



◎ 文 | 陳子儀

◎ Article | Cheng Je-yi



中國法制體系簡介

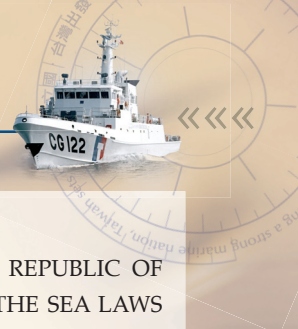
Introduction of China's Legal System

壹、前言

海巡署依法執行「海域執法」、「海事服務」、「海洋事務」等三大核心任務，並擔任行政院海洋事務推動委員會之幕僚機關，且同時為「海域安全組」之主辦機關，致力於推動海洋事務，不遺餘力。由於兩岸特殊情勢，海洋是兩岸的最前線，該署海巡業務與中國海域具有直接關聯性，無論海上交通安全、航政、漁業資源管理、海洋環境保護及保育等方面，在執法過程難免發生紛爭，若能瞭解中國海洋法制現況，將有助其業務推展並避免雙方執法機關發生衝突。有鑑於此，為積極掌握周邊國家及中國法制發展現況，海巡署法規會繼95年編印「亞洲主要國家海域法令彙編」後，96年

Part I Forward

By operation of law, the Coast Guard Administration executes three core missions- "Maritime Law Enforcement", "Maritime Services", "Maritime Affairs". In the meantime, the Administration works as the staff of Ocean Business Promotion Committee of Executive Yuan, leads "Maritime Safety & Security Team", and contributes to implement maritime business. Owing to special circumstance across the straits, the ocean becomes the frontline and our coast guard practice and China's sea area are so directly linked that traffic safety at sea, maritime transportation, maritime resource administration, marine environmental protection and preservation sometimes result in conflicts when enforcing relevant laws. By understanding China's maritime law and its present status, the Administration will promote business more efficiently and the conflicts between two enforcement units will be avoided. Hence, to know the current status of laws in the surrounding states and China as well, the Administration edited and published "COLLECTION OF THE



持續蒐集編印「中國主要海洋法規彙編」。由於中國法制體系、條文編排及法制用語，與中華民國之法制體系不同，為使人員業務上閱覽中國法規資料時，能了解其差異，本文就中國法制體系之重點加以簡介。

貳、法之位階及效力

中國法制體系，除「憲法」係由全國人民代表大會常務委員會或者五分之一以上的全國人民代表大會代表提議，並由全國人民代表大會以全體代表的三分之二以上的多數通過外，區分為「法律」、「行政法規」、「地方性法規」、「自治條例和單行條例」、「規章」，並已制定中華人民共和國立法法（以下簡稱立法法）、行政法規制定程式條例、規章制定程式條例、法規規章備案條例。

中國法規範之效力及位階如下：（立法法第78條至第82條）

- 一、憲法具有最高的法律效力，一切法律、行政法規、地方性法規、自治條例和單行條例、規章都不得與憲法相抵觸。
- 二、法律的效力高於行政法規、地方性法規、規章。行政法規的效力高於地方性法規、規章。
- 三、地方性法規的效力高於本級和下級地方政府規章。省、自治區的人民政府制定的規章的效力高於本行政區域內的較大的市的人民政府制定的規章。
- 四、自治條例和單行條例依法對法律、行政法規、地方性法規作變通規定的，在本自治地方適用自治條例和單行條例的規定。
- 經濟特區法規根據授權對法律、行政法規、地方性法規作變通規定的，在本經濟特區適用經濟特區法規的規定。
- 五、部門規章之間、部門規章與地方政府規章之間具有同等效力，在各自的許可權範圍內施行。

參、立法程序

中國「法律」、「行政法規」、「地方性

SEA LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA" in 2007, which follows "COLLECTION OF THE SEA LAWS AND REGULATIONS OF ASIAN MAJOR STATES" as of 2006. Further, because the legal system, arrangement of articles, as well as legal terms in China differ from those in Taiwan, the main points regarding China's legal system is introduced here to enable colleagues to understand the differences as reading professional documents.

Part II Status and Validity of Law

In China's legal system, beside the Constitution which is proposed by either Standing Committee of the National People's Congress or a fifth of National People's Congress, and ratified by a majority of over two-thirds National People's Congress the others are divided to laws, administrative laws, municipal laws, municipal bylaws and specific regulations, rules. Legislation Law of the People's Republic of China (hereinafter referring to as Legislation Law), Procedural Regulation of Constitution of Administrative Regulation, Procedural Regulation of Constitution of Regulation, Registered Statute of Regulation are further constituted.

