Feeling the Rhythm of China's Legal Transformation: My Experience in Government and Business in China

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Editors' Note:

This paper is an autobiographical account of the exciting career of Zhang Xingxiang (张兴祥), the RCCPB's inaugural Practitioner-in-Residence. From 1997 to 2004, Dr. Zhang worked in the State Council's Legislative Affairs Office. After receiving his LLM from Yale in 2005 and his doctorate in law from China University of Politics & Law in 2006, he spent the next nine years of his life working for the American multinational General Electric (China). He originally was responsible for GE's government policy work vis-a-vis the Chinese central government. He later shifted to direct legal and compliance affairs for Yingda International Leasing, a joint venture between GE and the State Grid. He left Yingda and GE in August 2014 in order to join the RCCPB for the current academic year.

A core ethos of the RCCPB is to build bridges between academia, industry, and government. Our research projects and events typically include experts from all three groups, as we believe it is important that our research be not only of the highest academic quality but directly relevant for policymakers and the business community. That is why we launched the Practitioners-in-Residence program and why we are so enthusiastic about Dr. Zhang joining our community. Without his joining the RCCPB, this paper would not have been possible.

Dr. Zhang provides us a path-breaking personal window into the usually hidden life of government officials and lobbyists in China. His experience working in and outside of the Chinese government makes his description and analysis of both even more valuable. Although the secondary literature on this area, to which I have contributed, is growing, scholarly articles cannot convey the rich texture of what life is like for the participants in this process. In many ways, this essay is similar to the autobiographical sketches that are found in Sang Ye's, China Candid: The People of the People's Republic (University of California Press, 2006). Dr. Zhang lifts that veil for us, and reveals a complex world with a wide variety of individuals whose views and actions are shaped by their personalities, family background, education, personal networks, and employer. As such, we see a China that is more nuanced and varied than the typical stereotypes. Government officials are not simply condescending power brokers, and being successful in business is not simply about currying favor with a select group of patrons. There is much, much more going on. To ensure that we are sharing Dr. Zhang's authentic voice, we have only edited lightly for grammar and have not checked any of the data or other information for accuracy.

The RCCPB is indebted to Dr. Zhang for sharing his experiences and perspective with us. As usual, we encourage and welcome readers' feedback.

- Scott Kennedy, Senior Associate, RCCPB
- Li Xinyang, Program Officer, RCCPB
The Road to Becoming a Cadre

I was born in Anhui Province, which is located in the southern part of China. My hometown is a small isle surrounded by the Yangtze River, the longest river in China. There were several primary schools and one middle school on the island. Before I went to college, I barely ever left. People there were mostly peasants who lived with little income and endured poor conditions. Working for the government had been my pursuit since I was a young pupil. I knew even then that cadres earned stable salaries and stayed in nice office buildings, never needing worry about bad weather.

I was smart and good at taking exams when I was young. With a score of 482, I ranked in the top 50 in Anhui Province’s National College Entrance Examination in 1990. Back then the government still provided secured jobs to college graduates. Admission by a college meant I was no longer a peasant and just one step away from being a government official. But by the time I graduated, the policy changed abruptly, and college graduates needed find jobs by themselves. To position myself better in the job market, I decided to study law after getting a bachelor's degree of history, and was admitted to China University of Politic Science and Law (CUPL), which has the best law school in China.

Three years later, in February 1997, I received a phone call from Beijing while I was celebrating Spring Festival with my parents in my hometown. The head of the human resources department under the State Council’s Legislative Affairs Bureau told me that I passed the written examination and was to be admitted to her institute. She then raised one question and imposed one condition for my admission. She was curious, "Your legal essay earned your score of 90. Is it because you knew the subject of the essay, the balance between administrative power and citizen’s rights in legislation, before the test?" "Of course not. I choose administrative law as my major, and I have already thought seriously on the topic at law school. That’s the reason why I could write a good essay," I answered. She then said, “Cadres in our Bureau were frequently summoned to the Prime Minister’s office at Zhongnanhai. Whether you can be finally hired shall be conditioned on the clearance of a stringent health check." So, I was called immediately to come to Beijing for a health check just before my 24th birthday.

It was the first time in my life that I walked into Zhongnanhai. The palace where the headquarters of Chinese Communist Party and the cabinet ---- the Central People’s Government is located. I went through a serious security check at the gate. I needed to present a reference letter with the Legislative Affair Bureau’s seal, specifying the purpose of my visit. In addition, an official in Zhongnanhai need call the guard to verify my ID, but I was not allowed to call directly to my contact inside. Zhongnanhai is a large park with high walls and buildings spread out under the shadow of green trees. Except for security guards here and there, there were barely any people walking in the quiet courtyard. The HR Director quietly showed me the location of the Prime Minister’s office, the canteen, and the conference building. She further disclosed that the Legislative Affairs Bureau, which previously was stationed within Zhongnanhai, but because
of its expanding scale and the growth of outside visitors, such as companies and individuals, was moved out and settled in a building just across the north entrance of Zhongnanhai. There were three students who participated in the health check on the same day. The one female student and I were cleared. The other male student failed because of hepatitis.

