

COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF THE PEOPLE'S REPUBLIC OF CHINA

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IMPORTANT NOTES

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This document was last amended in December 2012.

1. Constitution of the People's Republic of China 1982

(as amended, most recently in 2004)

[Extracts of relevant provisions]

...

Article 57:

The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

Article 58:

The National People's Congress and its Standing Committee exercise the legislative power of the state.

...

Article 67:

The Standing Committee of the National People's Congress exercises the following functions and powers:

...

(14) To decide on the ratification or abrogation of treaties and important agreements concluded with foreign states;

...

(18) To decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defense against aggression.

...

Article 81:

The president of the People's Republic of China conducts state affairs and receives foreign diplomatic representatives on behalf of the People's Republic of China and, in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.

...

Article 89:

The State Council exercises the following functions and powers:

...

(9) To conduct foreign affairs and conclude treaties and agreements with foreign states.

...

Note:

The full text of China's 1982 Constitution both as officially adopted in Chinese and in English translation can be accessed on the official website of Chinese Government's Official Web Portal at:

http://www.gov.cn/gongbao/content/2004/content_62714.htm

http://www.gov.cn/english/2005-08/05/content_20813.htm

2. Statutory Provisions related to Treaty Practice

A. General Principles of the Civil Law of the People's Republic of China 1986

[Extracts of relevant provisions]

...

Article 142:

The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Notes:

- The full text of the General Principles (in English translation) can be accessed on the website of The National People's Congress of the People's Republic of China at:

http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm

- The full text of the General Principles as officially adopted in the Chinese language is available on the website of the National People's Congress at:

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm

B. Law of the People's Republic of China on the Procedure of the Conclusion of Treaties 1990

(Adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990 and promulgated by Order No.37 of the President of the People's Republic of China on December 28, 1990)

Article 1

The present Law is enacted in accordance with the Constitution of the People's Republic of China.

Article 2

This Law shall be applicable to bilateral or multilateral treaties and agreements and other instruments of the nature of a treaty or agreement concluded between the People's Republic of China and foreign States.

Article 3

The State Council, that is, the Central People's Government, of the People's Republic of China concludes treaties and agreements with foreign States.

The Standing Committee of the National People's Congress of the People's Republic of China decides on the ratification and abrogation of treaties and important agreements concluded with foreign States.

The President of the People's Republic of China, in accordance with decisions of the Standing Committee of the National People's Congress, ratifies and abrogates treaties and important agreements concluded with foreign States.

The Ministry of Foreign Affairs of the People's Republic of China, under the leadership of the State Council, administers the specific affairs concerning the conclusion of treaties and agreements with foreign States.

Article 4

The People's Republic of China shall conclude treaties and agreements with other States in the name of:

(1) the People's Republic of China;

- (2) the Government of the People's Republic of China; or
- (3) the governmental departments of the People's Republic of China.

Article 5

The decision to negotiate and sign treaties and agreements shall be made according to the following procedures:

- a. In the case of a treaty or agreement to be negotiated and signed in the name of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation and draw up a draft treaty or agreement of the Chinese side and submit it to the State Council for examination and decision;
- b. In the case of a treaty or agreement to be negotiated and signed in the name of the Government of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council shall make a recommendation and draw up a draft treaty or agreement of the Chinese side and, after consultation with the Ministry of Foreign Affairs, submit it to the State Council for examination and decision. In the case of an agreement concerning a specific line of business, its Chinese draft shall, with the consent of the State Council, be examined and decided upon by the department concerned under the State Council or when necessary in consultation with the Ministry of Foreign Affairs;
- c. Agreements to be negotiated and signed in the name of a governmental department of the People's Republic of China concerning matters within the scope of functions and powers of the department concerned shall be decided upon by the department itself or after consultation with the Ministry of Foreign Affairs. In the case of an agreement relating to matters of major importance or matters falling within the functions and powers of other departments under the State Council, the department concerned shall submit it by itself or after consultation with the other departments concerned under the State Council, to the State Council for decision. The draft agreement of the Chinese side shall be examined and decided upon by the department concerned or when necessary in consultation with the Ministry of Foreign Affairs;

- d. When major modification in the Chinese draft of a treaty or agreement already examined and decided upon by the State Council are necessary as a result of negotiation, the revised draft shall be submitted to the State Council for examination and decision.

