



Chinese Legal Research

中国法律检索

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03-2014



Three Branches of US Government

美国政府的三权分立

Legislative



Executive



Judicial



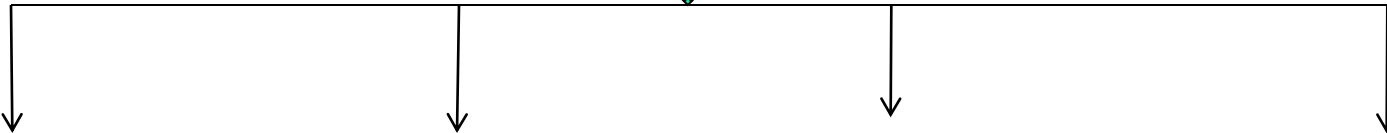


Legislative: NPC



Judiciary

Administrative



SPP



SCP

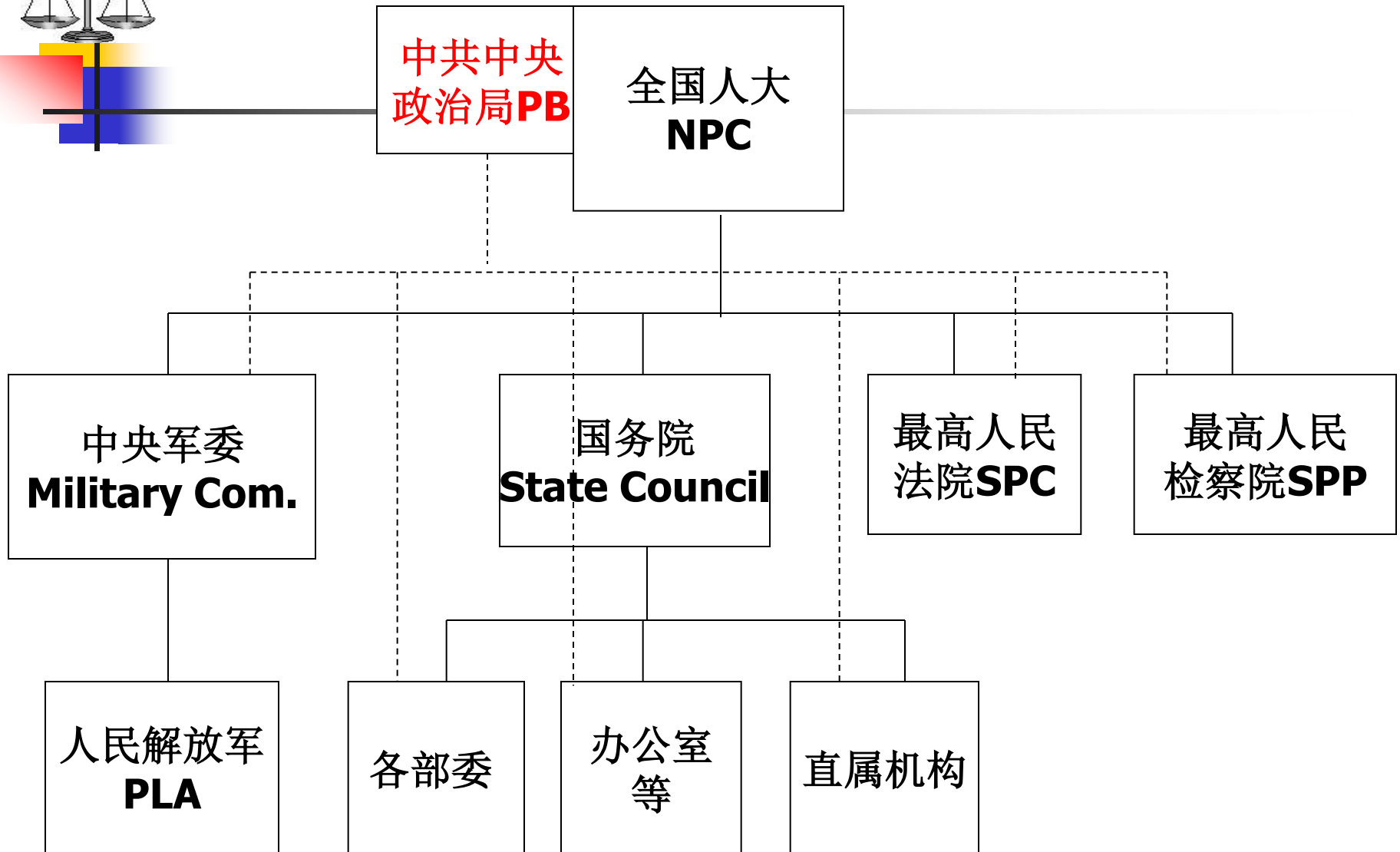


State Council

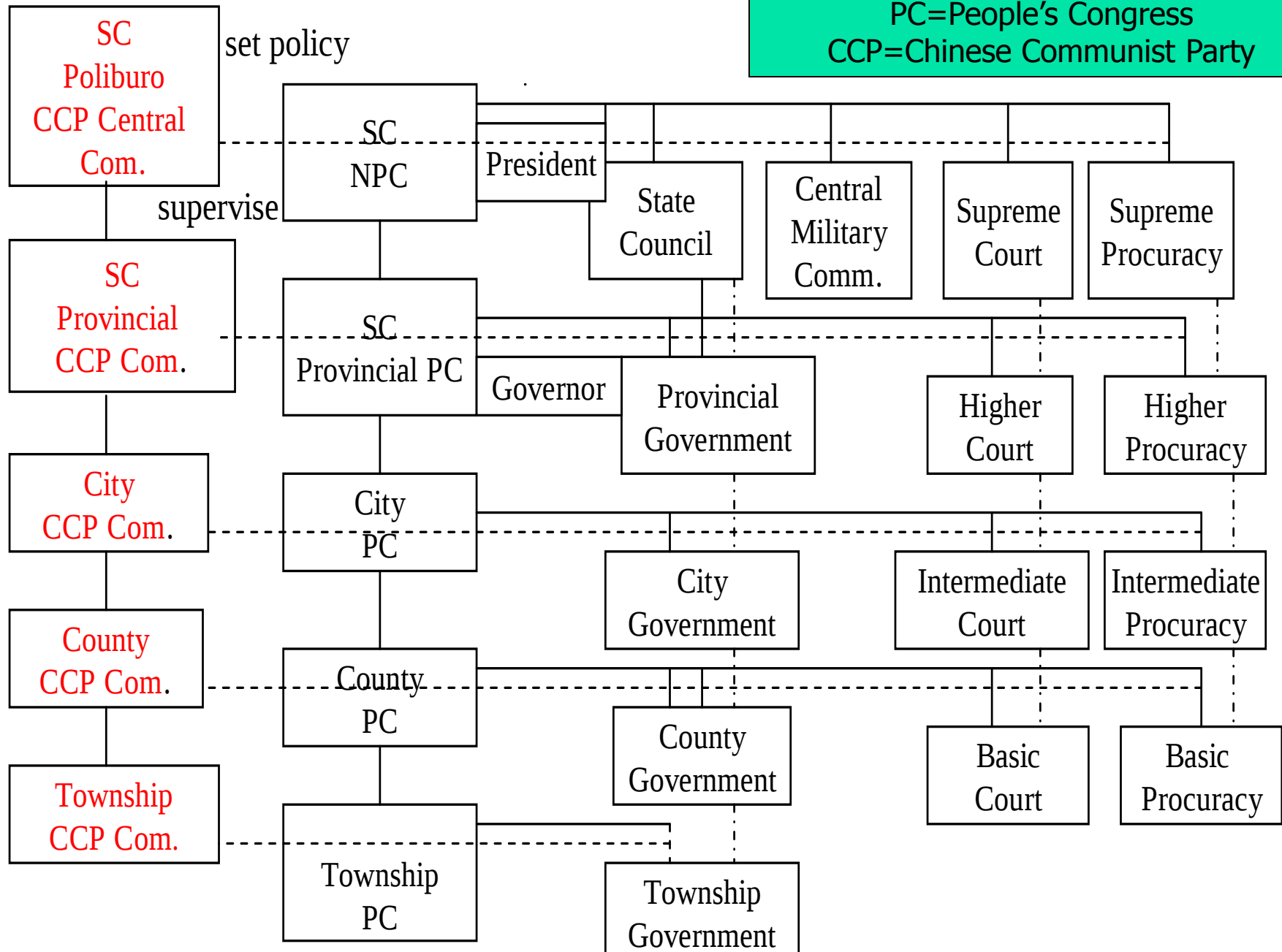


Military
Commission

中国政府结构 Chinese Gov. Structure



SC=Standing Committee
PC=People's Congress
CCP=Chinese Communist Party





1. Primary Sources of Chinese Law 中国法律原始资源

1.1 Legislatures立法

1.2 Administrative Regulations行政法规

1.3 Interpretations of Laws法律解释

1.4 Case Law 案例参考

1.5 International Treaties国际条约

1.6 Rules Issued by the Chinese Communist
Party中共规章？



1.1 Legislatures 立法

- The NPC 全国人大：宪法和其他大法
- NPC's Standing Committee: Laws人大常委会：法律



1.2 Administrative Regulations

行政法规

- The State Council: Administrative Regulations 国务院：法规
- Ministries of the State Council: Departmental Rules 国务院各部委办的规章
- Local People's Congresses: Local Regulations 地方人大：法规
- Local Governments: Local Rules 地方政府：规章
- The Central Military Commissions 中央军委：法规



The State Council 国务院

- Broadly Delegated Legislative Power 立法权
