

China Reforms 2.0: The Arrival of “Rule by Law”!

中国革命 2.0: “依法治国”时代到来!

With closer scrutiny of officials and greater adherence to law, China is entering a period which promises to provide more fairness for domestic and international businesses, as well as the country's population.

by **Nicolas Musy**

随着中国加强对官员的审查和更大程度上对法律的遵循，中国进入了一个允诺给内资企业、跨国企业和人民更大的公平的时代。

作者: **Nicolas Musy**

China has reached the limits of its current business model and must reform in order to continue to grow in ways that are sustainable in the long term. A change of model, as business leaders know, necessitates far-reaching changes in an organisation. In China's case, this calls for decisive overhauls of economic policy and also fundamental changes in the leadership culture.

In a nutshell, China's current growth model - based on investments channelled through state-owned banks and companies (sometimes referred to as “State Capitalism”) - has run its course. It cannot continue without driving the state's debt beyond acceptable levels which, if unchecked, could be the cause for a financial crisis. Furthermore, state-owned companies have become both centres of power and of corruption, allowing them to challenge government policy to pursue their interests without care for the environment and the effects of pollution on people's health.

Without a complete change in China's current development model, the country will most certainly come to a period of severe disaffection among its population and very slow (or no) growth.

According to some reliable estimates, 225,000 officials have been or will be arrested in China through the current anti-

中国现有的商业模式已走到尽头，必须通过改革来实现长期内可持续性的增长。为企业家所知的是，模式的转变需要组织内彻底的变革。对于中国来说，这需要对经济政策进行决定性的改革，也需要对领导文化进行根本的改变。

中国目前的增长模式——基于国有银行和国有企业投资（常常被称为“国家资本主义”）——已完成其使命，这种模式不能继续下去，否则将会把国家债务提高到不可接受的水平，如果这种模式不改，将可能会导致金融危机。另外，国有企业已成为权力和腐败的中心，它们为了自身利益挑战政府政策，并置环境和污染对人们健康的危害于不顾。

中国若不对现有发展模式进行全面的改革，很可能终将引起人民的严重不满，而经济也将十分缓慢的增长或不再有增长。

据可靠估计，在本次中国反腐运动中，有 225,000 名官员已被或将被逮捕，另有 18,000 名逃往海外的官员被通缉，涉及合计达 2-3 万亿美元 的赃款，其中约 70% 将被追回，表明在政策得到很好的执行的同时国家也将取得高收益。

因此，正在进行的新改革模式并不只是简单

corruption drive, and another 18,000 who are currently abroad are being pursued. The total amounts embezzled have allegedly reached USD2-3tr, about 70 per cent of which is expected to be recovered - adding high profitability to a good policy move.

The new sets of reforms underway, therefore, are not simply conveniences: they are an absolute necessity for the country to continue its development, as well as for the leadership to maintain its legitimacy and its mandate to govern.

Corruption must be stopped

The solution to corruption is evident, but its implementation goes against the vested interest of the state-owned sector, the politicians who control it, and their entourages who derive gains from it.

A telling example of the pre-eminence of State-owned enterprises' (SOEs') vested interests is the fuel and oil industry. In 2009, the State Council (China's Cabinet) issued the China III Diesel Standards, which were simply ignored by the (state-owned) oil companies in order to maintain their profits. (See "As Pollution Worsens in China, Solutions Succumb to Infighting", New York Times, 21 March 2013.)

Government clampdown on graft, bribery, and embezzlement is an absolute necessity for a number of reasons, one of which is to prevent large SOEs from operating under de facto immunity from government-prescribed policies.

Fortunately enough, events of the past year have provided room for optimism. A clear indication of both the new government's determination and the support that it commands is the decision to arrest and charge top-level officials such as Xu Caihou (the Army's No 2 officer and former Politburo member) and the former security czar (Zhou Yongkang) for "serious disciplinary violations". Remarkably, in Zhou's case, it is the first time in the history of the People's Republic of China that a former Standing Member of the Politburo has been charged. Party members with top-level associations have also not been immune, showing that in today's China, no one is untouchable, and that officials who want to feel safe must apply policy in an ethical manner.

