

THE ERA LOGIC FOR ADVANCING THE CONSTRUCTION OF SYSTEM AND CAPACITY FOR LAW-BASED GOVERNANCE OF FOREIGN-RELATED AFFAIRS

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*Huang Jin**

China's law-based governance of foreign-related affairs should operate in parallel with reform and opening up. The Third Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) decided to reform and open up, and China's law-based governance of foreign-related affairs began. The *Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures* formulated in 1979 is the first foreign-related law enacted after China's reform and opening up. For more than 40 years since the reform and opening up, China's law-based governance of foreign-related affairs has been deepened, developed, and moved forward, making great progress and effectively promoting reform and opening up and the construction of a modern socialist powerhouse. Since the 18th CPC National Congress, the CPC Central Committee with Comrade *Xi Jinping* at its core has made a series of major decisions and plans on law-based governance in all respects, and creatively put forward a series of new concepts, ideas and strategies for law-based governance in all respects, with particular emphasis placed on strengthening law-based governance of foreign-related affairs. In 2014, the Fourth Plenary Session of the 18th CPC Central Committee adopted the *Resolution of the Central Committee of the Communist Party of China on Certain Major Issues Concerning Comprehensively Advancing Law-Based Governance*, which clearly stated that it is necessary to 'strengthen foreign-related legal work'. In 2019, at the Second Meeting of the Commission for Overall Law-Based Governance of the CPC Central Committee, General Secretary *Xi Jinping* emphasized that we should 'foster the strategy for law-based governance of foreign-related affairs'. In 2020, at the Central Conference on Work Related to Overall Law-Based Governance, General Secretary *Xi Jinping* clearly put forward the '11 Upholds', of which for the first time he proposed 'taking a coordinated approach to promoting the rule of law at home and in matters involving

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foreign parties’. The *Report to the 20th CPC National Congress* once again stressed that ‘We will step up legislation in key, emerging, and foreign-related fields and advance the rule of law in domestic and foreign-related affairs in a coordinated manner.’ On November 27, 2023, at the 10th group study session of the Political Bureau of the CPC Central Committee, General Secretary *Xi Jinping* underlined ‘advancing the construction of system and capacity for law-based governance of foreign-related affairs in China’, and made a systematic, in-depth and comprehensive exposition on strengthening law-based governance of foreign-related affairs. Since the reform and opening up, especially since the 18th CPC National Congress, law-based governance of foreign-related affairs in China has not only been a magnificent and great practice, but also a vivid and lively picture of the times.

I. DEEPLY UNDERSTANDING AND GRASPING THE ERA BACKGROUND FOR ADVANCING THE CONSTRUCTION OF SYSTEM AND CAPACITY FOR LAW-BASED GOVERNANCE OF FOREIGN-RELATED AFFAIRS

Since the 18th CPC National Congress, the CPC Central Committee with Comrade *Xi Jinping* at its core, has proposed to advance law-based governance in domestic and foreign-related affairs in a coordinated manner, and the construction of system and capacity for law-based governance of foreign-related affairs. There are two major era backgrounds for this. First, socialism with Chinese characteristics enters a new era. Currently, China is building a great country and moving toward national rejuvenation on all fronts through Chinese modernization. This determines that the rule of law is not only a means, a path, and a method, but also an important goal that needs to be achieved. Chinese modernization is a modernization promoted under the rule of law, and the modernization of the rule of law is integral to Chinese modernization. Building law-based governance of domestic affairs and law-based governance of foreign-related affairs are precisely two aspects and two dimensions of ‘exercising law-based governance in all respects and advancing the rule of law in China’. Advancing law-based governance of domestic and foreign-related affairs in a coordinated manner, and building the system and capacity for law-based governance of foreign-related affairs are long-term needs for building a great country and moving toward national rejuvenation on all fronts through

Chinese modernization. Second, global changes of a magnitude not seen in a century are taking place in the world. This is a period of historical change, in which world economic, political, social, cultural and ecological patterns are profoundly adjusted, international situation is complex, economic globalization encounters countercurrents, unilateralism and protectionism rise again, world economic recovery is weak, international trade and investment shrink, a new round of scientific and technological revolution and industrial transformation develops in depth, and global governance system urgently needs to be reformed and perfected. This background of the era determines that China must consider both domestic and international situations, that is, pursuing a strategy of national rejuvenation amid global changes of a magnitude not seen in a century, and put emphasis on both development and security. We cannot advance the law-based governance of China in all respects and build the rule of law in China behind closed doors, nor can we only develop the rule of law in domestic affairs but not the rule of law in foreign-related affairs. We must continuously build the system and capacity for law-based governance of foreign-related affairs, advance the rule of law in domestic and foreign-related affairs in a coordinated manner, firmly safeguard national sovereignty, security, and development interests, protect the interests of the people, effectively prevent various risks and respond to severe challenges, promote the rule of law in international relations, advance the progress of the international rule of law, and promote the development of a human community with a shared future. Advancing the rule of law in domestic and foreign-related affairs in a coordinated manner and building the system and capacity for law-based governance of foreign-related affairs are of paramount importance for promoting high-standard opening up and responding to external risks and challenges.