Validity and status of laws in China are as follows: (Legislation Law § 78-82)

- (I) The Constitution has the premier validity, all laws, administrative laws, municipal laws, municipal bylaws and specific regulations, rules should not be in conflict with the Constitution.
- (II) The validity of laws is above that of administrative laws, municipal laws, rules as the administrative laws have validity premier than municipal laws, rules.
- (III) The validity of municipal laws is above rules of even or lower level governments. Moreover, the validity of rules constituted by provincial or municipal governments is premier than that of rules made by the larger city governments within their district.
- (IV) As the municipal regulations and specific regulations accommodate laws, administrative laws, municipal laws according to law, the municipal regulations and specific regulations are applicable within the autonomous region.
- (V) As the economic zone accommodates laws, administrative laws, municipal laws according to authorization, the economic zone laws are applicable within the economic zone.

The validity between each departmental rules and between departmental and municipal rules are even, all of the above are practiced within inasmuch as they are permitted legally.

Part III Law-making Process

The law-making processes of the fore-mentioned subjects are as below:

I. Laws:



法規」、「自治條例和單行條例」、「規章」之立法程序如下：

一、法律：

法律之立法機關為「全國人民代表大會」和「全國人民代表大會常務委員會」。全國人民代表大會制定和修改刑事、民事、國家機構的和其他的基本法律。全國人民代表大會常務委員會制定和修改除應當由全國人民代表大會制定的法律以外的其他法律。（立法法第7條）按全國人民代表大會是最高國家權力機關，全國人民代表大會常務委員會為其常設機關，兩機關行使國家立法權。（中華人民共和國憲法第57條及第58條）因此，全國人民代表大會及其常務委員會通過的法律，由國家主席簽署主席令予以公布（立法法第23條、第41條），並刊登於公報及報紙。

下列事項只能制定法律：（立法法第8條）

- （一）國家主權的事項。
- （二）各級人民代表大會、人民政府、人民法院和人民檢察院的產生、組織和職權。
- （三）民族區域自治制度、特別行政區制度、基層群眾自治制度。
- （四）犯罪和刑罰。
- （五）對公民政治權利的剝奪、限制人身自由的強制措施和處罰。
- （六）對非國有財產的徵收。
- （七）民事基本制度。
- （八）基本經濟制度以及財政、稅收、海關、金融和外貿的基本制度。
- （九）訴訟和仲裁制度。
- （十）必須由全國人民代表大會及其常務委員會制定法律的其他事項。

前揭事項尚未制定法律者，除有關犯罪和刑罰、對公民政治權利的剝奪和限制人身自由的強制措施和處罰、司法制度等事項外，全國人民代表大會及其常務委員會有權作出『決

The legislature of laws refers to “National People's Congress” and Standing Committee of the National People's Congress. National People's Congress is responsible for constitution and amendment of criminal law, civil law, basic laws of national institutes and others. Standing Committee of the National People's Congress is in charge of other laws which National People's Congress does not involve (Legislation Law §7). National People's Congress is designed to be the supreme authority, along with Standing Committee of the National People's Congress as its standing organization, to enforce legislation (The Constitution § 57-58). Hence, the laws ratified by National People's Congress and its standing committee are enacted and promulgated on official gazettes and newspapers (Legislation Law § 23,41).

Only laws are applicable to the following subjects (Legislation Law § 8):

- (I) Nation's sovereignty
- (II) Establishments, organizations, duties of Municipal People's Congress, Municipal People's Government, Municipal People's Court, Municipal People's Procuratorate.
- (III) Municipal systems of ethnic regions, special administrative region, population in general.
- (IV) Crimes and penalties
- (V) Attainting of citizens's political rights, restrictions to personal freedom and punishments.
- (VI) Confiscation of non-state property
- (VII) Basic civil system
- (VIII) Basic economic policies and policies related to cameral, taxation, Custom, finance, trading.
- (IX) Litigation and arbitration.
- (X) Others required to be constituted by National People's Congress and the standing committee.

