the "Taiwan Experience" provides a negative lesson, showing an irrational increase of administrative measures and decrease of foreign investment.

The government not only directly manages important public utilities and enterprises that affect the nation's economic well-being as a whole, (such as *electric power, transportation, communications, sugar manufacturing, petroleum and fertilizer industries*), and promotes and participates in such projects as are required for agricultural development, but also plans and helps to carry through the development of important industries under private ownership [cf. Chapters II and IV].<sup>23</sup> In fact, the government has at various times served as custodian of private firms, founder of new enterprises, prospector, supplier of raw materials,

<sup>22</sup> Art. 6 of the 1975 Foreign Company Registration Measures.

<sup>23</sup> The economic policy of the Nationalist government has been guided by the Principles of People's Livelihood, whereby the government takes the lead and gives direction to national economic development, while encouraging the free play of private enterprise consistent with government policy.

buyer of finished products and money lender willing to accept high risks.<sup>24</sup> The initiative and leadership taken by the government in this respect is generally believed to be one of the main reasons for the rapid economic growth of Taiwan.<sup>25</sup>

Suffice it to say here that the major strategies and considerations which over the years have guided the ROC government's efforts to promote economic development, and which constitute public policy during certain phases of development, are as follow: price stability, providing infrastructural facilities, incentives, foreign aid, an orderly development of agriculture and industry, boosting the investment climate, supporting the agriculture sector, transformation of industries, and market (Cf. Section II.3.C). These strategies and considerations are evident in the planning and implementation of the series of economic development plans put into effect during the last four decades (1952-90).

Planning in Taiwan mostly takes the form of '*suggestions*' to the private sector, *backed up with sympathetic fiscal, monetary and trade policies, the legislative framework, and maintaining the infrastructure.*<sup>26</sup> The direct role of the government has diminished over time but it still operates the key energy and heavy industry sectors. In addition, it takes an active role in priority areas--such as the establishment of the Hsinchu Science-Based Industrial Park in 1980 and the recently constructed World Trade Centre. Moreover, the government has a controlling influence over the financial sectors and over certain prices, notably, those of energy (Cf. Section II.3.C).

One of the by-products of the planning system has been a high degree of **protectionism**. For example, imports are fairly well regulated and foreign investment is screened. The argument that *infant industries*, such as automobile and service sectors, should

<sup>24</sup> The reasons why the government participates directly in certain vital industries are: on the one hand, early in Taiwan's economic development during 1950s, there was an acute shortage of the farsighted entrepreneur or the imaginative banker like those in the advanced countries. On the other hand, many of these state industries were either inherited from the Japanese after the World War II or had large capital requirements, making them difficult for private industry to undertake. See K.T. Li (1976).

<sup>25</sup> The trend has now been to sell to the private sector marginally profitable industries where it is not considered necessary for the government to retain control. In 1952 the public sector accounted for 57 per cent of industrial production. By 1983 this proportion had shrunk to 16 per cent. Nearly all public industries, according to the reports, return considerable profits. See The Economist Intelligence Unit, *Country Profile: Taiwan, 1987-88*, (London: 1987), p.23.

<sup>26</sup> Ibid., pp. 15-16.

be protected by the state is used as justification for protectionist measures [cf. M.J. Liu (1991) and J.Q. Wang (1991)]. Nevertheless, the system has been challenged and as a result, the trend in recent years has been towards "liberalization" and "internationalization" of the economy, permitting more foreign competition in the form of imports and direct manufacturing production.<sup>27</sup> At the same time, pressure from the USA<sup>28</sup> in particular to move more rapidly towards a free trade regime has been mounting in recent years.

In short, in addition to trade and economic planning, government and bureaucracy also play a leading role in the regulation of foreign investment in Taiwan. In developing countries, the activities of foreign capital and Multinational Corporations (MNCs) have been surrounded by considerable controversy. In Taiwan's case, these activities do not seem to have brought most of the problems posited by dependency theory [Clark (1989): 184-185]. The reasons that the GMD regime escaped the problems created by MNCs in many other developing countries, according to C. Clark [(1989): 185], include both the timing of Taiwan's industrialization surge and "the explicit efforts of the government to manage foreign capital".<sup>29</sup>

However, in my view there are three important and different aspects behind Clark's analysis which must be addressed: first, "the barriers erected as part of the import-substitution strategy" before the early 1960s have not disappeared (Hsing (1990): 78). Second, these barriers have continued to work since then, and have their effects, positive and negative, on Taiwan's present expanding economy. Finally, the development of 'internal resistance' toward foreign investment in Taiwan after the domestic industrialization since the early 1960s have developed through these administrative barriers [Cf. M.J. Liu (1991): 116].<sup>30</sup> The

<sup>27</sup> Eg., *FCJ*, (09/May/88), 'Taiwan's Door is Open to Foreign Securities Firms'; *FTL*, (21/Apr/88), 'Taiwan may seek end to EC barriers'; and *FTL*, (12/May/88), 'Taiwan to relax broker rules'.

<sup>28</sup> Eg., a crucial trade talk was started in 1988; cf. *FCJ*, (09/May/88), 'Trade Talks, Bids Bother US'. The recent Taiwan-USA trade talk, focusing on the protection of intellectual property, was in April 1992; cf. *CDN* (IE) (12/4/92): 1.

<sup>29</sup> "Foreign investment did not really begin to flow into Taiwan until the early 1960s both because of the barriers erected as part of the import-substitution strategy and because of the poor investment climate created by the island's uncertain political and economic status. Thus, domestic industrialization was well under way when the foreign presence started to escalate, which made 'denationalization' and foreign domination much harder to achieve." [Clark (1989): 185]

<sup>30</sup> Furthermore, administrative barriers have also been the core of protectionism of international trade in Taiwan. M.J. Liu has pointed four kinds of administrative measures that have been used in formalization of protectionism: (1) the measures for "limiting imports-

attempts of legal changes and the failure of the new policy discussed before explain these situations. Moreover, even accepting "the explicit efforts of the government to manage foreign capital", which Clark has praised, this management may be a myth only, given the analysis of Professor Tsiang (, a long-term participant of economic policy-adjustment in Taiwan,) that "after 1963 foreign capital and foreign transfer dropped sharply, and American aid stopped in 1965" [Tsiang (1985): 165], which contradicts Clark's statement above.

#### VI.4 EVALUATION ON THE REGULATION AND PROTECTION OF FOREIGN INVESTMENT IN TAIWAN'S DEVELOPMENT

In this section we will evaluate the developments of three basic elements as our concluding remarks: the role of foreign investment in Taiwan's development; the role of the Nationalist Party-State intervention on business; and, interaction between formal and informal law therein which has been the major theme of this study.

Up to the end of the 1980s, a much greater role was given in Taiwan 'small and medium enterprises' within the industrial structure than in its Asian competitors such as Japan and South Korea, while economic denationalization and foreign domination by MNCs still remained less than other countries from the out-looking. On the other hand, one major dilemma faced by the GMD government in the early 1990s is that the current economic policy [Cf. Section II.3.C.(v)] to make the private sector better structured for industrial transformation may under cut one of Taiwan's prime comparative advantages--the ability for '*flexible production*' by small and medium enterprises, with their willingness to change, adapt and meet the customers' requirements and changes in fashion or trends, and to promote technological diffusion by Taiwanese managers from MNCs to start their own small or medium enterprises. Nevertheless, in the long term, the new economic strategy and policy under the regime will inevitably change not only the importance of these small and medium

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tion by the producing enterprises only"; (2) measures for "limiting importation by the public enterprises only"; (3) measures for "limiting importing areas"; and (4) measures for "application and approval" M.J. Liu (1991): 116-117.

firms<sup>31</sup> but also the role of foreign investment. Several cases at present shall be analysed accordingly.

#### VI.4.A. Another View on the Role of Foreign Investment in Taiwan's Development

It is commonly believed that the increase of foreign investment during the 1960s and the 1970s demonstrated the success of the governmental measures to stimulate and manage foreign capital. In fact, this is doubtful. Private foreign investment, which had averaged less than 1 percent of gross domestic capital formation (GDCF) during the 1950s, rose to over 4 percent during 1960-67 and to 9 percent at the beginning of the 1970s [Clark (1989): 183]. Furthermore, foreign investment in Taiwan varied and changed over time considerably by industry.<sup>32</sup> More precisely, within each particular industry, *electronics* was also the "only sector" with a particularly large foreign presence, that is, 19 percent in the 1960s and 34 percent in the 1970s, although in machinery and non-metallic mineral sectors respectively foreign investment reached a fifth of total gross domestic capital formation (GDCF) in the 1970s [Clark (1989): 184]. In short, in terms of the capital amounts, the facts show that foreign investment in Taiwan never reached high levels. However, Clark does not discuss to what extent the increase of foreign capital amount resulted from the government incentive policy.

Nevertheless, the '*sector-directing policy*', praised by Clark, could be in question in Taiwan.<sup>33</sup> Although I agree with Clark's analysis that Taiwan's strong domestic investment

<sup>31</sup> See "SMEs Face New Challenges", *FCI* (21 January, 1991): 5.

<sup>32</sup> During the 1960s, foreign investment was concentrated in the *electronics, textile, and chemical industries*, which accounted for two-thirds of all foreign capital. In the 1970s, the proportion in *electronics* rose markedly from 34 percent to 44.5 percent, while that in textiles decreased sharply close to zero [Clark (1989): 183-184].

<sup>33</sup> Clark has noted here, "The regime ..... moved to channel foreign capital into the new dynamic export sector, to ensure its integration with the overall economy through domestic content legislation and limitations on the number of expatriate managers, and to maintain the monopolies of state corporations in the heavy and capital-intensive industries usually dominated by foreigners. The government's ability to regulate foreign capital depended on the high profit that could be obtained in the rapidly expanding export sector, but the attractive economic environment meant that foreign firms could be successfully harnessed to Taiwan's developmental objectives." [Clark (1989): 185]

and saving records--perhaps the highest in the world in the 1970s<sup>34</sup> - were a principal reason for the country's industrial transformation and growth, the effects of Nationalist government's measures to stimulate and manage foreign investment remain doubtful. In fact, although the government policy can induce the inflow of foreign capital, foreign investors can still make their own decisions. Furthermore, the expansion of the "export sector" cannot be justified by the minimum inflow of foreign capital as a whole analysed. Moreover, the "attractive economic environment" praised by Clark cannot be proven by the fact that after 1963 foreign capital dropped sharply. At least, we shall bear in mind that in Taiwan "export-oriented FDI did occur during 1967-74" only [Tsai (1991): 277], while Clark has treated all FDI in Taiwan as export oriented under the sector-directing policy. Tsai's recent empirical study has explained that "most of the FDI in Taiwan" has aimed at the domestic market [Tsai (1991): 277].

Since Taiwan already had created a strong and expanding economic base, the powerful external economic shock resulting from the first oil crisis in the early 1970s had only a fleeting impact on the country. To the GMD government and its bureaucracy during the global economic crisis, considerable credit must be given (Cf. Section II.3.C.(iv). above). Indeed, the regime successfully blended deflationary and stimulative policies and fine-tuned the degree of government activities to rapidly changing macro-economic conditions. But, this only explained the short-term "pragmatist" reactions, for instance, the controversy highly-controlled market and importation [cf. M.J. Liu (1991)], to reduce the impact of the external shock.

However, the changing policies and strategy over time have brought in considerable controversy on Taiwan's further development and the performance of bureaucracy in the regulation of foreign investment, as Taiwan was pricing itself out of the low-cost labour niche in the global economy. Thus, in early 1990s, the new labour issue has been the status of migrant workers from overseas and Chinese Mainland [e.g., CDN (IE) (11/4/92): 8]. A

<sup>34</sup> E.g., saving as a proportion of GNP, "which had averaged 9 percent in the mid-1950s and 11 percent in the late 1950s and early 1960s, rose dramatically as export-led growth produced more resources, from 12.4 percent in 1962 to 17.2 percent in 1963 to 25.3 percent in 1970 and to 32.1 percent in 1972". Clark (1989): 182.

new inflationary surge occurred during the mid-1980s; and the international and domestic economic regressions in 1990-91. Therefore, in the whole 1980s the government had been guiding the economy towards a new transformation to such 'capital-intensive' industry as *machinery, steel, petrochemicals, and non-ferrous metallurgy* and to various types of 'high-technology' industry, especially in the *electronics and information-processing* fields.<sup>35</sup> In short, Taiwan has been trying to establish a new '*international comparative advantage*' in more technology, skill, and capital-intensive products, while remain certain degree of the old international compared advantage, such as without requirements of labour welfare under the international labour organization, of which Taiwan is not a member.

As directly reflected in Taiwan's production and trade statistics during 1977-86, this new economic strategy did bring in some achievement<sup>36</sup> in Taiwan's international competitiveness and prove that the country could move beyond assembly work by low-cost labour.<sup>37</sup> But again this achievement could benefit the domestic enterprises. Because of a strong need for technological development under this new strategy, Taiwan also started changing its policy to attract more foreign investment. For instance, some of the regulations governing foreign investment were liberalized and changed during the 1980s, with the result that foreign investment increased substantially from the late 1970s to the late 1980s.<sup>38</sup> However, again this is only part of the global expansion of foreign investment [Tsai (1991): 276]. Therefore, after the successful record during the 1967-1974 when foreign capital had been concentrated in the export sector (already discussed), whether Taiwan has continued to attract foreign

<sup>35</sup> For example, the Science-Based Industrial Park in Hsinchu opened in 1980 seeming to bring together both domestic and foreign enterprises in high-technology industries. Furthermore, the two new sets of governmental programmes in the 1980s, the so-called Twelve and Fourteen Construction Projects respectively, provided the similar instances. cf. *FCJ* (17 January, 1991): 5; *FCJ* (21 January, 1991): 5.

<sup>36</sup> E.g., during 1977-86, according to *Taiwan Statistical Data Book* (1987), heavy industry grew at an annual rate of 12.2 percent, compared with 7.8 percent for light industry. Furthermore, the fastest annual growth rates for individual products over this period, were generally recorded by "sophisticated manufactures" including telephone sets (48%), electric fans (39%), electric calculators (26%), machine tools (20%), motor vehicles (20%), sound recorders (18%) and integrated circuits (17%), along with a few simpler consumer products. *Taiwan Statistical Data Book* (1987): 92-96. Also Cf. Clark (1989): 201.

<sup>37</sup> In 1986 the principal export source in Taiwan became "electronics", combining both high technology and labour-intensive assembly, which rose from 12.3 percent to 22.3 percent of all exports during 1970-86. Furthermore, during the same period heavier industries, including rubber and plastics, metal manufactures, and machinery, also became more important as their combined share of Taiwan's export mix rocketed from 6.1 percent to 19.3 percent. *Taiwan Statistical Data Book* (1987): 213, 228-229. Also Cf. Clark (1989): 202.

<sup>38</sup> Foreign investment increased substantially from \$164 million in 1977 (to \$466 million in 1980 to \$770 million in 1986) to \$1,223 million in 1987, which was equivalent to about 6.5 percent of total investment during 1985-86: Clark (1989): 203; quoted from U.S. Department of Commerce, International Trade Administration, *Investment Climate Statement: Taiwan* (Washington, D.C.: U.S. Government Printing Office, 1988).

investment and is able to control it in directing it into priority sectors remains a question during the 1980s and the 1990s. In practice, this "*sector-directing policy*" by the government has been controversial, although up to date foreign investment has continued to be concentrated in *high technology* and *heavy industries*, particularly *machinery, electronics, and non-metallic minerals* [FCJ (1/1/91): 3], which may not only be guided by the government but decided by foreign investors themselves.

However, in terms of the three major contributions--funds, technology, and marketing networks--that foreign investment can make to the domestic industrial structure, the "Taiwan miracle" could be a "mirage" in the long term. First, given Taiwan's strong record of domestic saving and re-investment since the 1960s, the amount of foreign capital, as analysed above, was relatively minor; and the country is now suffering from its over-huge trade surpluses (e.g., \$73.5 billion in 1988) and the resultant price inflation. In other words, the regime and its bureaucracy did not manage to "invest" its trade surpluses in a better or proper way. Second, because of the "over-concentration" of foreign investment in **labour-intensive export production**, technology transfer in Taiwan was probably less important than in most developing countries during the 1960s and the 1970s [E.g., Cf. Clark (1987): 185], and is the major challenge for the industrial transformation today. Finally, in 1970 about half of all exports in Taiwan were marketed through foreign companies [Gold (1986): 83-87]; MNCs, such as American and Japanese trading and retail firms, assumed a leading role in marketing Taiwan's exports. Since the mid-1980s, the country has also been suffering from American pressure on trading (as discussed already), and from a dilemma between the lacking of its own international marketing networks and the maintaining of the dominance of small and medium enterprises with their complex sub-contracting and selling relations.

#### **VI.4.B. The Status of Foreign Enterprises in the Capitalist Quasi-federal Production**

I cannot accept the common conception that Taiwan provides a case of solely capitalist production. Simply speaking, capitalism has been defined as the system of free enterprise



where individual profit seekers invest their capital and employ labour, although there exist only various forms of production, without any model, in different histories. According to the theorists of market economics or the theory of 'invisible hand', this self-seeking behaviour is the best way to ensure prosperity for all. However, the term of capitalism in Taiwan serves as a term of abuse, because the system has not proved as individualistic as these theorists would like. We shall discuss this case from the transformation from agricultural economy towards industrialisation in Taiwan from the latter 1940s to the 1970s, taking into account of three factors of production: labour, land and capital.

In the aggregate, the land reform of 1948-53 had a major positive effect on income distribution in rural areas and feudal production therein. Landlords were compensated 70 percent with land bonds in kind (rice for paddy land, sweet potatoes for dry land) and 30 percent with shares of stock in four government enterprises earmarked to be transferred to private ownership--Taiwan Cement, Taiwan Paper and Pulp, Taiwan Agriculture and Forestry, and Taiwan Industry and Mining [S.M.S. Chen et al (1991): 33, and Gold (1986): 66]. Within the process of exchange of 'land' into 'capital', the smaller landlords were the big losers and the largest landlords became the new "vassals" under the Nationalist regime within the transition of economy. Under the Nationalist policy prior to the reform, land values had plummeted so the valuation was set at a price much lower than its real value. Later, these smaller landlords regarded the government enterprise bonds skeptically and sold them off below par value to speculators, missing out on the later boom of industrialisation [Gold (1986): 66]. These speculators will be analysed below. However, by contrast, through investment in industry and finance, those largest landlords played a more active role of capitalists at the early stage of Taiwan's industrialisation.

In my view, although the Nationalists dominated most industry, three reasons made the government devise measures to promote capitalists in certain key sectors such as cotton textiles, flour milling, and manufacturing and service later. In addition to the compromise with the landlord/gentry class after the bloody "2-28 Incident" and the pressure from the U.S.A., the private production was promoted under the insistence of the pro-private-sector

bureaucrats led by K.Y. Yin (1903-63), who worked for Westinghouse in the U.S.A. earlier and dominated and forged the broad lines of Taiwan's economic path in the 1950s as the Minister of Economic Affairs. At the early stage of capitalist production under the Nationalists, three beneficiaries of speculators or entrepreneur grew with the necessary state and U.S. assistance.

Along with the parallel development of both the party and state organs in the regulating Taiwanese society, a trinity of political/military bureaucrats (cadres), economic technocrats and domestic entrepreneurs developed in an integrated connection. The first main beneficiaries were mainlanders from Shanghai and Shantung Province [Gold (1986): 70-71].<sup>39</sup> These major corporations such as Tai-yuan Textile, Far Eastern Textile, and Chung-hsing Textile had no risk and stood to make their fortune in a market where demand far outstripped supply after the war periods. Assuming the famous name of "*Shanghai-bang*" (the Gang from Shanghai), with additional state and U.S. assistance, they expended into man-made fibres as well.

The second group of capitalists consisted of Taiwanese under the sponsorship of the Nationalists. One type was those Taiwanese who had spent several years serving the Nationalists on the Mainland before 1949. For example, the former elected Mayor of Taipei Wu San-lien set up, and assumed the first general-director of, the Tainan Textile Corporation with a group of Taiwanese businessmen from Tainan [K. Hsieh (1991): 278]. This "*Tainan-bang*" (the Gang from Tainan) has become a major manufacturing group and later a diversified conglomerate including the famous and liberal 'Independent Evening Post' and 'Independent Morning Post'. The other type is represented by Y.C. Wang, a lumber-yard owner who agreed with a government contract to manufacture polyvinyl chloride (pvc) in a plant established by AID. From the mid-1950s with the government and U.S. assistance, Wang has built Formosa Plastics and has spinoffed companies into Taiwan's most successful and best integrated conglomerate [Gold (1986): 71]. Furthermore, through the intermarriage

<sup>39</sup> As T.B. Gold has analysed: "Although officially anyone could apply for AID allotments, in practice mainlanders had an inside track, being familiar with procedures and having friends or relatives in the bureaucracy. American officials complained about this to the Chinese." Gold (1986): 70-71.

Wang's family is connected with the top officers of the party-state.<sup>40</sup> However, during 1989-91 this great 'vassal' once denied his return from the U.S.A. to Taiwan, because of his bargaining of further investment projects both in Mainland and Taiwan with the political and environmental issues.

As discussed already, the final group of main beneficiaries of the Nationalist industrialisation policy was the biggest landlords, the Japanese-era collaborators, who got a boost from the land reform mentioned. They accumulated shares in the four state enterprises, named already, used to compensate landlords for compulsorily purchased land. In 1954, the government began to transfer these firms to private ownership amidst a flurry of stock price manipulation [Gold (1986): 71]. The five big families concentrated on the Taiwan Cement Corporation, with which the sector has been the "untouchable" area for foreign investment even up to the date. Lin Po-shou of the '*Pan-chiao clan*' became the first post-transfer chairman, succeeded by C.F. Koo, son of Ku Hsien-jung who was one of the members of Japan's parliament before the war. Same as those sponsored by the party-state mentioned above, the company enjoyed state protection and contracts. "A seat on its board became a coveted status symbol for later generations of Taiwanese capitalists [Gold (1986): 71]".

With the rapid growth of Taiwan's economy, these capitalists bred from the guidance of the Nationalists become economic 'vassals' to the regime, which not only holds a party-state mechanism in the fields of military, political and social controls internally, but also dominates all the external relations. In short, with an appearance of capitalist production, the economic system in Taiwan has been based upon a servile relationship between the economic 'vassals' and a 'lord', which has been a foreign sovereign power transferred from mainland onto Taiwanese society. The vassals have paid homage and service of the ruling stabilisation to the lord and the lord has provided the vassals protection and land, which in the case of Taiwan has been transferred into capital and market, or even the access to raw materials and other productive elements. Under this capitalist-feudal system of quasi-feudals, each

<sup>40</sup> The Vice-minister of Defence in Taiwan in 1990, General S.S. Chen, who served the Nationalist before the end of the war and in the first Taiwanese promoted as a General under the Nationalist. Cf. *The Journalist (Hsing-hsing-wan, Taipei)* (7-13/January/91): 66-78, "The Political Trademark is Marriage Registration".

industrial sector is a quasi-feud, and each corporate group is a castle, within whose jurisdiction there have existed several economic units, that is the majority of small and medium enterprises under various direct and indirect productive links. In my view, behind these organisations of enterprises there always exist state-contracts, contracts, sub-contracts, and a network of productive agencies under a close-knit hierarchy of economic authorities, or an aggregate of social and political institutions.

Within the system of production in Taiwan, the role of bureaucracy assumes the bridge between the court and the quasi-feuds, and the co-ordinator between the state and the market, between foreign and domestic economic forces, and between the social, political and economic changes. For instance,

"In 1951, leading businessmen set up an umbrella organization, the China National Association of Industry and Commerce. Cabinet officials charged with economic affairs maintained close links with it. It functioned as a channel by which government policies were relayed to businessmen, unlike Japan's *Keidanren*, which is an association for the private sector to represent its interests to the bureaucracy [Gold (1986): 71]."

From this kind of channels, bureaucracy plays the key of the capitalist-feudal system. To a great content, it has been long criticized in Taiwan the governmental and party administrators at all levels have too close links with the business circus, such as "Party-State Capitalism". However, it has been also difficult for the bureaucracy itself to break up this ruling and productive system. For instance, the chair of the Association of Industry and Commerce mentioned has been taken, through the all 1980s up to the date, by C.F. Koo, mentioned as the Chairman of Taiwan Cement, a best example of the business-political connection in Taiwan.<sup>41</sup> Moreover, his family has been standing as one of the five top families in Taiwan since the era of Japanese colony. Again, the intermarriage makes his family connected with these families of top bureaucrats, big entrepreneurs and military leaders of the Nationalists.<sup>42</sup> An interesting case can be found from another leader of *Tainan-bang* mentioned, Ching-

<sup>41</sup> Through the all 1980s up to the date, C.F. Koo is the Chairman of Taiwan Cement, who is also the head of the China Trust Group (*Chong-hsin*, or *Ho-hsin* corporate group); a partner of the foreign joint ventures, for example, of Taiwan Coca Cola Company; a member in the Central Standing Committee of the Nationalist Party; the Adviser to the President of Taiwan since 1988 and the Senior Adviser from July 1991.

<sup>42</sup> *The Journalist (Hsing-hsing-wan, Taipei)* (7-13/January/91): 66-76.

Yuan Kao,<sup>43</sup> a key figure between liberal medium and the Nationalist Party-State, and between the labour representative and entrepreneur.

In conclusion, just as the examples of slavery in America, apartheid in South Africa, monopolies everywhere, the term of capitalism, or its form, has been abused in Taiwan. At least, the capitalist production in Taiwan takes the form of an altered quasi-feudal system as its basic social structure, which cannot be explained from the astir data of the rapid growth [E.g., the tables cited in C. Clark (1989): 157-216]. Very different from the principles of three former Presidents who strictly kept the businessmen far away from the power, President T.H. Lee, criticized by the journalists, has too many 'close friends' from the business circus.<sup>44</sup> Indeed, after 1988 there have increased the number of the political-business scandals, of which some cases were reported as connected with the President indirectly.<sup>45</sup>

#### VI.4.C. Contradictions between Formal and Informal Economic Regulation

The formal law in Taiwan shows its limits from business environment to administrative system within the Party-State capitalism.

##### *(i) Considerations from Foreign Investors, not only from the Nationalists*

So far, what has been less discussed in our analysis is the considerations from the supply-side of the foreign investment in Taiwan. For the sections on the statutory framework and administrative procedure regulating foreign investment, and their political-economic context, the analytical process have been all based on the consideration of the demand-side, i.e., Taiwan and its government. From the legal context itself, we have seen the counter-foreign-capital tendency and the mechanism used by both Nationalist bureaucracy and the

<sup>43</sup> During 1991-92, C.Y. Kao has been the General-director of the *Tung-yi* (United) Corporate Group and of the Independent Post group which has long been the leading medium criticizing the Nationalist government, and a member of the Central Committee (and of the Taiwan Provincial Committee) of the Nationalists. Furthermore, he is not only a member of the Labour Committee under the Executive Yuan, but also the Chairman of Taiwan Provincial Industrial Chamber.

<sup>44</sup> *The Journalist (Hsing-hsing-wen, Taipei)* (3-9/December/90): 20-21; 35-41.

<sup>45</sup> E.g., the case of the Land Use of Golf-Course in 1990, and the case of the establishment of Evergreen Airline in 1991. Cf. *Asiaweek (Ya-Zhou Zhou-Kan)* (30/June/91): 49; *The Journalist (Hsing-hsing-wen)* *ibid*; and (11-17/March/91): 10-17, especially 13.

domestic enterprises. On the other hand, from the point of view of foreign investors, unfortunately:

"No clear evidence was found to support the expectation that government incentive policies were effective in attracting FDI to Taiwan. Moreover, Taiwan's extraordinary economic performance in the past two decades was not a significant determinant of FDI. Therefore, barring possible noneconomic factors, in the case of Taiwan FDI is most likely to be supply-side determined [Tsai (1991): 282]".

Thus, both legal and economic environments in Taiwan, generally speaking, have not provided a set of good circumstances for foreign investment. Moreover, the major beneficiaries of the legal and economic mechanism for encouragement of investment in Taiwan have been the domestic capitalists and bureaucrats.

More precisely, the growth of the foreign investment in Taiwan before 1991, as mentioned in the last Sections, is "very likely just part of the global expansion" of foreign direct investment. This also accords with Professor Tsiang's analysis that Taiwan's economic development in the last three decade has depended little on foreign capital [Tsiang (1985): 165; also cf. Section VI.3.B.]. Furthermore, with regards to considerations from the supply-side, in the face of "rising labour costs"<sup>46</sup> indicates that cheap labour may not be as important as expected. The myth of cheap labour was already questioned even before the 1980s:

"Schive (1978a, 1978b) pointed out that in Taiwan the kind of FDI which relies on cheap labour for the purpose of export was apparent only during 1967-74 [Tsai (1991): 276]".

Moreover, taking the governmental incentive policies, including the tax concessions, into account of the motivation of foreign investors,

"Empirical evidence, however, suggests that their merits are limited (IMF, 1985; Balasubramanyam, 1986) ... with the exception of 1967-74, most of the FDI in Taiwan is aimed at the domestic market [Tsai (1991): 277]".

In accordance with our analysis of protectionism produced from both law and administrative procedure of foreign investment in Taiwan, the statement that the *domestic market* is more

<sup>46</sup> As Tsai has cited in his study, "Wu (1985) found that, having adjusted for the effect of the foreign exchange rate, the increase in the unit labour cost in Taiwan reached 13% during 1970-82. This is higher than similar increases in the United States (7.2%), Japan (10.2%), South Korea (7.3%), the Philippines (3.1%) and Singapore (9.4%) in the same period". Tsai (1991): 276.

attractive than both tax and legal incentive, such as cooperation from the public sector, shall be more likely a concluding remark. The formal law shows its limitation.

*(ii) The Structural Informality as the Major Contradiction of Political Economy in Taiwan*

In our theme of interaction between formal and informal law, it is clear that all these contradictions of economic regulation have come from the Party-State structure and its informal and traditional ruling mechanism.

The role of government under the party-state machine provides the primary explanation for Taiwan's economic success story. The party-state has clearly played the major role in directing Taiwan's development. The several structural transformations which occurred - and without which significant growth could not have happened - were clearly the result of explicit government (or party-state) decisions and policies. However, the government policies, in turn, can be explained by elite interests and values within the party-state network -- the capitalist quasi-federal system or the Party-State Capitalism. The initial Nationalist national leadership was composed of the top political and military figures who had come from the mainland. The key decision of the initially strongly military regime was to encourage development and structural change and to give substantial political power to the economic technocrats who would oversee the ROC's development strategy. Indeed, those Nationalist economic technocrats did propose a prospective role of law in Taiwan's development: "what we need in the way of legislation are laws of a dynamic nature, that will serve as a driving force in promoting social stability and progress" [K.T. Li (1976): 19]. However, law has more part to play in the Taiwan of tomorrow.

First, the Nationalist economic technocrats opted for an economy primarily based on private enterprise in which the greatest material rewards were probably reaped by businessmen rather than political and military leaders. This also opened the way for economic advancement and social mobility for former landlords and native Taiwanese. This development led to the creation of a new prosperous economic elite since the 1970s. A more

differential elite with a much broader sharing of political power and economic resources would be an "open-sesame" to the Nationalist's party-state rule.

Furthermore, by the end of the 1980s, the rapidly growing tension between the ruling government, the capitalist entrepreneur and the labour class increased the uncertainties of Taiwan's development. However, in my view, unless there is a restructuring of the party-state into a more democratic structure, the growing power of domestic entrepreneurs will dominate the development of Taiwan, in the way of an alliance with the bureaucracy. In our study, the continuing protectionism in the 1990 SUI is the best example. Instead of 'despising' the authority of the party-state, both entrepreneurs and bureaucrats tend to 'use' its ruling machine. This tendency in 1991 becomes clearer in the change of the Statute of Election.<sup>47</sup> The new system of voting is based on the small administrative areas which will be easier for the businessmen and the secret societies to win the local election. Accordingly, the party-state organs, if allied with the former two, can further assume the core to co-ordinate and dominate the divided population.

