



## New Annex III Law

**T**he Standing Committee of the National People's Congress ("NPCSC") decided on 27 October 2005 to add a national law on the immunity of property of foreign central banks from judicial enforcement measures 《中華人民共和國外國中央銀行財產司法強制措施豁免法》 (the "National Law") to Annex III to the Basic Law following its adoption by the NPCSC on 25 October 2005. With this addition, the list of laws in Annex III of the Basic Law now includes 12 pieces of national laws. For the list of the other 11 national laws in Annex III of the Basic Law, see *Sidelights* of Issue No. 3, p. 33 (April 2002).

The decision to add the National Law to Annex III to the Basic Law was made after the NPCSC consulted its Committee for the Basic Law of the HKSAR and the HKSAR Government in accordance with BL 18. The National Law seeks

to protect the property of foreign central banks from legal process for the enforcement of a judgment in the People's Republic of China. Since granting protection to foreign central banks is a matter of foreign affairs, it is dealt with by the Central Authorities by enacting a national law. The application of the National Law to HKSAR would provide express legal protection to the property of foreign central banks in Hong Kong, thus restoring similar protection accorded to foreign central banks in Hong Kong prior to 1 July 1997.

As certain modifications and adaptations in respect of the National Law will be necessary for the local circumstances, the HKSAR Government intends to implement it in Hong Kong by way of local legislation.





# The Administrative Procedure Law of the PRC (中華人民共和國行政訴訟法)

**T**he *Administrative Procedure Law* (the “*Law*”) was enacted by the National People’s Congress (“NPC”) in April 1989 and has taken effect since 1 October 1990. The *Law* enables citizens, legal persons and other organisations to bring administrative litigation proceedings to challenge the legality of specific administrative acts in the People’s Courts.<sup>1</sup> Under Article 11 of the *Law*, eight specified categories of administrative acts are subject to review by the court. They include: administrative sanctions such as detention, fine and cancellation of licences; compulsory administrative measures such as restriction of freedom and confiscation of property; interference with the operational autonomy of enterprises; refusal to perform statutory duties and infringement of rights of person and property.<sup>2</sup>

There are, however, administrative acts that are not subject to litigation. Article 12 of the *Law* specifies that the court shall not accept proceedings brought against any of the following matters: (a) acts of state like national defence and foreign affairs; (b) administrative rules and regulations, decisions and orders promulgated by administrative organs; (c) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel; and (d) specific administrative acts which shall be conclusively decided by an administrative organ.

The *Law* stipulates that an aggrieved person may apply for an administrative review before initiating proceedings at a people’s court or he may directly bring a lawsuit in the people’s court.<sup>3</sup> In administrative litigation proceedings, the administrative organ concerned shall bear the

burden of proof<sup>4</sup> and the court has the authority to obtain evidence from the relevant administrative organs, other organisations or citizens.<sup>5</sup>

After hearing a case, the court shall have the power to uphold or annul the relevant administrative act or order the administrative organ to undertake new administrative acts.<sup>6</sup> If the court finds that the officer of the administrative organ has violated administrative discipline, it shall transfer the case to the relevant administrative organ or the organ at the next higher level or the supervisory department for appropriate action; and if the court finds that certain personnel has committed a crime, it shall transfer the case to the public security and procuratorial organs.<sup>7</sup>

The *Law* stipulates that a citizen, legal person or any other organisation who suffers damage arising from any infringement upon his/its lawful rights by an administrative organ, shall have the right to claim compensation.<sup>8</sup>

<sup>1</sup> Articles 2 and 5 of the *Law*

<sup>2</sup> Article 11 of the *Law*

<sup>3</sup> Article 37 of the *Law*

<sup>4</sup> Article 32 of the *Law*

<sup>5</sup> Article 34 of the *Law*

<sup>6</sup> Article 54 of the *Law*

<sup>7</sup> Article 56 of the *Law*

<sup>8</sup> Article 67 of the *Law*

## Constitutional Functions and Structures of the National People's Congress and its Standing Committee

**U**nder the Constitution of the People's Republic of China, the NPC is the highest organ of state power<sup>1</sup> and is represented by its Standing Committee ("NPCSC") when the NPC is not in session. Each NPC member is elected for a term of five years<sup>2</sup> and meets annually,<sup>3</sup> usually for two weeks in March.

The NPC is composed of deputies elected by provinces, autonomous regions, municipalities directly under the Central Government, special administrative regions and the armed forces.<sup>4</sup> The number of deputies to the current NPC is 2983.<sup>5</sup> The NPC is empowered to exercise various functions including to amend the Constitution, supervise the enforcement of the Constitution, enact and amend basic laws concerning criminal offences, civil affairs, state organs and other matters.<sup>6</sup> Only the NPCSC or more than one-fifth of the deputies to the NPC may propose amendments to the Constitution and the amendments shall be adopted by a majority vote of more than two-thirds of the deputies to the NPC.<sup>7</sup> For laws and resolutions, these shall be adopted by a majority vote of more than one half of all NPC deputies.<sup>8</sup> Special committees are established in the NPC to deliberate and submit bills and proposals under the committee's purview. Committee on Finance and Economy and Committee on Foreign Affairs are two examples.<sup>9</sup>

