



The PRC Legislative Process: Rule Making in China

PRC Government Bodies

PRC laws, regulations, and various other types of administrative decisions, from national and local levels of government, affect nearly every aspect of doing business with and in China. Companies not only strive to comply with an ever-growing regulatory framework, they are increasingly interested in shaping the laws and regulations that govern them. Thus, they need to understand the process by which these laws and regulations are made.

In an effort to cast light on that process, the US-China Business Council presents a basic outline of the relevant government bodies and how they interact to create laws and regulations. This overview is not meant to be comprehensive, as the Chinese Communist Party has a substantial influence on policymaking through its parallel governing system that this overview does not address.

Central legislative bodies

The **National People's Congress (NPC)** is the highest-ranking legislative body in the PRC government. The full NPC consists of about 3,000 members, each of which is chosen either by a provincial people's congress or the army, and meets for only two weeks each March. The infrequency of these meetings requires the NPC to rely on its various committees to conduct the central government's regular business of drafting legislation.

The **NPC Standing Committee** is the most important NPC committee and consists of approximately 150 members that meet every two months. (The Standing Committee typically meets for four to five days at the end of even-numbered months.) It has the power to "interpret" the Constitution, pass laws, and amend basic laws, as long as the changes do not conflict with the law's

basic principles. The Standing Committee Council of Chairs, in which the chair and vice chair of the NPC sit along with the chairs of the nine permanent NPC committees, plays a prominent role in legislative activity.

The **Legislative Affairs Commission (LAC)**, a staff bureau under the Standing Committee, assists the NPC and the Standing Committee in their legislative functions. The LAC is divided into bureaus, each of which focuses on a particular area of law.

Central administrative bodies

The **State Council** is the country's highest-ranking administrative body and is often referred to in the Western media as "China's Cabinet." It consists of a premier, vice premiers, state councilors, an auditor-general, a secretary-general, and a number of ministers and commissioners from the various state agencies that are directly under the State Council.

The State Council's **Legislative Affairs Office (LAO)** sets the State Council's legislative agenda and, when applicable, coordinates legislative implementation by the aforementioned state agencies. About 250 LAO officials regularly assess and revise draft legislation from the ministries, commissions, and other agencies. The LAO sometimes drafts laws and regulations as well. In total, 70 to 80 percent of the laws that the NPC promulgates come directly from or pass through the LAO. (Other laws pass through the LAC, as described above.) The office also oversees the implementation and evaluation of laws by the responsible agencies, interagency coordination and law implementation, registration of central and local laws and rules, and the publication of legislation and authorized translations.

Lower administrative levels

Directly beneath the national level of governing bodies is the provincial level, which includes four

municipalities (Beijing, Chongqing, Shanghai, and Tianjin) and five autonomous regions (Guangxi, Inner Mongolia, Ningxia, Tibet, and Xinjiang) under the direct administration of the central government. Under these, the Constitution acknowledges counties, cities, municipal districts, townships, “national townships,” and towns. Each of these has a people’s congress and an administrative branch, officially known as the “People’s Government,” which acts as an administrative body for the local people’s congress.

Types of Legislation

National laws are issued by the NPC and its Standing Committee.

National administrative regulations are produced and issued in accordance with the Constitution and laws by the State Council and its various agencies. Under the leadership of the State Council, central government agencies can make administrative rules in their specific policy fields, provided these rules do not conflict with the Constitution, existing laws, and the State Council’s own administrative rules and regulations. In cases where no previous decisions on a particular subject have been made, ministry and commission regulatory action can fulfill the function of a law. National administrative regulations have a significant impact because of their general reach and because of their use as the legal basis for decisions at lower levels of government.

The Provisional Regulations on the Procedures for the Enactment of Administrative Regulations determine what types of regulatory documents the various agencies can issue. State Council and agency legislation include legal documents without “law” (*fa*) or “regulation” (*tiaoli*) in the title, such as “provisions” (*guiding*), “methods” (*banfa*), and “circulars” (*tongzhi*).

Regional regulations are issued by the people’s congresses at provincial and lower levels. These regulations cannot conflict with the Constitution or higher governments’ laws and administrative regulations. The standing committees of higher people’s congresses have the right to annul the decisions of the lower people’s congresses.

Regional and local administrative rules are issued by people’s governments at the provincial and lower levels and must be in accordance with all higher governments’ promulgations and their own people’s congress’ decisions.

Legislative Processes

Agenda-setting: How a subject enters the agenda of a legislative body

In general, most legislation goes through a basic agenda-setting process. This process may not be followed, however, and some topics for which legislation is considered, such as those that originate in the LAO, may not undergo each stage outlined below.

1. A topic is researched and a proposal for legislation is drafted.

Most proposals originate from ministries and their leaders. Ministry staff, sometimes at the behest of top leaders’ advisors, conduct research and feasibility studies, gather and analyze results from local policy experiments, and solicit opinions from nongovernment players on topics they deem appropriate for legislation. They use this background research to write proposals or, sometimes, rough drafts of legislation. These proposals are then given to ministry leaders or other top government officials, who can sponsor or formally submit them to the State Council or NPC.