- Forms of Administrative Regulations: 实施细则 (detail implementation rules), 条例 (regulations), 规定 [provisions], 办法 [measures], 决定 [decisions], etc.
- Regulating Documents [规范性文件]: 通知 [circulars], 意见 [opinions], 命令 [orders], etc.



Ministries of the State Council 国务院各部委

- Administrative Rules [行政法规] or departmental rules [部门规章]
- The largest number of Chinese written laws 中国最多的成文法规



Local Governments 地方政府

- Provincial 省 – Cities 市 – Counties 县 – Townships 乡镇
- Local People's Congresses: local regulations 地方人大：法规
- Local Governments (Executive Branches): local rules 地方政府：规章



1.3 Interpretations of Laws

法律解释

- Legislative Interpretations 立法解释
 - The NPC's Standing Committee: not often
- Judicial Interpretations 司法解释 by the Adjudicating Committees of the SPC & SPP
 - Derived from specific cases 具体案件
 - Dealing with current and future possible legal issues: more often 可能的问题
- Administrative Interpretations 行政解释: not often



1.4 Case Law 案例

- Authority of Case Law: unsettle, persuasive authority参考/指导性=说服力规范
- Cases tried by the SPC最高法院审理的案例
- Cases selected and published by the SPC最高法院选择并出版在《公报》的案例
- Selected Case Reporter 《人民法院案例选》
- 其他出版物？



Regulations of the Chinese Communist Party

- Where to search?
- How to search?