*(iii) Interaction between Formal and Informal Law: from "Toyota-Taiwan Automobile" to "McDonnell Douglas-Taiwan Aerospace Corporation"*

On contrast, Taiwan's economy continues to depend heavily on foreign cooperation technologically and politically. In terms of upgrading industries, both capitalization and use of technology obviously do not realise the transfer of technology and its further research and development. Up to the early 1990s, Taiwan remains as an economic processing zone for the West and Japan without any economic and technological independence. In terms of capital needed for national development, the huge foreign exchange reserve as the result from the export surge remains in American banks, while the country has been criticized as lacking a proper public construction and welfare policy for its own people. The new Six-Year Planning as reported is depended on foreign investment and technology. Whether Taiwan

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<sup>47</sup> The Journalist (*Hsing-hsing-wan*, Taipei) (3/February/91): 21-29.



can withdraw its huge foreign reserve from the U.S.A. remains obviously out of question. Thus, in early 1992 several vice-ministers of economic affairs, trade, communication, and transportation from France, the United Kingdom, Holland, Denmark, and Sweden have been welcomed by the Nationalist government in their visitings to Taiwan for opportunities of investment and cooperation [CDN (IE) (14/4/92): 8].

Thus, two famous cases of foreign investment with high technology, from 1979 to 1992, shall be examined in our study on interaction between formal and informal law. One is the failed proposal of joint venture of "*Da-chi-cher-chang*" (Big Automobile Plant), which has been repeatedly reviewed as the first unsuccessful precedent of governmental industrial policy-making.<sup>48</sup> During 1979-84, the proposed project was negotiated between the then Minister of Economic Affairs in Taiwan, Yao-tung Chao (Yao-dong Zhao, the Junior Adviser of President during 1990-92), and Toyota Automobile Group in Japan. Chao has commented on the case recently:

"The purpose of the policy was to build up an automobile industry in Taiwan with internationally competitive capability. However, during then there already existed three domestic automobile companies - *Yu-long*, *Ford-Liu-ho* and *San-yang*. When national industrial policy crashed into the interests of these businesses, the project of the Big Automobile Plant with 300,000-vehicle production yearly was discarded before it got started [CDN (IE) (12/4/92): 8]"

In early 1992, given the fact that Taiwan has still been lacking the automobile high technology, Toyota has come back to cooperate with a Taiwanese private company, *Guo-rei* Automobile, to set up a joint venture for big-automobile manufacturing. Chao not only feels excited, but also is concerned with the question of "Who decides what" now?

The other is the recently disputed joint venture between *McDonnell Goulas (USA)* and *Taiwan Aerospace Corporation*, 1991-92. On 6th January, 1992, the Legislative Yuan fired strongly on the aerospace project by ROC government, Taiwan Aerospace Corporation, and McDonnell Douglas. Minister of Economic Affairs was questioned the followings:

<sup>48</sup> "*Fang-dian' yuo yi shai-Tai yuan-meng* (Toyota wish to complete its dream)" is a good article for people to understand the unexpected termination of the Toyota investment during 1979-84, and the new project in 1992. Cf. CDN (IE) (12/4/92): 8.

(1) why can a manager of private company be appointed as the negotiating representative of ROC government? (2) what is the standard of the appointment of the government-sided Director of Taiwan Aerospace of which government has certain shares? (3) why can a governmental representative guarantee that there is never a problem of fund-supply from government? and, (4) what is the legal effects of the Memorandum of Understanding in negotiating joint venture? [Cf. *Independent Evening Post* (Taipei) (6/1/92): 3; *China Times Express* (Taipei) (6/1/92): 3; *United Evening News* (Taipei) (6/1/92): 3]

This requirement of formality within the process of setting-up a joint venture with foreign investment has exploded with all the internal problems of McDonnell Douglas case.<sup>49</sup> At the end of April 1992, the Minister came back to the Legislative Yuan with two reports of assessment on risks and opportunities. The key points of McDonnell Douglas investment have been that the rate of risks is as high as that of opportunities for upgrading aerospace technology. Thus, the private Taiwanese enterprises wish the government to take the major part of risks, while the government holds the contrary view, in order to exchange the support from the Legislative Yuan [CDN (IE) (29/4/92): 7]. The major risks of the project are the uncertainties of marketing and the lacking of relevant technician from Taiwan. Therefore, it seems impossible that the Legislative Yuan will permit using public fund to take the risks for private enterprises [Ibid.].

From the two cases discussed above, we can find out that informal resistance from domestic enterprises in Taiwan paralysed the project of big automobile industry. On the hand, the great requirements of formal procedure and transparency of economic decision-making have been increasing in Taiwan recently. The interaction between formal and informal economic regulation depend on the interrelations between the executive authorities, the Legislative Yuan, and domestic enterprises. However, another common fact in both cases has been the lacking of advanced technology and of better channels for upgrading industries in Taiwan from 1979 to 1992.

However, the multinational corporations continue to take advantages of: capitalization of technology without any capital contribution, tax benefits of technological level, selling of

<sup>49</sup> On 15th April, 1992, the MoEA announced that Taiwan Aerospace has no capability to join the investment; the General Director resigned next day [CDN (IE) (17/4/92): 7].

lower level technology and equipments, loan credits, payment and fees of intellectual property and technician operation, marketing fees, legal privileges of remitting profits in the name of development and research of new technology, and so on. Hence, in the light of promotion of foreign investment, the law has been countered the protectionism from the administrative authorities. For instance, in April 1992, the Industrial Department of MoEA has still announced that importation of Japanese-made automobile may be permitted in the coming two years [CDN (IE) (14/4/92): 8]. Equally, regarding to the control of foreign investment, state law in Taiwan is not successful and effective in dealing with both technology and capital. Indeed, facing the competition from the other Southeast Asian newly industrial countries, what becomes serious in Taiwan in 1992 are the losing out of natural resources, environmental pollution, industrial inflation, outdated public utilities and social disorder.

#### VI.5 CONCLUSIONS

It is only through an examination of law in the context that we have found out the active part of informal sector in political economy in Taiwan even today. This Chapter has analysed that within the statutory framework liberalization has been confronted with protectionism behind the administrative measures. Furthermore, both the structure and content of the legal system in Taiwan has been occupied by informality. The flexibility of the legal structure and its great informal domains have originated from the Nationalist Party-State. Moreover, the content of the statutory framework has been filled with both administrative measures and business practices and customs, such as casting lots for land-purchase.

All these contradictions of informal regulation discussed in this Chapter have been closely co-existed with the Party-State Capitalism under the GMD. The ROC was in the period of mobilization to suppress the rebellion, or the period of national emergency, even though its martial law ended in 1987. The *1948 Temporary Provisions* have safeguarded the

Nationalist's legitimacy as the ruling party and government in Taiwan until April 1991,<sup>50</sup> while the Communist government has never declared that a military invasion will not be used to settle the China-Taiwan dispute.<sup>51</sup> Thus, it seems in the immediate future that the Nationalist government will maintain this last straw of legitimacy from which its requirement of administrative legality stems.

Nonetheless, the legal attitude of Taiwanese society also provides many channels for the existence of informality. For instance, the first quarter of 1992, the out-flow of "foreign exchange for tour" has more than half of balance of trading [*CDN (IE)* (9/4/92): 8]. An official of Central Bank has pointed out that it is common for a Taiwanese tourist to exchange and send out more than one million U.S. dollars for migration, housing overseas, and investment "under the cover of tour" [*Ibid.*]. Indeed, informal rule and behaviour have penetrated through the whole Taiwanese society. Thus, to a certain degree, the role of informal law still has its essential part to play in Taiwan's development in the near future.

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<sup>50</sup> *Asiaweek* (*Ye-Zhou Zhou-Kan*) (5/May/91): 9-10; and, (12/May/91): 10-15.

<sup>51</sup> *Asiaweek* (*Ye-Zhou Zhou-Kan*), *ibid.*, and, (3/February/91): 34-35.

## **CHAPTER VII. FURTHER PROMOTION OF FOREIGN INVESTMENT IN THE PRC: PREVENTING ADMINISTRATIVE ARBITRARINESS AND EMPHASIZING BUSINESS FUNCTION**

### **VII.1 INTRODUCTION**

Significant changes have taken place in the development of law and the administrative regulation of foreign investment after the Sixth Five-Year Plan (1981-85) of the PRC. Two new characteristics of this late development shall be taken into account. First, further promotion of foreign investment is necessary, once the national economy has reached beyond the initial open stage. After the practice and experience of the regulation of foreign investment, there is a greater determination to readjust the relevant legal framework closer towards the business practice of foreign economic co-operation [cf. UNCTC (1988): 262-263; 276-278]. This has been the case in the PRC since 1985, and the case of Taiwan since the 1970s. This trend has been the major driving force behind the changes of the laws and institutions of foreign-related business. Secondly, facing heavy tasks in the economic transition period, administrative regulation has in fact increased along with the transformation of economic structure, business environments and the legal frameworks.

Thus, this chapter examines some questions relating to foreign investment from the recent legal changes up to readjustment of administrative procedure. It first focuses on the legalisation of informal sector in the Second Wave of Encouragement of Foreign Investment through formal law since the mid-1980s. Secondly, following a close examination of the contradiction of informal law under the administrative procedure, the interaction of law, administration and business practice in the field of foreign investment becomes clearer. Thus, from the socio-economic viewpoint, the role of the state law and the impacts of state intervention in foreign-invested business in the PRC can be brought into the picture following the legal analysis.

**VII.2 LEGALIZATION OF INFORMAL SECTOR IN THE SECOND WAVE OF ENCOURAGEMENT THROUGH THE FORMAL LAW AFTER 1985**

The PRC's legislation on foreign investment after the mid-1980s, in my view, is different from the legislation before then. Especially, since 1986-87, a series of new preferential treatments have been guaranteed by a better restructuring of both statutory and administrative frameworks regulating foreign investment. The Second Wave of Encouragement of Foreign Investment through the Formal Law started with the major tasks on lifting the administrative intervention, which produced barriers for further foreign investment, and on legalizing business practice. Thus, we shall take both the recent legislation, including amendment of laws, and improvement of administrative procedure into a closer account.

**VII.2.A. Progress of Formal law by the Omnibus Legislation of the 1986 "22 Articles"**

As already mentioned, the *1986 Provisions for the Encourage of Foreign Investment* (861011) were promulgated by the State Council to resolve the operational problems encountered by the foreign-invested enterprises before 1987. The importance of these "22 Articles" also lies in the subsequent series of administrative regulations and measures formulated by the administrative authorities at all levels. Accordingly, on the one hand, the "22 Articles" try to improve the conditions of the 'existing foreign investment'. On the other, the provisions grant 'new special preferences', through a qualification of operational 'functions' of business, to enterprises either **manufacturing products mainly for export or possessing advanced technology**.

Within the legislative framework, the "22 Articles" have assumed several significances. First, the operational problems of foreign investment before 1986 explicated that between the law and business practice there existed a bottleneck for promotion of foreign investment inside the PRC. This bottleneck came not only from the uncertainties of China's reform of economic system, but also from the administrative obstruction, *both the unreasonable intervention and the lack of a guarantee by administrative co-operation*, as discussed in Section V.4.B. Secondly, the application of the "22 Articles" has covered all the

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foreign investments, *despite their different forms*, this *omnibus legislation* explained its coordinating function in regulating both foreign-related business and administration. At least, the State Council realized that there existed a need for the central government to provide a new guideline based on legislation for promotion of foreign investment in different areas.

Thirdly, however, the enforcement and interpretation of the "22 Articles" has still relied heavily on the local administrative regulations and procedure. The huge number of administrative regulations enacted by different authorities not only explains how the local governments' support to the policy of the central, but provides a legal guarantee for the encouragement of foreign investment under the "22 Articles". Finally, the interaction between the central legislation and local regulations clarifies that the local administration on regulating foreign investment plays the key part within the open policy to promote international economic co-operation in the PRC.

### VII.2.B. Interaction between Formal and Informal Sectors under the 1990 Amendment of Equity Joint Venture Law

On 4th April, 1990, the Third Session of the Seventh NPC approved a "Decision"<sup>1</sup> on "the Revision of the Law on Joint Ventures Using Chinese and Foreign Investment". In practice, the Amendment provides a good example for people to understand the Chinese attitude towards furthering international co-operation and its economic legislation. In the light of the control of foreign investment, is it imperative that some provisions of the 1979 Equity JV Law be amended and implemented? As I have argued elsewhere:

"The answer is positive -yes- for the Chinese state authorities with emphasis on negotiation under the facade of international practice, legitimation of business operation through legal experimentation, and rationalization of the state regulatory authorities. ..." [C.J. Lee (1991): 288-289]

For these reasons, an expansion of administrative control of foreign investment has developed through the formal legalization of business practice in the past.

<sup>1</sup> National People's Congress, "Decision on the Revision of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment" (04/04/90) (hereinafter cited as "the Amendment"). The Amendment in English was published in *Beijing Review* (May 7-13, 1990), pp.27-28.

*(i) Emphasis on Negotiation under the Facade of International Practice:*

To the Chinese government, the Amendment is believed to be "very necessary" because several changes of the texts conform "to international practice and the principles specified in agreements on investment protection signed by Chinese and foreign governments" [Cf. Li Ping (1990)]. However, a flexibility within the words of the Amendment for further negotiation by both parties in order to reserve a leeway for the state regulatory authorities.

*(i).(a) No Nationalization without Compensation*

The Amendment provides a pledge not to nationalize or expropriate equity joint ventures except where necessary in the "public interest". However, according to some lawyers,<sup>2</sup> a public interest can be easily found in practice. Furthermore, in addition to lacking reference to the term "appropriate compensation",<sup>3</sup> there is no provision that compensation will be paid in "hard currency". Should a foreign investor whose joint venture is expropriated be compensated in *Ren-min-bi* (People's Dollar) the investor could be faced with a foreign exchange problem [CLP Editor's Notes (1990): 38-39]. Thus, this provision opens the possibilities of further official interpretive comment, state practice, and parties' bargaining.

Furthermore, the new provision, as criticized by western lawyers, obviously will not prevent the Chinese from reversing their policy in the future by simply repealing the statutory promise or enacting superseding legislation [Robertson & Chen (1990): 11].

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<sup>2</sup> E.g., D.F. Robertson and X. Chen (1990): 11.

<sup>3</sup> In cases where joint ventures must be expropriated the Amendment stipulates that appropriate compensation shall be paid. This guarantee conforms with the compensation rule applied in most Western countries for expropriation of foreign property.



*(i).(b) Chairmanship open to Foreign Investors<sup>4</sup>*

The Amendment leaves the chairmanship of the enterprise open to both sides,<sup>5</sup> eliminating one of the more conspicuous differences between the Equity JV Law and the 1988 Contractual JVL [Robertson & Chen, *ibid.*; also, *CLP Editor's Notes* (1990): 39]. The vice-chairman must come from "the side that does not take the chair". However, in both law and practice, the power of the chairman is still not specified, except as authorized through negotiation by both parties to the equity joint venture.

*(i).(c) Duration of Joint Venture may be Waived*

As discussed previously, under an amendment to Article 100 of the 1983 EJVL Implementing Regulations (Cf. Section V.3.D.), a blanket maximum of 50 years applied to "all" joint ventures. The Amendment changes Article 12 to allow joint ventures in "certain industries" to operate without term limits. Without any detailed provision in the Amendment, it is not clear whether enterprises already in operation under the fixed-period scheme will be able to renew their contracts without term limits. In addition, more official guidelines as to which "types" of joint ventures may be allowed to operate without term limits are still required.

Furthermore, Chinese policy on the term of the business was stated as: "different lines of business and circumstances shall be handled differently, a principle embodying the state's industrial policies" [Li Ping (1990): 26]. Thus, the wording of the Amendment does not actually differ much from the old text because, on the one hand, both provide that the term of the joint venture may be determined by the parties and because, on the other hand, any practical length more than the original 30 years limitation may still be repealed effectively by the administrative authorities [Robertson & Chen (1990): 12]. "In conformity with international practice" is only a covering phrase. *Both negotiations and administrative ap-*

<sup>4</sup> The original Article guaranteed the chairmanship to the Chinese side, with the foreign party taking one or two vice-chairmanships.

<sup>5</sup> The new Article 6 allows foreigners to become chairman of the board in equity joint ventures. Accordingly, the chairman may be elected by the board of directors or appointed through negotiation between both parties.

*proval* are essentially important to Chinese state economic planning in order to control the operation and term of business.

**(ii) *Legitimation of Business Practice through Legal Experimentation:***

Over the past ten years the business circumstance of joint ventures has changed beyond some original provisions. Although the basic principles of the 1979 Law remain applicable, some business practices, adopted by both joint ventures and administrative authorities, need legitimation from the Chinese government itself.

**(ii).(a) *Banking Monopoly Relaxed***

Originally, the 1979 Equity JV Law conferred authority on the Bank of China to handle all foreign currency deposits and remittances made by joint ventures. However, since 1979 many banks, including the CITIC Industrial Bank and foreign bank branches in Shenzhen SEZ, have received authorization to deal in foreign exchange. Joint ventures have gradually started dealing with such banks--first with approval granted on an *ad hoc* basis and now often without obtaining formal approval [Robertson & Chen (1990): *ibid.*]. The Amendment provides for a relaxation of the banking restrictions on foreign exchange of the equity joint ventures. This, in fact, only legitimates a banking reform that has taken place over the last several years. Although this was criticized as "not an innovation" [CLP Editor's Notes (1990): 39], it still shows that a legal basis is necessary for foreign exchange operations.

The Amendment, on the one hand, extends greater banking freedoms to equity joint ventures, and on the other hand, *places the informal business practice under the state control*.<sup>6</sup> Given the current pervasiveness of the PRC's restrictive foreign exchange controls, the Amendment is criticized as not making much difference to foreign investors [Robertson & Chen (1990): 11]. However, in order to eliminate foreign exchange dealings without

<sup>6</sup> Accordingly, the Amendment removes the requirement for joint ventures to seek approval to open foreign exchange accounts with "banks other than the Bank of China", or to use such banks to remit foreign exchange wages and profits outside the PRC.

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formal approval, and to move the regulatory treatment of equity joint ventures closer to that of contractual joint ventures, Chinese legislators adopt a necessary legal basis which is the same as the banking rule found in the 1988 Contractual JVL.<sup>7</sup>

### *(ii).(b) Tax Benefits Broadened<sup>8</sup>*

The Amendment, providing no innovative tax concessions, widens the scope of tax breaks applicable which again conforms with current practice. Although this is criticized as simply reflecting "changes in the substance or administration of other laws applicable to equity joint ventures" [Robertson & Chen (1990): 12], a legitimization through the Amendment is deemed necessary by the PRC government. In this regard, the Amendment merely generalizes these items in deference to preferential tax laws promulgated since 1979 [CLP *Editor's Notes* (1990):39].

### *(iii) Rationalization of the State Regulatory Authorities:*

In those fields above mentioned, such as expropriation with compensation, approval of the term limit, and foreign exchange banking, the PRC government re-assures itself of the control of joint venture operations. In addition, as to the internal structures of administrative and legal frameworks under Chinese authority, the Amendment provides certain improvements towards more rationalization of business regulation.

### *(iii).(a) Applicability*

Since 1979, the Equity JV Law itself clearly refers to joint ventures in which a separate entity is created using capital contributed by the foreign and Chinese parties. Co-operative joint ventures are the subject of a separate law, that is, the 1988 Contractual (Co-

<sup>7</sup> The contractual joint ventures are permitted, under Article 16 of the Contractual Joint Venture Law, to open a foreign exchange account at any "bank or other financial institution" which is authorized by the PRC government to conduct foreign exchange transactions.

<sup>8</sup> The original Article 7 under the 1979 Equity JV Law restricted the scope of tax types, time periods, and joint ventures to which tax concessions could be applied.

operative) JVL. In practice, because the last Law was promulgated much later in time, its provisions and implementation provided the important references for the Amendment to the Equity JV Law. The Amendment is applicable *only* to Chinese-Foreign equity joint ventures. Thus, to a major degree, some lawyers have argued that the Amendment only eliminates several structural and functional differences between equity and contractual joint ventures, with little effect on attracting more investment into China.<sup>9</sup> As a whole, these eliminations include provisions on chairmanship and banking.

*(iii).(b) Generalization of Regulatory Authorities*

The Amendment, in Paragraphs 2 and 7, generalizes the names of "the foreign economic and trade" and "the industry and commerce" administrative departments in Articles 3 and 13. The names of both authorities have been changed since 1979. For some past years, the PRC government has been using the general term "administrative department" (*xing-zheng guan-li zhu-guan bu-men*) to refer to a department in charge of a particular function, rather than referring to the department by name [*CLP Editor's Notes* (1990): 39]. This part reflects *de facto* changes in the contract approval process that occurred when the PRC government had been attempting "to *decentralize* its administrative function" in the decade after the original Law was enacted [Robertson & Chen (1990): 11]. Similar to the legitimation of some business practices, the Amendment merely confirms that the *Foreign Investment Commission* in the original text is no longer the sole state agency that authorizes and governs the operation of equity joint ventures.

<sup>9</sup> The Amendment, argued by Robertson & Chen, is "not likely to give the parties to an equity joint venture significantly greater control over the management of their joint business". For the most part, it simply incorporates into the Equity Joint Venture Law "changes in other laws applicable to foreign-funded enterprises in China". Robertson & Chen, *supra* note 4, p.10.

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### VII.2.C. Progress of Formal Law by the Omnibus Legislation of the 1991 Foreign Income Tax Law

On 9th April, 1991, another important piece of legislation--the *Income Tax Law the PRC for Enterprises With Foreign Investment and Foreign Enterprises (1991 Foreign ITL)* (910409) was adopted by the Fourth Session of the Seventh NPC. Thus, after 1 July at the same year, the effective date, the 1991 Foreign ITL will replace two separate sets of income tax laws concerning foreign investment<sup>10</sup> enacted in the early 1980s (Article 30). According to PRC authority,<sup>11</sup> the background of the new 1991 Foreign ITL was "the practice and experience of the last decade" and the principle of "not increasing the tax payers' burden and not reducing favourable treatment".

Thus, while those provisions in the original tax laws which have proved effective and are universally accepted are retained in the new tax law, the content of some other provisions has been replaced as discussed below, referring to common international practice. The PRC's authority declares that the restructuring of the foreign income tax law, following the Amendment of Equity JV Law in 1990, indicates the PRC's continuing adherence to "the principle and policy of reform and opening to the outside world".<sup>12</sup> Furthermore, the 1991 Foreign ITL is another *omnibus legislation* regulating foreign investment on the issue of tax. Therefore, the definition of the taxpayers includes both 'the enterprises with foreign investment'<sup>13</sup> and 'the foreign enterprises'<sup>14</sup> which shall be within the PRC tax jurisdiction.

<sup>10</sup> They are: (a) the Income Tax Law of the PRC Concerning Joint Ventures with Chinese and Foreign Investment (EJV ITL) (801210) and its Implementation Rules (of EJV ITL) (801214) for the Equity joint ventures; and, (b) the Income Tax Law of the PRC Concerning Foreign Enterprises (FE ITL) (811213) and its Implementation Rules (of FE ITL) (820221) for both the contractual joint ventures and wholly foreign-owned enterprises.

<sup>11</sup> E.g., the speech by State Councillor and Minister of Finance, Wang Bingqian in the Conference of the NPC. See RMJB (People's Daily, International Edition), April 12, 1991, p.3.

<sup>12</sup> Ibid.

<sup>13</sup> These include: (1) Sino-foreign joint ventures; (2) Sino-foreign contractual joint ventures; (3) exclusively foreign-funded enterprises.

<sup>14</sup> These are: (4) foreign companies, enterprises and other economic organizations which 'set up organizations and establishments in China to engage in production and business activities'; and (5) foreign companies, enterprises and other economic organizations which, though without organization or establishment in China, have 'dividend, interest, rent, royalties and other income sources within China'.

The 1991 Foreign ITL stipulates a new schedule of tax rates. As to both equity and contractual joint ventures, the law computes their income-tax 'at a flat rate' (Article 5).<sup>15</sup> It is believed by the PRC authority that the 'flat rate' is simple and clear, benefits investors "by making feasibility studies and calculating economic return possible" and helps "prevent the rise and fall of applicable tax rate due to changes in prices and foreign exchange rate".<sup>16</sup> Thus, in business practice, this benefits the Sino-foreign 'contractual' joint ventures more. Furthermore, the income-tax rate for all enterprises, under the 1991 Foreign ITL, is 33 percent, the same as the rate for Sino-foreign joint ventures in the old income tax laws. This is also much lower than 50 percent 'progressive rate' for 'contractual' joint ventures and 'foreign enterprises' under the old laws.<sup>17</sup>

In addition to a better restructuring of the tax rate, several preferences are granted, based on "*functions of production-oriented projects*", by the 1991 Foreign ITL. For both enterprises with foreign investment and foreign enterprises 'in Special Economic Zones' and production-oriented enterprises with foreign investment 'in Economic and Technological Development Zones', the income-tax rate under the 1991 Foreign ITL is 15 percent only (Article 7:1). Secondly, for enterprises with foreign investment in other areas which 'fall within the stipulation of the State Council' and with 'energy, transport and communications, harbours, docks and other projects encouraged by the state', the income-tax shall also be charged at a rate 15 percent under those stipulations of the State Council (Article 7:3). Furthermore, for production-oriented enterprises with foreign investment in coastal economic development zones and urban areas where SEZs and ETDZs are located, the income-tax rate will be cut to 24 percent (Article 7:2).

Nevertheless, on the issues of exemption and reduction the 1991 Foreign ITL provides clearer stipulations. Production-oriented enterprises with foreign investment which

<sup>15</sup> Previously, the income tax on Sino-foreign Equity joint ventures was computed at a 'flat rate' while the of Sino-foreign joint ventures was computed at 'progressive rates on amounts in excess of specified amounts of taxable income'.

<sup>16</sup> Wang Biquan (12/4/1991, RMJB).

<sup>17</sup> A progressive rate of 40% and a local income tax 10%; cf. Arts. 3 and 4 of the 1981 FEITL (811213) and Art.3 of the 1982 FEITL Implementation Rules (820221).

are scheduled to operate 'for a period of ten years or more' shall, under the 1991 Foreign ITL, be 'exempt from income-tax in the first two profit-making years' and 'allowed a 50 percent reduction of income tax to the fifth profit-making years' (Article 8:1). However, enterprises engaged in *tourism, commerce and service* are 'excluded' from the list of businesses enjoying exemption and reduction of income-taxes for a fixed period of time, as listed in the old laws.<sup>18</sup> On the other hand, the 1991 Foreign ITL extends the scope of businesses enjoying tax exemption and reduction, from Sino-foreign contractual joint ventures and foreign enterprises engaged in agriculture, forestry, livestock breeding and a few other low profit-making trades<sup>19</sup> to 'all production-oriented projects' (Article 8). And the length for tax exemption and reduction has been extended.

The preferential treatment also exists in the relationship between the new and old laws (Article 27).<sup>20</sup> In contrast, the new 1991 Foreign ITL stipulates some provisions to deal with tax evasion, with others concerning fines and punishments for violations of the law. These new coercive measures came from the lack of clear stipulations prohibiting tax evasion in the old laws and the difficulties for the tax authorities to regulate these cases.

### VII.3 CONTRADICTIONS OF INFORMAL DOMAINS UNDER ADMINISTRATIVE PROCEDURE OF FOREIGN INVESTMENT

In this section we will examine the most complicated part of the regulation of foreign investment in the PRC. However, unless we go through this growing mechanism, we cannot realize several important factors, including the growing powers of local authorities which constitute a very different picture from the administration of Taiwan. Furthermore, the growing local administration on foreign investment also shows the fact that the central

<sup>18</sup> Cf. Art. 1 of the 1980 JV ITL (801210), and Art. 2 of the 1980 JV ITL Implementation Rules (801214); and, Art. 1 of the 1981 FE ITL (811213), and Art. 4 of the 1981 FE ITL Implementation Rules (810221).

<sup>19</sup> Cf. Arts. 1 and 4 of the 1981 FE ITL, Arts. 4 and 6 of the 1982 FE ITL Implementation Rules.

<sup>20</sup> In case that old tax laws provided more favourable treatments, the 1991 Foreign ITL specifically provides that enterprises with foreign investment 'established before its promulgation' shall continue to follow the laws and relevant stipulations of the State Council 'before the implementation of the new tax law', 'if their new tax rate is higher than the old tax rate' or 'their treatments concerning tax exemption and reduction are less favourable than they would otherwise receive under the previous tax law' (Article 27).

government "*fang*" (let bloom) or release its control on foreign economic activities, while the local authorities "*shou*" (rein in) or grasp the key discretion on the regulation of foreign investment.

Moreover, through this "decentralization", both local administration and foreign investors benefit from the increasing autonomy and more preferences. In Spring 1992, for instance, even the "district" authorities in Shanghai, such as Lu-wan, Hong-kuo and Huang-pu, have been vested with the power of discretionary approval of foreign investment [*Fa-zhi Ri-bao*, Beijing (3/April/92): 1]. However, the contradictions that come from this trend have been: regionism; repetitious investments; and too many processing and assembling lines than the fundamental industries.<sup>21</sup>

### VII.3.A Informal Sector under Procedure of Establishment Based on the Forms of Foreign Investment

In the relative terms, the statutory framework is more formal to the administrative procedure, while the latter, more formal to business practice. However, even different "forms" of investment have their different requirements under the statutes, both administrative and business practice still remain informal to certain degree, especially in the case of contractual joint ventures.

#### (i) *The Equity Joint Venture*

A basic legislative framework for the procedure of establishment of the joint venture has been the three steps under Article 11 of the *1983 Equity JV Implementation Regulations*. However, the administrative examination and approval are the necessary requirements for "four successive steps and seven documents" ("*si-ge jei-duan qi-ge wen-jian*"), according to a Chinese book *"Jin-Ji-Fa 400 An-Li-Xi"* (Analysis of 400 Cases of Economic Law):

<sup>21</sup> These recent contradictions of control on foreign investment include: "After the decentralization of approval powers and delegated administration, economic management has been disintegrated between the approval departments and the business administrative departments, different regions lacks a communication, the problems of blind attractions and repetitious investments are getting serious. Among "*San-Zi*" (three foreign investment) enterprises, processing industries are more than fundamental ones; assembling lines are far more than enterprises manufacturing spare parts or machines [NBDC-II, *The Nineties* (May 1992): 55]."



(i) Research: the project proposal;<sup>22</sup> (ii) Negotiation: feasibility study report, and the contract with the articles of association;<sup>23</sup> (iii) Examination and Approval: three documents above and application forms; (iv) Registration: the five documents above, the certificate of approval, and the license<sup>24</sup> [JJF-400-ALX (1988): 379-381].

In the same book, there are two cases cannot get through these steps. One was "xie-yi" (initial agreement) with proposed items different from those under the provincial governmental project proposal [JJF-400-ALX (1988): 378-379]. The other one was a joint venture for producing beer for the Chinese domestic market under the cover of exporting proposal [JJF-400-ALX (1988): 379].

### *(ii) Wholly Foreign-Owned Enterprise*

While the 1986 WFOEL only provides the general principles of examination, approval, and registration to establish this type of enterprises, the detailed application procedure usually is supplemented and decided by local municipal or provincial provisions. More emphasis on 'local' administrative control can be found through the 'form' of the wholly foreign-owned enterprise itself. Compared with the joint venture with Chinese participation, the wholly foreign-owned enterprise is operated 'solely by the foreign investors'. It is thus, from the very beginning, the responsibility of the local authorities to regulate the procedure of establishment.

Moreover, the whole procedure is required by a 'double-check' administrative process. For instance, when foreign investors start to establish their wholly owned enterprise in Shanghai, they must entrust 'the consultative bodies or agencies'<sup>25</sup> approved by the

<sup>22</sup> The Chinese participant should have a project proposal approved by the proper authorities. Without such an approval, negotiations with the foreign investors may not begin.

<sup>23</sup> On the basis of the project proposal, the Chinese participant and the foreign investor may proceed with the investigation and prepare the feasibility study report. Then both parties may negotiate the contract and the articles of association. The Chinese participant must submit these three documents to proper authorities for examination and approval. Generally, this is approved by the local Foreign Economic Relations and Trade Commission. The local commission must submit the documents to the MOFERT for further examination and approval if the total amount of investment exceeds the limitation authorized by the Ministry.

<sup>24</sup> Within one month of issuing a certificate of approval, both parties must register the joint venture with the local Administrative Bureau of Industry and Commerce to obtain a license for operation. The local bureau will issue a license after examining the submitted documents. The date on the business license is regarded as the formal establishment of the joint venture.

