

**Fiscal Considerations for Sustainable Public
Funding of Urban Old-Age Pensions in the
People's Republic of China**

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Statement of Originality

This is to certify that to the best of my knowledge, the content of this thesis is my own work. This thesis has not been submitted for any degree or other purposes. Any contribution made to the research by others, with whom I have worked at the University of Sydney or elsewhere, is explicitly acknowledged in the thesis.

I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.

Signed

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Date 17 December 2016

Acknowledgement

I dedicate this research to my late parents. It was my parents' unfailing encouragement and support that has enabled me to pursue my dreams.

The completion of this research would not have been possible without the patient guidance and frank criticism of my supervisor, Professor Tyrone Carlin. He was always available for consultation and provided invaluable insights at each stage of the process. I am especially grateful for his trust in me to venture down a less travelled path. His wise counsel during the process has taught me independence and collaboration, which gave me confidence as a researcher. His productivity and generosity have shown me the best example to continue my chosen career.

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Translation Note

Much of the literature for this research comes from Chinese language material. The author is an accredited translator certified by the National Accreditation Authority for Translators and Interpreters (NATTI) in Australia.¹ No other translation service was acquired for this research.

If not otherwise stated, the English language version of Chinese legislative material is sourced from Westlaw China.² Other Chinese language materials, including the actual policies of ancient Chinese dynasties and other ancient Chinese texts were translated by the author.

When translating Chinese proper nouns into English, there are different translation traditions. Some translators prefer to translate the meaning of the proper noun into English, others prefer to transliterate the pronunciation, thereby Romanising the term.

Contemporary transliteration is done by using the *Pinyin*³ of the term. There are other types of transliteration methods used by China Studies scholars. For example, the Wade-Giles method.⁴ In this research, when the Romanised proper noun of a work or person is not in *Pinyin*, earlier translations of the work by other scholars were available. If the title or name appears in *Pinyin*, or the meaning of the title of the work is translated into English, no earlier translation of the work was available during the literature search for this research. Where untranslated Chinese appears in the footnote in this thesis, the Chinese text is the original text of the phrase being discussed.

¹ NATTI Professional Translator: Chinese to English, NATTI number: 63930.

² Westlaw China Online (27 Nov. 2015).

³ 拼音. *Pinyin* is the official Mandarin phonetic system.

⁴ *Pinyin.info* Online, <<http://www.pinyin.info/romanization/wadegiles/>> (27 Dec.2015).

Abstract

China has well-established Old-Age Pensions policies for the different segments of its population, both as part of the current welfare policies framework as well as continuing a long established tradition of care for the elderly. Urban Old-Age Pensions policies are growing in importance in the increasingly urbanised economy of the People's Republic of China (PRC).

The PRC government continued with tradition in the policies that led to the enactment of the *Social Insurance Law of the People's Republic of China*⁵, and promised to fully fund Urban Old-Age Pensions. A common theme reported in the prevailing literature is that the PRC government does not have the ability to sustainably fund Urban Old-Age Pensions, citing both substantive and administrative causes of the short fall, and calling for changes to the Social Insurance Contributions policies to make the Urban Old-Age Pension schemes more sustainable. The prevailing literature, however, neglected the Chinese tradition that includes government policies to look after the elderly, and misconstrued the Social Insurance Contributions as insurance premiums.

This thesis investigated whether changes to funding policies are needed in order to meet the stated obligation of fully funding Urban Old-Age Pensions. The thesis investigated the sources of funding by collating all sources of fiscal revenue and then calculating whether this sum collected would successfully fund the required level of disbursed Urban Old-Age Pensions.

This thesis concludes that at current Urban Old-Age Pension replacement rates⁶, the PRC's fiscal structure can adequately fund Urban Old-Age Pensions at present benefit levels. Current studies on the sustainability of funding need to consider the data gathered and arguments made in this thesis so that they incorporate all sources of funding before stating that short falls in funding and lack of funding sustainability exist, or suggesting reform proposals.

⁵ Above note 2.

⁶ The Old-age Pension replacement rate is taken to be the rate Old-age Pensions is paid at as a percentage of National Average Wages Levels.

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⁷ Note that the currency conversion rate is approximately AUD 1 = RMB 5. <<http://www.boc.cn/sourcedb/whpj/>> (22 Apr 2016).

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Chapter I Introduction

1.1 Introduction

The People's Republic of China (PRC) began, in 2009, a process of enacting the *Social Insurance Law of the People's Republic of China (Social Insurance Law)*.⁸ This legislation was the result of many years of reform to re-establish social welfare in the PRC after the 1978 Open Door Policies⁹ were in place. Its promulgation collated the PRC's social security policies into the *Social Insurance Law*¹⁰ welfare framework.

The *Social Insurance Law*¹¹ entrenched in law the requirement that the PRC government provides five types of social security support for its people: Old-Age Pensions, Healthcare, Workers Compensation, Parental leave, and an unemployment safety net. These five forms of benefits are partially funded by compulsory Social Insurance Contributions made towards the Social Insurance Fund.

The PRC government's welfare policies in the *Social Insurance Law*¹² welfare framework were formulated in reaction to economic and social developments as the result of the 1978 Open Door Policy.¹³ Instead of focusing on providing welfare

⁸ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

⁹ 《中国共产党第十一届中央委员会第三次全体会议公报》 *Communiqué of The Third Plenum of the Eleventh Central Committee of the Communist Party of China* 1978 (The Central Committee of the Communist Party of China); 人民网, 《中共党史上的 80 件大事 (65) 党的十一届三中全会》, People's net, '80 Important Events in the History of the Communist Party of China', *people.cn*, 13 June 2001, <<http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488120.html>> (21 Feb. 2016); and 新华网, 《中共十一届三中全会 (1978)》, Xinhua Net, 'The Third Plenum of the Eleventh Central Committee of the Communist Party of China (1978)', *Xinhua Net*, <http://news.xinhuanet.com/ziliao/2003-01/20/content_697755.htm> (21 Feb. 2016).

¹⁰ Above note 8.

¹¹ Above note 8.

¹² Above note 8.

¹³ 《中国共产党第十一届中央委员会第三次全体会议公报》 *Communiqué of The Third Plenum of the Eleventh Central Committee of the Communist Party of China* 1978 (The Central Committee of the Communist Party of China); 人民网, 《中共党史上的 80 件大事 (65) 党的十一届三中全会》, People's net, '80 Important Events in the History of the Communist Party of China', *people.cn*, 13 June 2001, <<http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488120.html>> (21 Feb. 2016); and 新华网, 《中共十一届三中全会 (1978)》, Xinhua Net, 'The Third Plenum of the Eleventh Central Committee

through its role as an employer in the form of the public service or State Owned Enterprises, the government is providing welfare to its people as citizens through its fiscal policies.

The Urban Old-Age Pensions policies in this welfare framework signify that the PRC government is returning to tradition to look after its urban elderly. Urban Old-Age Pensions are no longer part of employment remuneration received by a State employee. The recent policy announcements¹⁴ to merge the Old-Age Pensions policy for public servants and government agency employees, and enterprise employees, further symbolises that the PRC government is shifting to a model based on the concept of urban employees as citizens, not as employees working for the State.

Policies on Social Insurance Contributions for Old-Age Pensions are the most developed in the *Social Insurance Law*¹⁵ welfare framework, especially the policies for the urban population. Urban Old-Age Pensions Social Insurance policies, however, have also received the most criticism. One major criticism of Urban Old-Age Pensions Social Insurance policies is that the PRC government does not have the ability to sustainably fund Urban Old-Age Pensions. The prevailing research into sustainability of Old-Age Pensions was published from 1997, when the reforms to establish a welfare policy framework that included Social Insurance Contributions were first put in place. Up till 2014, the criticism and presumptions in that research have not changed.

This is surprising in that, since 1997, the legal institutions and fiscal structure in the PRC have changed significantly. With the importance of Old-Age Pensions and given

of the Communist Party of China (1978)', *Xinhua Net*, <http://news.xinhuanet.com/ziliao/2003-01/20/content_697755.htm> (21 Feb. 2016).

¹⁴ 李金磊,《养老金并轨进入实质启动阶段 多地公布实施办法》, Li J, 'The Track Merge of Old-Age Pensions Schemes is Coming to the Implementation Stage – Many Places are Announcing Implementation Rules', *China News Net*, 5 March 2015, <<http://www.chinanews.com/cj/2015/08-05/7447764.shtml>> (5 Mar. 2015).

¹⁵ Above note 8.

the lack of updated research in this area, it is appropriate to re-analyse the ability of the PRC's government to sustainably fund Urban Old-Age Pensions.

Urban Old-Age Pensions as part of urban welfare policies in the PRC will become increasingly dominant in the PRC's *Social Insurance Law*¹⁶ welfare framework, because since the Open Door Policy reforms, especially after 1997, the PRC has also experienced increased rates of urbanisation. In 2014, the national urbanisation rate was 54.77%, and several developed cities – Beijing, Shanghai, Guangzhou and Shenzhen were experiencing urbanisation levels similar to that of developed countries.¹⁷

This thesis takes this opportunity to re-evaluate Urban Old-Age Pensions policies in the PRC, the possible sources of funding for those policies, and to suggest that in order to evaluate the sustainability of funding Urban Old-Age Pensions in the PRC, models should take into consideration the broader fiscal revenue structure.

This chapter identifies the research question, methodological approach and the structure of the research.

1.2 Research Question

This thesis asks the question:

In order to meet the requirements of the *Social Insurance Law of the People's Republic of China*¹⁸ to fully fund Urban Old-Age Pensions, does the government of the People's Republic of China need to make further considerations about the funding sustainability of its Urban Old-Age Pensions policies?

¹⁶ Above note 8.

¹⁷ 黄映川、广东省统计局,Huang Y & Statistics Bureau of Guangdong Province 《广东人口城镇化发展状况浅析》, 'A Brief Analysis of the Urbanisation of the Population of the Guangdong Province', *Guangdong Statistics Net*, <http://www.gdstats.gov.cn/tjzl/tjfx/201411/t20141110_184244.html>(24 Jul. 2015); and *World Bank Database*, Online <<http://data.worldbank.org/topic/urban-development>> (18 Apr. 2016).

¹⁸ Above note 8.

In this thesis, Urban Old-Age Pensions policies refer to Old-Age Pensions policies under the *Social Insurance Law*¹⁹ that cover urban employees. Urban employees include public servants and government agency employees, and enterprise employees. Public servants and government agency employees are collectively referred to as government employees in this research.

The urban population in the PRC includes more than those who have urban residence registration (*Hukou*)²⁰, it also includes workers who migrated from rural areas to urban areas to seek employment, that is, migrant workers. The coverage of the Urban Old-Age Pensions policies include migrant workers.

Funding sustainability has the same meaning as that in the prevailing literature, for example, as referred to in Yang's model.²¹ Sustainability refers to the long term viability of the policy.

1.3 Demographic Reasons for Focusing on the Urban Old-Age Pensions Scheme

This thesis examines the Urban Old-Age Pensions scheme in the PRC. There are two material reasons for focusing on the urban population. One of the reasons relate to the general ageing population debate, and the perspective taken on this debate for the purposes of this research. Another reason is that the PRC is experiencing increasing rates of urbanisation, therefore urban social welfare policies will continue to increase in significance in the PRC's *Social Insurance Law*²² welfare framework.

¹⁹ Above note 8.

²⁰ 《中华人民共和国户口登记条例》 *Resident Registration Regulation of the People's Republic of China* 1958 (National People's Congress).

²¹ 杨晓茜, 《中国城镇居民养老保险体系的可持续性研究》, Yang X, 'A Study of the Sustainability of the Urban Old-Age Pensions Insurance System in China', (2014) 238 *International Economics and Trade* (4) 147.

²² Above note 8.

1.3.1 Demystifying the “Ageing Population” Problem

The Old-Age Pensions literature often refers to the “ageing population” problem, the literature on the present Old-Age Pensions reform in the PRC is no exception.²³ The issue at the centre of this problem is the increasing old age dependency ratio. The old age dependency ratio is a ratio of the number of retirees per 100 persons of working age.²⁴ Persons of working age often refers to people between 15 and 64 years old.²⁵ The general view is that the increase in old age dependency ratio in the population means the cost of maintaining the retired population will increase, thereby increasing the burden on the welfare state. Based on national data from the National Bureau of Statistics of China, the old age dependency ratio in the PRC was 13.7 in 2014,²⁶ which was much lower than Germany – 32, Australia – 22, the USA – 22, and the UK – 28.²⁷

Apps and Rees in their book *Public Economics and the Household*²⁸ and many other publications,²⁹ concluded that the “ageing population” problem is a myth, and associated solutions of promoting the birth rate may not lower the burden on the welfare state. Their conclusion was reached by using a different model to look at the relationship between demographic changes, public good provision, productivity growth and cost of welfare. Instead of using the individual as the data unit, their research considered the nuclear family (parents and dependant children). In their research, they

²³ For example, see Hu N & Yang Y, ‘The Real Old-Age Dependency Ratio and the Inadequacy of Public Pensions Finance in China’, (2012) 5 *Journal of Population Ageing* 193; and the critique of the literature in Apps P, Rees R, & Wood M, ‘Population Ageing, Taxation, Pensions and Health Costs’, (2007) 10 *Australian Journal of Labour Economics* 79.

²⁴ Ibid.

²⁵ See *OECD Database*, Online <<https://data.oecd.org/pop/working-age-population.htm>> (6 Sep. 2015); and *World Bank Database*, Online <<http://data.worldbank.org/indicator/SP.POP.DPND>> (6 Sep. 2015).

²⁶ *Database of the National Bureau of Statistics of China (Chinese Version)* Online <<http://data.stats.gov.cn/>> (25 Aug. 2015), please also see Appendix A and B.

²⁷ *World Bank Database*, Online <<http://data.worldbank.org/indicator/SP.POP.DPND>> (6 Sep. 2015).

²⁸ Apps P & Rees R, *Public Economics and the Household*, (Melbourne: Cambridge University Press, 2009).

²⁹ For example, Apps P & Rees R, ‘Australian Family Tax Reform and the Targeting Fallacy’, (2010) 43 *Australian Economic Review* 153; Apps P, ‘The High Taxation of Working Families’, (2004) 5 *Australian Review of Public Affairs* (December) 1; and Apps P, Rees R, & Wood M, ‘Population Ageing, Taxation, Pensions and Health Costs’, (2007) 10 *Australian Journal of Labour Economics* 79.

weighed the cost of bringing up a child (who has never paid tax) and the cost of maintaining a retired person (who has paid taxes during their working life); and the impact on economic growth made by productivity growth caused by technical advances. In their research the years as a child and life expectancy of a person after retirement is assumed to be similar.³⁰

This research utilises the conclusion made by Apps and Rees, therefore it does not take the “ageing population” as a factor that requires further analysis. The much lower old age dependency ratio in the PRC than that of Australia and Germany (the data set in the research of Apps and Rees³¹) further makes allowances for not considering this problem.

1.3.2 Urbanisation in the PRC

Urbanisation in the PRC is gradually increasing, and increasing at a faster rate. The increasingly urbanised population means urban social welfare policies will continue to increase in significance, as they will cover a larger proportion of the population as the economy continues to grow.

Post 1978 economic reforms mean the PRC is now in the post Open Door Policy era.³² It has returned to treating welfare policies as policies for the whole population. In regards to Old-Age Pensions, this is returning to the Chinese policy tradition of looking after the elderly by the State. The major difference between the days when that tradition developed to the contemporary policies is that the demography of the country has changed significantly. The policies in ancient China were targeted at a very agricultural population. The contemporary policies are focused on the urban population. Economic

³⁰ Ibid.

³¹ Apps P & Rees R, *Public Economics and the Household*, (Melbourne: Cambridge University Press, 2009).

³² Above note 9.

developments and urbanisation trends meant it has become increasingly important for the nation to gradually reorganise the economy from the dual urban-rural planes into a uniformed economy.³³

Although the rural population still accounted for 50.32% of total population³⁴ when this research began; as identified by the Chinese Academy of Social Sciences in 2009, rural GDP would account for less than 10% of total GDP by 2010.³⁵ Urbanisation is a key policy objective of the *Twelfth Five-year Plan*.³⁶

Table 1-1 following is an empirical illustration of urbanisation in the PRC. The urban population is taken to be people who habitually live in urban areas,³⁷ it is not the same as the number of people who hold urban *Hukou*.³⁸ The data used are from the National Data database of the National Bureau of Statistics of China.³⁹

Table 1-1 illustrates the relationship between urbanisation and economic development in the different provinces. In 2014, the national GDP average in the PRC was approximately RMB 2.2 Trillion,⁴⁰ the national urbanisation rate was 54.77%, and the national average of urbanisation growth rate was 1.331 percentage points per annum.

³³ 白永秀,《由“前改革时代”到“后改革时代”》, Bai Y, ‘From the “Pre-reform” Era to the “Post-reform” Era’, (2010) 40 *Journal of Northwest University (Philosophy and Social Sciences Edition)* (No.2) 5, at 5-6.

³⁴ 中华人民共和国国家统计局,《2010年第六次全国人口普查主要数据公报[1] (第1号)》, National Bureau of Statistics of China, *Important Data of the 6th National Census 2010 No 1*; <http://www.stats.gov.cn/tjgb/rkpcgb/qgrkpcgb/t20110428_402722232.htm> (19 Feb. 2012).

³⁵ 中国新闻网,《社科院: 明年农业产值占 GDP 比重下降到 10% 以下》 Chinanews, ‘The Chinese Academy of Social Sciences: Agricultural GDP Will Account for Less Than 10% Of Total GDP Next Year’, *Chinanews*, 21 December 2009, <<http://www.chinanews.com/cj/cj-gncj/news/2009/12-21/2028674.shtml>> (17 Oct. 2012).

³⁶ 新华社,《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, Xinhua Press, ‘Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People’s Republic of China’, *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012), at ch 1.

³⁷ 常住人口.

³⁸ 户籍人口.

³⁹ *Database of the National Bureau of Statistics of China (Chinese Version)*, Online <<http://data.stats.gov.cn/>> (25 Aug. 2015). A limited English version of the data are available at: <<http://data.stats.gov.cn/english/>>. Data assessed for this research came from the Chinese version.

⁴⁰ RMB 2,207.31 Billion. This is approximately AUD 441.46 Billion.

Table 1-1 Provincial Urbanisation Rate Ranked by Annual GDP 2014

Locality	GDP (RMB Billion)	GDP Rank	Urbanisation rate	Urbanisation rank	Average Growth rate ⁴¹
National⁴²	63,436.73		54.77%		1.331
Provincial Aggregate⁴³	68,426.75				
Guangdong	6,779.22	1	68.00%	4	0.804
Jiangsu	6,508.83	2	65.21%	6	1.786
Shandong	5,942.66	3	55.01%	13	1.112
Zhejiang	4,015.35	4	64.87%	7	1.090
Henan	3,493.94	5	45.20%	27	1.607
Hebei	2,942.12	6	49.32%	21	1.301
Liaoning	2,862.66	7	67.05%	5	1.050
Sichuan	2,853.67	8	46.30%	24	1.505
Hubei	2,736.70	9	55.67%	12	1.556
Hunan	2,704.85	10	49.28%	22	1.304
Fujian	2,405.58	11	61.80%	8	1.469
Shanghai	2,356.09	12	89.57%	1	0.102
Beijing	2,133.08	13	86.34%	2	0.313
Anhui	2,084.88	14	49.15%	23	1.520
Inner Mongolia	1,776.95	15	59.52%	10	1.431
Shaanxi (陕西) ⁴⁴	1,768.99	16	52.58%	18	1.356
Tianjin	1,572.25	17	82.27%	3	0.885
Jiangxi	1,570.86	18	50.22%	19	1.471
Guangxi	1,567.30	19	46.00%	26	1.398
Heilongjiang	1,503.94	20	58.02%	11	0.547
Chongqing	1,426.54	21	59.61%	9	1.643
Jilin	1,380.38	22	54.83%	14	0.200
Yunnan	1,281.46	23	41.73%	28	1.397
Shanxi(山西)	1,275.94	24	53.78%	16	1.356
Xinjiang	926.41	25	46.08%	25	1.001
Guizhou	925.10	26	40.02%	30	1.536
Gansu	683.53	27	41.68%	29	1.289
Hainan	350.07	28	53.82%	15	0.935
Ningxia	275.21	29	53.63%	17	1.299
Qinghai	230.11	30	49.74%	20	1.306
Tibet	92.08	31	25.79%	31	0.447

Detailed statistical calculation was performed on EViews.⁴⁵ See Appendix A for detailed results on the urbanisation and economic development of the PRC and its

⁴¹ Percentage points taken to 3 decimal points. Please see Appendix A for calculations.

⁴² Above note 39.

⁴³ Note that the aggregate differs slightly from the National figure. Overlap may occur when provinces collect data independently from the National Bureau of Statistics.

⁴⁴ The provinces of Shannxi and Shanxi are distinguished by spelling because their Pinyin is the same. The pronunciation in Mandarin differs only in tone.

⁴⁵ EViews is a quantitative analysis software.

provinces. The statistics showed a rough positive correlation between GDP rank and urbanisation rank, but no correlation between GDP rank and urbanisation growth. This is because the highly urbanised areas are areas that are already more developed at the beginning of the data period, that is, in 2005.

The three provinces ranked highest by urbanisation rank were Beijing, Shanghai and Tianjin. These three provinces are the original Municipalities Directly under the Central Government.⁴⁶ All three are cities directly controlled by the central government, and which always had a small rural population. The correlation between urbanisation and economic growth are less significant for these three cities.

The urbanisation ranking of the Guangdong and Jiangsu provinces correlate positively to their GDP levels, therefore the urbanisation level and economic growth for the two most developed provinces in the PRC are aligned.

It is also worth noting Guangzhou and Shenzhen as prefecture level cities. Guangzhou is the capital city of the Guangdong Province. Shenzhen is one of the earliest special economic zones in the PRC, and it is also located in the Guangdong Province. Along with Beijing and Shanghai, these two cities are considered as the most developed in the PRC, and their urbanisation rates are at developed economy levels⁴⁷ (above 80%). Guangzhou's urbanisation rate was 85.27% in 2013. Shenzhen's urbanisation rate was 100% since it became a city without a rural area on 29 June 2004,⁴⁸ that is, Shenzhen no longer has locals with rural *Hukou*. The urbanisation statistics for the four most

⁴⁶ 直辖市. See above note 954, Arts 95 & 97. Chongqing as a central, industrial and highly populated city that is important for defence purposes was added later in 1997.

⁴⁷ Above note 17.

⁴⁸ 胡谋、范勤学著,陈健编,《深圳成为全国首个无农村无农民的城市》Hu M & Fan Q in Chen J ed, 'Shenzhen Becomes the First City in China that does not Have Villages and Rural Residents', *people.cn*, 29 June 2004, <<http://www.people.com.cn/GB/shizheng/14562/2605584.html>> (6 Sep. 2015); and 《深圳市宝安龙岗城市化土地管理办法》*Shenzhen Baoan & Longgang Urban Land Management Rule* 2004 (Shenzhen Prefecture Government).

developed provinces in the PRC illustrated that as the economy in the PRC continues to grow, urbanisation of its population will continue to grow.

Figure 1-1 is reproduced from Figure A-1 of Appendix A. It illustrates the urbanisation growth trend in the PRC and a few representative provinces in the 10 years from 2005 to 2014. Detailed calculation of that trend is reported in Appendix A.

Figure 1-1 10 year Average Urbanisation Growth Rates (in percentage points) of the PRC and a few Representative Provinces 2005-2014.

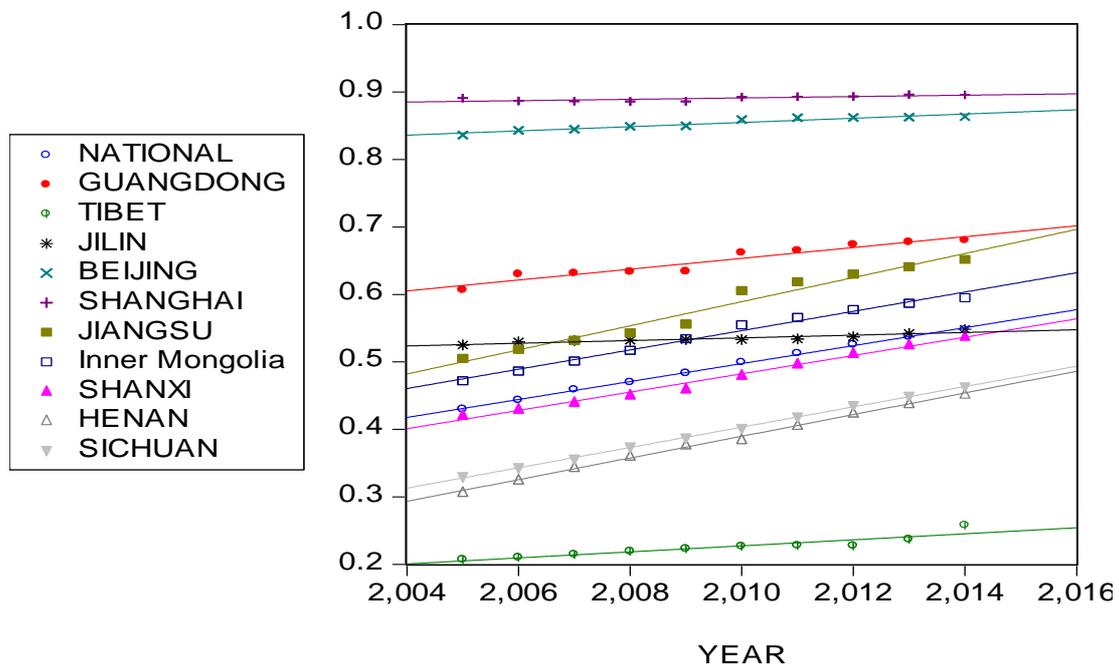


Figure 1-1 only reported on the urbanisation trend of representative provinces. Provinces that exhibited similar traits to the representative provinces had similar urbanisation trends.

The representative provinces were selected based on the following criteria: GDP level, nature of the economy, whether there is a dominant industry, urbanisation rate, whether the province is a major contributor of migrant workers to the more developed provinces, and whether the province has a dominant minority ethnic group. The representative

provinces chosen are Guangdong, Jiangsu, Tibet, Jilin, Inner Mongolia, Shanxi, Henan, and Sichuan.

Guangdong was chosen because it had the highest GDP in 2014. Its GDP was much higher than the national average of RMB 2.2 Trillion. Its urbanisation rate was 68% and ranked 3rd nationally in 2014. Its 10 year urbanisation growth trend was 0.804 percentage points per annum, slower than the national urbanisation growth trend.

Jiangsu was chosen because it was the second richest province and it exhibited the highest urbanisation growth, at a 10 year urbanisation growth trend of 1.786 percentage points per annum. Its urbanisation growth was 0.455 percentage points faster than the national average of 1.331 percentage points per annum. Its urbanisation rate was 65.21% and ranked 4th nationally in 2014.

Tibet was chosen because it was the poorest province. Its main residents are from the Tibetan ethnic group, and its urbanisation rate was the lowest. Its urbanisation growth was very slow, but its population size was only 0.234% of the national population in 2014, which is negligible for the purposes of this research. Its 10 year urbanisation growth trend was 0.447 percentage points per annum.

Jilin was chosen because it is one of the old industrial areas,⁴⁹ its economy moves at a very slow pace, its GDP of RMB 1.38 Trillion⁵⁰ in 2014 was only approximately 62.5% of the national average of RMB 2.2 Trillion. Its urbanisation growth was also very slow. Its 10 year urbanisation growth trend was 0.200 percentage points per annum.

⁴⁹ An old industrial area is one that is accounted for as an industrial area before 1949. The *Thirteenth Five-year Plan* targets these old industrial areas as one of its thematic policy goals. 网易财经, 《“十三五”规划最全梳理》, 163 Money, ‘The Most Comprehensive Summary of the Thirteenth Five-year Plan’, 163 Money, <<http://money.163.com/15/1015/13/B5VK7HFR00253B0H.html>> (2 Nov. 2015).

⁵⁰ RMB 1,380.38 Billion. This is approximately AUD 276.08 Billion.

Inner Mongolia was chosen because it is a western province. The central government directs beneficial development policies towards western provinces. Inner Mongolia has a large population of the Mongolian ethnic group. It is also a relatively rich western province. Its 10 year urbanisation growth trend was 1.431 percentage points per annum.

Shanxi was chosen because it is a relatively poor western province. It has difficult corruption problems, especially with regard to the coal mining industry. Since the current leadership began to crack down on corruption, Shanxi is one of the provinces that had the most corruption investigations and convictions. Its 10 year urbanisation growth trend was 1.356 percentage points per annum.

Henan was chosen because it is one of the provinces in central China that exhibit the following characteristics: large population size, source of rural emigrant workers, lower urbanisation rates (nationally, Henan ranked 24 in 2014) and a source of the higher urbanisation rates of the wealthier provinces. Other similar provinces are Hebei, Hunan, Hubei and Shandong. Henan had the highest GDP out of these provinces in 2014, nationally, its GDP ranked No. 5. Its 10 year urbanisation growth trend was 1.607 percentage points per annum.

Sichuan was chosen because it is a south western province that exports many rural migrant workers, its population is mainly of the Han majority ethnic group. Other similar provinces are Yunnan, Chongqing, Guizhou, and Guangxi. Chongqing is a provincial level Municipality Directly under the Central Government. Yunnan, Guizhou and Guangxi have large populations of people of minority ethnic groups. These south western provinces differ from the population mix of the rest of the PRC because more beneficial development policies are directed towards these provinces. Sichuan's 10 year urbanisation growth trend was 1.505 percentage points per annum.

Internationally, the urbanisation rate of developed economies is approximately 80%.⁵¹ Beijing and Shanghai were chosen because they are developed, and they have a very high urbanisation rate. As urbanisation continues to increase in the PRC, the Old-Age Pensions policies for the urban population will grow in importance in the PRC's welfare state. Consequently, the scheme for the rural population will decrease in importance.

As urbanisation gradually increases in the PRC, more people will be covered by the Urban Old-Age Pensions scheme. Therefore, it is increasingly important to understand the policy structure and sustainability of the Urban Old-Age Pensions Scheme.

1.4 Outline of the Thesis

The *Social Insurance Law*⁵² represents the PRC government's promise to fully fund five social security benefits, including Old-Age Pensions. This thesis examines the fiscal considerations for sustainable public funding of Urban Old-Age Pensions.

Chapter II briefly outlines current laws that regulate Urban Old-Age Pensions in the PRC. This discussion contextualises Urban Old-Age Pensions in the *Social Insurance Law*⁵³ welfare framework, and explains the regulations for the administration of benefits, and the funding of these benefits by Social Insurance Contributions and subsidies from consolidated revenue.

Chapter III reviews the arguments in the prevailing literature in relation to the lack of sustainability in the funding of Urban Old-Age Pensions. This literature suggested reasons for the lack of sustainability and possible solutions. Some of the solutions are substantive, others are administrative. This review prosecutes the case that the

⁵¹ *World Bank Database*, Online <<http://data.worldbank.org/topic/urban-development>> (18 Apr. 2016).

⁵² Above note 8.

⁵³ Above note 8.

presumption in the literature that contributed to the conclusion of unsustainable funding is flawed, and many gaps exist in the literature. Before filling these gaps, it would be difficult to make a conclusive argument that the Urban Old-Age Pensions policies in the *Social Insurance Law*⁵⁴ welfare framework are not sustainable.

Chapter IV is the first step in this research to reconsider Urban Old-Age Pensions policies in the PRC. It explains the Chinese policy tradition of looking after the elderly by the government. This chapter also reports on historical policies that looked after people's livelihoods, emphasising on looking after the elderly. It also offers an analysis of what constitutes as law in ancient China⁵⁵, in order to suggest that, although the historical policies were not promulgated as law in the western sense, they indeed had the force of law. This chapter provides the basis for arguing that the PRC government is returning to policy tradition in the *Social Insurance Law*⁵⁶ framework, and that its promise to fully fund Urban Old-Age Pensions is made based on the government making a promise to its citizens.

Chapter V is the second step in the research. It analyses the institutional developments in the PRC since 1949. Urban Old-Age Pensions policy developments are reviewed as part of the analysis. The chapter argues that up till the Open Door Policy in 1978, the PRC's Urban Old-Age Pensions policies were administered as if they were employment remuneration for urban enterprise employees. At the time, the majority of the working age population in urban areas were working for the government, either as government employees, or employees of State Owned Enterprises. 1997 was identified as the year when major reform happened to Urban Old-Age Pensions policy that returned

⁵⁴ Above note 8.

⁵⁵ In this research, the term "China" is used to refer to the geographical area that shared history, culture and the written language. It is not used to refer to a particular sovereign State.

⁵⁶ Above note 8.

enterprise administered employee welfare to social welfare provided for and administered by the State. From 1997 onwards, the PRC has developed a practicable set of institutions, including the legal system that supports the provision of Urban Old-Age Pensions to beneficiaries. This institutional framework also supports the implementation of laws that regulate revenue collection, part of that collected revenue funds Urban Old-Age Pensions as a public good. Prior literature did not include these new institutional developments which results in a gap in that literature.

Chapter VI and VII form the third step in the research. Chapter VI is a fiscal study that analyses the funding of Urban Old-Age Pensions as a public good by the PRC's fiscal revenue structure. It analyses the revenue collected according to different types of fiscal laws, and concludes that non-earmarked formal tax revenue could be sourced to subsidise the funding of Urban Old-Age Pensions.

Chapter VII is a static feasibility study that tests the funding ability of the Urban Old-Age Pensions scheme against three funding pools from the PRC's fiscal structure. The analysis is performed with respect to the generational contracts model of funding Old-Age Pensions.⁵⁷ That is, the current generation of working age people contribute to fund the retirements of current retirees. The purpose of the static study is to illustrate the changes to the ability of the PRC to fund Urban Old-Age Pensions when more sources of funds are taken into account as allowed by the *Social Insurance Law*.⁵⁸

Chapter VIII concludes this research and identifies areas for future research. Chapter VIII also discusses challenges arising from the conclusions of this research.

⁵⁷ For a full static analysis, see for example, Verbon HAA, 'Explaining Pay-as-you-go Financed Public Pensions Systems' (1988) 28 *Economics Letters* 181, at 184-185.

⁵⁸ Above note 8.

1.5 Methodological Note

This research is interdisciplinary⁵⁹ in nature, and the chapters utilise different methodology to contribute to answering the research question. It follows a pragmatist research paradigm,⁶⁰ where the research problem is more important than the choice of methods. The disciplines contributing to this research are history, law, economics and sociology.

When governments make fiscal policy, the process often begins by identifying a social or economic problem that needs to be regulated, the government then studies the problem to create social and economic policy. Once the policy is made, a cost and benefits analysis is made, then laws are drafted to be presented to the legislature. During the implementation of the law, the policy is re-examined for the purpose of necessary reforms. This research contributes to the policy re-examination process for Urban Old-Age Pensions in the PRC.

Chapter II is an outline of the legal requirements for the Urban Old-Age Pensions scheme in the PRC. The chapter reports results from a textual legal study of the *Social Insurance Law*⁶¹ and associated regulations.

Chapter IV reports on a historical study of China's traditional welfare state. The chapter applies historical-comparative research methods⁶² to identify that historically, the sovereign in China had the responsibility to provide social welfare to their people, and there were real policies to look after the elderly. This is a single nation, past time,

⁵⁹ Repko AF, Newell WH, & Szostak R, *Case Studies in Interdisciplinary Research*, (Singapore: Sage, 2012), 8-11.

⁶⁰ Creswell JW, *Research Design Qualitative, Quantitative, and Mixed Methods Approaches*, 2nd ed, (Los Angeles: Sage Publications, 2003), at 11.

⁶¹ Above note 8.

⁶² Neuman WL, *Social Research Methods - Qualitative and Quantitative Approaches*, (Sydney: Pearson Education, Inc., 5th ed, 2003), at 39.

qualitative data type historical-comparative study⁶³ that compares policies in the different dynasties. It also compares the function of *Li* rules, which is an important element in ancient China's governance structure, to the functions of modern laws, in order to give context that the traditional policies to care for the elderly had the force of law.

Chapter IV treats ancient Chinese theories on people's livelihoods and the importance of filial piety as having the force of law. The force of law is analysed by applying Weber's core interpretative sociology concepts⁶⁴ to analyse the functions of the ancient policy documents, and drawing a comparison between Fuller's understanding of the Rule of Law⁶⁵ and those identified functions. The method of the analysis is explained as part of the analysis in Chapter IV.

The chapter then reports the results of content analysis⁶⁶ on qualitative data. For the ancient period, the data is in the form of ancient Chinese court documents and official readings for the different dynasties. Those documents help gain an understanding of ancient policies to look after the elderly.

Chapter V reports on an analysis of the changes in the PRC's institutional framework. The chapter reports results of content analysis of qualitative data.⁶⁷ The data is in the form of Communist party policy documents, the *Twelfth Five-year Plan*,⁶⁸ and

⁶³ Id, at 405-407.

⁶⁴ Weber M, *Economy and Society an Outline of Interpretive Sociology*, Roth G & Wittich C, eds, (Berkeley: University of California Press, 1978).

⁶⁵ Fuller LL, *The Morality of Law*, (New Haven: Yale University Press, revised ed, 1968), at 46-91.

⁶⁶ Above note 62, at 36-37.

⁶⁷ Above note 62, at 36-37.

⁶⁸新华社,《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, Xinhua Press, 'Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People's Republic of China', *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012).

regulatory documents in the periods that are significant for the development of Urban Old-Age Pensions policies.

Chapter VI contains the analysis of the possible sources of funding for Urban Old-Age Pensions. It first briefly analyses the PRC's budget and tax system structure to understand the PRC's fiscal revenue structure. It then builds an income tax model to study the incidence of Urban Old-Age Pensions Social Insurance Contributions. The next step is an income tax analysis within a welfare economics framework.⁶⁹ The actual methodology contributes to answering the research question, it is explained in Chapter VI itself.

Chapter VII is a feasibility study of the ability of the PRC's public revenue structure to sustainably fund Old-Age Pensions for the urban population. This feasibility study is a case study.⁷⁰ Detailed study methodology is contained in that chapter.

⁶⁹ Kaplow L, *The Theory of Taxation and Public Economics*, (Princeton and Oxford: Princeton University Press, 2008).

⁷⁰ Yin R, *Case Study Research Design and Methods*, (Thousand Oaks CA: Sage, 4th ed, 2009), at 14.

Chapter II The PRC Government's Promise

2.1 Introduction

Inherent in the Chinese culture is the obligation to care for the elderly. The laws of the People's Republic of China (PRC) capture this promise. These laws are the result of years of reform of welfare policies in the PRC, cumulating in the core piece of legislation, the *Social Insurance Law of the People's Republic of China*,⁷¹ which took effect in 2010. This chapter outlines the legal provisions that establish the basis upon which the PRC fulfils the promise to look after its urban elderly.

The *Social Insurance Law*⁷² welfare framework contains requirements for funding Urban Old-Age Pensions. Section 2.2 explains the different forms of law-documents in the PRC, each of which, regardless of their apparent importance, has legal standing when they perform regulatory functions. Section 2.3 outlines the legal provisions in relation to Urban Old-Age Pensions within the *Social Insurance Law*⁷³ welfare framework. Section 2.4 concludes the chapter.

2.2 Sources of Law in the PRC

The laws of the PRC arise in different forms. This research refers to them collectively as law-documents. These law-documents include, in decreasing order of priority:

⁷¹ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

⁷² *Ibid.*

⁷³ *Ibid.*

Legislation,⁷⁴ Administrative Regulation,⁷⁵ Local Regulation, Autonomous Regulation, Separate Regulation and Rules,⁷⁶ and Ministerial Rules.⁷⁷

Legislation⁷⁸ in the PRC refers specifically to the laws made by the National People's Congress or its Standing Committee.⁷⁹ There are two types of Legislation in the PRC. Basic Laws are made and amended by the National People's Congress in its full session. They regulate issues of national importance and issues that relate generally to the people, such as the criminal law, civil law and laws of the government organs. Specific Laws are laws that are usually made by the National People's Congress's Standing Committee. The *Social Insurance Law*⁸⁰ is a specific law.

Administrative Regulations are law-documents made by the State Council according to the *Constitution*⁸¹ and the *Legislation Law*.⁸² Orders issued by the State Council are Administrative Regulations.

Local Regulations, Autonomous Regulations, Separate Regulations and Rules are made by People's Congresses and their Standing Committees at local government areas. These law-documents regulate the implementation of the national level law-documents at the local government area.

Ministerial Rules are made by the functional ministries in relation to their administrative functions. Article 2 of Chapter 1 of the *Administrative Procedure Law*

⁷⁴ 《中华人民共和国立法法》 *Legislation Law of the People's Republic of China* 2015 (National People's Congress), ch II. 法律.

⁷⁵ Id, ch III. 行政法规.

⁷⁶ Above note 74, ch IV, s1. 地方性法规、自治条例和单行条例.

⁷⁷ Above note 74, ch IV, s 2. 规章.

⁷⁸ 《中华人民共和国宪法》 *The Constitution of the People's Republic of China* 2004 (National People's Congress), Art 58.

⁷⁹ The roles and how laws can be made by the Standing Committee of the National People's Congress are regulated by the *Constitution* in ch III, s 1. Above note 78. The procedural rules of law making by the National People's Congress and its Standing Committee are regulated by above note 74 in ch II, ss 2 & 3 respectively.

⁸⁰ Above note 71.

⁸¹ Above note 78.

⁸² Above note 74.

of the PRC⁸³ specifically includes these Rules in relation to administrative procedures, that is, citizens and legal persons in the PRC could sue a government organisation when they have not performed their functions according to the Rules made by themselves.

Regardless of its priority as law-documents, each source of law has valid standing in court and are relevant to any analysis of the PRC's legal system. For the purposes of analysing funding Urban Old-Age Pensions, all forms of law-documents are considered for their content.

2.3 The Law Regulating Urban Old-Age Pensions in the PRC

The Urban Old-Age Pension in the PRC is a social welfare scheme partially funded by a Social Insurance scheme. The law in the PRC regulates the nature of the scheme, the collection and administration of Social Insurance Contributions, the payment of pensions and the entitlement of participants. The discussion is divided into what is provided and how it is administered, collected and disbursed. Section 2.3.1 presents an account of the PRC's welfare framework under the *Social Insurance Law*.⁸⁴ Section 2.3.2 explains the legal requirements for the collection, and administration of Social Insurance Contributions; as well as the payment of pensions and participant entitlements.

2.3.1 The Welfare Framework under the Social Insurance Law⁸⁵

The *Social Insurance Law*⁸⁶ regulates the PRC's Social Insurance based welfare policies. There are five types of Social Insurances corresponding to five types of social

⁸³ 《中华人民共和国行政诉讼法》 *Administrative Procedure Law of the People's Republic of China* 2014 (Standing Committee of the National People's Congress).

⁸⁴ Above note 71.

⁸⁵ Above note 71.

⁸⁶ Above note 71.

security programmes. These are Old-Age Pensions Social Insurance,⁸⁷ Health Social Insurance,⁸⁸ Workers Compensation Social Insurance,⁸⁹ Parental Social Insurance⁹⁰ and Unemployment Social Insurance.⁹¹

2.3.1.1 Non Old-Age Pensions Social Insurances

While the Social Insurance framework is the PRC government's promise to look after its people in all areas of welfare, policies and laws have only developed sufficiently in the Old-Age Pensions area. The other welfare areas lack formal laws, however, a comprehensive welfare framework exists that is partially funded by Social Insurance Contributions.

2.3.1.1.1 Health Social Insurance

Health Social Insurance in the PRC covers both public health and the healthcare previously covered by the *Workforce Insurance Regulation of the People's Republic of China* (Administrative Regulation)⁹² that began in the 1950s. The current Health Social Insurance policy is regulated by the *Decision by the State Council on Establishing a Basic Healthcare System for Urban Enterprise Employees*.⁹³ It remains in place after the *Social Insurance Law*⁹⁴ came into effect and acts as Administrative Regulation that supplements the *Social Insurance Law*.⁹⁵ The Health Social Insurance is a funds system, where the individual and employer share contributions with payment of benefits made

⁸⁷ Above note 71, ch 2.

⁸⁸ Above note 71, ch 3.

⁸⁹ Above note 71, ch 4.

⁹⁰ Above note 71, ch 6.

⁹¹ Above note 71, ch 5.

⁹² 《中华人民共和国劳动保险条例》 *Workforce Insurance Regulation of the People's Republic of China* 1951 (Previously Ministry of Government, now State Council).

⁹³ 《国务院关于建立城镇职工基本医疗保险制度的决定》 (国发[1998]44号) *Decision by the State Council on Establishing a Basic Healthcare System for Urban Enterprise Employees* (Guofa [1998]No 44) 1998 (State Council).

⁹⁴ Above note 71.

⁹⁵ Above note 71.

by Health Social Insurance administrators. These administrators are often third parties such as financial institutions. Events that trigger these payments include visiting doctors, hospitalisation and filling out a prescription.⁹⁶

2.3.1.1.2 Parental Social Insurance

The Parental Social Insurance in the PRC covers parental leave payments and the health costs during pregnancy and at childbirth, as well as family planning costs. The current Parental Social Insurance is regulated by several law-documents, including: the *Labor Law of the People's Republic of China*,⁹⁷ which is legislation made by the National People's Congress; the *Pilot Implementation Rules of Enterprise Employee Parental Insurance* (Ministerial Rule);⁹⁸ and the *Female Employee Work Protection Regulation* (Administrative Regulation made by the State Council).⁹⁹ These law-documents remain in place after the *Social Insurance Law*¹⁰⁰ came into effect. The *Parental Insurance Pilot*¹⁰¹ and the *Female Employee Work Protection Regulation*¹⁰² supplement the requirements in the *Labor Law*¹⁰³ and the *Social Insurance Law*.¹⁰⁴

2.3.1.1.3 Workers Compensation Social Insurance

The coverage of Workers Compensation Social Insurance in the PRC includes injury recovery, healthcare of occupation related diseases, and income for the employee and their family during injury recovery. Workers Compensation Social Insurance in the

⁹⁶ Above note 93.

⁹⁷ 《中华人民共和国劳动法》 *Labor Law of the People's Republic of China* 1994 (National People's Congress).

⁹⁸ 《企业职工生育保险试行办法》(劳部发[1994]504号) *Pilot Implementation Rules of Enterprise Employee Parental Insurance (Laobufa [1994] No 504)* 1994 (Previously Ministry of Labor, now Ministry of Human Resources and Social Security).

⁹⁹ 《女职工劳动保护规定》(国务院令第9号) *Female Employee Work Protection Regulation* 1988 (State Council Order No. 9).

¹⁰⁰ Above note 71.

¹⁰¹ Above note 98.

¹⁰² Above note 99.

¹⁰³ Above note 97.

¹⁰⁴ Above note 71.

PRC is regulated by the *Labor Law*;¹⁰⁵ the *Pilot Implementation Rules on Enterprise Employee Workers Compensation Insurance* (Ministerial Rule);¹⁰⁶ and the *Workers Compensation Regulation* (Administrative Regulation made by the State Council).¹⁰⁷ These law-documents remain in place after the *Social Insurance Law*¹⁰⁸ came into effect. The *Workers Compensation Pilot*,¹⁰⁹ and the *Workers Compensation Regulation*¹¹⁰ supplement the provisions in the *Labor Law*¹¹¹ and the *Social Insurance Law*.¹¹²

2.3.1.1.4 Unemployment Social Insurance

Unemployment Social Insurance in the PRC only covers urban employees. It is a system to provide an income stream for the unemployed during their temporary unemployment. Unemployment Social Insurance in the PRC is regulated by the *Unemployment Insurance Regulation* (Administrative Regulation made by the State Council).¹¹³ The Regulation remains in place after the *Social Insurance Law*¹¹⁴ came into effect and supplements the requirements of the *Social Insurance Law*.¹¹⁵

Of note in the PRC's Unemployment Social Insurance is that it began by covering a special group of urban employees¹¹⁶ – those who became unemployed due to the post Open Door Policy structural reform of State Owned Enterprises¹¹⁷. For these employees, their original employer continues to be required to contribute Social Insurance

¹⁰⁵ Above note 97.