Excluding crimes, penalties, attainting of citizens' political rights, restrictions to personal freedom and punishments, judicial system, National People's Congress and its standing committee have the authority to any fore-mentioned subjects that have not been constituted in laws. The State Council is authorized to constitute administrative rules for part of the said subjects in advance (Legislation Law §9). The State Council should propose to National People's Congress and its standing committee to constitute the administrative rules as laws as soon as the rules have been mature through practice and review (Legislation Law § 56.3).

However, it is noted that the interpretation power of laws belongs to Standing Committee of the National People's Congress (Legislation Law § 42.1)

II. Administrative rules

Pursuant to the Constitution and Laws, the State Council constituted administrative rules for enforcement of laws and the State Council's



定』，授權國務院可以根據實際需要，對其中的部分事項先制定行政法規。（立法法第9條）國務院根據全國人民代表大會及其常務委員會的授權決定先制定的行政法規，經過實踐檢驗，制定法律的條件成熟時，國務院應當及時提請全國人民代表大會及其常務委員會制定法律。（立法法第56條第3款）

惟應予注意者，中國「法律解釋權」屬於全國人民代表大會常務委員會。（立法法第42條第1款）

二、行政法規：

行政法規係由國務院根據憲法和法律，就（一）為執行法律的規定需要制定行政法規的事項；（二）憲法第八十九條規定的國務院行政管理職權的事項，所制定之行政法規。行政法規由國務院組織起草，國務院有關部門認為需要制定行政法規的，應當向國務院報請立項。行政法規由總理簽署國務院令公布。（立法法第56條、第57條、第61條）

三、地方性法規：

省、自治區、直轄市的人民代表大會及其常務委員會根據本行政區域的具體情況和實際需要，在不與憲法、法律、行政法規相抵觸的前提下，得制定地方性法規。

較大的市的人民代表大會及其常務委員會根據本市的具體情況和實際需要，在不與憲法、法律、行政法規和本省、自治區的地方性法規相抵觸的前提下，得制定地方性法規，報省、自治區的人民代表大會常務委員會批准後施行。省、自治區的人民代表大會常務委員會對報請批准的地方性法規，應當對其合法性進行審查，與憲法、法律、行政法規和本省、自治區的地方性法規不抵觸的，應當在四個月內予以批准。

省、自治區的人民代表大會常務委員會在對報請批准的較大的市的地方性法規進行審查時，發現其同本省、自治區的人民政府的規章相抵觸的，應當作出處理決定。

所謂「較大的市」是指省、自治區的人民政府所在地的市，經濟特區所在地的市和經國務

院行政權威根據憲法第89條。The administrative rules are drafted by the State Council, proposed to the council by its involved department if necessary, and finally signed by the Premier and promulgated by the State Council (Legislation Law § 56, § 57, § 61) .

III. Municipal rules

Given that it does not interfere with the Constitution, Laws and administrative rules, the People's Congress and the standing committee in province, municipality, is allowed to constitute municipal rules depending on actual need.

Also, given that it does not interfere with the Constitution, Laws and administrative rules, municipal rules of province and municipality, the People's Congress and the standing committee in major cities is allowed to constitute municipal rules depending on actual need. The rules are in effect after ratification of the standing committee of the People's Congress of province and municipality. The municipal rules proposed for ratification should be reviewed for the validity. Those which do not interfere with the Constitution, Laws, administrative rules, municipal rules of province and municipality, should be ratified in four months.

The Standing Committee of People's Congress in province and municipality is required to make a decision when it reviews and determines municipal rules proposed by major cities are in conflict with rules of province, municipality.

The said "major cities" refer to cities where Provincial People's Government and Municipal People's Government are located in, cities where the economic zone are located, and larger cities recognized by the State Council (Legislation Law § 63) .

Municipal rules constituted by People's Congress in province, municipality, are promulgated and enacted by the committee itself.

Municipal rules constituted by the People's Congress and its standing committee in major cities are promulgated and enacted by the standing committee (Legislation Law § 69.1-69.3)

IV. Municipal regulations and specific regulations

People's Congress in ethnic region has the authority to constitute municipal regulations and specific regulations depending on local political, economic, cultural situation. The municipal regulations and specific regulations in municipal region are in effect after ratified by the Standing Committee of National People's Congress. The municipal regulations and specific regulations in municipal province and municipal county are brought into force with ratification of the Standing Committee of People's Congress in province, municipal region and Given that it does not violate basic principles of laws and administrative rules, the municipal regulations and specific regulations are allowed to accommodate laws and administrative rules according to local ethnic features, but disallowed to accommodate regulations based on the Constitution, Municipal Laws of Ethnic Region or other relevant regulations made by laws and administrative rules (Legislation Law § 66) .