After that visit, I devoted most of my time to writing my Master's thesis and waiting to start working in August at the Legislative Affair Bureau. I was not told that during that period, but it turns out that the Party conducted extensive investigations on the background and conditions of my close relatives, including my parents, grandparents, aunts and uncles. The government actually made the formal decision to hire me only after determining that my close relatives had no "anti-Party" or "anti-socialist" tendencies.

**Typical Work as a Government Official**

I went to the Legislative Affairs Bureau on August 1, 1997, to begin my government career. Only after having been on board did I learn there had been a fierce competition to hire me between the General Office and the Government Legal Affairs Coordination Department. The General Office was serving the Bureau’s leadership and got support from the boss to enjoy the priority in selecting new recruits. I was dispatched to the Research Section under the General Office. My work included preparing speeches and drafting documents for the leadership team and conducting research on important legal affairs.

There were around 70 to 80 employees working at the Bureau then. The Bureau was stationed in a three-floor compound and an affiliated building. My office sat in the middle of second floor, while the leaders’ offices were located on the east side of the same floor. The layout was designed for us to better serve our bosses.

**A Respectable Job**

I used up all of my savings after my first year in the government. The reason is very simple. My salary was too humble. My first month’s salary was only RMB 290. (The HR director later sent an apology, saying that as a university graduate student, my salary should have been RMB 350.) I earned RMB 1,000 when I worked as a summer intern at a law firm the year before! Regardless of this, I was still happy with my daily work. I was charged to draft regulations and policies. My work directly benefitted ordinary people. The non-salary benefits of working at a ministry were great. We were provided free apartments. Among the 108 graduate students from the China University of Political Science and Law in 1997, I was one of a dozen who moved into an apartment provided by the government. And I qualified to receive a full salary even after retirement. What’s more, there was also free food at the canteen. I was so proud that I worked for the Central Government and was an advisor to the Premier on legal affairs!

When carrying out organization reform in 1998, to show its high attention to legal work, the State Council’s Legal Affairs Bureau was upgraded to a ministry-level agency and renamed the
State Council Legislative Affairs Office (SCLAO). When I accompanied SCLAO’s leaders to conduct on-site investigations or business visits, the counterpart was either a minister or a provincial governor. If we identified serious legal issues, the report would immediately be sent to the Premier’s desk (then Zhu Rongji). Our circulars were issued directly to the provincial-level people’s governments. Most of my working time had been spent on clarifying laws and regulations and guiding which one to follow where there was a conflict between different laws at the national and provincial levels. Since China was still an administration-oriented country, most legal issues were addressed through the administrative agencies. In my job, I met the biggest names, the biggest projects, and the toughest issues. All of this helped me to develop a higher reputation for my work. I immediately fell in love with my government career and lifestyle.

“Five Plus Two, White and Black”
There is a popular phrase about office work in government: “With one pen, one piece of newspaper, and one cup of tea you can kill a whole day.” This view exaggerates government work. It reflects some people’s complaints and anger at some officials who just give approval, collect fees and issue permits, but who do not take any responsibility when things go wrong. From my work experience, this is not true. From my observations, there were three types of officials in office: one-third worked very hard, one-third just killed time, and the remaining one-third not only failed in their jobs but also made trouble. I wanted to be the kind of cadre who work really hard. Therefore, I couldn't just sit in the office, read newspapers and drink tea.

Most cadres working in our office had regular working hours from 8 am to 5 pm. At those times government ministries run their own shuttles to take officials between home and office. When the shuttle arrived at the office at 8:00 am, I would rush into the canteen to grab some food for breakfast. Officials started work around 8:30 am. As most of the more senior officials at the ministry-general level (buji) and division chief level (siji) need send their children to school, lower-level officials voluntarily cleaned the office, carrying hot water from the canteen to the office and boiling tea for their direct supervisors. I did those type of errands for almost one year and passed them on to a newcomer the following year. Everyone went to the canteen for lunch at around 12 pm and came back to the office at 1 pm. After lunch, I usually took a nap, while others would exercise. For the minister and vice ministers, each had their own room for napping after lunch. Director general-level officials had sofas in the offices, which could be opened and extended into beds. For other cadres, they either took a nap in the chairs, or they found other colleagues to playing cards or do exercises with. If an individual unfamiliar with this fact visited or made a call during lunch time, there was a high possibility that she would not be able to conduct any business. Even worse, she might make the officials unhappy because she would disturb their lunch rest. There was a public shower room in the building. Cadres may take a shower after playing basketball or doing other exercise. Although business hours are until 5 pm, those catching a shuttle or picking up their children at school would leave the office around 4:45 pm. It’s very hot during the summer in Beijing. The top state leaders normally would take off for the Beidaihe resort. At that time, most ministries closed up shop at around 3 pm, making the
effective working period less than 6 hours. If you add in the time for political study, the actual working time was entirely insufficient to accomplish our jobs. As far as I know, there was one section within the SCLAO that was left with only one cadre left in the office, as the others had been dispatched out of Beijing for poverty relief and aiding Tibet.