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发文字号

发布日期 到

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发布部门

中央其他机构 ▾

批准部门

全部 ▾

法规分类

全部 ▾

实施日期 到 例: 19960912

效力级别

中华人民共和国国家公报索引



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■ 法院检察院专区

- 中国审判法律应用支持系统
- 案例管理分析平台
- 法律知识管理平台
- 法律远程培训平台

- | | | |
|---|-------------------------------------|--------------|
| 5 | 中华人民共和国民兵组织暂行条例[失效] | 1952. 11. 28 |
| 6 | 中华人民共和国民族区域自治实施纲要[失效] | 1952. 08. 09 |
| 7 | 政务院关于与外国订立条约、协定、议定书、合同等的统一办法之决定[失效] | 1952. 08. 07 |
| 8 | 各级人民政府民族事务委员会试行组织通则[失效] | 1952. 08 |

[更多](#)

◆ 行政法规 (命中685条)

- | | | |
|---|--|--------------|
| 1 | 中共中央、国务院关于深化科技体制改革加快国家创新体系建设的意见 | 2012. 09. 23 |
| 2 | 国务院、中央军委关于授予浙江省公安边防总队舟山市支队罗家岙边防派出所和辽宁省公安消防总队沈阳市支队启工中队荣誉称号的命令 | 2012. 05. 07 |
| 3 | 中共中央办公厅、国务院办公厅关于进一步加强人民政协提案办理工作的意见 | 2012. 04. 05 |
| 4 | 中共中央、国务院关于加快推进农业科技创新持续增强农产品供给保障能力的若干意见 | 2011. 12. 31 |
| 5 | 中共中央办公厅、国务院办公厅关于印发《国家“十二五”时期文化改革发展规划纲要》的通知 | 2011. 12. 29 |
| 6 | 中共中央办公厅、国务院办公厅印发《关于深化政务公开加强政务服务的意见》的通知 English | 2011. 06. 08 |
| 7 | 中共中央办公厅、国务院办公厅关于印发《农村基层干部廉洁履行职责若干规定（试行）》的通知 | 2011. 05. 23 |
| 8 | 中共中央、国务院关于分类推进事业单位改革的指导意见 | 2011. 03. 23 |

[更多](#)

◆ 司法解释 (命中55条)

- | | | |
|---|------------------------------------|--------------|
| 1 | 最高人民法院、解放军总政治部印发《军人违反职责罪案件立案标准的规定》 | 2013. 02. 26 |
|---|------------------------------------|--------------|



中共中央发布的办法等(1)

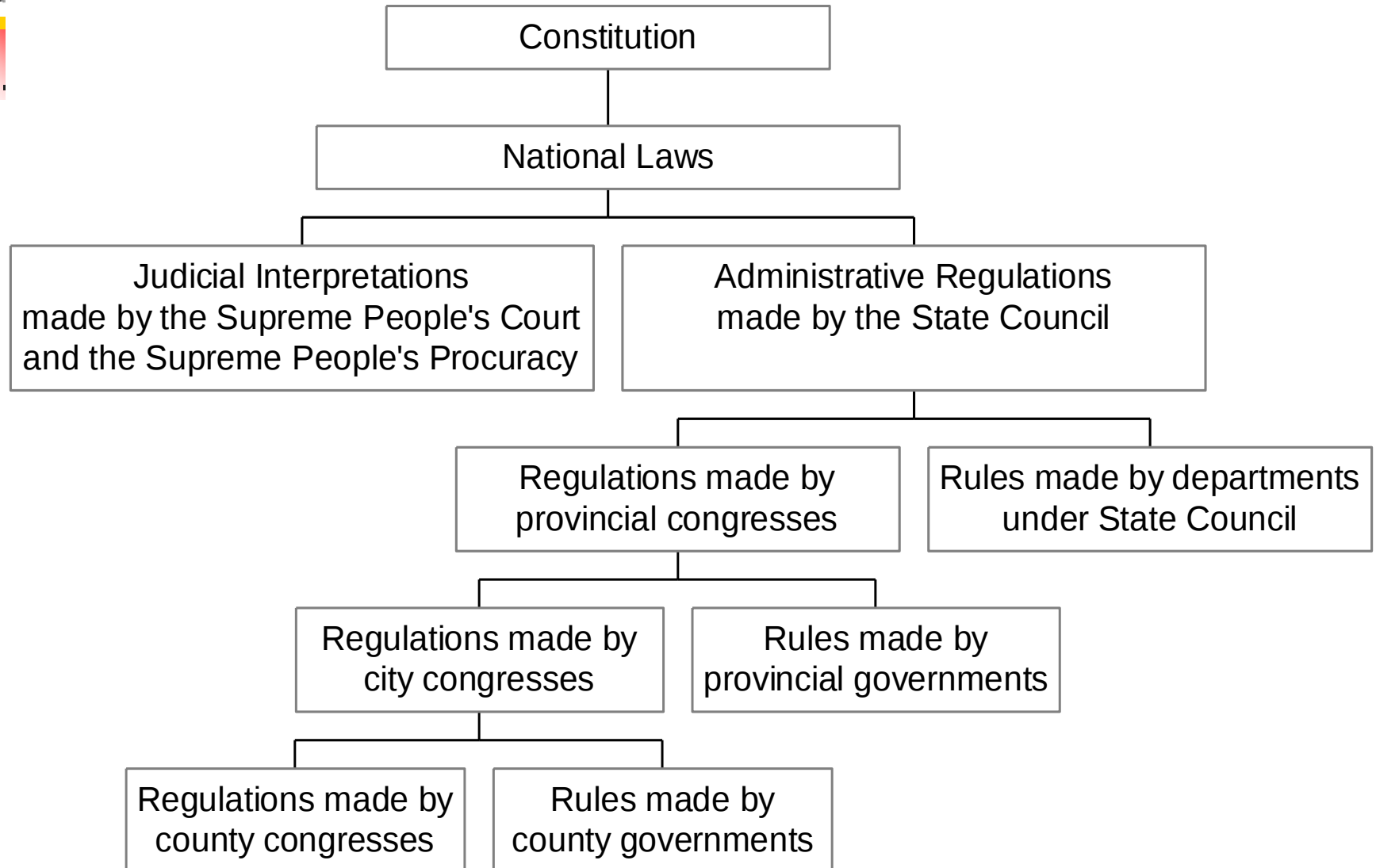
- Why is this relevant?
- CCP sets policies and directions
- 市县党委书记履行干部选拔任用工作职责离任检查办法(试行)2010.03.01
- 中共中央办公厅党政领导干部选拔任用工作责任追究办法(试行)2010.01.01
- 中共中央办公厅、国务院办公厅关于印发《国有企业领导人员廉洁从业若干规定》的通知



