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Volume III

中华人民共和国中小企业促进法

——立法进程资料汇编 (1999~2000年)

THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON
THE PROMOTION OF SMALL AND MEDIUM-SIZED ENTERPRISES
PART ONE: Materials on the Drafting Process, 1999—2000



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中华人民共和国中小企业促进法

2002年6月29日第九届全国人民代表大会常务委员会第二十八次会议通过

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朱少平 葛 毅 编著

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前 言

截至21世纪初，中国有98.5%的企业属于中小型企业（SME）。这些企业拥有全国75%的劳动力，占国民生产总值的50%和国家税收的40%。这些数据已经显示出中小型企业对中国经济发展的重要性，然而直至今日，中国的中小型企业一直都面临着不利的市场条件，尤其明显的是在资金和专利的准入方面的种种不利，以及来自国有企业方面的歧视。考虑到在由计划经济到市场经济的转型时期所进行的国有企业重组，可能会导致高失业率，一直以来，中国的领导层都在力图改善迄今的市场条件，因为好的市场环境能够促进中国的中小型企业进一步发展，进而能够解决国有企业人员过剩所带来的问题。起草《中小企业促进法》的初衷也就是为了创造一个良好的市场环境。《中小企业促进法》的起草工作已经被纳入了全国人民代表大会第九个（五年）立法计划（1998~2003年）的工作进程中。1998年，全国人大财政经济委员会就已经成立了起草工作组进行该促进法的发展工作。在整个起草过程中，起草工作组先后出台了若干个草案并进行了热烈的讨论，直到2002年6月29日，《中华人民共和国中小企业促进法》才被全国人大常委会最终通过，并于2003年1月1日起开始生效。

本书的出版，旨在对《中华人民共和国中小企业促进法》草案的整个讨论过程进行全面的回顾。本书对从1999~2002年召开的数次中小企业促进法研讨会与会人员的讲话及相关资料进行了汇总。在这些研讨会上，起草工作组针对该法的各个《草案》与中外专家进行了广泛的交流，为人们提供了评论法律

《草案》，并向起草工作组提出建议的机会，因此，本书出版的另一个目的，是为了将中国的立法进程透明化，是指为更多的人所了解。本书是为数不多的汇集了当前有关中小企业促进法的各种观点及最新进展的资料汇编，因此也就具有了相当重要的意义。首先，本书有助于了解参与立法过程的不同的人们各自的观点；阐释立法者的真正意图，是将来执行本法的重要依据。其次，将立法过程透明化是建立法治国家的重要步骤；透明化将引导公众关注立法，从而进一步引导其加入到立法进程中来。从这一方面讲，本书是贯彻法治国家的原则的一部分，这一原则已于1999年正式写入《中华人民共和国宪法》第5条第1款；同时，本书也是中国加入世界贸易组织（WTO）后将在国家及地方层面上实行政策公开的充分体现。

从2001~2002年的历次研讨会以及本书的出版，都是由中华人民共和国全国人民代表大会（NPC）财政经济委员会（FEC）以及“中华人民共和国全国人民代表大会财政经济委员会立法咨询项目”公同筹备组织的。全国人民代表大会财政经济委员会负责起草《中华人民共和国中小企业促进法》；“中华人民共和国全国人民代表大会财政经济委员会立法咨询项目”是全国人大财经委与Deutsche Gesellschaft für Technische Zusammenarbeit（德国技术合作公司）的合作项目，德国技术合作公司代表联邦德国经济发展与合作部。

依据《中华人民共和国宪法》，全国人民代表大会是中华人民共和国的最高权力机构，也是中华人民共和国的立法机构。全国人民代表大会共有近3 000名成员（目前为2 997名），每年只举行一次全体会议，因此，大部分的立法决议都是由155名成员组成的全国人民代表大会常务委员会作出的，全国人民代表大会常委会也就成了全国人大实际意义上的立法机构，而155名成员也足以构成其他很多国家的国家议会了。同时，国家政治的不同领域由全国人大及其常委会下属的9个专门的委员会负责。财政经