¹⁰⁶ 《企业职工工伤保险试行办法》 *Pilot Implementation Rules on Enterprise Employee Workers Compensation Insurance* 1996, (Previously Ministry of Labor, now Ministry of Human Resources and Social Security).

¹⁰⁷ 《工伤保险条例》 *Workers Compensation Regulation* 2003 (State Council).

¹⁰⁸ Above note 71.

¹⁰⁹ Above note 106.

¹¹⁰ Above note 107.

¹¹¹ Above note 97.

¹¹² Above note 71.

¹¹³ 《失业保险条例》 *Unemployment Insurance Regulation* 1999 (State Council).

¹¹⁴ Above note 71.

¹¹⁵ Above note 71.

¹¹⁶ 刘翠霄, 《社会保障法史》, Liu Cuixiao, *History of Social Security Laws*: <<http://www.iolaw.org.cn/showArticle.asp?id=2874>> (02.Feb.2012), ch 10.

¹¹⁷ 下岗职工(*Xiagang Zhigong*). This is literally translated as enterprise employees who lost their position.

(including Old-Age Pensions Social Insurance) on their behalf.¹¹⁸ As these people find employment or pass retirement age, this scheme will phase out in the PRC's economy.

2.3.1.2 Old-Age Pensions Social Insurances

Historically, post 1949 China had different Old-Age Pensions policies for its rural¹¹⁹ and urban residents. Urban residents can be categorised into three groups depending on their employment activities. Two of the groups are exclusively from the urban population: government employees who are either public servants or employees working for government agencies (collectively referred to as government employees), and enterprise employees. The third group is military personnel, made up of both urban and rural residents, who have their own social security policies.¹²⁰ Urban Old-Age Pensions policies therefore need to cover enterprise employees and government employees.¹²¹

2.3.2 Legal Requirements for the Urban Old-Age Pensions Scheme

As at February 2016, the PRC has two different Social Insurance schemes for its two types of urban employees – enterprise employees, and government employees – although there are moves to combine them.¹²² There have been discussions to combine

¹¹⁸ Above note 116.

¹¹⁹ Above note 71, Arts 20, 21.

¹²⁰ 《军人抚恤优待条例》 *Military Personnel Priority Treatment and Compensation Regulation* 1988 (State Council and the Central Military Committee); 《革命残废军人优待抚恤暂行条例》 *Temporary Implementation Rule on Priority Treatment and Compensation for Disabled Military Personnel* 1950 (Ministry of Internal Affairs); 《革命工作人员伤亡褒恤暂行条例》 *Temporary Regulation for the Compensation of Revolutionary Workers* 1950 (Ministry of Internal Affairs, by Authorisation from the Previous Ministry of Government, now State Council); 《民兵民工伤亡抚恤暂行条例》 *Temporary Implementation Rule on Priority Treatment and Compensation for Militiaman* 1950 (Ministry of Internal Affairs); 《革命军人牺牲、病故褒恤暂行条例》 *Temporary Implementation Rule on the Compensation for Death of Military Personnel* 1950 (Ministry of Internal Affairs); and 《革命烈士家属、革命军人家属优待暂行条例》 *Temporary Implementation Rule on Priority Treatment of the Families of Military Personnel* 1950 (Ministry of Internal Affairs).

¹²¹ The rural sector has its own Old-Age Pensions scheme. See 《国务院关于开展新型农村社会养老保险试点的指导意见》 *State Council Recommendations on Applying a New Style Rural Old-age Pensions Social Insurance Pilot* 2009 (State Council); and above note 71, Arts 20 and 21.

¹²² Above note 71, Art 13.

the two systems,¹²³ with recent changes in relation to merging the two Urban Old-Age Pensions schemes occurring in January 2015, when the State Council issued its Administrative Regulation – *Decision on Reforming the Old-Age Pensions Social Insurance System of Public Servants and Employees of Government Agencies* (Administrative Regulation).¹²⁴ As at August 2015¹²⁵ the merging of the two schemes has begun to occur. When the merger of the two schemes is completed, the resulting scheme will have the same provisions as the Urban Employee Old-Age Pensions scheme. The analysis in this thesis is performed by assuming that the merger has completed, with current Urban Employee Old-Age Pensions policies applicable to all urban employees. Hereafter, the merged scheme is referred to as the Urban Old-Age Pensions scheme.

The *State Council Decision 2015*¹²⁶ supplements the requirements in the *Social Insurance Law*¹²⁷ in relation to having separate provisions for public servants and those who are governed by the *Public Servant Law*.¹²⁸ Those who are governed by the *Public Servant Law*¹²⁹ refer to all government employees. The issuing of the *State Council Decision 2015*¹³⁰ means that all urban employees are now captured into one Old-Age Pensions Scheme.

¹²³ 宋晓梧, 《养老保险并轨其实是个利益问题》 Song X, ‘Social Insurance Policy Merge is in Reality a Question about Interests’, *Economic Reports of the 21st Century*, website of China Society of Economic Reform, 16 March 2011, <<http://www.cser.org.cn/index.php/2011-03-16-06-27-31/3952-2011-03-16-06-31-25>> (12.Feb. 2012).

¹²⁴ 《国务院关于机关事业单位工作人员养老保险制度改革的决定》 *Decision on Reforming the Old-age Pensions Social Insurance System of Public Servants and Employees of Government Agencies* 2015 (State Council).

¹²⁵ 李金磊, 《养老金并轨进入实质启动阶段 多地公布实施办法》, Li J, ‘The Track Merge of Old-Age Pension Schemes is Coming to the Implementation Stage – Many Places are Announcing Implementation Rules’, *China News Net*, 5 March 2015, <<http://www.chinanews.com/cj/2015/08-05/7447764.shtml>> (5 Mar. 2015)

¹²⁶ Above note 124.

¹²⁷ Above note 71, Arts 10 and 13.

¹²⁸ 《中华人民共和国公务员法》 *Public Servant Law of the People’s Republic of China* 2005 (Standing Committee of the National People’s Congress).

¹²⁹ Ibid.

¹³⁰ Above note 124.

Urban Old-Age Pensions Social Insurance that is regulated by the *Social Insurance Law*¹³¹ is one of the three tiers in the PRC's retirement welfare policy framework. The other two tiers are the Civil Benefits and private pension insurances. The Civil Benefit¹³² is the safety net in the PRC that includes supporting the elderly who had not participated in Old-Age Pensions Social Insurance schemes,¹³³ and the private tier of voluntary urban pension insurances¹³⁴ is available for urban residents who are self-employed or otherwise not employed.

The changes introduced by the *State Council Decision 2015*¹³⁵ standardises the Urban Old-Age Pensions scheme for the two types of urban employees – urban enterprise employees and government employees. The *Social Insurance Law*¹³⁶ regulates the provisions for enterprise employees. It is supplemented by the *Implementation Rule to the Social Insurance Law of the People's Republic of China* (Ministerial Rule);¹³⁷ and the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pensions Social Insurance Systems* (Administrative Regulation made by the State Council).¹³⁸

The *State Council Decision 2005*¹³⁹ broadens the implementation of the earlier *Pilot Proposal on Improvements to the Urban Social Security System 2000* (Administrative

¹³¹ Above note 71.

¹³² 《城市居民最低生活保障条例》 *Regulation of Urban Resident Low Income Safety Net* 1999 (State Council); 《国务院关于在各地建立城市居民最低生活保障制度的通知》 *Announcement on Establishing Systems of Urban Resident Low Income Safety Net by Local Government Authorities* 1997 (State Council); and 《国务院关于开展城镇居民社会养老保险试点的指导意见》 *Guiding Opinion of the State Council on Carrying out the Pilot Program of Old-Age Pension Insurance for Urban Residents* 2011 (State Council), Art 2.

¹³³ 《完善城镇社会保障体系试点方案》 *Pilot Proposal on Improvements to the Urban Social Security System 2000* (State Council).

¹³⁴ 《国务院关于开展城镇居民社会养老保险试点的指导意见》 *Guiding Opinion of the State Council on Carrying out the Pilot Program of Old-Age Pension Insurance for Urban Residents* 2011 (State Council).

¹³⁵ Above note 124.

¹³⁶ Above note 71.

¹³⁷ 《实施〈中华人民共和国社会保险法〉若干规定》 *Implementation Rule to the Social Insurance Law of the People's Republic of China* 2011 (Ministry of Human Resources and Social Security).

¹³⁸ 《国务院关于完善企业职工基本养老保险制度的决定》 (国发[2005]38号) *State Council Decision on Unifying the Enterprise Employee Basic Old-age Pensions Social Insurance Systems* (Guo Fa [2005] No. 38) 2005 (State Council).

¹³⁹ Above note 138, especially Art 2.

Regulation made by the State Council)¹⁴⁰ to the rest of the country and to all enterprises (including private enterprises). The detailed provisions remain in the 2000 *Pilot*,¹⁴¹ and the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pension Insurance Systems* (Administrative Regulation made by the State Council) in 1997.¹⁴² The *State Council Decision 2015*¹⁴³ sets out mirror provisions for government employees.

The Urban Old-Age Pensions Social Insurance is a mixed defined benefits, defined contributions scheme¹⁴⁴ that has two types of accumulation accounts – the centrally administered basic social pooling account¹⁴⁵ and an individual account¹⁴⁶ for each participant. Urban retirees receive a defined benefit as a basic pension, and an annuity as a result of the contributions into their individual accounts.¹⁴⁷ Article 10 of the *Social Insurance Law*¹⁴⁸ sets out the two types of accounts for enterprise employees, and Article 2 of the 2000 *Pilot*¹⁴⁹ details the nature of the accounts. For government employees, Article 3 of the *State Council Decision 2015*¹⁵⁰ mirrors those provisions.

Social pooling of contributions of Old-Age Pensions¹⁵¹ is a system that collects contributions into a centrally administered Old-Age Pensions Fund. This fund is

¹⁴⁰ Above note 133.

¹⁴¹ Above note 140.

¹⁴² 《国务院关于建设统一的企业职工基本养老保险制度的决定》 *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pension Insurance Systems* 1997 (State Council).

¹⁴³ Above note 124.

¹⁴⁴ Hu N & Yang Y, ‘The Real Old-Age Dependency Ratio and the Inadequacy of Public Pension Finance in China’, (2012) 5 *Journal of Population Ageing* 193, at 197. See also Feldstein M, ‘Social Security Pension Reform in China’, (1999) 10 *China Economic Review* 99.

¹⁴⁵ Also can be translated as “social contribution” in policy documents. The two terms are used interchangeably in this research.

¹⁴⁶ 《国务院关于深化企业职工养老保险制度改革的通知》（国发〔1995〕6号） *Circular from the State Council on Deepening the Reform of the Urban Enterprise Employee Old-Age Pensions Insurance System* (Guofa [1995] No 6) 1995 (State Council), see also the introduction to above note 142.

¹⁴⁷ Above note 144.

¹⁴⁸ Above note 71.

¹⁴⁹ Above note 140.

¹⁵⁰ Above note 124.

¹⁵¹ 劳动保障部, 《什么是退休费用社会统筹?》, Ministry of Labor, *What is Retirement Insurance Centralised Social Contribution?* : <http://www.gov.cn/banshi/2005-06/14/content_6394.htm> (2 Feb. 2012). Note that the Ministry of Human Resources and Social Security is the current name of the Ministry of Labour.

operated by third party financial institutions, but administered by the Ministry of Human Resources and Social Security and the Departments of Human Resources and Social Security at lower level governments.¹⁵²

The individual accounts are administered in the same way as the basic social pooling account, but the funds are earmarked¹⁵³ for the particular employee.¹⁵⁴ The amounts in the individual account cannot be withdrawn in advance because it is only accumulated for the purposes of retirement.¹⁵⁵

The contributions mechanism is outlined in Article 12¹⁵⁶ of the *Social Insurance Law*.¹⁵⁷ Employers should contribute a certain percentage of total payroll as Old-Age Pensions Social Insurance, with another portion to the employee's earmarked individual account. The administrative mechanism for the two portions are different. The portion going to the social account is calculated before the employer discharges their Individual Income Tax withholding duties. The portion going to the individual account is calculated after the employer discharges their Individual Income Tax withholding duties.¹⁵⁸ Although Social Insurance Contributions by the employer and by the employer on behalf of the employee are administered in separate accounts, they are part of the same funding source for Old-Age Pensions. They come from the same contributions base – the wages or salary of urban employees.

¹⁵² Ibid.

¹⁵³ Earmarking refers to government revenue that is collected for a particular type of expenditure. The discussion on the tax system structure of the PRC in Chapter VI further explains this term.

¹⁵⁴ Above note 151.

¹⁵⁵ Above note 142.

¹⁵⁶ Above note 71.

¹⁵⁷ Above note 71.

¹⁵⁸ Individual Income Tax withholding by the employer is a common tax administration tool used by governments to ensure that Individual Income Tax is collected. This arrangement diverts the burden of proofing income tax liability onto the employee, when they fill out their tax returns at the end of the income year.

The employer contributes 20% of its total payroll to the social pooling account for Old-Age Pensions Social Insurance¹⁵⁹ on behalf of all of its employees. The employee contributes 8% of the individual's wage income to the individual's personal Old-Age Pensions Social Insurance account.¹⁶⁰

Centralised Social Insurance Contributions administration and final payment of pension benefits occur at the provincial level. This means centralisation of administrative and funding responsibilities has increased from the prefecture level to the provincial level.¹⁶¹ The law-documents provide that Urban Old-Age Pensions funds can be from multiple sources, including government subsidies.¹⁶² These multiple sources signify the PRC government's promise to fully fund Urban Old-Age Pensions to look after its urban elderly.

Employees need to have participated in the scheme for 15 years before they receive a monthly Basic Old-Age Pension.¹⁶³ A monthly pension is paid based on the total amount in the individual account divided by 120, multiplied by the number of years participated; plus 20% of the monthly average wage level in the province.¹⁶⁴ Employees who have not participated for more than 15 years will receive the amount in the individual account as a lump sum.¹⁶⁵ To ensure all employees can equitably receive an Urban Old-Age Pension, there are policies to enable contribution of

¹⁵⁹ Total payroll = total cost of the wages and salaries of employees in the organisation.

¹⁶⁰ Above note 124, Art 3; and note 140, Art 2.

¹⁶¹ 人民网-财经频道, 《人社部: 目前全国 31 个省区市已出台养老保险省级统筹办法》, People's Net Finance and Economics Channel, 'Ministry of Human Resources and Social Security: 31 Provincial Level Governments Now Have Provincial Level Centralisation Rules for the Administration of Contributions of Old-age Pensions Social Insurance', *people.cn*, <<http://finance.people.com.cn/n/2015/1027/c1004-27745507.html>> (4 Nov. 2015); above note 138, Art 8; and 《国务院关于实行企业职工基本养老保险省级统筹和行业统筹移交地方管理有关问题的通知》 *Circular from the State Council on the Administration of Provincial and Industry Centralisation of Employee Old-age Pensions Social Insurance Contribution Collection by Local Governments* 1998 (State Council).

¹⁶² Above note 71, Arts 65 & 71.

¹⁶³ Above note 124, Art 4; and note 142, Art 5.

¹⁶⁴ Above note 142.

¹⁶⁵ Above note 142.

additional amounts into the Social Insurance Fund, that is equivalent to 15 years of normal contributions. These policies are for employees who began their working life before the implementation of the *State Council Decision 1997*,¹⁶⁶ and whose employers delayed their participation in the scheme.¹⁶⁷

Basic Urban Old-Age Pensions benefits are to be calculated¹⁶⁸ based on an average of the average monthly wages of the workforce and the indexed average of the individual's monthly wages. Each full year of contributions leads to an increase in benefits by 1% of that Urban Old-Age Pension average. Urban Old-Age Pensions from the individual accounts are calculated by total savings in the account divided by expected months of entitlements. Expected payment months are calculated based on factors such as the life expectancy of the urban population at the time of the employee's retirement, the employee's retirement age and market interest rates. Article 14¹⁶⁹ of the *Social Insurance Law*¹⁷⁰ prohibits drawing from the individual account before the retirement age. This ensures that the compulsory contributions are made only for the purposes of Old-Age Pensions.

There are domestic migrant workers who participate in urban employment in the PRC. Within the PRC, a migrant worker is one who either moves between provinces, or moves from rural areas to cities. It is important that these migrant workers are able to enjoy the benefits of the Urban Old-Age Pensions scheme should they end their working life in a city. The scheme allows for the continuation of Old-Age Pensions Insurance relationships. The *Temporary Implementation Rule on the Transfer of Old-Age Pensions Social Insurance Relationships by Urban Employees of Enterprises*

¹⁶⁶ Above note 142.

¹⁶⁷ Above note 138.

¹⁶⁸ Above note 138, especially Art 6.

¹⁶⁹ Above note 71.

¹⁷⁰ Above note 71.

(Ministerial Rule)¹⁷¹ makes provisions for people who move provinces during their working life, that is, during their 15 or more years of contributions to the Urban Old-Age Pensions Social Insurance.

An example best illustrates this. Wu is a migrant worker from a rural area in Hubei Province. He graduated from a University in Shanghai with an engineering degree in 1992 and found work in Shanghai as an assistant engineer in October of the same year. His employer immediately began to contribute towards his five Social Insurances, including Urban Old-Age Pensions. Wu moved to Wuhan in January 2005 to be closer to his family. He found employment in May and his employer began to contribute towards his five Social Insurances. Wu then continues to work in Wuhan until his retirement. His Old-Age Pensions are calculated based on 12 years and 2 months in Shanghai, combined with time worked in the Hubei Province. The four months that he was out of employment does not impact on the continuation of his contribution period. When he retires, the benefits are paid according to a formula that takes into consideration the payment standards of Shanghai and Hubei according to the time he spent earning income in those provinces. This provision alleviates the obstacles to workforce mobility and allows for national centralised administration of Old-Age Pensions Social Insurance Contributions and payments.

The *Pilot 2000*¹⁷² specified that the administration of the collection of contributions and payment of benefits should be independent, and suggested that provinces could choose to use tax authorities to collect the contributions in their local areas. Article 11

¹⁷¹ 《城镇企业职工基本养老保险关系转移接续暂行办法》 *Temporary Implementation Rule on the Transfer of Old-age Pensions Social Insurance Relationships by Urban Employees of Enterprises* 2009 (Ministry of Human Resources and Social Security and Ministry of Finance).

¹⁷² Above note 133, Arts 7(3) & 7(4).

of the *Temporary Regulations on the Collection of Social Insurance Contributions*¹⁷³ specified the mechanisms for the tax authorities to collect Social Insurance Contributions. In reality, most provinces now choose to have the Local Tax Bureau collect Urban Old-Age Pensions Social Insurance Contributions.¹⁷⁴

2.4 Conclusion

The promulgation of the *Social Insurance Law*¹⁷⁵ is the result of the continuous development in the PRC's social welfare policies. The Urban Old-Age Pensions scheme in the *Social Insurance Law*¹⁷⁶ welfare framework covers all urban employees on whose behalf Social Insurance Contributions have been made for an equivalent of 15 years. The scheme has policies that allow retirees to receive a pension if they have retired to a location different to their employment location. Urban Old-Age Pensions Social Insurance schemes are part of the PRC government's promise to look after its urban elderly, and this promise is supported by legal requirements that allow the government to source funds from general revenue.

¹⁷³ 《社会保险费征缴暂行条例》 *Temporary Regulations on the Collection of Social Insurance Contributions* 1999 (State Council).

¹⁷⁴ For example, 《广东省劳动和社会保障厅、广东省地方税务局关于印发广东省社会保险费地税全责征收实施办法（暂行）的通知》 *Circular to Issue the Temporary Implementation Rule of Administration and Collection of Social Insurances by Local Tax Bureaus in the Guangdong Province* 2008 (Guangdong Provincial Department of Labor and Social Security and Guangdong Provincial Local Tax Bureau).

¹⁷⁵ Above note 71.

¹⁷⁶ Above note 71.

Chapter III The Funding Unsustainability Arguments

Relating to the PRC's Urban Old-Age Pensions

3.1 Introduction

The current Urban Old-Age Pensions policies in the People's Republic of China (PRC) are regulated within the *Social Insurance Law*¹⁷⁷ welfare framework. This framework represents the PRC's contemporary welfare state. The reforms associated with the developments of the current Urban Old-Age Pensions laws and policies have attracted attention from researchers who have written from different perspectives. One common theme from the literature is the argument that the PRC's Urban Old-Age Pensions is underfunded for the country's ageing population, and the scheme is not sustainable.

The prevailing literature began to be published around 1997, when scholars started to write about the Urban Old-Age Pensions reforms in relation to the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pension Insurance Systems* (Administrative Regulation made by the State Council),¹⁷⁸ and identified the causes of the lack of sustainable funding for the Urban Old-Age Pensions scheme at the time. Some of the issues identified were substantive, others were administrative. Later research continues to treat the causes as problems that require solutions. Models were built to analyse the causes and suggest proposals to solve the problems.

¹⁷⁷ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

¹⁷⁸ 《国务院关于建设统一的企业职工基本养老保险制度的决定》 *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pension Insurance Systems* 1997 (State Council).

This chapter reviews the prevailing literature on this common theme. The prior research discussed in this chapter was performed within a welfare economics and welfare state research paradigm.

Section 3.2 is a brief discussion of what is a welfare state, in order to provide a context to the reviewed literature. Section 3.3 reviews literature that identified the causes of the lack of funding sustainability. Most of this literature was written at the time of issue of the *State Council Decision 1997*.¹⁷⁹ Section 3.4 reviews the subsequent literature that identified issues that required further reform. Section 3.5 reviews the literature that analysed those issues and suggested solutions. Section 3.6 summarises the flaws in the literature that argues about the lack of sustainable funding for Urban Old-Age Pensions in the PRC. Section 3.7 identifies other relevant issues raised in the literature. Section 3.8 summarises the gaps and funding issues raised by prior scholars that will be investigated throughout the remainder of this thesis.

3.2 Contextualising Welfare State

The *New Oxford Companion to Law*¹⁸⁰ defines a welfare state as

“the institutional framework under which the state assumes responsibility for the basic welfare of citizens and applies policies, operationalized via legislation, to that end. Social security, health, housing, and education are its main areas of provision. It is particularly associated with the meeting of basic needs; and it thus operates as a redistributive mechanism for the inequalities that occur under a market economy”. Welfare state refers to a way governments apply policy, when comparing the concepts of welfare state and welfare society, Skillen emphasised that “the welfare state is not just a system of personal insurance but an expression of community, of concern for our fellows. It places some things beyond the question of purchasing power”.¹⁸¹

¹⁷⁹ Ibid.

¹⁸⁰ Cane P & Conaghan J, ‘Welfare State’, *The New Oxford Companion to Law*, <<http://www.oxfordreference.com.ezproxy1.library.usyd.edu.au/view/10.1093/acref/9780199290543.001.0001/acref-9780199290543-e-2323>> (23 May 2014).

¹⁸¹ Skillen A, ‘Welfare State Versus Welfare Society?’, (1985) 2 *Journal of Applied Philosophy* 3.

The welfare state represents the direct provision of public goods by the government. The funding of those public goods is supplied in the government budgeting process, and the funding methods could be from earmarked taxes or directly from consolidated revenue.

In practice, Bismarck's Germany was regarded as the first "welfare state",¹⁸² when it passed the first "social legislations" in 1883 and 1884.¹⁸³ These legislations were the beginning of a perception of social welfare, that it is a form of social security funded by social insurance schemes in the European social welfare tradition.¹⁸⁴

The term *welfare state*¹⁸⁵ was allegedly coined by Sir William Temple in the UK in 1941. This welfare state in the UK emerged as a result of the pension and unemployment insurance before World War I¹⁸⁶ and the reforms that arose from the Beveridge Report.¹⁸⁷ The Beveridge Report¹⁸⁸ advanced the principle that welfare should be provided "from cradle to grave", through universal social insurance, family allowances and a national health service,¹⁸⁹ in order to combat the five "giant evils" of squalor, ignorance, want, idleness, and disease.¹⁹⁰

There are different typologies of welfare states: whether it is a minimal welfare state or maximal welfare state;¹⁹¹ whether it is an "institutional" or "residual" welfare state;¹⁹²

¹⁸² Ibid.

¹⁸³ *Sickness Insurance Law 1883, Accident Insurance Law 1884, and Old Age and Disability Insurance Law 1889.*

¹⁸⁴ Schulz-Forberg H, 'Welfare State', in Anheier H and Juergensmeyer M, eds, (Thousand Oaks: Sage Publications, Inc., 2012) <<http://dx.doi.org/10.4135/9781452218557.n562>> (19 May 2014).

¹⁸⁵ Ibid.

¹⁸⁶ Above note 180.

¹⁸⁷ Abel-Smith B, 'The Beveridge Report: Its origins and outcomes' (1992) 45 *International Social Security Review* (1-2) 5; and Fordham University, 'An Executive Summary to Beveridge: Social and Allied Services (The Beveridge Report), 1942', in *Modern History Sourcebook* <<http://www.fordham.edu/halsall/mod/1942beveridge.asp>> (26 May 2014).

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ The Beveridge Report, 1942. Please see BBC, 'Fact File: Beveridge Report', in *BBC*, <<http://www.bbc.co.uk/history/ww2peopleswar/timeline/factfiles/nonflash/a1143578.shtml>> (4 Mar. 2016).

¹⁹¹ Above note 184.

¹⁹² Above note 180; and Saunders P, *The Ends and Means of Welfare Coping with Economic and Social Change in Australia* (Port Melbourne: Cambridge University Press, 2002).

and as according to Esping-Andersen, whether it is conservative, liberal or social-democratic.¹⁹³ Esping-Andersen's typology represents

“different ways of ‘decommodification’ of labour in a capitalist economy, empirically measured by the replacement rates and contribution periods of benefits, and the financial arrangements.” These typologies were created according to “level of expenditure, institutional arrangements of distribution (...entitlements, compensation levels, the public/private mix of provisions), features of taxation, the initial need structure and the final distributive outcome, the historical tradition and actors, and present day partisanship”.¹⁹⁴

The minimal welfare state is also called the liberal welfare state or the competition state,¹⁹⁵ where the foundation principle is that the government should provide to the members of society that are in dire need of support, but not provide more than the necessities – here the focus is on securing the safety net.

The maximal welfare state is currently practiced by Nordic countries. It is characterised by a proactive government making cradle to grave provisions.¹⁹⁶ Often, these policies are funded by a high level of taxes.

The institutional welfare state is similar to the maximal welfare state, but the state does not play such a proactive role. Institutional welfare states are where “the state assumes a responsibility to ensure a reasonable standard of living for all and confers universal rights.”¹⁹⁷ The more conditional those rights and the weaker and less redistributive the framework of protection, the further the welfare state is from the institutional model.¹⁹⁸

A residualist welfare state is similar to a minimal welfare state, but the policy framework is more structured.

¹⁹³ Vogel J, ‘Welfare State’, (2003) 64 *Social Indicators Research* 373.

¹⁹⁴ Ibid.

¹⁹⁵ Above note 184.

¹⁹⁶ Above note 184.

¹⁹⁷ Above note 184.

¹⁹⁸ Above note 180; and Saunders P, *The Ends and Means of Welfare Coping with Economic and Social Change in Australia* (Port Melbourne: Cambridge University Press, 2002).

“A ‘residualist’ welfare state steps in when other sources of welfare, including privately purchased provision, the family, and the voluntary sector, are inadequate. Thus it makes minimal or highly selective provision and places greater onus on the individual to make contingency arrangements, for example through insurance”.¹⁹⁹

Welfare state policies are analysed within a policy framework bridging social and economic policies.²⁰⁰ Modern social policies take into consideration social progress, and what contributes to a “good society”.²⁰¹ Two concepts in this policy mix are sustainability – whether people can maintain their current material and non-material living conditions; and the consequences of policies on people’s social relations.²⁰²

Sustainability is an aim of both social and economic policies.²⁰³ In welfare state policies, it plays the role to link social policies and economic policies. Social policies are those policies that “rests on value judgements”,²⁰⁴ and that aims for an outcome that is a political process. Economic policies are policies that ask and answer more technical and less normative questions.²⁰⁵ Social policies thereby can be viewed as the step before developing economic policies to fulfil certain governmental value propositions.²⁰⁶

The social policy aim of any welfare state is to absorb social tensions by way of specific policies to redistribute income to disadvantaged members of the society,²⁰⁷ including the sick, the disabled and the elderly.

“The idea of the welfare state builds on a conception of social rights guaranteed to all citizens... Social rights are an extension of democratic rights, defining welfare rights monitored on the political arena by collective decision-making. Social rights are usually expressed with explicit reference to equality and social

¹⁹⁹ Above note 180; and Saunders P, *The Ends and Means of Welfare Coping with Economic and Social Change in Australia* (Port Melbourne: Cambridge University Press, 2002).

²⁰⁰ Above note 184.

²⁰¹ Saunders P, *The Ends and Means of Welfare Coping with Economic and Social Change in Australia* (Port Melbourne: Cambridge University Press, 2002), at 7-8.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ A detailed distinction between social and economic policies can be found in above note 201, at 41-45.

²⁰⁷ Above notes 181 & 184.

inclusion. The right to employment (supported by labour market policy), to safe working conditions (labour protection regulation), the right to education (tax-based mass schooling), poverty relief (transfers) and general public health care are all widely accepted in Europe in all political camps.²⁰⁸

The majority of specific income redistribution policies relate to income support provided by the government to those weaker members of the society.²⁰⁹ Support by the government takes two forms: directly as an income transfer, or indirectly as services to assist those of employment age to access employment. There are also two types of schemes – earnings-related benefits under social insurance schemes; and means-tested transfers under social assistance schemes. The former maintains income, and the latter aims to alleviate poverty.²¹⁰

Welfare economics²¹¹ and public economics²¹² provide the economic policy choices to meet this social aim. Along with negotiations between different interest groups that ascertain the different social tensions, and regulatory instruments that aim to change behaviours, these economic policies often rely on taxes and its redistributive effects – where taxes give rise to public revenue to be spent on these “cradle to grave” programmes.

3.3 Preparation for Reform

At the time of the issue of the *State Council Decision 1997*,²¹³ researchers performed thorough analysis of the existing pension structure and identified that the Old-Age

²⁰⁸ Vogel J, ‘Welfare State’, (2003) 64 *Social Indicators Research* 373.

²⁰⁹ Above note 201, at 220-221.

²¹⁰ Above note 201, at 220-221.

²¹¹ Stiglitz JE, *Economics of the Public Sector*, (New York: W.W.Norton & Company, 3rd ed, 2000).

²¹² Rosen, HS & Gayer T, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008).

²¹³ Above note 178.

Pensions scheme in the PRC was not sustainable. They identified the causes of the lack of sustainability, and areas for reform with possible reform directions.

Phillon's paper *Chinese Welfare State Regimes*²¹⁴ was an example of an overview of the history of Urban Old-Age Pensions policies before 1997. Selden and You's paper *The Reform of Social Welfare in China*²¹⁵ identified the broad scope for research to address the lack of funding sustainability. West's paper *Pension Reform in China: Preparing for the Future*²¹⁶ summed up the aim of the research at the time and contributed to planning for reform. Feldstein's paper *Social Security Pension Reform in China*²¹⁷ took a diagnostic approach. Gui's paper²¹⁸ represented research that considers the demographic needs for Old-Age Pensions.

West's paper²¹⁹ identified the causes for the lack of funding sustainability, and so the reasons for the reform in 1997 were: "declining workers-to-retirees ratio",²²⁰ "reduction in coverage",²²¹ "rising enterprise burden",²²² and "erosion of pension benefits".²²³ She identified major issues for future reform to be pension "affordability"²²⁴ and increasing "level of pooling".²²⁵ "Affordability" issues were due to changes faced by enterprises during the marketisation process after the Open Door Policy reforms, such as enterprises facing financial difficulties arising from the structural change.²²⁶ West identified the plausibility of moving from the Pay-as-you-

²¹⁴ Phillon S, 'Chinese Welfare State Regimes', (1998) 28 *Journal of Contemporary Asia* (4) 518.

²¹⁵ Selden M & You L, 'The Reform of Social Welfare in China', (1997) 25 *World Development* 1657.

²¹⁶ West L, 'Pension Reform in China: Preparing for the Future', (1999) 35 *The Journal of Development Studies* (3) 153.

²¹⁷ Feldstein M, 'Social Security Pension Reform in China', (1999) 10 *China Economic Review* 99.

²¹⁸ 桂世勋, 《未来中国养老保险面临的两大压力与对策》, Gui, X 'The Two Pressures of Social Insurance in China in the Future and Proposed Solutions' (1998) *Journal of the Eastern China Normal University Philosophy and Social Sciences Edition* (4) 56.

²¹⁹ Above note 216.

²²⁰ Above note 219, at 154-156.

²²¹ Above note 219, at 156.

²²² Above note 219, at 156-158.

²²³ Above note 219, at 158-161.

²²⁴ Above note 219, at 169-173.

²²⁵ Above note 219, at 173-177.

²²⁶ Above note 219, at 169-173.

go system to a fully funded model.²²⁷ The “level of pooling” refers to the administrative issue of pooling contributions. This is the same issue as raised by later research, which was referred to as increasing the level of centralisation for contributions of Social Insurance.

Feldstein’s paper²²⁸ sets out a framework to analyse whether to identify the PRC as a pay-as-you-go (PAYG) pensions insurance system, or a fully funded insurance system. It represented literature that performed analysis on the problems of the gap in funding within the framework of prevailing pensions social insurance theories.

Gui’s paper²²⁹ was a discussion on the two main stresses of the PRC’s Urban Old-Age Pensions policy. The first stress is the gap between economic development and the rapidly growing aging population problem. The second stress is the reducing size of families.²³⁰ These two problems increased the difficulty for the younger generations to support their parents, and therefore, a reliable public system of Urban Old-Age Pensions is necessary. Gui suggested that the public Urban Old-Age Pensions should include an individual deposit mechanism and there should be considerations on fund administration.²³¹ Gui’s paper was a classic example of considering family size and the ageing population together for Old-Age Pensions reform suggestions. The literature does not offer reasons for linking these two different demographic trends.

This relatively early literature was written at a time that unemployment from the systemic changes to State Owned Enterprises, and reemployment by the private sector materially changed the nature of the post 1949 welfare state in China. Scholars were

²²⁷ Above note 219, at 170.

²²⁸ Above note 217.

²²⁹ Above note 218.

²³⁰ Above note 218, at 56-58.

²³¹ Above note 218, at 59-61.

contributing to making initial reform suggestions. The Urban Old-Age Pensions policy at the time was administered and paid by employers. These employers were either the public service or government agencies, or State Owned Enterprises. The government was the employer in that Urban Old-Age Pensions scheme.

This body of literature suggested changes according to the US model of funding Old-Age Pensions. It viewed “pension insurance contributions” as the only legitimate source of funding for Urban Old-Age Pensions in the PRC. This view informed the argument in the later literature that transfer payments from consolidated revenue should not be made to subsidise payments of Urban Old-Age Pensions.

3.4 Issues for Further Reform

As reforms progressed from 1997, scholars continued to contribute to the reform by identifying issues for further reform and their solutions. Many of the reform issues were the same as those identified by scholars who wrote at the start of the 1997 reform. Scholars quantified the large gap in the funding of the PRC’s Urban Employee Old-Age Pensions scheme. They continued to comment that the scheme is not sustainable, that the ageing population is adding to the funding pressure, and that there are problems with the ability of a retiree to access pension benefits if they retired to a different local government area.²³² Solutions suggested included increasing the level of centralisation of the administration of Old-Age Pensions insurance contributions to ease the funding pressure and to solve the “historical Old-Age Pensions insurance debt”²³³ problem.

²³² 褚福灵,《职工养老保险关系转移现状的思考》,Zhu F, ‘Study on the Transfer of Urban Old-age Pensions Social Insurance Relationship’, (2013) *Social Security Studies* (1) 3.

²³³ 谭喜祥,《中国养老保险历史债务偿还的法律思考》 Tan X, ‘Legal Considerations of the Repayment of the Historical Social Insurance Debt in China’ (2005) 146 *Lanzhou Academic Journal* (5) 213.

The literature also critiqued the government's practice of making transfer payments from consolidated revenue to subsidise Urban Old-Age Pensions.

Four years after the release of the *State Council Decision 1997*,²³⁴ Liu analysed the position of the reform process. In her paper *The Current Status and Problems of the Old-Age Pension Insurance in China*,²³⁵ she suggested that: the coverage of the Old-Age Pensions insurance should be expanded as well as suggesting that the centralisation of the administration of Old-Age Pensions insurance needed to gradually increase. She also suggested increases to the contribution rate, that the government should be identified as the party that bears legal liability of the “historical Old-Age Pensions insurance debt” and a multi-tier Old-Age Pensions social security model should be developed. Further there needed to be clarifying of the management responsibilities of Old-Age Pensions insurance and improvement of the management and investment of the Old-Age Pensions insurance fund.

The scale of the cumulative funding gap was reported in 2012 as RMB 76.7 Billion,²³⁶ which was approximately USD 11 Billion at the time. One important reason identified for the gap's existence was that the employees' individual Old-Age Pensions insurance accounts were actually “empty” so that there is insufficient funds in the Social Insurance Fund²³⁷ to pay pensions.

The cause identified in the literature for the empty individual accounts problem was that the funds contributed on behalf of current employees were being used to fund the

²³⁴ Above note 178.

²³⁵ 刘翠霄,《我国养老保险的现状和问题》.Liu C, ‘The Current Status and Problems of the Old-Age Pension Insurance in China’, Chinese Academy of Social Sciences *Online*: <<http://www.cass.net.cn/file/2005102550124.html>> (29 Nov. 2011).

²³⁶ 京华时报《社科院报告称中国 14 省份养老金缺口 767 亿元》, *Jinghua Daily*, ‘The Chinese Academy of Social Sciences Reported that the Total Gap in Retirement Funding for 14 Provinces is RMB 76.7 Billion’, *Jinghua News*, 18 December 2012, <<http://www.chinanews.com/jk/2012/12-18/4415534.shtml>> (18 Feb. 2013). This is approximately AUD 15.34 Billion.

²³⁷ This is the headline Social Insurance Fund in the PRC's fiscal structure.

Old-Age Pensions of current retirees. For example, Wang commented that, by identifying the PRC's Old-Age Pensions insurance as a PAYG system, it was argued that there is a gap in the funding for Old-Age Pensions in the PRC due to the problem of "empty individual accounts".²³⁸

There was a very weak voice in the counter argument to this complaint, represented by the Ministry of Finance in its 2013 comment,²³⁹ where the Ministry of Finance opined that its calculations from budget and national accounts data showed that the funding gap did not exist. This section focuses on discussing the literature on the causes and suggested solutions to the so called "empty individual accounts" problem.

3.4.1 The Empty Individual Accounts Problem

There are two main bodies of research that look at the problem of the "empty individual accounts". Individual accounts refer to the individual accounts in the Social Insurance Fund that houses the contributions by individuals. For a time, before the individual accounts and social pooling accounts were separately set up, it was hard to differentiate from which pool of funds Old-Age Pensions benefits were paid.

The two bodies of literature focused respectively on the "historical Old-Age Pensions Insurance debt" problem, which was argued as one of the causes of the so called "empty individual accounts"; and centralisation of the administration of contributions, which was viewed as a potential solution for the so called empty individual accounts problem.

²³⁸ Wang Y, 'Reform of China's Pension System', (2005) *China & World Economy* (May/June issue): <<http://search.proquest.com.ezproxy2.library.usyd.edu.au/docview/237250034/citation?accountid=14757>> (4 Nov. 2015).

²³⁹ 人民网-财经频道, 《人社部: 2013 全国养老金无缺口 结余 4000 亿》, People's Net Finance and Economics Channel, 'Ministry of Human Resources and Social Security: Nationally There is No Gap in Funding Old-Age Pensions in 2013 - the Surplus is RMB 400 Billion', *people.cn*, 26 February 2014, <<http://finance.people.com.cn/n/2014/0226/c1004-24469146.html>> (1 Mar. 2014).

Most of the research on the “historical Old-Age Pensions insurance debt” problem focuses on the causes of the problem, the social impact of the problem, and the identification of legal liability for this debt.

Liu’s paper *The Historical Old-Age Pensions Insurance Debt Problem in China*²⁴⁰ is one of the most significant analysis by a Chinese scholar on this issue. She argued that the major cause of the problem was the transition between the pre 1997 programme and the post 1997 programme that utilises Old-Age Pensions insurance contributions to fund Urban Old-Age Pensions. The identified problem was that the retirement of the older generation is required to be funded by the current generation of workers, and those workers, at the same time, are saving for their own retirement.²⁴¹

Liu criticised the fact that the funds in the individual Old-Age Pensions insurance accounts could not be attributed to distinct proprietorship, therefore, although the participant had an individual account, there was no entity that bears the legal liability to pay a pension when the participant retires.²⁴² She argued that the government should be identified as the entity with the debt liability in relation to the individual accounts.²⁴³ She also argued that social problems arise from this lack of clarity on legal liability, such as social trust issues,²⁴⁴ and urban poverty in old age.²⁴⁵

The solutions Liu suggested for this problem were similar to those stipulated in her earlier paper:²⁴⁶ in order to receive more contributions, amend the law to broaden the coverage of Urban Old-Age Pensions insurance; increase the retirement age; increase

²⁴⁰ 刘翠霄, 《我国养老保险的历史债务问题》, Liu C, ‘The Historical Old-Age Pensions Insurance Debt Problem in China’, (2003) *Legal Research* (6) 87.

²⁴¹ Ibid, at 89.

²⁴² Id, at 90.

²⁴³ Id, at 90-93.

²⁴⁴ Id, at 94.

²⁴⁵ Id, at 95-97.

²⁴⁶ Above note 235.

the centralisation level of contributions management, thereby allowing cross subsidisation between local government areas; and ascertaining the liability of Old-Age Pensions insurance debt.²⁴⁷ She also analysed the plausibility of repaying the debt,²⁴⁸ and suggested that the funds in the social pooling account should be the only source of public revenue used to repay Old-Age Pensions insurance debt;²⁴⁹ but other earmarked sources of funds could be raised, such as selling State owned assets,²⁵⁰ or issuing special purpose debentures;²⁵¹ and indicating a time line for repayment.²⁵²

Tan's paper²⁵³ and Liu and Fang's paper²⁵⁴ added suggested solutions to the problem, including separate administration of the funds in the individual accounts and funds in the social pooling accounts;²⁵⁵ and legislating to determine the nature and responsibility of the "debt".²⁵⁶

Increased administrative centralisation of Old-Age Pensions insurance contributions in the literature was treated as a solution to the "empty individual accounts problem". Zheng's paper in 2007²⁵⁷ and Xi and Lei's paper in 2011²⁵⁸ are representative in this area of the research.

²⁴⁷ Above note 240, at 98-100.

²⁴⁸ Above note 240, at 101-102.

²⁴⁹ Above note 240, at 103.

²⁵⁰ Above note 240, at 104.

²⁵¹ Above note 240, at 105.

²⁵² Above note 240, at 105.

²⁵³ Above note 233.

²⁵⁴ 刘敏、方荣军,《我国养老保险隐形债务偿还的对策思考》, Liu M & Fang R, 'Considerations on the Responses to the Repayment of Hidden Debt in China', (2007) *Finance and Economics* (December) 35.

²⁵⁵ Ibid. 254

²⁵⁶ Above note 233.

²⁵⁷ 郑秉文,《关于加快推进省级社保统筹的建议》, Zheng B, 'Suggestions on Speeding up Provincial Level Economical Centralised Contribution of Social Insurance', (2007) *A Guide to China's Economics and Trade* (18) 9.

²⁵⁸ 席恒、雷晓康,《基本养老保险全国统筹的思路与支持条件》, Xi H & Lei X, 'Some thoughts on and the Support Conditions for National Centralised Contributions of Old-Age pension in China', (2011) *Reforms in Administrative Management* 34.

Zheng²⁵⁹ identified the importance for increased administrative centralisation of Old-Age Pensions insurance contributions in the PRC, especially to the provincial level. Xi and Lei²⁶⁰ analysed the supporting conditions for increasing administrative centralisation of Old-Age Pensions insurance contributions to the national level. The two papers argued that at the time of their paper, Enterprise Employee Old-Age Pensions Insurance²⁶¹ had become society's insurance. Both papers took the perspective of equality in providing Old-Age Pensions across the country. The authors noted the geographical developmental disparity in the PRC as an area of difficulty in implementing administrative centralisation.

Xi and Lei²⁶² in their analysis also emphasised that the Urban Old-Age Pensions insurance systems in the PRC were established along with the tax sharing fiscal structure.²⁶³ The reality of different levels of economic development in geographical areas meant economic development affected the development of Old-Age Pensions provision across the country. The pilot Old-Age Pensions insurance programmes chose different models according to the economic situation of the local area. Even in different administrative areas of the same province, the Old-Age Pensions insurance and benefits model can differ substantially. Increased centralisation of pensions administration became necessary for the fair provision of Old-Age Pensions in the PRC.

Xi and Lei²⁶⁴ observed that Old-Age Pensions administration centralisation in the PRC differed across provinces. Some have achieved provincial central administration of

²⁵⁹ Above note 257.

²⁶⁰ Above note 258.

²⁶¹ The literal translation of the Chinese term, taken out of the Social Insurance context.

²⁶² Above note 258.

²⁶³ 分税制 《国务院关于实行分税制财政管理体制的决定》 The Decision of the State Council on Implementing a Tax Split Public Finance Management System 1993 (State Council).

²⁶⁴ Above note 258.

Old-Age Pensions insurance contributions, including the Guangdong province.²⁶⁵ Some continued to lag at the prefecture, even worse, at the county level.²⁶⁶ This complexity meant the revenue from Old-Age Pensions insurance belongs to different levels of local governments.²⁶⁷ The local level governments would not have the motivation to remit the revenue to be administered by the higher level government.

Xi and Lei²⁶⁸ argued that there were three major concerns in relation to increased levels of centralisation of contributions.²⁶⁹ They argued that these three concerns arise from the difference in the administration of revenue and expenditure in the PRC, where there is no matching of funds administration levels to payment administration levels. The independence and complexity of tax administration were suggested as the reasons for the lack of matching.

These three concerns are first,²⁷⁰ the fate of the Old-Age Pensions insurance funds that were originally administered by local governments becomes questionable after national centralisation. Theoretically²⁷¹ there are three options: remit all to central government, partial remittance to central government, and keep everything at the different local government levels. Second,²⁷² after national centralisation, the requirements for funding and the method of benefit payment are unclear. According to Xi and Lei,²⁷³ this can be calculated according to the national aggregate of wages and salaries or

²⁶⁵ 中国养老金网,《广东成全国首个社保统筹省 养老保险可无障碍转移》, *CNOld-Age pensionet*, 'Guangdong Becomes the First Province to Achieve Central Contribution of Social Insurance - Old-Age pension insurance Can Now be Transferred without Obstacles', *CNOld-Agepensionet*, 23 December 2009, <http://www.cnOld-Age pension.net/index_lm/2009-12-23/news1261530333d1013765.html> (24 Feb. 2012).

²⁶⁶ The PRC has five levels of governments: national, provincial, prefecture, county and town.

²⁶⁷ Above note 258.

²⁶⁸ Above note 258.

²⁶⁹ Above note 258.

²⁷⁰ Above note 258.

²⁷¹ Above note 258.

²⁷² Above note 258.

²⁷³ Above note 258.

national consumption levels. Third,²⁷⁴ the source of funding for Old-Age Pensions insurance after administrative centralisation of contributions is also unclear. According to Xi and Lei,²⁷⁵ this may come from contributions by employers, central government fiscal subsidies and distinctive national social insurance funds.

It was unclear how the authors drew the correlation between administrative centralisation and the tax sharing structure to arrive at their policy proposals.²⁷⁶ One possible reason is that because the Old-Age Pensions payments are administered by Departments of Human Resource and Social Security at local government areas, and Local Tax Bureaus of the State Administration of Taxation collect revenue types that are to fund expenditure administered by local governments. By increasing the level of centralisation for the administration of funds will enable easier matching of funding needs to revenue sources. The authors may have assumed that the PRC still does not have a comprehensive formal institutional framework that included a practicable fiscal revenue structure.

Two other issues were identified by Zheng²⁷⁷ and Xi and Lei²⁷⁸ as significant in implementing administrative centralisation. One major problem of the Old-Age Pensions insurance system in the PRC was the piecemeal nature of the system. Some participants in the system had contribution certainty, for example, urban enterprise employees. Other participants had benefits certainty, for example, public servants.