<sup>25</sup> Cf. the Provisions of Shanghai Municipality on Application and Approval of Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Cooperative Ventures, and Enterprises Operated Exclusively with Foreign Capital.

Shanghai Foreign Economic Relations and Trade Commission with the task of application, submission for approval, and so on in order to facilitate the work [Cf. *Shanghai OIU Manual* (1988): 458-466 and 507-515].<sup>26</sup> To prepare a '*project proposal*' is the first step for the establishment of a wholly foreign-owned enterprise.<sup>27</sup> In practice, this project proposal shall first be submitted to the 'local bureau' or to the 'district or county people's government' for comments and signatures.

Secondly, the project proposal will be forwarded to the Economic Relations and Trade Commission for 'preliminary examination'. Then, the Commission submits the proposal to the MOFERT for further examination and approval. After the MOFERT's approval, the foreign investors shall compile a '*project feasibility study report*', articles of association, and other relevant documents through a repeated process. These documents shall be commented on, and signed by the administrative bureau in charge or by the district or county people's government. After filing with the local Economic Relations and Trade Commission, the documents will be forwarded, with the application documents, to the MOFERT for 'final examination and approval'.

After the approval of MOFERT, a *certificate* of approval shall be issued. The foreign investors shall register with the Shanghai Administrative Bureau for Industry and Commerce within 30 days upon receipt of certificate to obtain a *business license*. As usual, the date on the business license shall be deemed the formal establishment of the enterprise.

### (iii) *The Contractual Joint Venture*

Since the regulation of equity joint ventures provides a reference to the drafting of **1988 Contractual JVL**, the application and approval for establishing a contractual joint ven-

<sup>26</sup> Here, the procedure can be referred to that of joint ventures. Cf. the Sections of "Content Requirements of the Project Proposal for a Joint Venture Using Chinese and Foreign Investment" and "Content Requirements for the Feasibility Study Report of a Joint Venture Using Chinese and Foreign Investment" of *Shanghai OIU Manual* (1988): 503-506.

<sup>27</sup> The Proposal must file the general description of the foreign investor; the purpose of the enterprise, i.e., the necessity and possibility of generating foreign currency as well as acquiring technology; the scope and scale of the enterprise; the investment appraisal, i.e., the total sum of fixed and working capital; the form of investment and source of funds; the supply of raw materials; the infrastructure of the facility; the management structure; and the economic benefit, i.e., the balance of foreign exchange.

ture, within the administrative practice, are to be handled 'like a joint venture'. The influence from the 'formal' law, for example, the 1979 Equity JV Law, on the emergence and transformation of the 'informal' economic practice into the law, for example, the 1988 Contractual JVL, can be better explained here again. Especially, in addition to the procedure of establishment, a great number of 'corresponding stipulations' were inserted to make the new law in accordance with the then-existing foreign investment laws.<sup>28</sup>

While the administrative authorities prefer referring the Equity JV Law to the establishment of the contractual joint venture, a legal coercion has been imposed on the business practice. The 1988 Contractual JVL, for instance, requires both Chinese and foreign investors to fulfill their 'obligation of contributing full investment and providing the conditions for co-operation' during the initial establishment (Article 9). In short, the 'procedure' of establishing the contractual joint venture exists under the requirements within the model of 'formal' law, while the flexible organization of the business is left to be modelled by 'informal' business practice.

### VII.3.B Informal Sector under Procedure of Qualifications Based on Functional Preferences

Following the enactment of the "22 Articles" in 1986, the MOFERT and other government authorities have issued several regulations as supplements to the "22 Articles", including many administrative measures on the areas of balance of foreign exchange,<sup>29</sup> import-export license,<sup>30</sup> classification of enterprises,<sup>31</sup> preferential taxation,<sup>32</sup> employment,<sup>33</sup> customs,<sup>34</sup>

<sup>28</sup> These corresponding provisions widely include: the transfer of investments and conditions for co-operation; relations between employees and labour unions; purchases and sales on the domestic and world markets; balance of foreign exchange income and expenses; remittance of profits and foreign employees wage and legitimate income; the extension of the term of co-operation; and settlement of disputes.

<sup>29</sup> Measures of the MOFERT Concerning the Purchase of Domestic Products for Export by Foreign Investment Enterprises to Balance Foreign Exchange Receipts and Disbursements (20/01/87, by MOFERT), hereinafter cited as the *MOFERT Balance Measures* (870120).

<sup>30</sup> Implementation Measures of the MOFERT Concerning the Application for Import and Export Licenses by Enterprises with Foreign Investment (24/01/87, by MOFERT); hereinafter cited as *MOFERT I-E License Measures* (870124).

<sup>31</sup> Implementation Measures of the MOFERT Concerning the Confirmation and Assessment of Export Enterprises and Technologically-Advanced Enterprises with Foreign Investment (27/01/87, by MOFERT); hereinafter cited as *MOFERT Confirmation Measures* (870127).

Chinese RMB loans,<sup>35</sup> foreign exchange guarantee,<sup>36</sup> the proportion of registered capital,<sup>37</sup> and loans.<sup>38</sup>

Nonetheless, local governments at all levels also issued their own preferential measures in accordance with the "22 Articles" in order to improve their local investment environments. These regulations aim to assist foreign investors in achieving foreign exchange balances, reducing costs, and simplifying procedures. Generally speaking, the procedural framework of these complex administrative measures and the "22 Articles" aim to ensure the management autonomy of foreign investment enterprises.

(i) *Classification of Enterprises*

Opening the domestic market without upgrading technological levels has been crucial for the PRC. For instance, in the case of "*Restrictive Business Clause of A-B Joint Venture*" [cf. Zhang *et al* (1990); 245-247]. Under the Restrictive Business Clause, marketing areas of the products were excluded from West Europe, Northern America, Central America, Australia, Southern Africa and Middle Asia. Furthermore, 85% of products were for the domestic market, 15% for exporting, of which marketing was only through foreign-side agents [Zhang *et al*, *ibid.*].

<sup>32</sup> Implementation Measures of the MOF for Putting Into Effect the Preferential Terms on Taxation Provided in the Provisions of the State Council for the Encouragement of Foreign Investment (31/01/87, by MOF); hereinafter cited as *MOF Tax Measures* (870131).

<sup>33</sup> Regulations for the Autonomous Right of the Enterprises with Foreign Investment to Employ Personnel, Wages and Salaries, and the Expenses for Insurance and Welfare Benefits for Staff Members and Workers (861110) (10/11/86, by the Ministry of Labour and Personnel).

<sup>34</sup> Provisions of the Customs Governing the Import of Materials and Parts Needed by Enterprises with Foreign Investment to Perform Product Export Contracts (861124) (24/11/86, by the General Customs Administration).

<sup>35</sup> Provisional Regulations for Mortgage on Foreign Exchange for Renminbi Loans by Enterprises with Foreign Investment (26/11/86, by the People's Bank of China); hereinafter cited as *PBC RMB Loans Regulations* (861126).

<sup>36</sup> Provisional Measures of the People's Bank of China Governing the Issue of Foreign Exchange Guarantee by Resident Institutions in China (20/02/87, by the People's Bank of China); hereinafter cited as *PBC FE Guarantee Measures* (870220).

<sup>37</sup> Provisional Regulations for the Proportion of Registered Capital to Total Amount of Investment of Joint Ventures Using Chinese and Foreign Investment (01/03/87, by the State Administration of Industry and Commerce); hereinafter cited as *SAIC Capital Regulations* (870301).

<sup>38</sup> *Regulations of Bank of China on Providing Loans to Enterprises with Foreign Investment* (870424) (07/04/87, approved by the State Council; 24/04/87, promulgated by the People's Bank of China).

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In order to promote both foreign trade and investment, the "22 Articles" grant a variety of preferential treatments to foreign investment enterprises, especially "export-oriented" and "technologically advanced" enterprises, in the areas of taxation, expenses and fees, as well as production and operating conditions. To clarify the standards by which enterprises are to be judged either export-oriented or technologically advanced, the State Council and MOFERT have issued the "22 Articles" and *"Measures Concerning the Confirmation and Assessment of Export-Oriented and Technologically Advanced Enterprises (870127) (Confirmation Measures)"*.

First of all, in order to take advantage of the preferences granted to these two special enterprises, foreign investment enterprises must satisfy certain regulatory requirements.<sup>39</sup>

To qualify as an 'export-oriented' enterprise, a foreign-invested enterprise must meet three requirements.<sup>40</sup> Furthermore, a qualified export-oriented enterprise whose value of export products in a year reaches 70 percent or more of the total value of all its products may be entitled to 'preferential tax treatment' offered by Article 8 of the "22 Articles" upon the annual assessment.<sup>41</sup> Thus, it is a tax credit that is most beneficial to the foreign investors to qualify as an export-oriented and technologically advanced enterprise status. To qualify as a "technologically advanced" enterprise, an enterprise must meet the four requirements,<sup>42</sup> set forth in MOFERT's *Confirmation Measures*.

<sup>39</sup> Although the "22 Articles" provide general criteria for initial classification as an export-oriented (Article 2(1)) or technologically advanced (Article 2(2)) enterprise, these criteria are not entirely satisfactory concerning verification of the two kinds of enterprises. The *Confirmation Measures* provide further clarification.

<sup>40</sup> Including: (a) the enterprise produces products for export; (b) the products are mainly for export and the value of annual export products reaches 50 percent or more of the total value of all its products; and, (3) a balance of, or surplus in, the operating exchange receipts and expenditures is realized in that year. [Cf. Measure 2 of *Confirmation Measures* (870127)]

<sup>41</sup> Accordingly, after the expiration of the period for production or exemption of enterprise-income-tax according to the relevant, the export-oriented whose export value that year amounts to 70 percent or more of the total value of all its products for in the same year, may pay enterprise-income-tax at one-half the rate of the present tax. Also, export-oriented enterprises in the SEZs and in the ETDZs, and other enterprises that have already paid enterprise-income-tax at a rate of 15 percent, if they meet the requirements above, may pay enterprise-income-tax at a rate of 10 percent.

<sup>42</sup> Including: (a) the technology, process and key equipment used by an enterprise with foreign investment are those that fall within the category of projects to be encouraged for investment as announced by the State; (b) the technology must be advanced and appropriate in nature; (c) the technology must be in short supply in China, it must produce newly developed products, or it must be able to upgrade or replace similar domestic products; and, (d) the technology increases either exports or imports substitutes. [Cf. Measure 4 of *Confirmation Measures* (870127)]

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Secondly, according to these regulatory requirements, administrative authorities, on a *case-by-case* basis, verify export-oriented and technologically advanced enterprises.<sup>43</sup> For example, in the SEZs the 'Management Committees' of the People's Governments also have the authority to formulate 'their own measures' pursuant to the *Confirmation Measures* to suit their local circumstances, in addition to these authorities mentioned thereunder. However, their local measures must be submitted to the MOFERT for the record (*bei-an*, mentioned already),<sup>44</sup> in order to strengthen macro-management over increasingly growing foreign direct investment in the PRC.

Thirdly, a foreign-invested enterprise, during the process for classification, must submit the documents required to the authorities aforementioned.<sup>45</sup> Furthermore, for the application for a technologically advanced enterprise, certain information is required,<sup>46</sup> while that for export-oriented enterprises, the information on products for export, export ratio and the statement of foreign exchange receipts and expenditures.

Fourthly, administrative authorities in charge at all levels will complete the verification procedures and render a decision on the application within 30 days of receipt of the required documents mentioned. However, 'the procedure for technologically advanced enterprises' will be handled jointly by the authorities aforementioned with other relevant departments in charge, which include, in the technical field, the State Science and Technology Commission and the ministries charged with industry and technology. A certificate signed and stamped by Chinese authorities will confirm the application. The final end of this long administrative procedure will be 'the submission of the confirmation

<sup>43</sup> The authorities, (according to these Measures), in charge of verification and confirmation of export-oriented or technologically advanced enterprises include 'foreign economic relations and trade departments' of provinces, autonomous regions, municipalities directly administered by the central government, or municipalities that have their own 'planning authorities'.

<sup>44</sup> The MOFERT verifies and confirms, in a uniform approach, export-oriented and technologically advanced enterprises established by various department or organs directly administered by the State Council.

<sup>45</sup> Including: (a) an application form; (b) copies of the relevant investment contract(s) and approval document(s); and, (c) a project feasibility study report and approval document.

<sup>46</sup> Including: (a) the name and legal address of the enterprise; (b) the total amount of investment; (c) the registered capital contribution of the Chinese and foreign investors; and (d) the scope of business, production scale, and the nature of technology and equipment used in the enterprise.

certificate, application form and other required documents'<sup>47</sup> to the MOFERT and the State Economic Commission for the record (*bei-an*).

Fifthly, a **yearly-verification** of both enterprises has been set under Measures 10 and 11 of Confirmation Measures,<sup>48</sup> which constitute the crucial part of administrative procedure. Of course the primary purpose of this yearly-verification is to examine whether the particular enterprise is qualified to maintain preferential status. The approval authorities and other relevant departments, under Measure 10, hold the decision to confirm or deny the status.

Finally, the administrative authority in charge compiles a list of both types of preferential-treated enterprises that have passed the assessment in a yearly catalogue, and circulates it among relevant departments so that such enterprises can continue to enjoy various preferences each year (Measure 11). However, an enterprise that fails to pass the year-end re-assessment must, under Measure 11, repay the amount of reduced or exempted taxes.<sup>49</sup>

**(ii) Preferences for both Export-Oriented and Technologically Advanced Enterprises**

In addition to the tax credit mentioned above, a variety of preferences have been granted to both export-oriented and technologically advanced enterprises within the administrative framework under the "22 Articles". First of all, 'the land-use fees' for each type of enterprise, under *Article 4*, except for these located in busy urban sectors of large cities, are computed and charged according to the preferential standards.<sup>50</sup> Furthermore, the

<sup>47</sup> The foreign-invested enterprise, under Measure 9 of Confirmation Measures, must regularly prepare its own annual export plan and submit the statement of actual export performance, which constitute the basis for the re-assessment of an export-oriented enterprise, to the verification and confirmation authorities.

<sup>48</sup> The focus of the re-assessments include 'the enterprises export plans, actual annual export performances, and other aspects involving technical data on quality of products, localization of production materials based on Measures 2, 3, and 4 of Confirmation Measures, and approved contracts.

<sup>49</sup> Nevertheless, if the confirmed export-oriented or technologically advanced enterprise fails to pass the re-assessment for 'three consecutive years', the original verification and confirmation authority will 'revoke the certificate' issued to it as a qualified enterprise. From both sides, these Measures not only promote but urge the success of these enterprises.

<sup>50</sup> Including: (a) 5 to 20 RMB (*yuan*) per square meter per year in areas where the development fee and the land-use fee are computed and charged together; and, (b) not more than 3 RMB (*yuan*) per square meter per year in sit areas where the development fee is computed and charged on a one-time basis or areas developed by the enterprises themselves.

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land-use fees mentioned above may be *waived* by the local government for a specific period of time under the same Article.

Secondly, several priorities of the services relevant to the production are granted to the qualified enterprises. Such priorities as in obtaining water, electricity and transportation services, and communication facilities needed for the production and operation have been listed by the "22 Articles". Therefore, one can conclude these preferences presented *difficulties* for foreign investment in the PRC before 1987: the economic social context of the legislation of the "22 Articles" in 1986. Since then fees are charged according to the standards for 'local state enterprises' (*Article 5*). This priority is helpful to foreign investors, but it cannot resolve any cases if there were certain conflicts of supplies between the state and foreign-invested enterprises.

The third preference is the financial treatment. The priority of both qualified enterprises in obtaining short-term loans and other necessary credit from the Bank of China<sup>51</sup> to meet the needs of production and operation. Fourthly, an easier approach to remitting *tax-free profits* abroad is another preference offered to the qualified enterprises.<sup>52</sup> As to the technologically advanced enterprises, *Article 9* provides a 50 percent reduction in enterprise income taxes for three years, after the PRC's 'period of reduction or exemption of an enterprise income taxes'.

In addition, the tax treatment and 're-investment' issue<sup>53</sup> have received the fifth preference under the "22 Article". However, a closer administrative control can be found, if the re-investment is withdrawn prior to five years, the refunded amount of enterprise income tax shall be returned. Sixthly, the People's Government at all levels and relevant authorities

<sup>51</sup> As mentioned earlier, two administrative regulations governing RMB and foreign exchange loans have been issued by the People's Bank of China and Bank of China followed the enactment of the "22 Articles".

<sup>52</sup> The qualified enterprises that remit their profit abroad, under *Article 8*, are exempted from income tax. Also, 'export-oriented enterprises' whose export value in the year amounts to 70 percent or more of the value of their products for that year, after the PRC's 'period of reduction or exemption of enterprise income tax' expires, may enjoy a 50 percent reduction in the present tax. Under the same Article, 'export-oriented enterprises in the SEZs and ETDZs', and other export-oriented enterprises that already 'pay enterprise income taxes at rate of 15 percent' are allowed to pay only 10 percent enterprise income taxes.

<sup>53</sup> The qualified enterprises 're-invest' profits to establish or expand such enterprises 'for five years', after approval by the tax authorities, are refunded the total amount of enterprise income tax already paid on the re-invested proportion (*Article 10*).



in charge are bound by *Article 15*, to guarantee the '*right of autonomy to enterprises*' with foreign investments and encourage enterprises to adopt internationally advanced management techniques. Obviously, the text of this Article<sup>54</sup> has not taken into account the environment of production, the labour market, the external relations between the foreign-invested enterprises and Chinese State, collective and private enterprises, and their competition relationship with the local bureaucracy [cf. *NBDC-II*, *The Nineties* (May, 1992) : 57].

Similarly, '*protection from indiscriminate charge*' by local government is granted by Article 16 under which foreign investors may refuse to pay unreasonable charges and may also appeal to competent government agencies to intervene. This legal protection enables the foreign investors to estimate more accurately the operational costs of their investment. However, from the sociological point of view, the law only prohibits the 'active intervention', but does not regulate the 'passive co-operation' - the silent resistance--from the administrative authorities [cf. *NBDC-II*, *ibid.*].

Finally, access to the Chinese domestic market<sup>55</sup> constitutes the last preference to foreign-invested enterprises. Indeed, the "22 Articles" have provided provisions for this preference for the qualified enterprises to sell their products on the Chinese domestic market. Of course the PRC government has set many guidelines to insure a foreign exchange balance for both the state and foreign investors. But, in return, the qualification of a 'technologically advanced enterprise' which is granted access to the domestic market demonstrates the *need* of the PRC to import advanced technology directly or indirectly through legal mechanisms. For instance, to sell domestically, the products must be sophisticated and manufactured with advanced technology provided by the foreign investors. This legislative tendency has shown earlier in the case of the qualification of the 'joint venture' as a technologically advanced enterprise, by the *Regulations on Joint Venture's Balance of Foreign Exchange Revenue and Expenditure* (hereinafter cited as *JV Balance Regulations*) (860115), by the State Council. Furthermore, compared with export-oriented enterprises, technologically advanced

<sup>54</sup> The enterprises, from a pure view of the legislative text, are free from interference by local governments and have the right to formulate production plans, and financial and marketing strategies, as well as set wages and carry out labour management.

<sup>55</sup> Generally speaking, the size of China's domestic market has been most attractive to foreign investors, and a penetration into that market with their products has been always their dream.

enterprises have further been permitted to market their products on the Chinese market as 'import substitutes' where such products are 'urgently needed' in the national economy, and 'the quality of products is equal to existing imports'. However, this legislative difference exists at the level of administrative legislation only.<sup>56</sup>

## (iii) Regulations Governing Debt and Equity Ratios

For nearly a decade since the late 1970s, debt and equity ratios of a foreign-invested enterprise, when that enterprise plans to borrow money from the Bank of China or from international financial institutions, have been ambiguously, in the legislative sense, managed by both Chinese and foreign parties. At least, any regulatory requirement was lacking before 1987. In March 1987, in order to clarify debt and equity ratios, the SAIC promulgated the *SAIC Capital Regulations* (870301), mentioned earlier.

Following the "22 Articles", the SAIC Capital Regulations also apply to contractual joint ventures and wholly foreign-owned enterprises, and to enterprises established by participants from Hong Kong, Macao and Taiwan (Rules 6 and 7). The legislative purpose can be found in Rule 2: on the one hand, to require the registered capital to be suitable to the scale of production and operation and, on the other, to re-emphasize that participants to joint ventures must share profits and bear risks and losses in proportion to registered capital. Accordingly, the *SAIC Capital Regulations* require 'a schedule of debt and equity ratios' to be complied under Rule 3.<sup>57</sup> However, in a case of "Chinese-Hong Kong Shipping Joint Venture", the rate between the invested capital (RMB \$7,200,000) and registered capital (RMB \$200,000) was 36:1 which was obviously illegal [Zhang et al (1990): 242-245].

<sup>56</sup> Measures Relating to the Import by Products of Sino-Foreign Equity and Contractual Joint Ventures (871019), promulgated by the State Council; hereinafter cited as 'Import Substitution Measures'.

<sup>57</sup> (a) where the total amount of investment is less than \$3 million (RMB Dollar, included), the registered capital shall be at 7:10 of the total amount of investment; (b) where the total amount of investment is between \$3 and \$10 million (included), the registered capital must be at least one-half of the total amount of investment, but where the total amount of investment is less than \$4.2 million, the registered capital must be at least \$2.1 million; (c) where the total amount of investment is between \$10 and \$30 million (included), the registered capital must be at least 2:5 of the total amount of investment, but where the total amount of investment is less than \$12.5 million, the registered capital must be at least \$5 million; and, (d) where the total amount of investment is more than \$30 million, the registered capital must be at least 1:3 of the total amount of investment, but where the total amount of investment is less than \$36 million, the registered capital must be at least \$12 million. (Rule 3 of the SAIC Capital Regulations).

Nonetheless, an arguable issue only comes after the clear schedule above. The SAIC Capital Regulations strictly require the fixed schedule to be observed even 'in cases that investment is increased' later; on the other hand, certain exceptions may be allowed 'under special circumstances' (Rules 4 and 5). However, the claim of these special circumstances, which still need further clarification under the discretion of administrative authorities, only requires approval from the MOFERT and the SAIC. Therefore, with a considerable flexibility in granting exceptions, exceptions may be made on a case-by-case basis by the authorities in charge.

In fact, the *SAIC Capital Regulations* only provide the rule for debt and equity ratios of investment projects of more than \$3 million, while whether other projects less than that amount seems to be prohibited with any debt remains uncertain. Accordingly, small and medium enterprise with foreign invested projects may meet these difficulties in raising funding, in case of cash shortage. Nonetheless, from a Chinese perspective, this legislative framework has been consistent with the PRC's policy which is *to prevent foreign investment without substantial capital*, which might entrap the Bank of China and other Chinese financial institutions to issue guaranteed loans. To a major degree, this framework promotes the PRC policy of avoiding the debt crisis encountered by the third world. However, up to the end of 1990, the substantial capital arrived into the PRC (US \$19 billion), only occupied 47% of the foreign capital agreed (US \$40.3 billion). Furthermore, not only some foreign capital, but also Chinese capital has not yet been invested into the projects approved [*NBDC-II, The Nineties* (May 1992): 57].

(iv) *Balance of Foreign Exchange Receipts and Expenditures*

The foreign exchange problem has long been a most important issue for foreign investment in the PRC.<sup>58</sup> For instance, the two-month ceasing operation of *Beijing Jeep Ltd. Co.* in 1986. Since foreign exchange reserves are vital to the PRC's national economic and modernization programme, it is not surprising at all that the primary basis of the foreign exchange policy is 'centralized control' and 'unified national management', which are the first principle of the *Provisional Regulations on Foreign Exchange Control* (801218), promulgated by the State Council in 1980 (Articles 3 and 5). For the same reason, the second principle of the foreign exchange policy is 'self-balance by enterprises', and has been a basic requirement in several foreign-related economic laws since the late 1970s. To achieve a balance between foreign exchange receipts and expenditures by the enterprises themselves has been one of the common legal requirements in these laws, for instance, Article 75 of the *1983 Equity JVL Implementing Regulations* (830920), Article 18 of the *1986 WFOEL* (860412), and the *MOFERT Balance Measures* (870120) mentioned earlier. Accordingly, to generate sufficient foreign exchange by *exporting* all or most products by enterprise is the basic method, while certain foreign enterprises, which mainly sell their products within the PRC domestic market, with an imbalance in foreign exchange may receive relief from either the local or central government.

In order to resolve the foreign exchange difficulties encountered by many foreign-invested enterprises, several important regulations have been promulgated since 1986, such as the *JV Balance Regulations* (860115), *Import Substitution Measures* (871019), and the *MOFERT Balance Measures* (870120) mentioned.<sup>59</sup> Despite the economic operations, these regulations have constituted a flexible framework for foreign investment to achieve a balance between foreign exchange receipts and expenditures.

<sup>58</sup> In business practice, foreign-invested enterprises need sufficient foreign exchange to operate the project, to import equipment and raw materials, and to pay foreign employees' salaries. And this needs a feasibility based on the availability of foreign exchange earnings, which can enable the foreign participants to repatriate their dividends and eventually their originally contributed capital.

<sup>59</sup> The applications of both *JV Balance Regulations* and *Import Substitution Measures* cover equity and contractual joint ventures only, while the application of the *MOFERT Balance Measures* extends further to wholly foreign-owned enterprises.

In addition to the self-balance of foreign exchange from exports, a *second* alternative permitted, is to achieve a balance through the *business networks* within the PRC domestic market. Basically, foreign-invested enterprises marketing their products inside the PRC must be paid in RMB, not in foreign currency. However, under the recent foreign exchange regulations, exceptions to the general principles are available. For example, Article 8 of the *Balance Regulations* allows joint ventures, upon approval of the *State Administration of Exchange Control (SAC)*, to market their products domestically for foreign exchange to those enterprises which are able to pay in foreign exchange. Furthermore, in cases that the products, which would otherwise be imported or are urgently needed on the domestic market, or substitute for imports, domestic sales may also be paid in foreign currency. The *Import Substitution Measures* have set up the conditions under which a product may be regarded as an *import substitute*, and the procedures for application and approval of import substitution status (Measures 3, 4, and 5), of which the regulatory requirements must be satisfied.

The *third* alternative in balancing foreign exchange, under the MOFERT Balance Measures, is to "*purchase domestic products for RMB and then to export them for foreign currency*" to make up the foreign exchange balance (Measure 1). On the one hand, this requires the MOFERT approval in advance, and on the other, commodities under unified control (as stipulated by the State) have been excluded. Self-demonstration by enterprises, under Measure 3, is also required to explain that they are experiencing imbalance problems of exchange, i.e., foreign exchange deficits, and to apply annually for permission to purchase domestic products. On the whole, this administrative legislation with exceptions permitted has created a break from the general principle of 'self-balance' of enterprises through the export of their own products.

In the view of the aim of the *MOFERT Balance Measures* to solve the 'temporary difficulties' of foreign exchange imbalance, allowing these enterprises to purchase domestic products for export seems necessary. Furthermore, this privilege is only granted for positive purposes and is limited to a fixed period of time (Measure 2). For the same concern, several restrictions, imposed by the MOFERT itself, include 'limiting the quantity of domestic

products' purchased for export to the amount required in any year to cover the foreign investor's profits shared or to be remitted upon the winding up and liquidation of the enterprise (Measure 4). Especially, this purchase of domestic products with the particular purpose must be shipped abroad for distribution and sale, and not be re-sold inside the PRC (Measure 6).

Generally speaking, the practical importance of balancing foreign exchange also explains the flexibility of the PRC foreign related economic legal framework. At the statutory level, under the "22 Articles" for instance, foreign-invested enterprises, under the supervision of the foreign exchange control authorities, may mutually adjust their foreign exchange surpluses and deficits among each other by swapping foreign exchange for RMB, and *vice versa* (Article 14). Recently, in order to aid foreign investors in buying and selling foreign exchange, the SAC has established several 'foreign exchange adjustment centres' in a number of major cities to serve as governmental-sponsored intermediaries.

**(v) Other Administrative Regulations**

The importance of licensing and its application have urged the need for the relevant administrative regulation. Thus, the *MOFERT I-E License Measures* (870124) mentioned have been adopted to facilitate the operation. In addition, in preferential terms for taxation and providing loans, several regulations mentioned earlier provide both simplifying and facilitating functions. For instance, *MOF Tax Measures* (870127), *PBC RMB Loans Regulations* (861126), *PBC FE Guarantee Measures* (870220) aforementioned. These regulations have relaxed the major difficulties for foreign investment in the PRC before 1987, and also demonstrated the 'central' government's attitude towards a better investment environment. It is certainly not surprising that the interaction between the foreign investments, central administration, and local administration will be the core issue within the implementation of both laws and administrative regulations on foreign-related economic activities. Especially, given the size of the PRC and present communication conditions, the

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implementation of law between the central and local administration under the requirements of local circumstances shall be the focus, including the issues of supplying materials and labour, providing consulting services, and marketing and pricing.

### VII.4 THE INTERACTION BETWEEN LAW AND ADMINISTRATION IN THE REGULATION OF FOREIGN INVESTMENT

Seeing the detailed laws and measures in the previous Sections, both because of the flexibility of the wording and its implementation and because administrative approval being always retained as the final tool, the bureaucracy is the gatekeeper for every international economic activity in China, in order to protect its self-group interest under the sham of the national interest. Behind this legal context, there have long existed two questions related with the role of bureaucracy: what is the difference of state intervention between domestic and foreign investment, and between local and central administration? And, what is that between personal benefits of bureaucrats and benefits of general economy from the foreign investment?

#### VII.4.A. The Status of Foreign Enterprises in "*Zhu-Hou-Jing-Ji*" under Party-State Intervention

To Chinese authorities, the modern history China "has been proven that the nation can only take the socialist, not the capitalist, road"; and the utilization of capitalism "can be a rewarding supplement to the socialist economy" [F. Sheng (1992): 17]. Thus, the public ownership of the production will remain to certain major degree for the near future. Up to the end of 1991, the major problems in the economic performance in this socialist economy were: "slow progress in the structural adjustment, low economic efficiency, and severe difficulties in government finance" [Statistical Communique of the State Statistical Bureau, *Beijing Review* (23-29/3/92): 36].

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Thus, three dimensions shall be examined here for an evaluation on the regulation and promotion of foreign investment in the PRC's development: the role of public enterprises, including autonomy of enterprises (the second type of decentralization); relation between local and central administration (the first type of decentralization); and, the Party-State intervention behind the legal mechanism.

### (i) *The Role of State Enterprises*

Since the 1970s, how to reform the state industrial sector has been a crucial task. Under the appropriate central government ministry many new "industrial corporations" have been established to deal with matters concerning some specific sectoral business. For instance, in the case of oil, the Energy Ministry, and so on. All enterprises specializing in these activities are automatically led by the corporation, which has more or less the same status as a central ministry, with more "autonomy", and takes charge of all stages of the complete production process in, of course, a more flexible way than before.

Secondly, for two reasons a looser organization--"*qi-ye jituan*" (industrial association) - has been established for enterprises producing similar products [cf. Riskin (1987): 351 and Shambaugh (1992): 26]. On the one hand, this kind of association is designed to break the original administrative barriers<sup>60</sup> that were built because enterprises were subordinated to different administrative apparatuses. On the other hand, the regime's fear of potential social unrest among urban workers<sup>61</sup> makes it unwilling to shut down unprofitable industries with the loss of jobs that would result" [Shambaugh (1992): 26]. In addition to the merging, or the formation, of various types of associated organizations mentioned, which has spread rapidly to other non-agricultural sectors, China has been strengthening lateral economic and

<sup>60</sup> Being a loose and semi-governmental body, the main function of the association is to prepare plans and to formulate development policies and technology alternatives for the industry, on the one hand, and to report on the activities of member enterprises to the government on the other hand. Cf. Riskin (1987): 351.

<sup>61</sup> In the most cautious terms, state enterprises employ one-third of China's 150 million urban workers, yet 40% of them operated at a loss during the first half of 1991 (a near tripling in three years) [Shambaugh (1992): 26].



technological co-operation among various localities, from interim to long-term stable co-operation as well [Cf. Riskin (1987): 351-352].

Nonetheless, two kinds of the "decentralization" have been concerned with the reform of the state industrial sector mentioned--between local and central administration (the first type of decentralization in the next section), and between enterprises and the Party-State organs (the second type of decentralization). It is clear the PRC government plans to grant "greater autonomy to engage in foreign trade while reducing government quotas" in order to give these public enterprises "more power to sell their low-quality and uncompetitive products on the open market" [Shambaugh (1992): 26].