From my personal experience, most government officials working at the ministry were very busy as they had been charged to draft policies and promote institutional infrastructure building. The mission and assignment of an agency was set clearly by laws or circulars. These must be accomplished. With limited resources and insufficient working hours to fulfill its mission, a ministry has to take advantage of one of the following opportunities: submit a report to the State Council emphasizing the importance of its work and asking to add staff headcount (SCLAO successfully added its headcount by dozens, and developed into an 120-staff agency when I left in the year of 2004); borrow cadres from local government; or work extra hours.

To help the Premier-appointees to understand the overall situation of government legal construction work, the Section where I worked borrowed two officials from the local governments of Beijing and Shanghai for two months. We worked together and conducted investigations and research on the subjects such as administering the country by law, making legislation plans, improving the administrative law enforcement system, and supervising the legality of administrative activities. Finally we provided four or five research reports and policy suggestions to the State Council. In the summer of 2011, to draft the Administrative Licensing Law, my Section borrowed two cadres from the Shangdong and Jiangsu provincial governments. It was the first time in our office that we drafted laws along with people from local governments, thus opening a door for the Administrative Licensing Law to incorporate local best practices and changing the situation whereas only officials from the ministries dominated drafting work. I learned that other departments also borrowed staff from other ministries or local governments thereafter. The secondment arrangement only needs approval from the head of the lending agency and the head of the borrowing agency. It is managed as if the secondee is going on business trip. The borrowing agency was required to issue an evaluation letter about the secondee’s performance to the lending agency after the assignment was accomplished.

Public servants have the obligation to work for extra hours, and the state is not subject to the Labor Contract Law’s provisions governing compensation for extra working hours. I worked for the SCLAO’s general office, which was even busier than other departments. Whenever there was any important conference to be held or important government circulars to be issued, we needed to undertake most of the preparatory work. During the 7 years of my work at the SCLAO, I was deeply involved in the drafting work of the Legislation Law, Law on Administrative Review, Law on State Council Organs, the State Council’s Work Conference on Administration by Law, the Work plan on National Administrative Approval Reform, the Domestic Legislation Adjustment for WTO’s Entry, and each year’s National Work Conference on the Government’s Legal Affairs. I frequently worked extra hours for the aforementioned important events. I needed
to work day and night from Monday to Friday. There was no rest on Saturdays, and no guarantee that I could rest on Sundays.

In addition to the roles and responsibilities set forth by laws and regulations, cases passed on from the State Council’s leaders also took a lot of my time. At the SCLAO, we called it banjian for drafting laws, regulations, and polices, and call it “small” banjian for handling cases with written instructions from the State Council’s leaders. Although government agencies were required to abide by the stipulations of laws and regulations, the enforcement of laws was a big headache in China. The law itself did not have intrinsic mechanisms to ensure its implementation. The State Council usually issued regulations or circulars which specifying how to enforce the law. Without that, most of time the law was just a written piece of paper posted on the wall but never seriously executed. The Constitution and Legislation Law stipulate the rank of legal instruments: among laws, regulations, rules, circulars and decisions, from highest to lowest. In practice, however, it went in a totally different direction. Whenever companies or individuals had a legal issue, they did not just look up the law, but sought decisions from a mayor, a governor of a province, or even the Premier because they knew such disposition was more effective. Accordingly, the Premier and the State Council’s other leaders gave written instructions on reports or letters flowed to their desks and required us to conduct research and prepare draft solutions.

As a new arrival, I was so excited to see the Premier’s real signature on a report forwarded to me in September 1997. I soon realized, however, that it is not an easy job to handle those cases with senior leaders’ instructions. I still remember one important case I handled. In September 2001, the authority in "Province A" confiscated noodles produced by a food company from "Province B" and banned its sale after finding that there were poisonous additives in the food. The food manufacturing industry was important in “Province B”, and the food company in question was one of their largest taxpayers. So the food company asked for help from the provincial government. The government supported the company’s efforts to bring an administrative suit against the enforcement agency for infringing upon its business reputation. The two provinces had sharply differing versions of facts and legal arguments. The State Council’s leaders forwarded the case to us, and the SCLAO chief further assigned the case to me to conduct research and to develop proposals on how to deal with the case. The case cost me 9 months! I had to collect the facts onsite, hear views from the company and other stakeholders, invite legal experts to advise on administrative law and commercial law, explore how to prevent local protection from institutional perspective, so on and so forth.