Ratified municipal regulations and specific regulations are



院批准的較大的市。（立法法第63條）省、自治區、直轄市的人民代表大會制定的地方性法規由大會主席團發布公告予以公布。省、自治區、直轄市的人民代表大會常務委員會制定的地方性法規由常務委員會發布公告予以公布。

較大的市的人民代表大會及其常務委員會制定的地方性法規報經批准後，由較大的市的人民代表大會常務委員會發布公告予以公布。（立法法第69條第1款至第3款）

四、自治條例和單行條例：

民族自治地方的人民代表大會擁有權依照當地民族的政治、經濟和文化的特點，制定自治條例和單行條例。自治區的自治條例和單行條例，報全國人民代表大會常務委員會批准後生效。自治州、自治縣的自治條例和單行條例，報省、自治區、直轄市的人民代表大會常務委員會批准後生效。

自治條例和單行條例可以依照當地民族的特點，對法律和行政法規的規定作出變通規定，但不得違背法律或者行政法規的基本原則，不得對憲法和民族區域自治法的規定以及其他有關法律、行政法規專門就民族自治地方所作的規定作出變通規定。（立法法第66條）

自治條例和單行條例報經批准後，分別由自治區、自治州、自治縣的人民代表大會常務委員會發布公告予以公布。（立法法第69條第4款）

五、規章：

國務院各部、委員會、中國人民銀行、審計署和具有行政管理職能的直屬機構，可以根據法律和國務院的行政法規、決定、命令，在本部門的許可權範圍內，制定規章。部門規章規定的事項應當屬於執行法律或者國務院的行政法規、決定、命令的事項。（立法法第71條）

省、自治區、直轄市和較大的市的人民政府，可以根據法律、行政法規和本省、自治區、直轄市的地方性法規，制定規章。（立法法第73條第1款）

部門規章應當經部務會議或者委員會會議決定。地方政府規章應當經政府常務會議或者

promulgated and enacted by the Standing Committee of People's Congress in municipal region, municipal province and municipal county (Legislation Law § 69.4) .

V. Regulations

All departments and committees of the State Council, People's Bank of China, National Audit Office and units directly under administrative authorities can constitute regulations within limited range according to laws, administrative rules, decisions, decrees of the State Council. Departmental regulations should be part of administrative rules, decisions and decrees of the State Council (Legislation Law § 71) .

People's Government in province, municipal region, (Legislation Law § 73.1) .

Departmental regulations should be determined by the departmental meeting or committee as the local regulations should be decided through local government's standing meeting or conference of the whole (Legislation Law § 75) .

Departmental regulations should be signed and promulgated by the head of department while local regulation are signed and enacted by the governor of province, chairman of municipal region, or mayor (Legislation Law § 76) .