The adoption of "Law of the PRC on Industrial Enterprises Owned by the Whole People" (the *IEOWP Law* (880423)) on 13th April 1988, effective as of 1st August 1988, has its historical significance in the reform of the State sector. However, up to the "Report by Five Departments on the Reform of Enterprises" published in February 1992, there are twelve problems remained in the further reform, among which the autonomy of the enterprise assumed the first question [*Fa-zhi Ri-bao* (14/2/92): 1]. It has been reported that the 1988 IEOWP Law has its positive but limited role in the past four years. However, since the end of January 1992, a movement of "*puo-san-tei*" (smashing three irons - iron bowl, iron chair, and iron salary) has been popularly started by both government and the state enterprises [Cf. *Fa-zhi Ri-bao*, February-April, 1992]. The "*puo-san-tei*" movement provides a fact that the 1988 IEOWP Law cannot be implemented by its own. In contrast, a mass line, or a social movement, has its positive and supportive effects to the formal law, which is the same case of the *1950 Trade Union Law* mentioned.

Nonetheless, in order to deepen the internal reform of enterprises, the police and security force has guaranteed its support and protection to the managers of these enterprises, for example, the Public Security Department of *Luo-yang* City in Henan Province [*Fa-zhi Ri-bao* (2/4/92): 1]. Furthermore, on 21st March 1992, for the first time in the PRC public ser-

vants were dismissed in Shengyang, where four tax agents were removed from their service [The Nineties (May 1992): 34].

Finally, as regards to the relationship between public and non-public sectors, a recent most complete investigating report, by four researchers in the State Council, has suggested that the ratio of non-public sector has not yet reached the reasonable degree, while the ratio of foreign invested enterprises has been so little that further attraction is necessary [J.Y. Guo *et al* (1992): 61].

(ii) "*Zhu-Hou-Jing-Ji*" and its Contradictions

The dilemma facing the central and local administration of economy retain even up to the 1990s.<sup>62</sup> However, even up to the 1990s, it has still been a crucial issue between centralization and decentralization, the first type mentioned, of economic administration. Especially, from the locations and institutions of the SEZs and coastal economic areas, the lowering administrative control has been a "leaning" (*qing-shei*) policy<sup>63</sup> providing the most priorities in the economic development within China's east coast where the local authorities are granted more autonomy and special administrative powers. For either purpose mentioned, China's complicated, inefficient and closed economic administrative organizations have to be reformed. The reform programme therefore has promoted the streamlining of existing administrative hierarchy, cancelling unnecessary intermediate administrative organs between the decision-making and basic economic units, and re-classifying and merging enterprises into new administrative organizations.<sup>64</sup>

<sup>62</sup> Given the size of China, it is necessary for the Beijing reformist regime to break all administrative barriers against the inter-regional and inter-departmental flow of goods and services, to facilitate specialization according to local comparative advantage, and to co-ordinate activities of various basic economic units, which have been granted greater power since 1979, so that both private and public interests can be better harmonized.

<sup>63</sup> Asiaweek [Ye-zhou Zhou-kan], 14/4/1991: p.14.

<sup>64</sup> Cf. "Decision of the Central Committee of the Communist Party on Reform of the Economic Structure" adopted by the 12th Central Committee of the CPC at its Third Plenary Session on 20 October, 1984; *Beijing Review*, Vol. 27, No. 44 (29/October/84): centrefold, 1-XVI.

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Furthermore, in the light of the dilemma between centralization and decentralization, a compromise in economic administration has been made. Therefore, the most significant attempt to reform China's economic administrative organization has been the experimental pursuance of "*network of co-ordinating administration system*" with the "*core cities*" (*zhong-dian-cheng-shih*) regulating and co-ordinating activities of practically all economic units within their jurisdiction, the "economic" administrative regions [Hardy (1987): 110; Riskin (1987): 343]. Encompassing a number of medium-sized cities, an economic administration region is led by one "core city".<sup>65</sup> For some "core cities", for instance, Shanghai, Tian-jin, Chong-qing, under which the economic administrative region spans different provinces. This reaches the requirement of both **specialization** and **localization** for a better economic performance. On the one hand, the central government, in order to complete the model, will specialize in regulating and co-ordinating the economic activities of the "core cities" together with their administrative regions. Nonetheless, activities of all economic units and enterprise within the economic regions are in general to be regulated by the leading "core city" taking into account of local considerations. However, there are still tensions between the local and central administration.

The first impact as a result from this decentralization is the decrease of the central control on local economy. In the economic term, the central revenue in 1989 declined into only 45% of the total revenue of the PRC.<sup>66</sup> By the end of the 1980s, the new problems of the "blockading of local markets" and "economic fray"<sup>67</sup> became accelerated. These phenomena are named as "**feudalist economy** [*Zhu-hou-jing-ji*"]". In order to control the local economic fray, Beijing has attempted several measures, such as prohibiting by directives, criticizing localism and economic feudalism by the media, and, promoting and

<sup>65</sup> Under this network, starting with the lowest administration, the countryside is divided into a large number of small regions based on economic considerations, each of which will be assigned a "town" for guiding and co-ordinating economic activities within its boundaries. Secondly, at a higher administrative level, medium-sized cities are authorized to guide and co-ordinate economic activities of the counties (*xian*) under their jurisdiction. Thirdly, economic activities of medium-sized cities together with their *xian*, in turn, are to be co-ordinated by the "core cities", which are usually the provincial capitals and large cities.

<sup>66</sup> Asiaweek [*Ya-zhou-zhou-kan*], 14/4/1991; p.14.

<sup>67</sup> E.g., it was reported that in 1990 Xinjiang government prohibited 48 products imported; some local authorities of Jilin province prohibited import of beer from the neighbouring provinces. Furthermore, Kwangdong imported rice from Thailand simply because the food-blockade of Hunan province. To prevent purchasing material from outside by people, several local authorities issued some sorts of 'supplementary currencies'. Asiaweek [*Ya-zhou-zhou-kan*], 14/4/1991; p.14.

removing the top officials of the local authorities. However, in the light of the economic progress as a result from the decentralization since 1979, the recentralization has been in a uncertainty.

Indeed, a contradiction of the economic reform has been contained within the tension between the central and the local administration, given the size of China's economy and the natural imbalance between the inner and coastal areas. For instance, on 25th April, 1986, both Chinese general-manager and vice-general-manager of one Sino-American joint venture were dismissed by "Provincial Department of Machinery" [Zhang, Wang & Sun (1990): 253-254]. Until American investors got the support from the State Council - central "intervention" (*gan-yu*), both Chinese managers were restored to their posts on 24th September at the same year [Ibid.].

*(iii) Party-State Intervention*

However, the legal problems of foreign investment in the PRC have not existed alone without extra-legal issues. In fact, even long before the massacre in Tiananmen Square, foreign investment in China was struggling to survive.<sup>68</sup> It is important to note that all these limitations on business remain today.

First, for instance, individual entrepreneurs, foreigners or Chinese, must devote concentrated attention and energy to managing the formal supply channels for materials. They have to link themselves informally into a network (in Chinese, *guan-xi*; or connection) with other entrepreneurs and administrative officials, that can effectively and dependably supply materials within the constraints of the centralized allocation system [Foster & Tosi (1990): 25]. This network is also very important for Chinese bureaucrats themselves;<sup>69</sup> for instance, close friends, classmates, or those from the same home town. However, this

<sup>68</sup> They suffered from acute shortages of foreign exchange, raw material and energy. In addition, there were labour problems, inflation, tight credit and arbitrary price controls. L.W. Foster & L. Tosi (1990): 22-27.

<sup>69</sup> *The Economist*, 16/06/90, p. 116, "Investing in China - Shanghai's Gorbachev".

difficulty and the flexibility of the legal wording (as analysed before) reveal another problem for foreign investment in the PRC, that is, corruption of bureaucracy, discussed below.

Secondly, the triangular relation between administration, domestic and foreign enterprises must also be considered. The *guan-xi* (connections) mentioned play the key part also in the relationship between the domestic, especially the public enterprises, and the foreign-invested ones. Given the fact that public enterprises exist under the sponsorship of the various administrative authorities, this close relation will in practice benefit the local enterprises more in case of competition from the foreign enterprises. Only two reasons may lead the officers to provide a better treatment to the foreign investors in practice: benefits to the local economy; and personal benefits. The crucial problem then lies in the uncertain line between these two factors: for example, can an administrative discretion, which is based on consideration of benefits of both local and personal economy, amount to a form of corruption?

Thirdly, in reality, in 1989-90 Chinese industry, both private and state-owned, was in danger of grinding to a halt.<sup>70</sup> Thus, it is arguable whether the foreign enterprises will destroy the domestic ones, or provide a chance for upgrading management by competition. Furthermore, with regard to the PRC's general business environment, foreign businessmen have been warned that China is printing money at an alarming rate and that enterprises are so short of working capital that many cannot pay their debts.<sup>71</sup> Of course, law itself cannot figure out that the role of foreign investment should be in this economic reality. Obviously, only improvements of the law and administration do not guarantee better circumstances in China's macro-economy to foreign investors.

Finally, since the state provides the power to the officers of the PRC, their behaviours and attitudes towards the present market-planning system play the key part for the success of

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<sup>70</sup> Figures for the first six months of 1990 show that profits of China's state-owned enterprises are down 59% overall, and more than a third are losing money. *The Economist*, 14/07/90, p.57, "Japan throws China a lifeline".

<sup>71</sup> *Ibid.*

both the economic reform and general businesses. However, inside the PRC basic free-market concepts, such as profit, marketplace, and customer, are ill-developed and not well understood [Foster & Tosi (1990): 24]. In the PRC's forty-one-year history, the last decade has been too short for the most Chinese personnel who have lived their entire adult life in a lesser developed country with a centralized and planned communist economy. Thus, there may always exist some negative elements of bureaucrats' personal activities within the state intervention on business.

### VII.4.B Contradiction between Formal and Informal Economic Sectors

#### *(i) The Development of Foreign Investment Since 1979*

Since 1979 a process of policy changes over longer than a decade has witnessed the PRC government's elaborate attempts to attract foreign investment to China. At the initial stage, the policy framed by the cautious Communist leaders was to limit the scope of foreign investment in China to particular organizational 'forms', such as the 1979 Equity JV Law, and particular geographic "regions", such as the SEZs in 1980 in the coast of Southeast China. And the few selected "sectors" of economy designated foreign capital and technology in the late 1970s implied that foreign investment could be the "special" trade in China, as termed by Ho and Huenemann (1985).

However, through the 1980s foreign investment expanded far beyond these initial restrictions. Almost every local authority was proud of launching promotional schemes to attract foreign investment which is either established or is being induced to come in to every part of China now. Furthermore, the legislative development in the decade of the 1980s has greatly widened the range of organizational formats under which foreign investment can be adopted.

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In fact, before 1983 foreign direct investment in China remained at a rather low level.<sup>72</sup> Nonetheless, on the one hand, the legal framework for foreign economic activities became more complete, and on the other, the organizational forms of foreign investment became more flexible and diverse, and the rate of foreign investment in the PRC rose rapidly during the 1983-85 period. However, neither the Beijing government nor the foreign investors felt satisfied with the progress of foreign investment in China during the 1980s. To the Chinese government the nature of the foreign business in China has been disappointing, as has the total amount [Riskin (1987): 326]. Before 1986 most of the projects were small enterprises, launched mainly by overseas Chinese via Hong Kong, with low levels of capitalization and fairly unsophisticated technology in the relatively short term.

This was the background of the enactment of the famous 22 Articles of October 1986. First, it had been difficult for foreign business to repatriate any profits not earned in hard currency, because before 1987 the PRC government required each foreign venture to maintain its own foreign exchange balance.<sup>73</sup> This discouraged investment in business designed to produce for the "domestic" Chinese market, thus removing one of the major incentives that China could offer to potential foreign investors. Secondly, the PRC's balance of payments difficulties during 1985-86 further exacerbated the long term problems mentioned.<sup>74</sup> Thirdly, the then devaluation of the RMB seriously increased the cost of imported components and accordingly raised the price of the finished product inside the Chinese market. For instance, The Shanghai No. 1 Sewing Machine Plant was unable to make any profits [Riskin (1987): 334]. Therefore, in order to restore foreign investors confidence by improving the business climate in China, the State Council successfully issued a full set of

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<sup>72</sup> Cf. Chu Baotai (1986).

<sup>73</sup> Repatriation, with only some exceptions, was permitted only if it was counter-balanced by an inflow of foreign exchange through "exports" or "new investment".

<sup>74</sup> It thus became more difficult, when the PRC government tightened its control over the expenditure of foreign exchange, for foreign business to import necessary equipment or components from abroad. Cf. Riskin (1987): 333-335.

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new regulation for these long-standing problems in October 1986, that is, *the Provisions for Encouragement of Foreign Investment*<sup>75</sup>.

However, it remains highly doubtful that these legal devices, provided by the 1986 new investment regulations and others, will solve the foreign exchange problems of foreign enterprises in China. In addition, the political issues and the social tensions, with the recently widened gap of wages and economic uncertainties, have been disappointing the foreign business community in the PRC. For example, the early 1989 demonstrations and mass movements and the tragedy of the 4th June in Beijing. Accordingly, the poor investment climate in the PRC remains an issue for both foreign investors and Chinese government, and foreign investment will increase more slowly than Chinese leaders' planning.

Out of the 29,000 foreign business of the establishment of which has been approved by the Chinese authorities by the end of 1990, it was officially reported that only 14,000 were actually in operation, of which 3,300 are wholly foreign-owned.<sup>76</sup> The total registered capital (those not operating included) is 19 billion U.S. dollars. Furthermore, the total industrial output of these "three-foreign-investment" (*San-Zi*) businesses in 1990 was 70 billion RMB, about three percent of the national industrial output in the PRC; and the exports of these businesses reached 7.81 billion US dollars, about 12.6 percent of the total exports by value of the PRC.<sup>77</sup> This meant a net benefit for China's balance of payments. Generally speaking, foreign direct investment increased during the period of the Seventh Five-Year Plan (1986-90). According to China's State Bureau of Statistics, foreign capital used in the period was 46.09 billion US dollars in total. Among these, 30 billion US dollar was through foreign loans, and 14.17 billion was foreign direct investments in some 29,000 projects [*RMRB*, (14/03/1991): 3].

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<sup>75</sup> The provisions were shortly followed by several provincial and municipal regulations which offered more incentives and concessions to foreign investors.

<sup>76</sup> *Ren-Min Ri-bao* (People's Daily), Beijing (Overseas Edition), hereinafter cited as *RMJB*, 19/03/1991, p.1.

<sup>77</sup> *Ibid.*



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Nonetheless, the recent Internal Investigating Report by three authorities mentioned has given the fair evaluation of the foreign investment since 1979. As regards to the "forms" of 29,052 foreign invested projects, up to the end of 1990, equity joint ventures have occupied 16,294 items (56.1% of the total); contractual joint ventures, 9,308 items (32%); wholly foreign-owned enterprises, 3,386 items (11.7%); and, ocean petroleum cooperative-development, 64 items (0.2%) [NBDC-I, *The Nineties* (April, 1992): 36]. The functions of foreign investment have been highly appraised:

- (a) expediting the functions of "four windows" - (*si-ge-chuang-kou*; windows of technology, management, know-how, and foreign policy), beneficial to economy of the coastal areas;
- (b) promoting the readjustment of industrial structure, increasing the level of industrial and technological management;
- (c) "San Zi" (three foreign investment) enterprises has been the most active part of the PRC's economy, and the useful supplement to the socialist economy<sup>78</sup> [NBDC-I, *ibid.*, 37-39].

### (ii) *Contradiction between Formal and Informal Law in Chinese Context*

Most of the PRC's currently effective statutes and regulations first appeared only after 1979. Chinese leaders and officials frequently refer to the recent "lack of perfection" of the legal system, but their invocation of "perfection" reflects a narrow emphasis on the quality and the texts of rules rather than on their application [Lubman (1991): 320]. On the legal application as interaction between law and administration, well examined in Sections VII.2 and VII.3, administration has assumed a more important role than law itself. For instance, since both the enactment of the 1986 "22 Articles" and the Amendment to the 1979 Equity JV Law mean that *administrative procedure* has become even more important in the statutory framework, it is not likely that new foreign investment would be stimulated in China only by the promulgation of formal law with more preferences, for example, tax benefits under the 1991 Foreign ITL discussed. This is also the case of the 1990 SUI in Taiwan.

<sup>78</sup> Including the growth of production output in the most rapid; increase of both trading and foreign exchange expands in the recent successive years; enlarging the financial income of the nation and the local government; effectively supplement the value of the fixed-assets of enterprises of the PRC; creating the opportunities of employment; upgrading the technological levels of the old enterprises by the technological "jia-jie" (combination, or marriage); and promoting and advancing the development of domestic enterprises.

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Furthermore, from the very status of law being a *gongju* (tool), the impacts of informal sector under political norms, *zhengce*, ought to be taken into serious account. The first impact of the decentralization policy on China's economy has been another "unbalance" between the east coast and the inner areas, which is different from the unbalance between industrial sectors in the Cultural Revolution era, but similar to that from the late Qing to the Republican era. Of course, the economic growth has been rapid, while the tension caused from this strategy retains the conflicts between the central and local, such as "feudalist economy" discussed. At the level of implementation of law, this tension between the central and the local authorities and different considerations therein play the crucial parts. This tension is the core task of economic administration which has not yet gone with the failure of the Cultural Revolution. The central administration has to retain final control over coordination of the conflicts between the various regions. Also, the PRC's legal formalism since 1979 has been buttressed by positivism to emphasize the legislature as the sole source of law and the administration as the gatekeeper of legal application, and to limit the role of courts. For example, *Article 53* of the *Administrative Procedure Law* of the PRC (890404) has delegated the final discretion on legal disputes to the State Council, not the People's Supreme Court.

In practice, to Chinese officials, their own interest considerations, through their own discretion, can influence the business operation and the implementation of both policy and law. Indeed for over two thousand years, the Chinese have been administering their affairs through a professional civil bureaucracy which plays a more important and impregnable role in the post-1979 Chinese-foreign economic co-operation.

Also, the PRC state-planning economy, based on unpredictable bureaucratic proposals, is another serious problem for business. For instance, for the past ten years, foreign investors have been told that Shanghai was expanding westwards around the airport and they invested accordingly. Now the industrial centre is to be on swampy land to the east,

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the famous Pudong New Area. Foreign investors then ask, "If the rules change once, why not twice?"<sup>79</sup>

In addition, Chinese administration has been facing another difficulty in the post-1979 reforms, that is the **counter-reform** from the bureaucracy itself. Although government has always been a fortress for pedantry and inflexibility, it has always been a constant part of Chinese life. Since 1979 Chinese policies have been reflecting the beliefs of those in power in Beijing that continued development of the PRC depends on a unified nation and that unity depends on a strong central government and a strong army.<sup>80</sup>

Indeed, to Chinese leadership today, Western-style democracy is irrelevant to Chinese economic reform, what matters is the group interest of the bureaucracy under the sham of "national interest" or "Party interest". To a great extent, it is convinced that the massacre in Tiananmen Square clearly distinguished "national interest" from the "social interests", distinguished the "state" from "society", distinguished the "Republic" from the "People".<sup>81</sup>

Two key issues behind these distinguished facts are that Chinese law and new institutions have been imposed on Chinese society from the top down without a deeper societal root, and that the statutory framework shaped in the 1980s constitutes only the outline of a legal system. The content, meaningfulness and impact of these statutes are still unclear and depended on application in practice by administrative agencies. In our study of foreign investment, both a better legal application and considerable time for improvement are further required.

<sup>79</sup> The Economist, 16/6/90, p. 116, "Investing in China".

<sup>80</sup> It is a deep question for Chinese bureaucrats themselves how far the distance from their reform "mind" to the "reality" is. It is noted: "For the past four years, reform-minded authorities have drawn a clear distinction between the need for economic reform and any 'misguided' experimentation with political reform. Although Tiananmen Square may well represent a change in degree, it certainly represents no change in policy." Foster & Tom (1990): 26.

<sup>81</sup> For instance, "The post-1979 economic reforms and their results are not commonly shared by all the people of China. At least, inflation, corruption, wages and achieving Western democracy are the different concerns between the people and those party and state bureaucrats. The difficulties of the PRC economy and foreign business in China after the Tiananmen killing in fact come out from the counter-reforms of the bureaucracy, which maintains the group interests of the administrative officials at different levels in the past years and in the violence of June 1989 itself." cf. C.J. Lee (1991).

However, it is clear that the co-existence of and interaction between formal and informal law are by no means unique to China or unknown to the West. What is the meaningfulness of Chinese informal law in comparative perspective? To Victor H. Li [(1970): 110-111], legal "attitude" makes differences, to S. B. Lubman [(1991): 333-336], "legal culture" does; that is, the West tends to downgrade the informal law, associating it with the less important aspects of law. However, it is not only difference of the *degree*, but also of the very *status* of the law. As regards policy towards law of foreign investment in both the PRC and Taiwan, the most common thread has been treatment of law as "a *gongju* (tool) of state administration". No greater autonomy is likely to be granted to law without extensive political reform. Administration has been the core, the law as "*contingent*". Law, as an instrument, or tool, of administration, has been put in the hands of "administrative manipulation" (*xin-zhen-bu-men-zhi-you-cao-zhong*). Legality is necessarily weak, if administration alone can implement the policy (*zhengce*) to a certain content. In the field of foreign investment, the formal law not only gives the final decision-making to the administration, but remains both flexible in the wording and practical in negotiation [cf. Section VII.2].

Furthermore, the separation of party and state, or party and government, was not seriously undertaken during the 1980s both in the PRC and in Taiwan, although discussed occasionally. On the function and purpose of legal institutions, nothing less is needed than changing the habits of thought of Chinese officials and the Chinese populace. In short, from traditional influence, political ideology, to the legal mechanism, or the very autonomy of formal legal institutions, the role of informal system of law in Chinese context is different from the West.

### VII.5 CONCLUSIONS

From the analysis in this Chapter, we see the trend of corporate-related laws, especially foreign investment legislation, that has been moved from the various statutes based on differ-

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ent forms of business towards the stage of further unification of legal treatments and application. The Second Wave for the Encouragement of Foreign Investment, both in Taiwan and the PRC, has been fluctuating between the actions and reactions of the formal law, administrative measures, and business practice from foreign investors.

Also, we have seen the expansion of the administrative role in the general regulation of foreign investment. However, from the Chinese viewpoint, the officers argue that they have tried hard to simplify the administrative procedure. But, from the viewpoint of foreign investors, there exist more administrative measures for investment now. The only difference is that, in contrast to the situation in Taiwan, the discretion and approval powers have been lowered down to the local level. However, The State Council retains its coordinating role in Article 53 of the 1989 Administrative Procedure Law.

Nonetheless, since the general nature of this legal regime, as analysed above, remains both flexible in the wording and practical in negotiation, it could be asked to what extent this expansion of administrative control will benefit foreign investment. In my view, the emphasis on business negotiation and administrative measures means that law and its implementation merely act as the framework within which both foreign and Chinese parties can carry out their business bargaining. Although this is by no means unique to China or unknown to the west, the major distinction between the two approaches lies in both *degree* and *attitude* of reliance on these codes of behaviour and personal ties in administration. The interrelation between state law and administrative practice is the core issue, that is, which will assume the role of the base, and which, the role of the contingent element. From our analysis, in the cases of the PRC and Taiwan, unlike the West, administrative discretion, or sometimes administrative intervention or administrative arbitrariness, is more important than the statutory framework.

Along the 1980s, the expansion of export in the PRC did not resolve the accelerated domestic problems, such as inflation, debts, unemployment in the rural areas, and unbalanced development among areas. Above all, it remains a question of the effects of institutions for

promoting foreign investment, both law and SEZs: who benefits more, the PRC or the foreign investors, or both? Especially, whether the SEZs and their preferences and privileges offered to foreigners have created a new "treaty ports" system similar to that in Qing times is arguable. In my view, unless Beijing government evolves a better legal equipment to control both foreign investors and bureaucracy, the activities of self-interest and the local protectionism may accelerate the problems of China's development.

Indeed, facing both Chinese mandarins and the multinational giants, the function of law is limited both in Taiwan and in the PRC. However, to the minimum degree, law does matter as it is the instrument which stimulates foreign investment and trade and secondly, it is the tool for administrative regulation and bargaining. However, at the moment, the business environment of the PRC lacks any other positive conditions. Without additional positive conditions the political economy of China cannot develop as law is not sufficient on its own. Both the expansion of administration within the recent legislation and the business trends after the Tiananmen massacre also prove that the Party-State of the PRC only deems law as a tool for legitimation and regulation of the current business practice, not a more positive mechanism to improve economic circumstances. In summary, in addition to simply changing a law text, more far-reaching economic reforms are needed for the PRC government to stimulate new foreign investment.

## CONCLUSIONS

In conclusion, to the academics who study Chinese law in development or law in the context, the fact of the reliance on informal relationships remains a dominant cultural feature. Indeed, the importance of informal relationships predates the Party-State system in both the PRC and Taiwan, or the Party-State structure has not diminished their role but reinforces it. Even in the case of foreign investment where the statutory law has its positive and formal existence, all administrative operation, informal relationships and business practice have their inveterate and invincible parts. This is the case of the PRC, so is that of Taiwan.

However, it is not necessary that the informal sector always has negative effects on the national development in the PRC and Taiwan. Behind our study, at least two benefits from informal system of law can be taken into account. First, business and economic activities in the PRC and Taiwan, and foreign investment accordingly, are secured not only by the statutory guarantee but also by the informal networks, such as the interaction of social relations and personal ties, that is, "trust". From this aspect, the booming growth of the PRC's economy, to a certain degree, can be expected. In Spring 1992, Deng Xiao-ping's calling upon Guangdong Province to become Asia's fifth "Dragon" is not a dream only, but has its social foundation.

Secondly, from this interaction of social relation and personal ties, there exists a "hiding order" based on the informal channels. This will release people from the anxieties about the "*she-hui-tuo-xu*" (social "anomie", or disorder) in the transformation period. Behind these waves of action-reaction-interaction between formal and informal law, or the propaganda calling for "*fa-zhi-zhi-xu*" (legal order) by both regimes, there always retains a hiding order through social interactions, personal ties and informal channels. Thus, it seems less likely for China to suffer the same disorder from the integration of the former USSR in the near future. It is only from our examination of the informal system of law that we see the tenacity of Chinese society, a case of "*ruan-zhong-you-xu*" (order inside the disorder).

But, it does not necessarily mean that the formal law loses its importance. From our analysis, the national development and the reform programme have much benefited from the PRC's legal construction since 1979, which has been much positive than the legal development in Taiwan in the 1980s.

Indeed, there exist some common bases within social context and culture for a comparison of social studies between the PRC and Taiwan. But, what is the common interest of our comparative study on law of foreign investment between the PRC and Taiwan? In this final part, we shall conclude the major aspects in the following remarks, viz: corporate control between the company law and foreign investment law; administrative procedure as the key role of the regulation of foreign investment; and, the significance of the latest change of law. Then, a set of common characteristics, and the major differences thereof, can be further drawn out.

#### **I. Common Interests of the Comparison of Law of Foreign Investment Between the PRC and Taiwan**

If we examine the continuing development before and after the year 1949 for the comparison of law and economic development between the PRC and Taiwan, many differences in context can be drawn. First, the development of the legal system and the content of law have provided an interesting example. As we analysed, law under the Nationalist government has a longer history, since the legal reform and a professional judicial administration developed under the last dynasty (Qing) during the final years of the nineteenth century. On the other hand, through the mass involvement and popular participation, the legal framework in socialist China always had a major area of informal elements played therein before 1979. And only after then, has a professional and expert judicial administration found a better standing within the regime. But, the legal construction needs a longer period before getting to a matured stage, because law itself can not provide any guarantee without a sound political-economy. Thus, the degree of the westernisation of law accounts for the first difference. Nonetheless, the whole 1980s saw the much advance of



the PRC's legal construction, of which the formal legal changes have taken a much faster speed than that in Taiwan.

Secondly, when the Nationalist bureaucracy was learning the governing experiences through the stage of the bureaucratic capitalism in China before 1949, the Chinese Communists could only attempt to develop their rural economic management outside of the urban-industrialised coastal cities. In the point of view of international business cooperation, the Nationalist administrators had brought the experiences of economic management over Taiwan after the expulsion of the regime from the mainland. The management experience and the constituent elements of the technocrat and bureaucracy have been the other major difference between the two regimes.

The third point of the contrast between the PRC and Taiwan has been the reaction of the society under the constraint or constriction of the modern state and incorporation of international capitalism since the mid-eighteenth century. The role of state and its organs of government faced the challenges from the continued movements of the social restructuring through the mass campaigns. At least, one of the results from this societal reaction is the total expulsion of the foreign direct investment in the PRC from the late 1950s to the late 1970s, followed the expulsion of the Nationalist regime, labelled as the "capitalist-imperialist running-dogs". However, in Taiwan after the Second World War this has never been the case. But, without any exception, as we analysed already, the role of the state has been assuming a bridge between the domestic production and international capitalism. After the famous "2-28 Incident" in 1947, it is difficult to say there was any radical reaction from the society before the mid-1970s, while the only compromise between the state and society exists in the open of the private business. This tendency can be elaborated from the analysis of the "internationalisation" policy under the Nationalist economic development strategy.

Fourthly, law and foreign investment have provided different functions under the economic development strategy between two regimes. A better way to explain this is from the enactment of "1990 Statute for Upgrading Industries (901228)" as a tool of the policy of

internationalisation of both domestic and foreign-invested businesses. Whatever the content of this "internationalisation", or "interdependence", may be, Taiwan has never been "independent". This assertion is based on three accounts: first, compared with the PRC, the "economic sovereignty" of Taiwan remains a great difficulty to define, given reliance on a single capitalist patron, the U.S.A. Thus, to a certain content "interdependence" suggests that through internationalisation, Taiwan's "dependence" may be on more patrons than on U.S. only, such as the European Community. Furthermore, the new 1990 Statute only legalizes the long-term practice of internationalization of domestic business and the ruling regime in which the bureaucracy assumes the bridge role. Moreover, the internationalisation of capital and production in Taiwan lacks a concern for social equality, welfare policy and environmental protection, compared with the PRC's political, economic, and social concerns with foreign investment. Only from these considerations, can we see the role of law as a better tool of development in the PRC than in Taiwan. Therefore, in the view of foreign investment and policy of internationalisation, law in Taiwan does not assume the functions for upgrading the social equalities and economic benefits for the major working classes, but assume the channels for upgrading industries internationalised. This is one of the major difference from the law in the PRC.

Fifthly, the sizes of the economy and administration therein shall come into another examination. The major difference between the economy and its administration of the PRC and those of Taiwan is the size and international location, that is, Taiwan is only an island economy between the Northeast and Southeast Asia, and between the Northern America and Southeast Asia. At least, the tension between the central government and the local authorities within the PRC has been of great interest and different from the case of Taiwan.

Finally, in addition to the legal system, behaviour and experience of bureaucracy, relationship between the society and the state, and the functions of law under the different development strategies analysed, the forms of production and the ownership play the key parts of the later economic developmental differences. Different from the usual view which has simply separated Taiwan and the PRC into those production of capitalist and socialist ones, I believe that both systems have been developing in a kind of mongrel economy. In

other words, Taiwan, in terms of the favouritism [cf. Chapter VI], has developed a system with appearance of capitalist production with the core of the remains of feudal production, and the PRC has developed that with an appearance of socialist transformation before 1979,<sup>1</sup> and with an appearance of socialist market production after 1979, as named "Zhu-hou-jing-ji" [Cf. Chapter VII], integrated with the remains of feudal production as its core. The major reason for the maintenance of the quasi-feudal system is the compromise as the acceptance of the ruling regime by the society exchanged with the interests of local elites. As a fact, the new social-economic order has to rely more or less on this compromise with the old order, the pre-landlord or the localism.