Some instructions from the leaders addressed the allocation of powers among different government agencies. Around 2001, fake products and shady commodities prevailed in China, and illegal activities of intellectual property rights (IPR) infringement had not been effectively controlled. The Chinese Government was under great pressure from the US and other countries to improve its IPR enforcement. The State Council’s leaders instructed us to conduct research on
how to strengthen the administrative agency’s enforcement power and tools. After I was called onboard, I conducted extensive research on the valid laws and regulations at the time. To my astonishment, beyond police, customs authorities, and tax authorities, other administrative agencies had limited enforcement tools available after they uncovered illegal activities and/or rendered punishment decisions. It was understandable that illegal activities had not received corresponding corrections or appropriate punishment. Thus, fines had not been paid to the Ministry of Finance. Illegal activities had not been corrected, fake products had not been confiscated. Orders to freeze suspects’ bank accounts had not been effectively enforced by commercial banks. I also invited law professors to conduct comparative study on administrative agencies’ enforcement tools in other countries. The final policy suggestion was submitted to the State Council. The aforementioned issues were partially solved after the Standing Committee of National People’s Congress adopted the Law on Execution of Administrative Decision a few years later.

As time passed, more and more cases with senior leaders’ instructions came to me. After consulting with my manager, I gradually understood that I should not treat all instructions equally and seriously. I was no longer clumsily dealing with senior leaders’ instructions. Essentially, I divided instructions into the following three types:

- “Forwarded to *** for your information and disposition.”
  Meaning: The leaders did not have definite view on the issue. It was at my discretion how to handle it;
- “Please handle it quickly, Comrade ***.”
  Meaning: The leaders might think that the issue was very important and wanted to get the result in a short time. I would mark it as a priority; and
- “Please handle it according to law, Comrade ***.”
  Meaning: The leaders may think that the issue is very complicated. He wanted not only to receive a report on case handling, but also an overall legal analysis with policy suggestions. The above food case is a good example.

Study, Training, Conferences, Investigation and Research
Each year the ministry’s work runs as follows. First, annual performance evaluations run from December of the previous year to the end of January of the new year, and we have to draft the current year’s key projects and assignments with reference to the Central Economic Work Conference and the State Council’s annual work plan. Second, we send cadres to attend the Two Sessions (the annual meetings of the National People’s Congress and Chinese People’s Political Consultative Conference) and answer inquiries there, bring back proposals and suggestions and provide an official reply before the end of the year. (As to the SCLAO, the major work was to handle those legislation proposals raised by delegates and members. Most of their proposals and suggestions, however, lacked specific content. Actually there were rarely ever laws ever enacted based on the delegates’ proposals.) Third, we would hold group celebration activities for the July
1st (Party’s festival) and October 1st (National Day). Fourth, we visited retired officials and staff, and donated food and goods to low income staff or members of the public around New Year’s Day and Spring Festival (Lunar New Year’s Day). For the remainder of the year, time was devoted to political study and training, business meetings, on-site investigations and business visits.

The Communist Party of China (CPC) holds a new Congress every five years. Its first session announces new theory and makes arrangement for work over the next five years. After the Congress adjourns, each ministry holds meeting to pass on the major content of the Congress document to each and every staff member, and arrange tasks and assignment to each functional department.

From 1997 to 2004 (the years I worked in the government), the CPC held its 15th and 16th Congresses. I underwent political study and education on the Three Represents; the Scientific Development Outlook; Three Emphasis on Study, Politic, and Integrity; and Keep the Advancement of Party Members. In addition to officials’ self study, the administrative agency also engaged officials who drafted CPC’s documents to give a lecture on understanding the letter and spirit of the Congress and its documents. For example, after the 15th Congress meeting in 1997, the Legislative Affairs Office invited a senior official from CPC’s Central Organization Department to discuss the Three Represents, especially to explain why private entrepreneurs were allowed to join the Party for the first time. Back then people were really confused about why the CPC, as the pioneer of workers, accepted into its ranks capitalists who exploit workers. Ministers and directors-general also needed to take a leave to participate in theoretical training, so that senior cadres could be united under the core political ideas of CPC Central Committee.

Before issuing draft laws, regulations, and policies, SCLAO always holds meetings to get outside input and build a working draft. During the period when I just joined the SCLAO, a lot of my time was spent on technical tasks, such as making phone calls, sending meeting notices, and delivering conference materials. After two years’ experiences and exposure, I started to take on more important roles, such as writing meeting minutes and drafting memos. When conducting an investigation trip, we might have specific target companies in mind. We might also ask local government or official industry associations to invite, on our behalf, companies or administrative agencies to attend. In the legislation of laws or regulations governing specific industries or sectors, we not only heard opinions from the ministry in charge of regulating a particular industry or sector, but also gathered views from the macro-control departments such as the National Development and Reform Commission, the Ministry of Finance, the People’s Bank of China, and the State Council’s Research Office. We seriously heard from everyone in order to offset any one regulator or industry ministry’s self interest. Furthermore, we needed to collect comments from companies, individuals subject to the laws and regulations, and get feedback from local governments. General requirement was that the target of investigation should represent major sub-groups, such as large enterprises, small- and medium-enterprises, or regions.
such as the eastern coastal area and western less developed areas, so that various opinions could be heard. In practice, however, most meetings and investigations had only symbolic meaning unless the working team was open to receiving good input or changing their position. There is no requirement that these various hearings have any binding effect. The working teams for new legislation already had a policy proposal in their mind. The meeting and investigations were usually held to find supporting evidence or objection from other ministries, so that the working team could develop a report to the State Council for supporting its proposal.