²⁷⁴ Above note 258.

²⁷⁵ Above note 258.

²⁷⁶ 《国务院关于实行分税制财政管理体制的决定》 *The Decision of the State Council on Implementing a Tax Split Public Finance Management System* 1993 (State Council).

²⁷⁷ Above note 257.

²⁷⁸ Above note 258.

A second issue is a concern that the individual accounts resemble ordinary private insurance accounts. Take Xi and Lei's paper²⁷⁹ as an example. They believed that the lack of funds in these individual accounts directly contributed to the lack of sustainability in funding Old-Age Pensions in the PRC.

The authors did not provide reasons as to why in order to solve the funding sustainability issue, they were drawing the link between the piecemeal nature, and the resemblance of individual accounts to ordinary private insurance accounts; as well as their contribution to solving the "empty individual accounts" problem.

One possible reason is that the authors continued to believe that the Old-Age Pensions are the liability of enterprises, and individual accounts should act as the mechanism to guarantee that funds are available to pay pensions for urban enterprise retirees, as enterprises used to budget for Old-Age Pensions specifically for each retiree. The authors did not distinguish the role of the government as employer, with the role of government as the administrator of social welfare policies.

Other scholars have considered the empty individual accounts as a problem that leads to a lack of funding for future generations,²⁸⁰ because funds in the Social Insurance Fund that are attributable to the individual were transferred to pay the Old-Age Pensions of current retirees. This argument is only feasible within a private insurance framework,²⁸¹ where premium payments correlate with benefits.

²⁷⁹ Above note 258.

²⁸⁰ 凤凰网,《专家预计未来30年城市养老金空帐规模将达6万亿》, ifeng, 'Experts Forecasted that the Deficit in the Urban Old-Age Pension Account in the Next 30 Years Would be Up to RMB 6 Trillion', *ifeng*, 28 July 2010, <<http://finance.ifeng.com/news/20100728/2452047.shtml>> (24 Feb. 2012).

²⁸¹ 'Insurance' in Delbridge & others, eds, *The Macquarie Encyclopedic Dictionary*, (Sydney: Macquarie Library Pty Ltd, 1995), at 482.

Wang and Zheng²⁸² considered the empty individual accounts issue as reflecting the failure by Chinese policy makers to introduce individual accounts properly into its social society funding structure. Their concern about empty individual accounts being a problem was based on considering contributions on behalf of the individual as the only proper source of funding, and dismissing the government “subsidies” coming from consolidated revenue as a legitimate funding source. Wang and Zheng²⁸³ also argued that reforms to ascertain funds in the individual accounts are not necessary, as there is enough funds in the PRC’s fiscal structure to fund Urban Old-Age Pensions in the PRC. The authors did not explain how they arrived at the conclusion that there was enough funds in the fiscal structure to fund Urban Old-Age Pensions, leaving a gap in the literature.

Following the arguments from the research that contributed to initial policy reform, this body of literature presumed that pensions insurance contributions were the only legitimate source of revenue for funding Urban Old-Age Pensions. It did not consider the institutional changes in the PRC, especially that the Urban Old-Age Pensions were no longer administered by State Owned Enterprises as employers, but the government is administering pensions as a public authority. It also mixed the analysis of administrative problems arising out of the Urban Old-Age Pensions reform, and the substantive question of whether the PRC could sustainably fund Urban Old-Age Pensions. The increased centralisation of Urban Old-Age Pensions insurance contributions is an administrative solution that will assist in the management of existing

²⁸² 王钰磊, 引郑秉文, ‘中国与拉美及加勒比社保体系国际研讨会’, Wang Y, quoting Zheng B, ‘Comment in the International Conference on the Comparison between the Social Security Systems of China and South American and Caribbean Nations’, in 《社科院专家: 中国社保不差钱, 政府补空帐是傻瓜做法》, ‘Expert from the Chinese Academy of Social Sciences: There is No Lack of Funding for Social Security in China, Government Subsidies for the Deficit in the Social Security Account is a Fool’s Way’, *ifeng*, 22 July 2010, <<http://finance.ifeng.com/news/special/laolinghua/20100722/2433092.shtml>> (24 Feb.2012).

²⁸³ *Ibid.*

funding, it is not a solution for the lack of sustainable funding, if it is proven that there is insufficient funding of the policy.

3.5 The Lack of Sustainable Funding and Suggested Solutions

This section reviews the literature on the suggested solutions to solve the lack of sustainable funding problem in the PRC's Urban Old-Age Pension policies. Researchers have utilised empirical data and economic models to suggest policy reform. The common assumptions in this body of research are: the funds in the Social Insurance Fund pertaining to Old-Age Pensions is the only legitimate source of public revenue to fund Urban Old-Age Pensions; and that the empty individual accounts problem continues to be a real problem.

In Yuan and Feng's paper,²⁸⁴ the authors argued that the three-pillar pensions system introduced in 1997 that included the Basic Old-Age Pension Insurance, the private tier of Old-Age Pensions insurances and the safety net was unsuccessful. While many scholars in the field considered that the reason of the failure was due to the nature of the PAYG system, and some suggested that the fully funded pensions system is better for the PRC,²⁸⁵ in their paper, Yuan and Feng argued that the fully funded system is neither an efficient system in the current time period nor likely to be a good one in the future. They performed efficiency analyses to compare a PAYG system and a fully funded system in the PRC by using a wide range of historical data to show the outcome of the Old-Age Pensions system's performance in the last two decades, and suggested that a mandatory PAYG system is still more suitable for China's national

²⁸⁴ Yuan Z & Feng J, 'Rethinking Pension Reform in China', (2005) *China & World Economy* Mar/Apr <<http://ezproxy.library.usyd.edu.au/login?url+http://search.proquest.com/docview/237267157?accountid=14757>> (25 May 2014).

²⁸⁵ Ibid.

circumstances.²⁸⁶ From the model, they also concluded that the PAYG system is more sustainable in comparison to the fully funded system.²⁸⁷

In Wang, Beland and Zhang's paper,²⁸⁸ they first reviewed the PRC's Old-Age Pensions developments since 1978.²⁸⁹ They then set up an evaluation model to analyse the fairness of the current scheme.²⁹⁰ In this model, pension income, pension contribution, pension demand and pension generation gap are chosen as variables. The results showed that "the pension system is generally unfair in the view of pension income and pension contribution when pensions for civil servants are excluded from the analysis".²⁹¹ They concluded that the PRC's fragmented Old-Age Pensions system was fundamentally unfair. They proposed to establish an integrated and more egalitarian Old-Age Pensions system.

Lu, He and Piggott²⁹² in their paper discussed the necessity of building up a society-wide Old-Age Pensions system that also captured the rural population. The authors' main focus was on the government's fiscal cost burden, and therefore, the cost for the population. The size of the pensions recipient population was the key in the discussion.²⁹³ Specifically, they listed the potential size of the aging population and the related cost in the future, and plotted the data against the PRC's Old-Age Pensions structure.²⁹⁴ They concluded that the society-wide Old-Age Pensions system is not feasible in the PRC, because fiscal income could not cover the population. The flaws of this paper are that the authors discussed population issues as "costs", but there was

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Wang L, Béland D & Zhang S, 'Pension Fairness in China', (2014) 28 *China Economic Review* 25.

²⁸⁹ Ibid, at 25-27.

²⁹⁰ Id, at 27-33.

²⁹¹ Id, at 31.

²⁹² Lu B, He, W & Piggott J, 'Should China introduce a social pension?', (2014) *The Journal of Economics and Ageing* <<http://dx.doi.org/10.1016/j.jeoa.2013.12.001>> (04 Mar 2015).

²⁹³ Ibid.

²⁹⁴ Ibid.

no direct link drawn between fiscal income and those “costs”; they also did not consider the full scale of the PRC’s fiscal revenue structure.

Feng, He and Sato in their paper²⁹⁵ recognised the 1997 reform as building up a PAYG system and linked the effect of that reform to a concept of “pension wealth” that they defined as the discounted value of future pensions benefits.²⁹⁶ They built a model to explain the effects of “pension wealth” changes to household savings. In their model, they provided detailed information on the population data on age and gender. Their aim was to distinguish the differences in changes to household savings when income level changes differently due to age and gender.²⁹⁷ They ran regression models on the different scenarios to illustrate the relationship between household income, saving and the “pension wealth” and concluded that there is correlation between the variables.²⁹⁸

Yang’s paper²⁹⁹ analysed the sustainability of funding Old-Age Pensions from the perspective of life expectancy. Yang used population data from different local government areas and gender as variables to calculate the expected Old-Age Pensions expenditure based on life expectancy. He concluded that the current Old-Age Pensions payment structure regulated by the PRC’s law-documents does not reflect actual life expectancy of the PRC’s population, and the pool of Old-Age Pensions recipients will continue to enlarge.³⁰⁰ The paper argued that the Old-Age Pensions structure should be adjusted by the increases in life expectancy to balance expenditure needs.³⁰¹

²⁹⁵ Feng J, He L & Sato H, ‘Public Pension and Household Saving: Evidence from Urban China’, (2011) 39 *Journal of Comparative Economics* 470.

²⁹⁶ *Ibid*, at 470-472.

²⁹⁷ *Id*, at 478.

²⁹⁸ *Id*, at 479-485.

²⁹⁹ 杨斌, 《城镇企业养老保险个人账户给付期测算研究》, Yang, B, ‘Approximating the Payment Period for Urban Old-Age Pension Insurance Individual Accounts’, (2012) 5 *Social Security Studies* 3.

³⁰⁰ *Ibid*, at 3-10.

³⁰¹ *Id*, at 11-12.

Liu's paper³⁰² focused on the Old-Age Pensions replacement rate and pointed out that the Old-Age Pensions replacement rate is decreasing significantly. This decrease lowers the quality of life for the Old-Age Pensions recipient. The author suggested a so called self-automatic adjustment system that is able to adjust the level of Old-Age Pensions to ensure a relatively stable replacement rate. The variables in the self-automatic adjustment system are increases in wage levels and the price index. It was concluded that such a self-automatic adjustment system could effectively ensure the quality of life for people with lower income.³⁰³ A major flaw in this paper is that the author did not recognise the Urban Old-Age Pensions that is partially funded by a compulsory Social Insurance is different to the previously enterprise employer funded and administered Old-Age Pensions.

Yang³⁰⁴ built regression models on population growth and the growth of payment levels for Urban Old-Age Pensions. The purpose of the models was to measure the sustainability of the existing Urban Old-Age Pension policies. Key variables in the models included: the age of the working force (20-58) and the upper limit of life expectancy (100), average return on pensions re-investment (5.97%), the average amount of contributions to the pension fund, the population cover percentage of the Urban Old-Age Pensions, the average wage growth rate, the effective tax rate, and the replacement rate of the Urban Old-Age Pensions. Note that the chosen range for age of the working force was different to the working age population age used by the National Statistics Bureau of China, which is 15-64.³⁰⁵ Yang's was one of the more

³⁰² 柳清瑞, 《养老金替代率的自动调整机制研究》, Liu Q, 'The Self-automatic Adjustment System of Old-Age Pension Replacement Rates', (2005) 3 *Chinese Anthropology* 51.

³⁰³ Ibid, at 51-55.

³⁰⁴ 杨晓茜, 《中国城镇居民养老保险体系的可持续性研究》, Yang X, 'A Study of the Sustainability of the Urban Old-Age Pension Insurance System in China', (2014) 238 *International Economics and Trade* (4) 147.

³⁰⁵ *Database of the National Bureau of Statistics of China (Chinese Version)*, Online <<http://data.stats.gov.cn/>> (25 Aug. 2015). A limited English version of the data are available at: <<http://data.stats.gov.cn/english/>>.

comprehensive models in the literature to measure sustainability. One key variable, however, is missing; that is, the size of fiscal revenue that could be sourced to fund Urban Old-Age Pensions.

Gu³⁰⁶ pointed out that the shortfall on Urban Old-Age Pensions payments is the key element that is obstructing the reform of the Old-Age Pensions system. He concluded that the cause of the shortfall was the lack of system construction. As a result, he suggested that the level of contributions on behalf of the individual, that is, funds that are contributed to the individual account, should increase. He also suggested delaying retirement as a solution.³⁰⁷

Chen's 2014 paper³⁰⁸ analysed the ratio between social security expenditure and total expenditure, the ratio between the types of social security expenditure, the ratio between the social security expenditure for the different population groups – urban vs rural and people in different geographical areas. He identified unbalances in Pension Fund income and payment, in payment for different purposes, in different areas and between rural and urban areas.³⁰⁹ Chen concluded that currently there is still a need for general reform to Old-Age Pensions as an element of social security.

Yu and Chen³¹⁰ identified reasons for the lack of sustainable funding to include: a large funding gap, intergovernmental transfer difficulties, high costs of reform, population aging, and unbalance between localities.³¹¹ They identified reasons other than the

³⁰⁶ 顾锦林,《我国养老金缺口原因及对策分析》, Gu, J, 'Analysis of the Reasons and Solutions to the Gap in Old-Age Pension Funding in China', (2012) 232 *Reformation & Strategy* 12 131.

³⁰⁷ *Ibid.*, at 131.

³⁰⁸ 陈成,《中国社会保障支出: 问题与思考》, Chen, C, 'Social Security Expenditure in China: Questions and Considerations', (2014) 7 *Social Science* 26.

³⁰⁹ *Ibid.*, at 26-31.

³¹⁰ 于民、陈茜,《我国养老保险体制改革的财政困境与对策》, Yu M & Chen C, 'The Difficulties and Solutions for the Social Security System Reform in China', (2011) *Economic Perspective* (7) 42.

³¹¹ *Ibid.*, at 42-44.

empty individual accounts problem. The solution provided, however, was still mainly focused on centralisation of contribution administration.³¹²

Wang, Xu, Wang, and Zhai's paper³¹³ provided a very rough general equilibrium analysis of the PRC's Urban Old-Age Pensions reform. Their basic assumption was based on three sets of variables: macroeconomic variables (such as GDP, Investment and trade balance), pensions system characteristics (such as assumption of a PAYG system) and government fiscal closure issues (such as government expenditure and assumption of tax rates). The authors did not provide reasons for making these assumptions. One possible reason is that they were seeking to build a broad model, so considered a wide-range of variables.

3.6 Flaws in the Literature on Lack of Sustainable Funding for Urban Old-Age Pensions

The prior body of literature directly addressed the problem of the lack of sustainable funding for Urban Old-Age Pensions in the PRC. Spanning more than twenty years, it continued to assume that the funds in the Urban Old-Age Pensions insurance fund is the only legitimate source of funding. The reason for making this assumption is that the authors made a mistake by analysing Urban Old-Age Pensions Social Insurance Contributions as pensions insurance, therefore performing analysis within an insurance framework.

The wrong choice in analytical framework meant the prior literature is methodologically flawed. Instead of applying a public economics research paradigm,

³¹² Id, at 44.

³¹³ Wang Y & others, 'Options and Impact of China's Pension Reform: A Computable General Equilibrium Analysis', (2004) 32 *Journal of Comparative Economics* 105.

where Urban Old-Age Pensions funding is analysed as an element of public expenditure that is funded by general revenue; the analysis was performed by viewing retirement as a risk that requires insurance. On the revenue side of this public economics paradigm, Urban Old-Age Pensions Social Insurance Contributions as a social insurance is a compulsory levy, which is very different to insurance premiums which are results of actuarial calculations.

The literature also did not pay attention to the PRC's promise in the *Social Insurance Law*³¹⁴ to fully fund Urban Old-Age Pensions, and that the *Social Insurance Law*³¹⁵ allows subsidies to be made from consolidated revenue to supplement the funding of Urban Old-Age Pensions. The promise resulted in the PRC's Urban Old-Age Pensions becoming a public good within the budgeting process.

3.7 Other Relevant Issues

Other researchers added to the literature on the funding of Urban Old-Age Pensions from alternative perspectives. The alternative perspectives included identifying the government's responsibility in providing welfare, which is an attempt to legitimise government subsidies;³¹⁶ identifying Social Insurance Contributions as a tax; and proposals to utilise the financial market to grow the funding pool. This section briefly reviews the limited literature on contributions as a tax, and those on investment to grow the funding pool.

³¹⁴ Above note 177.

³¹⁵ Above note 177.

³¹⁶ See 黎建飞,《社会保险中的国家责任》,Li, J, 'State Responsibilities in Social Insurance', (2011) 1 *Human Resource and Social Security in China* 14; and 席恒, 翟绍果 《从理想模式到顶层设计: 中国养老保险制度改革思考》; and Xi H & Zhai S, 'From Ideal Model to Top Level Design: Considerations on the Reform of Old-Age Pension Insurance in China', (2012) 14 *Journal of Wuhan University of Science & Technology (Social Science Edition)* (6) 581.

3.7.1 Contributions as a Tax

Yang³¹⁷ and Pang³¹⁸ distinguished the fiscal nature of Urban Old-Age Pensions Social Insurance Contributions in the PRC, and have correctly referred to them as Social Insurance Contributions. Their papers are contributions to a small body of literature that took into consideration the growing maturity of the PRC's fiscal revenue structure as part of post Open Door Policy institutional developments, where the legal and tax system are better able to support government administered provision of public goods.

Yang³¹⁹ identified Urban Old-Age Pensions Social Insurance Contribution as an earmarked tax and the different ways that tax manifested itself. To Yang,³²⁰ Social Insurance Contributions is a tax and the Social Insurance tax is a payroll tax that is levied to fund social securities, including Old-Age Pensions. Social Insurance Contributions exhibits the four basic characteristics of taxes: compulsory levy, non-compensating, certainty and equity. According to Yang³²¹, since contributors can see the returns from Social Insurance Contributions, contributors (taxpayers) are more willing to contribute, the administrative cost thereby is relatively low, and the Social Insurance Tax is a simple and efficient tax.

To Yang, Social Insurance Taxes of different countries have common characteristics:

- 1) The taxpayers of the Social Insurance Tax are employees and employers. Some countries specify that all Social Insurance should be paid by the employer, for

³¹⁷ 杨斌, 《税收学原理》, Yang B, *Theory of Taxation*, (Beijing: Higher Education Press 2008), at 264-270.

³¹⁸ 庞凤喜, 《论社会保险税的征收与社会保险制度深化改革的关系》, 'The Relationship between Levying a Social Insurance Tax and the Deepening Reform of the Social Insurance System' (2007) *Comments on Public Economics* (7&8) 1.

³¹⁹ Above note 317, at 264 - 270.

³²⁰ Above note 317, at 267 - 268.

³²¹ Above note 317, at 267 - 268.

example Australia; and some countries include the self-employed into the social insurance tax net.

- 2) The tax objects of the Social Insurance Tax are wages and salaries, that is, it is a payroll tax. Any income other than wages and salaries such as investment income, capital gains, etc are not included. As the tax base, wages and salaries include cash paid by the employers, and in kind receipts and other receipts that are convertible to cash.
- 3) There is often a cap for payroll taxable wages and salaries. Although the social insurance tax of each country has the above common characteristics, the actual tax system designs are very different.

Pang³²² suggested that the PRC should treat the Old-Age Pensions Social Insurance Contributions as a tax, and to take away the earmarked nature of the tax. Taking away the earmarked nature makes Social Insurance Contributions a part of the general funding pool to fund Old-Age Pensions. She argued that this is more reflective of the economic nature of the Social Insurance Contributions.

3.7.2 Investment of Funds

There is also literature that addresses how investment mechanisms may be utilised to boost funding in the Social Insurance Fund.³²³ This part of the literature represents an alternative approach to address the lack of sustainable funding for Urban Old-Age Pensions. These scholars did not address the funding problem from the contributions

³²² Above note 318.

³²³ For example, see 郑秉文, 《建立社保基金投资管理体的战略思考》, Zheng, B, 'Strategies for Establishing an Investment Management System for Social Insurance Funds', (2004) 4 *Public Administration Journal* 4; and 张志超、但芳芳, 《社保基金投资组合选择和风险防范》, Zhang Z & Dan F, 'Social Insurance Fund Investment Portfolio Choice and Risk Mitigation', (2004) 4 *Openness Digest* 99.

side of the policy. This alternative is to take the funds contributed into the Old-Age Pensions Fund as given, and consider how to grow the funding pool.

Feldstein's 1999 paper³²⁴ already raised the point about the benefits the PRC could gain from running an investment-based system, where investments of the pool of funds in the Social Insurance Fund could add to the funding pool.³²⁵ Jame's paper³²⁶ attempted to suggest ways the PRC's Old-Age Pensions scheme could interact with the financial market reform.

3.8 Conclusion and Gap in the Research

The prevailing literature has consistently argued that there is a lack of sustainable funding for Urban Old-Age Pensions in the PRC. The literature overlooks that the PRC's institutional structure has developed significantly from the time of the *State Council Decision 1997*,³²⁷ a time when researchers first analysed the PRC's then employer administered Urban Old-Age Pensions scheme. Those earlier researchers contributed to initial reform by suggesting policy elements that would suit an Urban Old-Age Pensions scheme that is administered by the government.

The argument about the lack of sustainable funding is based on two major conclusions, that the funds in the Social Insurance Fund pertaining to Old-Age Pensions are the only legitimate source of public revenue to fund Urban Old-Age Pensions; and the empty individual accounts problem continues to be a real problem. Researchers have set up

³²⁴ Above note 217.

³²⁵ Above note 217, at 101-102.

³²⁶ James E, 'How Can China Solve Its Old-Age Security Problem? The Interaction between Pension, State Enterprise and Financial Market Reform', (2002) 1 *Journal of Pensions Economics & Finance* (1) 53.

³²⁷ Above note 178.

models testing these two conclusions as hypotheses, and concluded that the PRC's Urban Old-Age Pensions scheme is indeed not sustainable.

There is a literature that chose to analyse the sustainability of funding Urban Old-Age Pensions from a different perspective. The researchers focused on the funds that are in the Social Insurance Fund, and how to grow those funds. The main focus was investment solutions utilising the financial market.

There are many gaps in the literature on the sustainable funding of Urban Old-Age Pensions in the PRC. These gaps relate to the nature of the Urban Old-Age Pensions reform itself, the prevailing view, and the nature of Social Contributions in the PRC's fiscal revenue structure.

In relation to the reform itself, the *Social Insurance Law*³²⁸ now requires the government to fully fund Urban Old-Age Pensions and allow subsidies from consolidated revenue as supplement funding. There is almost no literature on the reasons behind that policy decision, therefore, the prevailing literature continues to argue that the contributions accumulated in the Social Insurance Fund should be the only source of funding for Urban Old-Age Pensions.

There is also little research on the impact increases in urbanisation in the PRC has on the development of Urban Old-Age Pensions policies. This increase in urbanisation means the urban scheme will cover a larger proportion of the population.

The PRC's old age dependency ratio is much lower than the OECD,³²⁹ thus the literature did not consider whether the much lower old age dependency ratio in the PRC

³²⁸ Above note 177.

³²⁹ *Database of the National Bureau of Statistics of China (Chinese Version)* Online <<http://data.stats.gov.cn/>> (25 Aug. 2015), please also see Appendix A and B; and *World Bank Database*, Online <<http://data.worldbank.org/indicator/SP.POP.DPND>> (6 Sep. 2015).

as compared to that of OECD countries make a difference to the policy design of Urban Old-Age Pensions in the PRC.

In relation to the prevailing views that are the presumptions for models to analyse funding sustainability, that is, funds in the Social Insurance Fund pertaining to Old-Age Pensions are the only legitimate source of public revenue to fund Urban Old-Age Pensions; and the empty individual accounts problem continues to be a real problem, the gaps in the literature include:

- Whether the institutional changes in the PRC from the Open Door Policy in 1978 make a difference to the assumption that public funding for Urban Old-Age Pensions could only be sourced from the Social Insurance Fund;
- Whether these institutional changes affect the perspective on the “historical Old-Age Pensions debt” problem;
- The reasons for arguing that funds in the individual accounts have to be accounted for separately; and
- When treating Urban Old-Age Pensions as a public good, considerations of other possible sources of funds in the PRC’s fiscal revenue structure.

In relation to the nature of Social Insurance Contributions, there is a small literature that identified Urban Old-Age Pensions Social Contributions as a tax that contributes to the general fiscal structure of the PRC. This literature did not go far enough to suggest that the tax nature of the Social Contributions impact on the PRC government’s ability to sustainably fund Urban Old-Age Pensions. This research also notes Wang and Zheng’s argument³³⁰ that there is no lack of funding in the

³³⁰ Above note 282.

PRC's fiscal structure. The researchers did not provide an analysis of how they reached this conclusion, leaving a gap in the literature.

This research aims to address some of these gaps in the literature. It suggested that the reason the government mandates subsidies is that China has a long tradition of policies where the government looks after the elderly in the population. It argues that the institutional reforms change the assumption that the accumulated contributions are the only source of funding for Urban Old-Age Pensions. It also argues that the PRC could source subsidies from the whole of its fiscal revenue structure to fund Urban Old-Age Pensions as a public good in its budgeting process. These arguments will contribute to changing the assumptions for the models that were developed in the existing literature to test the funding sustainability of the PRC's Urban Old-Age Pensions scheme.

Chapter IV The Chinese Policy Tradition of the State

Looking after the Elderly

大道之行也,天下为公,选贤与(jǔ)能,讲信修睦。故人不独亲其亲,不独子其子,使老有所终,壮有所用,幼有所长,鳏、寡、孤、独、废疾者皆有所养,男有分,女有归。货恶其弃于地也,不必藏于己;力恶其不出于身也,不必为己。是故谋闭而不兴,盗窃乱贼而不作,故外户而不闭,是谓大同。

《礼记·礼运篇》³³¹

“When the great Tao was in practice, the world was common to all; men of talents, virtue and ability were selected; sincerity was emphasized and friendship was cultivated. Therefore, men did not love only their own parents, nor did they treat as children only their own sons. A competent provision was secured for the aged till their death, employment was given to the able-bodied, and a means was provided for the upbringing of the young. Kindness and compassion were shown to widows, orphans, childless men, and those who were disabled by disease, so that they all had the wherewithal for support. Men had their proper work and women had their homes. They hated to see the wealth of natural resources undeveloped, [so they developed it, but this development] was not for their own use. They hated not to exert themselves, [so they worked, but their work] was not for their own profit...This was called the great unity.”

‘Li Yun’, in *Book of Rites*³³²

4.1 Introduction

As outlined in Chapter III, the existing academic analysis of Old-Age Pensions funding in the PRC argued that the public funding of Urban Old-Age Pensions is unsustainable from several perspectives. This previous analysis stated and found causes for the

³³¹ 《礼运》, ‘Li Yun’ in 《礼记》 *Book of Rites*, <http://so.gushiwen.org/guwen/book_23.aspx> (2 Nov. 2015). The *Book of Rites* was a collected Confucian work written during the Warring States Period (475 – 221 BC).

³³² As translated by Fung Yu-Lan in Fung Y, *A Short History of Chinese Philosophy – A Systematic Account of Chinese Thought From Its Origins to the Present Day*, Bodde D, ed, (New York: The Free Press, 1976), at 202-203.

unsustainability, some found issues for further reform, and others built models to suggest solutions to the problem. In each case, the analysis was based on an assumption that contributions to the Social Insurance Fund was the only legitimate source of funding.

Owing to the unique history of the PRC, this assumption of single legitimate source of funding is not accurate. The remainder of this chapter through a detailed historical analysis demonstrates that long standing Chinese tradition, where the State uses public policy tools funded through general revenue to meet its obligations in respect of elder care, must also be considered. If the PRC has continued this policy tradition it will open up further revenue sources that must be considered in any analysis of sustainability in funding Old-Age Pensions in the PRC.

China has a long established tradition of supporting the different social groups by the sovereign or government. The quote translated at the start of this chapter demonstrated an ideal society within this tradition. The welfare tradition involved governments paying for social welfare programmes from fiscal revenue. Of clear importance is looking after the weaker members of society in China. Historically, the ideal society is one where these weaker members received their sustenance from ancient China's sovereign centric society. Amongst policies that assisted people's livelihoods, those that aimed to look after the elderly have always been more important. This arose due to the pivotal role played by filial piety in Confucian thought,³³³ which is the branch of Chinese philosophy that greatly informed governance.

³³³ Confucian here refers to the school of thought, not just the writings of Confucius.

Loosely termed, the policy tradition that looked after the weaker members of society is a welfare state tradition, in the sense that a welfare state is:

“the institutional framework under which the state assumes responsibility for the basic welfare of citizens and applies policies, operationalized via legislation, to that end. Social security, health, housing, and education are its main areas of provision. It is particularly associated with the meeting of basic needs; and it thus operates as a redistributive mechanism for the inequalities that occur under a market economy”.³³⁴

This chapter identifies and analyses the underpinnings for the welfare policies in ancient China that provided for the elderly. The chapter provides examples of actual government policies that have the effect of law in the different dynasties and periods. Section 4.2 identifies the sources of the theoretical discussion in China’s Confucian literature.

Section 4.3 makes the case that policies made according to the Confucian governance philosophies of looking after the elderly performed the functions of laws. The policies formed part of the traditional Chinese “institutional framework”.³³⁵ These policies were in the form of *Li* rules, and in this section the function of *Li* rules within the ancient Chinese governance framework were compared to those of the western connotation of law through a simple constructive exercise. The exercise takes into consideration the core concepts originally developed by Weber³³⁶ to aid the understanding of the function of *Li* rules as an unfamiliar concept. Section 4.4 explains the role of the Sovereign in the traditional Chinese “institutional framework”.

³³⁴ Cane P and Conaghan J, ‘Welfare State’, *The New Oxford Companion to Law*, <<http://www.oxfordreference.com.ezproxy1.library.usyd.edu.au/view/10.1093/acref/9780199290543.001.0001/acr ef-9780199290543-e-2323>> (23 May 2014).

³³⁵ Above note 334.

³³⁶ Weber M, *Economy and Society an Outline of Interpretive Sociology*, Roth G & Wittich C, eds, (Berkeley: University of California Press, 1978).

Section 4.5 focuses on the discussion of filial piety as a principle in the *Li* rules and presents examples of policies in the tradition of government provided welfare for the elderly. Filial piety is the principle that regulated looking after the elderly, and it played the pivotal role in establishing the Chinese policy tradition where the State looks after the elderly. Section 4.6 concludes this chapter showing that this traditional basis still exists within the PRC, which means that funding from general revenue could be utilised to fund Old-Age Pensions.

4.2 Theoretical Sources Informing the Chinese Tradition for the Government to Look after the Elderly

The Confucian literature that forms the theoretical framework of the Chinese policy tradition to look after the elderly by governments is discussed in this section. It also introduces the historical records reviewed to gather policy examples on looking after the elderly in this tradition.

The texts reviewed are: the *Book of Rites*,³³⁷ *History of the Han Dynasty*³³⁸ and *History of the Later Han Dynasty*,³³⁹ *Book of Songs*,³⁴⁰ *Mencius*,³⁴¹ *Confucian Analects*,³⁴² *Xunzi*,³⁴³ *Guanzi*,³⁴⁴ *Bai Hu Tong Yi*,³⁴⁵ *Book of Filial Piety*,³⁴⁶ *Zhou Rites*, a

³³⁷ 《礼记》 *Book of Rites*, <http://so.gushiwen.org/guwen/book_23.aspx> (2 Nov. 2015).

³³⁸ 《汉书》 *History of the Han Dynasty*, <http://so.gushiwen.org/guwen/book_40.aspx> (2.Nov 2015).

³³⁹ 《后汉书》 *History of the Latter Han Dynasty*, <http://so.gushiwen.org/guwen/book_41.aspx> (2.Nov 2015).

³⁴⁰ 《诗经》 *Book of Songs*, <<http://so.gushiwen.org/gushi/shijing.aspx>> (2.Nov 2015).

³⁴¹ 《孟子》 *Mencius*, <http://so.gushiwen.org/guwen/book_11.aspx> (2.Nov 2015).

³⁴² 《论语》 Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015).

³⁴³ 《荀子》 *Xunzi*, <http://so.gushiwen.org/guwen/book_30.aspx> (2.Nov 2015).

³⁴⁴ 《管子》 *Guanzi*, <http://so.gushiwen.org/guwen/book_34.aspx> (2.Nov 2015).

³⁴⁵ 《白虎通义》 *Bai Hu Tong Yi*, <<http://www.zwbk.org/MyLemmaShow.aspx?lid=108203>> (2.Nov 2015).

³⁴⁶ 《孝经》 *Book of Filial Piety*, <<http://www.zwbk.org/MyLemmaShow.aspx?lid=76030>> (2.Nov 2015).

collection of Qin wooden tablets and bamboo strips that recorded Qin Dynasty laws,³⁴⁷ and a collection of Han Dynasty bamboo strips that recorded Han Dynasty laws.³⁴⁸

The *Book of Rites*³⁴⁹ is a Confucian work written by Confucius' students in the Warring States period (475 – 221 BC). The book has forty-nine chapters that describe and explain the rites and rituals in existence before the Qin Dynasty, including social norms, political organisations, ethics, politics and religion. It is a collection of *Li* rules, which are essential rules for the sovereign to regulate people's behaviour in China. The *Book of Rites*³⁵⁰ is one of the books officials were required to read before they could pass³⁵¹ the public service exams. In most dynasties, it was a component of the essential readings that were part of the books of governance in ancient China's *Li* framework.

The chapters from the *Book of Rites*³⁵² analysed for this research are Conveyance of Rites (*Li Yun*),³⁵³ Meaning of Sacrifices (*Ji Yi*),³⁵⁴ Patterns of the Family (*Nei Ze*),³⁵⁵ Black Robes (*Zi Yi*),³⁵⁶ Royal Regulations (*Wang Zhi*),³⁵⁷ Summary of the Rules of Propriety (*Qu Li*),³⁵⁸ King Wen as Son and Heir (*Wen Wang Shi Zi*),³⁵⁹ and Meaning of the Drinking Festivities in the Districts (*Xiang Yin Jiu Yi*).³⁶⁰ Out of these chapters,

³⁴⁷ 高恒, 《秦汉简牍中法制文书辑考》, 北京: 社会科学文献出版社, 2008 年. Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008); and 睡虎地秦墓竹简整理小组, 《睡虎地秦墓竹简》, 北京: 文物出版社, 1978 年. Shuihudi Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978).

³⁴⁸ 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005 年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005); and 高恒, 《秦汉简牍中法制文书辑考》, 北京: 社会科学文献出版社, 2008 年. Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008).

³⁴⁹ Above note 337.

³⁵⁰ Above note 337.

³⁵¹ A student could sit the exams, but there were non-exam record keeping mechanisms to make sure they have read the required readings before they could pass the exams. Without reading them, examinees received conditional passes.

³⁵² Above note 337.

³⁵³ 《礼运》, 'Li Yun' in above note 337.

³⁵⁴ 《祭义》, 'Ji Yi' in above note 337.

³⁵⁵ 《内则》, 'Nei Ze' in above note 337.

³⁵⁶ 《缙衣》, 'Zi Yi' in above note 337.

³⁵⁷ 《王制》, 'Wang Zhi' in above note 337.

³⁵⁸ 《曲礼上》、《曲礼下》, 'Qu Li I & II' in above note 337.

³⁵⁹ 《文王世子》, 'Wen Wang Shi Zi' in above note 337.

³⁶⁰ 《乡饮酒义》, 'Xiang Yin Jiu Yi' in above note 337.

*Li Yun*³⁶¹ details the Confucian governing ideals and the Confucian perception of history; *Ji Yi*³⁶² contains worship rituals; *Nei Ze*³⁶³ regulates the role of women and the family; and *Wang Zhi*³⁶⁴ defines the role of the sovereign and identifies systems on how the sovereign should behave.

The *History of the Han Dynasty*³⁶⁵ and the *History of the Later Han Dynasty*³⁶⁶ were court histories of the Han Dynasty. They serve as an authoritative source in relation to the nature of the policies on looking after the elderly that existed in the Han Dynasty (202 BC – 220 AD).

The Han was the first dynasty in which a formal written history of important events was kept. This court history contains four types of history books: Annals (*Ji*),³⁶⁷ Chronological Tables (*Biao*),³⁶⁸ Treatises (*Zhi*),³⁶⁹ and Biographies (*Zhuan*).³⁷⁰ The Annals are histories of an emperor's reign; the Chronological Tables list the important people and events of different periods. The Treatises detail the different laws in the different Chinese forms, that is, *Li*, *Fa*, *Xing* and *Zhi*.³⁷¹ Biographies are histories of the lifetime of a famous person, usually this person was a high level government minister or general.

Later dynasties continued the tradition began in the Han dynasty of recording formal histories. Two Treatises featured prominently in most court histories. They are the

³⁶¹ 《礼运》，‘Li Yun’ in above note 337.

³⁶² 《祭义》，‘Ji Yi’ in above note 337.

³⁶³ 《内则》，‘Nei Ze’ in above note 337.

³⁶⁴ 《王制》，‘Wang Zhi’ in above note 337.

³⁶⁵ Above note 338.

³⁶⁶ Above note 339.

³⁶⁷ 纪.

³⁶⁸ 表.

³⁶⁹ 志.

³⁷⁰ 传.

³⁷¹ 礼、法、刑、制. See 陈剩勇, 《法、礼、刑的属性(上)——对中国“法律”史研究方法论的一个反思》, Chen S, ‘The Character of *Fa*, *Li*, and *Xing* (I) – Reflections on the Methodologies for Researching the History of “Law” in China’, (2002) *Zhejiang Social Science* (5) 49; and 陈剩勇, 《法、礼、刑的属性(下)——对中国“法律”史研究方法论的一个反思》, Chen S, ‘The Character of *Fa*, *Li*, and *Xing* (II) – Reflections on the Methodologies for Researching the History of “Law” in China’, (2002) *Zhejiang Social Science* (6) 56.

Treatise on Food and Money (*Shi Huo Zhi*),³⁷² and the Treatise on Punishment and Law (*Xing Fa Zhi*).³⁷³ The Treatise on Food and Money records the economic and agricultural policies of their time. The Treatise on Punishment and Law (*Xing Fa Zhi*)³⁷⁴ are records of the laws and punishments of their time.

The *Book of Songs*³⁷⁵ is the oldest collection of songs and poems, and it was written between the western Zhou Dynasty (1046 – 771 BC) and the Spring and Autumn and Warlords periods (770 – 221 BC). The songs and poems collected were folk songs, court songs or religious songs, and are important because they record how people lived at the time.

The *Confucian Analects*³⁷⁶ is a summary of guiding Confucian *Li* principles written by the students of Confucius.³⁷⁷ The book records, posthumously, the discussions between Confucius and his students on a variety of topics. They have become part of the *Li* rules of ancient China, covering morality, individual and family ethics, politics, ceremony and rules of governance. Contemporary Chinese legal scholars go as far as saying that the *Li* rules in the body of Confucian literature represent the “Constitution” of ancient Chinese dynasties.³⁷⁸ Confucius and his students proposed that a gentleman³⁷⁹ firstly should improve his morals³⁸⁰ and learn to be benevolent;³⁸¹ secondly he should control

³⁷² 《食货志》, ‘Shi Huo Zhi’ in above note 338.

³⁷³ 《刑法志》, ‘Xing Fa Zhi’ in above note 338.

³⁷⁴ 《刑法志》, ‘Xing Fa Zhi’ in above note 338.

³⁷⁵ Above note 340.

³⁷⁶ Above note 342. As a record of dialogue, the book was written in spoken style, making it lively and interesting to read.

³⁷⁷ Confucius (551-479BC).

³⁷⁸ For example, 张千帆, 《传统与现代: 论“礼”的宪法学定性》, Zhang, Q ‘Confucianism and Constitutionalism: A Characterization of Li as a Constitution of Society’, (2001) *Jinling Law Review* 119.

³⁷⁹ 君子 (*Junzi*, pronounced as j’oon zzz). “Gentleman” is the English word that is the closest to the meaning of the Chinese term. There is an additional layer of meaning in *Junzi*, he is a learned man who behaves according to Confucian principles.

³⁸⁰ 修身.

³⁸¹ 仁.

and teach his family well;³⁸² finally, when governing, he should give the country fairness according to Confucian *Li* rules.³⁸³

*Mencius*³⁸⁴ is a collection of anecdotes and conversations of Mencius (372-289 BC), a Confucian thinker, and one of Confucius'³⁸⁵ later students.³⁸⁶ The book focuses more on the major governance issue at the time of Mencius's life – how a sovereign should behave benevolently. This governance issue was vital for the sovereigns in each of the ancient Chinese periods, especially after DONG Zhongshu³⁸⁷ convinced Han Emperor Wu (157 – 87 BC) to select Confucian method³⁸⁸ as the governance philosophy. Confucian method means that the governing principles and contents of the laws are Confucian, but they are implemented according to legalist methods. Legalist methods refer to how laws should be implemented according to the legalist school of thought, which focused on the importance of the black letter of the law - *Fa*, and that they should be strictly implemented.³⁸⁹

Mencius opined that the most important thing in a nation is its people, then the nation itself, and the least important thing is the sovereign.³⁹⁰ Mencius believed the sovereign was the sovereign because the people gave him their collective decision making

³⁸² 齐家.

³⁸³ 治国,平天下.

³⁸⁴ Above note 341.

³⁸⁵ Confucius (551 – 479 BC).

³⁸⁶ In the ancient Chinese tradition, “student” means more than the direct teacher-student relationship. It is a relationship similar to that between father and son. It refers to a tradition of generations within a school of thought, where the student may be a student of the original master's student, his student's student, his male descendant's student, etc.

³⁸⁷ Dong Zhongshu (179 -104BC) was a courtier in the Han Dynasty. By his suggestion, the Han Emperor Wu decided to “Dismiss the hundred schools, revere only the Confucian method” (罢黜百家, 独尊儒术). After that, the Confucian method became the dominant political system in ancient China.

³⁸⁸ 儒术.

³⁸⁹ For a discussion of the Legalist school, see Chen J, *Chinese Law: Context and Transformation*, (Boston: Martinus Nijhoff Publishers, 2008), at 14-16; and Fung Y, *A Short History of Chinese Philosophy – A Systematic Account of Chinese Thought From Its Origins to the Present Day*, Bodde D, ed, (New York: The Free Press, 1976), at 155-165.

³⁹⁰ 民为贵,社稷次之,君为轻.

rights,³⁹¹ so the sovereign needed to act in a righteous³⁹² way. This was the earliest idea of highlighting the people's opinions as part of governance ideology in ancient China, where the sovereign had to consider and follow the will of the people in order to successfully prosecute his reign.

*Xunzi*³⁹³ is a book written by XUN Kuang,³⁹⁴ a Confucian scholar after Mencius. In addition to Mencius's earlier assumption that people were born good, XUN Kuang argued that men may have inborn sinful tendencies that needed to be curbed through education and rituals. He believed that ethical norms rectified the wants, hates and lusts that are part of human nature,³⁹⁵ and suggested that humans should obey natural regulation by the heavens.³⁹⁶ As a result, besides the importance of benevolence and righteousness, *Li* and *Fa*³⁹⁷ are also necessary as regulations.

*Guanzi*³⁹⁸ is the collected works of GUAN Zhong (725 – 645 BC), who was a courtier in the Spring and Autumn period. GUAN Zhong's *Book of Filial Piety*³⁹⁹ is a book on the importance of filial piety, and how filial piety was to be practiced. These proposed filial piety practices were part of the civil laws of all dynasties.

The *Zhou Rites*⁴⁰⁰ is a book on the roles and functions of officials, detailing what each type of official did or should be doing. It was influential to the policy design of all later dynasties.

³⁹¹ Up to this point, Mencius's view on sovereign is similar to that of Hobbes in *Leviathan*. Hobbes T, *Leviathan*, Gutenberg EBook of *Leviathan*: <<http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>> (26 Oct. 2015).

³⁹² 义.

³⁹³ Above note 343.

³⁹⁴ 313-238 BC. He was a Confucian thinker after Mencius.

³⁹⁵ 生而有好利焉、生而有疾恶焉、生而有耳目之欲、有好色焉. Above note 343.

³⁹⁶ 天行有常. Above note 343.

³⁹⁷ 法

³⁹⁸ Above note 344.

³⁹⁹ Above note 346.

⁴⁰⁰ 《周礼》 *Zhou Rites*, <http://so.gushiwen.org/guwen/book_24.aspx> (2.Nov 2015).

4.3 The Legal Functions of *Li* Rules that Regulated Caring for the Elderly in China

The ideal of looking after the elderly is an aspect of governing according to *Li* rules in ancient China. *Li* is the set of governance principles used by ancient Chinese emperors since the Han Emperor Wu (157 – 87 BC) adopted DONG Zhongshu's⁴⁰¹ suggestion to govern strictly according to Confucian methods.

The *Li* rules were the general rules people had to follow according to their status in society. Governing according to *Li* rules is a governance philosophy based on Confucian ideals and legalist methodology – *Fa* as the method to implement the philosophy. Two essential concepts of this governance philosophy are:

- 1) The requirement that people (including the sovereign) need to act according to their station in life, if not, there are sanctions; and
- 2) There are standards of behaviour for each person.

Station in life refers to two things – status in society and status in the family. In this governance philosophy, the sovereign needs to behave according to his station in life.

4.3.1 *Li* as Described in Ancient Chinese Literature

In the Chinese dynasties, *Li* was a systematic body of rules presented by the sovereign that the people complied with.⁴⁰² It reflected the benevolent governance philosophy in Confucian thought.⁴⁰³ *Li* does not just have a cultural aspect, it attracted sanctions. For

⁴⁰¹ 《孝经》 *Book of Filial Piety*, <<http://www.zwbk.org/MyLemmaShow.aspx?lid=76030>> (2.Nov 2015).

⁴⁰² 王礼湛、贺国锋, 《“礼治秩序”与现代社会控制》, Wang L & He G, 'The Order under the Rule of *Li* and Modern Social Control', (1995) 28 *Journal of Zhejiang University* (6) 52.

⁴⁰³ Ibid.

example, in each dynasty, the welfare policies to look after the elderly attracted sanctions when they were not complied with, with the harshest penalty being death.⁴⁰⁴

The Confucian school proposes to govern a country according to *Li*, where *Li* is promulgated by the sovereign. According to *Xunzi*,⁴⁰⁵ the reason for *Li* to exist is that people have wants, and those wants might not be satisfied; if not satisfied, people will seek satisfaction.⁴⁰⁶ If there is no restraint in the search, then people compete. Competition leads to chaos, and chaos leads to poverty.⁴⁰⁷ The making of *Li* allows for order, where people may seek satisfaction according to order.⁴⁰⁸

In ancient China, *Li* is a system of order.⁴⁰⁹ It regulates the morals in society, customs in the community, relationships, conflict resolution, education, governance of the

⁴⁰⁴ See 《户律》，‘Hu Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 211; “奚诘晋之，罚金一斤”《敦煌悬泉汉简贼律》，‘Dun Huang Xuan Quan Han Bamboo Strip Zei Lv’ in 高恒，《秦汉简牍中法制文书辑考》，北京：社会科学文献出版社，2008年。Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 45; 《李杜列传》，‘Li Du Lie Zhuan’ in above note 339; 《告律》，‘Gao Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 100; 《法律答问》，‘Q & A on Laws’ in Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978), at 111; and 《贼律》，‘Zei Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 38-39 & 43; [唐] 杜佑撰，王文锦校：《通典》，北京：中华书局，1988年。[Tang Dynasty], Du Y, *Tong Dian*, Wang W, ed, (Beijing: Zhonghua Press, 1988), at 4288; 《奏淑书》，‘Zou Zhan Shu’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 31; 《宗室四王三侯列传》，‘The Four Kings and Three Dukes of the Royal Family Zhuan’ in above note 339; and 《奏淑书》，‘Zou Shu Shu’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 227; 《奏淑书》，‘Zou Shu Shu’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 227; 《秦始皇本纪》，‘Records of Emperor Qin Shi Huang’s Reign’ in in 《史记》*Records of the Grand Scribe*, <http://so.gushiwen.org/guwen/book_5.aspx> (2 Nov. 2015)⁴⁰⁴; “七十以上告子不孝，必三环之。三环之各不同日而尚告，乃听之”《贼律》，‘Zei Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 38-39.