## II. Corporate Control: Between Company Law and Foreign Investment Law

*(The 'Forms' of Foreign Investment; The Market for Corporate Control under State Economic Planning; Corporate Control and the Transnational Corporations)*

However, the major difference between two legal frameworks of foreign investment is the lacking of a general company law in the PRC up to the end of 1991. From the very beginning, the Nationalists in Taiwan have a private-oriented company law to regulate investment and business activities. While the PRC started its regulation of foreign investment through a special legislation on the selective form of foreign investment, that is, the 1979 Equity JV Law, which was followed by several special statutes. Thus, the approach of corporate control on foreign investment in Taiwan has developed from a domain (the general company law) through a line (the special statutes for different sectors) to a point (administrative discretion on each case). In contrast, the PRC's approach has developed from a point, through a line, towards a domain.

The emphasis of forms of foreign business in the legal mechanism explains the different effects on business activities. From the equity joint ventures, wholly foreign-owned enterprises, to the contractual joint ventures, the tendency of the legal harmonization explains

<sup>1</sup> The alternative development models before 1979 relevant to the PRC were the socialist and statist ones. In socialist development, the interests of those who work for a living receive primary emphasis, and the authority of the bureaucracy is progressively restricted in favour of the working classes, ultimately leading to the establishment of a socialist social formation. However, this was not the case before 1979 in China. In regards to the statist development, the interests of the bureaucracy are preeminent, and the rule of the bureaucracy and the statist social formation are consolidated. Cf. Chapter III.

that the PRC has been moving in an encouraging way from mechanisms based on the forms of business towards mechanisms based on operation functions of foreign investment. The gradual decrease of discriminatory treatments between the different forms of foreign investment provides a better competition between the foreign investors. While in the case of Taiwan, the continuing use of the requirement of the form of 'company-limited-by-shares', from the 1960 SEI to the 1990 SUI, explains the discriminatory treatment imposed upon the small and medium enterprises. Although Taiwan tries to promote the business function into upgrading industries programme, the form of business unfortunately creates itself an unequal basis in the programme. Compared with the tendencies above, it explains that the development of legal mechanism of foreign investment under two legal regimes is different. Law in Taiwan has adopted discriminatory form of business, as a key to promote investment, but law in the PRC has moved towards a harmonization of different businesses based on functions, that is, advanced technology and export orientation.

With regards to the market for corporate control under state economic planning, our study has suggested that inside capitalist economy, such as Taiwan, the state intervention is no less than that inside the socialist economy, such as People's China. Since 1978 the PRC has been moving towards a economy based on both the market and the state planning, the development of law in our analysis explains the policy is effective in the domain of foreign investment, especially after the 1986 "22 Articles" attempting to release business activities from the administrative intervention became clearer. In contrast, the administrative authorities in Taiwan still retain the "Negative Lists of Investment by Overseas Chinese and Foreign Nationals" as a measure to protect the major sectors of heavy industries and service. In this case, the state intervention in market and business is in fact more crucial and active in Taiwan, where the term of market economy has been abused.

Therefore, from the statutes to administrative procedure, the move from a general company law towards the special legislation of foreign investment in Taiwan has created a protectionism of domestic enterprises from foreign enterprises, and a privilege of big entrepreneurs from the small and medium enterprises. The bureaucracy is the key of this protectionism behind state intervention. However, the move from several special statutes

towards the adoption of a single legislation in the PRC, such as the 1986 "22 Articles" and the 1991 Foreign Enterprises Income Tax Law, has expressed the government's intention to urge more equal treatments under the law into the more market-oriented economy.

However, the law for corporate control itself provides a standing-point for the multinational business giants to exercise their super economic and technological powers. In our study, the dangerous practice to allow the foreign companies wholly-own or to capitalize their technology combined with the financial preferences for technology explain the financial difficulties for both the PRC and Taiwan at the end of the 1980s for further development [Cf. Chapters VI and VII]. Hence, that law in both regimes fails to control foreign investment effectively because of both the legal mechanism, and technological-economic context. Within this context, law, or the corporate control, faces its limits. While both the PRC and Taiwan benefit themselves from the exporting in the short term, the transnational corporations take the lion's share of this profit-making.

### III. Attempting to Rationalize Law and Administration

*(Administrative Procedure as a Key Role in the Control of Foreign Investment; The Context of the Change of Foreign Investment Law; The Social Costs of the Bureaucratic Counter-Reforms)*

From the comparative analysis, both in the PRC and Taiwan the administrative procedure indeed plays the key part of the whole framework of foreign investment. In addition to general politic-economic context, the limits of law have been laid on the expansion of the administrative measures, such as the often use of the administrative legislation and the discretion. The contradiction, or the uncertain relation, between the formal and informal law has further accelerated the traditional characteristics of Chinese bureaucracy, and has explicated the limits of law. However, in our study not only the Communists<sup>2</sup> but also the Nationalists have reinforced the informal relationships, generally based on reciprocity, for access to personal interests and opportunities. From a macro view, the survival of the party-state and group interests of bureaucracy and its related entrepreneurs as a ruling class in

<sup>2</sup> Indeed, as M. Manion has analysed, "Many who study Chinese politics and society consider the reliance on informal relationships a dominant cultural feature... Others, who agree that the importance of informal relationships predates the communist system, argue that communist structures have not diminished their role but reinforced it..." [Manion (1991): 253].

general are the cornerstones of the structure of corruption, favouritism, quasi-feudalist production and protectionism. The importance of the traditional informal relationship and administrative sector emphasized at the beginning of this study explains that human connections in Chinese society are the major resources of the limits of law. Unfortunately, from the historical-structural perspective, there is no condition for the rule of law to exist under the shadow of the Party-State.

The change of law tends to explain the tension between the formal law and the informal domain, between the statutory texts and the enforcement of law, between legal regulation and business practice, and, accordingly, between the social changes and state intervention. Of course, the business circus, domestic and foreign, has its influence on proposing any legal change, but the attitude of bureaucracy may distort the rationalization of legislation.<sup>3</sup> In both Taiwan and the PRC, the national interest, in the sense of the ruling interest of the Party-State, must make a compromise with the interest of bureaucracy. Furthermore, from the recent change of foreign investment law, it explicates that interests of other social groups can only develop under the ceiling of ruling interests of the Party-State. Moreover, the politically and economically strong groups tend to correlate with each other through the mechanism of the Party-State, such as the process of proposing policy and legal change.

The problems of the social costs of administrative counter-reforms explain the contradiction in both developments of the PRC and Taiwan. As one reviews the reform period since 1979, the new mechanism includes market system, foreign technology, foreign capital, a more balanced economic growth, and a judicial order for the protection of private economic activities and property, and for the respect for contracts as well. These new institutional settings and policies help us to understand the nature of the reform and how these contradictions emerged. However, at the end of the tragedy of the Tiananmen massacre in 1989, one saw one of two old contradictions--the intensification of hierarchy and the economic privileges, and a new contradiction--the failure to solve out the increased

<sup>3</sup> This explains why Weber's theory has failed to analyse that the state law is not always rational. Cf. M. Rheinstein (ed. 1966), *Max Weber on Law in Economy and Society* (Harvard Univ. Press, 1966), Ch. II, *The Economic system and the Normative Orders*, pp. 11-40, especially pp. 14-15.

unemployment and inflation, still reached a point which urged the Communists to take a cautious review of the reform programme.

In the view of the past decades, Taiwan, usually quoted as "a successful example of development", shall be challenged in the questions of the social costs. Behind the socio-economic transformation there has been a contradiction of development, suffice it to say that the Party-State and a Confucianist ideological bureaucracy have not yet been abolished for the past four decades. Taiwan's rapid economic growth, which provided widespread mobility opportunities and created the full employment necessary to stimulate real wage increases, has been under an alliance between the domestic entrepreneurs and bureaucracy. Therefore, the social uncertainties and economic inequalities caused by both political and economic privileges recently became the major criticism on of the Nationalists bureaucrats and connected entrepreneurs.

Indeed, the unprecedented international context accelerates Taiwan's changing steps. Even the issues of labour welfare and trade unions were pushed by American trade pressure. Furthermore, is the farmers' demonstration in May 1988 against US pressure trade a single incident, in light of the dependence relationship between the US and Taiwan for forty years? The potential tension of China-Taiwan trade, the laboratory of "one state two systems" in Hong Kong, and the gradual atrophy of the ROC's official relations in international community, thrust many tasks on Taiwan's law and development. In the PRC, was the 1989 Tiananmen democratic movement an individual case? Given the huge package of law and administrative directives on the civil rights have been published since then [Cf. Appendix A], law and its function assume a more obvious role in China's future development. However, can both the Nationalists and the Communists avoid the impacts from the collapse of the Party-State in the U.S.S.R. in August 1991?

A prospective legitimacy (and legality) for the future lies on both the recognition of a people's right to development and the distinction between the rule of law and the rule by law. Eventually, the ultimate institutional guarantee of legality probably bases on the structure and ideology of both the Nationalist and Communist Parties that both governments represent and

on the extent to which the Nationalist's and the Communist's nerve ends retain contact with popular mass.

All in all, from the initial incorporation of modern capitalism to the reform programme in the 1990s, the modernization of China has taken a long and cumbersome road between capitalism and socialism, while historically the Middle Kingdom was separated into two Party-States--Communist China and Nationalist China. At the end of our study, Taiwan's experience of dependence on the West repeatedly stirs up in people's minds the question of whether China can go through its "socialist road with Chinese unique characteristics". Between opening and closing the door, can China avoid the fate of penetration by the Western political and economic powers behind the giant transnational corporations? Between capitalism and socialism, which offers a better tomorrow for the Yellow Land? Moreover, between modernity and tradition, where is the sheltering sky for these "Children of the Dragon" who have long been eager for the return of cosmic harmony?



## APPENDIX A:

### STATUTES, REGULATIONS AND ADMINISTRATIVE MEASURES OF THE PRC RELATING TO LAW, ADMINISTRATIVE PROCEDURE AND FOREIGN INVESTMENT<sup>1</sup>

- 490929      The "Common Programme of the Chinese People's Political Consultative Conference" (the CPPCC), adopted on 29th September, 1949.
- 500628      The 1950 Trade Union Law of the PRC; June 28, 1950.
- 510226      The 1951 Labour Insurance Regulations of the PRC; February 26, 1951.
- 510306      Procedures of the PRC for Prohibiting the State Currency from Entering or Leaving the Country.
- 520100      Interim Procedures for Structuring National Economic Plans
- 540506      Decision of the Government Administration Council of the Central People's Government Concerning the Establishment of a Foreign Trade Arbitration Commission within the China Council for the Promotion of International Trade.
- 540920      The 1954 Constitution of the People's Republic of China, (Foreign Languages Press, Beijing (Peking): 1954)
- 560331      Provisional Rules of Procedure of the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade.
- 560525.1    1956 Decision of the State Council Concerning the Prevention of Danger from Silica Dust in Factories and Mining Enterprises; May 25, 1956.
- 560525.2    The 1956 Regulations on Factory Safety and Sanitation; May 25, 1956.
- 560525.3    The 1956 Regulations governing Safe Working Conditions in Building Construction and Installation Projects; May 25, 1956.
- 571116      The 1957 Provisional Regulations of the State Council Concerning the Retirement of Workers and Staff Members; approved on 16 November 1957 by the SC-NPC, adopted and amended on 6 February, 1958 by the State Council..
- 571116      The 1957 Provisional Regulations of the State Council Concerning the Granting of Home Leave to Workers and Staff Members and Wages to Them on such Leave (dated as the above one).
- 571026      Interim Rules of the State Council on the Reward and Punishment of Officials in State Administrative Organs.
- 580911      Regulations of the Industrial and Commercial Consolidated Tax of the PRC (Draft).

<sup>1</sup> Resources: Foreign Languages Press (Beijing) (1954). *The 1954 Constitution of the People's Republic of China*, (Foreign Languages Press, Beijing (Peking): 1954) and (1961). *Important Labour Laws and Regulations of the PRC* (Enlarged Edition), 1961, Beijing (Peking); UEA Press Ltd. and Institute of Chinese Law (Publishers) Ltd. (Hong Kong). *Statutes and Regulations of the People's Republic of China*. UEA's INDEX (1988); UEA's INDEX (1990); Tai Dao Publishing Ltd (H.K.) (1983). *Commercial Laws & Business Regulations of the People's Republic of China*, Vol. I (1983: Hong Kong); Vol. II (1984: Hong Kong); *Beijing Review*; *Ran-Min-Jhi-Bao* (RMJB); *East Asian Executive Reporter*; and, *China Law & Practice*.

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- 580913 Detailed Rules and regulations of the Industrial and Commercial Consolidated Tax of the PRC (Draft).
- 581121 Decision of the State Council of the PRC Concerning the Establishment of a Maritime Arbitration Commission within the China Council for the Promotion of International Trade.
- 590108 Provisional Procedural Rules of the Maritime Arbitration Commission of the China Council for the Promotion of International Trade.
- 720418 State Council's Approval of the Report of the Ministry of Finance on Reinstating the Construction Bank.
- 790700 State Council Notice on Organizing Pilot Points in Accordance with the Reform of Management Structure.
- 790702 Criminal Law of the PRC.
- 790708 Law of the PRC on Joint Venture Using Chinese and Foreign Investment.
- 790828 Provisional Regulation on Providing Loans for Capital Construction Projects.
- 790903 Procedures for the Development of Processing and Assembly Industry for Export and Medium and Small Compensation Trade.
- 790913 Environmental Protection Law of the PRC (Provisional)
- 800226 State Council Notice Concerning the Conversion of Foreign Economic and Trade Arbitration Commission.
- 800319 Provisional Regulations of the Bank of China on Foreign Exchange Certificates.
- 800603 Provisional Regulations Concerning the Export Licence System.
- 800726 Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment.
- 800726.2 Interim Provisions of the State Council on the Use of Land for Construction by Chinese-Foreign Joint Ventures.
- 800826 Regulations of Special Economic Zones in Guangdong Province.
- 800830 Relations for Providing Short-term Loans in Foreign Currency by the Bank of China.
- 800910.1 Income Tax Law of the PRC Concerning Joint Ventures with Chinese and Foreign Investment.
- 800910.5 Resolution of the Third Session of the Fifth National People's Congress on Amending the Constitution and Setting up the Constitution Amending Commission.
- 800922 Articles of Association of the Bank of China.
- 801017 Interim Rules on the Developing and Protection of Socialistic Competition.

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- 801024 Circular of the Ministry of Finance Concerning the Payment of Individual Income Tax by Foreigners Working in China.
- 801030 Interim Regulations of the PRC on the Control of Resident Offices of Foreign Enterprises.
- 801207 Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801208 Notice of the State Administration of Industry and Commerce of the PRC Concerning the Registration of Resident Offices of Foreign Enterprises.
- 801208.1 Circular of the State Administration of Commodity Prices on the Rigorous Enforcement of the Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801209 Circular of Ministry of Commerce on the Policy in the Rigorous Enforcement of the Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801209.1 Circular of the National Supply Cooperative on the Rigorous Enforcement of the Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801210 Circular of the Ministry of Food Supply on the Rigorous Enforcement of the Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801210.1 Circular of the State Administration of Industry and Commerce on Rigorous Enforcement of the Circular of the State Council on the Strict Control of Price and Price Negotiation.
- 801212 Circular of the State Metrological Commission on the Metrological Management in Coping with the Grand Price Inspection.
- 801214 Detailed Rules and Regulations for the Implementation of the Individual Income Tax Law of the PRC.
- 801214.1 Detailed Rules and Regulations for the Implementation of the Income Tax Law of the PRC Concerning Joint Ventures with Chinese and Foreign Investment.
- 801218 Provisional Regulations for Exchange Control of the PRC.
- 801219 Circular of the Beijing Municipal People's Government on the "Procedures for the Registration of Resident Office or Representative of Foreign Enterprises".
- 801224 Interim Provisions for the Professional Titles of Economic Professional Cadres.
- 80129.1 Decision of the State Council on the Rigorous Strengthening of Credit Control and Extension of Loans.
- 810212 Articles on Association of the China International Economic Consultants Incorporated.
- 810330 Interim Customs Procedures for the Collection of Fees.

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- 810424 Procedures for Registration, Examination and Approval of Joint Ventures Between Chinese and Foreign Investors.
- 810515 Interpretation of Tax Evasion, Refusal to Pay Taxes, Tax dodges and Arrears in Tax Payment by the General Taxation Bureau of the Ministry of Finance.
- 810602 Notice of the Ministry of Finance on Certain Questions Concerning Individual Income Tax.
- 810610.3 Decision of the Standing Committee of the National People's Congress on Strengthening the Work of Law Interpretation.
- 810180 Rules for the Implementation of Controls Relating to Carrying Foreign Exchange, Precious Metals and Foreign Exchange Instrument into and out of China.
- 810810.1 Rules for the Implementation of Foreign Exchange Controls Relating to Foreign Institutions in China and Their Personnel.
- 810924.1 Views of the State Economic Commission on Strengthening the Leadership and Properly Accomplishing the Reorganization of Enterprises.
- 811028 Circular of the State Council on the Despatch of the Views of the State Economic Commission on Strengthening the Leadership and Properly Accomplishing the Reorganization of Enterprises.
- 811126 Resolution on the Authorization of the Guangdong and Fujian Provisional People's Congress and their Standing Committees to Formulate Various Specific Economic Regulations for their Special Economic Zones.
- 811213 Economic Contract Law of the PRC.
- 811213 Income Tax Law for Foreign Enterprises of the PRC.
- 811224 Interim Provisions for Labour and Wage Management in Enterprises in the Special Economic Zones of Guangdong Province.
- 811224.1 Interim Provisions for the Registration and Administration of Enterprises in the Special Economic Zones of Guangdong Province.
- 811224.2 Interim Provisions of the Special Economic Zones of Guangdong Province for the Control of Personnel Entering and Leaving China.
- 811224.3 Interim Provisions of the Shenzhen Special Economic Zone for Land Management.
- 811231 Rules for the Implementation of Foreign Exchange Controls Relating to Individuals.
- 811231.1 Rules for the Implementation of the Examination and Approval of Application by Individuals for Foreign Exchange.
- 820107 Provision on the Categorisation of Export Commodities in Foreign Trade.
- 820122 Circular on the Export Licence System Governing Eleven Categories of Export Commodities.

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- 820202 Interim Provisions on the Rate of Registration Fee Payable by Chinese-Foreign Joint Venture.
- 820205 Interim Procedure for the Collection of Pollutant Discharge Fees.
- 820221 Detailed Rules and Regulations of the PRC for the Implementation of the Income Tax Law Concerning Foreign Enterprises.
- 820226 Notice Concerning the Levy of Income Tax on Revenue from the Freight of Foreign Vessels.
- 820304 Interim Provisions of Taxation Registration on the Operation and Cessation of Business Transactions of Foreign Enterprises.
- 820305 Procedures for Trial Implementation on the Retention of Foreign Exchange Earned from Export Commodities.
- 820401 Provisions of the General Customs Office and the Ministry of Finance for the Collection or Remission of Customs Duties and Industrial and Commercial Consolidated Taxes on Imports and Exports for the Chinese Foreign Cooperation Exploitation of Off-shore Oil.
- 821401 Notice of the Shanghai Municipal Administration of Industry and Commerce on the Registration of Resident Offices of Foreign Enterprises.
- 820413 Decision of the CCP Central Committee and the State Council on the Crack-down on Serious Crimes in Economic Activities.
- 820428 Circular of the State Council on the Strict Prohibition of Staff of Enterprises in Engaging in Improper Economic Activities For Soliciting Extra Income.
- 820430 Announcement of the Ministry of Finance on Taxation of the Foreign Freight and Passenger Ships.
- 820505 State Council Circular on the Division of Labour Among State Planning Commission and State Science and Technology Commission.
- 820604 Regulations of the PRC on the Quarantine of Imported and Exported Animals and Plants.
- 820605 Customs Procedures of the PRC for the Supervision and Taxation of Import and Export Samples and Advertising Materials.
- 820610 Circular of the Ministry of Finance Concerning the Adjustment of Industrial and Commercial Tax Rates on Certain Categories of Products and Extension Categories of Products and Extension of Taxable Items.
- 820707 Regulations for the Administration of Registration of Industrial and Commercial Enterprises.
- 820708 Code of Conduct for State Council Officials.
- 820921 Notice of the State Council Concerning the Taxation of Chinese-Foreign Joint Ventures and Cooperative Projects.
- 821204 Constitution of the PRC.
- 821210 Organic Law of the National People's Congress of the PRC.

- 821210.1 Organic Law of the State Council of the PRC.
- 821210.4 Resolution of the Fifth Plenary Session of the Fifth People's Congress on the Number of Deputies and the Election to the Sixth National People's Congress.
- 821211 Detailed Rules for the Implementation of Registrations on the Administration of Registration of Industrial and Commercial Enterprises.
- 821213 Interim Provisions of the Ministry of Finance on Tax Reduction and Exemption on Royalties from the Use of Proprietary Technology.
- 821222 Circular of the State Council on the Formation of the Office For Shanghai Economic Zone and Shanxi Energy Base.
- 821227 Articles of Association of the People's Insurance Company of China.
- 830101 Interim Provision of the Ministry of Finance Regarding the Reduction and Exemption of Income Tax on Interest Earned in China by Foreign Business.
- 830101.1 Rules of the Bank of China on Foreign Exchange Deposit (Category A).
- 830101.2 Rules of the Bank of China on Foreign Exchange Deposit (Category B)
- 830101.3 Rules of the Bank of China on Special Renminbi Deposit.
- 830114 Circular of the General Office of the State Council Concerning the Organizational Structures of the People's Construction Bank of China and the Agricultural Bank of China.
- 830201 Provisional Regulations for the Establishment of Representative Offices in China by Overseas Chinese and Foreign Financial Institutions.
- 830209 Report on the Reform of the Structure of the Construction Bank.
- 830305 The Decision of the Standing Committee of the National People's Congress on the Approval Power to be Exercised by the Ministry of Foreign Economic Relations and Trade Instead of the Former Foreign Investment Commission.
- 831307 Circular of the Ministry of Finance on the Exemption of Individual Income Tax on the Overseas Income of Foreigners Working in China.
- 830309 Reply of the Ministry of Finance on Income Tax Exemption of Products Used for Repaying the Cost and Interest of Equipment and Royalty of Proprietary Technology.
- 831310 Detailed Rules for Implementation of the Trademark Law of the PRC.
- 830401 Interim Regulations on State-Owned Industrial Enterprises.
- 831801 Rules for the Implementation of Exchange Control Regulations Relating to Enterprises with Overseas Chinese Capital, Enterprises with Foreign Capital and Chinese-Foreign Joint Venture.
- 830822 Regulations of the PRC on Arbitration for Economic Contracts
- 830826 Regulations Concerning Registration Procedures for Intermarriage Between Chinese and Foreigners.

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- 830900 China Council for the Promotion of International Trade Rules for Foreigners or Foreign Enterprises Applying for Trademark Registration in China.
- 830901 Regulations of the PRC on Contracts on Property Insurance.
- 830902 Resolution by the Standing Committee of the National People's Congress on the Amendments of "The Income Tax Law of the PRC Concerning Joint Ventures with Chinese and Foreign Investment".
- 830902.4 Law of the PRC on Maritime Traffic Safety.
- 830902.5 Decision of the Standing Committee of the National People's Congress in Authorizing the State Council in Amending and Supplementing Part of the Procedures for Staff Retirement and Registration.
- 830920 Regulations for the Implementation of the Law of the PRC on Joint Ventures Using Chinese and Foreign Investment.
- 831016 Report of the Ministry of Finance on the Levying of Industrial and Commercial Sales Tax on Wholesale Commodities.
- 831115 Resolution of the Standing Committee of the Guangdong Provincial People's Congress on Approval of the Rules of the Shenzhen Special Economic Zone on Commodity Building Property Management.
- 831119 State Council Circular on Stopping the Purchase, Sale and Leasing of Land.
- 831122 Notice of the Customs of the PRC.
- 831204 Rules of the Shenzhen Special Economic Zone on Commodity Building Property Management.
- 831217 Regulations on Administration of Private Urban Houses.
- 831228 Detailed Rules for the Implementation of the Regulation of the PRC on the Control of Gold and Silver.
- 840110 Provisional Regulations of the PRC on Import Licence System.
- 840114 Supplementary Provision of the Ministry of Finance on the Levy of Industrial and Commercial Tax on Commodity Retailing Business.
- 840119 Provisions for the Implementation of the Regulation on Labour Management in Joint Ventures Using Chinese and Foreign Investment.
- 840128 Regulations of the PRC on Inspection of Import and Export Commodities.
- 840131 Regulations Regarding the Supervision, Levy and Exemption of Tax on Good Imported and Exported by Chinese-Foreign Cooperative Enterprises.
- 840131.1 Notice of the Ministry of Finance on Tax Exemption on International Finance Corporation.
- 840201 Regulations on Control of the Import and Export of Gold and Silver.
- 840207 Regulations on Foreign Economic Contracts of Shenzhen Special Economic Zone.

- 840208 Provisional Regulations on Technology Import to Shenzhen Special Economic Zone.
- 840209 Detailed Rules for the Implementation of the Registration of Enterprises in the Shenzhen Special Economic Zone.
- 840312 Patent Law of PRC.
- 840420 Regulations Concerning Import and Export of Articles by Resident Offices of Foreign Enterprises and Presses and Their Staff Stationed in China.
- 840423 The Task and Jurisdiction of People's Courts on the Trial of Economic Cases.
- 840427 Administrative Procedures of the Customs of the PRC on the Inward/Outward Foreign Vessels, Imported/Exported Goods, and the Baggage and Personal Articles of Foreign Staff Coming to PRC for Chinese-foreign Cooperation in Off-shore Petroleum Exploitation.
- 840430 Provisions of the Customs General Administration, Ministry of Finance, and Ministry of Foreign Economic Relations and Trade Regarding the Supervision and Levy/Exemption of Duty on Goods Imported and Exported by Chinese-Foreign Joint Ventures.
- 840511 Law of the PRC on the Prevention of Water Pollution and Treatment of Polluted Water.
- 840513 Fire Services Regulations of the PRC.
- 840515 Rules for the Implementation of the Interim Regulations on Licensing System for Import Commodities of the PRC.
- 840601 Rules for the Implementation of the Regulations on Inspection of Import and Export Commodities.
- 840714 Regulations on the Registration of Enterprises in the Xiamen Special Economic Zone.
- 840714.1 Regulations on the Use of Land in the Xiamen Special Economic Zone.
- 840714.2 Regulations on Labour Administration in the Xiamen Special Economic Zone.
- 840714.3 Regulations on Technology Imports the Xiamen Special Economic Zone.
- 840714.4 Regulations on Economic Integration between the Xiamen Special Economic zone and Inland Areas of China.
- 840414 Report of the Opinion on the Reform of Foreign Trade System.
- 840825 Provisions of the Ministry of Urban and Rural Construction and Environmental Protection on the Administration of Private House Owned by Foreigners.
- 840912 Scientific and Technical Progress Reward Regulations of the PRC.
- 840917 Views of the Supreme People's Court on Some Questions Concerning the Rigorous Enforcement of the "Economic Contract Law".



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- 840918 Decision of the Standing Committee of the National People's Congress on Authorizing the State Council in Reforming the Industrial and Commercial Taxation System and in Promulgating the Relevant Draft of Taxation Regulations for Trial Implementation.
- 841008 Procedures for the Trial Implementation of Labour Management in Chinese-Foreign Joint Ventures in the Shanghai Municipality.
- 841015 Provision on Preferential Treatment in Dalian Economic and Technological Development Zone.
- 841015.1 Administrative Procedures for the Registration of Enterprises in Dalian Economic and Technological Development Zone.
- 841015.2 Procedures for the Administration of Foreign Economic Contract in Dalian Economic and Technological Development Zone.
- 841015.3 Procedures for the Management of Labour Wages in Enterprises in Dalian Economic and Technological Development Zone.
- 841015.4 Procedures for the Land Use Management in Dalian Economic and Technological Development Zone.
- 841018 Provisions on the Signing of Certificates on Generalized Preferential Terms for Foreign Processing and Assembly Business, Compensation Trade, and the Export Goods of Chinese-Foreign Joint Ventures, Chinese-Foreign Cooperation, and Enterprises with Exclusive Foreign Investment (Trial Implementation).
- 841020 Decision of the CCP Central Committee on the Reform of the Economic Structure.
- 841109 Resolution of the Standing Committee of Guangdong Provincial People's Congress on Delegation of Authority of Shenzhen Municipal People's Government to Readjust at its Discretion the Scale of Land Use Fees in Shenzhen Special Economic Zone.
- 841114 Decision of the Standing Committee of the National People's Congress Concerning the Establishment of Maritime Courts in China's Coastal Port Cities.
- 841115 Provisional Tax Regulation for 14 Open cities, Special Economic Zones and Hainan Island.
- 841128 Decision for the Supreme People's Court Concerning the Setting Up of Maritime Courts.
- 841205.1 Provisions of the Shanghai Municipality on the Administration of the Supply and Marketing of Resources Undertaken by Chinese-Foreign Joint Ventures and of Commodity Price (Trial Implementation).
- 841220 Regulations for Contracts of Processing Materials.
- 841225 Procedures on the Revision, Preferential Terms, Reduction and Exemption of Land Use Fees in Shenzhen Economic Zone.
- 850119 Regulations of the Implementation of the Patent law of the PRC.

- 850119.1 Notice on the Rate of Patent Fees.
- 850121 Accounting Law of the PRC.
- 850204 Procedures for the Reduction or Postponement of Payment for Patents by Individual Applicants.
- 850216 Circular of the Supreme People's Court on Some Questions Concerning the Implementation of the Adjustment of Patent Cases.
- 850301 Customs Provisions on Import of Small Sized Machines of Production by Urban and Rural Private Industrialists and Businessmen.
- 850303 Provisional Regulations on the Administration of Insurance Companies.
- 850304 Accounting Regulations of the PRC for Joint Ventures Using Chinese and Foreign Investment.
- 850313 Circular of the State Council on Strengthening the Management, Supervision and Inspection of Commodity Price.
- 850321 Foreign Economic Contract Law of the PRC.
- 850402 Regulations Governing Foreign Banks and Joint Chinese Foreign Banks in Special Economic Zones of the PRC.
- 850405 Provincial Regulations on Violation of Exchange Control of the PRC.
- 850409 Interim Regulations on the Guangzhou Economic and Technological Development Zone.
- 850409.1 Tentative Procedure of the Guangzhou Economic and Technological Development Zone for Land Management.
- 850409.2 (Tentative) Procedures of the Implementation of Industrial and Commercial Taxes in the Guangzhou Economic and Technological Development Zone.
- 850409.3 Interim Rules on Certain Matters Relating to Inland Associated Enterprises (or Undertakings) in the Guangzhou Economic and Technological Development Zone.
- 850409.4 Tentative Procedures for the Registration and Administration of Enterprises in the Guangzhou Economic and Technological Development Zone.
- 850409.5 Tentative Procedures for Labour and Wage Management in Enterprises in the Guangzhou Economic and Technological Development Zone Concerning the Introduction of Technology.
- 850409.6 Interim Rules of the Guangzhou Economic and Technological Development Zone Concerning the Introduction of Technology.
- 850410.1 Decision of the Third Session of the Sixth National People's Congress of the PRC on the Authorization of the State Council in the Formulation of Interim Provisions or Regulations Concerning the Economic Structural Reform and Economic Opening to the External World.

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- 860115      The Regulations on Joint Venture's Balance of Foreign Exchange Revenue and Expenditure (cited as JV Balance Regulations) (860115), adopted by the State Council.
- 860115      The Amendment of Article 100 of the 1983 Equity JV Implementation Regulations , on 15 January, 1986, by the State Council.
- 860412      General Principles of Civil Law of the PRC.
- 860620      "Provisions of Shanghai Municipality on Application and Approval of Chinese-Foreign Equity Joint Ventures, Chinese-Foreign Cooperative Ventures and Enterprises Operated Exclusively with Foreign Capital", adopted by the 22nd Session of the Standing Committee of the Eighth People's Congress of Shanghai on 20 June, 1986.
- 861010      Procedures of the Guangdong Province for the Administration of Securities and Bonds.
- 861011      Provisions of the PRC for the Encouragement of Foreign Investment.
- 861011.1    Provisions of Shanghai Municipality for the Encouragement of Foreign Investment.
- 861110      Provisions on the Decision-making Power Regarding Employment of Staff, Pay Scale, and Expenditure on Insurance and Welfare for Staff and Enterprises with Foreign Investment.
- 861124      Procedures of the Customs of the PRC Governing Import of Materials and Parts that Enterprises Run with Foreign Investment Need in Performing Product Export Contract.
- 861126      Procedures of the People's Bank of China on the Loan in Renminbi to Foreign Investors with Foreign Exchange as Security.
- 861129      Regulations of the PRC on Bankruptcy of Enterprises with Foreign Investment in Shenzhen Special Economic Zone.
- 861201      Customs Procedures for the Declaration of Goods Imported and Exported by Foreign Embassies in the PRC and their Embassy Staff.
- 861201.1    Provisions of the General Administration of Customs of the PRC Regarding Articles Brought Into and Taken Out of the Country by Foreign Embassies in the PRC and their Embassy Staff.
- 861201.2    Detailed Rules for the Implementation of Highway Transportation of Goods Contract.
- 861201.3    Detailed Rules for the Implementation of Air Cargo Transportation Contract.
- 861216      Provisions of the State Economic Commission, State Science and Technology Commission, Ministry of Finance, and Patent Office if the PRC on Strengthening the Patent Work of Enterprises.
- 861227      Detailed Rules for the Implementation of the Law of the PRC for the Control of the Foreign Nationals Entering and Leaving the Country.