济委员会就是其中之一，现有成员34名。与很多国家的议会相比，财政经济委员会拥有一个25人的大规模办公室，大部分人员都是经济学家或律师。财政经济委员会的工作包括：起草有关财政经济方面的法律，以及由计划经济向市场经济转型的必要的法律法规。财政经济委员会成立起草工作组，订立草案并递交到全国人民代表大会及其常务委员会作进一步的立法工作。起草工作组的成员包括财政经济委员会的领导班子；同时还包括向立法工作提出建议并陈述观点的专家，这些专家来自政府各机构，特别是与起草法律相关的各部委，还有各有关团体的代表，以及学者、教授；最后，还有起草法律的财政经济委员会的工作人员。

本书回顾了整个立法过程——从起草工作组的成立一直到该法审议通过，对起草工作组的每一步工作和各个版本的草案都进行了详尽的评述。本书开始先简要介绍了中国对于中小企业促进法的探索以及中小企业促进法发展的背景资料。其后是本书的主体，共包括五章正文及附录。第一章收集了1999年研讨会的所有文章，展示了起草工作组成立的过程以及最初的讨论议题：哪些内容将被写入草案。第二章列举了促进中小型企业发展的示范法律，作为起草工作的借鉴。第三章收集了2000年研讨会的所有发言，对已经出台的第一部草案进行了评述。1999年的研讨会的讨论还导致了第二部草案的产生，2001年的研讨会对第二部草案进行了评述，会上所有的发言都被汇总到本书的第四章。第五章收集了2002年研讨会的发言，讨论的焦点是出台的第三部草案。2002年研讨会之后不久起草工作组确定了最终的草案并通过了中国第一部《中小企业促进法》。除了第二章，其余各章还收录了历次研讨会的总结报告。其他相关资料，如三个版本的草案和最终通过的法律均收入本书附录；附录中还列举了个别发言稿作者的个人简历，以示对他们的感谢。

以上所列举的历次研讨会以及本书的出版都是“中华人民共和国全国人民代表大会财政经济委员会立法咨询项目”的部分工

作成果。该项目自1997年成立以来,已经为全国人大财政经济委员会在诸多法律领域中提供了相应的立法建议:《外汇管理法》、《证券法》、《投资基金法》、《信托法》、《中小企业促进法》、《物权法》、《政府采购法》、《破产法》、《招标投标法》、《国家预算法》、《遗产税法》和《军人保险法》;同时该项目还对中国的两部现有法律提出了修改建议,它们分别是《公司法》和《合伙企业法》。法律咨询服务形式包括:个别会谈、研讨会、调研、代表团以及法律培训。从1997年到2004年联邦德国经济发展合作部代表德国政府将向该项目提供总数为410 000欧元的资金,如果该项目延期,还将从2005年起投入更多资金。

“中华人民共和国全国人民代表大会财政经济委员会立法咨询项目”是德国技术合作公司(2001年)在北京成立的法律合作办公室的组成部分。该法律合作办公室负责如下项目的工作:(1)中华人民共和国全国人民代表大会常务委员会法制工作委员会立法咨询项目;(2)中华人民共和国全国人民代表大会常务委员会预算工作委员会立法咨询项目;(3)中华人民共和国商务部立法咨询项目;(4)中华人民共和国劳动与社会保障部立法咨询项目。

如欲获得有关本书及上述项目的更多信息,请与德国技术合作公司法律合作办公室联系,地址:北京市亮马河南路14号塔园外交办公楼1-13-2,邮政编码:100600,电话:(+86) 10-85321401,传真:(+86) 10-85321405,电子邮件:gtznpc@netchina.com.cn 或者登陆网站<www.gtz-legal-reform.org.cn>。

我们代表全国人大财政经济委员会和德国技术合作公司向文章的作者表示感谢。全国人大财政经济委员会为研讨会的召开提供了极大的支持,为会议的成功召开提供了决定性的帮助,在此特别感谢:巨家仁、李鲁洋、王闻越、朱忠良、龚繁荣、翟庆华、刘修文、蔡概还、翟伟,李命志和钟真真。最后,还要特别提到,没有德国技术合作公司法律合作办公室全体工作人员的努力,就

没有研讨会的成功举办和本书的出版，在此特别感谢：刘畅、魏双娟、刘巍、张为民、Holger Hanisch、Andreas Obst、Sandra Nicklisch, Gregor Franssen 和 Volker Hagemeister。