Article 6

Representatives for negotiating and signing treaties or agreements shall be appointed according to the following procedures:

- (1)** In the case of a treaty or agreement to be concluded in the name of the People's Republic of China or the Government of the People's Republic of China, the Ministry of Foreign Affairs or the department concerned under the State Council shall submit a report to the State Council for the appointment of a representative. The full powers of the representative shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs;
- (2)** In the case of an agreement to be concluded in the name of a governmental department of the People's Republic of China, a representative shall be appointed by the head of the department concerned. The letter of authorization for the representative shall be signed by the head of the department. Where the head of a department signs an agreement concluded in the name of the governmental department, and where the contracting parties agree that it is necessary for the head of the department to produce full powers, the full powers shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs.

The following persons shall dispense with full powers for negotiating and signing treaties and agreements:

- (1)** the Premier of the State Council, the Minister of Foreign Affairs;
- (2)** the head of a diplomatic mission of the People's Republic of China who negotiates and signs treaties and agreements concluded between China and the State to which he is accredited, unless it is otherwise agreed by the contracting parties;
- (3)** the head of a governmental department of the People's Republic of China who negotiates and signs the agreements concluded in the name of his department, unless it is otherwise agreed by the contracting parties; **(4)** the

person, dispatched to an international conference or accredited to an international organization by the People's Republic of China, who is at the same time the representative for negotiating treaties or agreements in that conference or organization, unless it is otherwise agreed by the conference or otherwise provided for in the constitution of the organization.

Article 7

The ratification of treaties and important agreements shall be decided upon by the Standing Committee of the National People's Congress.

The treaties and important agreements referred to in the preceding paragraph are as follows:

- (1) treaties of friendship and cooperation, treaties of peace and similar treaties of a political nature;
- (2) treaties and agreements relating to territory and delimitation of boundary lines;
- (3) treaties and agreements relating to judicial assistance and extradition;
- (4) treaties and agreements which contain stipulations inconsistent with the laws of the People's Republic of China;
- (5) treaties and agreements which are subject to ratification as agreed by the contracting parties; and
- (6) other treaties and agreements subject to ratification.

After the signing of a treaty or an important agreement, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall submit it to the State Council for examination and verification; the State Council shall then refer it to the Standing Committee of the National People's Congress for decision on ratification; the President of the People's Republic of China shall ratify it in accordance with the decision of the Standing Committee of the National People's Congress.

After the ratification of a bilateral treaty or an important bilateral agreement, the Ministry of Foreign Affairs shall execute the formalities for the exchange of the instruments of ratification with the other contracting party. After the ratification of a multilateral treaty or an important multilateral agreement, the Ministry of

Foreign Affairs shall execute the formalities for the deposit of the instrument of ratification with the depositary State or international organization. The instrument of ratification shall be signed by the President of the People's Republic of China and countersigned by the Minister of Foreign Affairs.

Article 8

After the signing of the agreements and other instruments of the nature of a treaty which do not fall under paragraph 2, Article 7 of this Law and which are subject to approval as prescribed by the State Council or as agreed by the contracting parties, the Ministry of Foreign Affairs or the departments concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall submit them to the State Council for approval.

After the approval of agreements and other instruments of the nature of a treaty, in the case of a bilateral one, the Ministry of Foreign Affairs shall execute the formalities for the exchange of the instruments of approval with the other contracting party or for mutual notification of the approval by diplomatic notes. In the case of a multilateral one, the Ministry of Foreign Affairs shall execute the formalities for the deposit of the instruments of approval with the depositary state or international organization concerned. The instruments of approval shall be signed by the Premier of the State Council, but may also be signed by the Minister of Foreign Affairs.

Article 9

After the signing of the agreements which need no decision on ratification by the Standing Committee of the National People's Congress or approval by the State Council, the agreements shall be submitted by the departments concerned under the State Council to the State Council for the record, except those agreements concluded in the name of the governmental departments of the People's Republic of China which are to be submitted by these departments to the Ministry of Foreign Affairs for registration.