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- 870103 Circular of the State Council on the Repeal of Certain Statutes on Foreign Affairs and Economic Relations; Industry, Transport and Urban Construction; Labour and Personnel; and Education, Science, Arts and Hygiene.
- 870120 Procedures of the Ministry of Foreign Economic Relations and Trade on Enterprises with Foreign Investment Regarding the Balance of Foreign Exchange Revenue and Expenditure by Purchasing Domestic Products for Export.
- 870122 Customs Law of the PRC.
- 870124 Rules of the Ministry of Foreign Economic Relations and Trade for the Implementation of Import and Export Licensing for Enterprises with Foreign Investment.
- 870127 Implementing Procedures of the Ministry of Foreign Economic Relations and Trade Regarding the Affirmation and Assessment of Foreign Invested Export Manufacturing Enterprises and Technologically Advanced Enterprises.
- 870131 Procedures of the Ministry of Finance for the Implementation of the Preferential Tax Terms in the Rigorous Enforcement of the "Provisions of the State Council for the Encouragement of Foreign Investment".
- 870203 Regulations of the PRC on 1987 State Treasury Bonds.
- 870217 Circular of the Ministry of Finance on the Levy of Bonus and Salary Regulatory Tax.
- 870218 Procedures for the Handling of Official Documents of State Administrative Departments.
- 870220 Interim Procedures for the Administration of Providing Foreign Exchange Guaranties by Domestic Institutions.
- 870301 Interim Provisions on the Proportion of Registered Capital and Gross Investment of Chinese-foreign Joint Ventures.
- 870327 Interim Regulations on the Administration of Bounds of Enterprises.
- 870408 Resolution of the State Council on the Serious Enforcement of Tax Laws and Disciplines and on the Strengthening of Tax Collection.
- 870421 Interim Regulations on the Formulation of Administrative Statutes.
- 870424 Regulations of Bank of China on Providing Loans to Enterprises with Foreign Investment (07/04/87, approved by the State Council; 24/04/87, promulgated by the People's Bank of China).
- 870523 Shanghai Provisional Measures for the Administration of Enterprise Bonds; and Shanghai Provisional Measures for the Administration of Shares, promulgated by the Shanghai Municipal People's Government on May 23, 1987, effective from July 1, 1987 ([1987] 8 Fagui Xinxi).
- 870616 Interim Provisions of the State Council on the Penalty for Breach of Financial Statutes.
- 870623 Law of the People's Republic of China on Technology Contracts, adopted by the Standing Committee of the National People's Congress on June 23, 1987,

effective from November 1, 1987 ([1987] 15 State Council Gazette (June 26, 1987) 515).

- 870701 Measures for Application for Guarantees in Respect to Import and Export Goods, promulgated by the Customs General Administration, effective from July 1, 1987.
- 870728 Regulations for the Supervision of State-owned Industrial and Communications Enterprises Facilities, promulgated by the State Council on July 28, 1987 (Zhongguo Fazhi Bao, August 14, 1987, p.2).
- 870731 Interim Provisions for the Management of Labour Disputes in State Enterprises, promulgated by the State Council on July 31, 1987, effective from August 15, 1987 (Zhongguo Fazhi Bao, August 11, 1987, p.2).
- 870731 Provisions for the Collection of Fines for Late Reporting of Imported Commodities, promulgated by the Customs General Administration, announced on July 31, 1987, (Shenzhen Special Zone Daily, July 31, 1987, p.1 (report)).
- 870801 Provisions for the Collection of Fines for Late Reporting of Import Commodities, promulgated by the Jiulong Customs, effective from August 1, 1987 (Shenzhen Special Zone Daily, July 31, 1987, p.1 (report)).
- 870801 Interim Provisions on Reduction of Individual Income Tax on Wages and Salaries of Foreign Personnel Working in China, promulgated by the State Council, effective from August 1, 1987 (Renmin Ribao (overseas edition), August 16, 1987, p.1 (report)).
- 870805 Provisional Regulations for the Supervision of Urban and Rural Individual Industrial and Commercial Enterprises, promulgated by the State Council on August 5, 1987, effective from September 1, 1987 (Zhongguo Fazhi Bao, August 19, 1987, p.2).
- 870823 Interim Provisions on Labour Management of Foreign Investment Enterprises in the Shenzhen Special Economic Zone, promulgated by the Shenzhen Municipal Government, announced on August 23, 1987 (Shenzhen Special Zone Daily, August 23, 1987, p.1 (report)).
- 870827 Interim Provisions for Statistics on and Monitoring of Foreign Debt, promulgated by the State Administration for Exchange Control on August 27, 1987 (Renmin Ribao, August 27, 1987, p.2).
- 870829 Provisional Measures for Strengthening the Administration of Commodities Imported by Air, promulgated by the State Council General Office on August 29, 1987 (Renmin Ribao (overseas edition), August 31, 1987, p.3).
- 870905 Law of the People's Republic of China on the Prevention and Treatment of Air Pollution, adopted by the Standing Committee of the National People's Congress on September 5, 1987, effective from June 1, 1988 (Renmin Ribao September 10, 1987, p.5).
- 870905 The Agreement on Civil and Commercial Judicial Enforcement between China and France, ratified by the Standing Committee of the National People's Congress on September 5, 1987 (Renmin Ribao, September 6, 1987, p.4 (report)).

- 870905 The Agreement on Civil and Criminal Judicial Enforcement between China and Poland, ratified by the Standing Committee of the National People's Congress on September 5, 1987 (Renmin Ribao, September 6, 1987, p.4 (report)).
- 870911 Price Control Regulations of the People's Republic of China, promulgated by the State Council on September 11, 1987 (Renmin Ribao, September 20, 1987, p.2)
- 870912 Import and Export Duty Regulations, revised by the State Council on September 12, 1987, effective from October 15, 1987 (Renmin Ribao, September 30, 1987, p.5).
- 870917 Provisional Regulations for the Administrative Punishment of Speculation and Profiteering, promulgated by the State Council on September 17, 1987 (Zhongguo Fazhi Bao, October 8, 1987, p.2).
- 870923 Security Administration Measures for the Hotel Industry, approved by the State Council on September 23, 1987, promulgated by the Ministry of Public Security on November 10, 1987 (Zhongguo Fazhi Bao, November 12, 1987, p.2)
- 871001 Measures on Foreign Exchange Control for Non-Bank Financial Institutions, promulgated by the People's Bank of China on October 1, 1987.
- 871001 Measures for Quality Supervision of Imported Goods, promulgated by State Administration for Commodity Inspection, State Economic Commission, Ministry of Foreign Economic Relations and Trade, and Customs General Administration, effective from October 1, 1987 (Renmin Ribao (overseas edition), September 27, 1987, p.3).
- 871010 Interim Provisions of the Supreme People's Court Relating to Handling Appeals in Criminal Cases by the People's Courts at All Levels, dated *October 10, 1987*,<sup>2</sup> published on September 20, 1989 (Fazhi Ribao, October 25, 1989, p.2)
- 871015 Shanghai Interim Provisions on the Prevention of Improper Competition, promulgated by the Shanghai Municipal People's Government on October 15, 1987, effective from January 1, 1988 ([1987]) Fagui Xinxi p.45)
- 871019 Measures for Import Substitution Concerning Products of Sino-Foreign Equity Joint Ventures and Cooperative Joint Ventures, promulgated by the State Planning Commission on October 19, 1987 (Renmin Ribao (overseas edition), October 31, 1987, p.3).
- 871029 Detailed Rules for the Implementation of Interim Provisions Concerning Sanctions for Violating Public Finance Legislation, promulgated by the Ministry of Finance and the Auditing Office on October 29, 1987, effective June 16, 1987 (Zhongguo Fazhi Bao, November 23, 1987, p.2)
- 871031 Measures for Import Substitution Management of Machinery and Electrical Products of Sino-Foreign Equity Joint Venture and Cooperative Joint Ventures, promulgated by the State Economic Commission, announced on October 31, 1987 (Renmin Ribao (overseas edition), October 31, 1987, p.3 (report)).

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<sup>2</sup> HKLJ (1990), Vol.20, No.1, p.101.

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- 871107 Provisions on the Administration of Foreign Processing and Assembly Business, promulgated by the Customs General Administration, Ministry of Foreign Economic Relations and Trade, Ministry of Finance and the State Administration for Industry and Commerce, announced on November 7, 1987, effective from November 1, 1987 (Ta Kung Pao, October 13-16, 1987).
- 871109 Advertising Control Regulations (revised), promulgated by the State Council on November 9, 1987, effective from December 1, 1987 (Zhongguo Fazhi Bao, November 12, 1987, p.2)
- 871124 Rules of Procedure of the Standing Committee of the National People's Congress, adopted by the Standing Committee of the National People's Congress on November 24, 1987 (Zhongguo Fazhi Bao, November 25, 1987, p.4)
- 871124 Village Committee Organisation Law of the People's Republic of China (for Trial Implementation), adopted by the Standing Committee of the National People's Congress on November 24, 1987, effective from June 1, 1988 (Zhongguo Fazhi Bao, November 25, 1987, p.4)
- 871129 Measures for the Assignment of Leaseholds for Value in the Shanghai Municipality, promulgated by the Shanghai Municipal People's government on November 29, 1987, effective from January 1, 1988 (Liberation Daily, December 23, 1987, p.3)
- 871201 Regulations of Fujian Province for the Protection of the Lawful Rights and Interests of Consumers, adopted by the Fujian People's Congress, effective from December 1, 1987 (Zhongguo Fazhi Bao, September 24, 1987, p.2).
- 871215 Provisional Measures on the Administration of Taxation on Business Transactions between Foreign Investment Enterprises and Associated Companies, promulgated by the Shenzhen Municipal People's Government, announced on December 15, 1987, effective from January 1, 1988 (Ta Kung Pao, December 22, 1987)
- 871221 Notice on the Revision of Article 86 (iii) of the Implementing Regulations of the Law Concerning Sino-foreign Equity Joint Ventures of the People's republic of China, issued by the State Council on December 21, 1987 (Ta Kung Pao, December 31, 1987, P.2 (report))
- 871221 Provisional Administrative Measures for the Development of Imported Materials for Processing and Assembly Business, formulated by the Fujian Provincial Foreign Economic Relations and Trade Commission, announced on December 21, 1987 (Wen Wei Pao, November 14, 1987, p24 (report))
- 871229 Regulations on Land Administration in the Shenzhen Special Economic Zone, adopted by the Standing Committee of the Guangdong Provincial People's Congress on December 29, 1987, promulgated on January 4, 1988 (Wen Wei Pao, January 6-9, 1988, p.24)
- 871230 Measures on Responsibility for Quality Control over Imported Commodities, promulgated by the Hunan Provincial People's Government, announced on December 30, 1987 (Zhongguo Fazhi Bao, December 30, 1987, p2)
- 880101 Several Provisions Concerning Capital Contributions by All Parties to Sino-foreign Equity Joint Ventures, promulgated by the Ministry of Foreign Economic Relations and Trade and the State Administration for Industry and

- Commerce on January 1, 1988, effective from March 1, 1988 (Renmin Ribao (overseas edition), January 15, 1988, p.3)
- 880109 New Preferential Policies for Assembly and Processing Enterprises in the Guangzhou Municipality, promulgated by the Guangzhou Municipal People's Government, announced on January 9, 1988 (Wen Wei Pao, January 9, 1988, p.24)
- 880111 Interim Provisions for the Control of the Prices of Important Production Materials, Communications and Transportation, promulgated by the State Council on January 11, 1988 (Fazhi Ribao, January 21, 1988, p.2).
- 880111 Provisional Control Measures Regarding Nationwide Centralized Price Ceilings for Production Materials Outside the Plan, promulgated by the State Council on January 11, 1988 (Fazhi Ribao, January 21, 1988, p.2).
- 880113 Detailed Rules for the Implementation of the Trademark Law of the People's Republic of China (revised) promulgated by the State Administration for Industry and Commerce on January 13, 1988 (Fazhi Ribao, January 18, 1988, p.2)
- 880115 Jiangsu Province Provisional Regulations for the Supervision of Rural Collective Industrial Enterprises, promulgated by the Standing Committee of the Jiangsu Provincial People's Congress (Fazhi Ribao, January 15, 1988, p.1 (report))
- 880120 Detailed Rules for the Implementation of the Regulations on the Administration of Technology Import Contracts of the People's Republic of China, approved by the State Council on December 30, 1987, promulgated by the Ministry of Foreign Economic Relations and Trade on January 20, 1988 (Renmin Ribao, January 21, 1988, p.2)
- 880121 Amendments to the Detailed Rules for the Implementation of the Individual Income Tax Law of the People's Republic of China, issued by the Ministry of Finance on January 21, 1988, effective from January 1, 1988 (Renmin Ribao, February 24, 1988, p.1)
- 880121 Water Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on January 21, 1988, effective from July 1, 1988 (Fazhi Ribao, January 23, 1988, p.2)
- 880121 Supplementary Provisions of the Standing Committee of the National People's Congress Regarding the Punishment of Corruption and Bribery, and Supplementary Provisions of the Standing Committee of the National People's Congress Regarding the Punishment of Smuggling, adopted by the Standing Committee of the National People's Congress on January 21, 1988 (Fazhi Bao, November 25, 1988, p.2)
- 880212 Measures for the Administration of Land on Hainan Island, promulgated by the Hainan Provincial Preparatory Group, announced on February 12, 1988 (Wen Wei Pao, February 25, 1988, p.24)
- 880223 Urgent Circular Relating to Strictly Controlling the Purchasing Power and Reducing Expenses of Social Organisations, issued by the State Council on February 23, 1988 (Fazhi Ribao, February 24, 1988, p.1 (report)).
- 880224 Measures for the Administration of Domestic Vehicles Carrying Foreign Processed and Assembled Bonded Goods and Goods Carried in Such



- Vehicles, promulgated by the Customs General Administration, announced on February 24, 1988 (Wen Wei Pao, February 25, 1988, p24 (report)).
- 880225 Measures for the Supervision of Vehicles and Accompanying Goods Entering and Departing from Hong Kong and Macao, promulgated by the Customs General Administration, announced on February 25, 1988, effective from March 1, 1988 (Wen Wei Pao, February 25, 1988, p24)
- 880227 Provisional Regulations on the Contract Responsibility System for State Industrial Enterprises, promulgated by the State Council on February 27, 1988, effective from March 1, 1988 (Fazhi Ribao, March 5, 1988, p.2).
- 880302 Guangdong Provincial Measures for Encouragement of the Development of Foreign Processing and Assembly Business and Compensation Trade, promulgated by the Guangdong Provincial People's Government on March 2, 1988 (Renmin Ribao, (overseas edition), April 8, 1988, p.3 (report)).
- 880303 Ministry of Finance Circular on Reaffirming the Requirement of Foreign Investment Enterprises to Appoint Registered Accountants to Verify Capital Contributions and to Audit Accounts, issued by the Ministry of Finance, announced on March 3, 1988 (Fazhi Ribao, March 4, 1988, p.1 (report)).
- 880305 Provisions on the Administration of Financial Institutions Handling Spot and Forward Foreign Exchange Transactions on Behalf of Customers, promulgated by the State Administration of Exchange Control on March 5, 1988 ([1988] 5 State Council Gazette 143).
- 880309 Shaoguan Municipal Measures on the Encouragement of Foreign Investment, promulgated by the Shaoguan Municipal People's Government, announced on March 9, 1988 (Ta Kung Pao, March 12, 1988, p.12 (report)).
- 880309 Zhaoqing Municipal Preferential Measures Concerning Foreign Investment Enterprises, promulgated by the Zhaoqing Municipal People's Government, announced on March 9, 1988 (Ta Kung Pao, March 9, 1988, p.30 (report)).
- 880321 Tentative Provisions on the Administration of Technology Contracts, promulgated by the State Science and Technology Commission on March 21, 1988 (Fazhi Ribao, April 1, 1988, p.3).
- 880402 Opinion on Certain Questions Relating to the Enforcement of the 'General Principles of Civil Law of the People's Republic of China'(for Trial Implementation), issued by the Supreme People's Court on April 2, 1988 ([1988] 2 Supreme People's Court Gazette (June 20, 1988) 16
- 880412 Constitution of the People's Republic of China, Amendments (Articles 10 and 11), adopted by the National People's Congress on April 12, 1988 (Fazhi Ribao, April 13, 1988, p.1).
- 880413 State Industrial Enterprise Law of the People's Republic of China, adopted by the National People's Congress on April 13, 1988, effective from August 1, 1988 (Renmin Ribao, April 16, 1988, p.2).
- 880413 Decision Relating to the Establishment of Hainan Province, adopted by the National People's Congress on April 13, 1988 (Fazhi Ribao, April 14, 1988, p.2).
- 880416 Circular on the Problem Concerning the Settlement of Exploration Expenditures Incurred by the Foreign Petroleum Companies for Co-operative

- Exploitation and Exploration of Petroleum in China, promulgated by the Ministry of Finance General Administration of Taxation on April 16, 1988 (Renmin Ribao, (overseas edition), April 28, 1988, p.3).
- 880419 Preferential Policies of the Guangxi Zhuangzu Autonomous Region on Encouragement of the Development of an Export-oriented Economy, promulgated by the Guangxi Provincial People's Government on April 19, 1988 (Wen Wei Pao, June 9, 1988, p.26).
- 880422 Measures of the Customs of the People's Republic of China on the Administration of Bonded Factories Engaged in Processing Business, promulgated by the Customs General Administration, announced on April 22, 1988, effective from May 1, 1988 (China Economic News, May 9, 1988, pp. 6-8).
- 880423 Measures on the Administration of Technology Exports, promulgated by the Guangdong Provincial People's Government, announced on April 23, 1988 (Ta Kung Pao, April 23, 1988, p.3 (report)).
- 880426 Jiulong Customs Measures on the Further Simplification of Inspection Release Procedures Concerning a Few Urgently Needed Production Goods and Materials Carried by Personnel of Enterprises of the Shenzhen Special Economic Zone, promulgated by Jiulong Customs Bureau on April 26, 1988 (Renmin Ribao, (overseas edition), April 26, 1988, p.1).
- 880428 Provisional Regulations Prohibiting Appropriations on Enterprises, promulgated by the State Council on April 28, 1988, effective from May 20, 1988 (Renmin Ribao, May 6, 1988, p.2).
- 880506 Customs Measures on the Administration of Reliable Enterprises, promulgated by the Customs General Administration, announced on May 6, 1988 (Fazhi Ribao, May 6, 1988, p.1).
- 880507 Yingkou Municipal Provisions on Encouragement of the Development of the 'Three Imports, One Compensation' (Import of Materials for Processing, Import of Parts for Assembly and Import of Samples for Processing; One Compensation Trade) Project, promulgated by the Yingkou Municipal People's Government (Liaoning Province), announced on May 7, 1988 (Renmin Ribao, (overseas edition), May 7, 1988, p.3 (report)).
- 880507 Yingkou Municipal Provisions on the Encouragement of Foreign Investment, promulgated by the Yingkou Municipal People's Government (Liaoning Province), announced on May 7, 1988 (Renmin Ribao, (overseas edition), May 7, 1988, p.3 (report)).
- 880507 Provisions on the Administration of Cadres Employed by Foreign Investment Enterprises, promulgated by the Guangdong Provincial Personnel and Labour Bureaux on May 17, 1988 (Renmin Ribao, (overseas edition), May 17, 1988 (report)).
- 880507 Measures of the Customs of the People's Republic of China on the Administration of Bonded Warehouses and Bonded Goods, promulgated by the Customs General Administration, announced on May 7, 1988 (Wen Wei Pao, May 7, 1988, p.26).
- 880513 Regulations of the People's Republic of China on the Administration of Registration of Enterprise Legal Persons, promulgated by the State Council on

- May 13, 1988, effective from July 1, 1988 (Wen Wei Pao, June 23-25, 1988, p.26).
- 880513 Provisions of the Customs of the People's Republic of China on the Administration of Import and Export Goods from Economic and Technological Development Zones, promulgated by the Customs and General Administration, announced on May 13, 1988, effective from May 15, 1988 (Fazhi Ribao, May 13, 1988, p.1).
- 880514 Provisions of the State Commodity Price Bureau Relating to Sanctions for Price Violations, promulgated by the State Commodity Price Bureau on May 14, 1988 (Fazhi Ribao, May 16, 1988, p.2).
- 880514 Provisions on the Encouragement of Investment in and Development of Hainan Island, promulgated by the State Council on May 14, 1988 (China Economic News, May 16, 1988, p.6).
- 880518 Regulations for the Prevention of Environmental Pollution from Ship-breaking, promulgated by the State Council on May 18, 1988, effective from June 1, 1988 (Fazhi Ribao, June 25, 1988 p.2).
- 880518 Opinion on the Further Realization of the Autonomy of Foreign Investment Enterprises Regarding Personnel, promulgated by the Ministries of Labour and Personnel, approved by the State Council and announced on May 18, 1988 (Renmin Ribao, (overseas edition), May 19, 1988, p.1).
- 880519 Gongbei Customs Provisions on the Administration of Bonded Warehouses and Bonded Factories, promulgated by the Gongbei Customs Bureau (Zhuhai), announced on May 19, 1988 (Wen Wei Pao, May 19, 1988, p. 25 (report)).
- 880519 Gongbei Customs Detailed Rules for the Implementation of the Administration of Reliable Enterprises, promulgated by the Gongbei Customs Bureau, announced on May 19, 1988 (Wen Wei Pao, May 19, 1988, p. 25 (report)).
- 880521 Measures of the Customs of the People's Republic of China on the Administration of Imported and Exported Materials used in the Processing Industry, promulgated by the Customs General Administration, announced on May 21, 1988, effective from June 1, 1988 (Wen Wei Pao, May 21, 1988, p.26).
- 880522 Certain Provisions of Yantai Municipality on the Development of an Export-oriented Economy, promulgated by the Yantai Municipal People's Government on May 22, 1988 (Wen Wei Pao, July 1, 1988, p.26).
- 880522 Regulations of the Ningbo Economic and Technological Development Zone, adopted by the Standing Committee of the Zhejiang Provincial People's Congress on May 22, 1988 (Wen Wei Pao, May 26, 1988, p.26).
- 880523 Sichuan Provincial Provisions on the Encouragement of Foreign Investment, promulgated by the Sichuan Provincial People's Government on May 23, 1988 (Wen Wei Pao, June 21, 1988, p.26).
- 880526 Shandong Provincial Trial Measures on Carrying Out Foreign Assembly, Processing and Compensation Trade, promulgated by the Shandong Provincial People's Government, announced on May 26, 1988 (Wen Wei Pao, May 26, 1988, p.26).

- 880528 Preferential Measures on the Encouragement of Foreign Investment in Respect to the Establishment of Enterprises and the Development of Processing and Assembly Business with Imported Materials, promulgated by the Nanning Municipal People's Government, announced on May 28, 1988 (Wen Wei Pao, May 28, 1988, p. 29).
- 880528 Guangdong Provincial Provisions for the Implementation and Administration of Foreign Investment Utilized in Capital Construction Projects, promulgated by the Guangdong Provincial People's Government, announced on May 28, 1988 (Wen Wei Pao, May 28, 1988, p.26 (report)).
- 880603 Regulations of the People's Republic of China on the Administration of Enterprise Legal Persons Registration, promulgated by the State Council on June 3, 1988, effective from July 1, 1988 (Renmin Ribao, June 13, 1988, p.2).
- 880605 Provisional Regulations for Leasing Management of Small-scale State Industrial Enterprises, promulgated by the State Council on June 5, 1988, effective from July 1, 1988 (Renmin Ribao, June 16, 1988, p.2).
- 880608 Shanghai Municipal Interim Provisions on Bills of Exchange, promulgated by the Shanghai Municipal People's Government on June 8, 1988, effective from October 1, 1988 (1988) Xin Fagui 44
- 880609 Detailed Implementing Measures on the Import Commodity Quality Licensing System (trial implementation), promulgated by the State Administration for Inspection of Import and Export Commodities, the State Economic Commission, the Ministry of Foreign Economic Relations and Trade and the Customs General Administration on June 9, 1988 (China Economic News, October 10, 1988, pp 21-22)
- 880615 Interim Provisions on the Reduction of and Exemption from Enterprise Income Tax and Consolidated Industrial; and Commercial Tax for the Encouragement of Foreign Investment in the Coastal Open Economic Zones, promulgated by the ministry of Finance on June 15, 1988 (China Economic News, July 11, 1988, p19)
- 880616 Agreement on Mutual Service of Litigation Documents between Hong Kong and Guangdong Province, concluded on June 16, 1988, effective from July 1, 1988 (Economic Daily, June 17, 1988, p1 (report))
- 880616 Certain Provisions of Hebei Province on the Encouragement of Foreign Investment and the Opening of Qin-Tand-Cang Bohai Gulf Open Economic Zone, promulgated by the Hebei Provincial People's Government on June 16, 1988 (Wen Wei Pao, July 5, 1988, p.26).
- 880625 Provisional Regulations of the People's Republic of China on Private Enterprises, promulgated by the State Council on June 25, 1988, effective from July 1, 1988 (Renmin Ribao, June 29, 1988, p.2).
- 880625 Provisional Regulations of the People's Republic of China on Income Taxation of Private Enterprises, promulgated by the State Council on June 25, 1988, effective from July 1, 1988 (Renmin Ribao, June 29, 1988, p.2).
- 880625 Provisions of the State Council Relating to Collection of Individual Income Adjustment Tax from Investors in Private Enterprises, promulgated by the State Council on June 25, 1988, effective from July 1, 1988 (Renmin Ribao, June 29, 1988, p.2).

- 880628 Provisions of the Customs of the People's Republic of China on the Import and Export of Goods, Means of Transportation, Articles of Luggage and Postal Articles to and from the Hainan Special Economic Zone, promulgated by the Customs General Administration, announced on June 28, 1988, effective from July 1, 1988 (Wen Wei Pao, June 28, 1988, p.26).
- 880626 Measures on the Assignment and Transfer of Land Use Rights, promulgated by the Xiamen Municipal People's Government, announced on June 26, 1988 (Wen Wei Pao, June 26, 1988, p.26).
- 880630 Notice on the Repeal of Certain Foreign-Related Laws and Regulations, announced by the State Council on June 30, 1988 (Renmin Ribao (overseas edition), July 4, 1988, p3)
- 880701 Shenzhen Tentative Provisions on the Administration of the Shatoujiao Bonded Industrial Zone, promulgated by the Shenzhen Municipal People's Government on July 1, 1988 (Wen Wei Pao, July 1, 1988, p26)
- 880701 Hainan Provincial Measures on Tax Incentives for the Encouragement of Foreign Investment in Hainan Province, promulgated by the Hainan Provincial People's Government on July 1, 1988 (Wen Wei Pao, August 20, 1988, p26)
- 880701 Interim Provisions Relating to Party Disciplinary Sanctions Against Leading Party Cadres Who Commit Bureaucratic Errors Involving Dereliction of Duty, issued by the Chinese Communist Party Central Discipline Inspection Committee, effective from July 1, 1988 (Fazhi Ribao, July 30, 1988, p2)
- 880703 Provisions on the Encouragement of Investment by Taiwan Compatriots, promulgated by the State Council on July 3, 1988 (Fazhi Ribao, July 7, 1988, p2)
- 880703 Decision Concerning Further Implementation of the Open Policy, issued by the State Council on July 3, 1988 (Shenzhen Special Zone Daily, July 22, 1988, p1)
- 880705 Notice on Delegation of Authority for the Approval of Wholly Foreign-Owned Enterprises to Provinces, Autonomous Regions, Centrally Governed Municipalities, Special Economic Zones and Cities under Independent Plans, issued by the State Council and announced on July 5, 1988 ([1988] State Council Gazette (No.15) p496)
- 880705 Xinjiang Preferential Measures for the Encouragement of Foreign Investment, promulgated by the Xinjiang Uyger Autonomous Region People's Government on July 5, 1988 (Wen Wei Pao, July 16, 1988, p26)
- 880711 Agreement between China and Australia on the Mutual Promotion and Protection of Investment, concluded on July 11, 1988 ([1988] 20 State Council Gazette 661-70).
- 880712 Interim Measures on the Administration of Taxation of Foreign Construction Enterprises Contracting Construction Projects in Beijing Municipality, promulgated by the state Tax Bureau on July 12, 1988, effective from July 1, 1988 (Beijing Ribao, August 7, 1988, p2)
- 880712 Notice on Several Questions Concerning the Implementation of the Taxation Provisions in the 'State Council Provisions on the Encouragement of Investment in and Development of Hainan Island', promulgated by the State

- Tax Bureau on July 12, 1988, effective from July 1, 1988 ([1988] China Taxation (No. 9 ), p49)
- 880718 Regulations on Compensation for Families of Deceased Servicemen and Preferential Treatment for Servicemen, promulgated by the State Council on July 18, 1988, effective from August 1, 1988 (Renmin Ribao, July 26, 1988, p4)
- 880721 Labour Protection Provisions for Women Workers, promulgated by the state Council on July 21, 1988, effective from September 1, 1988 (Renmin Ribao, July 26, 1988, p4)
- 880801 Several Provisions for the Acceleration of the Development and Construction of the Hainan Special Economic Zone, promulgated by the Hainan Provincial People's Government on August 1, 1988 (China Economic News, October 17, 1988, pp 16-17)
- 880801 Beijing Municipal Interim Measures on the Administration of Foreign Exchange in Foreign Investment Enterprises, promulgated by the Beijing Municipal People's Government on August 1, 1988 (China Economic News, October 3, 1988, p18-19)
- 880806 Provisional Regulations of the People's Republic of China on Stamp Duty, promulgated by the State Council on August 6, 1988, effective from October 1, 1988 (Fazhi Ribao, August 13, 1988, p2)
- 880810 Interim Provisions Relating to Party Disciplinary Sanctions Against Communist Party Members Who Violate Discipline in Foreign Affairs Activities, issued by the Chinese Communist Party Central Discipline Inspection Committee on August 10, 1988, effective from July 1, 1988 (Renmin Ribao, August 10, 1988, p4)
- 880812 Labour Regulations for the Special Economic Zones of Guangdong Province, adopted by the Guangdong Provincial People's Congress on August 12, 1988, effective from October 1, 1988 (Wen Wei Pao, September 20-24, 1988)
- 880823 Regulations of the Chinese Communist Party Discipline Inspection Authorities on Supervision of Cases (for Trial Implementation), issued by the Chinese Communist Party Central Discipline Inspection Committee, announced on August 23, 1988 (Renmin Ribao, August 24, 1988, p4)
- 880827 Agreement on the Promotion and Mutual Protection of Investment between China and Japan, concluded on August 27, 1988 (Guoji Shangbao, September 15, 1988, p2)
- 880902 Guangdong Provincial Notice on Questions Concerning Acceleration of the Development of an Export-oriented Economy, promulgated by the Guangdong Provincial People's Government on September 2, 1988 (Wen Wei Pao, October 4-8, 1988)
- 880905 Law of the People's Republic of China on Guarding State Secrets, adopted by the Standing Committee of the National People's Congress on September 5, 1988, effective from May 1, 1989 (Renmin Ribao, September 6, 1988, p.4)
- 880905 Supplementary Provisions of the Standing Committee of National People's Congress Relating to Punishment for the Offence of Disclosing State Secrets, adopted by the Standing Committee of the National People's Congress on September 5, 1988 (Renmin Ribao, September 6, 1988, p4)