A Model of Open-Door Legislation --- The Case of Drafting the Administrative Licensing Law
Along with China’s reform and opening up, administrative power expanded and awareness of citizens’ right increased. The regulation of common government activities gradually brought the attention of legislators. The National People’s Congress Standing Committee (NPCSC), after adopting Administrative Litigation Law in 1989 and Administrative Punishment Law in 1996, shifted its focus to the legislation concerning administrative licensing. The Legislative Affairs Working Committee of the NPCSC started to conduct research and legislation of administrative licensing activities, and developed a draft of the Administrative Licensing Law for which it sought comments. However, they stopped there and achieved no further progress. The 9th NPCSC listed administrative licensing law in its Five-Year Legislation Plan, and moved the drafting responsibility from the Standing Committee to the State Council. Since the State Council’s new leadership carried out its work in 1998, SCLAO was busy working on the legislation on institutional reform, and it did not immediately spend time to take care of the legislation of administrative licensing law.

On May 21, 2000, Premier Zhu Rongji, read a report titled “Report on Relevant Facts on the Government Agencies’ Administrative Approvals against SOEs” and found that state-owned enterprises were often forced to abandon investment plans for good market opportunities because the necessary official seals and approvals came too slowly. He instructed the SCLAO to sort out and collect administrative approvals by all ministries, evaluate the effectiveness of these approvals, and conduct research on whether administrative approvals were in line with the requirements of a socialist market economy. On May 25th, the SCLAO kicked off the legislation of the Administrative Licensing Law. I had studied administrative law in law school, being the liaison with the working team to draft Administrative Licensing Law at National People’s Congress. Because of this and my good performance after joining the SCLAO, I was designated by the SCLAO leaders as the project leader for drafting the Administrative Licensing Law. From that day on, I started the busy legislation process, which was originally expected to be finished in one and a half years but ended up taking three years.

Legislation to Realize the Fruits of Reform
The legislative process is a long journey. There was no pre-existing draft bill of laws in my mind. After taking the assignment to draft Administrative Licensing Law, I started first from an
understanding of the overall situation of administrative approvals. For that purpose, I needed sort out all types of administrative approval items at various ministries and grasp firsthand information on administrative licensing activities. After three months of hard work, based on the original data from all ministries and my review and sorting, I became a master on the overall information on China’s central government’s approval items: 70 ministries and ministry-level agencies executed 2,800 approval items, with two-thirds of them being focused on economic affairs. Among those economic approval items, 447 items were related to qualification and certification of market subjects, which took 23.5% of full economic approvals. 1,201 items were related to the companies’ production and management activities (including 760 industrial product approvals), which took 63.2% of full economic approvals. For those affairs subject to government approval, most of them were issues that fell out of the government’s function and ought not be managed by administrative agencies or belonged to an area where government should focus on post supervision instead of prior approvals.

After grasping the overall situation at the central government level, I immediately arranged several field investigations and visited local governments and communities. We held a seminar in Hangzhou from September 10 to September 13, 2000, to discuss administrative approval reform. Officials from the Zhejiang provincial government’s Legislative Affairs Office, the Hangzhou and Ningbo city governments’ Legislative Affairs Bureaus were invited to participate. We then sponsored another seminar in Suzhou from September 14 to 16 to further discuss administrative approval reform, where officials from Suzhou City Government’s seven different bureaus shared their observations and thoughts. On the basis of those two seminars, SCLAO held the National Administrative Approval Reform Symposium from September 24 to 27 in Hangzhou, where representatives from ten local governments, eight central government ministries, and four law and economics professors met together to exchange views on various issues concerning administrative approval reform. Most complained that the government intervened in economic activity too deeply and broadly, thus imposing too many unnecessary costs on enterprises. To cite some examples, there were 2,487 administrative approval items from the Zhejiang provincial government, 1,344 administrative approval items from the Qingdao city government, 1,091 administrative approval items from the Shenzhen city government, and 37 administrative approvals at the Ministry of Land and Resources. Worse than that, there were numerous pre-approval and multi-approval items. There were around 163 businesses pending pre-approval before applying for a new company registration with industrial and commercial authorities. Hotels and hostels needed to apply for at least five administrative licensing certificates, including but not limited to public security, special profession, food hygiene, public health and other permits. Those grassroot visits and conferences helped me to deepen my analysis and evaluation of the administrative approval process in China. After several months of work, I wrote an essay titled “On the Strategic Issues of Administrative Approval Reform” and published it in the first issue of the Journal of the National College of Administration in 2001. In that paper, I proposed to carry out administrative approval reform under the guidance of the principles of legality, reasonableness, effectiveness, and liability.
Equipped with preliminary theoretical analysis, I organized two further seminars to discuss tough issues in legislation. In the two seminars, practitioners and experts debated the definition of administrative licensing in March and the categorization of administrative licensing in April. March was the busiest month for me in 2001. I attended the Two Sessions during the day, and conducted manual statistical analysis and categorized administrative approval items forwarded from various ministries during the night. I also needed to further render a proposal on which approval items should be kept, which should be delegated to local government, and which should be terminated. Although SCLAO leaders granted additional resources and staff to help me, I really wanted to conduct every important piece of the work by myself, as I knew this could be the only chance in my life to become a project leader on important legislation. I did not want to miss any work related to the legislation of Administrative Licensing Law. I recall very clearly that frequently working late into the night, skipping a lot of sleep that spring. If I ever got a chance to take the transportation shuttle home, I would spend most of the time on the bus sleeping! My hard work brought me rewards. Firstly, the National Administrative Approval Reform Action Plan, based on my proposal, was accepted by top leaders. The State Council announced in April 2001 that it would simplify and consolidate administrative approvals, and cut down 50% of the approval items held by all ministries. Secondly, I was granted the Minister’s Merit Award that year. Thirdly, I was recommend by the SCLAO to take IELTS (International English Language Testing System) and was selected to participate the EU-China Legal and Judicial Cooperation Program. I spent 10 months in the EU as a member of the Young Lawyers Sub-Program.