⁴⁰⁵ “礼起于何也？曰：人生而有欲，欲而不得，则不能无求，求而无度量分界，则不能不争。争则乱，乱则穷。先王恶其乱也，故制礼义以分之，以养人之欲，给人之求。……是礼之所起也。”，《王制》，‘Wang Zhi’ in above note 343.

⁴⁰⁶ “礼起于何也？曰：人生而有欲，欲而不得，则不能无求。”，《王制》，‘Wang Zhi’ in above note 343.

⁴⁰⁷ “...求而无度量分界，则不能不争。争则乱，乱则穷。”，《王制》，‘Wang Zhi’ in above note 343.

⁴⁰⁸ “...先王 恶其乱也，故制礼义以分之，以养人之欲，给人之求”，《王制》，‘Wang Zhi’ in above note 343.

⁴⁰⁹ “礼者，人 道之极也”；“夫礼，天之经也，地之义也，民之行也。”，《礼论》，‘Li Lun’ in above note 343.

country, keeping of armies, behaviour of officials and worship.⁴¹⁰ Therefore *Li* is the standard of behaviour between people. It covers three areas: system, morality, and rituals and etiquettes. The *Li* system includes some criminal laws (especially on what amounts to criminal behaviour and how to identify crimes)⁴¹¹ and other governing rules applied by the sovereign to govern the country, which cannot and should not be changed easily.⁴¹² It covers rules on naming a family, property, feudal relationships and establishing official responsibilities;⁴¹³ ancestor worship rituals of the sovereign and of the people;⁴¹⁴ economic policy⁴¹⁵ and many other areas of policies.⁴¹⁶

The *Li* system also established a judicial process. There were five hearing processes, eight discussion processes, three questioning processes, three defences and three pardons.⁴¹⁷ These processes were applied differently to different types of criminal and civil proceedings, depending on the person's relationship to the suit and status in society.

Li as morals focus more on the side of society that is covered by civil law in western countries. These are regulations on people's behaviour depending on their status in society and their relationship between each other. It supports the self-regulation of one's

⁴¹⁰ “道德仁义，非礼不成；教训正俗，非礼不备；分争辩讼，非礼不决；君臣上下、父子兄弟，非礼不定；宦学事师，非礼不亲；班朝治军、莅官行法，非礼威严不行；禘祠祭祀、供给鬼神，非礼不诚不庄”，《曲礼》，‘Qu Li’ in above note 337.

⁴¹¹ The more specific written criminal law are detailed in *Xing*, as penal codes.

⁴¹² “礼以体政，政以正民，是以政成而民听，易则生乱。”，《桓公二年》，‘Second Year of Duke Heng’ in 《左传》 *Zuo Zhuan*, <http://so.gushiwen.org/guwen/book_19.aspx> (8 Nov. 2015); and “礼，经国家，定社稷，序民人，利后嗣者也。”《隐公十二年》，‘Twelfth Year of Duke Yin’ in 《左传》 *Zuo Zhuan*, <http://so.gushiwen.org/guwen/book_19.aspx> (8 Nov. 2015).

⁴¹³ “惟王建国，辨正方位，体国经野，设官分职，以为民极。乃立天官冢宰，使帅其属而掌邦治，以佐王均邦国。治官之属……” in 《周礼》 *Zhou Rites*, <http://so.gushiwen.org/guwen/book_24.aspx> (2.Nov 2015).

⁴¹⁴ “王者谛共祖之所自出夕以其祖配之而立四庙……礼不王不禘。”，《丧服小记》，‘Sang Fu Xiao Ji’ in above note 337.

⁴¹⁵ “冬，京师来告饥。公为之请成余于宋、卫、郑，礼也。”《隐公六年》，‘Sixth Year of Duke Yin’ in 《左传》 *Zuo Zhuan*, <http://so.gushiwen.org/guwen/book_19.aspx> (8 Nov. 2015); and “凡侯伯救患、分灾、讨罪，礼也。”，《僖公元年》，‘First Year of Duke Xi’ in 《左传》 *Zuo Zhuan*, <http://so.gushiwen.org/guwen/book_19.aspx> (8 Nov. 2015).

⁴¹⁶ For more detail, please see above note 420.

⁴¹⁷ “《周官》有五听、八议、三刺、三宥、三赦之法。五听：一曰辞听，二曰色听，三曰气听，四曰耳听，五曰目听。八议：一曰议亲，二曰议故，三曰议贤，四曰议能，五曰议功，六曰议贵，七曰议勤，八曰议宾。三刺：一曰讯群臣，二曰讯群吏，三曰讯万民。三宥：一曰弗识，二曰过失，三曰遗忘。三赦：一曰幼弱，二曰老耄，三曰蠢愚”，《刑法志》，‘Xing Fa Zhi’ in above note 338. For more detail, please see above note 420.

behaviour and for one to regulate others, in order to follow the behaviour patterns set for that person in their station in life. The earlier discussion of benevolence and filial piety fall into this meaning of *Li*. Social sanctions and sanctions in other forms are prescribed in relation to each type of ritual or relationship.

Li as rituals deals with rituals in relation to every event in a person's lifecycle and events in the country's calendar, and the changes to a person's role in their lives. These rituals formalise standards of behaviour, with sanctions if not fulfilled.⁴¹⁸ The events included worshipping of ancestors, starting of battles, farming, education, birth, weddings, death, etc. Depending on the person's station in life, rituals differ; the higher the station in life, the more rules a person was required to follow.⁴¹⁹

4.3.2 The Legal Function of Li Rules that Regulated Looking after the Elderly

There were different bodies of rules that performed the function of modern laws in ancient China,⁴²⁰ and *Li*⁴²¹ was one of these bodies of rules. The other bodies of rules were *Fa*, *Xing* and *Zhi*.⁴²²

When translating and introducing *De l'Esprit des Lois* by Montesquieu,⁴²³ YAN Fu,⁴²⁴ a famous Chinese scholar and translator of the early 20th Century, warned the Chinese legal community that "law" in the west includes the meaning of *Li*, *Fa*, *Xing* and *Zhi*.⁴²⁵

⁴¹⁸ 《大宗伯》，‘Da Zong Bo’ in 《周礼》 *Zhou Rites*, <http://so.gushiwen.org/guwen/book_24.aspx> (2.Nov 2015).

⁴¹⁹ Ibid.

⁴²⁰ 陈剩勇,《法、礼、刑的属性(上)——对中国“法律”史研究方法论的一个反思》,Chen S, ‘The Character of *Fa*, *Li*, and *Xing* (I) – Reflections on the Methodologies for Researching the History of “Law” in China’, (2002) *Zhejiang Social Science* (5) 49, at 50.

⁴²¹ 礼。

⁴²² 法、刑、制。

⁴²³ Above note 420.

⁴²⁴ Above note 420.

⁴²⁵ 礼、法、刑、制。

In essence, YAN Fu's warning was that what the west regards as law is captured in all four bodies of rules. Each alone did not paint a full picture. *Fa* means the different forms of written laws,⁴²⁶ such as rules, codes, regulations, customs, and methods. *Xing* means punishment. *Zhi* is system, especially legal system.⁴²⁷ The meaning and functions of *Li* are more nuanced as evaluated below.

The *Li* rules, philosophical in nature, functioned as laws, the requirements from the *Li* rules meant that the rules regulating people's behaviour according to their station in life are their legal obligations. A brief social construction analysis⁴²⁸ supports this point. The meaning and function of *Li* rules are compared to the western conception of law and its functions, showing that the meaning and function of *Li* rules that regulated looking after the elderly performed the functions of laws in the ancient Chinese formal institutional framework.

4.3.3 Constructive Methodology to Understand the Function of Li Rules

The function of *Li* rules is an unfamiliar concept. Often the starting point of understanding an unfamiliar concept is to find a point of reference in the form of a familiar concept. Social scientists usually apply constructivist/interpretivist⁴²⁹ qualitative methodologies to understand unfamiliar concepts as phenomena.⁴³⁰ Whether the *Li* rules performed the functions of law in the ancient Chinese formal institutional framework is a question that has received much attention. This section

⁴²⁶ 舒国滢主编,《法理学导论》, Shu G, ed, *Introduction to Jurisprudence*, (Beijing: Peking University Press, 2006).

⁴²⁷ Above note 420, at 51.

⁴²⁸ Creswell JW, *Qualitative Inquiry & Research Design, Choosing Among Five Approaches*, 2nd ed, (US: Sage Publications, 2007).

⁴²⁹ *Ibid*, 47-48.

⁴³⁰ *Id*, 60-62 & 78-81.

illustrates the more generally accepted⁴³¹ functions of *Li* rules through a simple social construction exercise that takes into consideration the core elements important to Weber when he first developed his interpretive sociology.⁴³²

This social construction exercise is by no means comprehensive and sociological research in relation to the law that are based on Weber's theories have evolved extensively. Weber's original core concepts are however still useful to illustrate the similarities between concepts in comparative studies. These core concepts are *Verstehen*, social action, meaning, and ideal type.⁴³³ They contribute⁴³⁴ to understanding meaning of an unfamiliar concept by setting a familiar term as benchmark to construct or interpret meaning of that unfamiliar concept. These four concepts are also relatively less contentious when applied to understanding legal concepts.⁴³⁵ In this exercise, the familiar concept used as the benchmark is the functions of the western connotation of "law".

The first concept in this social construction exercise is "*Verstehen*". When translated into English, *Verstehen* means understanding. It is an analytical and methodological tool⁴³⁶ Weber used to interpret social action through ideal types.

There are two types of understanding:⁴³⁷

⁴³¹ For example, Peerenboom R, ed, *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, (Cambridge: Cambridge University Press, 2010); Peerenboom R, *China's Long March Toward Rule of Law*, (Cambridge: Cambridge University Press, 2002).

⁴³² Above note 336.

⁴³³ Above note 336.

⁴³⁴ For example, Luhmann N & Behnke K, 'The Modernity of Science', (1994) 61 *New German Critique* (Winter) 9; Dessler D, 'Constructivism within a Positivist Social Science', (1999) 25 *Review of International Studies* (1) 123.

⁴³⁵ See Roger Cotterrell, *The Sociology of Law, An Introduction* (Oxford University Press, 2nd ed, 1992) 149, where Cotterrell considered it to be Weber's attempt to "Combine a positivist conception of law, in harmony with the general view of German jurists of his day, with an insistence on the notion that sociology's concern is with understanding social action – that is, action subjectively meaningful to the actor and oriented to or taking account of the behaviour of others".

⁴³⁶ See Oakes G, 'The Verstehen Thesis and the Foundations of Max Weber's Methodology', (1977) 16 *History and Theory* (February) 11; and Tucker WT, 'Max Weber's "Verstehen"', (1965) 6 *The Sociological Quarterly* (Spring) 157.

⁴³⁷ Above note 336, at 8.

- 1) “the direct observational understanding of the subjective meaning of a given act as such, including verbal utterances”. To Weber, both rational facts and emotive feelings are observable, therefore can be objectively understood;
- 2) “explanatory understanding”, whereby the motive of the actor is ascertained.

The second concept is “social action”. Weber viewed social action as something that the “acting individual” is able to attach to his behaviour a subjective meaning. This subjective meaning could relate to the behaviour overtly, covertly, by omission or by acquiescence; the Self constructs this subjective meaning by internalising his/her surroundings.⁴³⁸ This surroundings include the environment and other people. The social action for this exercise is the unfamiliar concept – the functions of *Li* rules, especially when they are applied in regulating the behaviour of people in the ancient Chinese dynasties.

Weber devised four ways to understand social actions.⁴³⁹ Instrumentally rational (zweckrational in German) understanding is

“determined by expectations as to the behaviour of objects in the environment and of other human beings; these expectations are used as ‘conditions’ or ‘means’ for the attainment of the actor’s own rationally pursued and calculated ends”.⁴⁴⁰

The actor understands their surroundings with reference to other things, and takes action.

Value-rational (*wertrational* in German) understanding is

“determined by a conscious belief in the value for its own sake of some ethical, aesthetic, religious, or other form of behaviour, independently of its prospects of success”.⁴⁴¹

⁴³⁸ Above note 336, at 8.

⁴³⁹ Above note 336, at 24-25.

⁴⁴⁰ Above note 336, at 24-25.

⁴⁴¹ Above note 336, at 24-25.

The actor understands their surroundings independently through their own value/belief systems, then takes action. Value may be assumed when pragmatists perform analysis.

Affectual rational understanding is “determined by the actor’s specific affects and feeling states”.⁴⁴² This could be viewed as taking into consideration emotions. The actor understands their surroundings through feeling, and acts intuitively.

Traditional understanding is “determined by ingrained habituation”.⁴⁴³ The actor understands and acts according to habit.

The third concept is “meaning”.⁴⁴⁴ It is a concept that links *Verstehen* and social action.

Weber defined meaning in two ways:⁴⁴⁵

- 1) “the actual existing meaning in the given concrete case of a particular actor” or “the average or approximate meaning attributable to a given plurality of actors”;
- 2) “the theoretically conceived pure type of subjective meaning attributable to a hypothetical actor or actors in a given type of action”.

The first type of meaning is observable, and could be empirically tested. The second type of meaning is abstract, requiring the Self to construct according to his or her surroundings.

The fourth concept is “ideal type”.⁴⁴⁶ Weber used ideal types to analyse social actions.

The “ideal type” is a construction of a “purely rational course of action” which “has the merit of clear understandability and lack of ambiguity”.⁴⁴⁷ The researcher conveniently takes away the emotionally emphatic or irrational out of the social action, in order to

⁴⁴² Above note 336, at 24-25.

⁴⁴³ Above note 336, at 24-25.

⁴⁴⁴ Above note 336.

⁴⁴⁵ Above note 336, at 8.

⁴⁴⁶ Above note 336.

⁴⁴⁷ Above note 336, at 6.

perform their analysis.⁴⁴⁸ Weber does not place actual predominance of rational elements in human life,⁴⁴⁹ therefore, the ideal type takes into consideration the objective elements of a social action. The “ideal type” is the benchmark to understand the unfamiliar concept. For this exercise, it is the regulatory functions of the western connotation of “law”.

This section aims to evaluate the meaning and functions of *Li* rules in the governance of ancient Chinese dynasties, against the meanings and functions of the modern meaning of “law” in the west. The social action to be understood is the function of *Li* rules, and an ideal type of “law” needs to be constructed.

4.3.4 Comparing the Functions of Li Rules to Laws

For the purposes of this research, there are three elements of the ideal type of “law”. These elements are: Weber’s sociological concept of law, a comparison between the meaning of the English word “law”, and its closest Chinese translation “法” (*Fa*), and Fuller’s⁴⁵⁰ conception of the Rule of Law.

4.3.4.1 Weber’s Sociological Concept of Law

When conceptualising law, Weber distinguishes between the legal and sociological question, hence establishing that law in society is a relationship between law and economics.⁴⁵¹ The legal question is: “what is intrinsically valid as law?”, and this is a normative question of “what meaning ought to be attributed in correct logic to a verbal pattern having the form of legal proposition?”.⁴⁵² The sociological question is: “what

⁴⁴⁸ Above note 336, at 6.

⁴⁴⁹ Above note 336, at 7.

⁴⁵⁰ Fuller LL, *The Morality of Law*, (New Haven: Yale University Press, revised ed, 1968), at 46-91.

⁴⁵¹ Above note 336, at 311.

⁴⁵² Above note 336, at 311-312.

actually happens in a group owing to the probability that persons engaging in social action, especially those exerting a socially relevant amount of power, subjectively consider certain norms a valid and practically act according to them, in other words, orient their own conduct towards these norms?"⁴⁵³

The legal question is an "ought" question in relation to norms, the sociological question relates to an "is" question relating to a sense of positivity.⁴⁵⁴ The sociological question in essence asks about the functions of law. This research focuses on the sociological question to identify the functions of *Li* in the ancient Chinese society.

To Weber, as long as coercion or a coercive apparatus is able to enforce compliance with some legal norms, those legal norms can be considered as "law".⁴⁵⁵ Prima facie, because the sovereign and other members of the state are educated according to *Li* classics, the other three types of rules - *Fa*, *Xing*, and *Zhi* were made according to the *Li* concepts, and the *Li* rules attracted sanctions, the *Li* rules were coercive, and the available judicial procedure⁴⁵⁶ meant *Li* rules were enforceable.

In Weber's own understanding of law, the ideal type represent "guaranteed laws".⁴⁵⁷ Here the coercion may be "physical or psychological", "direct or indirect in their operation", and "maybe directed" "against the participants in the consensual group", the organisation, or the institution, within which the "order is empirically valid, or they may be aimed at those outside".⁴⁵⁸ Legal coercion by violence to Weber is the monopoly of the State,⁴⁵⁹ this is a way for the State to ensure enforcement of its

⁴⁵³ Above note 336, at 311-312.

⁴⁵⁴ Burger T, 'Max Weber, Interpretive Sociology, and the Sense of Historical Science: A Positivistic Conception of Verstehen' (1997), 18 *The Sociological Quarterly* 165.

⁴⁵⁵ Above note 336.

⁴⁵⁶ See above note 417.

⁴⁵⁷ Above note 336, at 312-315.

⁴⁵⁸ Above note 336, at 313.

⁴⁵⁹ Above note 336, at 314.

authoritative decisions through applying penalties and sanctions to those who do not comply.⁴⁶⁰ The State can make and enforce laws through any of its organs. The administration of *Li* rules in ancient China accords with this means of coercion.

When applying the ideal type to understand *Li*, it could be seen that *Li* rules were promulgated through the volitions of the sovereign – the sovereign being the emperor⁴⁶¹, not a parliament such as that in the Westminster tradition.⁴⁶² The *Li* rules were intelligible to the people, as they understood their station in life, therefore they knew which rules apply to themselves. Since the people understood their station in life, the rules were able to avoid impossible demands and frequent changes – the *Li* rules were collected in books that were the basis of a person’s education,⁴⁶³ and they don’t change. There were institutions and persons to administer these rules – ancient China had a sophisticated system of public servants to help maintain rules of order, *Li* being one element of those rules. The dynasties had *Li* Ministries, which were in charge of rituals and educating how people should behave according to their social status.

Legitimacy is another concept in Weber’s ideal type of law. To Weber, legitimacy is acquired in relation to domination. Before considering domination, it is necessary to consider the term “legitimate order” in relation to social action.⁴⁶⁴ In a typology of this legitimate order, Weber distinguishes between Convention and Law.⁴⁶⁵ An order is a convention “so far as its validity is externally guaranteed by the probability that deviation from it within a given social group will result in a relatively general and

⁴⁶⁰ Wallner J, ‘Legitimacy and Public Policy: Seeing Beyond Effectiveness, Efficiency, and Performance’, (2008) *Policy Studies Journal* 421, at 423.

⁴⁶¹ Or the other forms of noblemen, such as the Duke for a Dukedom.

⁴⁶² ‘Westminster system’ in Nygh PE, & Butt P, eds, *Butterworths Australian Legal Dictionary*, (Sydney: Butterworths, 1997), at 1265.

⁴⁶³ The fundamental books are: the *Book of Rites*, *Zhou Rites*, and *Etiquette*. Above notes 337, 400 and 《礼仪》, ‘Etiquette’ in above note 339.

⁴⁶⁴ Above note 336, at 31.

⁴⁶⁵ Above note 336, at 33-34.

practically significant reaction of disapproval”. An order is a law “if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a staff of people in order to bring about compliance or avenge violation”.⁴⁶⁶ The Ministries in the ancient Chinese dynasties and the officials in the civil service had the power to administer *Li* rules and apply sanctions accordingly, therefore *Li* rules exhibited characteristics of law, not those of customs.

The legitimacy of regulation by *Li* can be guaranteed⁴⁶⁷ if it could be guaranteed according to the value-rational sense of legitimacy – “determined by the belief in the absolute validity of the order as the expression of ultimate values of an ethical, esthetic or of any other type”;⁴⁶⁸ and where the expectation of specific external effects or interest situations⁴⁶⁹ are considered. Since *Li* rules were part of the Confucian method and a major component in the education of officials, their absolute validity can be ascertained in the Confucian belief and political system.

The specific external effects that can be expected here is the expected compliance and administration of *Li* rules. As Weber considers dominance as the basis for legitimacy,⁴⁷⁰ the sovereign who proclaimed the importance of *Li* did dominate in ancient Chinese society, giving *Li* rules legitimacy.

The next step in the Weberian functional analysis of *Li* rules is to examine whether it had legal authority. To Weber, legal authority rests on the acceptance of the validity of “mutually inter-dependent ideas”.⁴⁷¹ The *Li* rules were established by imposition by the sovereign through the Confucian method of governance. They were established on

⁴⁶⁶ Above note 336, at 34.

⁴⁶⁷ Above note 336, at 33.

⁴⁶⁸ Above note 336, at 33.

⁴⁶⁹ Above note 336, at 33.

⁴⁷⁰ Above note 336, at 215-216.

⁴⁷¹ Above note 336, at 217-218.

grounds of value-rationality, and they could claim the obedience of the people through the Confucian belief and political system.

The *Li* rules were a consistent system of abstract rules contained in the *Li* books mentioned in the literature review. They were intentionally established by the sovereign. The administration of the *Li* rules were by self-regulation and the regulation of others (including by the sovereign through his court and the system of officials). This self-regulation and regulation of others equated to consistent administration of *Li* rules. The rules of administration were also part of the *Li* rules.

As the sovereign himself had to behave like the sovereign according to *Li* rules, therefore he was “subject to an impersonal order by orienting his actions to it in his own dispositions and commands”. The clear distinction of people’s stations in life allowed people to obey *Li* rules as individual members of the society. What they obeyed were the rules, and the sovereign as an entity, not a particular person. Therefore *Li* rules certainly had legal authority. Accordingly, since *Li* exhibited characteristics of the identified ideal type of “law”, it is legitimate and had the force of law.

The type of legal authority exhibited by *Li* rules was rational legal authority.⁴⁷² With reference to *Li*, four categories are relevant:

- 1) “a continuous rule-bound conduct of official business”. *Li* as a body of rules meet this criteria.
- 2) “A specific sphere of competence” – jurisdiction:

⁴⁷² Above note 336, at 218.

- a) “a sphere of obligations to perform functions which has been marked off as part of a systematic division of labor” – here, the officials administered *Li* rules.
 - b) “the provision of the incumbent with the necessary powers” – the sovereign had powers.⁴⁷³
 - c) “The necessary means of compulsion are clearly defined and their use is subject to definite conditions”. There is an “administrative organ” or “agency” which exercises authority organised in this manner. In the case of *Li*, this is the ancient Chinese civil service system.
- 3) “The organization of offices follows the principle of hierarchy”, “there is a right to appeal and of statement of grievances from the lower to the higher”. The judicial process in relation to *Li* rules followed this process.
 - 4) “the rules which regulate the conduct of an office may be technical rules or norms”. This was met for *Li*. The officials had their own rules of *Li* according to their stations in life.

Finally, Weber also stressed the importance of looking at legal authority through examining monocratic bureaucracy, which is the purely bureaucratic type of administrative organisation,⁴⁷⁴ where the two “spirits” of rational bureaucracy – formality and from a utilitarian point of view, the exercising of their functions by officials, contribute to understanding rational legitimacy.⁴⁷⁵ It is not difficult to see, that rational authority existed in the texts of the body of *Li* rules.

⁴⁷³ As discussed earlier with regard to sovereignty as argued by Hobbes.

⁴⁷⁴ Above note 336, at 223-226. Also see an analysis of Weber’s legitimacy in relation to constitutions in Fallon RH Jr., ‘Legitimacy and the Constitution’ (2005)118 *Harvard Law Review* 1787, at 1795-1796 & 1843 – 1844.

⁴⁷⁵ Above note 336, at 226.

It is clear, according to Weber's own conception of law, *Li* rules performed the social functions of "law" in ancient China.

4.3.4.2 The Dictionary Meaning of "Law" vs "法" (*Fa*)

YAN Fu's warning⁴⁷⁶ about the scope of "law" in the west illustrates the importance of a functional understanding of *Li* and the other three types of rules in China. The second element of the ideal type of law to evaluate the meaning and functions of *Li* in China is to identify the difference between the meaning of "law" in English, and its closest Chinese translation "法" (*Fa*).

A modern dictionary meaning of "law" in the west is provided by the *Macquarie Dictionary*:⁴⁷⁷

- “*noun* **1.**the principles and regulations emanating from a government and applicable to a people, whether in the form of legislation or of custom and policies recognised and enforced by judicial decision.
- 2.**any written or positive rule of conduct, or collection of rules, prescribed under the authority of the state or nation, whether by the people in its constitution, as the **organic law**, or by the legislature in its **statute law**, or by the treaty-making power, or by municipalities in their ordinances or **by-laws**.
- 3.**the controlling influence of such rules; the condition of society brought about by their observance: *to maintain law and order*.
- 4.**the institutions and persons collectively responsible for the administration of the legal rules, or an agent that helps maintain the rules.
- 5.**a system or collection of such rules.
- 6.**the department of knowledge concerned with these rules; jurisprudence: *to study law*.
- 7.**the body of rules and legal principles concerned with a particular subject or derived from a particular source: *commercial law; the law of torts*.
- 8.**an act of the supreme legislative body of a state or nation, as distinguished from the constitution.
- 9.**the principles applied in the courts of common law, as distinguished from equity.
- 10.**the profession which deals with law and legal procedure: *to practise law*.
- 11.**legal action; litigation.

⁴⁷⁶ Above note 420.

⁴⁷⁷ *Macquarie Dictionary*, Online, <https://www-macquariedictionary-com-au.ezproxy2.library.usyd.edu.au/features/word/search/?word=law&search_word_type=Dictionary> (09 Apr. 2014).

- 12. any rule or principle of proper conduct or collection of such rules.
- 13. *Aboriginal English* Aboriginal customary law.
- 14. (in philosophical and scientific use)
 - a. a statement of a relation or sequence of phenomena invariable under the same conditions.
 - b. a mathematical rule.
- 15. a commandment or a revelation from God.
- 16. (*often upper case*) a divinely appointed order or system.
- 17. *Bible* the five books of Moses (the Pentateuch) containing this system and forming the first of the three Jewish divisions of the Old Testament
- 18. the preceptive part of the Bible, especially of the New Testament, in contradistinction to its promises: *the law of Christ...*”

This definition takes consideration of the different understanding of what law is. The first nine items and items 11 and 12 contribute to an understanding of what the law is from the perspective of positive law.⁴⁷⁸ Positivist theories look at the lowest common denominator of what law is. They treat legislation as created without regard to cultural norms, nor religious or ethical bias.⁴⁷⁹ Bentham began the argument⁴⁸⁰ by presenting a utilitarian view of law:

“a law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question”.⁴⁸¹

The essence of this argument is that laws are signs of the sovereign’s volition in relation to conducts of people in his/her reign. The connotation of sovereignty differs in different legal and political traditions, but the existence of a sovereign⁴⁸² is always required for the positivists. Bentham’s utilitarian argument was furthered by John

⁴⁷⁸ Freeman MDA, *Lloyd’s Introduction to Jurisprudence*, (London: Sweet & Maxwell, 8th ed, 2008).

⁴⁷⁹ Himma, K, ‘Legal Positivism’, *Internet Encyclopedia of Philosophy*, Online, <<http://www.iep.utm.edu/legalpos/>> (3 May, 2014).

⁴⁸⁰ Bentham J, excerpt of ‘Of Laws in General (Hart ed (1970))’ in above note 478, at 273 - 291.

⁴⁸¹ Above note 478, at 273.

⁴⁸² See Above note 520 and associated discussion.

Austin,⁴⁸³ who pursued the view that it was a sovereign body that created laws, which are commands that were supported by sanctions. This created a society whereby, so long as the majority of individuals followed the commandments, the sovereign reigned.

The definition of *Fa* could be found in the writings of the legalist thinkers.⁴⁸⁴ The legalist school of thought⁴⁸⁵ focused on the more rigid side of *Fa*, that people needed rules to regulate their activities.⁴⁸⁶ *Fa* has three levels of meaning.

First, *Fa* means standards and methods the sovereign could apply in order to take ownership of the land and govern the country.⁴⁸⁷ To Mozi⁴⁸⁸-- a representative of the Legalist school,⁴⁸⁹ there are methods and standards to do everything, including how to be a minister or a general and how craftsmen produce their craft.⁴⁹⁰ When these methods and standards are not followed, people will argue, resulting in the loss of productivity, the same happens when the sovereign governs the country not according to methods or standards.⁴⁹¹ Guanzi also talked about *Fa* as the standards and measurements that one should follow⁴⁹², and it is how nature behaves, just like the seasons rotate, the stars do not change and the sun rises in the morning.⁴⁹³

⁴⁸³ Austin J, excerpt of 'The Province of Jurisprudence Determined' in above note 478, at 291-303.

⁴⁸⁴ Above note 389.

⁴⁸⁵ 法家.

⁴⁸⁶ For example, 《任法》, 'Ren Fa' in above note 344.

⁴⁸⁷ 准则, 法仪.

⁴⁸⁸ Circa 479—381BC.

⁴⁸⁹ See above note 389

⁴⁹⁰ “天下从事者不可以无法仪，无法仪而其事成者无有也。虽至士之为将相者，皆有法，虽至百工从事者，亦皆有法。百工为方以矩，为圆以规，直以绳，正以悬。无巧工不巧工，皆以此四者为法……”，《法仪》，‘Fa Yi’ in 《墨子》 Mozi, <http://so.gushiwen.org/guwen/book_29.aspx> (2 Nov. 2015); “法者，天下之仪也。”，《禁藏》，‘Jin Zang’ in above note 344; “法者，天下之程式也，万事之仪表也。”，《明治》，‘Ming Zhi’ in above note 344; and “如四时之不忒，如星辰之不变，如宵如昼如阴如阳如日月之明曰法。”，《正》，‘Zheng’ in above note 344.

⁴⁹¹ “……今大者治天下，其次治大国，而无法所度，此不若百工，辩也。”，《法仪》，‘Fa Yi’ in 《墨子》 Mozi, <http://so.gushiwen.org/guwen/book_29.aspx> (2 Nov. 2015).

⁴⁹² “法者，天下之程式也，万事之仪表也。” Here measurements means how a person measures his or her conduct according to the behaviour standards of their station in life. See 《明治》，‘Ming Zhi’ in above note 344.

⁴⁹³ “如四时之不忒，如星辰之不变，如宵如昼，如阴如阳，如日月之明，曰法。”。《正》 in above note 344.

Second, *Fa* is the legal system and measures that give the sovereign the authority to rule.⁴⁹⁴ Rules, codes and processes together form a system that the sovereign can apply to control his people. To GUAN Zhong, laws are the ultimate reasons that allow the sovereign to rule the people and the sovereign makes these laws to give the people rules to follow.⁴⁹⁵ These rules allow the sovereign to stop foul play in the reign, and give the people a behaviour standard.⁴⁹⁶

Third, it is the actual laws, the rules, codes, procedures themselves, which are established by the sovereign and the people together.⁴⁹⁷ Often, *Fa* is also taken to mean punishments or criminal law. This should be the meaning of *Xing*, which is included in *Fa*.⁴⁹⁸

Fa is an important element of positive law in ancient China, but it is only the methods to govern the reign, it is more procedural. The scope of “law” in the English dictionary meaning also covers two other types of rules in ancient China, *Xing*, which were the penal codes, and *Zhi*, which is the form of the legal system.

In relation to this element of the ideal type, *Li* rules were the content and spirit of the law in ancient China, so they also performed the function of laws.

4.3.4.3 Fuller’s Formal Approach to the Rule of Law

There has been a lengthy debate on whether the Rule of Law exists in China. In recent times, the consensus appears to be that the thin or formal notion of the Rule of Law

⁴⁹⁴ 法度.

⁴⁹⁵ “法者，天下之至道也。……法者，上之所以一民使下也。”。《任法》，‘Ren Fa’ in above note 344.

⁴⁹⁶ “法度者，主之所以制天下而禁奸邪也。”，《明法》，‘Ming Fa’ in 344; and “法度者，万民之仪表也”，《形势》，‘Xing Shi’ in above note 344.

⁴⁹⁷ 法令。“畏法令也。”，《曲礼上》，‘Qu Li I’ in above note 337; and “法令者，君臣之所共立也。”《七臣七主》，‘Seven Rules for the Servant and Seven Rules for the Master’ in above note 344.

⁴⁹⁸ Above note 420; and 陈剩勇，《法、礼、刑的属性(下)——对中国“法律”史研究方法的一个反思》，Chen S, ‘The Character of *Fa*, *Li*, and *Xing* (II) – Reflections on the Methodologies for Researching the History of “Law” in China’, (2002) *Zhejiang Social Science* (6) 56-62.

does exist.⁴⁹⁹ The notion of the Rule of Law is not important for evaluating the functions of *Li* rules in ancient China. The elements that contributed to the meaning of law in the Rule of Law however contribute to the ideal type of law in the west. Fuller's theory⁵⁰⁰ is taken to be a formal approach to the Rule of Law, that is, a "monist" approach that does not distinguish the Rule of Law as a political ideal with reference to the meaning of the law.⁵⁰¹ This research considers the eight elements established by Fuller,⁵⁰² namely, Generality,⁵⁰³ Promulgation,⁵⁰⁴ Prospectivity,⁵⁰⁵ Clarity,⁵⁰⁶ Consistency,⁵⁰⁷ Practicable,⁵⁰⁸ Stability⁵⁰⁹ and Congruence.⁵¹⁰

Fuller's Generality is a very broad concept, it is the lowest common denominator in "a system for subjecting human conduct to the governance of rules" – that "there must be rules".⁵¹¹ Whether the rules were fair or not is not important.

As to Promulgation, Fuller considers "marginal utility".⁵¹² Promulgation of laws are essential, and "law" needs to be distinguished from "generally shared views of right and wrong"⁵¹³, this requirement is more easily met in common law systems due to the coincidence of these terms. Also, if the law corresponds closely with the morals of

⁴⁹⁹ See the numerous books and articles written by Randall Peerenboom and Albert Chen. For example, Peerenboom R, ed, *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, (Cambridge: Cambridge University Press, 2010); Peerenboom R, *China's Long March Toward Rule of Law*, (Cambridge: Cambridge University Press, 2002); Chen AHY, 'The Discourse of Political Constitutionalism in Contemporary China in Chiu A& Xu Z, eds, *World Chinese Legal Philosophy Congress 2013*, (Hong Kong: Red-Publish, 2013) 18; and Chen AHY& Ginsburg T, eds, *Public Law in East Asia* (Farnham: Ashgate, 2013).

⁵⁰⁰ Above note 450, at 46-91.

⁵⁰¹ Bennett M, "The Rule of Law" means literally what it says: the Rule of the Law': Fuller and Raz on formal legality and the concept of law", (2007) 32 *Australian Journal of Legal Philosophy* 90, at 90-92.

⁵⁰² Above note 450, at 46-91.

⁵⁰³ Above note 450, at 46-48.

⁵⁰⁴ Above note 450, at 49-51.

⁵⁰⁵ Above note 450, at 51-62.

⁵⁰⁶ Above note 450, at 63-65.

⁵⁰⁷ Above note 450, at 65-70.

⁵⁰⁸ Above note 450, at 70-79.

⁵⁰⁹ Above note 450, at 79-81.

⁵¹⁰ Above note 450, at 81-91.

⁵¹¹ Above note 450, at 46.

⁵¹² Above note 450, at 49.

⁵¹³ Above note 450, at 50.

society, promulgation becomes less important. For there to be promulgation, it is not necessary for all citizens to know and read them, the law just needs to be knowable.

Fuller's view on Prospectivity,⁵¹⁴ or not having retrospective laws is based on distinguishing three aspects: pure retrospective laws that make yesterday's lawful act unlawful today (especially in the criminal sense), those laws that are retrospective to cure a wrong, and retrospective decision making by judges. The last two forms of retrospectivity are less internally amoral.

Fuller distinguishes clarity and the use of ordinary language.⁵¹⁵ For example, the standards of "good faith" "due care" or "reasonableness" are clear to Fuller, because they are generally understood in their context.

Consistency, or in Fuller's own words "contradictions in the laws"⁵¹⁶ depends on the context or extrinsic circumstances. Fuller distinguishes logical contradictions, incompatible requirements, and repugnant laws – those that "fight each other", and "inconvenient laws". Law needs to be practicable and stable are self-explanatory. To Fuller "Congruence between official action and declared rule"⁵¹⁷ depends on interpretation and the role of the judiciary.

The core concept of the rule of *Li* is that people, including the sovereign, needed to act according to their stations in life; and there were penal codes in relation to not complying with these *Li* rules.

Li rules were certainly rules in a system of governance. They were properly promulgated, because they were knowable. *Li* rules were also closely aligned with

⁵¹⁴ Above note 450, at 50.

⁵¹⁵ Above note 450, at 50.

⁵¹⁶ Above note 450, at 65.

⁵¹⁷ Above note 450, at 81.

proper behaviour, because they act as behaviour guides. The penal codes were the only rules that changed, so *Li* rules themselves were stable. They are clear because there were *Li* classics every educated man or official were required to learn as part of their education. The adjudicating bodies interpreted the rules and applied the penal code accordingly, therefore there was congruence. The *Li* rules themselves were prospective, because they regulated future behaviour. It is worth noting that their stability meant *Li* rules were part of the social fabric in ancient China. Sometimes the penal codes could be retrospective in all three different ways discussed by Fuller. The *Li* rules were also practicable, because they had been stably in practice through history. Consistency is the element that requires more caution. Education, examination and wars meant social mobility was possible in ancient China, this meant when the person's station in life changed, *Li* rules and their penal codes were less consistent for the person and their family, until they readjusted to their new station in life. *Li* rules had the social functions of laws in ancient Chinese society.

4.3.4.4 Summary

Li rules formed the majority of rules that regulated filial piety and looking after the elderly in the Chinese dynasties. The ideal type of “law” was used to evaluate the meaning and functions of *Li* rules in the Chinese governance regime. Weber's concept of law, the comparison between the scope of “law” in English and *Fa* in the legalist writings, and Fuller's elements of the Rule of Law were taken to be elements in the ideal type. Comparing *Li* rules to the ideal type makes the case that the *Li* rules that regulated filial piety and looking after the elderly performed the functions of laws. The Chinese tradition of looking after the elderly by the State was part of the institutional framework that governed ancient China. It was not just a philosophical tradition.

4.4 The Role of the Sovereign in the *Li* Rules that Regulated Care for the Elderly

In the ancient Chinese tradition of the State looking after the elderly, the *Li* rules regulating the Sovereign played a significant role.

4.4.1 The Sovereign's⁵¹⁸ Standard of Behaviour

The standard of behaviour for the sovereign in the ancient Chinese dynasties was “benevolence”.⁵¹⁹ The sovereign was obliged to behave accordingly, as his status in society was that of the sovereign.

4.4.1.1 Defining “Sovereign”

In this research, the choice of the word “sovereign” was made with reference to the meaning Hobbes attributed to the word in his *Leviathan*.⁵²⁰ In the Confucian literature on looking after the people, the reference to the ruler was nearly identical as the Hobbesian connotation of “sovereign”. By placing the meaning of sovereignty in its international law context, Krasner⁵²¹ identified three elements of sovereignty, “International legal sovereignty”, “Westphalian/Vattelien Sovereignty” and “domestic

⁵¹⁸ The word “sovereign” has a neutral connotation. The thinkers referred to in this research wrote at different times. Their sovereign could be emperor, king, duke or nobleman of lesser titles. In the reign of Empress Wu Zetian (690 – 705) in the Tang Dynasty, the sovereign was an Empress. She was the only generally accepted female sovereign in Chinese history.

⁵¹⁹ 仁. This Chinese character has been translated as benevolence, kindness and perfect virtue. For the purposes of identifying the standard of behaviour of the sovereign, benevolence is a better translation. Confucius (551 – 479 BC) in the *Analects* talked about benevolence as loving others by controlling the self to behave according to *Li* rules, “樊迟问仁。子曰：‘爱人’。”又“克己复礼为仁。一日克己复礼，天下归仁焉。”。《颜渊》，‘Yan Yuan’ in 《论语》，Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015). Confucius also taught that the sovereign is one who has good morals and is benevolent, “以德行仁者王”。《雍也》，‘Yong Ye’ in 《论语》，Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015).

⁵²⁰ Hobbes T, *Leviathan*, Gutenberg EBook of Leviathan: <<http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>> (26 Oct. 2015).

⁵²¹ Krasner SD, ‘The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law’, (2003-2004) 25 *Michigan Journal of International Law* 1075, at 1075-1077.

sovereignty”. Hobbes’ account in *Leviathan* was one of the earlier western accounts of domestic sovereignty.

Hobbes in Chapter XVIII of *Leviathan*⁵²² identified twelve elements of the sovereign of a Commonwealth⁵²³ with reference to sovereign powers. People who assembled at the time of the institution of the State conferred these elements of sovereign powers onto the sovereign.

First, because people have covenanted, they cannot change the form of government.⁵²⁴ This covenant meant that automatically, the decisions made by the sovereign is law that all people have agreed to and are required to comply with. As people gave up sovereignty – the free will to do what they wanted to their body and possessions, these people agreed to be punished according to the laws; if the law is broken, they would be punishing themselves.⁵²⁵

Second, “sovereign power cannot be forfeited”.⁵²⁶ This is to say that the sovereign is unable to give up the power to make decisions for the people as a whole because the people have covenanted to give him these powers, regardless of his will.⁵²⁷

Third, “no man can without injustice protest against the institution of the sovereign declared by the major part”.⁵²⁸ Individuals who belong to the group that covenanted to institute the Commonwealth have given the sovereign the power to make decisions in the form of laws, so they have tacitly consented to the laws made by the sovereign. It doesn’t matter whether this particular individual disagrees with the choice of sovereign,

⁵²² Above note 520.

⁵²³ Above note 520. “Commonwealth” is the term used by Hobbes in *Leviathan*. This research hereon uses the words “commonwealth” and “state” interchangeably.

⁵²⁴ Above note 520, in ch XVIII.

⁵²⁵ Above note 520, in ch XVIII.

⁵²⁶ Above note 520, in ch XVIII.

⁵²⁷ Above note 520, in ch XVIII.

⁵²⁸ Above note 520, in ch XVIII.

or disagrees with the laws made, he has agreed to be bound by these laws. Otherwise he would be “left in the condition of war he was in before”.⁵²⁹ In modern terms, he would have broken the law.

Fourthly, “the sovereign’s actions cannot be justly accused by the subject”.⁵³⁰ The sovereign embodies the will of the people when making decisions concerning the subjects of the state. The subjects may be harmed by the sovereign’s decisions, but since it is the same as the subjects making decisions regarding themselves, the sovereign would not have been unjust when making those decisions. Harm to the subjects is a physical fact, unjust is a logical relationship between the sovereign and his subjects.

This fourth point is very similar to the obligations of the sovereign in ancient China within its *Li* system. The sovereign needed to act benevolently, and to his best ability govern in a way that does not harm his subjects. He did not need to consider whether his actions are just, because as sovereign he has behaved according to the *Li* rules.

Following from the logic of the fourth element, fifth, “whatsoever the sovereign doth is unpunishable by the subject”.⁵³¹ Individuals cannot punish the collective will that is embodied in the sovereign, because they will be punishing themselves.

Sixth, the sovereign makes judgement about the doctrines that his subjects are taught.⁵³² To Hobbes,⁵³³ actions proceed from opinion, therefore the content of the education of the subjects is important. Making decisions on what doctrines are to be taught meant the sovereign makes decisions regarding the ideology of the state, which in turn shapes

⁵²⁹ Above note 520, in ch XVIII.

⁵³⁰ Above note 520, in ch XVIII.

⁵³¹ Above note 520, in ch XVIII.

⁵³² Above note 520, in ch XVIII.

⁵³³ Above note 520, in ch XVIII.

the predominant culture in the state. In ancient China, the emperors as sovereign chose to govern according to *Li*. Therefore Confucian principles were the contents of the people's education.

Seventh, “the right of making rules, whereby the subjects may every man know what is so his own, as no other subject can without injustice take it from him”.⁵³⁴ The sovereign makes laws in relation to ownership and the distribution of wealth. These laws stop people from fighting for possessions. In ancient China, the sovereign was the ultimate owner of property.⁵³⁵

Eighth, the sovereign has the “right of judicature and decision of controversy”.⁵³⁶ This right to make judgment takes away the necessity for private individuals to think about self-preservation.⁵³⁷ In ancient China, this “right of judicature” was represented by the different civil and criminal procedures that needed to be followed when matters were brought in front of an official or family elder.

Ninth, the sovereign has the power to “make war, and peace, as he shall think best”.⁵³⁸ The sovereign therefore is the head of the military, and has the monopoly on coercive power.⁵³⁹

Tenth, the sovereign is the person who chooses “counsellors and ministers, both of peace and war”.⁵⁴⁰ These people help the sovereign govern the country by performing specific tasks.⁵⁴¹

⁵³⁴ Above note 520, in ch XVIII.

⁵³⁵ Above note 340.

⁵³⁶ Above note 520, in ch XVIII.

⁵³⁷ Above note 520, in ch XVIII.

⁵³⁸ Above note 520, in ch XVIII.

⁵³⁹ Above note 520, in ch XVIII.

⁵⁴⁰ Above note 520, in ch XVIII.

⁵⁴¹ Above note 520, in ch XVIII.

Eleventh, the sovereign has the power to reward and punish in a way that he sees fit.⁵⁴²

These rewards and punishments should in the best way encourage people to serve the Commonwealth. As discussed in Chapter XVII of *Leviathan*,⁵⁴³ humans are different from other social animals because honour is important to them, therefore the sovereign needs to consider honour or “ignominy”⁵⁴⁴ when deciding on the measure of rewards and punishments.

Last, directly on the point of honour, the sovereign has power to bestow honours and orders on subjects.⁵⁴⁵

In ancient times, the Chinese sovereign had the sovereign powers described by Hobbes. “All the land below heaven belongs to the Sovereign; all the people on the land are the Sovereign’s servants”⁵⁴⁶ summed up the governance relationship between the sovereign and the people in ancient China. Note that the saying described what happened at the time – the ultimate power held by the sovereign as described became the State governance tradition in China. This mentality gave rise to governance philosophies that centred on the importance of the people – their livelihoods⁵⁴⁷ and their wishes.⁵⁴⁸ The sovereign had to look after his subjects during his reign, in order to behave according to the benevolence behaviour standard that he was subjected to.

⁵⁴² Above note 520, in ch XVIII.

⁵⁴³ Above note 520, in ch XVII.

⁵⁴⁴ Above note 520, in ch XVIII.

⁵⁴⁵ Above note 520, in ch XVIII.

⁵⁴⁶ “普天之下，莫非王土。率土之滨，莫非王臣”。《小雅·谷风之什·北山》，‘Xiao Ya · Gu Feng Zhi Shi · Bei Shan’ in 《诗经》，*Book of Songs*, <<http://so.gushiwen.org/gushi/shijing.aspx>> (2.Nov 2015).

⁵⁴⁷ 民生. The concept of *minsheng* (people’s livelihoods) was first formally discussed as part of the benevolence teachings in the writings of Confucius and Mencius. Whereas Confucius taught about benevolence in general, Mencius taught specifically about looking after people’s livelihoods.

⁵⁴⁸ 民主.

4.4.1.2 The Philosophical Ideal Role of the Sovereign

Looking after the elderly is an element of looking after People's Livelihoods. Looking after People's Livelihoods is an important aspect of benevolence as the standard of behaviour for the sovereign. These standards were part of the *Li* rules, therefore the sovereign's behaviour standard of looking after the elderly were the sovereign's legal obligations. That is, the policy tradition in China for the sovereign to look after the elderly through publicly funded programmes equated to a tradition of sovereign obligations to look after the elderly.

The policy tradition to look after the people's livelihoods in China started at least from the Zhou Dynasty (1024 – 249 BC), where policies and laws assisted the elderly, the poor, and people in times of famine.

There is a clear philosophy behind looking after the population by the sovereign, who was the head of the government. Confucius referred to *Da Tong*⁵⁴⁹ - “the great unity”, and *Xiao Kang*⁵⁵⁰ - “well to do”. His student, Mencius, later addressed *Minsheng*⁵⁵¹ - “the people's livelihoods”. These three ideals represent the philosophical beginnings of the policy tradition to look after people's livelihoods in ancient China.

The great unity is a picture of a perfect world painted by Confucius – orderly and respectful.⁵⁵² The social order in the picture was Chinese, but the orderly nature in this picture is not dissimilar to that painted by Sir Thomas More in *Utopia*,⁵⁵³ nor Plato's

⁵⁴⁹ 大同. Above note 331.