What is next? "Rule by Law"

It is also important to note that Zhou Yongkang was lastly in charge of China's internal security, which includes the police and the judiciary - a department endowed with a bigger budget than China's military. The internal security system's first mission is to maintain social stability - the overarching priority of China's government. The People's Liberation Army, too, is manoeuvring quickly in reaction to



"Whatever the law does not prohibit can be done as far as the market is concerned, while whatever the government does must be authorised by law," said Li Keqiang one year ago.

一年前李克强曾指出：“法无禁止既可为，法无授权不可为”。

的权宜之计，而是国家继续发展所完全必须的，也是领导层对执政合法性和人民授权的维护。

腐败必须停止

解决腐败问题的方法很明显，但它的执行将与国有部门、部门领导层以及其从中获益的裙带人员的既定利益相悖。

国有企业（SOEs'）的既定利益的一个突出的例子就是燃油行业。2009年，国务院发布了中国国三柴油标准，然而，国有石油公司为了维护自身的利益而忽视该标准（见“中国污染恶化，内江压制治理方案”，纽约时报，2013年3月21日）。

政府对贪污、贿赂和侵吞公款的打击是完全有必要的，原因很多，其中之一就是防止大型国有企业不按国家制定的政策进行操作。

幸运的是，去年的反腐败运动让人们看到了希望。决定以“严重违纪”罪名逮捕和控诉包括徐才厚（中国军队二号人物，曾是政治局成员）和曾任中央政法委员会书记的周永康等高层领导人清晰的彰显了新一届政府领导人的决心和对该运动的

The new sets of reforms are a necessity for the country to continue its development

改革是国家继续发展所完全必须的。

increased scrutiny, with a January 2015 announcement that 16 current and former senior military officials have been placed under investigation or are awaiting trial.

Yet, once unethical civil servants are out of the way, reforming the legal system is a natural next step. A well-performing and ethical judiciary is needed, first of all, to ensure that corrupt practices do not resurface. Just as importantly, it is the essential tool to bring about equal economic opportunities for companies small and large, private or state-owned. This economic fairness is also the best instrument to motivate the private sector to invest, generate confidence, and galvanise individual consumption.

It is therefore no surprise that the main themes of the coming October plenum of the Communist Party have been announced to be the economy and “Rule by Law” - the officially sanctioned term for the role of the law in China’s constitution.

Limiting arbitrary power

A key pillar of the reform agenda is therefore the strengthening of the legal system in favour of citizens and entrepreneurs by fostering greater transparency and more judicial independence, while simultaneously professionalising the judicial decision-making processes.

Among other provisions, specialised intellectual property rights courts were established in late 2014, and officials have been instructed to provide expanded government information to the public, particularly about the way local governments use their funds. Furthermore, a transparency mechanism is planned that will require the Chinese government to disclose all of its administrative approval requirements, starting first with those at the central government level. Under this arrangement, government agencies will no longer be allowed to interfere in the approval of items not included in their own registers. For the sake of transparency, these same agencies will additionally have to publish their administrative approvals items on their official websites.

New decisions and opinions are bringing about some fundamental changes in the way the legal system works. Amongst these are a clear emphasis on enforcing greater judicial accountability for judges, prosecutors and police, and the establishment of a greater division of powers between the judiciary and law enforcement bodies.

The legal system’s new role

Ultimately, this is intended to shift the state away from an interventionist role and create a much more level playing-field, to support the development of private businesses in China along with generating an environment perceived to be fair by common citizens. This is the Chinese constitution’s “Rule by Law” concept.

“Rule by Law” is the officially sanctioned term for the role of the law in China’s constitution

“依法治国”是中国宪法中官方认可的
法律的地位”

支持。值得注意的是，周永康的案子是中华人民共和国历史上首次对曾经的政治局常委提出控诉。高层机构中的党员也未能得到豁免，这表明在今天的中国，没有人是动不得的，官员若想安全做官就必须以道德的方式执政。

下一步是什么？“依法治国”

关于周永康案还有一点值得注意的是他最后任职于社会治安部门，包括警察和司法——一个被赋予比中国军队更多预算的部门。社会治安体系的首要使命是维

护社会稳定——中国的首要任务。人民解放军在应对不断升级的调查上的行动也很迅速，2015年1月宣布16名现任和前任高级军官正接受调查或正等待审讯。

然而，一旦清理完了这些腐败分子，那么对法律体系的改革自然就是下一步。首先需要的是履职、道德的司法部门来保证腐败行为不再重新滋长。同样重要的是，使无论小企业或是大企业、私营企业或是国有企业都能获得公平的经济机会是根本的工具。经济机会上的公平性也是激励私有部门投资、建立信心和鼓励个人消费的最佳工具。