Technical Aid from Foreign Institutions
In the SCLAO’s legislative work, we kept our eyes open to other countries’ experiences and lessons. Working teams for a specific legislative project frequently entrusted Chinese embassies in other countries to collect relevant information on particular legislation. After learning that the SCLAO had started work on the legislation of the Administrative Licensing Law, the Asian Development Bank and Yale University’s China Law Center expressed high interest in funding the relevant research activities.

The SCLAO and Asia Development Bank signed an agreement on ADB Technical Aid (TA No. 3279 Development of Economic Laws) in 2000. ADB committed to provide funding support, engage foreign experts to conduct research jointly with SCLAO on key legislation issues, and provide consultation on the draft of Administrative Licensing Law. Afterwards, the SCLAO held a two-day International Symposium on Administrative Licensing on July 5th in Beijing, where five experts from Japan, the US, and Germany attended and shared the relevant legislation on administrative licensing in those foreign countries.

The Yale China Law Center invited me to fly to the US in November 2001. I conducted comparative research with a focus on US deregulation reform in 1970s and 1980s. Professor Paul
Gewirtz, Director of China Law Center, also introduced me to several law professors, economists, and former officials who participated in de-regulation reform. The research work there helped me better understand the scope of government functions and economic-social impact analysis of introducing a new license (which, finally, were incorporated into China’s Administrative Licensing Law), and also helped me become acquainted with a lot of US experts. Among them, Justice Stephen Breyer (US Supreme Court), Dr. Robert Litan (then Vice President of the Brookings Institution), Professor Peter Strauss (Columbia Law School), and Professor Jerry Mashaw (Yale Law School) all accepted invitations to attend the International Symposium on Government Regulation and Administrative Licensing on July 3, 2001.

During the aforementioned two international symposiums, Professor Strauss’s comments on the category of administrative license from a functional perspective attracted my attention. He divided licenses into three categories: registration purpose, the control of hazardous activities, and franchises with quotas. After the meeting, I was told that some US scholars thought that administrative licenses could be break into four categories: permits, such as a driver license; professional certifications, like a lawyer’s license; franchises, for example, a radio frequency; and general permits, such as a restaurant license. Those good ideas shed light on the categories of various and complicated licenses, and inspired my own further research and analysis. Finally, in the draft of the Administrative Licensing Law I prepared, administrative licenses were divided into five categories: ordinary permits, concessions, qualifications, technical verifications, and registrations, which incorporating, to some degree the fruit of US experts’ research.

“Three-in-One Combination:” Legislative Institutions, Regulatory Agencies and Academic Experts

I was a busy bee in the summer of 2001, but I was also quite productive. In addition to the preparation, logistics, and summary of the aforementioned two international symposiums, I took business trips to various cities in July and August to take more comments from companies and local governments. I first went to Ningbo to understand how its One-Stop Service Administrative Approvals Hall operated, and solicited comments on administrative licensing process provisions on the working draft of Administrative Licensing Law. Then I flew to Shenzhen to do a case study on foreign investment approval procedures there. My trip ended in Taiyuan, where I underwent the real experience of applying for a company registration and project construction approval. In August, the SCLAO organized three internal meetings, inviting 19 local governments, 21 ministries and 10 academics separately, to get their input on improving the yet underdeveloped working draft of Administrative Licensing Law.