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- 880908      Provisional Regulations on Cash Management, promulgated by the State Council on September 8, 1988, effective from October 1, 1988 (Renmin Ribao, September 13, 1988, p2)
- 880908      Certain Provisions Relating to Handling Accusations, Charges and Appeals, passed by the Chinese Communist Party Central Discipline Inspection Committee on July 8, 1987, effective from August 1, 1987, announced on September 8, 1988 ( Renmin Ribao, September 8, 1988, p4)
- 880912      Arbitration Rules of the China International Economic and Trade Arbitration Commission, adopted by the China Council for the Promotion of International Trade on September 12, 1988, effective from January 1, 1989 ([1988] 22 State Council Gazette 723-29).
- 880912      Arbitration Rules of the China Maritime Arbitration Commission, adopted by the China Council for the Promotion of International Trade on September 12, 1988; effective from January 1, 1989 ([1988] 22 State Council Gazette 729-36).
- 880913      Interim Provisions Relating to the Administrative Punishment of Corruption and Bribery by State Personnel, promulgated by the State Council on September 13, 1988 (Renmin Ribao, September 18, 1988, p3)
- 880915      Dali Preferential Policies Concerning the Acceleration of Economic Development, promulgated by the Dali Municipal People's Government (Yunnan Province), announced on September 15, 1988 (Wen Wei Pao, September 15, 1988, p38)
- 880920      Regulations of the Chinese Communist Party Discipline Inspection Authorities on the Trial of Cases, issued by the Chinese Communist Party Central Discipline Inspection Committee on July 14, 1987, announced on September 20, 1988 (Renmin Ribao, September 21, 1988, p3)
- 880920      Several Preferential Provisions of Kunming Municipality for the Encouragement of Foreign Investment, promulgated by the Kunming Municipal People's Government on September 20, 1988 (Ta Kung Pao, October 22, 1988, p19 (report))
- 880920      Rules on Trading and Administration of the Shanghai Foreign Exchange Adjustment Centre, issued by the Shanghai office of the State Administration of Exchange Control on September 20, 1988
- 880922      Provisional Regulations on the Control of Building Construction, promulgated by the State Council on September 22, 1988 (Renmin Ribao, September 26, 1988, p2)
- 880922      Provisional Regulations of the People's Republic of China on Banquet Tax, promulgated by the State Council on September 22, 1988, effective from dates to be determined by the provinces, autonomous regions and municipalities (Fazhi Ribao, September 29, 1988, p2)
- 880925      Measures on the Levying of Customs Supervision Charges on Imported Goods Which Enjoy Duty Reductions and Exemptions and on Bonded Goods, formulated by the Customs General Administration, the Ministry of Finance and the State Price Bureau, effective from September 25, 1988 (Wen Wei Pao, September 21, 1988, p34)



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- 880926 Circular Relating to the Severe Punishment of Serious Economic Criminal Elements and the Prompt Trial of Economic Crime Cases, issued by the Supreme People's Court on September 26, 1988 (Fazhi Ribao, September 28, 1988, p1 (report))
- 880927 Provisional Regulations of the People's Republic of China on Land-use Tax in Cities and Towns, promulgated by the State Council on September 27, 1988, effective from November 1, 1988 (Renmin Ribao, October 6, 1988, p2)
- 880927 Measures on the Administration of Foundations, promulgated by the State Council on September 27, 1988 (Renmin Ribao, November 13, 1988, p.4)
- 880928 Provisional Regulations of the People's Republic of China on the Urban Land-use Tax, promulgated by the State Council on September 28, 1988, effective from November 1, 1988 (Economic Daily, October 4, 1988, p2)
- 881003 Certain Provisions Relating to Problems of Resigned or Retired Cadres of Party and State Offices at the County Level and Above Engaging in Trade and Managing Enterprises, issued by the State Council and the Chinese Communist Party Central Committee on October 3, 1988 (Renmin Ribao, October 25, 1988, p1)
- 881103 Detailed Rules for the Implementation of the Regulations of the People's Republic of China on the Administration of Registration of Enterprise Legal Persons, promulgated by the State Administration of Industry and Commerce on November 3, 1988, effective from December 1, 1988 (China Economic News, January 23 and 30, 1989)
- 881105 Hunan Provincial Supplementary Provisions on the Encouragement of Foreign Investment, promulgated by the Hunan Provincial People's Government on November 5, 1988 (Wen Wei Po, December 11, 1988, p.29)
- 881108 Land Reclamation Provisions, promulgated by the State Council on November 8, 1988, effective from January 1, 1989 (Renmin Ribao, November 20, 1988, p.4)
- 881112 Measures for the Administration of Import and Export Commodity Inspection of Samples, promulgated by the State Administration of Import and Export Commodity Inspection on November 12, 1988 (Renmin Ribao (overseas edition) December 3, 1988, p. 3)
- 881121 Agreement between China and Malaysia on the Mutual Promotion and Protection of Investment, concluded on November 21, 1988 (Wen Wei Po, November 22, 1988, p.2 (report)).
- 881122 Agreement between China and New Zealand on the Mutual Promotion and Protection of Investment, concluded on November 22, 1988 (Fazhi Ribao, November 23, 1988 (report)).
- 881125 Certain Provisions on the Reporting Work of the People's Procuratorates (for Trial Implementation), passed by the Investigation Committee of the Supreme People's Procuratorate on November 25, 1988 (Fazhi Ribao, January 12, 1989 p.2)
- 881130 Auditing Regulations of the People's Republic of China, promulgated by the State Council on November 30, 1988, effective from January 1, 1989 (Renmin Ribao, December 8, 1988, p.5)



- 881201 Shaanxi Provincial Provisions on the Encouragement of Foreign Investment, promulgated by the Shaanxi Provincial People's Government in December 1, 1988, (China Economic News, January 16, 1989, pp. 18-19)
- 881201 Provisions Prohibiting State Administrative Offices and Personnel From Giving and Accepting Gifts in the Course of Official Activities within the Country, promulgated by the State Council on December 1, 1988 (Renmin Ribao, December 4, 1988, p.4)
- 881205 Provisions on the Payment of Royalties for the Exploitation of Off-shore Petroleum Resources, approved by the State Council on December 5, 1988, promulgated on January 1, 1989 (China Economic News February 20, 1989 pp. 19-20)
- 881209 Shenzhen Special Economic Zone Measures on the Administration of 'Temporary Workers Handbooks', promulgated by the Shenzhen Municipal Labour Bureau on December 9, 1988 (Shenzhen Special Zone Daily, January 2, 1989, p.2).
- 881215 Agreement between China and the United States on Maritime Transportation, concluded on December 15, 1988 (Wen Wei Po, December 17, 1988, p.2 (report)).
- 881220 Provisions on the Administration of Economising on Water Use in Cities, approved by the State Council and promulgated by the Ministry of Construction on December 20, 1988, effective from January 1, 1989 (Fazhi Ribao, December 31, 1988, p.2)
- 881220 Shanghai Municipal Provisions on the Administration of Foreign Debt Information, promulgated by the Shanghai branch of the State Administration of Exchange Control on December 20, 1988 (China Daily, December 21, 1988, p.2 (report))
- 881220 Implementing Measures on Sanctions for Unlawful Conduct Relating to Prices in Purchase and Sale Operations in Cotton, issued jointly by the State Price Bureau and the State Technology Supervision Bureau on December 20, 1988 (Fazhi Ribao, January 26, 1989, p.2)
- 881222 Provisions on the Administration of Personnel Who Obtain Legal Qualifications But Do Not Engage in Legal Practice, issued by the Ministry of Justice (Fazhi Ribao, December 22, 1988, p.2)
- 881229 Decision of the Standing Committee of the National People's Congress Concerning Amending the Land Administration Law of the People's Republic of China, adopted on December 29, 1988 (Renmin Ribao, December 31, 1988, p.4; full text of the amended law, Renmin Ribao, January 19, 1989, p.5)
- 881231 Standardisation Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on December 29, 1988, effective from April 1, 1989 (Renmin Ribao, December 31, 1988, p.4)
- 890101 Regulations of the Shanghai Economic and Technological Development Zones, approved by the Standing Committee of the Shanghai Municipal People's Congress, effective from January 1, 1989 (China Economic News, January 2, 1989 pp. 17-18)
- 890101 Chongqing Municipal Provisions on the Encouragement of Foreign Investment, promulgated by the Chongqing Municipal People's Government

on January 1, 1989 (Wen Wei Po, January 11, 1989, p. 35, January 12, 1989, p.30, and January 13, 1989, p.28).

- 890101 Measures on the Collection and Application of Fishery Resources Cultivation and Protection Fees, issued jointly by the Ministry of Agriculture, the Ministry of Finance and the State Price Bureau, effective from January 1, 1989 (Fazhi Ribao, December 6, 1988, p.2)
- 890103 Measures for Determining the Dutiable Value of Imports and Exports, promulgated by the Customs General Administration on January 3, 1989, effective from January 10, 1989 (Wen Wei Pao, January 6, 1989, p.30 and January 7 1989, p.27)
- 890106 Provisions on the Establishment of Import and Export Tax Administration Offices by Tax Bureaux in 15 Provinces and Municipalities, promulgated by the Ministry of Finance, announced on January 6, 1989 (Wen Wei Po, January 6, 1989, p. 38 (report))
- 890120 Circular on the Question of Reaffirming the Levying of Tax on Receipts and Income of Foreign Investment Enterprises, issued by the Shanghai Municipal Taxation Bureau and the Shanghai branch of the State Administration of Exchange Control on January 20, 1989.
- 890124 Shantou Special Economic Zone Provisions on Land Administration, passed by the Standing Committee of the Shantou Municipal People's Congress, announced on January 24, 1989 (Shantou Special Zone Daily, January 28, 1989, p.2).
- 890125 Provisions on Penalties for the Violation of the Import and Export Licensing Administration System, promulgated by the Customs General Administration and the Ministry of Foreign Economic Relations and Trade on January 25, 1989, effective from February 1, 1989 (Renmin Ribao, (overseas ed) February 4, 1989. p.25)
- 890203 Regulations for Handling Boundary Disputes between Administrative Districts, promulgated by the State Council on February 3, 1989 (Renmin Ribao, February 12, 1989, p.4)
- 890205 Circular Concerning Clearing up Problems Relating to Party and State Office Cadres Holding Positions in Companies (Enterprises), issued jointly by the General Office of the Communist Party Central Committee and the General Office of the State Council on February 5, 1989 (Jingji Ribao, February 13, 1989, p.2)
- 890211 Administrative Provisions on the Laying of Submarine Electric Cables and Pipes, promulgated by the State Council on February 11, 1989, effective from March 1 1989 (Fazhi Ribao, February 22, 1989, p.2)
- 890211 Implementing Measures of Guangdong Province for the Protection of Women Workers, adopted by the Guangdong People's Government on February 11, 1989, effective from March 1, 1989 (Shenzhen Tequbao, March 6, 1989, p.8).
- 890212 Agreement between China and Pakistan on the Mutual Promotion and Protection of Investment, concluded on February 12, 1989 (Renmin Ribao, March 2, 1989 p.2 (report)).

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- 890214 Notice on Strengthening Administration Over the Borrowing of International Commercial Loans, issued by the State Council, announced on February 14, 1989 (Economic Daily, February 14, 1989, p.1 (report))
- 890215 Implementing Regulations for the Technology Contract Law of the People's Republic of China, approved by the State Council on February 15, 1989, issued by the State Science Commission on March 15, 1989 (Fazhi Ribao, March 16, 1989, p.2).
- 890216 Provisions on Jurisdiction and Procedures for Penalising Foreign Investment Enterprises Which Violate Administrative Regulations on Registration, promulgated by the State Administration of Industry and Commerce, announced on February 16, 1989 (Wen Wei Po, February 16, 1989, p.31)
- 890220 Provisions for the Administration of Payment Settlements in Foreign Exchange to Foreign Investment Enterprises in the People's Republic of China, promulgated by the State Administration of Exchange Control on February 20, 1989, effective from March 1, 1989 (Jingji Cankao, February 28, 1989, p.2)
- 890221 Resolution of the Standing Committee of the National People's Congress Concerning the Publication of the Hong Kong Basic Law Draft, adopted on February 21, 1989 (Renmin Ribao, February 24, 1989, p.5)
- 890221 Law of the People's Republic of China on Import and Export Commodity Inspection, passed by the National People's Congress on February 21, 1989, effective from August 1, 1989 (Economic Daily February 24, 1989, p.2)
- 890301 Beijing Municipal Measures on Mediation of Patent Disputes, promulgated by the Beijing Municipal People's Government, effective from March 1, 1989 (Beijing Ribao, May 22, 1989, p.2).
- 890301 Provisions on Exchange Control for Chinese Parties to Sino-foreign Equity and Co-operative Joint Ventures, promulgated by the State Administration for Exchange Control, effective from March 1, 1989 (China Economic News, March 13, 1989, p.20).
- 890301 Provisions for the Control of Bank Accounts Opened Abroad by Foreign-funded Enterprises, promulgated by the State Administration of Exchange Control, effective from March 1, 1989 (China Economic News, February 27, 1989, pp. 22-23)
- 890302 1989 Special State Bonds Regulations of the People's Republic of China, promulgated by the State Council March 2, 1989 (Renmin Ribao, March 16, 1989, p.6).
- 890302 Interim Provisions on the Administration of Civil Aviation Transportation Unscheduled Flights, promulgated by the State Council on March 2, 1989 (Renmin Ribao, March 9, 1989, p.6).
- 890306 Measures on Exchange Control for Investments Abroad, promulgated by the State Administration of Exchange Control on March 6, 1989 (Economic Daily, March 7, 1989, p.2).
- 890308 Circular on Sorting out and Reorganising Various Types of Foreign Trade Corporation, issued by the State Council, announced on March 8, 1989 ([1989] 5 State Council Gazette).

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- 890311 Xian Municipal Interim Provisions on Land-use Management by Foreign Investment Enterprises, promulgated by the Xian Municipal People's Government, announced on March 11, 1989 (Ta Kung Pao, March 11, 1989, p.19 (report)).
- 890312 Regulations on Petroleum and Natural Gas Pipeline Protection, promulgated by the State Council on March 12, 1989 (Renmin Ribao, April 20, 1989, p.6).
- 890314 Provisions Relating to the Trial of Pricing Violation Cases (for Trial Implementation), issued by the State Price Bureau on March 14, 1989 (Fazhi Ribao, May 29, 1989, p.2).
- 890314 Provisions of the People's Republic of China on the Administration of Imports into and Exports out of the Coastal Open Regions, promulgated by the Customs General Administration, announced on March 14, 1989, effective from April 1, 1989 (Renmin Ribao, March 16, 1989, p.2).
- 890315 Decision Relating to the Important Points of Current Industrial Policy, issued by the State Council on March 15, 1989 (Renmin Ribao, March 18, 1989, p.5).
- 890315 Provisions on Strengthening the Administration of Imported Goods and Materials Donated by Overseas Chinese and Hong Kong, Macao and Taiwan Compatriots, promulgated by the State Council, announced on March 15, 1989, effective from March 1, 1989 (Renmin Ribao, March 17, 1989, p.3).
- 890316 Provisions on Export Licensing Control for Special Commodities and the Products of Foreign Investment Enterprises, promulgated by the Ministry of Foreign Economic Relations and Trade, announced on March 16, 1989 (Guoji Shangbao, March 16, 1989, p.1 (report)).
- 890316 Provisions Concerning the Current Handling of Cases Involving Crimes of Speculation and Profiteering by Enterprises, Institutions, Offices and Associations, issued by the Supreme People's Court and the Supreme People's Procuratorate on March 16, 1989 (Renmin Ribao, March 20, 1989, p.5).
- 890321 Provisions of the People's Republic of China on the Administration of Surveying and Mapping Results, promulgated by the State Council on March 21, 1989, effective from May 1, 1989 (Renmin Ribao, April 6, 1989, p.6).
- 890323 Provisions Governing the Names of Some Foreign Trade Enterprises, promulgated by the Ministry of Foreign Economic Relations and Trade and the State Administration of Industry and Commerce, announced on March 23, 1989 (Guoji Ribao, March 23, 1989, p.1).
- 890325 Provisions on Matters Related to Title Registration of Foreign-Owned Houses, promulgated by the Ministry of Justice, Ministry of Construction, Ministry of Foreign Affairs and the State Council Office of Overseas Chinese Affairs, announced on March 25, 1989 (Renmin Ribao, March 27, 1989, p.2 (report)).
- 890330 Provisions on the Problems of Foreign Investment Enterprises Acting as Withholding and Paying Agents of Business Tax Linked to Retail Sales, promulgated by the State Taxation Bureau, announced on March 30, 1989 ([1989] 5 China Taxation 42).
- 890331 Agreement on Air Transportation between China and Malaysia, concluded on March 31, 1989 (Renmin Ribao (overseas edition), April 1, 1989, p.1 (report)).

- 890404 Administrative Procedure Law of the People's Republic of China, adopted by the National People's Congress on April 4, 1989, effective from October 1, 1990 (Renmin Ribao, April 10, 1989, p.1).
- 890404 Rules of Procedure for the National People's Congress of the People's Republic of China, adopted by the National People's Congress on April 4, 1989 (Renmin Ribao, April 10, 1989, p.3).
- 890405 Interim Provisions on Radio Administration Fees, issued by the State Radio Administration Commission, the State Price Bureau and the Ministry of Finance on April 5, 1989 (Fazhi Ribao, May 22, 1989, p.2).
- 890406 Shanghai Customs New Preferential Provisions for Foreign Investment Enterprises, promulgated by the Shanghai Customs Bureau, announced on April 6, 1989 (Wen Wei Pao, April 7, 1989, p.40 (report)).
- 890417 Guangdong Provincial Interim Provisions on Private Enterprises Carrying On Foreign Processing, Assembly and Compensation Trade Business, promulgated by the Guangdong Provincial People's Government, announced on April 17, 1989 (China Economic News, April 17, 1989, pp. 19-20 (report)).
- 890417 Guangdong Provincial Interim Provisions on Private (Foreign Commercial) Entities Contracting to Engage in Foreign Processing, Assembly and Compensation Trade Business, promulgated by the Guangdong Provincial People's Government, announced on April 17, 1989 (China Economic News, April 17, 1989, p.20 (report)).
- 890417 Guangdong Provincial Interim Provisions on Private Enterprises Establishing Sino-Foreign Equity and Co-operative Joint Ventures, promulgated by the Guangdong Provincial People's Government, announced on April 17, 1989 (China Economic News, April 17, 1989, p.20 (report)).
- 890424 Measures on the Granting and Assignment of Leaseholds for Value in the Ningbo Economic and Technological Development Zone, promulgated by the Ningbo Municipal People's Government, announced on April 24, 1989 (China Economic News, April 24, 1989, p.16 (report)).
- 890428 Interim Provisions on the Administration of Foreign Chambers of Commerce, promulgated by the Executive Committee of the State Council on April 28, 1989 (Renmin Ribao, June 23, 1989, p.4).
- 890501 Guangdong Provincial Provisions on Labour Management in Foreign Investment Enterprises, promulgated by the Guangdong Provincial People's Government, announced on May 1, 1989 (Nanfang Ribao, May 1, 1989, p.1 (report)).
- 890518 China-Soviet Union Joint Communiqué, issued on May 18, 1989 (Renmin Ribao, May 19, 1989, p.3).
- 890520 Order Relating to the Implementation of Martial Law in Parts of Beijing Municipality, issued by the State Council on May 20, 1989 (Renmin Ribao, (overseas ed.), May 22, 1989, p.1).
- 890520 Beijing Municipal People's Government Orders Nos. 1, 2 and 3, issued by the Mayor of Beijing Municipality on May 20, 1989 (Renmin Ribao, (overseas ed.), May 22, 1989, p.1).

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- 890521 Notice to Residents of Beijing Municipality, issued by the Martial Law Forces Command on May 21, 1989 (fazhi Ribao, May 22, 1989, p.1).
- 890523 Notice Relating to the Restoration of Normal Order in the Capital as Soon as Possible, issued by the Beijing Municipal People's Government and the Martial Law Forces Command on May 22 1989 (Fazhi Ribao, May 23 1989, p.1).
- 890525 Urgent Circular Concerning the Strict Prohibition of Students from Storming Railways and Forcibly Riding Trains to Enter the Capital, issued by the State Council on May 25, 1989 (Fazhi Ribao, May 26, 1989, p.1)
- 890603 Urgent Notice of the Martial Law Forces Command, issued on June 3, 1989 (Renmin Ribao (overseas ed), June 5 1989, p.1)
- 890605 Notice to the Whole Membership of the Communist Party and the People of the Whole Country, issued by the Central Committee of the Communist Party and the State Council on June 5, 1989 (Fazhi Ribao, June 5 1989, p.1)
- 890606 Urgent Notice of the Beijing Municipal People's Government and the Martial Law and Forces Command No 8, issued on June 6, 1989 (Fazhi Ribao, June 7, 1989, p.1)
- 890607 Notice Concerning the Strict Prohibition of Storming of Railways and Ensuring the Safety and Accessibility of Railway Transportation, issued by the State Council on June 7, 1989 (Fazhi Ribao, June 8, 1989, p.1)
- 890607 Urgent Circulars Concerning the Crack-down on the Counter-revolutionary Rebellion Elements and Beating, Smashing, Looting, Burning, Killing and Other Serious Criminal Elements, issued by the Supreme People's Procuratorate on June 7 and June 11, 1989 (Fazhi Ribao, June 17, 1989, p.1).
- 890607 Notice Concerning the Restoration of Normal Teaching Order in Tertiary Institutions, issued by the State Council on June 7, 1989 (Fazhi Ribao, June 9, 1989, p.1).
- 890608 Beijing Municipal People's Government and the Martial Law Troops Command Notices Nos. 9, 10 and 11, issued on June 8, 1989 (Renmin Ribao (overseas ed.), June 10, 1989, p.1).
- 890609 Beijing Municipal People's Government and the Martial Law Troops Command Notice No. 12, issued on June 9, 1989 (Renmin Ribao (overseas ed.), June 19, 1989, p.1).
- 890609 Notice on Firmly Safeguarding Normal Economic Order and Ensuring Normal Conduct of Industrial Production, issued by the State Council on June 9, 1989 (Fazhi Ribao, June 10, 1989, p.1).
- 890610 Beijing Municipal People's Government and the Martial Law Troops Command Notice No. 13, issued on June 10, 1989 (Renmin Ribao (overseas ed.), June 12, 1989, p.1).
- 890612 Beijing Municipal People's Government and the Martial Law Troops Command Notice No. 14, issued on June 12, 1989 (Fazhi Ribao, June 13, 1989, p.1).

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- 890612 Notice Concerning the Strict Suppression of the Counter-revolutionary Rebellion and Control of Social Disturbances, issued by the Ministry of Public Security on June 12, 1989 (Fazhi Ribao, June 13, 1989, p.1).
- 890612 Shanghai Municipal Measures on the Administration of Price Control for Foreign Investment Enterprises, promulgated by the Shanghai Municipal People's Government on June 12, 1989, effective from July 1, 1989 ([1989] Xin Fagui Yuekan No 8, pp56-60)
- 890617 Beijing Municipal People's Government and the Martial Law Troops Command Notice No. 15, issued on June 17, 1989 (Jingji Ribao, June 18, 1989, p.1).
- 890617 Regulations on the Organisation of People's Mediation Committees, promulgated by the State Council on June 17, 1989 (Renmin Ribao, July 3, 1989, p4)
- 890619 Circular Concerning the Swift Punishment of Counter-revolutionary Rebellion Elements According to Law, issued by the Supreme People's Court on June 19, 1989 (Renmin Ribao (overseas ed.), June 21, 1989, p.1).
- 890628 Shanghai Municipal Provisions on the Work of Foreign Investment Consultants and Agents, promulgated by the Shanghai Municipal People's Government on June 28, 1989, effective from August 1, 1989 ([1989] Xin Fagui Yuekan No 9, pp63-65)
- 890703 Regulations of the People's Republic of China on the Administration of Traffic Safety in Harbour Waters, promulgated by the State Council on July 3, 1989, effective from August 1, 1989 (Renmin Ribao, July 20, 1989, p6)
- 890705 Wuhan Municipal Supplementary Provisions on the Encouragement of Foreign Investment, promulgated by the Wuhan Municipal People's Government, announced on July 5, 1989 (Wen Wei Po, July 5, 1989, p 25(report))
- 890706 Resolution Relating to Curbing the Turmoil and Suppressing the Counter-revolutionary Rebellion, adopted by the Standing Committee of the National People's Congress on July 6, 1989 (Renmin Ribao, July 7, 1989, p1)
- 890712 Shanghai Municipal Measures on the Purchasing of Materials and Marketing of Products by Foreign Investment Enterprises, promulgated by the Shanghai Municipal People's Government, announced on July 12, 1989, effective from July 1, 1989 ([1989] Xin Fagui Yuekan No8, pp53-56)
- 890713 Interim Provisions on Strengthening the Administration of the Real Estate Market in the Shenzhen Special Economic Zone, promulgated by the Shenzhen Municipal People's Government on July 13, 1989 (Shenzhen Special Zone Daily, August 7, 1989, p8)
- 890721 Interim Provisions of the Supreme People's Court Relating to Handling Appeals in Civil and Economic Dispute Cases by the People's Court at All Levels issued on July 21, 1989 (Fazhi Ribao, August 26, 1989, p2)
- 890725 Interim Provisions Concerning Overseas Chinese, Hong Kong, Macau, and Taiwan Compatriots Who Donate Foreign Exchange or Participate in Foreign Exchange Transactions, promulgated by the State Administration of Exchange Control, announced on July 25, 1989 (Renmin Ribao (overseas edition), July 27, 1989, p3)

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- 890803 Shanghai Municipal Supplementary Provisions on the Administration of Registration of Enterprise Legal Persons, promulgated by the Shanghai Municipal People's Government, announced on August 3, 1989 (Wen Wei Po, August 3, 1989, p25 (report))
- 890803 Treaty between the People's Republic of China and the Democratic Republic of Germany on Civil and Criminal Judicial Assistance, concluded on August 3, 1989 (Fazhi Ribao, August 5, 1989 (report))
- 890812 Shanghai Municipal Regulations on Trade Unions in Sino-foreign Equity Joint Venture Enterprises promulgated by the Shanghai Municipal People's Government on August 12, 1989, effective from October 1, 1989 ([1989] Xin Fagui Yuekan No 12, pp 50-53)
- 890815 Notice Relating to Corruption, Bribery, Speculation and Other Criminal Elements Who Must Voluntarily Surrender and Make a Confession Within the Deadline, issued by the Supreme People's Court and the Supreme People's Procuracy on August 15, 1989 (Renmin Ribao, August 16, 1989, p4)
- 890817 Provisions Strictly Controlling Visits Abroad by Leading Cadres, issued by the Communist Party Central Committee General Office and the State Council General Office on August 17, 1989 (Renmin Ribao, October 8, 1989, p1)
- 890819 Notice Relating to the Question of State Administrative Personnel Who Have Engaged in Corruption and Bribery and Must Confess Within the Deadline, issued by the Ministry of Supervision on August 19, 1989 (Renmin Ribao, August 20, 1989, p2)
- 890901 Guangzhou Municipal Measures on the Administration of Real Estate Operations Which Utilise Foreign Investment, promulgated by the Guangzhou Municipal People's Government, effective from September 1, 1989 (Guangzhou Ribao, August 31, 1989, p6)
- 890908 Detailed Implementing Regulations for the Interim Provisions Relating to Administrative Sanctions for Corruption and Bribery by State Administrative Personnel, issued by the Ministry of Supervision on September 8, 1989 (Renmin Ribao, September 22, 1989, p6)
- 890915 Interim Provisions on the Administration of Temporary Identity Cards, issued by the Ministry of Public Security on September 15, 1989, effective from October 15, 1989 (Fazhi Ribao, September 19, 1989, p2)
- 890919 Guangzhou Provisional Measures on the Transfer for Value of Portions of Production Rights of State-Owned Industrial Enterprises to Foreign Parties, promulgated by the Guangzhou Municipal People's Government, announced on September 19, 1989 (Guangzhou Ribao, September 19, 1989, p1)
- 890922 Hainan Provincial Provisional Measures on the Administration of Export Licences, promulgated by the Hainan Provincial Trade Department, announced on September 22, 1989 (Wen Wei Po, September 22, 1989, p34 (report))
- 890922 Hainan Provincial Provisional Measures on the Administration of Import Licences, promulgated by the Hainan Provincial Trade Department, announced on September 22, 1989 (Wen Wei Po, September 22, 1989, p34 (report))



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- 891005 Interim Provisions Concerning the Supervision of Temporary Workers in Enterprises Owned by the Whole People, promulgated by the State Council on October 5, 1989 (Renmin Ribao, November 2, 1989, p6)
- 891020 Regulations of the People's Republic of China Concerning the Administration of the Protection of Underwater Cultural Objects promulgated by the State Council on October 20, 1989 (Fazhi Ribao, October 25, 1989, p2)
- 891025 Measures for the Fourth National Census promulgated by the State Council on October 25, 1989 (Renmin Ribao, November 3, 1989, p2)
- 891025 Regulations on the Administration of Registration of Social Groups, promulgated by the State Council on October 25, 1989 (Renmin Ribao, November 9, 1989, p6)
- 891030 Provisions on Certain Issues of Foreign Currency Conversion, promulgated by the State Administration of Exchange Control, effective from October 30, 1989 (Jinrong Shibao, November 30, 1989, p1)
- 891031 Law of the People's Republic of China on Mass Rallies and Demonstrations, adopted by the Standing Committee of the National People's Congress on October 31, 1989 (Renmin Ribao, November 1, 1989, p2)
- 891101 Measures of the People's Republic of China on Customs Inspection of Luggage and Articles of Tourists Entering and Exiting the Country, promulgated by the Customs General Administration on November 1, 1989, effective from December 1, 1989 ([1989] State Council Gazette No.24, pp882-87)
- 891110 Detailed Rules for the Implementation of Foreign Debt Registration, promulgated by the State Administration of Exchange Control on November 10, 1989 (Renmin Ribao (overseas edition), November 16, 1989, p3)
- 891110 Measures on the Administration of Registration of Foreign Exchange (On-lent) Loans, promulgated by the State Administration of Exchange Control on November 10, 1989 (Renmin Ribao(overseas edition), November 14, 1989, p3)
- 891118 Shangdong Provincial Interim Provisions on the Administration of Foreign Investment Enterprises, promulgated by the Shangdong Provincial People's Government, announced on November 18, 1989 (Wen Wei Po, November 18, 1989, p25 (report))
- 891123 Guangdong Provisional Detailed Rules for the Implementation of Registration of Foreign Exchange (On-lent) Loans, promulgated by the State Administration of Exchange Control, announced on November 23, 1989 (Nanfang Ribao, November 23, 1989, p10)
- 891206 Interim Provisions on the Screening of Technology Exports Involving State Secrets, promulgated by the State Science and Technology Commission on December 6, 1989 (Fazhi Ribao, January 12, 1990, p2)
- 891206 Interim Provisions on State Secret Technology Export Review, issued on December 6, 1989 by the State Technology Commission and the state Secrets Bureau (Renmin Ribao, January 12, 1990, p2)
- 891226.1 Law of the People's Republic of China on the Organisation of Urban Residents' Committees, adopted by the Standing Committee of the National