中共中央发布的办法等(2)

- 中央司法体制改革领导小组关于司法体制和工作机制改革的初步意见（**12/2004**）
- 中共中央关于进一步加强人民法院，人民检察院工作的决定（**05/2006**）
- 中共中央政法委关于深入学习实践科学发展观解决政法工作突出问题的意见（**01/2009**）

The Hierarchy of Chinese Laws





原始文献：法律和法规：纸质Primary sources: laws and regulations in print

- 《中华人民共和国法律全书》王怀安等主编，吉林人民出版社**1989-**，年度、季度更新
- 《中华人民共和国法规汇编》法律出版社 **1955-1965, 1985-**.
- 《中华人民共和国法律汇编》人大法工委编，法律出版社（活页）



中国成文法检索面临的主要问题Problems of Chinese written law research

- 法律法规汇编太杂、不统一、不全
- 不公开的规范性文件？
- 缺乏完整的索引目录
- 没有相关法条的索引
- 有些法律条文互相矛盾，如《反不正当竞争法》第24条和《广告法》第37条对虚假广告的处罚：十至二十万元 v 1到5倍广告费的罚款



原始法律文献最佳检索途径? Best Way to search primary sources

- 可靠、全面的网络法律数据库
comprehensive online databases
 - 北大法宝 Chinalawinfo
 - 法意网
 - 国信中国法律网
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Chinese law & regulation online databases:

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北大法宝 > 法律法规

法规类别

- 宪法(770)
- 国家机关(815)
- 机关工作(6740)
- 法制工作(1608)
- 律师(702)
- 公证(637)
- 民族事务(239)
- 华侨事务(122)
- 港澳事务(191)
- 台湾事务(128)
- 三教事务(72)

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☐ 结果中检索

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☐ 模糊

☐ 同篇

☐ 同句

☐ 同段

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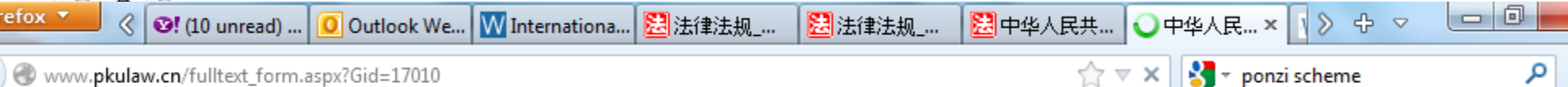
中央法规司法解释 (191488篇)

法律(1840篇)

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附则

第一编 总则

第一章 刑法的任务、基本原则和适用范围

第一条 【立法目的】为了惩罚犯罪，保护人民，根据宪法，结合我国同犯罪作斗争的具体经验及实际情况，制定本法。

（**法宝联想：** 法律约1篇 部门规章约1篇 高法公报案例约1篇 案例与裁判文书约126篇 法学期刊约36篇 修订沿革 条文释义约3篇 法学教程约2篇 法学文献约65篇 ）

第二条 【任务】中华人民共和国刑法的任务，是用刑罚同一切犯罪行为作斗争，以保卫国家安全，保卫人民民主专政的政权和社会主义制度，保护国有财产和劳动群众集体所有的财产，保护公民私人所有的财产，保护公民的人身权利、民主权利和其他权利，维护社会秩序、经济秩序，保障社会主义建设事业的顺利进行。

（**法宝联想：** 高法公报案例约2篇 案例与裁判文书约60篇 法学期刊约38篇 修订沿革 条文释义约3篇 法学教程约2篇 法学文献约79篇 ）

第三条 【罪刑法定】法律明文规定为犯罪行为的，依照法律定罪处刑；法律没有明文规定为犯罪行为

其他规范性文件(4篇)

- 中国证券业协会关于防范非法证券活动的风险提示公告
- 中国农业银行女员工权益保障(暂行)办法
- 共青团中央、全国“扫黄打非”工作小组、中央综治委预防青少年违法犯罪工作领导小组等关于在全国开展有害卡通画册和淫秽“口袋本”图书专项整治行动的通知
- 中国农业银行关于印发《关于依法收贷工作的若干法律指导意见》的通知

地方法规规章(302篇)