全體會議決定。（立法法第75條）

部門規章由部門首長簽署命令予以公布。地方政府規章由省長或者自治區主席或者市長簽署命令予以公布。（立法法第76條）

肆、法制體例及用語

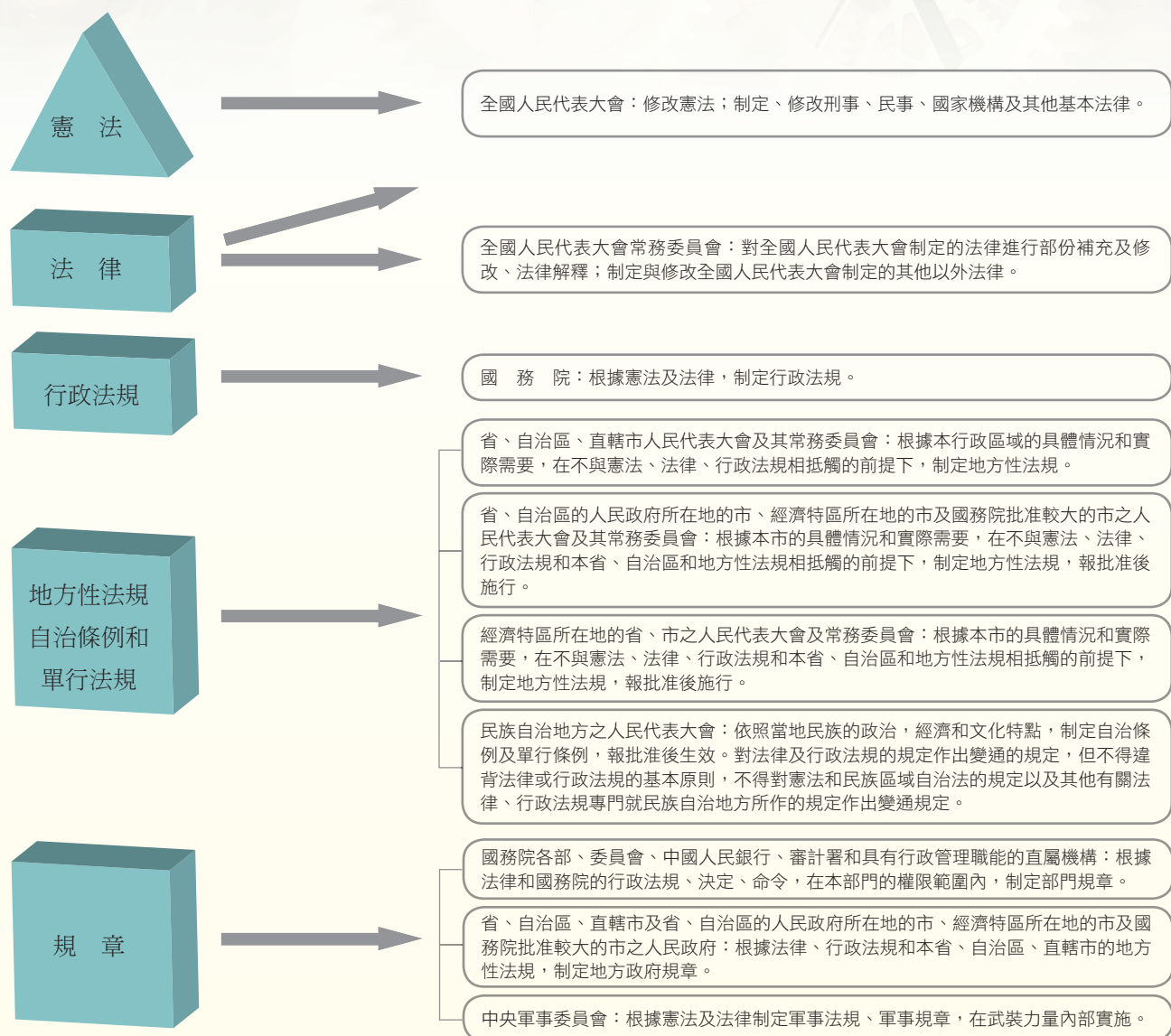
中國法律及行政法規條文之安排係根據內容需要，可以分編、章、節、條、「款」、「項」、目。編、章、節、條的序號用中文數位依次表述，款不編序號，項的序號用中文數位加括弧依次表述，目的序號用阿拉伯數字依次表述，故相較於中華民國中央法規標準法第8條第1項及第9條規定，法規條文係分編、章、節、條、「項」、「款」、目不同。（立法法第54條、行政法規制定程式條例第5條第2款）