⁵⁵⁰ 小康. Above note 331.

⁵⁵¹ 民生.

⁵⁵² Above note 332.

⁵⁵³ More T, *Utopia*, Baker-Smith, trans, (London: Penguin Books, 2012).

Republic.⁵⁵⁴ The great unity is an ideal that even Confucius himself argued was not attainable.

The sage described another ideal world that was attainable, since it was attained in the reigns of Emperors Yu⁵⁵⁵ and Tang⁵⁵⁶ in the myths and the Kings Wen,⁵⁵⁷ Wu,⁵⁵⁸ Cheng⁵⁵⁹ and Duke Dan⁵⁶⁰ of the Zhou Dynasty.⁵⁶¹ These six reigns were considered to be virtuous and saintly in the writings of ancient Chinese thinkers. This attainable ideal is *Xiao Kang*. *Xiao Kang* establishes:⁵⁶²

Now the great *Tao* is in hiding, the world belongs to one family. Therefore, men loved only their own parents, treated as children only their own sons, exerted themselves only for their own gain and guarded their own wealth. The nobility passed down their titles, and this became *Li* to be followed, and towns were fortified. Etiquettes, rituals, orders and punishments were established as rules of standard behaviour, thereby the relationship between monarch and minister is formalised, father and son loved each other, brothers are friendly and husband and wife are harmonious, there are established systems, fields and land are divided, those who are brave and virtuous are respected, and merits were sought for the self. Therefore strategies are learnt and wars began. Yu of Xia, Tang of Shang, the Kings Wen, Wu and Cheng of Zhou and Duke Dan of Zhou are the best in their revered times. These six great wise men were virtuous at following *Li*. They exemplified the connotations of the *Li* system, and used them to check the trustworthiness of the people and their wrongful behaviour, issue punishments and rewards accordingly, and educated the people. When someone doesn't follow the rules of *Li*, even if they are powerful, they are punished and the people know to view their behaviour as wrong. This is called *Xiao Kang*.

This is a world of order according to the rules of *Li*.

⁵⁵⁴ Bloom A, trans, *The Republic of Plato*, (Sydney: HarpersCollins Publishers, 1968).

⁵⁵⁵ 禹. Emperor Yu lived in the mythical times in China's history. He was the first sovereign of the Xia Dynasty (circa 21st Century – 16th Century BC).

⁵⁵⁶ 汤. Emperor Tang lived in the mythical times in China's history. He was of the first sovereign of the Shang Dynasty. (Circa 1670 – 1587 BC).

⁵⁵⁷ 1152 – 1056 BC. 周文王.

⁵⁵⁸ Circa 1087 – 1043 BC. 周武王.

⁵⁵⁹ 1055 – 1021 BC. 周成王.

⁵⁶⁰ 周公旦. Born circa 1100.

⁵⁶¹ 1046 – 771 BC.

⁵⁶² Author's translation. “今大道既隐，天下为家。各亲其亲，各子其子，货力为己。大人世及以为礼，域郭沟池以为固，礼义以为纪，以正君臣，以笃父子，以睦兄弟，以和夫妇，以设制度，以立田里，以贤勇知，以功为己。故谋用是作，而兵由此起。禹、汤、文、武、成王、周公由此其选也。此六君子者，未有不谨于礼者也。以着其义，以考其信，着有过，刑仁讲让，示民有常。如有不由此者，在絜者去，众以为殃。是谓小康”。《礼运》，‘Li Yun’ in 《礼记》 *Book of Rites*, <http://so.gushiwen.org/guwen/book_23.aspx> (2 Nov. 2015).

The concept of *minsheng*⁵⁶³ (people's livelihoods) was first formally discussed as part of the benevolence teachings in the writings of Confucius and Mencius. Whereas Confucius taught about benevolence in general, Mencius taught specifically about looking after people's livelihoods.

Confucius opined that people should treat the sovereign as the heart of the reign, and in turn the sovereign should treat the people as the body of the reign. To Confucius, as the court songs recorded -- there were days when the sovereign was honourable and spoke clearly, so the nation was peaceful, towns were built and the people lived well.⁵⁶⁴ If one wanted the nation to be built, one would not dare be dishonourable and work his people too hard. This personification of the relationship between the sovereign and the people meant that benevolence by the sovereign was in the best interest of the sovereign. As Mencius pointed out, the sovereign should govern with policies that were beneficial to the people to gain their support.⁵⁶⁵ Later on, GUAN Zhong summarised the importance of people's livelihoods in Confucian thought -- the people needed to be materially satisfied before they could be taught *Li*.⁵⁶⁶

Policies that give people relief from hardship were very important to secure their livelihoods.⁵⁶⁷ The idea of people's livelihoods as part of benevolent policies included four types of policies: "securing the people's basic living standards",⁵⁶⁸ "giving wealth

⁵⁶³ 民生.

⁵⁶⁴ 子曰：“民以君为心，君以民为体。心庄则体舒，心肃则容敬，心好之身必安之。君好之，民必欲之。心以体全，亦以体伤。君以民存，亦以民亡。诗云：‘昔吾有先正，其言明且清。国家以宁，都邑以成，庶民以生。谁能秉国成，不自为正，卒劳百姓。……’”。《缙衣》，‘Zi Yi’, in above note 337.

⁵⁶⁵ 孟子曰：“得天下有道：得其民，斯得天下矣；得其民有道：得其心，斯得民也；得其心有道：所欲与之聚之，所恶勿施，尔也。”。《离娄上》，‘Li Lou I’ in above note 341.

⁵⁶⁶ “仓廩实而知礼节，衣食足而知荣辱”。Above note 344.

⁵⁶⁷ 《离娄上》，‘Li Lou I’ in above note 341.

⁵⁶⁸ 保民.

to the people and hiding wealth with the people”,⁵⁶⁹ “educating the people”,⁵⁷⁰ and “having fun with the people”.⁵⁷¹

To secure people’s basic living standards,⁵⁷² the sovereign should make sure that the people have enough seeds in spring for a sufficient harvest in autumn, if not the government should offer supplements.⁵⁷³ To allow people to have enough when they were living and when they die,⁵⁷⁴ the sovereign should give the people production advice -- planting their crop in the right seasons (for food and clothing), farming fish, and collecting timber at the right time (so they have enough timber for coffins)⁵⁷⁵, thereby allowing the sovereign to look after the people in their old age and at other times of need.⁵⁷⁶ A continuation of these policies should allow the sovereign to give wealth to the people and hide wealth with the people.⁵⁷⁷ Hiding wealth with the people refers to allowing the people to accumulate wealth that leads to the building of a tax base for the sovereign to collect extra fiscal revenue, when the need arises.

One policy proposal by Mencius to give wealth to the people and hiding wealth with the people was the square fields system to allow for private and public food

⁵⁶⁹ 富民，藏富于民。

⁵⁷⁰ 教民。

⁵⁷¹ 与民同乐。

⁵⁷² 《梁惠王上》、《梁惠王下》，‘King Hui of Liang I’ & ‘King Hui of Liang II’ in above note 341.

⁵⁷³ “春省耕而补不足，秋省敛而助不给”。《梁惠王下》，‘King Hui of Liang II’ in above note 341.

⁵⁷⁴ Death is traditionally an important aspect of a person’s life in China. The ancient Chinese believed in an afterlife, ancestor worship is part of this belief. A person needed to be buried with respect. Most of the time, coffins were built out of timber, it was therefore important to plan for the timber and other burial ritual necessities when one is alive. Ancient Chinese governments accounted for death in their welfare policies targeted at the elderly.

⁵⁷⁵ “不违农时，谷不可胜食也；数罟不入夸池，鱼鳖不可胜食也；斧斤以时入山林，材木不可胜用也。谷与鱼鳖不可胜食，材木不可胜用，是使民养生丧死无憾也。养生丧死无憾，王道之始也。”。《梁惠王上·寡人之于国也》，‘The role of the monarch to the nation in King Hui of Liang I’ in above note 341.

⁵⁷⁶ “五亩之宅，树之以桑，五十者可以衣帛矣。鸡豚狗彘之畜，无失其时，七十者可以食肉矣。百亩之田，勿夺其时，数口之家，可以无饥矣；谨庠序之教，申之以孝悌之义，颁白者不负戴于道路矣。七十者衣帛食肉，黎民不饥不寒，然而不王者，未之有也。狗彘食人食而不知检，涂有饿莩而不知发，人死，则曰：‘非我也，岁也’。”；and “是何异于刺人而杀之，曰：‘非我也，兵也？’王无罪岁，斯天下之民至焉。”。《梁惠王上·寡人之于国也》，‘The role of the monarch to the nation in King Hui of Liang I’ in above note 341.

⁵⁷⁷ 《梁惠王上·寡人之于国也》，‘The role of the monarch to the nation in King Hui of Liang I’ in above note 341.

production.⁵⁷⁸ This was a farming and irrigation system where each piece of farmland was divided into nine squares, with the harvest from the middle square taken as taxes.⁵⁷⁹ Farmers were obligated to farm the public land first, then farm their private land. This requirement meant necessary irrigation works were the obligation of the sovereign. As farmers needed to farm the public land collectively, it is likely that they would farm each other's land together, allowing for the possibility of a harvest that leads to savings.⁵⁸⁰

Educating the people included teaching them the importance of *Li* and morals.⁵⁸¹ Having fun with the people to Mencius was a simple ideal that referred back to the times of the six great wise men,⁵⁸² where the sovereign shared with the people their entertainment.⁵⁸³

XUN Kuang continued this Confucian tradition when advising sovereigns to look after their reign and ascertain people's livelihoods. He described the sovereign as a boat, and peasants as water. The water can float the boat, it can also sink the boat.⁵⁸⁴ A real king gives wealth to the people. A dominating lord only gives to officials; a barely surviving country gives only to the powerful; and a country going to ruin gives only to the ruling family's purse.⁵⁸⁵ If the sovereign only kept wealth in their own purse, the people will

⁵⁷⁸ “夫仁政必自经界始，经界不正，井地不均，谷禄不平，是故暴君污吏必慢其经界。经界既正，分田制禄，可坐而定也。... 方里而井，井九百亩，其中为公田。八家皆私百亩，同养公田，公事毕，然后敢治私事”。

《滕文公上》，‘T’ang Wan Kung’ in above note 341.

⁵⁷⁹ 《滕文公上》，‘T’ang Wan Kung’ in above note 341. “夫仁政”

⁵⁸⁰ 《滕文公上》，‘T’ang Wan Kung’ in above note 341.

⁵⁸¹ “善政不如善教之得民也。善政，民畏之；善教，民爱之。善政得民财，善教得民心。”《离娄上》，‘Li Lou I’ in above note 341.

⁵⁸² “贤者亦乐此乎？”。《梁惠王上·与民同乐》，‘Having fun with the people in King Hui of Liang I’ in above note 341.

⁵⁸³ “孟子见梁惠王。王立于沼上，顾鸿雁麋鹿，曰：‘贤者亦乐此乎？’”。For more detail, please see 《梁惠王上·与民同乐》，‘Having fun with the people in King Hui of Liang I’ in above note 341.

⁵⁸⁴ “君者，舟也；庶人者，水也。水则载舟，水则覆舟。”《王制》，‘Wang Zhi’ in 343 《荀子》 *Xunzi*, <http://so.gushiwen.org/guwen/book_30.aspx> (2 Nov. 2015).

⁵⁸⁵ “故王者富民，霸者富士，仅存之国富大夫，亡国富筐篚，实府库。”《王制》，‘Wang Zhi’ in 《荀子》 *Xunzi*, <http://so.gushiwen.org/guwen/book_30.aspx> (2 Nov. 2015).

be poor; when both ends of the reign “leaks”, the people could neither defend, nor attack; the country would soon collapse.⁵⁸⁶

XUN Kuang made it very clear that the sovereign needed to look after the people for the success of his reign, not just those close to him. His book *Xunzi*⁵⁸⁷ also included the metaphor that the relationship between the sovereign and the people is one of a water stream.⁵⁸⁸ The sovereign is the source, and the people form the stream. If the source is clear, the stream is also clear; if the source is muddy, the stream is also muddy. If the sovereign in power is not able to love the people and be benevolent to the people, but still asks for the people to love him, it is impossible to achieve. If the people do not love the sovereign, but the sovereign wants to use the people or wants the people to die for him, it is impossible to achieve. If the people cannot be used by the sovereign, or will not die for the sovereign, but the sovereign asks for a powerful army or a strong fort, it is impossible to achieve. If the army is not powerful, nor is the fort strong, but if the sovereign still asks for the enemy not to arrive, it is not possible to achieve. If there is nothing to stop the enemy when they come, but the sovereign asks for the reign to not come to an end, it is not possible to achieve.⁵⁸⁹ The sovereign needed to look after his people for his own success.

To XUN Kuang, a person who is governing a country should aim to gain three things from the people – energy, life and good fame. The energy from the people will lead to wealth, the lives of the people will lead to strength, and good fame from the people will

⁵⁸⁶ “筐篚已富，府库已实，而百姓贫，夫是之谓上溢而下漏，入不可以守，出不可以战，则倾覆灭亡可立而待也。”《王制》，‘Wang Zhi’ in 《荀子》 *Xunzi*, <http://so.gushiwen.org/guwen/book_30.aspx> (2 Nov. 2015).

⁵⁸⁷ Above note 343.

⁵⁸⁸ “君者，民之原也，原清则流清，原浊则流浊。故有社稷而不能爱民，不能利民，而求民之亲爱己，不可得也。民不亲不爱，而求为己用，为己死，不可得也。民不为己用，不为己死，而求兵之劲，城之固，不可得也。兵不劲，城不固，而求敌之不至，不可得也。敌至而求无危削，不灭亡，不可得也。”《君道》，‘Jun Dao’ in above note 343.

⁵⁸⁹ 《君道》，‘Jun Dao’ in above note 343.

lead to honour.⁵⁹⁰ Gaining these three things from the people meant the sovereign has behaved as the sovereign should, and all that is beneath heaven would belong to him. The reign would go to ruin if he has not gained these three things from the people.⁵⁹¹

4.5 Promotion of Filial Piety – Looking after the Elderly

The promotion of filial piety and its associated policies were part of the *Li* rules framework in the governance by the sovereigns of the dynasties. Filial Piety is the central Confucian idea that informed the policy tradition in China to look after the elderly. It played a pivotal role in policy formation in the dynasties.

The concept of filial piety was an important component of both the *Li* and *Fa* rules of the dynasties -- *Li* as a system of rituals that had binding force in relation to civil matters; and *Fa* as a system of codes that had binding force and attracts criminal sanctions. Filial piety policies were important people's livelihoods policies of each dynasty, contributing significantly to the ancient Chinese welfare framework.

In ancient China, many esteemed Confucian scholars have written about filial piety -- *Xiao*⁵⁹² (pronounced see'ao) by treating it as a focal point of State governance. These writers were informed by the practices in the Zhou Dynasty,⁵⁹³ as two of the earliest Confucian books, the *Zhou Rites* and the *Book of Rites* were written through idealising Zhou practices.

⁵⁹⁰ “用国者，得百姓之力者富，得百姓之死者强，得百姓之誉者荣。三得者具而天下归之，三得者亡而天下去之；天下归之之谓王，天下去之之谓亡。”《王霸》，‘Wang Ba’ in above note 343.

⁵⁹¹ 《王霸》，‘Wang Ba’ in above note 343.

⁵⁹² 孝.

⁵⁹³ 1046 – 256BC.

4.5.1 Western Zhou Policies to Look After the Elderly

Real government policies that looked after the elderly began from the Western Zhou⁵⁹⁴ era, where the welfare system for the elderly was based on a patriarchal bloodline that promoted the idea of “emphasising the parents and the elderly”.⁵⁹⁵ These policies informed the writings of Confucius and thinkers in the Confucian tradition, including GUAN Zhong.

The Western Zhou government promoted etiquettes and rituals (*Li*) in relation to looking after the elderly. These *Li* rules included dietary programmes for those who were above fifty, sixty, seventy, eighty and ninety respectively,⁵⁹⁶ whereby the government promoted keeping better quality food for the elderly, and other rituals and etiquettes to support the elderly in their daily lives.⁵⁹⁷

Practical government policies to look after the elderly were also in place. These policies included tax and forced labour⁵⁹⁸ policies, political priority policies and education policies. *Yi* was the levying of forced labour by Chinese governments. This was a non-monetary form of per-capita taxation levied up till 1949. People, usually men, were required to perform compulsory labour, mostly to build infrastructure. The compulsory nature is similar to compulsory conscription, and during times of war, forced labour could mean conscription.

In terms of tax and forced labour policies, the government exempted forced labour and taxes from the elderly at the age limit of sixty for those who lived in cities, and sixty-

⁵⁹⁴ Circa 11th Century BC to 771 BC.

⁵⁹⁵ “贵亲而尚齿”，《祭义》，‘Ji Yi’ in above note 337.

⁵⁹⁶ “五十异粮，六十宿肉，七十戴膳，八十常珍，九十饮食不离寝。”《内则》，‘Nei Ze’ in above note 337.

⁵⁹⁷ 《内则》，‘Nei Ze’ in above note 337. For example, when a person reached ninety, the *Li* rules required that he should not need to leave the bed for meals. For those who were over seventy, there should be better clothing to keep them warm. The elderly should not carry heavy things when they travel.

⁵⁹⁸ 役, *Yi* pronounced “yee”.

five for those who lived in rural areas.⁵⁹⁹ In terms of forced labour (including conscription), there were also policies to exempt the forced labour of sons of the elderly. For example, if the elderly person was over seventy, one son's forced labour was exempted; if over eighty, two sons; over ninety, the whole family.⁶⁰⁰

In relation to political priority, the government had mechanisms to raise the status of the elderly, such as giving honourable/noble titles to men who were over fifty.⁶⁰¹ Also, the sovereign must visit his land, and during that visit, he must ask the elderly about their daily lives, this was part of the rituals to pay respect to the elderly and to alter their weaker social positions.⁶⁰² There were already preferential policies for elderly officials in the Western Zhou era, including returning their posts⁶⁰³ and related policies.

Returning the post was the ability for an official to request returning their duties to the emperor when they reached a certain age, for example, seventy.⁶⁰⁴ When these officials returned their posts, they were not entirely free from politics. The emperor often asked for their counsel when there were important events, as well as giving them titles (which included property for them to receive income) or an ex-gratia payment in-kind.⁶⁰⁵ Other related benefits involved special provisions for those elderly officials who were still needed for active duties, such as rewards in gifts and providing them with conveniences such as seats, crutches, servants and carriages.⁶⁰⁶

⁵⁹⁹ “国中自七尺以上及六十，野自六尺及六十有五，皆征之” 《地官·乡大夫》，‘Di Guan · Xiang Dai Fu’ in above note 400.

⁶⁰⁰ “年七十以上，一子无征”，“八十以上，二子无征”，“九十以上，尽家无征” 《入国》，‘Ru Guo’ in above note 344.

⁶⁰¹ “五十而爵” 《王制》，‘Wang Zhi’ in above note 337.

⁶⁰² 《祭义》，‘Ji Yi’ in above note 337.

⁶⁰³ 致仕或致政，meaning the returning of duties by officials to the emperor.

⁶⁰⁴ “七十致政” 《王制》，‘Wang Zhi’ in above note 337.

⁶⁰⁵ 赏赐.

⁶⁰⁶ “若不得谢，则必赐之几杖，行役以妇人，安车适四方” 《曲礼上》，‘Qu Li I’ in above note 337.

The criminal laws also had special treatment for the elderly because they have lived to that ripe old age.⁶⁰⁷ For example, the criminal law exempted the elderly from sentences that directly injured the body,⁶⁰⁸ any person over seventy would not be punished to slavery,⁶⁰⁹ and people above eighty were not sentenced.⁶¹⁰ There were officials whose jobs were just to oversee cases involving the mistreatment of the elderly.⁶¹¹ Those who mistreated the elderly would be criminally punished, and officials who did not administer these punishments were also punished.⁶¹²

Education was an important part of social policy in ancient China. As early as the Western Zhou era, education as a means to promote looking after the elderly was already important. Policies included rituals and mass education campaigns. An example of rituals was when the emperor visited any school, the emperor had to perform a ritual that emphasises his respect to the elderly.⁶¹³ This ritual included sacrifices made to earlier great teachers of the Confucian tradition,⁶¹⁴ and banquets that included seats for the elders of the local area.⁶¹⁵ The ritual that was performed most in the Western Zhou era was the village drinking ritual, where the treatment for people of different age groups were distinctively different, thereby teaching the masses the importance of the wisdom of the elderly and the importance of the elderly in society.⁶¹⁶ Education

⁶⁰⁷ “生日久乎”. 高恒, 《秦汉简牍中法制文书辑考》, 北京: 社会科学文献出版社, 2008 年. Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 174.

⁶⁰⁸ The five extreme sentences including tattooing the face, ear, back of the neck or arm; cutting off the nose; breaking the foot; castration; and death. 《刑法志》, ‘Xing Fa Zhi’ in above note 338.

⁶⁰⁹ “凡有爵者与七十者与未齿者, 皆不为奴。”《刑法志》, ‘Xing Fa Zhi’ in above note 338.

⁶¹⁰ “八十九十曰耄, 七年曰悼。悼与耄, 虽有罪, 不加刑焉。”《曲礼》, ‘Qu Li’ in above note 337.

⁶¹¹ “掌不孝不弟之刑”《地官·大司徒》, ‘Di Guan · Da Si Tu’ in above note 400.

⁶¹² “以肺石远(达)穷民, 凡远近恟独老幼之欲有复于上, 而其长弗达者, 立于肺石, 三日, 士听其辞, 以告于上而罪其长”《秋官·大司寇》, ‘Qiu Guan · Da Si Kou’ in above note 400.

⁶¹³ 学中养老礼; and “凡视学, 必遂养老”。《文王世子》, ‘Wen Wang Shi Zi’ in above note 337.

⁶¹⁴ “释奠于先老” in 杨天宇注: 《礼记译注·文王世子》, 上海: 上海古籍出版社, 2004 年; Yang T, annotated, *Translated and Annotated Wen Wang Shi Zi of Book of Rites*, (Shanghai: Shanghai Ancient Text Publisher, 2004), at 256.

⁶¹⁵ “设三老、五更、群老之席位”《文王世子》, ‘Wen Wang Shi Zi’ in above note 337.

⁶¹⁶ 乡饮酒礼。《祭义》, ‘Ji Yi’ in above note 337.

campaigns included behaviour etiquette education by village elders to the masses, of which filial piety was an important element.⁶¹⁷

4.5.2 Filial Piety in Confucian Works

Filial piety has a pivotal role in Confucian thought. It is the theoretical underpinning to people's livelihoods policies that aimed to look after the elderly. Filial piety is therefore an important part of ancient China's rigid and orderly society.

In Confucius's own words, looking after the elderly includes both maintaining the elderly,⁶¹⁸ that is, physically looking after them; and respecting the elderly,⁶¹⁹ that is, spiritually and psychologically looking after the elderly of one's realm or in one's family.

After the Spring and Autumn Period⁶²⁰, each dynasty and period had policies to look after the elderly that were informed by GUAN Zhong's writings and practices. GUAN Zhong's⁶²¹ work is the most significant in regards to filial piety as a principle in the *Li* rules.

In his seminal work *Guanzi*,⁶²² GUAN Zhong added to Confucian thinking on the concept of filial piety. Confucius referred to three important relationships: the relationships between the sovereign and his people, between father and son, and between husband and wife.⁶²³ Filial piety is based on the relationship between father

⁶¹⁷ “孝、友、睦、姻、任、恤”六行。《地官·大司徒》，‘Di Guan ·Da Si Tu’ in above note 400.

⁶¹⁸ 养老。《辞海》，*Ci Hai*, Online <<http://cihai.supfree.net/>> (5 Nov. 2015).

⁶¹⁹ 敬老。Above note 342.

⁶²⁰ 770-476 BC.

⁶²¹ 管仲 735—645 BC.

⁶²² Above note 344.

⁶²³ “三纲者，何谓也？谓君臣、父子、夫妇也。”。《三纲六纪》，‘Three Relationships and Six Behaviour Codes’ in above note 345. See also, 《颜渊》，‘Yan Yuan’ in above note 342.

and son. GUAN Zhong was the first to formalise the importance of these three relationships as behavioural rules.

The connotation of filial piety included loving one's parents, providing them with material sustenance, being kind to them and respect, obedience and servitude, especially by the children and their spouses.⁶²⁴ As a patriarchal society, the role of the daughter-in-law in ancient China was regulated along with that of sons.⁶²⁵

The son and the daughter-in-law had a duty to look after elderly parents, otherwise as punishment, they would lose their livelihoods. They were required to supply their elderly parents with material goods. To GUAN Zhong, no matter how important or busy the person was, whether they were officials, craftsmen or farmers, it was a crime not to maintain the elderly. This crime was also unpardonable.⁶²⁶

In *Mumin*,⁶²⁷ GUAN Zhong discussed the four facets of governing a country: rituals, morals and etiquette – *Li*,⁶²⁸ righteousness – *Yi*,⁶²⁹ free from corruption – *Lian*,⁶³⁰ and a sense of shame – *Chi*.⁶³¹ Only *Li* and *Yi* are discussed here. *Li* in this context refers to seven behaviour types when dealing with different people and in different situations. Filial piety was the most important in these seven behaviour types.⁶³²

When GUAN Zhong wrote on *Li* and *Yi*, there were clear statements about how to look after the elderly. These statements related to how the young were supposed to look after their older kin. These instructions included respect and obedience⁶³³ as discussed in

⁶²⁴ 《形势解》，‘Xing Shi Jie’ in above note 344.

⁶²⁵ 《形势解》，‘Xing Shi Jie’ in above note 344.

⁶²⁶ Above note 344.

⁶²⁷ 《牧民》，‘Mu Min’ in above note 344. Here, GUAN Zhong talked about governance with reference to pastoral care.

⁶²⁸ 礼. Here it means etiquette, rituals and morals.

⁶²⁹ 义.

⁶³⁰ 廉.

⁶³¹ 耻.

⁶³² 《五辅》，‘Wu Fu’ in above note 344.

⁶³³ 《五辅》，‘Wu Fu’ in above note 344.

the eight methods GUAN Zhong used to teach the people to follow *Li*. GUAN Zhong placed much importance on the education of the people to follow *Li*, where the sovereign should lead by example⁶³⁴ as part of his policies to look after the elderly. These policies were essential to the benevolence policy framework.

GUAN Zhong opined that if the sovereign did not lead by example to look after his parents, the people would not consider filial piety as so important, thereby the policies and laws would not be voluntarily complied with.⁶³⁵ Once the sovereign leads by example, he can then promote looking after the elderly through educating all levels and sectors in society by teaching the young to support the older generations; so farmers, craftsmen, as well as officials know how to respect and look after the elderly.⁶³⁶

4.5.2.1 GUAN Zhong's Policy Implementations

As the prime minister of one of the largest kingdoms in the Spring and Autumn Period -- the Qi Kingdom, GUAN Zhong designed and implemented a welfare system that covered three key policy proposals.⁶³⁷ The first was the creation of a social welfare system that focused on the elderly. *Guanzi* suggested that⁶³⁸ if a family has an old person whose age was over 70, one of his sons would be exempt from conscription or forced labour; and meat should be supplied by the local government every three months.⁶³⁹ If a family has an old person whose age was over 80, two of his sons would be exempt from conscription or forced labour and the government should provide meat

⁶³⁴ Above note 344.

⁶³⁵ 《牧民》、《山权数》, 'Mu Min' & 'Shan Quan Shu' in above note 344.

⁶³⁶ 《大匡》, 'Da Kuang' in above note 344.

⁶³⁷ These policy proposals were captured by the Confucian writings that were the compulsory part of the education received by the sovereign and officials. GUAN Zhong's policy designs that were implemented became the *Li* rules in the dynasties.

⁶³⁸ “年七十以上, 一子无征, 三月有馈肉; 八十以上, 二子无征, 月有馈肉; 九十以上, 尽家无征, 日有酒肉。死, 上供棺槨。”。《入国》, 'Ru Guo' in above note 344.

⁶³⁹“年七十以上, 一子无征, 三月有馈肉”。《入国》, 'Ru Guo' in above note 344.

every month.⁶⁴⁰ If the old person in the family was over 90 years old, the whole family would be exempt from conscription or forced labour, the government should provide meat and wine to the elderly person every day.⁶⁴¹ When the old person dies, the government should also supply funeral needs.⁶⁴²

The second type of policy proposal was to create a social relief system that included the elderly. Guanzi suggested⁶⁴³ that society should support the elderly and orphans, and help both widows and widowers.⁶⁴⁴ Relief policies should also include enquiring after their health status (including medical services), and financial support when these weaker members of society die from accidents.⁶⁴⁵ To Guanzi⁶⁴⁶, implementation of all these policies contributed to the sovereign's benevolence, where he cares in emergencies.⁶⁴⁷

The third type of policy proposal was to create a health system for the elderly. To Guanzi,⁶⁴⁸ in relation to enquiring after health status, nations and major cities should have officers who were in charge of “asking about the health status” of the elderly. When citizens were sick, these officers should go and visit them. For old people whose age was over 90, officers should visit them every day; for those who were over 80, officers should visit every two days; those who were over 70, the visit should be every three days.⁶⁴⁹

⁶⁴⁰ “八十以上，二子无征，月有馈肉”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴¹ “九十以上，尽家无征，日有酒肉”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴² “死，上供棺槨”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴³ “养长老，慈幼孤，恤鳏寡，问疾病，吊祸丧，此为匡其急。”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴⁴ 《入国》，‘Ru Guo’ in above note 344.

⁶⁴⁵ “问疾病，吊祸丧”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴⁶ Another name for GUAN Zhong. Ancient Chinese literature refers to a wise man or a sage as “zi” – 子。

⁶⁴⁷ “此为匡其急”。《五辅》，‘Wu Fu’ in above note 344.

⁶⁴⁸ “所谓问病者，凡国、都皆有掌病，士民有病者，掌病以上令问之，九十以上，日一问；八十以上，两日一问；七十以上，三日一问。”。《入国》，‘Ru Guo’ in above note 344.

⁶⁴⁹ “所谓问病者，凡国、都皆有掌病”。《入国》，‘Ru Guo’ in above note 344.

Establishing one cohesive system in the country that combined the three types of policy proposals to look after the elderly was therefore very important for GUAN Zhong. His real policy proposals were in the following forms:

- 1) Praise and material encouragements, such as praising the top ten percent of filial children, and reward them in monetary form;⁶⁵⁰
- 2) Exemption from forced labour or conscription;⁶⁵¹
- 3) Reward with public service employment. GUAN Zhong considered filial piety as the most important virtue for an official, and listed it in his public service recruitment policy proposals.⁶⁵²

4.5.3 Policies in Later Dynasties

Each dynasty made taking care of its elderly population an important policy goal. The court histories included public expenditure detail on looking after the elderly.⁶⁵³ Governments⁶⁵⁴ took the view that looking after the elderly was a mechanism of social control. This part of people's livelihoods has its practical purpose. In the traditional Chinese society, there was an obvious reason to emphasise looking after the elderly. The experiences the elderly could pass down in traditional societies that have slower scientific development were vital for production to continue, and for the accumulation of wealth. The wisdom of the elderly also provided the basis to educate the people, and pass down the appropriate moral standards.

⁶⁵⁰ 《山权数》, 'Shan Quan Shu' in above note 344.

⁶⁵¹ 《山权数》, 'Shan Quan Shu' in above note 344.

⁶⁵² Above note 344.

⁶⁵³ For examples, see the Tables in above note 338.

⁶⁵⁴ This research chooses to use the term "government", because governments took many forms in ancient China and the emperor may not be the de facto sovereign in his court.

The policies often included: in-kind benefits such as food, clothing to materially provide for the elderly,⁶⁵⁵ tax benefits; preferential political treatment; special laws and punishments, and education to promote filial piety as a concept based on the writings of DONG Zhongshu.⁶⁵⁶

Later dynasties continued to have policies to look after the elderly by the State. The types of policies were similar to those in the Qin and Han Dynasties discussed below. From the Tang Dynasty, females began to enjoy the same benefits as males.⁶⁵⁷

4.5.4 The Qin (221 – 207 BC) and Han (202 BC – 220AD) Dynasties

The reign of Qin Shihuang,⁶⁵⁸ the first emperor in China's history ended the Warring States Period, and unified China as a nation. Qin Shihuang's reign began the long tradition of centralised politics in China, where much precedents were made. However, the dynasty he started – the Qin Dynasty⁶⁵⁹ was short lived. The ruinous habits of his son, the second emperor and the strong influence of a few calculating ministers led to the demise of the dynasty and the beginning of the Han Dynasty⁶⁶⁰ – one that was lengthy and relatively stable. The prosperity and stability of the Han Dynasty allowed policies to develop from their Qin Dynasty precedents and be implemented. The system of welfare policies targeting the elderly in the Qin and Han Dynasties included five types of policies: welfare, support, compensation, law and education. This section briefly discusses each, as these policies carried on the tradition from the Western Zhou era, and laid the foundation for the other periods⁶⁶¹ in China's long ancient history.

⁶⁵⁵ These are part of the policies to maintain the elderly.

⁶⁵⁶ 董仲舒 Above note 346.

⁶⁵⁷ 李穆, 《从性别角度看唐代的养老政策》, Li M, 'Welfare Policies Targeted at the Elderly in the Tang Dynasty – From a Gender Perspective', (2007) *Science & Technology Information* 51.

⁶⁵⁸ 秦始皇 260–210 BC.

⁶⁵⁹ 221 – 207 BC.

⁶⁶⁰ 202 BC - 220 AD.

⁶⁶¹ Periods included dynasties and the relatively unstable periods between dynasties, where the geographic area of "China" was divided into multiple smaller States.

Welfare and support policies and laws are discussed separately, while compensation, and education are discussed as part of welfare and support policies.

4.5.4.1 Welfare Policies to Look After the Elderly

In the Qin and Han Dynasties, there were three major policy groups under the heading of welfare policies to look after the elderly. These were in-kind benefits, tax and forced labour policies, and policies to keep the counsel of the elderly.

In-kind benefits were often one off non-monetary ex-gratia payments by the government to the elderly. Some of these in-kind benefits were continuous and regular in nature, others were truly one off awards. Examples from the court history records of the Han Dynasty⁶⁶² showed that things that were awarded are usually food and different types of fabric. These things were often awarded to the elderly and people who have been filial.⁶⁶³ These awards often happened when there were special events relating to the emperor or special national events, such as naming the empress, the sovereign's national tour to audit officials in his reign, a good harvest, naming the heir, general pardons, and coronations.⁶⁶⁴

Tax and forced labour policies revolved around exemptions for the elderly and for those who had to look after the elderly. For example, in the Qin Dynasty, for people who were titled, forced labour was exempted when they turned fifty six; for those who were not titled, exemptions began when they turned sixty.⁶⁶⁵ In the Han Dynasty, people of different classes were exempt from forced labour from a different age, the higher their

⁶⁶² Above notes 338 and 339.

⁶⁶³ Table in 高宁, 《硕士学位论文: 秦汉养老制度研究》, Gao N, *Master's Dissertation: The System of Welfare Targeted at the Elderly in the Qin and Han Dynasties*, (Northwest University, 2012), at 17-20.

⁶⁶⁴ Above notes 338 and 339.

⁶⁶⁵ “秦制二十爵, 男子赐爵一级以上, 有罪以减, 年五十六免。无爵为士伍, 年六十乃免老” [汉] 卫宏《四部备要: 汉旧仪》, 北京: 中华书局, 1936年, [Han Dynasty] Wei H, *Collected Important Documents of Four Sectors · Han Dynasty Old Rituals*, (Beijing: Zhonghua Press, 1936), at 3657.

class, the younger exemptions began. For an esteemed official, this began when they turned fifty-eight, a normal peasant has to turn sixty-six before exemptions began.⁶⁶⁶ There were also policies to half forced labour in the Han Dynasty for people who almost meet the age for exemption.⁶⁶⁷ There were policies to exempt per capita taxes in both dynasties.⁶⁶⁸

Policies to keep the counsel of the elderly were introduced to improve the status of the elderly in society. The emperor usually kept counsel of the elderly in three ways: asking for their health to improve the elderly person's social status, in-kind benefits, and asking them to suggest the right person to be officials.

4.5.4.2 Support Policies to Look After the Elderly

Support policies to look after the elderly began in the Han⁶⁶⁹ Dynasty. They were a safety net mechanism to maintain the basic living standards of elderly people or for the elderly during times of natural disaster. Policies included food distribution, or government subsidised loans to the elderly. There were four main types of policies:

- 1) Temporary aid policies, such as the distribution of rice, food, money and the services of people in the form of forced labour;⁶⁷⁰

⁶⁶⁶ “大夫以上年五十八，不更六十二，簪褭六十三，上造六十四，公士六十五，公卒以下六十六，皆为免老” 《傅律》，‘Fu Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 221.

⁶⁶⁷ “院老各半其爵徭，入独给邑中事” 《徭律》，‘Yao Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 243; and“年六十[以上]与年十六以至十四，皆为半作”，《银雀山田法》，‘Yin Que Shan Tian Fa’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 74.

⁶⁶⁸ For example, 《高帝纪上》，‘Emperor Gao Ji I’ in above note 338.

⁶⁶⁹ 202BC - 220AD.

⁶⁷⁰ 《光武帝纪》，‘Emperor Guang Wu Ji’，and 《和帝纪》，‘Emperor He Ji’ in above note 339.

- 2) Moving people to food or moving food to the people during times of famine or other natural disasters;⁶⁷¹
- 3) Exempting rent and taxes and opening up mountains and forests for the elderly or the widowed to gather food during times of disaster and famine;⁶⁷² and
- 4) Distributing public land and loaning seeds to people affected by famines and disasters, in order to encourage people to get back to food production and return to being self-sufficient.⁶⁷³ The seeds were loaned because an equivalent amount was required to be returned to the government warehouses subsequent to harvest time.

There were also long term continuous aid policies, usually focusing on exempting or discounting rent on land or places at markets. Those who benefited were the widowed or childless people who were over sixty; and other relatives who took on the burden to care and provide for childless people who were over sixty.⁶⁷⁴

4.5.4.3 Policies to Look After the Elderly Who Had Made Special Contributions to the Country

The people who made special contributions to the country often referred to officials, ex-officials or ex-soldiers. The policies to look after the elderly who had made special contributes to the country can be divided into three categories:

- 1) Special retirement treatment⁶⁷⁵ for elderly officials;
- 2) Special retirement treatment⁶⁷⁶ for elderly scholars (over 60);

⁶⁷¹ 《高帝纪》, 'Emperor Gao Ji' in above note 338; and 《安帝纪》, 'Emperor An Ji' in above note 339.

⁶⁷² 《和帝纪》, 'Emperor He Ji' in above note 339.

⁶⁷³ 《宣帝纪》, 'Emperor Xuan Ji', and 《昭帝纪》, 'Emperor Zhao Ji' in above note 338.

⁶⁷⁴ 'Emperor Wen Ji' in above note 338.

⁶⁷⁵ 优抚.

⁶⁷⁶ 耆儒.

- 3) Special retirement treatment for the elderly who received a “Sovereign’s Mace”.⁶⁷⁷

4.5.4.3.1 Special Retirement Treatment for Elderly Officials

The special retirement treatments for elderly officials were administered according to three conditions, and the official would either be old or sick before they could apply to retire. The first condition was the age of the official – ordinarily this meant a minimum of seventy years old in the Han Dynasty,⁶⁷⁸ where the person was considered to be infirm. The second condition was illness,⁶⁷⁹ where the official retires because they were gravely ill. The third condition was the official applies to retire,⁶⁸⁰ often this means the retirement was necessary as the forms of wording used in the application would indicate the official was “begging for their bones for burial”.⁶⁸¹

These stringent conditions meant those officials who did retire were treated very well by three types of policies:

- 1) Financial special treatments that included large sums of money⁶⁸² as a one off reward. The reward may also include food, wine and medicine; and a lifetime pensions⁶⁸³ that either equalled to or was a proportion of their working life salary.

⁶⁷⁷ 王杖. A wooden mace commissioned by the sovereign to be made for the person. It can be used as a crutch.

⁶⁷⁸ “七十阳道极，耳目不聪明，跛蹄之属，是以退去避嫌者”。《致仕》，‘Zhi Shi’ in above note 345.

⁶⁷⁹ 甘肃省文物考古研究所等，《居延新简》，北京：文物出版社，1990年。Gansu Archelogy Research Centre, *Ju Yan Xin Jian*, (Beijing: Antiques Press, 1990), at 199; and 《杜延年传》‘Du Yan Nian Zhuan’ in above note 338.

⁶⁸⁰ 《匡张孔马传》，‘Kuang Zhang Kong Ma Zhuan’, and 《王莽传》，‘Wang Mang Zhuan’ in above note 338.

⁶⁸¹ 匡衡“连乞骸骨” and 王邑上书“愿乞骸骨”。《匡张孔马传》，‘Kuang Zhang Kong Ma Zhuan’, and 《王莽传》，‘Wang Mang Zhuan’ in above note 338.

⁶⁸² 《杜延年传》，‘Du Yan Nian Zhuan’, and 《史丹传》，‘Shi Dan Zhuan’ in above note 338; and 《郑钧传》，‘Zheng Jun Zhuan’ in above note 339.

⁶⁸³ 《石奋传》，‘Shi Fen Zhuan’ in 《史记》 *Records of the Grand Scribe*, <http://so.gushiwen.org/guwen/book_5.aspx> (2 Nov. 2015).

- 2) Political special treatments that included gifting of the “Sovereign’s Mace” and horses and vehicles;⁶⁸⁴ visitation by the emperor or representatives from the emperor;⁶⁸⁵ acting as a special counsel to the emperor in important state matters;⁶⁸⁶ and recommending direct descendants to the emperor.⁶⁸⁷
- 3) Special treatments at death that included attendance at funerals by the emperor or his representatives,⁶⁸⁸ the emperor paying for burial and funeral costs,⁶⁸⁹ the emperor issuing decrees to praise the dead,⁶⁹⁰ and commanding a family member to look after their grave – the implication of this command was that the family member’s job became looking after the grave, thereby taxes and forced labour were exempt for that family member.

There were also policies to lighten the load⁶⁹¹ of elderly officials who were not permitted to retire; and providing conveniences such as crutches and seats to those elderly officials.⁶⁹²

4.5.4.3.2 Special Retirement Treatment for Elderly Scholars (over 60)

The reason scholars were important was that the scholars were the nation’s reserve of officials, as they have all passed the requisite exams. The major retirement policies for elderly scholars involved giving them employment as policy officials. Official posts allowed elderly scholars economic independence and political security.

⁶⁸⁴ 《杜延年传》, ‘Du Yan Nian Zhuan’ in above note 338.

⁶⁸⁵ 《郑钧传》, ‘Zheng Jun Zhuan’ in above note 339.

⁶⁸⁶ 《李通传》, ‘Li Tong Zhuan’ in above note 339.

⁶⁸⁷ 《哀帝纪》, ‘Emperor Ai Ji’ in above note 338.

⁶⁸⁸ 《霍光传》, ‘Huo Guang Zhuan’ in above note 338; and 《杨赐传》, ‘Yang Ci Zhuan’, 《祭遵传》, ‘Ji Zun Zhuan’, and 《班超传》 ‘Ban Chao Zhuan’ in above 339.

⁶⁸⁹ 《循吏传》, ‘Xun Li Zhuan’ in above note 338; 《周荣传》, ‘Zhou Rong Zhuan’, and 《胡广传》, ‘Hu Guang Zhuan’, in above note 339.

⁶⁹⁰ 《尹翁归传》, ‘Yin Weng Gui Zhuan’ in above note 338.

⁶⁹¹ 《史律》, ‘Shi Lv’ in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 285; and 《顺帝纪》, ‘Emperor Shun Ji’ in above note 339.

⁶⁹² 《致仕》, ‘Zhi Shi’ in above note 345.

4.5.4.3.3 Special Retirement Treatment for the Elderly who Received a “Sovereign’s Mace”

The system of *Li*⁶⁹³ gave the elderly a special place in ancient Chinese societies. The “Sovereign’s Mace” was a sign that the elderly person had attained a status that the emperor considered important. The mace – a long wooden crutch, was a keepsake from the emperor, and the law and *Li* rules contained special treatment arising from having the mace. The person’s status equalled to a local official who was in charge of a county.⁶⁹⁴ It is interesting to note that the age and place for the elderly to use their mace were noted. *The Book of Rites*,⁶⁹⁵ which acted as part of the civil law in ancient China clearly specified rules of how people of different ages need to be treated by society and the emperor. Therefore carrying a mace or crutch became the distinction of the person’s status in their community. An interesting feature of the regime surrounding the mace was that when one becomes 90, if the emperor wants their counsel, the emperor had to pay the visit and bring gifts.

Once the elderly person received the mace, they were allowed special political rights, such as not kneeling when they were in the presence of the emperor,⁶⁹⁶ and travelling on riding ways.⁶⁹⁷ These elderly people also received special legal treatment: the elderly were exempt from punishment for many lesser crimes, and when they were

⁶⁹³ Here it is interesting to note that the age and place for the elderly to use their staff/crutches were noted. *Li Ji*, which was part of the civil law in ancient China clearly specifies rules of how people of different ages need to be treated by society and the emperor. “五十杖于家，六十杖于乡，七十杖于国，八十杖于朝。九十者，天子欲有问焉，则就其室，以珍从。”《工制》in above note 337.

⁶⁹⁴ 《王杖诏书令》，A Collection of Bamboo Strips on the Orders of Emperor’s Mace, as noted in 魏燕利，《“王杖”考辨》，Wei Y, ‘Analysis of the “Emperor’s Mace”’, (2004) *Bamboo Strip Analysis*.

⁶⁹⁵ “五十杖 于家，六十杖于乡，七十杖于国，八十杖于朝。九十者，天子欲有问焉，则就其室，以珍从。”《工制》in above note 337.

⁶⁹⁶ “入宫廷不趋”。《武威王杖诏书令》，‘King Wu Wei’s Order on the Mace’ in 高恒，《秦汉简牍中法制文书辑考》，北京：社会科学文献出版社，2008年。Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 174.

⁶⁹⁷ Riding ways were only for the use of horse riders, carriages and pedestrians were not allowed to travel on riding ways. 《武威王杖诏书令》，‘King Wu Wei’s Order on the Mace’ in 高恒，《秦汉简牍中法制文书辑考》，北京：社会科学文献出版社，2008年。Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 174; and 《江充传》，‘Jiang Chong Zhuan’, and 《成帝纪》，‘Emperor Cheng Ji’ in above note 338.

arrested, they were not bound. Those who offend against these elderly people were given harsher punishments that even included public executions.⁶⁹⁸

4.5.4.4 Laws on the Punishments or Exemptions Related to Looking After the Elderly

In the Qin and Han Dynasties, there were criminal codes specifically promulgated, directly or indirectly in relation to the criminal punishments of the elderly and their relatives. Direct rules included:

- Laws that exempted the elderly from suit – both by official channels (akin to modern public prosecutions), and by the family – that is, the suit involved the elderly in a crime against a family member - children or servants,⁶⁹⁹
- Laws that decreased the severity of penalties from physical punishment to monetary fines. Physical punishments included death or other penalties that harmed or injured the body;⁷⁰⁰ and
- Procedural laws that prohibited harming the elderly during the arrest and court processes;⁷⁰¹ and those that sped up the court process for the elderly⁷⁰², such as questioning the accused elderly person immediately after arrest.

⁶⁹⁸ 《武威王杖诏书令》，‘King Wu Wei’s Order on the Mace’ in 高恒，《秦汉简牍中法制文书辑考》，北京：社会科学文献出版社，2008年。Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 174.

⁶⁹⁹ 《法律答问》，‘Q & A on Laws’ in Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978), at 256; and 《告律》，‘Gao Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 100.

⁷⁰⁰ 《贼律》，‘Zei Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 38-39; and 《具律》，‘Ju Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 74.

⁷⁰¹ “男子八十以上，十岁以下，及妇人从坐者，自非不道，诏所名捕，皆不得系。”《光武帝纪》，‘Emperor Guang Wu Ji’ in above note 339.