因此，将今年10月共产党十八届五中全会的主题定为经济和“依法治国”（中国宪法中官方认可的法的地位）也就不足为奇了。

限制专断权力

总之，改革日程的一个关键支柱就是强化法律体系，通过提高透明度和更大的司法独立性使人民和企业受益，与此同时使司法决策过程职业化。

在这些改革中，包括2014年底设立的专门的知识产权法庭以及要求官员向公众提供详细的政府信息，尤其是地方政府对预算的使用等。此外，政府还计划建立政务透明的机制，要求中国政府公开所有行政审批要求，首先从中央政府层面开始。在这一安排下，政府机构将不得干预在他们职权范围以外的事项。按照政务透明的要求，这些机构也将必须在其官方网站上公布所有行政审批事项。

新的决策和意见为法律体系的运作方式带来了根本的改变。其中一个明显的重点是提高法官、检察官和警察的司法责任，建立司法和法律执行机构间更为明确的权力划分。

法律体系的新地位

最终，这将改变政府干预的角色，创造一个更为平等的竞争环境，支持私营企业在

The new approach was most aptly summarised by the Prime Minister Li Keqiang, when he declared that “Whatever the law does not prohibit can be done as far as the market is concerned, while whatever the government does must be authorised by law”, in a speech delivered one year ago.

While the new set of reforms clearly intends to instil dynamism in the private domestic economy rather than encourage foreign investment (the objective of the first set of reforms 30 years ago), foreign companies will still benefit. On one hand, additional sectors are being opened to foreign investments, but most importantly, is the more level playing-field that is undoubtedly being built.

This is good news for all those involved in China, and for the world in general: should the new reforms succeed - as it seems they will - we can expect growing China-size economic opportunities and a much more favourable environment for private and smaller-size enterprises. ○

的发展，同时建立一个人民认为公平的环境。这就是中国宪法的“依法治国”的理念。

国家总理李克强在一年前的演讲中宣布“法无禁止即可为，法无授权不可为”的思想时就对新的改革思路进行了总结。

虽然新改革希望为国内的私营经济注入活力，而非鼓励外来投资（30年前的第一套改革方案的目标是鼓励外来投资），但是外资企业仍会受益。一方面，政府向外来投资开放了更多部门，而更重要的则是正在建立的更为公平的竞争环境。

这对于所有有中国业务的企业来说都是好消息，而对于世界来说：如果新改革成功的话——看来会成功——中国增长将带来更多的经济机会，并为私营企业和小型企业提供更为有利的市场环境。○

About the author

Nicolas Musy is the founding partner at China Integrated (Shanghai) Co Ltd. China Integrated is a solution provider, designed to support international companies develop successful businesses in China by providing expertise in market entry, growth, and acquisition practices.



关于作者

Nicolas Musy 是 China Integrated 上海有限公司的创立合伙人。China Integrated 是一家解决方案提供商，通过提供市场进入、增长和并购方面的专业知识为国际企业成功的开展中国业务提供支持。

Shanghai United Family Hospital Emergency Room Services

Shanghai's only Western-style, 24/7 Emergency Room

- 24/7 in-house pediatric, adult, and OB operating room services for acute surgical emergencies (e.g., fractures, appendicitis, and C-sections)
- 24/7 in-house, state-of-the-art CAT scan, MRI, ultrasound, and X-ray imaging services with on-site Radiologist for more rapid and convenient imaging and diagnosis
- 24/7 adult, pediatric, and obstetric inpatient services available, including 24/7 inpatient rooms
- 24/7 Neonatal Intensive Care Unit and on-site adult Intensive Care capabilities
- Highly experienced Emergency Medicine physicians certified in:
 - Basic Life Support (BLS)
 - Advanced Cardiac Life Support (ACLS)
 - Pediatric Advanced Life Support (PALS)

Healthcare for Life!

Shanghai United Family Hospital

1139 Xianxia Road, Changning District, Shanghai 200336

Tel: +86 (21) 2216 3900 **24hr Emergency Hotline: +86 (21) 2216 3999**

Website: www.ufh.com.cn Appointment Center: 400 639 3900

The UFH network has pioneered JCI quality accreditation in China
和睦家医疗获得国际医疗卫生机构认证联合委员会(JCI)认证