- People's Congress on December 26, 1989, effective from January 1, 1990 (Renmin Ribao, December 28, 1989, p3)
- 891226.2 Environment Protection Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on December 26, 1989 (Renmin Ribao, January 5, 1990, p2)
- 891226.3 Urban Planning Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on December 26, 1989, effective from April 1, 1990 (Renmin Ribao, January 4, 1990, p6)
- 891228 Certain Provisions Relating to Administrative Sanctions for Communist Party Members Who Violate Socialist Morality and Party Discipline (Trial Implementation), issued by the Communist Party Central Discipline Commission on December 28, 1989 (Renmin Ribao, January 18, 1990, p2)
- 891228 Implementing Measures of Beijing Municipality for the 'Law of the People's Republic of China on Mass Rallies and Demonstrations,' adopted by the Beijing Municipal People's Congress on December 28, 1989 (Renmin Ribao, April 24, 1990, p2)
- 900110 Order Relating to Lifting Martial Law in Parts of Beijing Municipality, issued by the State Council on January 10, 1990, effective from January 11, 1990 (Renmin Ribao, January 11, 1990, p1)
- 900110 Order of the Beijing Municipal Government Relating to the Lifting of Martial Law, issued on January 10, 1990, effective from January 11, 1990 (Renmin Ribao, January 11, 1990, p1)
- 900111 Regulations on the Administration of Foreign Reporters and Foreign Resident News Organisations, promulgated by the State Council on January 11, 1990 (Renmin Ribao (overseas edition), January 22, 1990, p4)
- 900119 Regulations on the Management of Foreign Reporters and Foreign News Organisations, promulgated by the State Council on January 19, 1990 (Renmin Ribao, January 20, 1990, p2)
- 900201 Provisions Relating to Implementation of a System of Clearly Marked Prices for Commodities and Charges, issued by the State Commodity Price Bureau on February 1, 1990, effective from March 1, 1990 (Renmin Ribao, February 6, 1990, p2)
- 900220 Provisions on Recording Laws and Regulations, promulgated by the State Council on February 20, 1990 (Renmin Ribao, February 28, 1990, p2)
- 900224 Decision of the State Council Relating to the Amendment of Article 21 of the 'Provisional Regulations on the Contract Responsibility System for State-owned Industrial Enterprises,' promulgated on February 24, 1990 (Renmin Ribao, March 2, 1990, p2)
- 900224 Decision of the State Council Relating to the Amendment of Article 22 of the 'Provisional Regulations on the Contract Responsibility System for State-owned Industrial Enterprises,' promulgated by the state Council on February 24, 1990 (Renmin Ribao, March 3, 1990, p3)
- 900302 Regulations on the Administration of the Salt Industry, promulgated by the State Council on March 2, 1990 (Renmin Ribao), March 9, 1990, p2)

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- 900302 Decision on the Establishment of the Haikou and Xiamen Courts, issued by the Supreme People's Court on March 2, 1990 ([1990] Supreme People's Court Gazette, No1, p24)
- 900309 Supplementary Provisions on Encouraging the Development of the External Economy in the Coastal Regions, promulgated by the State Council, announced on March 9, 1990 (Wen Wei Po, March 12, 1990, p1)
- 900315 Measures on the Supervision of Internationally Linked Railway Transport Entering and Leaving the Country and Goods and Articles Carried by Such Transport, promulgated by the Customs General Administration on March 15, 1990, effective from May 1, 1990 ([1990] China Customs, No 6, p7)
- 900319 Provisions for the Administration of Secured Loans in the Special Economic Zones of Guangdong Province, promulgated by the Standing Committee of the Guangdong Provincial People's Congress on March 19, 1990 (Nanfang Ribao, March 19, 1990, p2)
- 900326 Provisions of the Hainan Special Economic Zone on the Transfer and Assignment of Land Use Rights for Value, promulgated by the Hainan Provincial People's Government on March 26, 1990 (Renmin Ribao (overseas edition), March 28, 1990, p5 (report))
- 900404 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted by the National People's Congress on April 4, 1990, effective from July 1, 1997 ( Renmin Ribao, April 7, 1990, pp1,3)
- 900404 Decision of the National People's Congress Concerning the Amendment of the 'Law of the People's Republic of China on Sino-foreign Equity Joint Ventures,' adopted by the Third Session of the Fifth National People's Congress on April 4, 1990 (Renmin Ribao (overseas edition), April 7, 1990, p2)
- 900406 Implementing Regulations for the Standardisation Law of the People's Republic of China, promulgated by the State Council on April 6, 1990 (Renmin Ribao, May 17, 1990, p6)
- 900419 Measures for Handling Disputes among the People, issued by the Ministry of Justice on April 19, 1990 (Fazhi Ribao, July 31, 1990, p2)
- 900427 Measures on the Administration of Overseas Financial Institutions, promulgated by the State Council on April 27, 1990 (Jinrong Shibao, April 28, 1990)
- 900505 Shantou Special Economic Zone Interim Provisions for the Encouragement of Investment by Taiwanese Businesses, promulgated by the Shantou Municipal People's Government, announced on May 5, 1990 (Wen Wei Po (Economy and trade Section), May 21, 1990, p3)
- 900506 Agreement between the People's Republic of China and the People's Republic of Mongolia on Scientific and Technological Co-operation, concluded on May 6, 1990 (Renmin Ribao, May 7, 1990)
- 900519 Provisional Measures on the Administration of Foreign Investment in Comprehensive Land Development and Management, promulgated by the State Council on May 19, 1990 (Renmin Ribao (overseas edition), May 26, 1990, p3)

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- 900519      Provisional Regulations of the People's Republic of China on the Transfer of State Land-use Rights in Cities and Towns, promulgated by the State Council on May 19, 1990 (Renmin Ribao, May 25, 1990, p2)
- 900525      Implementing Measures for the State Secrets Law of the People's Republic of China, approved by the State Council and promulgated on May 25, 1990 (Fazhi Ribao, May 25, 1990, p2)
- 900530      Regulations on the People's Republic of China 1990 State Treasury Bonds, promulgated by the state Council on May 30, 1990 (Renmin Ribao, June 9, 1990, p2)
- 900530      Regulations on the People's Republic of China 1990 Special State Obligations, promulgated by the State Council on May 30, 1990 (Renmin Ribao, June 9, 1990, p2)
- 900603      Regulations of the People's Republic of China on Rural Collective Enterprises, promulgated by the State Council on June 3, 1990, effective from July 1, 1990 (Fazhi Ribao, June 14, 1990, p2)
- 900622      Regulations of the People's Republic of China on the Control of Pollution Damage to the Marine Environment from Land Pollutants, promulgated by the State Council on June 22, 1990, effective from August 1, 1990 (Renmin Ribao, July 15, 1990, p5)
- 900625      Regulations of the People's Republic of China for the Prevention of Pollution Damage to the Marine Environment from Coastal Engineering and Construction Projects, promulgated by the State Council on June 25, 1990, effective from August 1, 1990 (Renmin Ribao, July 15, 1990, p5)
- 900626      Interim Provisions on the Administration of Receipts of Foreign Investment Enterprises and Foreign Enterprises, announced by the State Taxation Bureau on June 26, 1990, effective from September 1, 1990 ([1990] China Taxation, No 9, p42)
- 900626      Provisions on the Encouragement of Foreign Investment by Taiwanese Compatriots, promulgated by the Hubei Provincial People's Government, announced on June 26, 1990 (Renmin Ribao (overseas edition), June 26, 1990, p5 (report))
- 900628      National Flag Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on June 28, 1990, effective from October 1, 1990 (Renmin Ribao, June 30, 1990, p2)
- 900712      Regulations on Worker Assessment, issued by the Ministry of Labour on July 12, 1990 (Fazhi Ribao, July 27, 1990, p2)
- 900713      Certain Provisions of the Shenzhen Municipality on Penalties for Violations by Foreign Investment Enterprises, promulgated by the Shenzhen Municipal People's Government, announced on July 13, 1990 (Shenzhen Special Zone Daily, July 13, 1990, p1 (report))
- 900729      Provisions on the Administration of the Editing and Publication of Collections of Laws, promulgated by the State Council on July 29, 1990 (Fazhi Ribao, August 15, 1990, p2)

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- 900819 State Council Provisions for the Encouragement of Investment by Overseas Chinese and Hong Kong and Macau Compatriots, promulgated by the State Council on August 19, 1990 (Ta Kung Pao, August 28, 1990, p2)
- 900901 Provisions of the Shanghai Municipality on the Administration of Foreign Debt, promulgated by the Shanghai Municipal People's Government, effective from September 1, 1990 (Wen Wei Po, August 23, 1990, p32(report))
- 900906 Provisional Measures for the Administration of Planning and Construction of the Pudong New Zone, approved by the Shanghai Municipal People's Government on September 6, 1990 (Wen Wei Po, September 27, 1990, p25; September 28, 1990, p35)
- 900907 Railroad Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on September 7, 1990, effective from May 1, 1991 (Renmin Ribao, September 9, 1990, pp2, 5)
- 900907 Law of the People's Republic of China for the Protection of the Rights of Returned Overseas Chinese and Their Relatives, adopted by the Standing Committee of the National People's Congress on September 7, 1990, effective from January 1, 1991 (Renmin Ribao, September 9, 1990, p4)
- 900907 Copyright Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on September 7, 1990, effective from June 1, 1991 (Renmin Ribao, September 8, 1990, p5)
- 900907 Copyright Law of the People's Republic of China, adopted by the Standing Committee of the Seventh National People's Congress on September 7, 1990, effective from June 1, 1991 (Wen Wei Po, September 9, 1990, p3)
- 900908 Provisions on Reduction of or Exemption from Enterprise Income Tax for the Encouragement of Foreign Investment in the Pudong New Zone, promulgated by the Shanghai Municipal People's Government, announced on September 8, 1990, effective from October 1, 1990 (Wen Wei Po, September 11, 1990, p4)
- 900908 Measures on the Administration of Foreign-owned Financial Institutions and Sino-foreign Equity Joint Venture Financial Institutions in Shanghai, promulgated by the People's Bank of China on September 8, 1990 (Wen Wei Po, September 11, 1990, p4)
- 900910 Certain Provisions of the Shanghai Municipality on the Encouragement of Foreign Investment in the Pudong New Zone, promulgated by the Shanghai Municipal People's Government on September 10, 1990 (Wen Wei Po, September 21, 1990, p27; September 22, 1990, p42; September 23, 1990, p19)
- 900910 Certain Provisions of the Shanghai Municipality on the Administration of Land in the Pudong New Zone, promulgated by the Shanghai Municipal People's Government on September 10, 1990 (Wen Wei Po, September 14, 1990, p34; September 15, 1990, p40)
- 900910 Measures of the Shanghai Municipality on the Administration of the Waigaogiao Bonded Zone, promulgated by the Shanghai Municipal People's Government on September 10, 1990 (Wen Wei Po, September 20, 1990, p31)
- 900910 Measures for the Approval of Foreign Investment Enterprises in the Pudong New Zone, promulgated by the Shanghai Municipal People's Government on September 10, 1990 (Wen Wei Po, September 13, 1990, p32)

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- 900910 Guidelines on the Direction of Productive Business and Investment in the Pudong New Zone, promulgated by the Shanghai Municipal Planning Commission on September 10, 1990 (Wen Wei Po, September 25, 1990, p27; September 26, 1990, p27)
- 900911 Measures on the Administration of Goods, Transport and Personal Articles Entering and Departing the Shanghai Waigaoqi Bonded Zone, promulgated by the Customs General Administration, announced on September 11, 1990 (Wen Wei Po, September 11, 1990, p4)
- 901004 Provisions on Sino-foreign Equity Joint Ventures Engaged in Contracting Operations, promulgated by the Ministry of Foreign Economic Relations and Trade, announced on October 4, 1990 (Wen Wei Po, October 4, 1990, p23 (report))
- 901022 Interim Provisions on Limitation Periods for Co-operation in Sino-foreign Equity Joint Ventures, promulgated by the Ministry of Foreign Economic Relations and Trade on October 22, 1990 (Wen Wei Po, November 1, 1990, p30)
- 901030 Regulations of the People's Republic of China on Consular Privileges and Immunities, adopted by the Standing Committee of the Seventh National People's Congress on October 30, 1990(Renmin Ribao (overseas edition), October 31, 1990, p4)
- 901112 Detailed Implementing Rules for the Postal Law of the People's Republic of China, promulgated by the State Council on November 12, 1990 (Renmin Ribao, November 26, 1990, p.2).
- 901119 Implementing Measures for the Archives Law of the People's Republic of China, issued on November 19, 1990 (Fazhi Ribao, November 29, 1990, p.2).
- 901122 Provisions for the Administration of Labour Employment Service Enterprises, promulgated by the State Council on November 22, 1990 (Renmin Ribao, December 11, 1990, p.2).
- 901122 Decision of the State Council Relating to the Amendment of the 'Provisional Measures for the Administration of Registration by Mining Enterprises Owned by the Whole People', promulgated on November 22, 1990 (Renmin Ribao, December 9, 1990, p.2).
- 901209 Administration Supervision Regulations of the People's Republic of China, promulgated by the State Council on December 9, 1990 (Renmin Ribao, December 25, 1990, p.3).
- 901224 Administrative Reconsiderations Regulations, promulgated by the State Council on December 24, 1990, effective from January 1, 1991 (Renmin Ribao, December 28, 1990, p.3).
- 901224 Regulations on the Work of the People's Militia, promulgated by the State Council and the Central Military Commission on December 24, 1990 (Renmin Ribao, December 30, 1990, p.3).
- 901228 Law of the People's Republic of China for the Protection of Handicapped Persons, adopted by the Committee of the National People's Congress on December 28, 1990, effective from May 15, 1991 (Renmin Ribao, December 29, 1990, p.3).

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- 901228 Law of the People's Republic of China on the Procedures for Concluding Treaties, adopted by the Standing Committee of the National People's Congress on December 28, 1990 (Renmin Ribao, December 29, 1990, p.4).
- 901228 Decision of the Standing Committee of the National People's Congress Relating to Banning Drugs, adopted on December 28, 1990 (Renmin Ribao, December 29, 1990, p.4).
- 901228 Decision of the Standing Committee of the National People's Congress Relating to the Punishment of Criminal Elements Engaged in Smuggling, Manufacture, Sale and Circulation of Obscene Articles, adopted on December 28, 1990 (Renmin Ribao, December 29, 1990, p.4).
- 901231 Regulations on Chief Accountants, promulgated by the State Council on December 31, 1990 (Renmin Ribao, January 13, 1991, p.2).
- 910104 Implementing Regulations for the Land Administration Law of the People's Republic of China, promulgated by the State Council on January 4, 1991, effective from February 1, 1991 (Fazhi Ribao, January 16, 1991, p.2).
- 910215 Regulations on Land Requisition Compensation and Resettlement Resulting from Medium and Large Scale Water Conservancy and Hydroelectric Power Project Construction, promulgated by the State Council on February 15, 1991, effective from March 1, 1991 (Fazhi Ribao, February 24, 1991, p.2).
- 910409 Foreign Investment Enterprises and Foreign Enterprise Tax Law (passed by the NPC on 9 April, 1991, and effective from 1 July, 1991)
- 910409 Civil Procedure Law of the PRC (promulgated by the President of the PRC on and effective from 9 April, 1991).
- 910524 Computer Software Protection Regulations, adopted by the State Council on 24 May, 1991, effective from 1 October, 1991.
- 910630 Foreign Investment Enterprises and Foreign Enterprises Tax Law Implementing Rules, promulgated by the State Council on 30 June, 1991 and effective from 1 July, 1991.

## APPENDIX B:

### STATUTES, REGULATIONS AND ADMINISTRATIVE MEASURES OF TAIWAN (ROC) RELATING TO LAW, ADMINISTRATIVE PROCEDURE AND FOREIGN INVESTMENT<sup>1</sup>

- 280514 The 1928 Copyright Law, amended on 10 July, 1985.
- 280514 The 1928 Enforcement Rules for the Copyright Law, amended on 16 June, 1986;
- 290227 Law for Encouragement Establishment of Enterprises in China by Overseas Chinese; amended on 7 January, 1949.
- 290523 The Civil Code (1929).
- 290718 Import Tariff Provisional Rules; amended & promulgated May, 1936; 10 May 1951; 19 August, 1959.
- 290924 Law Governing the Application of the Book of General Principles; amended on 4 January, 1982.
- 291003 The Exchange Law; amended on 27 April, 1935.
- 291021 Labour Union Law
- 291202 Regulations Governing the Registration of Juristic Persons
- 291226 The Company Law (1931) ,(as one the four special laws regarding Civil Matters in the ROC)
- 291030 The Law of Negotiable Instruments (1929) (as one the four special laws regarding Civil Matters in the ROC).
- 291230 Maritime Law (1929), (as one the four special laws regarding Civil Matters in the ROC)
- 291230 Insurance Law (1929) (as one the four special laws regarding Civil Matters in the ROC).
- 291230 Factory Law
- 300301 Enforcement Rules of the Exchange Law
- 300506 The 1930 Trademark Law amended on 29 November, 1985.
- 300630 The Land Law; amended on 29 April, 1946; 29 March, 1955; and 24 July, 1975.
- 300701 (Old) Law Governing Enforcement of the Law of Negotiable Instruments.

<sup>1</sup> Resources: Law Revision Planning Group (CUSA, The Executive Yuan), *Laws of the Republic of China: First Series-Major Laws* (translated and compiled in English, Taipei, December 1961); *Laws of the Republic of China: Second Series* (Taipei, October 1962); Industrial Development & Investment Centre (MoEA), *Investor's Guide: Republic of China* (Taipei, 1985); and 'A New Edition of Compiled Book of the Six Laws' (*Hsin-Bian Liu-Fa-Chuan-Shu*), edited by J. Lin, Y. Chang, T. Tsai and D. Ku, (1984, published by Wu-Nan Press, Taipei); *Central Daily* (International edition, Taipei) *Free China Journal*.



301028	Collective Agreement Law
301125	(Old) Enforcement Law for the Maritime Law
301230	The 1930 Enforcement Rules for the Trademark Law, amended on 19 October, 1987;
310210	Factory Inspection Law
310328	The Banking Law (1931)
310613	1931 Business Tax Law (amended on 15 November 1985).
311212	Lodgement Law
340619	Custom Preventive Statute
341129	1934 Martial Law (promulgated and effective on 29 Nov., 1934; amended and effective on 19 May, 1948; and further amended on 14 Jan., 1949).
341208	Stamp Tax Law
350101	1935 Criminal Code (amended on 26 December, 1969)
350201	1935 Civil Procedure Law (Amended on 25 April, 1986)
350401	Enforcement Law of the Criminal Code
350405	Law Governing the Enforcement of the Land Law; amended 29 April, 1946.
350510	Law Governing the Enforcement of the Code of Civil Procedure
350717	Bankruptcy Law; amended on 1 May, 1937; 05 December, 1980.
350718	Law Governing the Application of the Bankruptcy Law.
360625	Mine Field Law
361225	Labour Contract Law
390608	City Planning Law
400119	Compulsory Execution Law; amended on 16 May, 1944; 21 December, 1948; and 22 April, 1975.
401002	Regulations Governing Land Registration
401218	Statute on Deed Tax
430126	1943 Statute on Employee Welfare Funds, amended on 16th December, 1948.
430217	The Income Tax Law (1943)
430221	Enforcement Rules of the Statute on Deed Tax
430311	Statutes on House Tax
430331	Law of Public Notarisation; amended on 29 January, 1974; 4 July, 1980.

430531	Law Governing Handling Labour Disputes
430701	Law Governing Fees for Public Notarisation; effective from 1 January, 1944.
430708	Law Governing Banquet and Entertainment Taxes
430709	Enforcement Rules of Income Tax Law
430716	Enforcement Rules of the Statute on Employee Welfare Fund
430916	Slaughter Tax Law
431225	Enforcement Rules for the Law of Public Notarisation
440428	Enforcement Rules of the Labour Union Law
440529	The 1944 Patent Law, amended on 24 December, 1986.
450408	Law of Costs of Civil Actions
450611	Licence Plate Tax Law
460416	Estate Tax Law
460621	Enforcement Rules for the Lodgement Law
460712	Enforcement Rules of the Estate Tax Law
461225	1946 Constitution (enacted on 25 Dec., 1946; promulgated on 1 Jan., 1947; and effective on 25 Dec., 1947).
470924	The 1947 Enforcement Rules for the Patent Law, amended on 10 July, 1987.
480311	Statute for Punishment of Smuggling
480420	Enforcement Rules of the Stamp Tax Law
480510	Temporary Provisions for the Duration of Mobilization to Suppress the Rebellion (cited as the 1948 Temporary Provisions), promulgated on 10 May, 1948; 11 provisions in total; amended on 11 March, 1960; on 19 March, 1966; and on 17 March, 1972.
481231	The 1948 Statute for Foreign Exchange Control, enacted by the Central Bank of China
490402	Statute on Commodity Tax
510607	The Statute for Reduction of Farm Rent to 37.5 Percent (1951)
510616	Statute for Uniform Collection of Central and Local Taxes and Assessments in the Province of Taiwan
520723	Rules Governing the Collection of Business Tax in Taiwan Province
530126	The Land-to-the Tiller Statute (1953)
530423	Rules Governing the Enforcement in Taiwan of the Land-to-the-tiller Statute

530606	Law Governing the Application of Laws of Civil Matters Involving Foreign Elements
530707	Statute on Tax on Domestically Produced Tobacco Products and Alcoholic Liquors
540714	The Statute for Investment by Foreign Nationals (the 1954 SIFN).
540826	The Statute for the Equalization of Urban Land Rights (1954)
551119	The Statute for Investment by Overseas Chinese (the 1955 SIOC).
580721	Labour Insurance Statute
590819	Customs Import Tariff
600301	Enforcement Rules of the Labour Insurance Statute
600910	The Statute for Encouragement of Investment (the 1960 SEI).
601230	Rules Governing Employment and Dismissal of Workers by Factories and Mines
610101	Regulations Governing Revaluation of Assets of Profit-seeking Enterprises [with: Rules Governing the Conducting of Revaluation of Assets of Profit-seeking-enterprises (610101)].
610111	Enforcement Rules of the Statute for Encouragement of Investment (1960 SEI)
610120	Commercial Arbitration Act; amended on 11 June, 1982.
610202	Criteria of Encouragement by Way of Reduction or Exemption of Profit-seeking-enterprise Income Tax; amended on 12 January, 1962. [with: Categories of Enterprises Eligible for Encouragement by Way of Reduction or Exemption of Profit-seeking-enterprise Income Tax].
610918	Measure for Installment Payments of Import Duty and Dues on Machinery and Equipment Imported by Productive Enterprises
611014	Rules Governing Registration of Arbitrators of Commercial Arbitration Associations
611014	Rules Governing Charges of Commercial Arbitration Fees
620430	Statute for the Collection of Provisional National Defense Special Assessments
620606	Measures for Setting Up Bonded Warehouses and Factories by Bonded and Credit Extension Agencies
620808	The 1962 Statute for Technical Co-operation (amended on 29 May, 1964; the 1962 TCS)
621229	Statute on Income Tax Rates for 1962
650130	The 1965 Statute for the Establishment and Management of Export Processing Zones (the 1965 EPZ Statute)

660412	Rules Governing Auditing of Final Income Tax Returns of Profit-seeking Enterprises
680210	Enforcement Rules of the Insurance Law.
680316	Minimum-wage Law
680430	The Securities Exchange Act (1968) (or, 1968 Law of Securities Transfer), amended on 29 January, 1988.
680603	"Measures for the Use of Patent Rights and Technical Know-How as Equity Investment" (published by MoEA on 3 June, 1968).
690531	Minimum Capitalisation Standards for Limited Companies and Companies-Limited-By-Shares, amended on 15th October, 1980.
700616	"Criteria for the Handling of Trademark Licensing by Foreign Enterprises" (amended on 3 June, 1985)
700925	Criteria for Allocation of Land for Lease in the Export Processing Zones, promulgated on 25 September, 1970 and amended on 23 November, 1972.
710201	The 1971 Public Highways Law, amended on 23rd January, 1984.
711105	"Enforcement Measures Governing Payment in Installments and Exemption from Duties and Dues Chargeable in respect of Machinery and Equipment Imported by Productive Enterprises", promulgated on 5 November, 1971, and amended on 27 May, 1988.
711111	"Categories and Criteria of Productive Enterprises Eligible for Encouragement" (amended, on 26 November, 1986) published by MoEA [under Article 3 of the 1960 SEI].
730406	Organic Rules of Commercial Arbitration Association
730529	(New) Law Governing the Application of the Law of Negotiable Instruments; amended on 21 January, 1974; 21 February, 1978.
750312	"Criteria for Encouragement of Establishment or Expansion of Industrial and Mining Enterprises", promulgated on 12 March, 1975 and amended on 30 November, 1987.
750422	"Supplementary Measures for the Company Registration in respect of Overseas Chinese and Foreign Investments" (1975 Foreign Company Registration Measures), amended on 28 July, 1982.
760624	Statute for the Enforcement of the Factory Law
761006	Categories and Criteria for Special Encouragement of Important Productive Enterprises, promulgated on 6 October, 1976; amend on 27 October, 1981.
770726	Measures for Refund of Taxes and Duties on Export Products
781127	1946 Statute for Securities Transfer Tax, amended on 27 November, 1978.
790727	The 1979 Statute for Establishment of Science-Based Industrial Park (the 1979 SIP Statute)

- 790727      The Science-based Industrial Park Statute (the 1979 SIP Statute)
- 820819      Key Points of the Simplified Procedure for the Importation of Machinery and Equipment by Overseas Chinese and Foreign Nationals in Productive Enterprises, promulgated on 19 August, 1982.
- 820821      "Applicable Scope of Strategic Industry", promulgated on 21 August, 1982 and amended 23 December, 1987.
- 831124      Regulations Governing the Administration of Venture Capital Investment Enterprises, promulgated on 24 November, 1983 and amended on 26 January, 1987.
- 831230      Statute on Income Tax Rates for 1984
- 840419      Criteria for Big Trading Company by Overseas Chinese and Foreign Nationals, promulgated on 19 April, 1984 and amended on 17 October, 1986.
- 840730      Labour Standards Law
- 850629      Measures Governing the Deduction for Investment in Procurement of Machinery and Equipment by Private Productive Enterprises, promulgated on 29 June, 1985 and amended 29 June 1986.
- 850918      Measures Governing the Deduction for Investment in Research and Development Expenses by Productive Enterprises, promulgated on 18 September, 1985.
- 870623      1987 National Security Law (enacted on 23 June, 1987; promulgated on 1 July, 1987; and effective on 15 July, 1987).
- 901228      1990 Statute for Upgrading Industries (the 1990 SEI)
- 910430      Supplementary Amendment of the Constitution of the ROC (10 Provisions), passed by the National Assembly on 30 April, 1991 and effective from 1 May, 1991.

# GLOSSARY OF CHINESE TERMS

- An-Li-Xi 案例析  
 bao-tuo 包頭  
 bei-erh-bu-shen 備而不審  
 Chang-Cheng 長城  
 Chen-Sher 澄社  
 Chong-hsin 中興  
 Chong-Mei-He 中美和  
 Da Qing Hui Dian 大清會典  
 Da-chi-cher-chang 大汽車廠  
 dang-guo 黨國  
 di-fang-bao-hu-zhu-yi 地方保護主義  
 di-fang-hsin fa-gue 地方性法規  
 du-zi 獨資  
 fa; fa-lu 法; 法律  
 Fan (Mr.) 范  
 Feng-tian (Toyota) 豐田  
 Fu-Ri 福日  
 gan-yu 干預  
 German G.S. Ltd Co. (德) 格布·舍馬克爾  
 guan-xi 關係  
 Guangyu Chongsheng Butong Nan-Chaoxian, Yizerlue he Nanfe Jinxin-maoyi zhi Tongzhi  
 (關於重申不同南朝鮮·以色列和南非進行貿易之通知)  
 Guangzhou 廣州  
 Guomindang (Kuomintang) 國民黨  
 Guo-min-dang dang-yin-shih-yeh 國民黨黨營事業  
 Gu-Ji 古籍  
 Guo-Rei 國瑞  
 bao-jia 保甲  
 bei an 備案  
 ben-wei-zhu-yi 本位主義  
 Chang-yi 昌邑  
 chong-fu-yin-jin 重複引進  
 Chong-li 中壢  
 Chung-hsing 中信  
 Da Qing Lu Li 大清律例  
 Dairen (Dalian) 大連  
 dang-guo yi-ti 黨國一體  
 Duo-liu 斗六  
 fa-zhi-zhi-xu 法治秩序  
 fang 放  
 Ford-Liuho 福特大和  
 gongju 工具  
 Guo-ji-hua 國際化  
 gue-din 規定

Hainan	海南	Hai-wai	海外
He-di	合迪	Ho-hsin	和興
Hong-kou	虹口	Hong Kong S.F. Co.	香港斯伏公司
Hong-Qi	紅旗	Hsien-Zeng-Yuan	行政院
Hsing-hsing-wen	新新聞	Hua-chiao	華僑
Hua-Jie	華傑	Huang-pu	黃浦
jia-jie	嫁接	jia-min-yin, jen-guo-yin	假民營真國營
Jiao-yun-tung	交運通	Jin-Zi Di-18641-Hau Han	經字第18641號函
Jing-ji-fa	經濟法	Jing-ji Ri-Bao	經濟日報
Jueding	規定	Kai-Da	凱達
Kai-fang Zhengce	開放政策	Lai-hua-tou-zi	來華投資
Kong-ye Tou-zi Jan-shun	工業投資簡訊	li; li-fa; li-lu	禮; 禮法; 禮律
lai-liao-jia-gong he-tung	來料加工合同	Lian-he-da-di	聯合大地
Lan-i-she	藍衣社	liang-tiao-tui-zou-lu	兩條腿走路
Li Ji	禮記	Lu-wan	瀘灣
liang-an-san-di	兩岸三地	Luo-Yang	洛陽
lieu-xu-pai	留蘇派		
lou-kuei	陋規		
luo-bao	撈包		
Mi-Han-Na	米漢納		
Min-zhu; Min-qung; Min-sheng	民族; 民權; 民生		
Nei-Bu-Diao-Ca	內部調查	Neibu	內部
Nio-tuo-zi-cung	牛砵仔村		
pa-i	八議	pao	保
Pan-Chiao	板橋	Ping-Shuo An-Tai-Bao	平朔安太堡
P'eng Pai	彭湃	Qin (Chin)	秦
Puo-san-tei	破三鐵	Qing-bang	青幫
Qing (Ching)	清		
qing-shei	傾斜		

- Qiu-Shi 求是  
 Ren-Min Ri-Bao 人民日報  
 San-fan 三反  
 San-yang 三陽  
 Shanghai; Shanghai-bang 上海上海幫  
 Shelun 社論  
 Sher 社  
 Sher-tan-chi-yu 設壇祈雨  
 Shi-ta-fu 士大夫  
 Shu 庶  
 si-ge jei-duan qi-ge wen-jian 四個階段七個文件  
 Sinkiang (Xinjiang) 新疆  
 Ta-tung 大通  
 Tai-yuan 台元  
 Tainan-bang 台南幫  
 Tao-yuan 桃園  
 Tianjin 天津  
 tong-zhi 通知  
 tzu-chueh 自縊  
 Wai-kuo-jen 外國人  
 Wu-fan 五反  
 xian 縣  
 xiangxi-xuancuang-jeishi-guojia-falu-zhidu 詳細宣傳解釋國家法律制度  
 xie-yi 協議  
 xin-zhen-bu-men zhi-yuo-caozhong 行政部門自由操縱  
 xing-zheng guan-li zhu-guan bu-men 行政管理主管部門  
 Ya-zhou Zhou-kan 亞洲周刊  
 yao-lan 要覽  
 yiju wuoguo-you-guan falu-he-zhengce 依據我國有關法律和政策  
 yin-chang-xin gong-ying-shih-yeh 隱藏性公營事業  
 qiye jituan 企業集團  
 ruan-zhong-you-xu 亂中有序  
 San-Min Zhu-i 三民主義  
 San Zi 三資  
 Shantou 汕頭  
 Shenzhen 深圳  
 sher-hui-tuo-xu 社會秩序  
 Shih 士  
 Shou 收  
 si-ge-chuang-kou 四個窗口  
 ta-fu 大夫  
 Ta-Zhong Co. 大眾公司  
 Tangwai 黨外  
 Tiananmen 天安門  
 tiao-li 條例  
 Tung-yi Co. 統一公司  
 tzu-tung 自重  
 Wan-li 萬曆  
 Xiamen 廈門



Yu-long 裕隆

yuan 元

Zalan Gong-Jian-Fa 砸爛公檢法

Zhi-du-hua 制度化

zhong-dian-cheng-shih 重點城市

Zhong-guo Fa-xue 中國法學

Zhongguo-qiyeh-guanli-xuei-huei 中國企業管理協會

Zhongguo-tigaiwei-jingji-tizhi-yu-guanli-yenjioshuo 中國體改委經濟與管理研究所

Zhongguo-waishang-touzi-qiyeh-xueihuei 中國外商投資企業協會

Zhongguo-Wujin-Kuangchian 中國五金礦產

Zhongguo Xunda 中國迅達

Zhong-hua 中華

Zhong-yang-ling-dao ji-ti-dequan-wei 中央領導集體的權威

Zhou (Chou) 周

Zhou-li 周禮

Zhu-Hou-Jing-Ji 諸侯經濟

Zhuhai 珠海

Zi 資

Zi-you-hua 自由化

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