⁷⁰² 《平帝纪》，‘Emperor Ping Ji’ in above note 338.

Indirect laws were issued to target the children of the elderly with an aim to promote filial piety in the society. These laws included:

- Allowing children to receive the punishment on behalf of the parent,⁷⁰³ or allowing sons who had titles or military rewards to give up the title or reward to cancel the parent's punishment;⁷⁰⁴
- Allowing children to keep secret the criminal activities of their elderly parents, where the children were exempt from the crime of "cover up" that often attracted heavy punishment.⁷⁰⁵ These laws had similar effects to legal privileges spouses enjoyed in common law systems;
- Exempting or lowering punishment on crimes committed caused by the filial actions of children, including revenging the murder or harm of a parent.⁷⁰⁶

There were also laws to specify rights for the elderly. Governments took children being non-filial as a grave crime⁷⁰⁷ with economic and criminal sanctions.⁷⁰⁸

⁷⁰³ 《仓律》，‘Cang Lv’ in 睡虎地秦墓竹简整理小组，《睡虎地秦墓竹简》，北京：文物出版社，1978年。Shuihudi Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978), at 53-54.

⁷⁰⁴ 《军爵律》，‘Jun Jue Lv’ in 睡虎地秦墓竹简整理小组，《睡虎地秦墓竹简》，北京：文物出版社，1978年。Shuihudi Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978), at 93.

⁷⁰⁵ 《宣帝纪》，‘Emperor Xuan Ji’ in above note 338.

⁷⁰⁶ 《周黄徐姜申屠列传》，‘Zhou Huang Xu Jiang Shen Tu Lie Zhuan’，and 《张敏传》 ‘Zhang Min Zhuan’ in above note 339.

⁷⁰⁷ 胡平生、陈美兰，《孝经礼记·五刑章》，北京：中华书局，2010年。Hu P & Chen M, ‘Five Punishments’ in *Book of Filial Piety and Book of Rites*, (Beijing: Zhonghua Press, 2010), at 257.

⁷⁰⁸ For example, the non-filial activities that attracted economic sanctions included breaking up the extended family when a parent was over seventy. The sanctions included allowing elderly parents and grandparents to possess land and servants that belonged to the non-filial offspring. Scolding one's elderly parent attracted severe fines. The non-filial activities that attracted criminal sanctions included not giving the parent a proper burial or marrying during the time of mourning; falsely accusing parents of crimes; murdering or humiliating parents or receivers of the Sovereign's Mace; not providing for elderly parents; abetting in non-filial activities; and not following the parents' counsel. For most of these crimes, the punishment was death, therefore in order to allow for judicial fairness, a crime of non-filial activity was only heard in court after three complaints of the same crime has been filed in the court system. See 《户律》，‘Hu Lv’ in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 211; “奚诟詈之，罚金一斤” 《敦煌悬泉汉简贼律》，‘Dun Huang Xuan Quan Han Bamboo Strip Zei Lv’ in 高恒，《秦汉简牍中法制文书辑考》，北京：社会科学文献出版社，2008年。Gao H, *Collected and Annotated Documents on the Legal System from Qin and Han Dynasty Bamboo Strips*, (Beijing: Social Sciences Literature Press, 2008), at 45; 《李杜列传》，‘Li Du Lie Zhuan’ in above note 339; 《告律》，‘Gao Lv’，in 朱红林，《张家山汉简〈二年律令〉集释》，北京：社会科学文献出版社，2005年。Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 100; 《法律答问》，‘Q & A on

4.6 Conclusion

The existing academic analysis concerning sustainability of funding for Old-Age Pensions in the PRC argued that the funds in the Social Insurance Fund as a result of Old-Age Pensions insurance contributions are the only legitimate source of public revenue for the funding of Urban Old-Age Pensions. Scholars, as a consequence, built models to analyse funding sustainability based on hypotheses that took into consideration this assumption. The earlier academic analysis did not offer a reason for this assumption, or explain why other sources were not considered.

Importantly, there does not appear to be contemporary research on the impact of China's policy tradition that informed the PRC government in its making of Old-Age Pensions policies which carried with it the requirement for the government to supply full funding from general revenue.

There is enough historical evidence to suggest that the argument regarding the contributions collected in the Social Insurance Fund being the only legitimate source of revenue is incorrect. The prevailing literature failed to recognise the Chinese policy tradition for the State to look after people's livelihoods,⁷⁰⁹ including looking after the

Laws' in Qin Tomb Bamboo Strips Cleaning Team, *Shuihudi Qin Tomb Bamboo Strips*, (Beijing: Antiques Press, 1978), at 111; and 《贼律》, 'Zei Lv' in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 38-39 & 43; [唐] 杜佑撰, 王文锦校: 《通典》, 北京: 中华书局, 1988年. [Tang Dynasty], Du Y, *Tong Dian*, Wang W, ed, (Beijing: Zhonghua Press, 1988), at 4288; 《奏谏书》, 'Zou Zian Shu' in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 31; 《宗室四王三侯列传》, 'The Four Kings and Three Dukes of the Royal Family Zhuan' in above note 339; and 《奏淑书》, 'Zou Shu Shu' in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 227; 《奏淑书》, 'Zou Shu Shu' in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 227; 《秦始皇本纪》, 'Records of Emperor Qin Shi Huang's Reign' in in 《史记》 *Records of the Grand Scribe*, <http://so.gushiwen.org/guwen/book_5.aspx> (2 Nov. 2015); “七十以上告子不孝, 必三环之。三环之各不同日而尚告, 乃听之” 《贼律》, 'Zei Lv' in 朱红林, 《张家山汉简〈二年律令〉集释》, 北京: 社会科学文献出版社, 2005年. Zhu H, *Collected and Annotated Zhangjiashan Han Dynasty Bamboo Strips (Second Year Codes)*, (Beijing: Social Sciences Literature Press, 2005), at 38-39.

⁷⁰⁹ For example, see 《孟子》 *Mencius*, <http://so.gushiwen.org/guwen/book_11.aspx> (2.Nov 2015).

elderly, which allows drawing funds from general revenue. Historically, the sovereign, by complying with their sovereign obligations, has funded policies that looked after the elderly through general revenue.

In the Chinese policy tradition, the governance philosophy was the Confucian method, whereas the principles were Confucian, the implementation methods were designed following the writings of the Legalist school of thought. This amounted to Confucian principles being implemented through strict adherence to a system of laws. *Li* rules that regulated people's behaviour according to their station in life were complemented by *Fa*, *Xing*, and *Zhi* rules. *Fa* rules were the criminal codes that bore sanctions; *Xing* rules listed the sanctions themselves; and *Zhi* rules regulated the legal system. The four types of rules together performed the functions of "law" in the western sense, and they made up the ancient Chinese formal institutional framework.

In this ancient Chinese formal institutional framework, the sovereign had to behave according to his station in life, with his standard of behaviour being "benevolence". The *Li* rules were captured in the Confucian works that were the compulsory reading for officials and the sovereign, and "benevolence" featured prominently in the writings that were attributed to Confucius himself; to Mencius in his writings on the importance of looking after the people's livelihoods for the sovereign; and to GUAN Zhong, whose major contribution was entrenching filial piety in the *Li* rules.

Filial piety was the Confucian principle that informed the sovereigns of all dynasties to design *Li* in the form of behavioural rules and rituals that aimed at looking after the elderly. Following the writings and practices implemented by GUAN Zhong, these rules required the sovereigns themselves to set up concrete policies to look after the elderly, including welfare policies, social relief policies, support policies, tax and forced

labour policies, and special retirement treatment for elderly officials, scholars or people who received the “sovereign’s mace” because they have made significant contributions to society. In each dynasty, there were criminal sanctions for people who did not obey the *Li* behavioural rules and ritual according to their station in life. For the purposes of looking after the elderly, the maximum penalty for a non-filial child was death.

The analysis in this chapter demonstrated that there is no evidence in the reviewed historical material that any forms of special levies were collected solely to look after the elderly. Since the sovereigns were making policies to look after the elderly to discharge their own duties as the sovereign, the *Li* rules implicitly required the sovereign to make good their promises by having adequate funding because looking after the elderly was a sovereign obligation. It can be stipulated that the traditional elderly care policies in China were funded by general government funds -- known in the west as consolidated revenue.

The court histories of each period, such as the *History of the Han Dynasty*⁷¹⁰ and *History of the Later Han Dynasty*⁷¹¹ recorded the times when the sovereign provided monetary or non-monetary awards to the elderly people of their reign. Some of these awards were periodic in nature, others were more one off. The court histories recorded the monetary value of the awards, evidencing that there were sufficient funds to make good the payments. The records did not specifically mention that extra levies were raised to pay for the policies. A conclusion can be made that the sovereigns in the ancient Chinese dynasties satisfied their *Li* obligations by fully funding policies that looked after the elderly through general fiscal revenue.

⁷¹⁰ 《汉书》 *History of the Han Dynasty*, <http://so.gushiwen.org/guwen/book_40.aspx> (2.Nov 2015).

⁷¹¹ 《后汉书》 *History of the Latter Han Dynasty*, <http://so.gushiwen.org/guwen/book_41.aspx> (2.Nov 2015).

When additional revenue was actually raised, the records pertained to raising revenue to guarantee the provision of welfare under special circumstances. As an example, from the Tang Dynasty (618-907 AD), governments collected a separate tea tax to purchase grain and seeds during normal harvests.⁷¹² This purchase was stored in government managed warehouses to be distributed ex-gratia or sold at below marketed prices at times of famine.⁷¹³

The lack of evidence on special levies aimed at funding care policies for the elderly is supportive to the PRC government's aim to fully fund Urban Old-Age Pensions by allowing subsidies from consolidated revenue. The *Social Insurance Law*⁷¹⁴ welfare framework is the PRC government's promise to continue with tradition to look after the elderly. The returning to tradition by the PRC government legitimises sourcing subsidies from consolidated revenue as a source of funding for Urban Old-Age Pensions, and contributed Urban Old-Age Pensions Social Insurances in the Social Insurance Fund is no longer the only legitimate source of funding in the PRC's *Social Insurance Law*⁷¹⁵ welfare framework.

Subsidies from consolidated revenue changes the assumptions in the exceeding models that analyse funding sustainability, therefore the results of the lack of sustainability in the prevailing literature will change. Amendments to the models that include subsidies allowed by the *Social Insurance Law*⁷¹⁶ will change the sustainable funding research paradigm, and results from the amended models will better measure the PRC

⁷¹² 翁礼华,《唐代茶税乃社保之税》, Weng L, 'Tea Tax is in effect a Social Security Tax in the Tang Dynasty', *Qianjiang Evening News*, 22 February 2010, <http://qjwb.zjol.com.cn/html/2010-02/22/content_270697.htm?div=-1> (6 Nov. 2015).

⁷¹³ Ibid. 常平仓。

⁷¹⁴ Above note 177.

⁷¹⁵ Above note 177.

⁷¹⁶ Above note 177.

government's ability to sustainably fully fund Urban Old-Age Pensions through its public revenues.

The *Social Insurance Law*⁷¹⁷ when considered in its full context of PRC obligations allows the government to make subsidies from consolidated revenue⁷¹⁸ as additional funding for the payment of Urban Old-Age Pensions. The Chinese tradition of the government using public policy tools to look after the elderly provides justification for the PRC government's policy choice that allows subsidies from consolidated revenue to fund Urban Old-Age Pensions in the *Social Insurance Law*⁷¹⁹ welfare framework. The PRC government is simply returning to a policy tradition, and promising to look after its elderly by fully funding Old-Age Pensions. Subsidies from consolidated revenue adds a source of funding to the Urban Old-Age Pensions scheme.

⁷¹⁷ Above note 177.

⁷¹⁸ Above note 177, Arts 65 & 71.

⁷¹⁹ Above note 177.

Chapter V Institutional Changes in the PRC and Associated Changes to Urban Old-Age Pensions Policies

5.1 Introduction

The prevailing literature on sustainably funding Urban Old-Age Pensions concluded that the People's Republic of China (PRC) could not sustainably fund Urban Old-Age Pensions by presuming that the Social Insurance Fund is the only legitimate funding source for Urban Old-Age Pensions. The researchers did not provide reasons for the continuation of this presumption, leaving a gap in the literature. This chapter addresses the gap in the literature by analysing the institutional changes in the PRC and associated developments in Urban Old-Age Pensions Policies.

As a result of a revolution, the governance and formal institutions⁷²⁰ of the PRC had to be rebuilt from 1949, when the PRC first became a State. The Communist ideology dictated the structure of its formal institutions in its formative years. Often, modern historians divide post 1949 China into several periods:⁷²¹ the immediate years after the PRC was established, the great-leap-forward years,⁷²² the Cultural Revolution years,⁷²³ the early Open Door Policy Years (from 1978 to 1997), and the post Open Door Policy Years⁷²⁴ (from 1997). Economic historians⁷²⁵ often group these periods into two era – the planned economy days, and the market reform days. 1978,⁷²⁶ when the Open Door

⁷²⁰ Potter PB, 'Review: Legal Reform in China: Institutions, Culture, and Selective Adaptation', (2004) 29 *Law & Social Inquiry* (2) 465.

⁷²¹ Saich T, *Governance and Politics of China*, (New York: Palgrave Macmillan, 3rd ed, 2011).

⁷²² Lippitt VD, 'The Great Leap Forward Reconsidered', (1975) 1 *Modern China* (1) 92.

⁷²³ 项怀诚编, 《中国财政通史·当代卷》, Xiang H ed, *Public Finance History of China, Contemporary Volume* (Beijing: China Public Finance and Economics Press, 2006), ch 3.

⁷²⁴ Woo WT, 'The Real Reasons for China's Growth', (1999) 41 *The China Journal* (January) 115, at 115.

⁷²⁵ Above note 1462, ch 4.

⁷²⁶ 《中国共产党第十一届中央委员会第三次全体会议公报》 *Communiqué of The Third Plenum of the Eleventh Central Committee of the Communist Party of China 1978* (The Central Committee of the Communist Party of China); 人民网, 《中共党史上的 80 件大事 (65) 党的十一届三中全会》, People's net, '80 Important Events in the History of the Communist Party of China', *people.cn*, 13 June 2001,

Policy⁷²⁷ was first identified as the development direction, was treated as the year that marked the turning point of policy development in the PRC.

For the purposes of looking after the urban elderly, the PRC's formal institutions have developed significantly since 1997. The *Social Insurance Law*⁷²⁸ welfare framework is part of a practicable formal institution framework.

The significant elements of the formal institutional framework in the PRC include: its legal system, five-year plans as policy documents in the planning process, and the role played by the Communist Party in its policy making process.

This chapter explains the PRC's institutional developments in the years since its birth, in order to argue that unlike its earlier years, looking after its urban elderly according to the *Social Insurance Law*⁷²⁹ and associated law-documents is done in a developed formal institutional system that includes laws, a distinct government structure and a fiscal structure.

5.2 Looking after the Elderly in the Pre Open Door Policy Era

Tony Saich in the introductory chapter of his *Governance and Politics of China*⁷³⁰ summed up the predominant perception of the early history of the PRC. He opined that

“...Careful observers of the Olympic opening ceremony will have noticed that there was no history between 1949, the founding of the PRC, and when reforms

<<http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488120.html>> (21 Feb. 2016); and 新华网, 《中共十一届三中全会（1978年）》, Xinhua Net, ‘The Third Plenum of the Eleventh Central Committee of the Communist Party of China (1978)’, *Xinhua Net*, <http://news.xinhuanet.com/ziliao/2003-01/20/content_697755.htm> (21 Feb. 2016).

⁷²⁷ 《关于授权国务院在经济体制改革和对外开放方面制定暂行规定决定》 *Decision to Delegate to the State Council the Power to Make Provisional Regulation during the Systemic Reform to the Economy and about Issues Arising from the Implementation of the Open Door Policy* 1985 (National People's Congress).

⁷²⁸ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

⁷²⁹ Ibid.

⁷³⁰ Above note 721, at 1.

began in the late 1970s. China's leader still do not know how to confront their own tumultuous past.”

This is a period where institutions were built and broken, social or economic policies were made in a piecemeal fashion, and there was no apparent separation between the Chinese Communist Party and the government apparatus of the State. It was a time when ideology was driving changes in China. Party policies were implemented by the party, in form and in substance.⁷³¹ State Owned Enterprises and Government entities were the sources of administration and economic activities.⁷³² The State Owned Enterprises represented the government as employer for the majority of the urban population.

The PRC began to run its economy on two parallel planes – the urban economy that is characterised by industry, commerce and services; and the rural economy that is characterised by primary production. Although this urban/rural distinction existed in China before 1949,⁷³³ it was the passing of the *Resident Registration Regulation of the People's Republic of China*⁷³⁴ (the *Hukou Regulation*) by the National People's Congress in 1958 that triggered the PRC to cement its dual urban-rural economies in their present form. This *Regulation*⁷³⁵ regulates residence registration (*Hukou*), thereby distinguishing residence rights for the rural and urban populations.⁷³⁶ When rural residents move to urban areas, they are required to follow a strenuous process to apply

⁷³¹ Above note 721, at 21-24, & 41; and Saich T, 'The Fourth Constitution of the People's Republic of China', (1983) 2 *Review of Socialist Law* 113, at 115.

⁷³² Above note 721, ch 1 & 3.

⁷³³ 白永秀, 《城乡二元结构的中國視角: 形成、拓展、路徑》, Bai Y, 'Urban-Rural Dual Structure under the Chinese Perspective: Its Formation, Expansion and Path', (2012) 44 *Academic Monthly* (May) 67, at 69.

⁷³⁴ 《中華人民共和國戶口登記條例》 *Resident Registration Regulation of the People's Republic of China* 1958 (National People's Congress).

⁷³⁵ *Ibid.*

⁷³⁶ *Ibid.*

for urban *Hukou*, including the submission of either the acceptance letters of education institutions or employment offers.⁷³⁷

The *Hukou* policy in post 1949 China⁷³⁸ stemmed from two reasons: the policy goal of prioritising heavy industry,⁷³⁹ and guaranteeing the levels of food production.⁷⁴⁰ The former contributed to the problem of the latter. At the beginning of the PRC's formation, its cities were full of refugees from rural areas. Industrial production and other economic activities were at below pre-World War II levels, and there was a severe food shortage.⁷⁴¹ The rural refugees in the urban areas were required to return to the rural areas for food production.

In order to prioritise industrialisation (especially heavy industry), policies were implemented. These included unequal exchange between industrial and agricultural products; collectivisation of agricultural production;⁷⁴² centralisation of purchasing, warehousing and sale of agricultural products; and the control of factors of production by the state.⁷⁴³ These policies controlled the price of grains and farming equipment through the central management of rural land and the rural population through collectives, which are the political and economic organs in a rural area.⁷⁴⁴

The government bought grain from farmers at below market prices to be sold at market prices in urban areas; and sold farming equipment at above market prices to farmers.⁷⁴⁵

⁷³⁷ Ibid.

⁷³⁸ Liu Z, 'Institution and Inequality: the *Hukou* System in China', (2005) 33 *Journal of Comparative Economics* 133, at 135.

⁷³⁹ 许经勇《解析中国城乡二元结构体制的成因》，Xu J, 'Explaining the Reason for the Urban-Rural Dual Structure in China', (2009) 9 *World of Research* 3 – 6 & 32.

⁷⁴⁰ 李学，《城乡二元结构问题的制度分析与对策反思》，Li X, 'The Institutional Analysis of Dualistic Urban-rural Economy Structure Problem and Relevant Countermeasures', (2006) 3 *Public Management* (No 4) 87.

⁷⁴¹ Selden M & You L, 'The Reform of Social Welfare in China', (1997) 25 *World Development* 1657, at 1658.

⁷⁴² Agricultural production was organised into rural collectives, which are the economic and political units in rural areas.

⁷⁴³ See above note 733, at 69-70.

⁷⁴⁴ See above note 739.

⁷⁴⁵ See above note 739.

This price difference policy is referred to as the “scissors difference”,⁷⁴⁶ which is a form of hidden tax in the PRC.⁷⁴⁷ This “scissors difference” meant the original accumulation of capital in the early days of the PRC came from the real surpluses of the agricultural sector. The government directed funding away from agriculture to promote industry, which means in effect it defocused on agriculture.⁷⁴⁸ Prioritising industrialisation created more job opportunities in urban areas, and fewer people remained in rural areas to produce food, thus leading to the need to control the movements of the population.

The decision to have a planned economy in the PRC between 1949 and 1978 was the reason behind the developmental differences between the urban and rural economies. The major planning tool was the Five-year Plan. Five-year Plans were and still are essential to policy development in the PRC. Since 1953, the country planned for its economic and social developments through the use of Five-year Plans. Five-year Plans and their associated Recommendations by the Central Committee of the Chinese Communist Party are the most important policy documents in the PRC’s reform and economic agenda. Recommendations by the Central Committee of the Chinese Communist Party are important in the policy process because the preamble of the *Constitution*⁷⁴⁹ of the PRC prescribed the leadership role of the Chinese Communist Party in the governance of the PRC. The Central Committee is the leadership body of the Chinese Communist Party. Five-year Plans and their associated Central Committee of the Chinese Communist Party Recommendations illustrate the strategic aims of the government, in order to identify the focus of government policy to manipulate market

⁷⁴⁶ 剪刀差

⁷⁴⁷ Yang B and Huang E, ‘Characteristics of the Chinese tax system and its cultural Underpinnings: a comparison with the west’, (2011) 1 *Journal of Chinese Tax and Policy* 13.

⁷⁴⁸ Above note 721, at 70-74.

⁷⁴⁹ 《中华人民共和国宪法》 *The Constitution of the People’s Republic of China* 2004 (National People’s Congress).

activities.⁷⁵⁰ These documents form the basis for the government to perform their economic regulation, market supervision, social administration and public service functions.⁷⁵¹

Policies to look after the elderly in this pre reform era developed along with other economic and social policies. They reacted to the transition from the pragmatism of post-war continuation of pre-1949 policies,⁷⁵² to the time of “rest” between 1949 and 1955, when the country moved to a Soviet model of governance; and for production purposes, private businesses were organised into a State Owned Enterprises framework. They then survived the radical socialism of 1955 - 1962, where ideology overtook the importance of economy⁷⁵³ to give rise to policy initiatives such as the “great leap forward”,⁷⁵⁴ in the process, breaking the continuity in public finances to look after people’s livelihoods. Finally, like other policies, policies to look after the elderly suffered during the Cultural Revolution that began in the early 1960s⁷⁵⁵ that destroyed the continuity of a governance infrastructure, where arguably, there was no longer a practicable set of formal institutions. The following collates the piecemeal Old-Age Pensions policies during this pre Open Door Policy era.

5.2.1 Piecemeal Policies to Look after the Elderly

In the pre Open Door Policy era, Old-Age Pensions were part of the social security system. The PRC’s post 1949 social security system began at a time when the civil war had not completely ended, and the model of government was based on the military

⁷⁵⁰ *The Government of the People’s Republic of China*, Online <http://www.gov.cn/2011lh/content_1825838.htm> (09 Feb. 2012).

⁷⁵¹ Ibid.

⁷⁵² Above note 721, at 39.

⁷⁵³ Above note 721, at 47-53.

⁷⁵⁴ Lippit VD, ‘The Great Leap Forward Reconsidered’, (1975) 1 *Modern China* (1) 92.

⁷⁵⁵ Above note 721, at 53-57.

structure applied in the base areas during the civil war.⁷⁵⁶ This military structure also bore civil responsibilities.⁷⁵⁷

The long war severely damaged the economy, and urban unemployment during 1949-1951 was as high as 20%.⁷⁵⁸ The welfare policies at the time were implemented in a rations system that was continued from the war era, established on a policy of government support for the families of soldiers and those who died in the war; and a policy of resettlement of ex-serviceman and soldiers that were disabled by the war.⁷⁵⁹

The natural disasters of the early 1960s forced the rural population to escape the land; crime and disease became an issue in affected areas.⁷⁶⁰ The continuous high unemployment meant a “national” social security system was necessary.⁷⁶¹ In the *Common Creed of the National Committee of the Chinese People’s Political Consultative Conference*,⁷⁶² which was the temporary Constitution at the time, the PRC government chose to have its “national” social security system based on that of Soviet Russia Policies.⁷⁶³ The system was a workforce insurance system.⁷⁶⁴ This workforce insurance system covered the urban workforce. The full employment policies⁷⁶⁵ of the pre Open Door Policy era meant nearly all of the non-public service employees of the urban population were employees of State Owned Enterprises,

⁷⁵⁶ Above note 721, at 39-40.

⁷⁵⁷ 刘翠霄,《社会保障法史》, Liu Cuixiao, *History of Social Security Laws*: <<http://www.iolaw.org.cn/showArticle.asp?id=2874>> (02.Feb.2012), ch 10.

⁷⁵⁸ 刘永富主编《中国劳动和社会保障年鉴》, Liu Y, ed, *Labour and Social Security YearYang and Huang forthcoming of the People’s Republic of China*, (Beijing: Labour and Social Security Press of the People’s Republic of China, 2001), at 488.

⁷⁵⁹ 《中国人民政治协商会议共同纲领》 *The Common Creed of the National Committee of the Chinese People’s Political Consultative Conference* 1949 (National Committee of the Chinese People’s Political Consultative Conference).

⁷⁶⁰ Ibid; above note 758, at 488, and Selden M & You L, ‘The Reform of Social Welfare in China’, (1997) 25 *World Development* 1657, at 1658-1659.

⁷⁶¹ Above note 758, at 488.

⁷⁶² Above note 759.

⁷⁶³ Above note 758, at 488; and Selden M & You L, ‘The Reform of Social Welfare in China’, (1997) 25 *World Development* 1657, at 1658-1659.

⁷⁶⁴ Above note 758.

⁷⁶⁵ Meng X, *Labour Market Reform in China*, (Cambridge: Cambridge University Press, 2004), at 3-20.

therefore the workforce insurance system covered the whole urban population. Old-Age Pensions policies were part of this “national” social security system based funded by the workforce insurance. This pre Open Door Policy era was the age of the Iron-rice-bowl.⁷⁶⁶

Before the Open Door Policy reforms, the PRC’s social security system that covered Urban Old-Age Pensions had the following characteristics:⁷⁶⁷

First, the national government used its policy tools to guide the development of the social security sector. Until the People’s Livelihoods Reform in the *Twelfth Five-year Plan*,⁷⁶⁸ there were no consolidated law-documents⁷⁶⁹ to regulate the social security sector, indicating that the leadership did not care whether there was a systemic set of institutions.⁷⁷⁰

The social security system during planned economy times were based on policy documents issued by the State Council or other Ministries. These law-documents were regulatory in nature, but were often temporary.⁷⁷¹ They were strong on policy but weaker on legal formalities. They were flexible but uncertain, which meant that although they covered every area of society, they did not solve the social issues a social security system ought to address in a practical sense. The instability and ad hoc nature of social policies also weakened the security function of the social security system. For example, the 1969 *Systemic Reform Proposals for the Accounting of State Owned*

⁷⁶⁶ Leckie, SH, ‘Pensions reform in China’, (2003) 8 *Pensions: An International Journal* 147.

⁷⁶⁷ Above note 757.

⁷⁶⁸ 新华社, 《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, Xinhua Press, ‘Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People’s Republic of China’, *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012).

⁷⁶⁹ Law-documents include all documents promulgated in the PRC according to its *Constitution*. They are the sources of laws in the PRC.

⁷⁷⁰ Above note 721, ch1.

⁷⁷¹ Frazier, MW, ‘China’s Pensions Reform and Its Discontents’, (2004) 51 *The China Journal* (January) 97, at 103-106.

*Enterprises*⁷⁷² issued by the Ministry of Finance easily shifted something that is the fiscal responsibility of the nation to enterprises – turning compulsory Social Insurance, albeit contributed by the State Owned Enterprises, into enterprise insurance that is funded, paid and administered by the enterprises. Urban Old-Age Pensions as one form of social security became essentially one form of remuneration paid by the State Owned Enterprise employer.

Second, social security was the responsibility of the national government (1949-1969) or the employer (1970-1978). The individual had no responsibility.⁷⁷³ This meant the social welfare of planned economy days, in substance, was provided by the government, who was also the major employer. The government as employer was manifested in the public service, government agencies, State Owned Enterprises, rural collectives and the military. Taking into consideration the *Systemic Reform Proposals for the Accounting of State Owned Enterprises*,⁷⁷⁴ before 1969, this manifestation was in substance only. After 1967, it existed also in form.

Third, the urban rural divide was another obstacle in the coordination of social security in the country. The *Hukou Regulation*⁷⁷⁵ separated the PRC's population and economy into the rural and urban planes.⁷⁷⁶ The distinction of welfare regimes followed. From the planned economy days, there were separate welfare schemes for four distinct groups in the PRC's demography: two schemes for the urban population - one for the public service and government agencies, and one for enterprises (which are businesses that produce goods and services); one for the rural population; and one for the Military

⁷⁷² 《关于国营企业财务工作中几项制度的改革意见》 *Systemic Reform Proposals for the Accounting of State Owned Enterprises* 1969 (Ministry of Finance).

⁷⁷³ Above note 721, at 309-316.

⁷⁷⁴ Above note 772.

⁷⁷⁵ Above note 734.

⁷⁷⁶ Wang F & Mason A, 'The Demographic Factor in China's Transition', in Brandt L & Rawski TG ed, *China's Great Economic Transformation*, (New York: Cambridge University Press, 2008), at 136-166.

(comprised of people from both the urban and rural populations, that is, their civilian *Hukou* could either be rural or urban).

At the time, rural social security policies only existed on paper, so the social security system was biased towards the urban economy.⁷⁷⁷ This is very different from the ancient Chinese tradition of looking after the elderly. The traditional policies paid close attention⁷⁷⁸ to the mostly agricultural nature of the economy, and thereby the majority of the population is rural.

For the privileged urban residents,⁷⁷⁹ there was a relatively complete set of welfare policies. The government and enterprises not only had to contribute to the Workforce Insurance Fund,⁷⁸⁰ as employers, they also had the responsibility to administer different social security policies as they evolved through time. These social security policies included payments of employee Old-Age Pensions, reimbursement of employee medical expenses, even the provision of social security items such as housing, canteens, pricing subsidies, childcare, bathing, etc. The employer funded social security system also covered education, housing and unemployment through the national government's annual budgets.⁷⁸¹

This meant the social security framework was employer focused. When the turnover of the enterprise could no-longer cover social security costs, the government provided subsidies.⁷⁸² Again, this suggests that the social security system was a very good

⁷⁷⁷ Above note 721, at 309-316.

⁷⁷⁸ Note the ancient policy review in Chapter IV. There is a common theme in the ancient literature to look after the people, the majority lived an agricultural lifestyle.

⁷⁷⁹ Above note 721, at 309-316.

⁷⁸⁰ 《中华人民共和国劳动保险条例》 *Workforce Insurance Regulation of the People's Republic of China* 1951 (Previously Ministry of Government, now State Council).

⁷⁸¹ Above note 757. One of the institutional developments in the PRC is to distinguish the separate roles of the government – government as asset owner and employer, and government as administrative authority. This distinction is insignificant for developed economies in the west, but during planned economy days, the PRC mixed these two roles because there was an insignificant private sector.

⁷⁸² Above note 757.

example that before the Open Door Policy, there was no distinct institutional framework⁷⁸³ in the PRC that separated government as employer, and government as the administrator of laws and policies.⁷⁸⁴

The initial urban social security policies in the planned economy era was divided into three branches: civil benefits (overlaps with the social relief system), enterprise employee benefits, and benefits for public servants and employees of government agencies.

Civil benefits were and are administered by the Ministry and Departments of Civil Affairs⁷⁸⁵ at different levels of government. These are the PRC's safety net and the most basic form of social security. They continue to play the same role in the *Social Insurance Law*⁷⁸⁶ welfare framework. Civil benefits are funded through the national government's annual budget. Although evidence showed that, when the policy was in its infancy, it covered less than 1% of the urban population in the PRC in 1961;⁷⁸⁷ and approximately 3% of the urban population in 2011;⁷⁸⁸ those who required its support were extreme cases; the level of these benefits affected the payment levels of Urban Old-Age Pensions throughout the PRC's post 1949 history. In the *Social Insurance Law*⁷⁸⁹ welfare framework, they are the benchmarks for the level of basic Urban Old-Age Pensions benefits.

⁷⁸³ Xu C 'The Fundamental Institutions of China's Reforms and Development', (2011) 49 *Journal of Economic Literature* (4) 1076.

⁷⁸⁴ Above note 721, ch 1.

⁷⁸⁵ Ministry of Civil Affairs of the People's Republic of China, Online <www.mca.gov.cn> (2 Feb. 2012).

⁷⁸⁶ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

⁷⁸⁷ 郑功成等,《中国社会保障制度变迁与评估》, Zheng G & others, *Changes and Evaluation of the Social Security System in China*, (Beijing: Remin University Press 2002), at 331.

⁷⁸⁸ Urban population that receive the safety net / urban population size = 22,749 / 690,790. Population in thousands. Data taken from Civil Affairs Statistics of November 2011, *Ministry of Civil Affairs of the People's Republic of China*, Online <www.mca.gov.cn> (2 Feb. 2012); and 马建堂,《2011年国民经济继续保持平稳较快发展》, Ma J, 'GDP Growth in 2011 Remains Relatively Fast and Stable', *website of National Bureau of Statistics of China*, January 2012, <http://www.stats.gov.cn/tjfx/jdfx/t20120117_402779443.htm> (4 Feb. 2012).

⁷⁸⁹ Above note 729.

Benefits for enterprise employees were administered by the Ministry of Labor⁷⁹⁰ and its local level government departments, funded according to the different iterations of Social Insurance policies. Benefits for public servants and employees of government agencies were administered by internal government human resource departments, funded by the national government's annual budget.⁷⁹¹

Urban Old-Age Pensions policies in the welfare framework under the *Social Insurance Law*⁷⁹² are based on policies for enterprise employees.⁷⁹³ The Urban Enterprise Employees Social Security Scheme in planned economy days was covered by the *Workforce Insurance Regulation*.⁷⁹⁴ It covered the whole range of social security items, including what later was partially funded by the five Social Insurances: Old-Age Pensions, Healthcare, Workers Compensation, Parental and an unemployment safety net. In this era, these five social security items and their associated Social Insurances did not develop separately, because especially from 1969,⁷⁹⁵ the system was employer administered.

The insignificant role played by laws in this era meant that the social security items were regulated by a regulation made by the then Ministry of Government (now State Council). On 26th February 1951, the first *Workforce Insurance Regulation*⁷⁹⁶ was promulgated. It came into effect on 1st March 1951. The scheme in the *Workforce Insurance Regulation*⁷⁹⁷ was an employer-centric scheme, where the government as

⁷⁹⁰ Now renamed as the Ministry of Human Resources and Social Security.

⁷⁹¹ Above note 757.

⁷⁹² Above note 729.

⁷⁹³ 《国务院关于机关事业单位工作人员养老保险制度改革的决定》 *Decision on Reforming the Old-Age Pensions Social Insurance System of Public Servants and Employees of Government Agencies* 2015 (State Council).

⁷⁹⁴ Above note 780.

⁷⁹⁵ Above note 772.

⁷⁹⁶ Above note 780.

⁷⁹⁷ Above note 780.

employer provided welfare. The coverage of the *Workforce Insurance Regulation*⁷⁹⁸ was strictly limited since the economy had not recovered.⁷⁹⁹

The employer centric nature of the workforce insurance allowed coverage to change as production levels changed.⁸⁰⁰ With fixed and planned price levels, changed level of production was equivalent to changes in economic output, therefore equivalent to economic growth. The *Workforce Insurance Regulation*⁸⁰¹ was amended on 2 January 1953 to take into account the improved economic conditions.⁸⁰²

The improved economic conditions meant that enterprise employees of “factories, mines and their affiliated organisations, and railway, shipping, postage enterprises and their affiliated organisations” with fewer than “100 employees” were also covered by the scheme.⁸⁰³ For enterprises that were temporarily not covered by the *Workforce Insurance Regulation*,⁸⁰⁴ their Workforce Insurance was covered by Workforce Insurance Contracts according to the principles⁸⁰⁵ of the *Workforce Insurance Regulation*.⁸⁰⁶

By the end of 1956, the *Workforce Insurance Regulation*⁸⁰⁷ had expanded its scope to dependent parents, children and spouses of employees, where benefits included half-fee medical services and support benefits after the death of the employee. During the

⁷⁹⁸ Above note 780.

⁷⁹⁹ Above note 757.

⁸⁰⁰ Svejnar J, ‘China in Light of the Performance of the Transition Economies’, in Brandt L & Rawski TG ed, *China’s Great Economic Transformation*, (New York: Cambridge University Press, 2008), at 68 - 90.

⁸⁰¹ Above note 780.

⁸⁰² The Ministry of Labor followed to issue the *Workforce Insurance Regulation Detailed Implementation Rule* to detail how the *Regulation* was to be implemented. 《劳动保险条例实施细则》 *Workforce Insurance Regulation Detailed Implementation Rule of the People’s Republic of China* 1953 (Previously Ministry of Labor, Now Ministry of Human Resources and Social Security) 1953.

⁸⁰³ Above note 780, Art 2.

⁸⁰⁴ Above note 780.

⁸⁰⁵ As the legal system was still at its infancy, “principles” allowed a lot of freedom for discretion. During the planned economy days, this discretion made decision making pragmatic.

⁸⁰⁶ Above note 780.

⁸⁰⁷ Above note 780.

time of the *Workforce Insurance Regulation*,⁸⁰⁸ those who benefited amounted to between one sixth and one fifth of the total population.⁸⁰⁹ The coverage of the scheme was relatively broad.

The *Workforce Insurance Regulation*⁸¹⁰ was successfully implemented up till the Cultural Revolution. Its success was attributed to the strict formulation of the law and regulation, and a centralised contribution and public expenditure model that was implemented throughout the country.⁸¹¹ Its implementation reflected economic efficiency and equality⁸¹² because the funds in the specialised Workforce Insurance Fund and their associated union accounts were relatively difficult to redirect to other purposes.⁸¹³ Towards the end of 1957, the foundation of the Social Insurance system for post 1949 China was almost complete. The PRC had re-established a welfare state.⁸¹⁴

5.2.1.1 Coverage and Contributions under the *Workforce Insurance Regulation*⁸¹⁵

For enterprise employees, the coverage of the *Workforce Insurance Regulation*⁸¹⁶ was very similar to the welfare policies under the contemporary *Social Insurance Law*⁸¹⁷

⁸⁰⁸ Above note 780.

⁸⁰⁹ 高书生,《社会保障改革何去何从》, Gao S, *Social Security Reform, Where to from Now*, (Beijing: Renmin University Press, 2006), at 33.

⁸¹⁰ Above note 780.

⁸¹¹ Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2016 Forthcoming), at ch 2.

⁸¹² Efficiency and equality are two of the four cannons of good tax system design argued for by Adam Smith in his *Wealth of Nations*. The other two cannons are simplicity and certainty. See Coleman C, & others, *Australian Tax Analysis: Cases, Commentary, Commercial Applications and Questions*, (Sydney: Lawbook Co., 2011), at 4-5.

⁸¹³ Above note 757.

⁸¹⁴ 王占臣等主编,《社会保障法全书》(上), Wang Z, & others, eds, *Encyclopaedia of Social Security I*, (Beijing: Reform Press, 1995), at 7.

⁸¹⁵ Above note 780.

⁸¹⁶ Above note 780.

⁸¹⁷ Above note 729.

welfare framework, because the Workforce Insurances were the original forms of the contemporary welfare policies.

Events that triggered the payment of benefits covered by *Workforce Insurance Regulation*⁸¹⁸ included retirement, sickness, disability, childrearing, death and support of dependent parents, children and spouses. There were three type of benefits based on the employment relationship between the employee and the government as employer:

- 1) Short term Workforce Insurance benefits directly paid by the employer;
- 2) Long term Workforce Insurance benefits paid by the Workforce Insurance Fund;
and
- 3) Workforce Insurance benefits paid to the dependent parents, children and spouses.

The employer centric scheme paid benefits based on two conditions that were dependent on the employment relationship:

- 1) Whether the employee was a union member. Non-union members received half of the benefits otherwise payable;
- 2) Model employees and war heroes who returned to work for their original employer enjoyed further Workforce Insurance benefits.⁸¹⁹

The contributions mechanism for employers of Workforce Insurance under the *Workforce Insurance Regulation*⁸²⁰ was similar to the contribution mechanism of

⁸¹⁸ Above note 780.

⁸¹⁹ Above note 757.

⁸²⁰ Above note 780.

Urban Old-Age Pensions Social Insurance Contributions under the *Social Insurance Law*.⁸²¹

The Workforce Insurance was paid by employers, at a rate of 3% of total payroll of the enterprise. It prohibited deducting payments from the wages and salary of employees, and prohibited otherwise collecting an amount equivalent to an insurance contribution from employees.

During the first two months of contributing to the Workforce Insurance for the benefit of any employee, the insurance paid by enterprises was collectively saved in an account kept by the All-China Federation of Trade Unions, as part of the sinking fund of the Workforce Insurance.⁸²² From the third month, 70% of funds collected were saved in the accounts of the enterprise's union branch⁸²³ accounting for Workforce Insurance funding; and 30% was collectively saved in the account of the All-China Federation of Trade Unions, as part of the sinking fund of the Workforce Insurance.⁸²⁴ This way, the policy was administered centrally by the national government, and the funding of benefits was from one pool. Those employers who did not pay or were late in paying workforce insurance were penalised by a fine, or the local bank branch was notified to deduct payment from the employer's accounts.⁸²⁵

The difference to the scheme under the *Social Insurance Law*⁸²⁶ was that the employer was responsible for administering the benefits, making it part of the urban employee's employment benefits. Since the employer was the government, the collection of the

⁸²¹ Above note 729.

⁸²² Above note 757.

⁸²³ The All-China Federation of Trade Unions is the head body of trade unions in the PRC. It is a government agency. There was a branch in every government department, government agency and State Owned Enterprise.

⁸²⁴ Above note 757.

⁸²⁵ Above note 757.

⁸²⁶ Above note 729.

Workforce Insurance also worked like the collections of an earmarked tax paid and born by employers. An earmarked tax is collected, and kept separate to general tax revenue, for a specific purpose.⁸²⁷ The penalties added to the compulsory nature of the Workforce Insurance contributions.

The government here mixed its roles as the employer and asset owner, and that of government authority. Instead of providing welfare as a public good in legal form, it was providing benefits to employees as if they were private employment benefits. In substance, because the PRC had a planned economy where all enterprises were State Owned Enterprises and all members of the urban population were practically State employees, there was no difference between the State providing a private benefit as an employer, or it providing a social benefit as a government. Where the employer was not the government, Labor Departments at local government areas had the responsibility to administer payments to employees of privately owned enterprises.⁸²⁸

5.2.1.2 Unfortunate Turn of Events

One unfortunate turn of events in the post 1949 history of providing welfare for urban employees was the issuing of the *Reform Proposal on the Accounting System of State Owned Enterprises*⁸²⁹ by the Ministry of Finance in February 1969. This law-document shifted the formal responsibility of funding social welfare for urban enterprise employees to the employer. It completely abolished the distinction between the government as employer and asset owner, and the government as administrative authority.⁸³⁰

⁸²⁷ Carling R, 'Tax Earmarking, is It Good Practice?' in *Perspectives on Tax Reform (12)*, CIS Policy Monograph 75, (Sydney: The Centre for Independent Studies, 2007).

⁸²⁸ Above note 757.

⁸²⁹ Above note 772.

⁸³⁰ Above note 811, at ch 2.

The *Reform Proposal on the Accounting System of State Owned Enterprises*⁸³¹ stopped requiring State Owned Enterprises to pay Workforce Insurance as an earmarked tax into the separate Workforce Insurance Fund accounts held at enterprise level unions and the general Workforce Insurance Fund administered by the All-China Federation of Trade Unions. What this meant was instead of listing Workforce Insurance as a line item in the enterprise's accounts; enterprises have to account for retirement wages,⁸³² long term sickness payments and other types of workforce security payments as separate expenses. In substance, the *Reform Proposal on the Accounting System of State Owned Enterprises*⁸³³ turned an at least formally, centrally administered earmarked tax type social welfare (including Old-Age Pensions) system that played a role of income redistribution, to an employer administered social security system where enterprises were fully responsible for funding it. It turned a Social Insurance system covered by public finances, to a semi-private welfare insurance system born by the employer, thereby completely reducing the provision of social welfare into internal affairs of an enterprise.⁸³⁴

In regards to providing for Urban Old-Age Pensions as a welfare item, the government is no longer providing it as a public authority through its budget. Instead, it is providing it as part of the remuneration of the employee. To the government, when providing welfare items such as Urban Old-Age Pensions, the employees are no longer citizens of the State, but employees. At this point, the PRC government turned away from the tradition of looking after the elderly by the sovereign. Although the system still looks similar to a pay as you go Pensions funding model,⁸³⁵ the government was not

⁸³¹ Above note 772.

⁸³² The Chinese word “工资”, meaning wages was used in the *Workforce Insurance Regulation*.

⁸³³ Above note 772.

⁸³⁴ Above note 772.

⁸³⁵ Feldstein M, ‘Social Security Pensions Reform in China’, (1999) 10 *China Economic Review* 99.

considering funding the Urban Old-Age Pensions as a public good. It is no longer making policies for social welfare. The 1969 *Reform Proposal on the Accounting System of State Owned Enterprises*⁸³⁶ signified that in the PRC government's policy making process, social security items, such as the Urban Old-Age Pensions were considered as an expense item for State Owned Enterprises.

This unfortunate turn of events meant enterprises of different sizes and nature bore different social security burdens, giving rise to inefficiency and unfairness in the social security system, and placing a long term obstacle in China's post 1949 development of social welfare policies. It ended the opportunity to build a nationwide social security policy framework. This negative event also broke with the tradition of government provided welfare to look after the elderly in China's history.

Another turn of events was the Cultural Revolution.⁸³⁷ It was an unfortunate turn for the development of social welfare policies, as it was for other areas of policy in the PRC. The realities of the Cultural Revolution meant the implementation of the social security system was again almost non-existent. In June 1970, the Ministry of Labor was abolished and the union system was nearing collapse. What this meant was that many employees who met the requirements to retire had no place to register their retirement status.⁸³⁸ Only until the *Temporary Implementation Rules on Caring for Old, Weak, Ill and Disabled Officials* (the No. 104 Document)⁸³⁹ was issued, did the semblance of an Old-Age Pensions system begin to re-emerge. The No.104 Document⁸⁴⁰ listed detailed provisions of conditions for retirement and retirement benefits, especially the minimum

⁸³⁶ Above note 772.

⁸³⁷ Above note 723.

⁸³⁸ Above note 757.

⁸³⁹ No 104 Document included two law-documents: 《关于安置老弱病残干部的暂行办法》 *Temporary Implementation Rules on Caring for Old, Weak, Ill and Disabled Officials* 1978 (State Council); and 《关于工人退休、退职的暂行办法》 *Temporary Implementation Rules on Retirement and Resignation of Workers* 1978 (State Council).

⁸⁴⁰ Ibid.

Old-Age Pensions standard and the policy of “child swap parent”.⁸⁴¹ The “child swap parent” policy was that, when the parent retires, one of the children can work in a State Owned Enterprise, usually that of the parent’s previous employer. No.104 Document is still often used as a benchmark in the PRC when registering a person’s retirement and calculating Old-Age Pensions benefits.

5.3 The Open Door Policy and Urban Old-Age Pensions

The end of the Cultural Revolution in 1976⁸⁴² signalled the beginning of a new era in the PRC. The Open Door Policy that began in 1978 started reform to gradually rebuild formal institutions in the PRC. This was an era where private activities in the market were again allowed and encouraged, giving rise to the necessity for formal institutions that enabled effective and efficient market activities.⁸⁴³

The Third Plenum of the Eleventh Central Committee of the Communist Party of China⁸⁴⁴ (the third plenum) marked the beginning of economic, social and legal reforms in the PRC. Reforms began as decisions made by the Chinese Communist Party. Throughout the reform, the party did not lose its “paramount position” in the PRC’s institutional framework. Although the party continued to dictate policy directions, a functional institutional framework had been established.⁸⁴⁵ The PRC continued with a gradual approach to its reforms.⁸⁴⁶ This gradual approach is highlighted by

⁸⁴¹ 顶岗。

⁸⁴² Above note 723.