朱少平 葛 毅

Preface

At the beginning of the 21st century about 98.5 % of all enterprises in China were small and medium-sized enterprises (SME), which employed 75 % of the workforce, generated 50 % of the GDP and contributed 40 % to collected taxes. These figures already show the importance of SMEs for the development of the Chinese national economy. Nevertheless, until today SMEs face in China unfavorable market conditions, especially such as difficult access to financial resources and know-how as well as discrimination against state-owned enterprises. The intension of Chinese leaders is to improve such market conditions, because they fear that the reorganization of state-owned enterprises within the transformation from a plan-oriented to a market economy may lead to a strong raise of the unemployment rate. Therefore, better market conditions shall help to boost the development of SMEs in China in order to absorb redundant personnel of state owned enterprises. To create such favorable market conditions was behind the idea to draft a Law on the Promotion of Small and Medium-sized Enterprises, which has been included in the legislation plan of the ninth legislation period of the National People's Congress (1998 - 2003). As a consequence, already in 1998 the Financial and Economic Committee (FEC) of the NPC set up a Drafting Group in order to develop such promotion law. Several drafts had been drawn up and were discussed controversially, but finally on June 29, 2002 the Standing Committee of the NPC promulgated the "Law of the People's Republic of China (PRC) on the Promotion of Small and Medium-sized Enterprises" (SME

Law). The law came into effect on January 1, 2003.

The present publication wants to give an overview of the discussion on the drafting of the SME Law. It comprises a collection of papers and related materials that were contributed by the participants of four symposia on various drafts of the SME Law, which were held in 1999, 2000, 2001 and 2002. At such symposia the Drafting Group shares their opinions on the draft law with each other and external Chinese and Foreign experts. Therefore, the symposia offer the opportunity to comment on the draft law and give advice to the Drafting Group. As a consequence, the present publication pursues the aim of making the legislation procedure in the People's Republic of China more transparent and comprehensible. Such compilation is one of the very few sources documenting the authentic ideas and intentions underlying the present SME Law. It is very important to have such source available. First, it is helpful to get information on the different approaches of the people being involved in the legislation process. It may be supportive in identifying the legislator's intentions in drafting the law and, therefore, facilitate the implementation of the law as an interpretation device. Second, to create transparency in the legislation process is an important step towards the rule of law. Transparency allows the public to follow the law making and, to a certain extent, lets the public participate in the legislation process. Thus, the present publication can be seen as part of the implementation of the rule of law principle, which has been adopted in art. 5 sec. 1 of the Chinese Constitution in 1999, as well as part of the Chinese efforts to comply with the transparency requirements as set up in China's WTO accession agreement, which demands transparency regarding all legal provisions on national and local levels.

The 2001 and 2002 symposia as well as the present publication

were jointly prepared and organized by the Financial and Economic Committee (FEC) of the National People's Congress (NPC) of the People's Republic of China (PRC) and the Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the PRC". The NPC, namely the FEC, was in charge of drafting the Chinese SME Law. The "Advisory Service to the Financial and Economic Committee of the National People's Congress of the PRC" is a cooperation Project between the FEC and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (German Technical Cooperation Corporation), acting on behalf of the German Federal Ministry of Economic Cooperation and Development.

The NPC is according to the Chinese constitution the highest organ of state power and the national legislative body of the PRC. A Plenary Session with all its nearly three thousand members (currently 2997) is held only once a year. Therefore, most of the legislation is deliberated by the Standing Committee of the NPC, which includes at present 155 members. As a result, the Standing Committee should be regarded as the actual decision making body of the NPC. With its 155 members, it is not smaller than many national parliaments of other countries. Furthermore, there are nine special committees in charge of different areas of national politics, which are under the leadership of the Plenary Session and the Standing Committee. One of these special committees is the FEC, which consists at present of 34 members. In comparison to parliamentary committees of many other countries, the FEC has a rather big office consisting of 25 persons, most of them economists or lawyers. The FEC's scope of activities includes the drafting of Laws related to commercial and financial issues as well as the national economy, hence, such laws necessary to transform the Chinese national economy from a plan-oriented to a market economy.