Article 10

If the two contracting parties need to go through different domestic legal procedures for the entry into force of the same treaty or agreement, the said treaty or agreement shall enter into force after the accomplishment by the two

parties of their respective legal procedures and the mutual notification by diplomatic notes.

After the signing of the treaties and agreements listed in the preceding paragraph, the formalities of ratification, approval, entry on the record or registration shall be executed as the case requires in accordance with Article 7, 8 or 9 of this Law. The formalities of notification by note shall be completed by the Ministry of Foreign Affairs.

Article 11

The decision to accede to multilateral treaties or agreements shall be made by the Standing Committee of the National People's Congress or the State Council as the case requires.

The procedures for acceding to multilateral treaties or agreements shall be as follows:

- (1)** To accede to a multilateral treaty or an important multilateral agreement listed in Paragraph 2, Article 7 of this Law, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for examination and verification; the State Council shall then refer it to the Standing Committee of the National People's Congress for decision on accession. The instrument of accession shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs;
- (2)** To accede to a multilateral treaty or agreement other than those listed in Paragraph 2, Article 7 of this Law, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for decision on accession. The instrument of accession shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs.

Article 12

The decision to accept a multilateral treaty or an agreement shall be made by the State Council. In the case of a multilateral treaty or agreement containing clauses of acceptance which is signed by the Chinese representative or does not require

any signature, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall make a recommendation after examination and submit it to the State Council for decision on acceptance. The instrument of acceptance shall be signed by the Minister of Foreign Affairs, and the specific formalities executed by the Ministry of Foreign Affairs.

Article 13

A bilateral treaty or an agreement concluded by the People's Republic of China with a foreign State shall be done in the Chinese language and the official language of the other contracting party, both texts being equally authentic. When necessary, a text in the language of a third State agreed upon by the two contracting parties may be executed in addition as a third, equally authentic, official text or an unofficial text for reference. It may be stipulated by agreement of the two contracting parties that the third text shall prevail in case of divergence of interpretation of the treaty or agreement.

For agreements on specific lines of business and treaties and agreements concluded with international organizations, a single language fairly commonly used internationally may also be used by agreement of the two contracting parties or in accordance with the provisions of the constitutions of the international organizations concerned.

Article 14

Signed originals of bilateral treaties and agreements concluded in the name of the People's Republic of China or the Government of the People's Republic of China and copies of multilateral treaties and agreements certified as true by the depositary States or international organizations concerned shall be deposited with the Ministry of Foreign Affairs. Signed originals of bilateral agreements concluded in the name of the governmental departments of the People's Republic of China shall be deposited with these departments.

Article 15

A treaty or an important agreement of which the Standing Committee of the National People's Congress has decided on ratification or accession shall be published in the bulletin of the Standing Committee of the National People's

Congress. The measures for publishing other treaties and agreements shall be made by the State Council.

Article 16

Treaties and agreements concluded by the People's Republic of China shall be compiled by the Ministry of Foreign Affairs into a Collection of the Treaties of the People's Republic of China.

Article 17

Treaties and agreements concluded by the People's Republic of China shall be registered with the Secretariat of the United Nations by the Ministry of Foreign Affairs in accordance with the relevant provisions of the United Nations Charter.

Treaties and agreements concluded by the People's Republic of China that require registration with other international organizations shall be registered by the Ministry of Foreign Affairs or the departments concerned under the State Council in accordance with the respective constitutions of the international organizations.

Article 18

The procedures for the conclusion of a treaty or an agreement with an international organization by the People's Republic of China shall follow this Law and the constitution of the relevant international organization.

Article 19

The procedures for amendment to, abrogation of and withdrawal from treaties and agreements concluded by the People's Republic of China shall follow *mutatis mutandis* the procedures for the conclusion of the treaties and agreements in question.

Article 20

The State Council may make regulations in accordance with this Law for its implementation.

Article 21

This Law shall enter into force as of the date of promulgation.

Notes:

- The full text of the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties, in English translation, can be accessed on the website of the National People's Congress at:
http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383893.htm
- The full text of the Law as officially adopted in the Chinese language can be accessed on the website of the Ministry of Foreign Affairs of the People's Republic of China at:
<http://www.fmprc.gov.cn/chn/gxh/zlb/tyfg/t70826.htm>