⁸⁴³ Clark D & Others, ‘The Role of Law in China’s Economic Development’, in Brandt L & Rawski TG ed, *China’s Great Economic Transformation*, (New York: Cambridge University Press, 2008), at 391; and above note 721, ch 1.

⁸⁴⁴ Above note 726.

⁸⁴⁵ See Peerenboom R, ‘Ruling the Country in Accordance with Law Reflections on the Rule and Role of Law in Contemporary China’, (1999) 11 *Cultural Dynamics* (3) 315 for the role law plays in contemporary China as part of its formal institution.

⁸⁴⁶ Brandt L & Rawski TG ed, *China’s Great Economic Transformation*, (New York: Cambridge University Press, 2008), chs 3, 4, 11 and 12.

experiments in the form of pilots⁸⁴⁷ regulated by lower level law-documents in local government areas, or particular industries.

The reform to Urban Old-Age Pensions policies is not an exception.⁸⁴⁸ Specifically for Urban Old-Age Pensions policies. The *Pilot Proposal on Improvements to the Urban Social Security System (Pilot 2000)*⁸⁴⁹ issued by the State Council in 2000 was the experiment in preparation for the *Decision of the State Council on Improving the System of Basic Old-Age Pensions Social Insurance for Enterprise Employees*⁸⁵⁰ issued in 2005. The experiment was performed in the Liaoning, Jilin and Heilongjiang Provinces.

Reforms important for the purposes of looking after the urban elderly included the marketisation of the economy, especially State Owned Enterprise reform, and allowing the growth of the private sector; the fiscal structure reform; and the rebuilding of State machinery.⁸⁵¹ The rebuilding of State machinery was the process that developed a practicable legal system, where the *Constitution*⁸⁵² clarified the roles and functions of different branches of government.⁸⁵³ The increasing importance of law⁸⁵⁴ in the reform process had made policy implementation more certain. In this era, the economy gradually opened to the global market, and industrialisation meant the population began to urbanise.

⁸⁴⁷ For example, during the recent real estate tax reform process, Shanghai was chosen as an experiment area, the pilot was regulated by 《上海市开展对部分个人住房征收房产税试点的暂行办法》 *Temporary Implementation Rule for the Shanghai Pilot on the Levying of Real Estate Tax for Selected Individual Residential Real Estate* 2011 (Shanghai People's Government).

⁸⁴⁸ west L, 'Pensions Reform in China: Preparing for the Future', (1999) 35 *The Journal of Development Studies* (3) 153.

⁸⁴⁹ 《完善城镇社会保障体系试点方案》 *Pilot Proposal on Improvements to the Urban Social Security System* 2000 (State Council).

⁸⁵⁰ 《国务院关于完善企业职工基本养老保险制度的决定》 *Decision of the State Council on Improving the System of Basic Old-Age Pensions Social Insurance for Enterprise Employees* 2005 (State Council).

⁸⁵¹ Above note 723, 115.

⁸⁵² Above note 749.

⁸⁵³ Unger J, 'The Struggle to Dictate China's Administration: the Conflict of Branches vs Areas vs Reform' (1987) 18 *The Australian Journal of Chinese Affairs* (July) 15.

⁸⁵⁴ Above note 720, at 2-3; and Brandt L & Rawski TG, *China's Great Economic Transformation*, (New York: Cambridge University Press, 2008), ch11.

Chinese scholars often refer to four stages of post Open Door Policy reforms.⁸⁵⁵ The first stage was December 1978 to September 1984, where the capitalist mode of production and commerce was reintroduced into the planned economy in the PRC, with the market allowed to operate at minimal regulation.⁸⁵⁶ October 1984 to January 1992 was the second stage, the era of the “planned market economy on the basis of public ownership”.⁸⁵⁷ The third stage covered February 1992 to September 2003, establishing the “socialist market economy”.⁸⁵⁸ October 2003 to the present continues economic development and develops policies for people’s livelihoods and income redistribution. The policy proposals in the People’s Livelihoods Reform stage aim for harmonisation between urban and rural areas in relation to economic and social policies.⁸⁵⁹ The People’s Livelihoods Reform stage refers to the *Twelfth Five-year Plan*⁸⁶⁰ period, including the policy discussion and the associated recommendation by the Central Committee of the Chinese Communist Party.

This research reconfigures the periods for the purposes of looking after the urban elderly. 1997⁸⁶¹ was chosen as the turning point, because it was when the PRC consolidated regulations to rebuild a welfare framework that is suitable for its increasingly market-based economy. It was the year the *State Council Decision on*

⁸⁵⁵ 白永秀,《由“前改革时代”到“后改革时代”》, Bai Y, ‘From the “Pre-reform” Era to the “Post-reform” Era’, (2010) 40 *Journal of Northwest University (Philosophy and Social Sciences Edition)* (No.2) 5, at 5-6.

⁸⁵⁶ *Id.*, at 6.

⁸⁵⁷ 《中共中央关于经济体制改革的决定》 *Decision by the Central Standing Committee of the Chinese Communist Party on Economic System Reform*, (Beijing: Renmin Press, 1984), at 17.

⁸⁵⁸ 《中共中央关于完善社会主义市场经济体制若干问题的决定》, *Decision by the Central Standing Committee of the Chinese Communist Party on Perfecting the Socialist Market Economic System*, (Beijing: Renmin Press, 2003).

⁸⁵⁹ Above note 855, at 7 - 8.

⁸⁶⁰ Above note 768.

⁸⁶¹ Salditt F, Whiteford P & Adena W, ‘OECD Social, Employment and Migration Working Paper No. 53 – Pensions Reform in China, progress ad Prospects’, *OECD*, Online <<http://www.oecd.org/els/workingpapers>> (15 Feb. 2016), at 4.

*Unifying the Enterprise Employee Basic Old-Age Pensions Insurance Systems*⁸⁶² was issued.

5.3.1 The Open Door Policy Era 1978 – 1997

In this era, the first phase of the reform to government policies that looked after the urban elderly began to emerge as a reaction to the marketisation of the economy. State Owned Enterprises could no longer perform the role of welfare provider,⁸⁶³ because they needed the flexibility to react to market forces and newly established market based regulations.⁸⁶⁴ Employees of these State Owned Enterprises, however, still demanded welfare paid to them as employees, not as citizens. Increasingly, private enterprises began to enter the market, either as individuals or as companies.⁸⁶⁵ The government had to balance the pensions needs of its citizens, since it was no longer the major employer in the economy.

Out of the two elements of marketisation – allowing private enterprises and the State Owned Enterprises reform, the former was the focus in this era.⁸⁶⁶ The Third Plenum allowed market forces to play an important role in the economy, and pragmatic policies were made as a result.⁸⁶⁷ This was type I reform as identified by Svejnar,⁸⁶⁸ where two important elements were government abandoning central planning and developing a safety net.

⁸⁶² 《国务院关于建设统一的企业职工基本养老保险制度的决定》 *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pensions Insurance Systems* 1997 (State Council).

⁸⁶³ Above note 721, at 297.

⁸⁶⁴ Clark D & Others, 'The Role of Law in China's Economic Development', in above note 846, at 391.

⁸⁶⁵ Clark D & Others, 'The Role of Law in China's Economic Development', in above note 846, at 391.

⁸⁶⁶ Above note 721, at 68-69.

⁸⁶⁷ Above note 721, at 68-69.

⁸⁶⁸ Above note 800, at 70.

In this phase of reform, a social security system based on the five types of Social Insurances was established as a reaction to the economic reform in the form of the Open Door Policy.⁸⁶⁹ As employment was no longer guaranteed in the urban areas through State Owned Enterprises and the public sector, these policies based on Social Insurances began to bridge the policy gaps.⁸⁷⁰ Social welfare became necessary as additional policies to welfare items supplied as part of employment remuneration. In this era, the leadership focused more attention on economic growth, and trusting that growth will lead to funds to cover Urban Employee Old-Age Pensions.⁸⁷¹

With respect to providing social welfare, economic developments post Open Door Policy necessitated the gradual separation of the private and public functions of the government⁸⁷² in the PRC. This necessity was the trigger for re-establish social securities based on a welfare state model, returning to the tradition where the government looked after the elderly.

In order to better identify citizens for benefits, from the late 1980s, administration of social security became beneficiary based. In this scheme, the unit of contribution for the five Social Insurances was the employee who is the individual participant in the scheme, not the employer. This participation model is still implemented within the *Social Insurance Law*⁸⁷³ welfare framework. The five Social Insurances are the Old-Age Pensions Social Insurance, Health Social Insurance, Workers Compensation Social Insurance, Parental Leave Social Insurance, and Unemployment Social Insurance.

⁸⁶⁹ Above note 848.

⁸⁷⁰ Above note 721, at 297.

⁸⁷¹ Above note 721, at 297 - 299.

⁸⁷² Above note 811, at ch 2.

⁸⁷³ Above note 729.

There were significant policy developments in Urban Old-Age Pensions policies before the People's Livelihoods Reform that resulted in the *Social Insurance Law*⁸⁷⁴ welfare framework. The contribution and payment mechanisms returned to that in the *Workforce Insurance Regulation*⁸⁷⁵ before the unfortunate turn of events in 1969.

The difference to the *Workforce Insurance Regulation*⁸⁷⁶ era was the redevelopment of the private sector as part of market reforms meant State Owned Enterprises were no longer the only players in the PRC's economy. As well as encouraging private enterprise, there were different policy phases to corporatise or privatise State Owned Enterprises.

As more people began to work for the private sector, or became unemployed during State Owned Enterprise restructures, and more rural dwellers began to find employment in urban centres, social security based on welfare policies centred on the government as employer was no longer enough to cover the whole society. State Owned Enterprises became solidly private citizens when they acted as employers and owners of assets. The government separated itself from the market based activities of these State Owned Enterprises to play the role of the administrative authority by administering laws and regulations that affect enterprises, regardless whether they are state owned, or privately owned. While the government no longer mixed its two roles, it was necessary for the government to have separate fiscal policies and laws to regulate the welfare state.

⁸⁷⁴ Above note 729.

⁸⁷⁵ Above note 780.

⁸⁷⁶ Above note 780.

5.3.1.1 Urban Old-Age Pensions Policies that Reacted to Marketisation

Through the operation of the *Reform Proposal on the Accounting System of State Owned Enterprises*,⁸⁷⁷ the Old-Age Pensions provisions in the *Workforce Insurance Regulation*⁸⁷⁸ forced the burden of Old-Age Pensions provision onto employers; thereby tying employees to one employer because their retirement benefits were the responsibility of that employer. This inflexibility meant the labour force was not mobile.

This disadvantage was heightened during the period of economic system reform as a result of the Open Door Policy. One important reform during this first period of the post Open Door Policy era was the reform of State Owned Enterprises to further differentiate the asset ownership function and public authority functions of the government.⁸⁷⁹ The establishment of the five Social Insurances (Old-Age Pensions, Health, Workers Compensation, Parental, and Unemployment) assisted in the process to reform State Owned Enterprises and the social security system to free up labour supply.

In this era, the social security system that included Urban Old-Age Pensions moved organically from a system based in the State Owned Enterprise, or public sector employers, to that administered by the government, especially local governments.⁸⁸⁰

The *Temporary Rules on Labour Contracts of State Owned Enterprises*⁸⁸¹ issued by the State Council in 1986 established the Old-Age Pensions Social Insurance system where employers and employees share contributions. It prescribed social contribution to a Social Insurance Fund as the source of funding to provide for the retirement of

⁸⁷⁷ Above note 7721461.

⁸⁷⁸ Above note 780.

⁸⁷⁹ Above note 811.

⁸⁸⁰ Above note 721, at 297-298.

⁸⁸¹ 《国营企业实行劳动合同制暂行规定》 *Temporary Ruling of Labour Contracts of State Owned Enterprises* 1986 (State Council).

employees who have employment contracts, where the enterprise and the employee make contributions according to a set ratio to an Old-Age Pensions fund. When the Old-Age Pensions Social Insurance Fund does not have sufficient funds to meet retirement benefit needs, the government subsidises. This was the response to the failing employer administered remuneration like system that was the result of the 1969 unfortunate turn of events. Those who work for the private sector began to have access to the five forms of social securities, including Urban Old-Age Pensions.

Social Contribution⁸⁸² of funds continues to be an essential feature of the contributions mechanism of Urban Old-Age Pensions, continuing in the welfare framework under the *Social Insurance Law*.⁸⁸³ What it amounts to is Social Insurance Contributions and associated benefit payments administered by government authorities, rather than administered by employers. The government no longer sees itself as the employer.

In the Open Door Policy era, social contribution was administered by Labor Departments – both the contributions of Social Insurance, and the payment of benefits. Employers and employees contributed towards funds operated by third party financial institutions.⁸⁸⁴ When there was a shortfall of funds in the third party operated Old-Age Pensions Fund, adjustments in the form of government subsidies from consolidated revenue according to pensions payment needs were made.⁸⁸⁵

The same mechanisms are still in place in the current Old-Age Pensions Social Insurance Contributions structure, except the Local Tax Bureaus of the State

⁸⁸² 劳动保障部,《什么是退休费用社会统筹?》,Ministry of Labor, *What is Retirement Insurance Centralised Social Contribution?* : <http://www.gov.cn/banshi/2005-06/14/content_6394.htm> (2 Feb. 2012).

⁸⁸³ Above note 729.

⁸⁸⁴ Above note 757.

⁸⁸⁵ Above note 881.

Administrations of Taxation now have administrative responsibility for contributions.⁸⁸⁶

Another essential element of Urban Old-Age Pensions under the *Social Insurance Law*⁸⁸⁷ welfare framework is centralised administration of Social Insurance Contributions. Policies for centralised administration of Social Insurance Contributions were first developed in this era. In 1991, the State Council issued *State Council Decision on the Reform of Urban Employee Social Insurance System* (the 1991 *Decision*)⁸⁸⁸, establishing the principle to increase administrative centralisation of Old-Age Pensions Social Insurance Contributions from the prefecture level, to the provincial level, then to the national level. By the end of 1992, 95% of prefectures in the PRC achieved social contribution of Old-Age Pensions Social Insurance by State Owned Enterprises at the prefecture level.⁸⁸⁹

The 1991 *Decision*⁸⁹⁰ also made provisions about the multi-tier Old-Age Pensions structure in the PRC. It achieved this by making in principle provisions to allow the development of private pensions insurances.

The structure of Urban Old-Age Pensions Social Insurance Accounts in the Social Insurance Funds Budget – a social pooling account and individual accounts for each participant, also began to be developed in this era. In 1995, the State Council issued

⁸⁸⁶ 《社会保险费征缴暂行条例》 *Temporary Regulations on the Collection of Social Insurance Contributions* 1999 (State Council); and State Administration of Taxation, *Online*: 《全国税务机关社会保险费征管工作会议日前召开·税务机关4年征收百姓“养命钱”1.8万亿元》, ‘the Social Insurance Contributions Administration Conference was Convened a Few Days Ago·Tax Bureaus Collected RMB1.8 Trillion of “Survival Money” from the People’ <<http://www.chinatax.gov.cn/n810219/n810724/c1108439/content.html>> (13 Feb. 2011).

⁸⁸⁷ Above note 729.

⁸⁸⁸ 《国务院关于城镇企业职工养老保险制度改革的决定》 *State Council Decision on the Reform of Urban Employee Social Insurance System* 1991 (State Council).

⁸⁸⁹ 中国社会科学院、德国阿登纳基金会, 《中国城市社会保障的改革》, Chinese Academy of Social Sciences & Konrad-Adenauer-Stiftung, *Current Social Security Reform in Urban China*, KAS-Schriftenreihe China Nr. 11, (Beijing: Chinese Academy of Social Sciences and Konrad-Adenauer-Stiftung), at 107.

⁸⁹⁰ Above note 888.

*Circular on Increasing the Efforts to Reform Employee Old-Age Pensions Insurance*⁸⁹¹ to establish such an Old-Age Pensions Social Insurance model based on social contribution and individual accounts.⁸⁹² In this model, the Old-Age Pensions Social Insurance contributed by the employer is collected into social insurance pooling accounts in the Social Insurance Fund. Old-Age Pensions Social Insurance contributed on behalf of the employee is collected in the individual accounts in the Social Insurance Fund.⁸⁹³ In this era, the two accounts began to be administered by social security authorities. Currently, this authority is the Ministry of Human Resources and Social Security and its lower level government departments. Old-Age Pensions for employees, therefore, consist of benefits funded by both the social contribution pooling fund and individual accounts.

Fiscal reform in the PRC that reacts to the increased volume of market based activities also began in this era.⁸⁹⁴ It was marked by the 1993/1994 tax sharing⁸⁹⁵ reform. This reform introduced the Value Added Tax and Business Tax into the revenue mix, capturing the majority of market based enterprise activities. Up to the end of 2013, revenue from these two taxes contributed a dominant portion of the PRC's fiscal revenue.⁸⁹⁶

⁸⁹¹ 《关于深化企业职工养老保险制度改革的通知》 *Circular on Increasing the Efforts to Reform Employee Old-Age Pensions Insurance* 1995 (State Council).

⁸⁹² The government took into consideration the benchmark practice in Germany. See 刘翠霄, 《主题研讨 : 德国法巡礼-德国社会保障制度》, Liu C, 'Keynote Address: Travel through German Law - The German Social Security System', (2001) *Global Legal Comments* 423.

⁸⁹³ Above note 757, at ch10.

⁸⁹⁴ Wong CPW, 'China's Fiscal System: A Work in Progress', in Brandt L & Rawski TG ed, *China's Great Economic Transformation*, (New York: Cambridge University Press, 2008), at 429-466.

⁸⁹⁵ 《国务院关于实行分税制财政管理体制的决定》 *The Decision of the State Council on Implementing a Tax Split Public Finance Management System* 1993 (State Council).

⁸⁹⁶ See statistical analysis in Appendix F.

5.3.2 The Post Open Door Policy Era – After 1997

During the Open Door Policy economic reforms from a planned economy to a market economy, structural issues became apparent in the PRC. 1997 was the year when sustainable economic development became important in the PRC.⁸⁹⁷ This is the stage of type II reforms identified by Svejnar,⁸⁹⁸ where privatisation of State Owned Enterprises and “enforcement of a market-oriented legal system and accompanying institutions” are important elements in the reform. Around this time, urban poverty became apparent in different forms, such as unemployment, inflation induced low Old-Age Pensions benefit levels and high medical costs, and poverty from the resulting economic life cycle events of the Open Door Policy, especially the newly unemployed from the State Owned Enterprise reform.⁸⁹⁹ This poverty arose because there were initially no policies and laws to cover the urban population who were not public servants, government agency employees or employees of State Owned Enterprises.

Policy developments took into consideration a broader policy perspective, where the government no-longer aims for the same types of pensions replacement rates as the employer funded era. Pensions replacement rates refer to the ratio between Pensions benefit payments and average wage and salary levels.

In this era, policy direction gradually moved towards looking after those who have not yet benefited from the reform.⁹⁰⁰ The government also moved to tighten its Social Insurance framework to capture the urban population that is no longer employed by State Owned Enterprises or the government. This tightening of the framework means

⁸⁹⁷ Above note 721, at ch 10; and Clark D & Others, ‘The Role of Law in China’s Economic Development’, in note 846, at 391.

⁸⁹⁸ Above note 868, at 70,

⁸⁹⁹ Above note 721, at

⁹⁰⁰ Above note 721, at 298.

that the PRC is finally considering Old-Age Pensions as part of the State's liability, and therefore providing for it as a public good in its laws. Tong⁹⁰¹ identified this era as a time when citizens could no longer hide under the protective umbrella provided by their government organisations. Urban Old-Age Pensions are no longer employment remuneration. This policy shift is returning to the Chinese policy tradition of looking after the elderly by the government as discussed in detail in Chapter IV.

Three policy initiatives were important in this era:

The first, was allowing profit seeking private players to enter the market to supply private insurance programmes parallel to the five types of social insurances,⁹⁰² to participants who were not previously covered by the government as employer.⁹⁰³

A second initiative, was to establish a social relief system.⁹⁰⁴ This system covered three types of beneficiaries: the “three withouts”⁹⁰⁵ – without legal guardians or legal providers, without ability to work, without stable income source; that is, orphans, the elderly, the disabled and the widowed; victims of natural disasters; and people living in distress.⁹⁰⁶

The State Council issued the *Announcement on Establishing Systems of Urban Resident Low Income Safety Net by Local Government Authorities*⁹⁰⁷ in 1997, requiring all urban governments to establish a system of minimum living standards (the safety net)

⁹⁰¹ 佟新,《我国的老龄化、性别和养老政策》Tong X, ‘The Ageing Population, Gender and Old-Age Welfare Policies in China’ (2008) 22 *Central China Science and Technology University Journal Social Sciences Edition* (2) 82, at 86.

⁹⁰² Allowed by the *State Council Decision on the Reform of Urban Employee Social Insurance System*. Above note 888.

⁹⁰³ Above note 721, at 298.

⁹⁰⁴ Above note 757.

⁹⁰⁵ “三无”

⁹⁰⁶ *Department of Civil Affairs of Guangdong Province*, Online <<http://www.gdmz.gov.cn/ywgl/shjj/>> (8 Feb. 2012).

⁹⁰⁷ 《国务院关于在各地建立城市居民最低生活保障制度的通知》*Announcement on Establishing Systems of Urban Resident Low Income Safety Net by Local Government Authorities* 1997 (State Council).

by the end of 1999. The *Regulation of Urban Resident Low Income Safety Net*⁹⁰⁸ issued by the State Council that came into effect on the 1st of October 1999 included the following:⁹⁰⁹

- 1) Coverage, where urban residents with urban *Hukou*, whose average per-capita household income⁹¹⁰ is below the safety net of the local area are entitled to monetary and non-monetary support from the local government.⁹¹¹
- 2) Relief standards, where the minimum urban living standard was set according to the cost of food, clothing and housing in the local area, also taking into consideration the cost of water, energy and public education for minors.⁹¹²
- 3) Source of funding for social relief, where the source of funding is accounted for in the local government's budget (as opposed to the national government's budget) as a separate line item – Social Relief Special Fund, it is independently administered.⁹¹³

These provisions of the social relief system performed the role of the safety net⁹¹⁴ in the PRC's welfare policy framework.

⁹⁰⁸ 《城市居民最低生活保障条例》 Regulation of Urban Resident Low Income Safety Net 1999 (State Council).

⁹⁰⁹ Above note 757.

⁹¹⁰ Per-capita household income refers to total income in the household divided by number of persons in the household.

⁹¹¹ After one year of implementation of the *Regulation of Urban Resident Low Income Safety Net*, nationally, up to 3.82 million people were enjoying the Civil Benefit, traditional civil affairs targets accounted for 15% of the people or households that received the Civil Benefit, 85% were made up of families experiencing difficulties who are employed, made redundant (下岗), unemployed, and retired, etc. See 时正新主编, 《中国社会福利与社会进步报告》, Shi Z, ed, *Report on the Social Security and Social Development in China*, (Beijing: Social Sciences Literature Press, 2001), at 77.

⁹¹² In 2000, the highest level of the safety net in an administrative district was RMB 319 per month, the lowest was RMB 78 per month. See 时正新主编, 《中国社会福利与社会进步报告》, Shi Z, ed, *Report on the Social Security and Social Development in China*, (Beijing: Social Sciences Literature Press, 2001). Data showed, in July 2012, the average Civil Benefits standard in the PRC was RMB 236.01, the highest level of the Civil Benefits in an administrative district occurred in the Zhejiang Province, the standard was RMB 652.66 per month; the lowest occurred in the Yunnan Province, the standard was RMB24.08 per month. 《2012年7月份全国县以上城市低保数据》, 'Urban Safety Net Data of Chinese Administrative Areas above County Level 2012' in *Ministry of Civil Affairs of the People's Republic of China*, Online <<http://files2.mca.gov.cn/cws/201208/20120821161457813.htm>> (21 Sep. 2012).

⁹¹³ In 2000, each level of government spent more than RMB 2, 960 Billion on the safety net (Approximately AUD 892 Billion). See 多吉才让, 《中国最低生活保障制度研究与实践》, Duo Ji Cai Rang, *Research and Application of the Safety Net in China*, (Beijing: Renmin Press, 2001), at 154.

⁹¹⁴ Above note 811, at ch 10.

The third policy initiative relates specifically to Urban Old-Age Pensions policies. Many policies in the *Social Insurance Law*⁹¹⁵ welfare framework and its associated law-documents were made in this era. Amendments continued to improve the Old-Age Pensions Social Insurance scheme, where the employer and employee share contribution responsibilities.

In 1997, the turning point in the PRC's welfare policy reform, the State Council issued the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pensions Insurance Systems* (the *State Council Decision 1997*).⁹¹⁶ The *State Council Decision 1997*⁹¹⁷ entrenched the requirement for the government to provide for social security, including the Urban Old-Age Pensions, as a public authority. The issuing of the *Decision*⁹¹⁸ in effect returned Urban Old-Age Pensions to a government provided public good, rather than a form of employment remuneration. The government's role as employer is no longer included within the terms of reference in the PRC's welfare policy making process. The *Decision*⁹¹⁹ enabled the expansion of the coverage of Old-Age Pensions Social Insurance to employees of all urban enterprises, and to gradually extend to covering urban sole-traders.

The *State Council Decision 1997*⁹²⁰ decided to standardise three core issues:

- 1) the ratio between employer and employee contribution;
- 2) the size of individual accounts; and
- 3) payment methods of Old-Age Pensions benefits.

⁹¹⁵ Above note 729.

⁹¹⁶ Above note 862.

⁹¹⁷ Above note 862.

⁹¹⁸ Above note 862.

⁹¹⁹ Above note 862.

⁹²⁰ Above note 862.

Feldstein⁹²¹ suggested that at this point, the PRC has a conditional defined benefits system, where “individuals have defined contribution accounts but are also guaranteed a minimum amount (a defined benefit). Any shortfall between the annuity provided by the defined contribution account and the guaranteed defined benefit amount is made up by the government.” The defined benefit portion of the Urban Old-Age Pensions scheme in the PRC refers to the Basic Urban Old-Age Pensions that is now guaranteed by the *Social Insurance Law*.⁹²²

2000 was the next important year in the institutional development of looking after the urban elderly in the PRC. The State Council issued the *Pilot Proposal on Improvements to the Urban Social Security System*.⁹²³ The *Pilot 2000*⁹²⁴ was an experiment in the Liaoning, Shenyang and Heilongjiang Provinces in preparation for the issue of the *Decision of the State Council on Improving the System of Basic Old-Age Pensions Social Insurance for Enterprise Employees (the State Council Decision 2005)*⁹²⁵ in 2005. The *Pilot 2000*⁹²⁶ stipulated that enterprises are liable to contribute an amount of Urban Old-Age Pensions Social Insurance equivalent to 20% of their total payroll⁹²⁷ to the social pooling account, income redistribution in the form of centralised administration of Social Insurance Contributions and final payment of benefits would occur at the provincial level; and the employer is liable to contribute on behalf of the employee an amount of Old-Age Pensions Social Insurance equivalent to 8% of the individual’s wage income to the individual’s Individual Urban Old-Age Pensions Account. The employee portion was reduced from 11% in earlier policy in the *State*

⁹²¹ Above note 835, at 99-107.

⁹²² Above note 729, Art 15.

⁹²³ Above note 849.

⁹²⁴ Above note 849.

⁹²⁵ Above note 850.

⁹²⁶ Above note 850.

⁹²⁷ Total payroll = total cost of the wages and salaries of employees.

Council Decision 1997.⁹²⁸ Individuals who had not yet contributed for 15 years could not enjoy Basic Urban Old-Age Pensions. Instead, savings in individual accounts would be paid out as a one off lump sum.⁹²⁹

In the same year, the Ministry of Human Resources and Social Security issued the *Announcement on Speeding up the Implementation of Social Distribution of Old-Age Pensions Benefits*⁹³⁰ and the *Announcement on Standardising the Procedure of Social Distribution of Old-Age Pensions Benefits*⁹³¹ to standardise payment of Old-Age Pensions through social means⁹³² rather than by the retiree's enterprise employer, finalising the move of responsibility for administering Urban Old-Age Pensions from the government as employer to the formal institutional framework captured by laws and the fiscal structure. These two Ministerial Rules cemented the social security nature of Urban Old-Age Pensions payment in the PRC. By this stage, welfare items in the PRC were certainly no-longer the liability of enterprises. By the end of 2001, the financial services and postage systems⁹³³ were responsible for administering 98% of the payment of Old-Age Pensions to urban enterprise retirees.⁹³⁴ This standardisation increased the coverage of the scheme.

In 2005, the *State Council Decision* 2005⁹³⁵ was issued by the State Council, to replace the *Pilot* 2000.⁹³⁶ It generalised the requirements in the *Pilot* 2000⁹³⁷ to the whole nation, and included a few extra provisions to ascertain that the Administrative

⁹²⁸ Above note 850, Art 4.

⁹²⁹ Above note 757.

⁹³⁰ 《关于加快实行养老保险金社会化发放的通知》 *Announcement on Speeding up the Implementation of Social Distribution of Old-Age Pensions Benefits* 2000 (Ministry of Human Resources and Social Security).

⁹³¹ 《关于进一步规范基本养老金社会化发放工作的通知》 *Announcement on Standardising the Procedure of Social Distribution of Old-Age Pensions Benefits* 2000 (Ministry of Human Resources and Social Security).

⁹³² Government administration.

⁹³³ China Post also performs a funds transfer function. It has its own savings bank.

⁹³⁴ 国务院新闻办公室,《中国劳动和社会保障状况白皮书》, State Council Media Office, 'White Paper on Current Labour and Social Security in China, *People's Daily*, 28 April 2002.

⁹³⁵ Above note 850.

⁹³⁶ Above note 850.

⁹³⁷ Above note 850.

Regulation could be implemented throughout the country. One notable new provision is to ascertain the funds in the individual accounts, to make sure they are not empty.⁹³⁸ This is a direct response to the literature on the “historical Old-Age Pensions insurance debt” problem. There is not much further analysis on whether this policy goal has been accomplished, but researchers from the Chinese Academy of Social Sciences have identified the failure of these individual accounts as a tool to ascertain funding for Urban Old-Age Pensions, they also argued that there is enough funds for social security in the PRC’s fiscal structure.⁹³⁹

The *State Council Decision 2005*⁹⁴⁰ added to the *Pilot 2000*⁹⁴¹ by stipulating concrete requirements for the payment of benefits. The recipients of Basic Urban Old-Age Pensions are defined as people who began contributions after the issue of the *State Council Decision 1997*,⁹⁴² who have contributed (including equivalent contributions, such as private Old-Age Pensions insurance, or people who were previously entitled to the employer administered Old-Age Pensions) for at least 15 years. These recipients are entitled to monthly Basic Urban Old-Age Pensions upon retirement.

The *State Council Decision 2005*⁹⁴³ also provided for the retirement of other urban workers. It stipulated that urban sole traders and freelance workers are required to contribute to retirement insurance at a rate of 20% of the local average wage rate: 12% goes to the social contribution fund, 8% to the individual fund. This *Decision*⁹⁴⁴

⁹³⁸ Above note 925, Art 4.

⁹³⁹ 王钰磊, 引郑秉文, ‘中国与拉美及加勒比社保体系国际研讨会’, Wang Y, quoting Zheng B, ‘Comment in the International Conference on the Comparison between the Social Security Systems of China and South American and Caribbean Nations’, in 《社科院专家: 中国社保不差钱, 政府补空帐是傻瓜做法》, ‘Expert from the Chinese Academy of Social Sciences: There is No Lack of Funding for Social Security in China, Government Subsidies for the Deficit in the Social Security Account is a Fool’s Way’, *ifeng*, 22 July 2010, <<http://finance.ifeng.com/news/special/laolinghua/20100722/2433092.shtml>> (24 Feb.2012).

⁹⁴⁰ Above note 850.

⁹⁴¹ Above note 850.

⁹⁴² Above note 862.

⁹⁴³ Above note 850.

⁹⁴⁴ Above note 850.

brought urban sole traders and freelance workers into the Urban Old-Age Pensions Social Insurance net.

The policy reforms from the *State Council Decision 1997* to the *State Council Decision 2005*⁹⁴⁵ happened in an organic process. This process was the beginning of the People's Livelihoods Reform in the *Twelfth Five-year Plan*⁹⁴⁶ planning phase in the PRC.

5.3.2.1 Urban Old-Age Pensions Planning in this Era

Planning is still important for the PRC government. Five-year Plans regained their importance as policy making tools at the end of the Culture Revolution. In the post Open Door Policy era, its role as a planning tool changed. In 2006⁹⁴⁷, there was a name change in Chinese from Five-year Plans⁹⁴⁸ to Five-year Blue-prints,⁹⁴⁹ so instead of the *Eleventh Five-year Plan*, the document was named the *Eleventh Five-year Blueprint* in Chinese. Since the phrase "Five-year Blue-print" was not used in the English language literature, this research continues to refer to the current policy document as the *Twelfth Five-year Plan*.⁹⁵⁰

It is essential to understand the role of Five-year Plans in the PRC. The name change emphasise that currently, the policy importance of these Five-year Plans are as policy guides, rather than more strict policy goals as they were before 2006.

According to the National Development and Reform Commission,⁹⁵¹ the change of terminology is to take into account a change in the function of the Five-year Plans.

⁹⁴⁵ Above note 850.

⁹⁴⁶ Above note 768.

⁹⁴⁷ 中新网,《中国政府将首次把“五年计划”变为“五年规划”》, Chinanews, "The First Time the PRC Government Changes "Five-year Plan" to "Five-year Blue-print", *Chinanews*, 26 March 2004, <<http://www.chinanews.com/n/2004-03-26/26/418226.html>> (28 Jun. 2014).

⁹⁴⁸ Above note 947.

⁹⁴⁹ Above note 947.

⁹⁵⁰ Above note 947.

⁹⁵¹ Above note 947.

Previously the Plans used to focus on economic development and they had to be strictly adhered to. The Blue-prints focus on the government's role to balance economic and social developments, and strict adherence is no-longer required.⁹⁵² The name change also reflects amendments made in the 2004 redrafting of the *Constitution*⁹⁵³ to emphasise that the PRC now has a socialist market economy.⁹⁵⁴

This change in terminology in Chinese did not restart the numbering of the Plans/Blue-prints because the functions of these documents did not change. They form the basis of economic and social policies in the PRC. The most material change is that the government perception of its role changed in relation to economic and social management.

In the “plan” days, the plans acted as microeconomic management tools, where the government played a major role in the economy through State Owned Enterprises, as well as took charge of all social policy developments.⁹⁵⁵

In the “blue-print” days, the government has shifted towards emphasising its macroeconomic management role. Since the marketisation of the economy started by the Open Door Policy is a “de-planning”⁹⁵⁶ process, the economy was allowed to break from the boundaries of the plans.⁹⁵⁷ The “Blue-prints” in the market economy plays a similar role to the explanatory material that accompanies annual budgets in western developed economies. The de-planning began from deregulation of prices and

⁹⁵² 于建荣, 《从五年计划走向五年规划》, Yu J, ‘The Journey from Five-year Plan to Five-year Blue-print’, (2005) *Ascent* (6) 23-25.

⁹⁵³ Above note 749.

⁹⁵⁴ Above note 749, Arts 14 & 15.

⁹⁵⁵ 胡鞍钢、鄢一龙、吕捷, 《中国发展奇迹的重要手段--以五年计划转型为例(从“六五”到“十一五”)》, Hu A, Yan Y & Lv J, ‘The Important Mechanisms of the Chinese Development Miracle --the Transformation of Five-year Plans as an Example (the Sixth Five-year Plan to the Eleventh Five-year Plan)’, (2011) 26 *Tsinghua University Academic Journal* 43.

⁹⁵⁶ Above note 952.

⁹⁵⁷ Above note 952.

corporatisation of State Owned Enterprises.⁹⁵⁸ The result is that the “Blue-prints” can no-longer be strictly adhered to as the market is allowed to do its job.⁹⁵⁹

The Five-year Plans include all important policy goals as thematic policy goals for the five year planning period. The *Twelfth Five-year Plan*⁹⁶⁰ was the planning document associated with the *Social Insurance Law*⁹⁶¹ welfare framework. The relevant thematic policy goal in the *Twelfth Five-year Plan*⁹⁶² was “People’s Livelihoods”.

The current people’s livelihoods wave of reform to Old-Age Pensions began from the discussions to draft the *Twelfth Five-year Plan*.⁹⁶³ The *Recommendation by the Central Committee of the Chinese Communist Party on Forming the Twelfth Five-year Plan for National Economic and Social Development (Recommendation on the Twelfth Five-year Plan)*⁹⁶⁴ passed by the Central Committee of the Chinese Communist Party on 18 October 2010 was the result of these discussions. The *Twelfth Five-year Plan*⁹⁶⁵ was tabled at the meeting of the Central Committee of the Chinese Communist Party at the same time.

5.3.2.2 Before the *Recommendation on the Twelfth Five-year Plan*⁹⁶⁶

By 2008, the PRC’s social security system had experienced 30 years of continuous reform. The PRC’s welfare policy reform evolved from a subordinate reform in the process of the State Owned Enterprises reform, to an independent functional set of laws

⁹⁵⁸ Above note 952.

⁹⁵⁹ Above note 952.

⁹⁶⁰ Above note 952.

⁹⁶¹ Above note 729.

⁹⁶² Above note 768.

⁹⁶³ Above note 768.

⁹⁶⁴ 新华社,《授权发布: 中共中央关于制定国民经济和社会发展第十二个五年规划的建议》, Xinhua Press, ‘Authorised Publication: Recommendation by the Central Committee of the Chinese Communist Party on Forming the Twelfth Five-year Plan for National Economic and Social Development’, *Xinhua Net*, 27 October 2011, <http://news.xinhuanet.com/politics/2010-10/27/c_12708501.htm> (2 Oct. 2012).

⁹⁶⁵ Above note 964.

⁹⁶⁶ Above note 964.

necessary for the PRC's market economy. However, new issues continue to arise from this post Open Door Policy social and economic transformation period, where reform continues to be affected by the PRC's historical dual urban-rural economic systems, where economic development differs due to geographic and demographic differences.⁹⁶⁷ In order to solve these issues, the People's Livelihoods reform began during the drafting process of the Central Committee of the *Twelfth Five-year Plan*.⁹⁶⁸

One important episode in this planning process is that the second draft of the *Draft Social Insurance Law*⁹⁶⁹ was sent for comments to the people on 28 December 2008. It aimed to improve the social security system based on consolidating changes to the existing system.

The *Draft Social Insurance Law*⁹⁷⁰ included provisions for enabling a participant of the Urban Old-Age Pensions schemes to have a continuous Old-Age Pensions Social Insurance relationship⁹⁷¹ during their lifetime⁹⁷² when they move between local government areas to earn income. It also stipulated for provincial level administration of Old-Age Pensions Social Insurance Contributions, and then gradually move towards national level administration of Social Insurance Contributions.⁹⁷³ Article 56 of the *Draft Social Insurance Law*⁹⁷⁴ stipulated for the establishment of a national system of social security numbers. The social security number would be the individual's resident identification number.⁹⁷⁵ Article 56 was not written into the *Social Insurance Law*.⁹⁷⁶

⁹⁶⁷ Above note 964.

⁹⁶⁸ Above note 964.

⁹⁶⁹ 《社会保险法(草案)》 *Draft Social Insurance Law* 2008 (National People's Congress).

⁹⁷⁰ Above note 969.

⁹⁷¹ Above note 969.

⁹⁷² The "lifetime" refers to the fifteen years of continuous contribution into the schemes.

⁹⁷³ Above note 969.

⁹⁷⁴ Above note 969.

⁹⁷⁵ Above note 969.

⁹⁷⁶ Above note 729.

Accompanying the development of the *Draft Social Insurance Law*⁹⁷⁷, and in order to accomplish its aims to fully fund Urban Old-Age Pensions by the government, the Ministry of Human Resources and Social Security issued two lower level ministerial rules – *Mechanism to Participate in Old-Age Pensions Social Insurance by Rural Residents who Work in Urban Areas*⁹⁷⁸ and the *Temporary Implementation Rule on the Transfer of Old-Age Pensions Social Insurance Relationships by Urban Employees of Enterprises*.⁹⁷⁹ These two documents facilitated the inclusion of rural *Hukou* holders who are working in urban areas for Old-Age Pensions purposes.

5.3.2.3 Provisions in the *Recommendation on the Twelfth Five-year Plan*⁹⁸⁰

The *Recommendation on the Twelfth Five-year Plan*⁹⁸¹ identified that the five years between 2011 and 2015 were crucial to continue economic and social reform and to change the direction of economic development. This five-year period was seen as a strategic opportunity to promote relative high speed economic growth that is sustainable in the long term.⁹⁸²

Unlike the previous Five-year Plans, the *Twelfth Five-year Plan*⁹⁸³ emphasised the importance of people's livelihoods instead of GDP growth.⁹⁸⁴ This Five-year Plan aims to balance the provision of social services, that is, social security policies, to different

⁹⁷⁷ Above note 969.

⁹⁷⁸ 《农民工参加基本养老保险办法》 *Mechanism to Participate in Old-Age Pensions Social Insurance by Rural Residents who Work in Urban Areas* 2009 (Ministry of Human Resources and Social Security).

⁹⁷⁹ 《城镇企业职工基本养老保险关系转移接续暂行办法》 *Temporary Implementation Rule on the Transfer of Old-Age Pensions Social Insurance Relationships by Urban Employees of Enterprises* 2009 (Ministry of Human Resources and Social Security).

⁹⁸⁰ Above note 979.

⁹⁸¹ Above note 979.

⁹⁸² Above note 964.

⁹⁸³ Above note 964.

⁹⁸⁴ 《聚焦十二五：2011—2015年国民经济和社会发展若干重大问题深度解析》，*Focusing on the Twelfth Five-year: an In-depth Analysis of A Number of Important Issues of National Economic and Social Development in 2011-2015*, (Beijing: China Youth Press, 2010), at 223-224.

sectors of the society – rural and urban residents, income groups, ethnic groups and gender.⁹⁸⁵ In order to achieve this balance and continue the reform to the welfare state,⁹⁸⁶ the Plan required the PRC to have transparent public finances, and that the fiscal revenue of the PRC is adequate to fund the five social security items and other social relief policies.

Recommendation Eight of the *Recommendation on the Twelfth Five-year Plan*⁹⁸⁷ targets social development improvements and the establishment of a system to provide for basic public services.⁹⁸⁸ This Recommendation identified the importance of “security” and the improvement of people’s livelihoods.⁹⁸⁹

This planning process considered building a public service provision system that adapts to the PRC’s national circumstances, where the economy still exhibits the dual urban/rural parallel planes.⁹⁹⁰ This public service provision system should cover both the urban and rural sectors sustainably, thereby increasing the government’s ability to fund social security programmes to ensure income equality.⁹⁹¹

Recommendation Eight⁹⁹² included three policy directives:

- 1) Encourage employment and balance the relationship between employee and employer.⁹⁹³
- 2) Evaluate the income redistribution relationship.⁹⁹⁴

⁹⁸⁵ Above note 984, at 224-227.

⁹⁸⁶ Above note 984, at 228-238.

⁹⁸⁷ Above note 964.

⁹⁸⁸ Above note 964.

⁹⁸⁹ Above note 964.

⁹⁹⁰ Above note 964.

⁹⁹¹ Above note 964.

⁹⁹² Above note 964.

⁹⁹³ Above note 964.

⁹⁹⁴ Above note 964.

- 3) Establish a social security system that covers both urban and rural residents.⁹⁹⁵

The third policy directive covers the policy group that guide the reform of the different Old-Age Pensions schemes, including Urban Old-Age Pensions. It refers broadly to social security, not just Social Insurance, because the policy goal was to have fully funded Urban Old-Age Pensions – therefore policies are required for sources of funds and payment of benefits. The aim was to maintain broad coverage and sustainability, secure basic provisions, and to establish a multi-tier structure.⁹⁹⁶ The policy requirement viewed the Urban Old-Age Pensions scheme in the generational contract model, where current generation of workers contribute to fund the Pensions of current generation retirees, and the government makes subsidies from consolidated revenue. The PRC government aimed to fully fund social security, and Social Insurance Contributions into the Social Insurance Fund⁹⁹⁷ was considered as only one component of that funding. The language in the policy directive is very clear, that the source of funding is “Social Insurance” that are compulsory contributions. This policy group illustrated that the PRC has finally returned to its policy tradition, where the government looks after its elderly population.

⁹⁹⁵ Above note 964.

⁹⁹⁶ Above note 964.

⁹⁹⁷ The fiscal relationship between Urban Old-Age Pensions Social Insurance, the Social Insurance Fund and the consolidated revenue in the PRC is explained in detail in Chapter VI.

This research focuses on policy aims two, three and six⁹⁹⁸ of Recommendation Eight.⁹⁹⁹ Policy aim two proposes to improve implementation of the urban enterprise employee and other residents' Old-Age Pensions Social Insurance systems. There are two components to this policy, one focuses on urban enterprise employees, the other focuses on other residents.¹⁰⁰⁰ The other-residents component falls into the private insurance tier of Old-Age Pensions policy in the PRC.

Policy aim three suggests implementing basic Old-Age Pensions Social Insurance social contributions at the national level, which is centralised contribution administration at the highest level of government. As at October 2015,¹⁰⁰¹ this policy aim is not yet achieved. Urban Old-Age Pensions are still administered at the provincial level.¹⁰⁰² However, the information flow within the tax administration system means there is no administrative hindrance to centrally administer Old-Age Pensions Social Insurance Contributions. The provincial Local Tax Bureaus report directly and independently to the State Administration of Taxation. The aim to centrally administer

⁹⁹⁸ Above note 964. Implement a broad coverage new style rural socially contributed⁹⁹⁸ Old-Age Pensions system. This system includes social accounts.⁹⁹⁸ The other policy aims are:

1. Implement a broad coverage new style rural socially contributed Old-Age Pensions System. This system includes social pooling accounts.
4. Promote reform of the Old-Age Pensions Social Insurance scheme for public servants and employees of government agencies. This policy aim is almost achieved.
5. Increase regulation of individual Old-Age Pensions Social Insurance accounts to allow for continuation when employees move provinces. This is an administrative issue relating to implementing the Social Insurance Law. It reflects the first goal of the second draft of the Draft Social Insurance Law.
7. Promote the establishment of enterprise Old-Age Pensions funds and industry Old-Age Pensions funds in the private sector to attract voluntary contributions to act as commercial supplements to the public Old-Age Pensions Social Insurance structure. This policy aim considers the private savings tier of the Old-Age Pensions structure.
8. Implement full coverage of social relief in both urban and rural areas. The relevance of this policy aim to this research is in relation to civil benefits standards that are chosen to compare with actual per capita Urban Old-Age Pensions expenditure.
9. Promote management and investment of Old-Age Pensions Social Insurance Funds. Emphasise on developing a charities sector. This is social relief policy.
10. Improve the development of social security information networks, and implement the social security card system, in order to improve the administration of social security.

⁹⁹⁹ Above note 964.

¹⁰⁰⁰ Note that the Old-Age Pensions policies for urban employees, government employees and other urban residents are being merged as at March 2015.

¹⁰⁰¹ 人民网-财经频道, 《人社部: 目前全国 31 个省区市已出台养老保险省级统筹办法》, People's Net Finance and Economics Channel, 'Ministry of Human Resources and Social Security: 31 Provincial Level Governments Now Have Provincial Level Centralisation Rules for the Administration of Contributions of Old-Age Pensions Social Insurance', *people.cn*, 27 October 2015, <<http://finance.people.com.cn/n/2015/1027/c1004-27745507.html>> (4 Nov. 2015).

¹⁰⁰² *Ibid.*

“Social Insurance Contributions” as part of the funding of Urban Old-Age Pensions by the government is now fulfilled.

Policy aim six suggests increasing social security coverage and gradually raise benefits levels, this issue relates to the expenditure side of social security policies. This policy aim means that the government wants to increase the Old-Age Pensions replacement rate in relation to national average wage and salary income.