The FEC sets up a Drafting Group, decides on the draft and forwards it to the Standing Committee or the Plenary Session for deliberation of the new piece of legislation. The Drafting Group includes first a steering team of FEC members. Second, there is an expert team consisting of professionals from other government bodies, especially ministries which have a stake in the intended legislation, representatives of interest groups, scholars and academics, giving advice and representing the opinion of their entities. Third, there is a team consisting of FEC staff, which actually does the drafting work. All three teams together make up the Drafting Group.

The present publication covers the whole legislation progress – right from the beginning where the Drafting Group has been nominated up to the deliberation of the Law. Each step of the Drafting Group and each version of the draft law has been comprehensively commented. The publication begins with a brief introduction to China's way to a SME Law including background information on SME development. Subsequently, there are five main parts followed by an appendix. Part one compiles all papers presented at the 1999 symposium. At that stage, the Drafting Group was set up and preliminary considerations were discussed regarding what to be included in the draft law. Part two contains a general model for a law to promote SME development, which could be used by the Drafting Group as a tool kit. Part three is a compilation of the papers presented at the 2000 symposium, where the first draft law has been presented and commented. The discussions of the first symposium led to a second draft, which has been commented on the third symposium in 2001. The papers of the 2001 symposium can be found in part four of the publication. Part five includes the presentations of the 2002 symposium, which focused on the meanwhile released third draft. Shortly after the 2002 symposium, the final draft

has been prepared, and promulgated as the first Chinese legislation on SMEs. Besides part two, every part includes the Conclusions of the respective symposium. Further material is added in the appendix, which contains the wording of draft one, two and three as well as of the promulgated law. Moreover, the contributors' curriculum vitae are included in the appendix in order to show who has given advice at which stage of the drafting process.

The above mentioned symposia as well as the present publication are part of the working results of the Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the People's Republic of China". The Project commenced in 1997 and up to now had provided various advisory services to the FEC on the following Chinese draft laws: Foreign Exchange Control Law, Securities Law, Investment Funds Law, Trust Law, Law on the Promotion of Small and Medium-sized Enterprises, Property Law, Government Procurement Law, Bankruptcy Law, Bidding and Tendering Law, National Budget Law, Inheritance Tax Law, Army Insurance Law and amendments to the already existing Company Law and Partnership Enterprise Law. Advisory services have been provided by individual consultations, workshops, symposia, researches, study tours and training. German Government represented by the German Federal Ministry of Economic Cooperation and Development invested app. 4.1 million Euro from 1997 up to 2004. Further funding may be taken into consideration for a time period commencing in 2005.

The Project "Advisory Service to the Financial and Economic Committee of the National People's Congress of the People's Republic of China" is part of the GTZ Legal Cooperation Office, which has been set up in Beijing in 2001. The GTZ Legal Cooperation Office is furthermore in charge of the following four Projects: (1) "Advisory

Service to the Legislative Affairs Commission of the Standing Committee of the People's National Congress", (2) "Advisory Service to the Budget Affairs Commission of the Standing Committee of the People's National Congress", (3) "Advisory Service to the Ministry of Commerce" and (4) "Advisory Service to the Ministry of Labour and Social Security".

For further information regarding the present publication or one of the above mentioned Projects please contact the GTZ Legal Cooperation Office at Ta Yuan Diplomatic Office building 1-13-2, No. 14 Liangmahe Nanlu, Beijing 100600, PR China, phone (+86) 10 – 85321401, fax (+86) 10 – 85321405, email <gtznpc@netchina.com.cn> or visit our website at <www.gtz-legal-reform.org.cn>.

On behalf of FEC and GTZ, we thank all contributors for their valuable participation and their papers. FEC's support to our symposia by Ju Jiaren, Li Luyang, Wang Wenyue, Zhu Zhongliang, Gong Fanrong, Zhai Qinghua, Liu Xiuwen, Cai Gaihuan, Zhai Wei, Li Mingzhi and Zhong Zhenzhen was essential for the success. Last but not least, neither the symposia nor the present publication would have been possible without strong engagement of all members of the GTZ Legal Cooperation Office, especially Liu Chang, Wei Shuangjuan, Liu Wei, Zhang Weimin, Holger Hanisch, Andreas Obst, Sandra Nicklisch, Gregor Franssen and Volker Hagemeister.

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