Through those on-site visits and conferences, local governments’ best practices were presented to me and other members of the drafting team for Administrative Licensing Law. Those best practices were as follows:

- Combine the power of reviewing and approving the application from various administrative agencies and granted to one agency;
• Allow companies or individuals to submit their applications and receive feedback from a single window. The official in charge of handling an application was prohibited from directly contacting applicants; and
• Post all provisions on the administrative permit’s conditions, documentation, criteria, and timeline at the premises of the administrative agency’s to avoid under-the-table deals.

These practices increased the speed of approvals and improved their fairness. For these reasons, they were praised by the business community and individual citizens. So all of these practices were incorporated into the draft of the Administrative License Law that I developed.

Now had come time to finalize the draft. Other working team members and I locked ourselves in a government hotel in the Beijing suburbs and spent four full days going through the text of working draft from September 2 to September 5. After the meeting, we revised and developed the final working draft of Administrative Licensing Law. The draft was immediately approved by the SCLAO leaders and submitted to the State Council for the Premier’s review. Unfortunately, for various reasons, the draft was not adopted at the State Council’s Executive Meetings on September 21 and was returned for further revision.

After the meeting, I spent another 9 months with the working team to fine-tune the draft. We further invited local city governments in Nanjing, Ningbo, Jinan and Chengdu to review the chapter on the application and review procedures, convened conferences to hear comments from law professors on government compensation when an invalid license was revoked. The draft was rewritten to reflect the comments we received, and then sent to four foreign advisors engaged by the Asian Development Bank to benchmark foreign best practices. On June 19, 2001, the draft Administrative License Law was submitted to the State Council’s Executive Meeting for a second review. Premier Minister Zhu Rongji was satisfied with the draft this time, and the draft was approved by the State Council. Thereafter, the draft was submitted by the State Council to Standing Committee of National People’s Congress for its final review and became law on August 27, 2003, when the NPCSC adopted it.

After accomplishing the drafting assignment, I left Beijing in August 2002 and spent 10 months in Great Britain, Denmark, Belgium, Germany, Spain and other EU member states to visit and study EU law.

Moving to a Multinational Company
The legal education system in US and UK attracted me after my visit to Yale in US and to EU member states. After I came back from EU-China program in May 2003, I started the preparatory work to apply for further legal education at law schools in the US and planned to pursue an academic career. I fulfilled my dream of studying law at Yale Law School and was admitted to its LLM program in September 2004. Although I was an international student in a classroom dominated by top US students, professors did not lower the bar even a bit just because
I am Chinese. Fortunately, I not only got my master's degree, but also received honors in the courses on regulation and lawyers’ ethics, which was not an easy job even for American students.

The world never goes exactly in the direction that you expect and life has a lot of surprises. I encountered Stephen Maloy, then General Counsel for GE’s Asia business operations, in January of 2005. He successfully persuaded me to change my career plans and join GE (China) Co. Ltd to do public policy work. As I would work for a US company’s China subsidiary and take the position of an in-house lawyer, I registered myself for the New York Bar Examination in July of 2005. Fortunately I passed the bar exam with a very short preparation period and was admitted to the bar in New York. I flew back to Beijing in August. My work was still conducting legal policy related work, but I was no longer a government official. Instead I was part of a company’s staff.

I worked in GE China’s Legal Department for 6 years. In addition to providing legal advisory opinions, I actively participated in the legislative development of the Enterprise Bankruptcy Law, Financial Lease Law, Anti-Monopoly Law, the Regulations on the Administration of Foreign Invested Banks, the Regulations on the Implementation of Government Procurement Law, and other important business laws and policies. The goal and objective of my work was to ensure GE’s position and view was heard by the drafting team for those laws and policies, and to avoid big legal surprises that might obstruct company operations.

**Backstage work to facilitate the adoption of the new Enterprise Bankruptcy Law**

China’s original Bankruptcy Law over-protected employees’ interests. In other jurisdictions bankruptcy law usually makes it very clear that secured lenders’ claims against collateral are protected. There is a huge gap between the positions of the China Banking Regulatory Commission (CBRC), which represents commercial banks, and the All China Federation of Trade Unions, which stands for workers’ interests. The confrontation limited the legislature's efforts to draft a new enterprise bankruptcy law, which had been in process for around 20 years. GE, as a trade creditor and a money lender, wanted to see the new law recognize the priority status of secured creditors.

Therefore, I approached the China Law Society in June 2006 and persuaded them to organize a closed-door meeting and invite the banking regulator, the national workers union, and the legislative working team to discuss coordinating all parties' interests and moving the drafting process forward. I did not know that this was the first time for the CBRC and the All-China Federation of Trade Unions (ACFTU) had a face-to-face meeting and quietly exchange views. In the past, through their reporting channels to state leaders respectively, they criticized how the draft failed to recognize and protect their interests. The US lawyers that I invited shared their experience about how the various stakeholders negotiated and made compromises to reach a consensus in adopting the US Bankruptcy Act. They made a bold suggestion that China might find a middle, but feasible, way in balancing the interests of secured creditors and employees’
unpaid wages and salaries. He proposed to cap the amount of unpaid employee wages and salaries when the debtor went into bankruptcy. I noticed that most attendees were nodding when the proposal was raised. The legislation working team at Legislative Affairs Working Committee under the NPC Standing Committee immediately submitted a report on the conference to state leaders. The leadership was happy to see the compromise strategy and instructed the drafting team to conduct further research on how to reflect this in the draft law. The final proposal from the drafting team was to set up a cut-off date to terminate the employees’ priority and prioritize secured creditors’ interests. The deadlock was solved, and the new bankruptcy law, which had been languishing for nearly 20 years, was finally adopted by NPC Standing Committee in August 2006. Admittedly, the new law is a bit different from GE lawyers’ proposal. However, from the perspective of GE and other finance companies, it was much more favorable than the original law it replaced.