II. ADHERING TO FORWARD-LOOKING THINKING, STRATEGIC PLAN AND OVERALL ADVANCEMENT, AND COMPREHENSIVELY STRENGTHENING THE CONSTRUCTION OF A SYSTEM AND CAPACITY FOR LAW-BASED GOVERNANCE OF FOREIGN-RELATED AFFAIRS

Fostering the system and capacity for law-based governance of foreign-related affairs is a systematic project characterized by consistency across a wide range of fields. We must consider both domestic and international

dynamics, and both development and security needs, deeply understand the importance and urgency of doing a good job in foreign-related rule of law work, advance law-based governance of domestic and foreign-related affairs in a coordinated manner, and build a system and capacity commensurate with the requirements for high-quality development and high-standard opening up. This will serve to create a favorable legal and external environment for the steady progress of Chinese modernization.

First, in terms of the overall work, it is necessary to speed up the strategic plans of foreign-related rule of law work. To promote high-standard opening up, foreign-related rule of law work must strengthen strategic layout, occupy commanding heights, and grasp the initiative. We must think about the future in making overall and strategic plans. We must push forward the project as a whole and strengthen top-level design, to advance legislation, enforcement, judicature, law observance, and legal services on foreign-related affairs in a coordinated manner.

Second, in terms of foreign-related legislation, it is necessary to build a comprehensive system of relevant laws and regulations. We should give precedence to legislation with scientific legislation, synchronize enactment, revision, abolition, interpretation, and codification of laws, enhance the systematic, integral, coordinated and timely legislation, give full play to the role of legislation in leadership and promotion, and grasp the key to improving the quality of legislation. We should further improve laws and regulations for countering foreign sanctions, interference, and ‘long-arm jurisdiction’, enrich the legal ‘toolbox’ to respond to challenges and prevent risks, promote the development of the system of laws for extraterritorial application, and provide a legal basis for China’s foreign-related law enforcement and judicial activities.

Third, in terms of foreign-related law enforcement, we should establish and improve the foreign-related law enforcement system. It is necessary to put in place a coordinated and efficient system for implementing law-based governance of foreign-related affairs, and increase the level and efficiency of law enforcement. In particular, we should continuously strengthen law enforcement capabilities in the field of international economy and trade, safeguard national sovereignty, security and development interests in accordance with the law, protect the legitimate rights and interests of Chinese citizens, legal persons and unincorporated organizations overseas according to the law, protect the rights and interests of foreign investors in

China in accordance with the law, counter illegal unilateral sanctions, create a world-class business environment that is market-oriented, law-based and internationalized, and promote high-standard opening up.

Fourth, in terms of foreign-related administration of justice, we should enhance the judicial credibility. It is necessary to actively reform and innovate the system and mechanism of foreign-related judicial trials that conform to the laws of trial, continuously improve the ability and level of foreign-related judicial trials, strengthen the effectiveness of foreign-related administration of justice, and strive to make the parties feel fairness and justice in every foreign-related judicial case.

Fifth, in terms of foreign-related observance of the law, it is necessary to improve the legal attainments of the subjects involved in foreign-related activities. In foreign-related work, we should heighten the sense of the rule of law and compliance, enhance the compliance management of enterprises, and encourage Chinese enterprises and citizens to more consciously abide by local laws, regulations, customs and practices when going global, and to protect their own legitimate rights and interests with laws and rules.

Sixth, in terms of legal services for foreign-related affairs, we should promote legal service system and capacity building. Through high-quality legal services, we could effectively safeguard the legitimate rights and interests of Chinese citizens and legal persons overseas and foreign citizens and legal persons in China, and protect the rights and interests of overseas Chinese in accordance with the law. It is necessary to pay attention to fostering world-class arbitration institutions, mediation institutions, law firms and other legal service institutions, and make foreign-related rule of law protection and services more effective.