- 广西律师协会关于印发《广西律师提供著作权法律服务业务操作指引》、《广西律师提供商标法律服务业务操作指引》、《广西律师提供专利诉

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图3.5.3

在图3.5.3中列出不同文章，点击相应主题进入该主题下的文件。

3.6逻辑运算符在检索中的运用

在您使用标题和全文关键词查询时可以利用以下符号或字母（不区分大小写），限制查询结果的范围。

若查询.....	符号或字母	范 例
包含所有多个关键词的文件	*(或空格)	在标题查询框中输入：证券*上市，查询结果为所有标题中同时包含"证券"和"上市"两个关键词的文件。
至少包含多个关键词之一的文件	+	在法规全文或文件全文框中输入：证券+上市，查询结果为所有正文中至少包含"证券"或"上市"其中一个关键词的文件。
不包含运算符后的关键词的文件	-	在法规全文或文件全文框中输入：证券-上市，查询结果为所有正文中包含"证券"但不包含"上市"的文件。

and

or

not

同时这三种符号还可以用英文输入状态下的"()"进行组合。如：(A+B)*C表示包含A或B，并且又包含C的文件。

注意事项：

全文查询中尽量不要单独使用助动词如"的、地、得"、简单的数词如"1，2"等查询。

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- **【法规标题】** 中华人民共和国禁毒法
- **【类别】** 公安/禁毒
- **【发文字号】** 主席令第79号
- **【批准日期】**
- **【发布部门】** 全国人大常委会
- **【发布日期】** 2007.12.29
- **【实施日期】** 2008.06.01
- **【时效性】** 尚未生效（说明：检索时间为2008-4-15）
- **【效力级别】** 法律
- **【唯一标志】** 100676（数据库设制的标识）
- **【全文】** 略



主要案例汇编 (Compilation of Chinese Case Law)

- 《人民法院案例选》 人民法院出版社, 1992-, 月刊
- 《中国审判案例要览》 高级法官培训中心, 人民大学法学院编, 1992-, 年刊
- 《上海法院案例精选》 上海人民出版社, 1997-
- 《最高人民法院公布裁判文书》 人民法院出版社, 2001-



中国案例网络数据库online Case law databases

- 北大法宝Chinalawinfo.com
 - 高法公报案例767 法院裁判文书219,385 经典案例评析1,128 仲裁裁决与案例463
- 法意：法院案例
- 中国法院网
(<http://www.chinacourt.org/>)



Secondary Sources in Chinese: 中文二次文献检索

- 书：
 - Search on OPACs
- 文章：
 - 中国学术期刊网
 - 北大法宝法学期刊



Chinese Legal Resources in English

- Primary Sources
- Secondary Sources
- Resources published in China
- Resources published overseas



English Translation of Chinese Laws

- All national laws and State Council's regulations have been translated but not all administrative regulations
- Translation services, Chinalawinfo.com
- Expensive
- Accuracy
- Authentication: Disclaimer Official v. Commercial or personal



Major Sources for Statutes and Regulations

- Major Prints

- *The China Law Reference Service* (looseleaf), Hong Kong : Asia Law & Practice Ltd., 1996-2002?, quarterly.
- *The Laws of the People's Republic of China*, Beijing : Foreign Languages Press and China Law Press, 1987-

- On the Internet

- Lawinfochina.com
- LexisChina and WestlawChina
- Isinolaw.com



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Gazettes(Title Index)

Journals(Title Index)

Database In Chinese

- Laws & Regulations Database

- Cases Database

- Law Journals Database

Products and Services

Legal News

- China's draft oil-pipeline protection law details pipeline companies' responsibilities (2010-04-28)
- Significant progress made in quake relief Chinese vice premier (2010-04-28)
- China to mourn quake victims (2010-04-22)
- China mourning quake victims (2010-04-22)
- Significant progress made in quake relief Chinese vice premier (2010-04-22)

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Latest Laws & Regulations

- Notice of the Shanghai Office of the China Banking Regulatory Commission on Further Strengthening the Credit Risk Management and Control of Foreign-funded Banks (04-12-2010)

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 - *China Law Reports*, Hong Kong: Butterworths Asia, 1995 for 1991 cases and 2001 for 1992-95 cases.
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- No good print publications in China
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- Oceana's Database on US and International Treaties (now Oxford U. Press)



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- China Law, HK: 1996- (lawinfochina)
- Law Yearbook of China, 2003- (lawinfochina)



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- The Frontiers of Law in China, [Amsterdam, Netherlands] : Higher Education Press, in association with Springer, 2006-, quarterly
- Peking University Journal of Legal Studies: 2008-, annually
- Tshinghua China Law Review, 2009-, annually



Monograph Series Published in English

- The China Law Series, HK: Sweet & Maxwell Asia
- Routledge Studies on China in Transition, London: Routledge
- Asian Law Series, Seattle, U. of Washington Press
- Asian Law Series: Kluwer
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Legal Dictionaries

- English-Chinese and Chinese-English Tow-way Law Dictionary, Beijing: Law Press, 2007; K52 .C5Y59 2007
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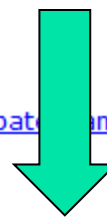
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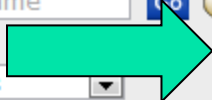
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Part II. Types of Acquisitions
Chapter 4. Joint Venture Method to Acquire a China Business**§ 4:1. Structure of transaction**

Most joint ventures in China are also a form of acquisition of an existing business or business assets. The contribution of capital, whether a state-owned or privately owned enterprise, frequently involves the contribution to capital of business assets. In some cases, the Chinese investor will contribute a portion of its assets and still another portion will be purchased from the foreign investor. A joint venture with cash contributed by the foreign investor. In this way, a whole business can be transferred. Where a joint venture there is normally a special annex to the Joint Venture Contract that discusses the assets to be contributed or purchased. The annex respects like a standard Asset Purchase Agreement and contain representations and warranties, covenants, and similar provisions.

Because the joint venture company is the buyer, there is always some question as to whether it will enforce its obligations against the China investor. The Board of Directors, which must contain representatives of the Chinese party, may be reluctant to do so in the annex to the Joint Venture Contract. To some extent, this problem can be overcome by drafting in the Joint Venture Contract that the foreign investor may treat the breach of the annex as a failure to contribute capital and exercise the remedies provided in the Venture Law and the Joint Venture Contract.