Modification of Merger Filing Threshold
The NPC adopted the Anti-Monopoly Law in 2008, but left the issue of setting the criteria to determine when companies needed to undergo a market concentration analysis and potential merger review to the State Council. The minimum filing threshold directly affects what type of business deals should go through prior review by the government before a company can close its merger, acquisition, or establishment of a joint venture. The initial draft penned by SCLAO was not good. Some US companies spoke very frankly about their disappointment. A few of them even brought the issue before the US government and urged it to step in. The working team felt that they had lost face before their boss and became even more antagonistic towards the critical companies. As a result, they did not conduct careful study of the companies’ suggestions and comments. I, however, took a different approach.

My status as a former colleague helped me this time. I was invited to attend a closed-door meeting convened by the working team in Mach 2009. Most of other attendees came from big SOEs, while I was the only person wearing the foreign invest enterprise hat. My American boss and I took the same flight to Xiamen for the company’s All-China Lawyers Meeting on the same day, and he also came to the meeting venue so that we could go together to the airport shortly after the meeting. He worried that his American face might spoil the commenting session, so he just sat there, listened to the discussion and did not make any comments. When I spoke, I first recognized the great work done by the working team in drafting the regulations and gave credit to the positive content in the draft regulations. Then, I tried to analyze how bad the draft regulation was even from the perspective of Chinese companies, instead of just talking about its negative impact on US companies. I presented my argument in this way so that the draft team could evaluate my comments without a negative reaction. I listed five unreasonable provisions under the draft regulations. For example, the market share standard was too subjective and unstable, the criteria focused on big companies but not on high concentration. Addressing over-concentration was supposed to be the Anti-Monopoly Law’s target. Then I concluded that the draft regulation departed from the central government’s policy to encourage SOEs to grow
bigger and stronger. I noticed that most officials attending the meeting nodded their heads while I spoke. Later on, four of my five suggestions were absorbed into the final version of the regulations. My regulatory policy work in the anti-monopoly law field earned me the Management Award from GE China that year.

**Boosting the Business Development of a Joint Venture**

I changed my job again in 2011 and took on an even bigger challenge. I became the Head of Legal and Compliance at Yingda International Leasing, a joint venture between GE Capital and one of China’s big SOEs, the State Grid. As a result, I did not have much time to engage in legislative and policy influence work any longer. In addition to legal work, as a member of the senior management team, I was accountable for business development. As a lawyer, one would think that this was a risk for any company’s business operations. For a management team member, the big risk, however, is to not having any business. To reach a balance, I needed identify what is an acceptable legal risk. Here what helped me again was my prior knowledge and experience of Chinese government operations, the reality of China’s legal enforcement, and policy development trends.

With the support from both companies’ shareholders, the company had good performance. It immediately developed business, and accomplished the integration of two different business cultures, and built up its infrastructure in the first year of its operations. It realized a net profit in its second year, which was one year ahead of the original business plan. In its third year, the company booked profit of RMB 80 million and doubled its registered capital. All of aforementioned deliverables were established without any major legal and compliance risks litigation, or delinquency in payments.

**Conclusion**

Looking back, I should say I have been very lucky. When I was young, the ladder to the central government opened so widely to a person who came from a grassroots family.

Even today, China is still an administratively-managed. Such agencies take a primary role in setting public policy. A company would be very difficult to success without fully understanding how the Chinese government operates and fitting its business strategy into government policy. Promotion in government rankings is the fundamental incentive for government officials in their career. Regardless of the context of various government agencies, the boss’s favorable opinion and society’s positive impression are two important deciding factors. For public policy, government officials really need social recognition to their work as a positive factor for their boss to decide to promote them, which creates room for the companies, individuals, and academics to engage Chinese government officials in the policy-making process.

Government officials care a lot about face, that is, their social image. Most officials know they
are not angels and their policies or decisions are not without fault. For them, however, the gap is between good and better, not good and bad. Therefore, the most effective way to engage officials is to offer a relatively positive evaluation and give credit to them for their past work and then provide constructive policy suggestions in a non-public venue. Doing this instead of providing more direct for policy improvements and sharply criticizing them in public circumstances, will facilitate the officials’ thirst for social recognition and fine-tune their working products.