Other than adopting laws and their amendments, the NPC has the power to elect top officials including the President and the Vice-President of the People's Republic of China, the Chairman of the Central Military Commission, the President

of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate and to decide on the choice of the Premier and Ministers of various ministries,<sup>10</sup> as well as their removal from the office. The Constitution also empowers the NPC to decide on questions of war and peace and to alter or annul inappropriate decisions of the NPCSC.<sup>11</sup>

The NPCSC is the permanent body of the NPC<sup>12</sup>. It exercises the highest legislative and state power when the NPC is not in session. The current NPCSC has 175 members.<sup>13</sup> The NPCSC interprets and supervises the implementation of the Constitution and has the power of interpreting laws.<sup>14</sup> In addition, it also enacts and amends laws with the exception of those which should be enacted by the NPC.<sup>15</sup> For example, the NPCSC enacted 20 pieces of legislation in 2004,<sup>16</sup> including the adoption of the *Law on Digital Signatures*<sup>17</sup> and the amendments to the *Law on Foreign Trade*.<sup>18</sup>

The NPCSC also has power to annul those administrative rules and regulations, decisions or orders of the State Council which contravene the Constitution or the laws and to annul those local regulations or decisions which contravene the Constitution, the laws or the administrative rules and regulations.<sup>19</sup> It is provided under the *Organic Law of the NPC* that a member of the NPCSC should not hold office in the administrative, judicial or procuratorial organs of the State; otherwise, he must first resign from his post in the NPCSC.<sup>20</sup>

<sup>1</sup> Article 57 of the *Constitution*

<sup>2</sup> Article 60 of the *Constitution*

<sup>3</sup> Article 61 of the *Constitution*

<sup>4</sup> Article 59 of the *Constitution*

<sup>5</sup> Reported on [www.english.people.com.cn](http://www.english.people.com.cn) on 4 March 2003

<sup>6</sup> Articles 62(1) and 62(2) of the *Constitution*

<sup>7</sup> Article 64 of the *Constitution*

<sup>8</sup> *Ibid.*

<sup>9</sup> Article 70 of the *Constitution*, Articles 35 and 37 of the *Organic Law of the NPC*

<sup>10</sup> Articles 62(4), 62(5), 62(6), 62(7), 62(8) and 63 of the *Constitution*

<sup>11</sup> Articles 62(14) and 62 (11) of the *Constitution*

<sup>12</sup> Article 57 of the *Constitution*

<sup>13</sup> Reported on [www.english.people.com.cn](http://www.english.people.com.cn) on 10 March 2003

<sup>14</sup> Articles 67(1) and (4) of the *Constitution*

<sup>15</sup> Articles 67(2) of the *Constitution*

<sup>16</sup> The figure was obtained from the website of the NPC, [www.npc.gov.cn](http://www.npc.gov.cn) and it included laws enacted by the NPCSC, legislative amendments adopted by the NPCSC and interpretation issued by the NPCSC.

<sup>17</sup> 《中華人民共和國電子簽名法》，adopted by the NPCSC on 28 August 2004.

<sup>18</sup> 《中華人民共和國對外貿易法（修訂）》，adopted by the NPCSC on 6 April 2004.

<sup>19</sup> Articles 67(7) and (8) of the *Constitution*

<sup>20</sup> Article 23 of the *Organic Law of the NPC* which was adopted by the NPC on 10 December 1982 and took effect on the same date



## NPCSC Interpretations under BL 158 since Reunification

**T**he NPCSC has issued the following Interpretations under BL 158 since Reunification. The English version can be located at the Bilingual Laws Information System (“BLIS”) ([http://www.legislation.gov.hk/blis\\_export.nsf/home.htm](http://www.legislation.gov.hk/blis_export.nsf/home.htm)).<sup>1</sup>

- i. The Interpretation by the Standing Committee of the National People’s Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Adopted by the Standing Committee of the Ninth National People’s Congress at its Tenth Session on 26 June 1999);<sup>2</sup>
- ii. The Interpretation by the Standing Committee

of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Adopted by the Standing Committee of the Tenth National People’s Congress at its Eighth Session on 6 April 2004);<sup>3</sup> and

- iii. Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China by the Standing Committee of the National People’s Congress (Adopted at the 15th Session of the Standing Committee of the Tenth National People’s Congress on 27 April 2005).<sup>4</sup>

<sup>1</sup> Each instrument was not given a chapter number in the Loose-leaf Edition of the Laws of Hong Kong. Because of the design of the BLIS, an unofficial “chapter” number is assigned to each instrument in the database for identification purposes. This will enable users to carry out a search restricted to a particular instrument represented by its “chapter” number. The English translation text is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region, which is an English translation of the original instrument in Chinese and is published for information.

<sup>2</sup> Cap 2106

<sup>3</sup> Cap 2107

<sup>4</sup> Cap 2108

<b>BL</b>	Basic Law / Basic Law Article
<b>BoR</b>	Hong Kong Bill of Rights
<b>CA</b>	Court of Appeal
<b>CE</b>	Chief Executive
<b>CE in C</b>	Chief Executive in Council
<b>CFA</b>	Court of Final Appeal
<b>CFI</b>	Court of First Instance
<b>CPG</b>	Central People’s Government
<b>ExCo</b>	Executive Council
<b>HKSAR</b>	Hong Kong Special Administrative Region
<b>HKSARG</b>	Government of the HKSAR
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>LegCo</b>	Legislative Council
<b>NPC</b>	National People’s Congress
<b>NPCSC</b>	Standing Committee of the NPC
<b>PRC</b>	People’s Republic of China

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