One other possibility is for the foreign investor to form a wholly foreign owned enterprise ("WFOE") and then either acquire an existing Chinese business for equity in the WFOE (thereby converting it to a joint venture) and for cash, or merging the Chinese business entity into a new joint venture pursuant to the terms of a merger agreement. In 2003 new regulations

	1. The Joint Venture Law: Discussion and Adoption
+	II. Principal Documents and Terms
+	III. Government Involvement in the Process
+	IV. Standard Structures: Majority, Minority, and 50/50
+	V. Foreign Incorporated Joint Ventures
+	Chapter 5. Acquiring an Interest in an Existing FIE
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+	APPENDICES
	APPENDIX A. List of Chinese Legal Texts with Official Mandarin Titles
	APPENDIX B. Due Diligence Checklist
	APPENDIX C. The Company Law of the People's Republic of China
	APPENDIX D. Provision on Foreign Investors' Merger and Acquisition of Domestic Enterprises
	APPENDIX E. Provisions of the Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce on Merger
	APPENDIX F. Partnership Law of the People's Republic of China
	APPENDIX G. Measures for the Administration of the Establishment of Partnership Enterprises in the Territory of China by Foreign Enterprises or Individ

_____ (the "Company")

DUE DILIGENCE QUESTIONNAIRE

PART I

Documents and Information to be Reviewed

For the purposes of this questionnaire:

- (i) a "subsidiary" means any company or entity in which the Company owns the equity and/or 50% of the voting rights; and*
- (ii) an "associated company" means (a) any company or entity in which the Company owns 50% or less of the equity and/or 50% of the voting rights; and (b) any company or entity controlling or under common control with the Company.*

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[Fletcher Forum of World Affairs](#) (FLFWA) ⓘ

[Going Public and the Public Corporation](#) (SECPUBCORP) ⓘ

[International Capital Markets and Securities Regulation](#) (SECINTCAP) ⓘ

[International Journal of Not-for-Profit Law](#) (IJNPL) ⓘ

[Manual of Corporate Forms for Securities Practice](#) (SECMCORPF) ⓘ

[Mortgage-Backed Securities](#) (MORTSEC) ⓘ

[Nichols Cyclopedic of Legal Forms Annotated](#) (NICHOLS-LF) ⓘ

[Restatement of the Law - The Foreign Relations Law of the United States](#) (REST-FOREL) ⓘ

[Securities and Federal Corporate Law](#) (SECFEDCORP) ⓘ

[Securities Crimes](#) (SECCRIM) ⓘ

[Securities Litigation: Damages](#) (SECLITD) ⓘ

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International Capital Markets and Securities Regulation (SECINTCAP) ⓘ

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 - ☐ + Source Material-British Isles-Part III
 - ☐ + Source Material-Scandinavia and Finland
 - ☐ + Source Material-Benelux Countries
 - ☐ + Source Material-France
 - ☐ + Source Material-Iberian Peninsula

Source Material-North America

- [APPENDIX US-1. U.S. Document 1: SEC Securities Act Release Number 4708 \(July 9, 1964\): Interpretative Releases Relating to the Securities Act of 1933](#)
- [APPENDIX US-2. U.S. Document 2: Quotation of Securities of Exempt Foreign Issuers on NASDAQ and Related Matters](#)
- [APPENDIX US-3. U.S. Document 3: Listing Standards and Procedure for Foreign Corporations on the New York Stock Exchange](#)
- [APPENDIX US-4. U.S. Document 4: Sample Notice to Investors from Offshore Offering Memorandum](#)
- [APPENDIX US-5. U.S. Document 5: Sample "Plan of Distribution" from Offshore/144A Offering Memorandum](#)
- [APPENDIX US-6. U.S. Document 6: Sample Disclosure Concerning Book-Entry Procedures from Offshore Offering Memorandum \(Domestic Debt\)](#)
- [APPENDIX US-7. U.S. Document 7: Sample Disclosure Concerning Book-Entry Procedures from Offshore Offering Memorandum \(Convertible Bonds of Foreign Issuers\)](#)
- [APPENDIX US-8. U.S. Document 8: Representations to DTC Regarding Regulation S Securities](#)
- [APPENDIX US-8A. Sample Transfer Restrictions and Settlement Terms](#)
- [APPENDIX US-8B. Indenture Provisions Relating to Regulation S and Rule 144A Securities](#)
- [APPENDIX US-9. U.S. Document 9: Comments of The Toronto Stock Exchange on 1997 Proposed Amendments to Regulation S](#)
- [APPENDIX US-10. U.S. Document 10: Sample Disclosure From Offering Memorandum \(Foreign Sovereign Debt\)](#)
- [APPENDIX US-11. U.S. Document 11: No-Action Letter Regarding Convertible Securities \(Aug. 24, 1998\)](#)
- [APPENDIX US-12. U.S. Document 12: Sample Letters from Nasdaq Regarding Delistings from Nasdaq National Market System](#)
- [APPENDIX US-13. U.S. Document 13: Brief of the Securities Exchange Commission, Amicus Curiae, Europe and Overseas Commodity Traders v. Banc of America Securities](#)
- [APPENDIX US-14. International Reporting and Disclosure Issues in the Division of Corporation Finance](#)
- [APPENDIX US-15. U.S. Document 15: Disclosure by Companies Doing Business in Countries Subject to U.S. Economic Sanctions](#)
- [APPENDIX US-16. U.S. Document 16: Special Study: Electronic Communication Networks and After-Hours Trading](#)
- [APPENDIX US-17. US Document 17: Service of Process Outside US: Excerpts from Rule 4 of Federal Rules of Civil Procedure](#)
- [APPENDIX US-18. US Document 18: Designated Offshore Securities Markets](#)
- [APPENDIX US-19. US Document 19: Designated Offshore Securities Markets \(Specific Designations by the Division of Corporation Finance\)](#)
- [APPENDIX US-20. US Document 20: DOSMs Receiving Category 3 Dispensation](#)
- [APPENDIX US-21. US Document 21: Sarbanes-Oxley Act of 2002](#)
- [APPENDIX US-22. US Document 22: Sample SEC Letter Enclosing Subpoena](#)