Proposals might also be initiated by NPC delegates, in which case the staffs of the Council of Chairs of the Standing Committee and the LAC might be involved in conducting preliminary research and preparing a proposal.

Central Chinese Communist Party (CCP) figures also suggest ideas for legislation. Although barred from formally sponsoring proposals, CCP figures can solicit government officials and their staffs to research and submit proposals for them.

Other nongovernment entities that suggest topics for possible legislation include independent legislative specialists and think tanks. These players shop ideas for legislation, or even ready-made proposals, around to different government agencies and leaders until they find a sponsor.

2. The proposal is formally submitted to the State Council or NPC by one of the central government organs or groups of legislators stipulated in the Constitution.
3. After reviewing the hundreds of proposals submitted, the LAO and LAC lay out government policy priorities. These priorities

are then put before State Council and NPC Standing Committee leadership for approval.

4. The State Council and NPC Standing Committee sign off on the policy priorities and approve drafting groups for the various regulations and laws.
5. Following approval, the LAO and LAC notify the appropriate central government agencies of the legislation that will be expected from them in the coming year and include the proposed regulations and laws on their annual legislative plans, which are released following the NPC plenary session each March.

Once included on the annual legislative plan, a regulation or law is usually finalized and promulgated within 12 to 18 months, although there have been notable exceptions to this (see below).

Ministries and commissions also highlight their priorities – including legislation – for that year in annual work plans.

Writing and drafting

The ministries and commissions usually have the responsibility of writing and drafting legislation. The LAO receives the drafts, researches them, makes necessary adjustments, and then sends them to the State Council or the NPC. In a few cases, laws are written by LAC staff. Drafting bodies often seek the various opinions of experts in the field, academics, implementing bodies, and other interested parties.

Inter-agency consultation

Broad, informal discussion of laws and regulations (through press reports, casual meetings, or other types of outreach) among involved government agencies, experts in the field, academics, and industry is increasingly common. Still, there is a separate, formal interdepartmental consultation process in which the LAO is responsible for mediating and helping to resolve disagreement among the agencies, though resolution on contentious issues is rare. Interdepartmental disagreements can lead to delayed, watered-down, or vague legislation and a lack of clarity about which agency ultimately has implementation authority.

Approval “in principle” by party leadership

The party leadership’s support for the premise of a particular rule must also be obtained. This stage of

the process typically overlaps with previous stages because important questions or conflicts of interest often can only be answered or resolved through dialogue with party leaders.

Approval and passage of draft laws and administrative regulations

- **National laws** The NPC’s Law Committee reviews all draft laws and other legislative items separately and makes a report to the NPC Standing Committee Council of Chairs, with possible suggestions for amendments. Every draft law is also assessed by a topical committee of the NPC. The NPC Standing Committee usually reads each law at least three times before passing it. In accordance with an NPC Standing Committee pledge to solicit public comments on draft laws and amendments that it reviews, legislative items are generally posted for comment on the NPC’s website after their first reading. Once the draft is finalized, the NPC (or its Standing Committee) passes the law.

Though the NPC was previously viewed as merely a “rubber stamp,” in recent years it has made significant changes to draft legislation during the three readings and has become a more open and important forum for debates on policy direction and legislation. With its practice of soliciting public comment on legislative items, the NPC has also become a more transparent and consultative body. For companies, this means that advocacy opportunities exist throughout the legislative process.

- **National administrative regulations** Draft administrative regulations are deliberated in an Executive Meeting of the State Council. In light of opinions put forth in this meeting, the LAO makes further revisions and finalizes the draft, which is then submitted to the premier for signature and promulgation. The State Council and agencies under its jurisdiction also solicit public comments on some drafts prior to passage, though they have been less consistent than the NPC Standing Committee in this area. As mentioned above, this practice gives the private sector an opportunity to weigh in and perhaps influence products of the central administrative bureaucracy.

Publication and registration

Laws are issued by the president and published in the NPC gazette (*Quanguo Renmin Daibiaodahui Changweihui Gongbao*), while administrative regulations of the State Council and administrative rules of the ministries and commissions are published in the State Council’s gazette (*Zhonghua*

Renmin Gongheguo Guowuyuan Gongbao). Local regulations must be submitted to NPC's Standing Committee for registration, and administrative rules must be submitted to the provincial people's congress and the State Council for registration.

Timeline for passage of legislation

The amount of time it takes a law or regulation to pass through China's legislative process can vary enormously. For some items, such as the Food

Safety Law, which was passed and issued within six months, the time from inception to promulgation is fairly short. For other items, the process takes years. This was the case for the Antimonopoly Law, which took 15 years. Essentially, delays can occur in any part of the process, as a legislative item can stall if it is not yet a priority, if it is controversial, by a change in political mood, or by increased involvement of various interest groups.