Seventh, in terms of international exchange and cooperation, efforts should be made to deepen international cooperation in the field of the rule of law. Based on international treaties and mutual benefit on an equal footing, we should advance international cooperation in legislation, law enforcement, and administration of justice, strengthen international cooperation in anti-corruption and actively participate in international cooperation in law enforcement security. We should deepen international cooperation in the judicial field, improve China's judicial assistance system, expand the coverage of international judicial assistance, and actively carry out judicial assistance such as extraterritorial service, evidence collection, ascertainment of extraterritorial laws, and mutual recognition

and enforcement of arbitral awards and court judgments. It is necessary to deepen cooperation in legal services in the fields of lawyers, arbitration, mediation, notarization, legal aid, and judicial aid, strengthen consular protection and assistance and build a robust network of legal measures to protect our overseas interests, and enhance the international dissemination of the rule of law in China and tell the story of China's rule of law.

Eighth, in terms of team building, it is necessary to cultivate foreign-related rule of law talents with high quality. High-quality foreign-related rule of law talents are those with firm ideals and beliefs, strong feelings for family and country, deep world vision, open global mind, solid legal foundation, familiarity with China's national conditions, good knowledge of international rules, and masterly handling of foreign-related legal affairs. To cultivate high-quality foreign-related legal talents, we should start from two aspects: the training of professional talents in law schools and on-the-job continuing education and training. From the aspect of training professionals in law schools, to train a corps of specialists equipped with a firm political stance, a high level of professional competence, and a good knowledge of international rules, laws and practices, we should raise the quality of legal education by cultivating values and moral integrity, consolidating the foundation of law, relying on the teaching staff of international law majors, and strengthening the development of practice-oriented training based on the professional platform of international law disciplines. From the aspect of continuing education and training, it is necessary to carry out continuing education and training on law-based governance of foreign-related affairs for foreign-related practitioners. We should also strengthen capacity building in law-based governance of our legal personnel. Leading officials at all levels should set an example in respecting, studying, observing and applying the law in order to improve their thinking and ability in law-based governance of foreign-related affairs. To build a strong reserve of high-caliber professionals in this field, we should improve the mechanisms for recruiting, selecting, training, utilizing, and managing legal talent.

Advancing the law-based governance of domestic and foreign-related affairs in a coordinated manner, and promoting the building of a system and capacity of law-based governance of foreign-related affairs are crucial to law-based governance in all respects, to our opening up and diplomatic work, to prudent and effective response to the complex and changeable international situation, and participation in the reform and construction of the

global governance system, and to the promotion of law-based governance in international relations, the progress of the international law-based governance, and the construction of a community with a shared future for humanity. Therefore, at the 10th group study session of the Political Bureau of the 20th CPC Central Committee, General Secretary *Xi Jinping* has emphasized that to better balance domestic and international imperatives and synergize development and security, we should thoroughly understand the importance and urgency of law-based governance of foreign-related affairs, and build a system and capacity commensurate with the requirements for high-quality development and high-standard opening up. This will serve to create a favorable legal and external environment for the steady progress of Chinese modernization.

The year 2023 is a very important year in the construction and development of law-based governance of foreign-related affairs in China. In 2023, the *Law on Foreign Relations of the People's Republic of China* and the *Law of the People's Republic of China on Foreign State Immunity* were successively formulated and promulgated. Part IV 'Special Provisions on Civil Actions Involving Foreign Parties' of the *Civil Procedure Law of the People's Republic of China* was substantially revised. The *Interpretation of the Supreme People's Court on Several Issues Regarding the Application of the Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships II*, the *Interpretation of the Supreme People's Court on Several Issues Regarding the Application of International Treaties and International Practices in the Trial of Foreign-Related Civil and Commercial Cases*, and the *Decision on Amending the Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of an International Commercial Court* were promulgated successively. At the same time, foreign-related law enforcement, administration of justice, observance of the law and legal services have received unprecedented attention, and the work on law-based governance of foreign-related affairs has flourished. The law-based governance of foreign-related affairs is a compulsory course for advancing law-based governance in all respects and building the rule of law in China, and is a systematic project characterized by consistency across a wide range of fields. We should base ourselves on China's foreign-related legislation, law enforcement, administration of justice, observance of the law and legal service practices, take the special foreign-related laws formulated by the National People's Congress and its

Standing Committee as the main line, and take into account the important foreign-related administrative regulations issued by the State Council. We should interpret, elucidate, and analyze China's foreign-related legislation and related practices on law-based governance of foreign-related affairs, conduct comparative analysis with foreign and international practices, discuss the accurate application of China's foreign-related laws and regulations, explore the laws of China's law-based governance of foreign-related affairs and the path of its optimization and development, and apply the rule of law to effectively respond to challenges and prevent risks to better safeguard the interests of the country and the people.

(Translated and Edited by Gong Li)