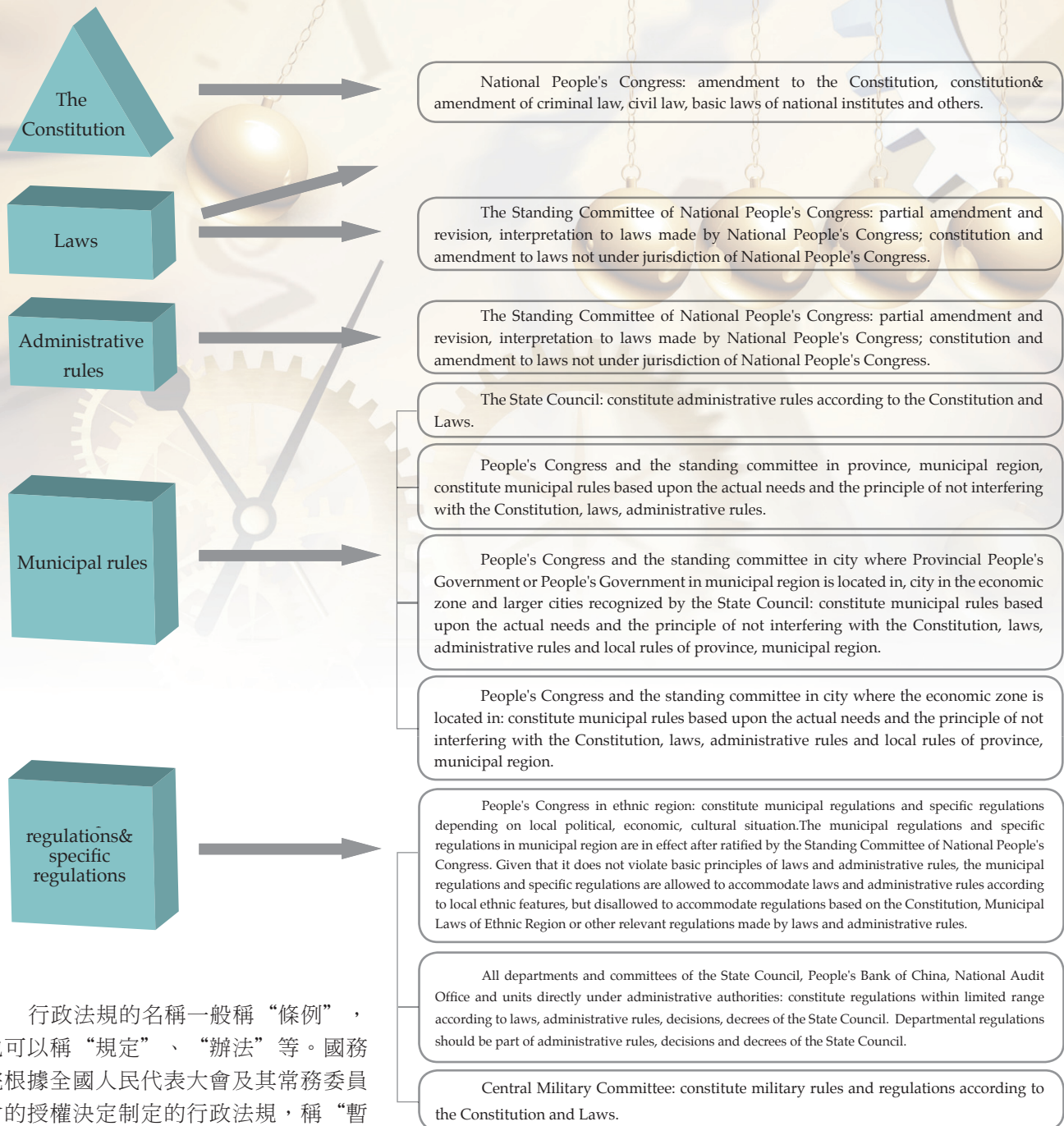
Organization Chart of China's Legal System

Part IV. Legal Style and Term

Above all, "Part, Chapter, Section, Article, Subsection, Paragraph, Item" are applied to arrangement of China's laws and administrative rules. Serial numbers for part, chapter, section, article are labeled with Chinese characters, while no number is given to subsection and Chinese characters with bracket are for paragraph. Arabic numerals are applied to item. Therefore, China's legal style greatly differs from that in Taiwan according to Central Regulation Standard Act § 8.1, § 9 (Legislation Law § 54, Procedural Regulation of Constitution of Administrative Rule § 5.2).

Generally, administrative rules are titled as "statute", "provision", "measure", etc. The administrative rules constituted by the State Council with authorization of National People's Congress and its standing committee refer to "interim regulation" or "interim rule". The regulations constituted by State





行政法規的名稱一般稱“條例”，也可以稱“規定”、“辦法”等。國務院根據全國人民代表大會及其常務委員會的授權決定制定的行政法規，稱“暫行條例”或者“暫行規定”。國務院各部門和地方人民政府制定的規章不得稱“條例”。（行政法規制定程式條例第4條）

規章的名稱一般稱“規定”、“辦法”，但不得稱“條例”。除內容複雜的外，規章一般不分章、節。（規章制定程式條例第6條、第7條第3款）

（本文作者任職於海巡署法規會）

Council's departments and Municipal People's Government is not designated as "statute" (Procedural Regulation of Constitution of Administrative Rule § 4).

Normal title of "regulation" is "provision", "measure", but not "statute". Except for complicated regulations, containing of most regulations is not labeled with "chapter" and "section". (Article 6 and Subparagraph 3 of Article 7 of Act Governing the Format of Regulation system)

(Author of this article presently works at Legal Affair Committee, Coast Guard Administration, Executive Yuan)