SECINTCAP APP US-3

APPENDIX US-3. U.S. Document 3: Listing Standards and Procedure for Foreign Corporations on the New York Stock Exchange
Approx. 1 page

10D Int'l Cap. Markets & Sec. Reg. Appendix US-3

International Capital Markets and Securities Regulation
Database updated December 2010

Harold S. Bloomenthal and Samuel Wolff

Source Material—North America

APPENDIX US-3. U.S. Document 3: Listing Standards and Procedure for Foreign Corporations on the New York Stock Exchange

Descriptive Note: A foreign corporation can be listed either under the standards for a domestic issuer (based on securities in the United States) or the more severe alternative standards which, however, take into account the corporation's worldwide. A more formidable practicable obstacle to listing is that it will require the issuer to register under the Securities Act of 1934 and subject the issuer to the reporting requirements of that Act. A non-Canadian foreign issuer can register under the Securities Act of 1934 which permits somewhat less extensive disclosure than Forms 10 and 10-K for domestic issuers and the use of accounting principles in accordance with a body of generally accepted accounting principles developed outside of the United States.

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China Law List

- E-mail Discussion Groups: China Law List

http://docs.law.gwu.edu/facweb/dclark_e/chinalaw/welcome.htm



Questions 问题?





检索实例 Example

- 中国公民张三**15**岁时移民美国，三年后因多次参与贩运海洛因等毒品，总数超过**100**克，被纽约市地方检察院起诉, to avoid long jail term, he entered a prebargain by admitting his guilty in exchange for 3 year jail term, 现刑满，但面临被美移民局遣送回中国，如被遣送会中国，是否被中国检察院起诉？如被起诉，将如何被判？



法律检索分析：法律争议点(Legal Issue) 例

- 根据中国法，中国是否应该对张三重新调查起诉？如果回答是“是”，张三会被这么判刑？
- 如果张三被遣送回国而中国将会对张三重新调查起诉并判刑，张三能否要求美国移民局不要遣送他回中国？



法律检索分析：提炼检索语言

关键词和法律术语：例

- 查中国法律：追诉、国外犯罪并服刑、美籍华人、中国公民、贩毒、管辖、司法管辖、
 - 同义词：追诉—调查、起诉、公诉
 - “先具后大体或总体”的原则：美籍华人—中国公民，美国—外国（海外、国外、域外、境外）
- 查美国法律：alien, criminal convicted, drug trafficking, deportation, immigration, harsh punishment, capital punishment (death penalty)

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| ☐ 台湾法律法规库 | ☐ 澳门法律法规库 | ☐ 显示命中条款 | |
- 按效力级别排序 ▼

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中国法律法规规章司法解释文库 (共 20 条)

◆ 法律 (4 条)

· 中华人民共和国刑法(97修订)	1997.03.14
· 全国人民代表大会关于修改《中华人民共和国刑事诉讼法》的决定(1996)	1996.03.17
· 中华人民共和国刑事诉讼法(96修正)	1996.03.17
· 中华人民共和国刑事诉讼法	1979.07.07

◆ 行政法规 [暂无]

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· 最高人民法院研究室关于外国公司、企业、事业单位在我国领域内犯罪如何适用法律问题的答复	2003.10.15
· 最高人民法院、最高人民检察院、司法部关于印发《关于适用普通程序审理“被告人认罪案件”的若干意见(试行)》和《关于适用简易程序审理公诉案件的若干意见》的通知	2003.03.14
· 最高人民法院、最高人民检察院、司法部关于适用普通程序审理“被告人认罪案件”的若干意见(试行)	2003.03.14

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·中华人民共和国刑法(97修订) 1997.03.14

·全国人民代表大会关于修改《中华人民共和国民事诉讼法》的决定(1996) 1996.03.17

·中华人民共和国民事诉讼法(96修正) 1996.03.17

·中华人民共和国民事诉讼法 1979.07.07

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·最高人民法院、最高人民检察院、司法部关于适用普通程序审理“被告人认罪案件”的若干意见(试行) 2003.03.14

·最高人民检察院关于人民检察院审查批准逮捕外籍犯罪嫌疑人程序的规定 1999.01.12

·最高人民法院关于执行《中华人民共和国民事诉讼法》若干问题的解释 1998.09.02

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◆ 部门规章 (9条)

·公安机关海上执法工作规定 2007.09.26

·中国银行业监督管理委员会关于印发《货币经纪公司试点管理办法实施细则》的通知 2005.11.07

·司法部公告第42号——2004年度法治建设与法学理论研究部级科研项目共111项获准立项课题名单公告 2004.12.16

·海关总署关于公布第一批废止的规范性文件目录的公告 2004.08.25

·公安机关办理刑事案件程序规定(98修正) 1998.05.14

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◆ 团体规定、行业规定、军事法规、军事规章及其他 [暂无]



《刑法》有关规定

- **第七条 【属人管辖权】** 中华人民共和国公民在中华人民共和国领域外犯本法规定之罪的，适用本法，但是按本法规定的最高刑为三年以下有期徒刑的，可以不予追究。

中华人民共和国国家工作人员和军人在中华人民共和国领域外犯本法规定之罪的，适用本法。

第十条 【对外国刑事判决的消极承认】 凡在中华人民共和国领域外犯罪，依照本法应当负刑事责任的，虽然经过外国审判，仍然可以依照本法追究，但是在外国已经受过刑罚处罚的，可以免除或者减轻处罚。

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3	司法部公告第42号——2004年度法治建设与法学理论研究部级科研项目共111项获准立项课题名单公告	2004.12.16
4	海关总署关于公布第一批废止的规范性文件目录的公告	2004.08.25
5	公安机关办理刑事案件程序规定(98修正)	1998.05.14
6	外商投资企业外国专家管理办法	1996.09.01
7	<u>公安部关于我国公民在国外犯罪经外国审判后回国如何依法处理问题的批复</u>	1996.06.06
8	公安部关于严禁公安机关插手经济纠纷违法抓人的通知	1992.04.25
9	全国民政系统推行行政执法责任制工作指导意见	

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公安部关于我国公民在国外犯罪经外国 审判后回国如何依法处理问题的批复



(1996年6月6日 公复字(1996)9号)

山东省公安厅：

你厅《关于对外国法院判决的刑事案件不服申请国内司法机关重新审理应如何办理的请示》（鲁公明发〔1996〕879号）收悉。经研究，现批复如下：

一、根据我国刑法第七条的规定，凡在中华人民共和国领域外犯罪，依照我国刑法应当负刑事责任的，虽然经过外国审判，仍然可以依照我国刑法处理。因此，对姚维晔可以依照我国刑法追究其刑事责任。但是，鉴于姚在外国已经受过刑罚处罚，可以依法减轻或者免除处罚。

二、根据《中华人民共和国和乌克兰关于民事和刑事司法协助条约》的规定，我国可以请求乌克兰提供刑事司法协助，我司法机关可以请求乌克兰将证人证言、鉴定结果、被告人供述以及物证、书证等证据材料移交我国，然后，按照我国刑事诉讼有关管辖的规定办理，并履行必要的法律手续。对于属于公安机关管辖的刑事案件，应当由公安机关立案侦查。公安机关根据乌克兰移交的证据材料，认为不需要继续侦查，可以结案的，可直接制作《起诉意见书》，移送人民检察院提起公诉。



2010年4月16日
星期五

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·如何确认中国公民在境外犯罪案件的管辖权及证据	张普	《犯罪研究》	2001	6	282

共有记录 2 条。 查看第 1 页 页次: 1/1

如何确认中国公民在境外犯罪案件的管辖权及证据

张菁

上海市人民检察院

一、基本案情

被告人吴迅，中国籍，男，无业。

1996年4月至12月，吴迅在日本国打工期间，伙同他人先后6次窜至该国静冈县采用翻墙、撬门窗、钻窗入室等法，窃得皮包、打火机、钢笔、音响、服装、照相机、皮大衣等总价值为人民币842万元的财物。

案发后，除吴迅外的其他同案犯均在日本国被抓获及被判刑（其中的最高刑为有期徒刑7年）。1999年3月23日在中国境内被抓获，2000年9月18日被上海市第一中级人民法院判处有期徒刑11年，剥夺政治权利3年，并处罚金人民币10万元。

二、主要问题

本案在处理过程中，引发出三个争议问题：一是我国刑法对本案应否行使刑事管辖权；二是我国司法机关能否外国司法机关收集的证据；三是我国审判机关如何对本案被告人量刑。

三、法理研究

1. 关于刑事管辖权的问题

笔者认为本案应由我国行使刑事管辖权，其主要理由如下。

四十五条规定之罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照本节各该条的规定处罚。

(相关资料: 裁判文书约10篇 相关论文约3篇 条文释义约2篇)

第七节 走私、贩卖、运输、制造毒品罪

第三百四十七条【走私、贩卖、运输、制造毒品罪】走私、贩卖、运输、制造毒品，无论数量多少，都应当追究刑事责任，予以刑事处罚。

走私、贩卖、运输、制造毒品，有下列情形之一的，处十五年有期徒刑、无期徒刑或者死刑，并处没收财产：

(一)走私、贩卖、运输、制造鸦片一千克以上、海洛因或者甲基苯丙胺五十克以上或者其他毒品数量大的；

(二)走私、贩卖、运输、制造毒品集团的首要分子；

(三)武装掩护走私、贩卖、运输、制造毒品的；

(四)以暴力抗拒检查、拘留、逮捕，情节严重的；

(五)参与有组织的国际贩毒活动的。

走私、贩卖、运输、制造鸦片二百克以上不满一千克、海洛因或者甲基苯丙胺十克以上不满五十克或者其他毒品数量较大的，处七年以上有期徒刑，并处罚金。

走私、贩卖、运输、制造鸦片不满二百克、海洛因或者甲基苯丙胺不满十克或者其他少量毒品的，处三年以下有期徒刑、拘役或者管制，并处罚金；情节严重的，处三年以上七年以下有期徒刑，并处罚金。

单位犯第二款、第三款、第四款罪的，对单位判处罚金，并对其直接负责的主管人员和其他直接责任人员，依照各该款的规定处罚。

利用、教唆未成年人走私、贩卖、运输、制造毒品，或者向未成年人出售毒品的，从重处罚。

对多次走私、贩卖、运输、制造毒品，未经处理的，毒品数量累计计算。

(相关资料: 部门规章约2篇 司法解释约7篇 地方法规约5篇 最高法公报案例约2篇 裁判文



Classroom research

- How have Chinese courts enforced foreign arbitration awards and judicial judgments?