5.3.2.4 *Twelfth Five-year Plan*¹⁰⁰³ Policy Guidance

For the five years between 2011 and 2015, the *Twelfth Five-year Plan*¹⁰⁰⁴ itself is the thematic national level policy document. It operates as a blue-print for the social and economic developments of the PRC in those five years. For actual policies in relation to Urban Old-Age Pensions to be implemented, or to be drafted into and promulgated as relevant laws, the policy aims have to be formally included in the *Twelfth Five-year Plan*¹⁰⁰⁵ itself. The provisions relevant for this research are in Chapter XXXIII¹⁰⁰⁶ of Part Eight of the *Twelfth Five-year Plan*,¹⁰⁰⁷ where it stipulates specifically for a social security system that covers all residents, that is, both urban and rural residents.

The relevant thematic aim¹⁰⁰⁸ of the *Twelfth Five-year Plan*¹⁰⁰⁹ is to improve the living standards of the people in a way that is sustainable. The *Twelfth Five-year Plan*¹⁰¹⁰ aims to significantly lower the number of people living below the poverty line. The

¹⁰⁰³ Ibid.

¹⁰⁰⁴ Ibid.

¹⁰⁰⁵ Ibid.

¹⁰⁰⁶ Above note 768.

¹⁰⁰⁷ Above note 768.

¹⁰⁰⁸ Above note 768.

¹⁰⁰⁹ Above note 768.

¹⁰¹⁰ Above note 768.

specific policy aim¹⁰¹¹ within the thematic aim is to promote equal provision of basic public services.

Policies proposed following the promulgation of the *Twelfth Five-year Plan*¹⁰¹² include: treating the public services system as a system that provides public goods to the people; improving the public finance system; and increasing the government's ability to provide social security.¹⁰¹³ These policies together will establish a relatively sustainable system of basic public services that suits the PRC's dual urban-rural economy; thereby gradually closing the gap in living standards and public services provision between the urban and rural economies.¹⁰¹⁴

Part Eight of the *Twelfth Five-year Plan*¹⁰¹⁵ directly responded to Recommendation Eight.¹⁰¹⁶ It considers improving people's livelihoods and establishing a functioning basic public services system.¹⁰¹⁷ The policy focuses were: systematic measures to improve living standards and quality of life through policies to improve employment, income distribution, social security, healthcare and housing; and promote fair provision of public services, in order to bring the fruits of economic development to the whole population.¹⁰¹⁸

The *Twelfth Five-year Plan*¹⁰¹⁹ is a blue print of the social security system in the PRC, it includes requirements that are now drafted into the *Social Insurance Law*.¹⁰²⁰ It is

¹⁰¹¹ Above note 768.

¹⁰¹² Above note 768.

¹⁰¹³ Above note 984.

¹⁰¹⁴ Above note 984.

¹⁰¹⁵ Above note 768.

¹⁰¹⁶ Above note 964.

¹⁰¹⁷ Above note 768, at Part Eight.

¹⁰¹⁸ For the sake of completeness, very briefly, Chapter XXX of the *Twelfth Five-year Plan* deals with improving the standards of public services. Chapter XXXI considers policy aim one of Recommendation Eight, that is, to encourage employment and balance the relationship between employee and employer. Chapter XXXII considers policy directive two of Recommendation Eight, that is, to evaluate the income redistribution relationship. See Chapters XXX, XXXI and XXXII, above note 768, and Recommendation Eight, above note 964.

¹⁰¹⁹ Above note 768.

¹⁰²⁰ Above note 729.

worth emphasising that the *Twelfth Five-year Plan*¹⁰²¹ specifically stipulates for the government to continue subsidising the administratively centralising socially contributed Old-Age Pensions fund in the Social Insurance Fund. This is to be done through redirecting revenue from State owned assets and expanding the issuing of welfare lottery tickets,¹⁰²² while encouraging investment in Old-Age Pensions funds to grow the pool of funds.¹⁰²³ This stipulation ascertains that the government aims to fully fund Urban Old-Age Pensions through its fiscal policies.

5.4 Formal Institutions in the PRC to Implement the *Social Insurance Law*¹⁰²⁴ Welfare Policy Framework

After the years of gradual reform from the beginning of the Open Door Policy, the PRC now has a practicable system of institutions.¹⁰²⁵ The PRC's government structure and law making powers are the current formal institutions that enables it to look after its urban elderly under the *Social Insurance Law*¹⁰²⁶ welfare framework.

Economists have performed empirical research on the effectiveness of policy implementation in the PRC in the post Open Door Policy era.¹⁰²⁷ The research evidences the increasing effectiveness of the PRC's formal institutions in implementing economic policies. Specifically, utilisation of digital government services platforms such as the Golden Tax Project that assists tax administration by Local and National

¹⁰²¹ Above note 768.

¹⁰²² 福利彩票. These are lottery tickets issued by the Welfare Lottery Issuing Bureau, where a certain percentage of sales revenue goes towards funding the Civil Benefit, refugees, orphanages, nursing homes and other social relief programmes.

¹⁰²³ Above note 768.

¹⁰²⁴ Above note 729.

¹⁰²⁵ Naughton B, *The Chinese Economy Transitions and Growth*, (Massachusetts: The MIT Press, 2007).

¹⁰²⁶ Above note 729.

¹⁰²⁷ See 陈太明, 《中国改革开放政策有效性的定量研究》, Chen T, 'An Empirical Study on China's Reform and Opening-up Policy Effectiveness', (2011) 28 *Statistical Research* (10) 54; and 陈杰、王立勇, 《改革开放以来我国宏观调控的有效性研究》, Chen J & Wang L, 'Macroeconomic Control Policy Effectiveness in the Post Open Door Policy Era in China', (2015) *Macroeconomic Research* (3) 50.

Tax Bureaus have proven to be effective.¹⁰²⁸ The implementation of the Golden Tax Project has led to effective collection of tax revenue according to the law, rather than relying on revenue collection quotas as part of the tax bureau's work plan.¹⁰²⁹

Clarke and others introduced their paper on *The Role of Law in China's Economic Development* by pointing out that¹⁰³⁰

“Economic growth requires economic agents to believe that political, social, and economic conditions are such that they can expect a reasonable return from their investments in property and from the agreements they make with others.”

The PRC's formal institutions are complex as a result of the gradual developments in its distinct historical periods. The *Social Insurance Law*¹⁰³¹ and its related law documents are implemented into this complex institutional framework.

The current formal institution for the purposes of looking after the urban elderly includes the laws that regulate the welfare policy framework, the government structure that implements the laws, and the fiscal structure and laws that enable the funding of Urban Old-Age Pensions. The *Constitution*¹⁰³² and the new *Legislation Law*¹⁰³³ play a vital role to regulate the PRC's institutions by ascertaining the law making powers, and the hierarchy of law-documents.

This section first explains the PRC's sources of laws and hierarchy of laws, then the complicated government structure that implements the Urban Old-Age Pensions policies, then explain the laws of the fiscal revenue structure of the PRC.

¹⁰²⁸ 靳万军, 《政府绩效管理与金税工程绩效》, Jin W, 'Government Performance Management and the Effectiveness of the Golden Tax Project', (2005) 242 *Taxation Research* (7) 24 – 32.

¹⁰²⁹ Ibid; and Brys B & Others, "Tax Policy and Tax Reform in the People's Republic of China", (2013) OECD Taxation Working Papers, No. 18, *OECD Publishing*: <<http://dx.doi.org/10.1787/5k4014d1mznz-en>> (4 May 2016).

¹⁰³⁰ Clark D & Others, 'The Role of Law in China's Economic Development', in above note 846, at 375.

¹⁰³¹ Above note 729.

¹⁰³² Above note 749.

¹⁰³³ 《中华人民共和国立法法》 *Legislation Law of the People's Republic of China* 2015 (National People's Congress).

5.4.1 The Formal Sources of Law and the Hierarchy of Law-documents in the PRC

The PRC's *Constitution*¹⁰³⁴ through the *Legislation Law of the PRC (Legislation Law)*¹⁰³⁵ allows lower level governments some law making powers in relation to the implementation of national laws. Saich¹⁰³⁶ opined that

“The new Constitution reflects the leadership’s concern to create a more predictable system based on a clearer separation of roles and functions and a system of clearly defined rules and regulations applicable to everyone. It is hoped that such a system will be better equipped to implement the plans for economic modernization. Indeed the process of drafting the Constitution is heralded by the Chinese as a triumph for the new emphasis on socialist legality and democracy.”

Two important peculiarities in the regulation of law-making in the PRC are that: it is done by the *Constitution*¹⁰³⁷ and the *Legislation Law*,¹⁰³⁸ which is a Legislation made by the National People’s Congress according to the *Constitution*;¹⁰³⁹ and that the Chinese Communist Party’s power is entrenched by the *Constitution*¹⁰⁴⁰ because the leadership role of the party is specified in the *Preamble* of the *Constitution*.¹⁰⁴¹ The *Preamble* of the in *Constitution of the PRC*¹⁰⁴² is part of the actual content of the *Constitution*.¹⁰⁴³ This means that the Chinese Communist Party leadership as embodied by the Politburo is allowed to make policy decisions and issue policy comments. The *Recommendation on the Twelfth Five-year Plan*¹⁰⁴⁴ is an example of this. These policy decisions and comments have significant impact on how policies

¹⁰³⁴ Above note 749.

¹⁰³⁵ Above note 1033.

¹⁰³⁶ Saich T, ‘The Fourth Constitution of the People’s Republic of China’, (1983) 2 *Review of Socialist Law* 113, at 113.

¹⁰³⁷ Above note 749.

¹⁰³⁸ Above note 1033.

¹⁰³⁹ Above note 749.

¹⁰⁴⁰ Above note 749.

¹⁰⁴¹ Above note 749.

¹⁰⁴² Above note 749.

¹⁰⁴³ Above note 749.

¹⁰⁴⁴ Above note 749.

were actually formulated, and how laws are drafted, yet, they are not a part of the PRC's source of law.

Frazier¹⁰⁴⁵ analysed the sources of laws for Old-Age Pensions purposes in 2004. His analysis does not change, but the new *Legislation Law*¹⁰⁴⁶ gives more certainty to the priority and conflicts between the different law-documents. The current *Legislation Law*¹⁰⁴⁷ is very different from the previous iteration. It clearly stipulates the different types of law-documents and their hierarchy. The *Legislation Law*¹⁰⁴⁸ embodies specific provisions on enacting, revising and nullification of law-documents in the PRC.¹⁰⁴⁹ Chapter II details requirements on making legislations by the National People's Congress and its Standing Committee. Section 1, Article 8 lists eleven "Limits of Legislative Power",¹⁰⁵⁰ which means in order to regulate these eleven matters, legislation must be promulgated, and they cannot be regulated by lower level law-documents.

The formal sources of law in the PRC are the law-documents that are made according to the *Constitution*.¹⁰⁵¹ These law-documents are of different levels of importance in the legislative hierarchy in the PRC:¹⁰⁵² the *Constitution* is the most important; followed by Legislation;¹⁰⁵³ then Administrative Regulations,¹⁰⁵⁴ Local Regulations,

¹⁰⁴⁵ Above note 771, at 103-106.

¹⁰⁴⁶ Above note 749.

¹⁰⁴⁷ Above note 1033.

¹⁰⁴⁸ Above note 749.

¹⁰⁴⁹ Above note 1033, Art 2.

¹⁰⁵⁰ Above note 1033.

¹⁰⁵¹ Above note 954.

¹⁰⁵² 舒国滢主编,《法理学导论》, Shu G, ed, *Introduction to Jurisprudence*, (Beijing: Peking University Press, 2006), at 71.

¹⁰⁵³ 法律. See above note 1033, ch II.

¹⁰⁵⁴ 行政法规. See above note 1033, ch III.

Autonomous Regulations, Separate Regulations and Rules;¹⁰⁵⁵ then Rules.¹⁰⁵⁶ The whole hierarchy of law-documents can be litigated in the PRC's court system.

The *Constitution*¹⁰⁵⁷ of the PRC does not list the law-making powers. Instead, it prescribes that the National People's Congress¹⁰⁵⁸ and its Standing Committee¹⁰⁵⁹ are allowed to make Legislation. Specifically, Constitutional amendment is the job of the full National People's Congress,¹⁰⁶⁰ the Standing Committee is only allowed to explain the *Constitution* and supervise its implementation.¹⁰⁶¹ In terms of making Legislation, the full National People's Congress enacts and amends "basic laws governing criminal offences, civil affairs, the State organs and other matters",¹⁰⁶² but the Standing Committee is only allowed to enact other laws¹⁰⁶³ and to interpret laws.¹⁰⁶⁴ Basic laws refer to laws that have nation-wide importance. Other laws are more specific. The *Social Insurance Law* is treated as a specific law because the Standing Committee was the enactment body.

Legislation as a term with its western connotation (meaning statutes made by the legislature)¹⁰⁶⁵ does not cover all the documents that have the force of law in the PRC. The National People's Congress and local government level People's Congresses are not the only bodies that could issue legally enforceable documents. This research hereafter refers to these legally enforceable documents collectively as law-documents.

¹⁰⁵⁵ 地方性法规、自治条例和单行条例。See above note 1033, ch IV.

¹⁰⁵⁶ 规章。See above note 1033, ch IV, s 2.

¹⁰⁵⁷ Above note 954.

¹⁰⁵⁸ Above note 1033, Art 62.

¹⁰⁵⁹ Above note 1033, Art 67.

¹⁰⁶⁰ Above note 1033, Art 62, para (1). Above note 954. A 2/3 majority of the full National People's Congress is required to amend the Constitution.

¹⁰⁶¹ Above note 1033, Art 67, para (1). Above note 954.

¹⁰⁶² Above note 1033, Art 61, para (3). Above note 954.

¹⁰⁶³ Above note 1033, Art 67, para (2). Above note 954.

¹⁰⁶⁴ Above note 1033, Art 67, para (4).

¹⁰⁶⁵ Nygh PE, & Butt P, eds, *Butterworths Australian Legal Dictionary*, (Sydney: Butterworths, 1997), at 682.

Legislations¹⁰⁶⁶ in the PRC refer specifically to the laws made by the National People's Congress or its Standing Committee.¹⁰⁶⁷

The role of the Standing Committee of the National People's Congress is to perform the functions of the National People's Congress when it is not in session, but laws or amendments to existing laws cannot be made against the principles of how the National People's Congress would have made or amended the law. Examples of Standing Committee made law include the *Trade Mark Law*,¹⁰⁶⁸ and the *Administrative Procedure Law of the PRC*.¹⁰⁶⁹ Decisions made by the National People's Congress and its Standing Committee that are of a regulatory nature are also Legislations.¹⁰⁷⁰

Article 61 of the *Legislation Law*¹⁰⁷¹ defines how to order the content within a piece of legislation, where "According to the need of the contents, a law may consists of parts, chapters, sections, articles, paragraphs, subparagraphs and items". Usually articles are numbered continuously from the beginning of the legislation, that is, when there is a new section, the articles do not restart at 1.

The State Council and its Ministries, lower level governments and functional administrative departments could all issue law-documents. All these law-documents together form the laws of the PRC. As such, although the PRC claims to have a

¹⁰⁶⁶ Above note 1033, Art 58.

¹⁰⁶⁷ The roles and how laws can be made by the Standing Committee of the National People's Congress are regulated by the *Constitution* in ch III, s 1. The procedural rules of law making by the National People's Congress and its Standing Committee are regulated by the *Legislation Law of the PRC* in ch II, ss 2 & 3 respectively. See above notes 1033.

¹⁰⁶⁸ 《中华人民共和国商标法》 *Trade Mark Law of the People's Republic of China* 2013 (Standing Committee of the National People's Congress).

¹⁰⁶⁹ 《中华人民共和国行政诉讼法》 *Administrative Procedure Law of the People's Republic of China* 2014 (Standing Committee of the National People's Congress).

¹⁰⁷⁰ Above note 749, Art 58.

¹⁰⁷¹ Above note 1033.

“unitary”¹⁰⁷² system, it in fact has a “multi-level” and “multi-dimensional” system of authorities that are able to make laws.¹⁰⁷³

Administrative Regulations¹⁰⁷⁴ are regulatory documents made by the State Council according to the *Constitution*¹⁰⁷⁵ and the *Legislation Law*.¹⁰⁷⁶ Orders issued by the State Council are Administrative Regulations.¹⁰⁷⁷ Article 9¹⁰⁷⁸ of the *Legislation Law*¹⁰⁷⁹ explains that the National People’s Congress and its Standing Committee can authorise the State Council to formulate Administrative Regulations based on need. These provisions allow the State Council to make Temporary Regulations. The authorisations need to be specific, clear, no longer than five years, and for the State Council to report on the success of the administrative regulation in regulating the matter and whether continued authorisation is required.¹⁰⁸⁰ When permanent Legislations should be made based on the content of the Administrative Regulation need also be specified, and those Legislations could only be made by the National People’s Congress or its Standing Committee.¹⁰⁸¹

Rules are made by the functional ministries in relation to their administrative function. Functional Ministries and Commissions are able to “issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance

¹⁰⁷² Above note 749, *Preamble*.

¹⁰⁷³ Chen J, *Chinese Law: Context and Transformation*, (Boston: Martinus Nijhoff Publishers, 2008), at 173.

¹⁰⁷⁴ Above note 1033. Arts 66 to 71 are procedural requirements for making Administrative Regulations by the State Council.

¹⁰⁷⁵ Above note 749.

¹⁰⁷⁶ Above note 1033.

¹⁰⁷⁷ Above note 749, Chapter III, Section 3. Art 89 allows the State Council to “enact administrative regulations and issue decision and orders in accordance with the Constitution and other laws”.

¹⁰⁷⁸ Above note 1033.

¹⁰⁷⁹ Above note 1033. Except for “criminal offences and their punishment, mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person, and the judicial system”.

¹⁰⁸⁰ Above note 1033, Art 10.

¹⁰⁸¹ Above note 1033, Art 11. Articles 9, 10, 11 together provide for the gradual nature of law and economic reform in the PRC. There will be efficient and functional responses to regulate new issues when they arise, so when permanent Legislation are made, they would require less frequent revisions.

with law and the administrative regulations, decisions and orders issued by the State Council”¹⁰⁸² These are called Ministerial Rules.¹⁰⁸³

Local Regulations, Autonomous Regulations, Separate Regulations and Rules are made by local area People’s Congresses and their Standing Committees,¹⁰⁸⁴ these documents regulate the implementation of the national level law-documents at the local government areas.

International Treaties that the PRC has ratified, except Articles that it specifically made reservations, form one source of law in the PRC.¹⁰⁸⁵ Ratification¹⁰⁸⁶ by the Standing Committee of the National People’s Congress is required for treaties and important agreements.

Conflict settlement between law-documents that regulate the same matter are regulated by Chapter V of the *Legislation Law*.¹⁰⁸⁷ Article 87 specifies that the “legal effect of the Constitution is the highest”. This is important in the context of the PRC’s current law reforms, it clarifies that the current government has the will to govern according to the “rule of law”¹⁰⁸⁸ and the *Constitution*.¹⁰⁸⁹ Below notes the conflict settlement rules:

¹⁰⁸² Above note 749, Art 90.

¹⁰⁸³ Article 2 of Chapter 1 of the *Administrative Procedure Law of the PRC*¹⁰⁸³ specifically includes these Rules in relation to administrative procedures, that is, citizens and legal persons in the PRC could sue a government organisation when they have not performed their functions according to the Rules made by themselves.

¹⁰⁸⁴ Above note 1032, s 5, especially Art 100 allows the Local People’s Congresses and their Standing Committees at provincial levels to “adopt local regulations, which must not contravene the Constitution and other laws and administrative regulations (made by the State Council)”, and they need to report these local regulations to the National People’s Congress’s Standing Committee for record; s 6 lists the roles of the organs of self-government of National Autonomous Areas, where Article 116 allows People’s Congresses of the National Autonomous Areas to “enact regulations on the exercise of autonomy and other separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned” and report them to the National People’s Congress’s Standing Committee for approval. Those of lower level autonomous governments would report the law-documents to the provincial level People’s Congress for approval. Procedural rules are in above note 1033, ss 1 & 2.

¹⁰⁸⁵ 《中华人民共和国缔结条约程序法》 *Law of the People's Republic of China on the Procedure of the Conclusion of Treaties* 1999 (Standing Committee of the National People's Congress).

¹⁰⁸⁶ *Id.*, Art 7.

¹⁰⁸⁷ Above note 1033.

¹⁰⁸⁸ Peerenboom R, *China's Long March toward Rule of Law*, (Cambridge: Cambridge University Press, 2002).

¹⁰⁸⁹ Above note 749.

- when there is conflict between Rules of different functional ministries/ departments, or between the Rules of function ministries/ departments and Local People's Congresses, the Rules only operate within the functional boundaries of the ministry/department or local government area;¹⁰⁹⁰
- Specific provisions in law-documents take priority over general provisions and new provisions take priority over old (but still valid) provisions;¹⁰⁹¹
- There is no retroactive application of law-documents except for those law-documents that are formulated to protect rights and interests;¹⁰⁹²
- When there is conflict and uncertainty, the maker of the law-document needs to make a decision.¹⁰⁹³

5.4.2 The PRC's Government Structure

The PRC government has two distinct functions: as asset owner and employer through State Owned Enterprises, and as the public authority. The government is an asset owner and employer, because the PRC's planned economy policies between 1949 and 1978 means it still controls a significant amount of capital assets and business activities through State Owned Enterprises.¹⁰⁹⁴

The PRC's government structure is complicated and confusing. The following first explains the reasons that makes the PRC's government structure confusing, then briefly

¹⁰⁹⁰ Above note 1033, Art 91.

¹⁰⁹¹ Above note 1033, Art 92.

¹⁰⁹² Above note 1033, Art 93.

¹⁰⁹³ Above note 1033, Arts 94 & 95. These requirements may allow the law-document maker too much discretion when there is conflict over priority.

¹⁰⁹⁴ State Owned Enterprises in the PRC has a very narrow definition – they have to be 100% owned by the State. Otherwise the laws in the PRC such as the *Company Law* treat them as normal private enterprises. 《中华人民共和国公司法》 *Company Law of the People's Republic of China* 2005 (Standing Committee of the National People's Congress), s1 of ch1.

explains the extra complication that relates to tax administration because Social Insurance Contribution is administered and collected by Local Tax Bureaus.

The PRC's government structure is confusing in three aspects:

- 1) The PRC has five levels of "People's Governments";¹⁰⁹⁵
- 2) The legal "separation of powers" functions in a government is divided differently, and the executive function is further complicated by the role of the State Council¹⁰⁹⁶ and its administrative functions ministries and departments;
- 3) The reference to the levels of governments, and administrative functions departments at these levels are different when considering the relationship between the governments themselves, and the relationship between the administrative functions departments at these levels and the level above.

The five levels of "People's Governments"¹⁰⁹⁷ in the PRC's government structure refers to the national central government, and the provincial, prefecture, county, and township level governments.

Provincial governments include Provinces,¹⁰⁹⁸ Municipalities Directly under the Central Government¹⁰⁹⁹ and Autonomous Regions.¹¹⁰⁰ The PRC has thirty-one¹¹⁰¹ provincial level governments, including twenty-three Provinces, four Municipalities Directly under the Central Government, and five Autonomous Regions. This research collectively refers to them as provinces. Prefecture level governments include Cities

¹⁰⁹⁵ 人民政府 Above note 749, ch III, ss 5 & 6.

¹⁰⁹⁶ Above note 749, ch III, s3.

¹⁰⁹⁷ 人民政府

¹⁰⁹⁸ 省 See above note 749, Arts 95 & 97.

¹⁰⁹⁹ 直辖市 See above note 749, Arts 95 & 97.

¹¹⁰⁰ 自治区 See above note 749, Arts 112, 113, & 114. Autonomous refers to the autonomy of the minority ethnic group that form the majority of the population in the region.

¹¹⁰¹ Not including Taiwan.

Divided into Districts¹¹⁰² and Autonomous Prefectures.¹¹⁰³ This research collectively refers to them as prefectures. County level governments include Counties,¹¹⁰⁴ Cities not Divided into Districts,¹¹⁰⁵ Municipal Districts,¹¹⁰⁶ and Autonomous Counties.¹¹⁰⁷ This research collectively refers to them as counties. Township level governments include Townships,¹¹⁰⁸ Nationality Townships,¹¹⁰⁹ and Towns.¹¹¹⁰ This research collectively refers to them as towns.

Table 5-1 Government Levels and Responsibility Lines in the PRC

Urban Area	Rural Areas	People's Congresses	Court	Procuratorate	Communist Authorities
State Council		National People's Congress	Supreme Court	Supreme People's Procuratorate	Central Committee
Provinces, municipalities, autonomous regions		Provincial People's Congress	Provincial People's Court	Provincial Procuratorate	Provincial Party Committee
Prefecture-level cities	Autonomous prefectures	Prefecture People's Congress	Prefecture People's Court	Prefecture- Cities People's Procuratorate	Municipal party committee
Municipal Districts ¹¹¹¹	County	District or County People's Congress	District People's Court	District People's Procuratorate	District Committee
	Town				... ¹¹¹²

Table 5-1 illustrated the government levels and different functional lines in the PRC. The functional lines loosely reflect the western concept of “separation of powers”. There is a very limited application of the doctrine of separation of powers (as

¹¹⁰² 设区的市, See above note 749, Arts 95 & 97.

¹¹⁰³ 自治州, See above note 749, Arts 112, 113, & 114. Autonomous refers to the autonomy of the minority ethnic group that form the majority of the population in the prefecture.

¹¹⁰⁴ 县, See above note 749, Arts 95 & 97.

¹¹⁰⁵ 不设区的市, See above note 749, Arts 95 & 97.

¹¹⁰⁶ 市辖区, See above note 749, Arts 95 & 97.

¹¹⁰⁷ 自治县, See above note 749, Arts 112, 113, & 114. Autonomous refers to the autonomy of the minority ethnic group that form the majority of the population in the county.

¹¹⁰⁸ 乡, See above note 749, Arts 95 & 97.

¹¹⁰⁹ 民族乡, See above note 749, Articles 95 & 97. These are to a limited extent autonomous, where the minority ethnic group that form the majority of the population in the township has some autonomy, such as the freedom to practice particular religions or other special cultural rites.

¹¹¹⁰ 镇, See above note 749, Articles 95 & 97.

¹¹¹¹ Municipal district is used as an example of a county level urban government.

¹¹¹² Communist Authorities are included in this table because of the leadership role afforded to them by the *Constitution* in its preamble. See above note 749, *Preamble*. They exist at each level, including grassroots committees at villages and enterprises.

traditionally understood in the west) in the PRC's legal structure. "Legal structure" is a deliberate choice of phrase. In this research, it is broader than the meaning of "legal system" because of the PRC's complicated governance structure.

In the PRC's governance structure, the concept of "separation of powers": the three arms of government – the legislature, judiciary and executive function independently¹¹¹³ has never been the norm in China's long history. The Chinese version of the term itself is a classic case of "meanings lost in translation".

There were two phases in the history of introducing "separation of powers" into China that gave rise to meanings lost in translation. The first phase happened when the word was first translated into Chinese. The second phase was a longer process during the usage of the translated term. What this means is that when translated back into English, the current Chinese term means "three independent powers",¹¹¹⁴ which gives the term a political, rather than legal connotation. The lack of a clear understanding of the western separation of powers meant the PRC's legal structure is not based strictly on a western rule of law.

One early iteration of the western conception of the rule of law is by Dicey, showing a clear legal framework.

"No man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law; every man's legal rights or liabilities are almost invariably determined by the ordinary Courts of the realm, and each man's individual rights are far less the result of our constitution than the basis on which that constitution is founded".¹¹¹⁵

¹¹¹³ Dicey AV, *Introduction to the Study of the Law of the Constitution* (1889), <http://www.constitution.org/cmt/avd/law_con.htm> (19 Oct. 2012).

¹¹¹⁴ 三权分立.

¹¹¹⁵ Above note 1113.

The political connotation of the term in the PRC means different branches of government are divided in the PRC not with reference to what legal purposes they serve, but according to administrative functions. This means, unlike western countries, there are more kinds of documents in the PRC that serve the purposes of laws, and the *Constitution*¹¹¹⁶ and the *Legislation Law of the PRC*¹¹¹⁷ have special provisions to give force of law to these documents.

Western separation of powers is fundamentally rooted in the idea of a system of checks and balances.¹¹¹⁸ It is argued that separating the three branches of government means the government is less likely to be embroiled in corruption or dictatorial rule, as all three have distinct roles but are still interdependent.¹¹¹⁹

Throughout ancient China, however, the emperor was the head of each branch of government, including the military. This resulted in the never ending debate between different schools of thinkers on whether to rule by law and punishment, or to rule by the benevolence of the sovereign. The former is from the writings of the legalists such as Han Feizi,¹¹²⁰ the latter from the writings of the students of Confucius.¹¹²¹ Emperors governed their reign according to concepts of these two schools of thought. This tradition continued, and law reform in the PRC now is turning back to this tradition for guidance. This tradition also means, politically, the executive branch of government is more dominant in the policy making process.

¹¹¹⁶ See above note 749.

¹¹¹⁷ See above note 1033.

¹¹¹⁸ Welch S & others, *Understanding American Government*. (Boston: Cengage, 2010), at 32 - 33.

¹¹¹⁹ *Ibid.*

¹¹²⁰ See 《物权》, About Power, 《问田》, About Agriculture, The Five Pests, 《有度》 About Proportion, in 《韩非子》, *Han Feizi* <http://so.gushiwen.org/guwen/book_31.aspx> (2 Nov. 2015)

¹¹²¹ 《论语》 Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015).

This dominance of the executive is apparent in the structure of the PRC's *Constitution*. Unlike western developed countries such as Australia, the *Preamble* of the PRC's *Constitution* is included in the contents of the *Constitution*.¹¹²² In this *Constitution*, the leadership role played by the Chinese Communist Party is described clearly.

The following section discusses the functional lines of the PRC's government structure, with reference to how the three legal powers of the government in the western concept of "separation of powers" – the legislative, judicial and executive powers are exercised in the PRC.

Since 1949, the PRC has four lines of government responsibilities. Firstly, the National People's Congress¹¹²³ and the Chinese People's Political Consultative Conference¹¹²⁴ can be identified as the legislature. Secondly, the Central Committee of the Communist Party of China¹¹²⁵ and the State Council¹¹²⁶ (with its administrative functions ministries) can be identified as the executive. The third line is the military. Finally, the Courts and the Procuratorates (a system of prosecutors and prosecutor courts) act as the judiciary. It is worth noting here that one of the thematic policy aims of the *Thirteenth Five-year Plan*¹¹²⁷ announced in October 2015 is judicial independence. This thematic policy aim is leading the PRC into a direction where a western form of "separation of powers" may be possible, at least from the judicial perspective.

¹¹²² 黄惟勤, 《论我国宪法序言的法律效力》, Huang W, 'On Its Preface's Legal Effectiveness of China's Constitution', (2010) *Law Magazine* 104.

¹¹²³ Set up by above note 749.

¹¹²⁴ Not a Constitutional Organ.

¹¹²⁵ The *Preamble* of the PRC's *Constitution* makes it a constitutional organ. See above note 749.

¹¹²⁶ Set up by Chapter III of the *Constitution*. See above note 749.

¹¹²⁷ 网易财经, 《十三五”规划最全梳理》, 163 Money, 'The Most Comprehensive Summary of the Thirteenth Five-year Plan', 163 Money, <<http://money.163.com/15/1015/13/B5VK7HFR00253B0H.html>> (2 Nov. 2015).

The National People's Congress has powers to legislate¹¹²⁸, and the *Constitution*¹¹²⁹ identifies it as the top power organ of the country. Its Standing Committee at times can exercise this power for efficiency purposes.¹¹³⁰ This legislative power includes the function of Constitutional amendments, supervision of the implementation of the Constitution, amendments of legislations, voting for all leadership positions in the lines of government, establishing new provincial level governments and making decisions on war.¹¹³¹ The Chinese People's Political Consultative Conference is somewhat like a consulting body consisting of a variety of people from the private sector and retirees from the government who revise and debate policy.¹¹³²

The Standing Committee of the National People's Congress supervises the Courts.¹¹³³ The Supreme Court President must report back to the National People's Congress.¹¹³⁴ This suggests that in practice, the Supreme Court of the PRC draws its judicial power from the National People's Congress, which is one step removed from directly deriving its powers from the *Constitution*.¹¹³⁵ This practice differs from that of many western countries, where the highest level court directly receives its powers from the Constitution. For example, Chapter III of Australia's *Constitution*¹¹³⁶ provides for the Judicature in Australia. In a way, there is only functional separation of powers between the legislature and the judiciary in the PRC.

¹¹²⁸ See above note 749, Art 58.

¹¹²⁹ Above note 749, at cha III, s 1.

¹¹³⁰ See above note 749, Art 67.

¹¹³¹ See above note 749, Art 62.

¹¹³² 《中国人民政治协商会议章程》 *The Constitution of the Chinese People's Political Consultative Conference* 1982(The Chinese People's Political Consultative Conference),

<<http://www.cppcc.gov.cn/2011/09/14/ART11315980170869872.shtml>> (23 Oct. 2012).

¹¹³³ See above note 749, Art 67.

¹¹³⁴ Jayasuriya K, *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions*, (New York: Routledge, 1999), at 244.

¹¹³⁵ See above note 749, ch 1, s 7.

¹¹³⁶ *Commonwealth of Australia Constitution Act*.

The State Council is the main administrative state organ, its top officials are elected democratically by the National People's Congress.¹¹³⁷ The State Council is responsible for national development in a variety of portfolios such as public security, education, defence and security, health, economic management and issuing regulations according to the law and the *Constitution*.¹¹³⁸ The different administrative functions ministries report directly to the State Council, and the Ministers report to the Premier, who is the head of the State Council.

It is clear there is little separation of power between the legislature and executive in the PRC, considering how the Executive is chosen from the National People's Congress.¹¹³⁹ Although there are differences between the roles of President and Premier to that of the more legislative National People's Congress, it is clear that much like the judiciary, they draw their authority from the National People's Congress and the Politburo of the Central Committee of the Communist Party of China.

There has been debate as to whether the Communist Party or the National People's Congress actually controls the military. It is worth noting that the PRC's *Constitution*¹¹⁴⁰ now provides that the Central Military Committee that controls the military belongs to the People's Republic of China,¹¹⁴¹ making the military a State organ and a part of the government. It is not the property of the Communist Party of China. As an arm of the government, social security for the military has always been separate policies in the PRC.

¹¹³⁷ See above note 749, ch 1, s 1.

¹¹³⁸ See above note 749, ch 3, s 3.

¹¹³⁹ See above note 749, ch 3, s 3.

¹¹⁴⁰ Above note 749.

¹¹⁴¹ See above note 749, ch 3, s 4.

Figure 5-1 Possible Law-document Making Bodies in the PRC

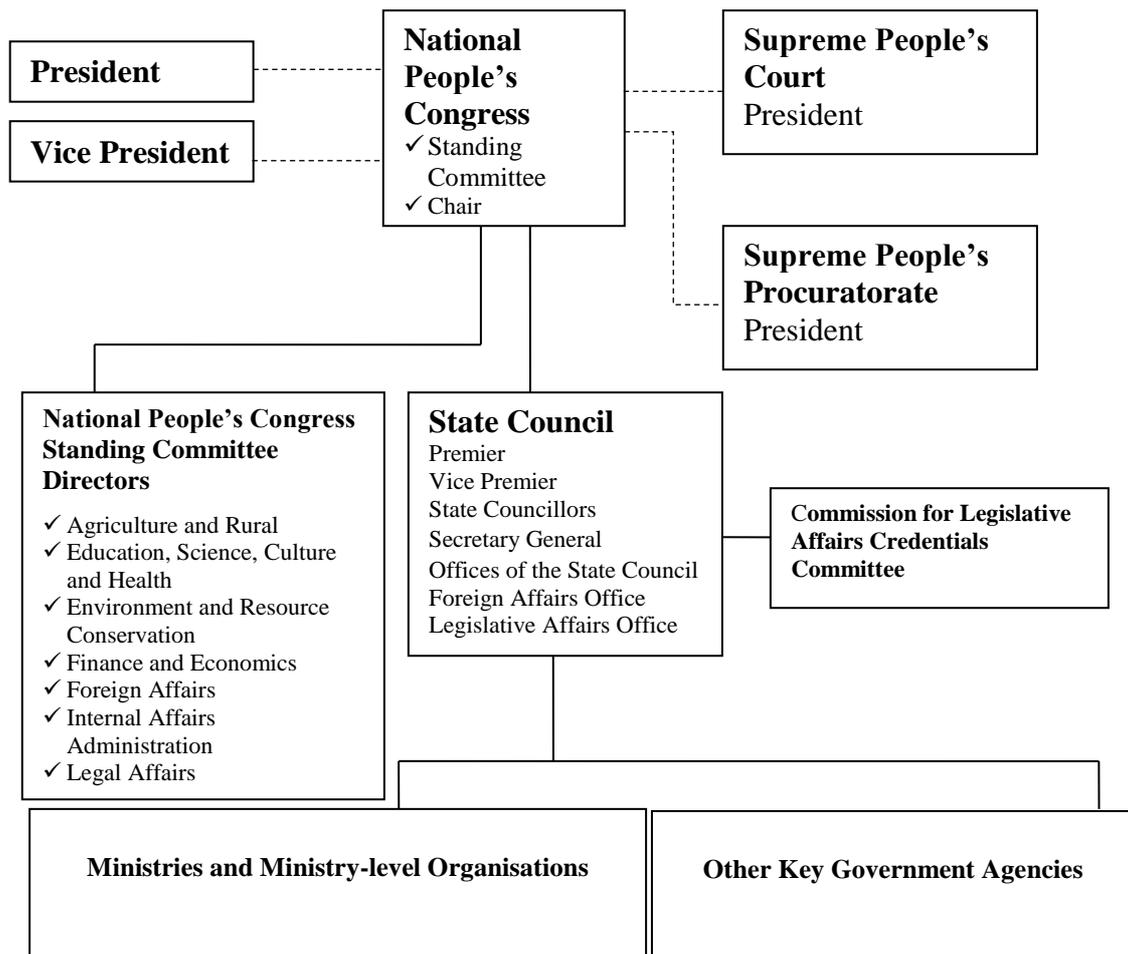


Figure 5-1 identified all the organs that can issue law-documents that have the force of law. Considering the different levels of governments illustrated in Table 5-2, the organs in the lower levels of governments can also issue interpretation and implementation documents that also have the force of law.

There are reporting relationships between four parties: the State Council, administrative functions Ministries, the Premier and the Ministers. Section 3 of chapter 3 of the *Constitution* stipulates in that the Premier is responsible for the works of the State Council, the Ministers are responsible for the works of their Ministries.¹¹⁴² This means

¹¹⁴² See above note 749, Art 86.

that the Ministries are part of the State Council, and the Ministers report to the Premier. However, the Ministries do not report directly to the Premier.

There are two reporting relationships between these four parties, where the Ministries report to their Minister and to the State Council, but not to the Premier; and the Ministers report to the Premier. Flowing from these two relationships are relationships between the lower level governments, the functional ministries and the local functional departments. The local functional departments report to the local governments and to the associated administrative functions ministries at central level. For example, the Department of Finance of the Guangdong Province reports to the Guangdong Provincial Government and the Ministry of Finance. These functional departments do not report directly to the head of the provincial government (the Governor of the province), but to the Provincial Department Head; that Provincial Department Head in turn reports to the Governor and the Minister of the functional ministry; and the Governor reports to the Premier.

Since Urban Old-Age Pensions Contributions are collected and administered by Local Tax Bureaus, tax administration adds to the complexity in the administrative and funding structure of the PRC for Urban Old-Age Pensions purposes. The central agency for tax administration is the State Administration of Taxation of the PRC. The 1994 tax reform¹¹⁴³ divided tax collection duties between the Local Tax Bureaus and National Tax Bureaus, both part of the State Administration of Taxation. The reason for this divide arose out of the revenue sharing agreement between the provinces and the central

¹¹⁴³ Blazey P & Chan K, eds, *Commercial Law of the People's Republic of China*, (Sydney: Lawbook Co., 2012); above note 747; and 《国务院关于实行分税制财政管理体制的决定》 *The Decision of the State Council on Implementing a Tax Split Public Finance Management System* 1993 (State Council).

government,¹¹⁴⁴ especially in relation to the Value Added Tax¹¹⁴⁵ (VAT) (25% for local expenditure, 75% for central expenditure). The National Tax Bureaus collect tax types that would be used for central government expenditure, Local Tax Bureaus collect tax types that would be used for local government expenditure. Colloquially, people call the taxes collected by the National Tax Bureaus national taxes, and those collected by Local Tax Bureaus local taxes. It is worth noting that revenues collected by both national and local tax bureaus are held in consolidated revenue in the national accounts. Expenditures are administered by the Ministry of Finance and the Departments of Finance at each levels of government. There is a complicated intergovernmental transfers process.¹¹⁴⁶

The extra layer of confusion in relation to the government structure appears in the reporting relationship between the tax bureaus and local governments. The usual practice is that the functional departments at different levels of government would have an indirect reporting relationship to the local government, as explained above. The local and national bureaus of taxation, however, only has one reporting relationship, they ultimately report directly to the State Administration of Taxation; and they do not report at all to the local governments. Tax administration is an independent process, and the function of both tax bureaus is the collection of revenue. The local and national bureaus are also independent from each other, that is, the Local Tax Bureaus at each level of government would report to the Local Tax Bureau at the upper level government; and the National Tax Bureaus would report to the National Tax Bureaus. The local and national tax bureaus at the provincial level report directly to the State Administration

¹¹⁴⁴ 《国务院关于实行分税制财政管理体制的决定》 *The Decision of the State Council on Implementing a Tax Split Public Finance Management System 1993* (State Council).

¹¹⁴⁵ Yang B & Huang E, in *Taxation in China* (Sydney: Thomson Reuters, 2015 Forthcoming), ch 13.

¹¹⁴⁶ Wong C, 'Reforming China's Public Finances for Long-term Growth', in Garnaut, R & Song, L eds, *China Update 2013* (Canberra: Australian National University, 2013), at 199-219.

of Taxation. At the moment, Old-Age Pensions “Social Insurance Contributions” are collected by Local Tax Bureaus at each levels of government. The administration of the payments of Old-Age Pensions are administered by the Ministry of Human Resources and Social Security and the Departments of Human Resources and Social Security at local government areas, where funding is appropriated by the Ministry of Finance and the Departments of Finance at local areas through the budgeting process.

The peculiar reporting relationships in the PRC’s government structure, and the lack of consideration to the western connotation of “separation of powers”, resulted in law documents appearing in many forms. The executive branch of the government headed by the State Council is allowed to make documents that have the force of law, thereby making administrative and funding transparency difficult to achieve. The continuing fiscal centralisation reforms are not only necessary for funding purposes, it is also necessary to clarify regulatory relationships with regard to the sources of laws.

In summary, the complex government structure and the mistranslation of “separation of powers” into Chinese meant that the three legal functions: judicial, legislative and executive are not independently performed by three distinct bodies in the PRC. Instead, the leadership of the Communist Party embodied in its Politburo of its Central Committee, the State Council and its Ministries, the National People’s Congress, the People’s Courts and the People’s Procuratorates are intricately linked in their functions and administrative relationships by Constitutional provisions. Also, the ancient tradition of benevolent governance by the sovereign means that the role of the executive is more important in the governance of the PRC.

Although the PRC is now in the post Open Door Policy era, where the market is significantly deregulated from the planned economy days, government functions are

still being reorganised to be more transparent.¹¹⁴⁷ This reorganisation contributes to the argued in the literature about centralisation of Social Insurance Contributions to ascertain the funds that are accounted in the Social Insurance Funds for the purposes of fully funding Urban Old-Age Pensions, because geographical developmental differences at the different provinces means Urban Old-Age Pensions administration is not uniform throughout the country.

The argument for further centralisation of Social Insurance Contributions is part of the continuous government transfers reform¹¹⁴⁸ (also called fiscal centralisation, here after, these two terms are used interchangeably) in the PRC. Increased fiscal centralisation improves transparency because it allows for easier access to information on the PRC's fiscal policies.

Briefly, the government transfers reform in the PRC is a continuous process beginning from the structural economic reforms arising out of the Open Door Policy.¹¹⁴⁹ Professor Christine Wong's research on reforming China's public finances¹¹⁵⁰ is representative in the English language literature on this issue. The major components of this reform include the consolidation of the budgeting process, clarifying the responsibilities of lower level governments in the budgeting and public goods funding process and reforming the tax system structure. Centralisation allows the national government more fiscal control.

¹¹⁴⁷ 白永秀,《由“前改革时代”到“后改革时代”》, Bai Y, 'From the "Pre-reform" Era to the "Post-reform" Era', (2010) 40 *Journal of Northwest University (Philosophy and Social Sciences Edition)* (No.2) 5, at 6.

¹¹⁴⁸ Wong, C 'Reforming China's Public Finances for Long-term Growth', in Garnaut, R & Song, L eds, *China Update 2013* (Canberra: Australian National University, 2013), at 199; and Wong, C 'Fiscal Reform: Paying for the Harmonious Society', (2010) 14 *China Economic Quarterly* (June 2010) 20.

¹¹⁴⁹ *Ibid.*

¹¹⁵⁰ For example, see above note 1148.

For the purposes of funding Urban Old-Age Pensions, fiscal centralisation itself does not contribute directly to the sustainability of fully funding Old-Aged Pensions by the government. It allows for simpler administration of Social Insurance Contributions and payment of Pensions. By decreasing the government's administrative costs of providing Old-Aged Pensions, it contributes positively to sustainability.

The laws that relate to the fiscal structure in the PRC are its revenue laws. The PRC has formal taxes, sundry levies and hidden taxes in its fiscal revenue structure. Below classifies the revenue types according to the law-documents that regulate their collection.

5.4.3 Legal Classification of Revenue Types in the PRC

There are multiple revenue types in the PRC depending on the law-document that regulates and the authorities that administers their collection. Inductive reasoning processes where general theory was utilised to examine a concept¹¹⁵¹ could be applied to study revenue types in the PRC.

The inductive reasoning “duck test” goes something like this: “If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck”. This test can be used to classify the fiscal revenue types in the PRC. The sources of revenue are collected according to different types of law-documents, but in substance, they can essentially be characterised as taxes.

The PRC's tax laws are drafted according to the nation's *Constitution* and other legislative instruments, but the legal sources of its taxes are peculiar from a western

¹¹⁵¹ Creswell JW, *Research Design Qualitative, Quantitative, and Mixed Methods Approaches*, 4th ed, (US: Sage Publications International Student Edition, 2014), at 65-66.

angle. Legally taxes in the PRC can be classified according to two special typologies: by distinguishing formal taxes, Sundry Levies and hidden taxes¹¹⁵²; and by distinguishing central and local taxes.¹¹⁵³

5.4.3.1 Fiscal Revenue Types in the PRC According to Sources of Law

According to the sources of law, there are three types of fiscal revenue in the PRC: formal taxes, Sundry Levies and hidden taxes.

“Formal taxes” is a term specific to the PRC due to its complicated sources of law. They are levied according to legislations made by the National People’s Congress or its Standing Committee; or according to Administrative Regulations made by the State Council that are called Temporary Regulations, or other delegated law-documents such as Regulations, Detailed Rules, Implementation Rules, and Ministerial Policy Interpretations (also called red letterhead documents)¹¹⁵⁴ by the Ministry of Finance and the State Administration of Taxation. The administration of formal taxes are by the State Administration of Taxation and its national and local tax bureaus.

From March 2015, the *Legislation Law*¹¹⁵⁵ requires taxation to be regulated by legislations.¹¹⁵⁶ As explained in the above sources of law discussion, delegation needs to be reviewed, and successful pilots¹¹⁵⁷ or Temporary Regulations need to be passed as legislation. Table C-1 in Appendix C lists the formal taxes and the type of law-

¹¹⁵² Yang B & Huang E, ‘China’s major tax system: Characteristics and Development Directions’, in *Other Governance: Business Regulation in China*, 2010 (Sydney, 2010).

¹¹⁵³ *Ibid.*

¹¹⁵⁴ 红头文件. These are high level government documents specific to the PRC. The letterhead has the name of the issuing Ministry in red ink. These documents has legal effect and often deal with the interpretations of the law. Red letter documents are law-documents as explained in the sources of law discussions in Section 5.4.1..

¹¹⁵⁵ Above note 1033.

¹¹⁵⁶ Above note 1033, Art 8.

¹¹⁵⁷ The PRC’s policy making and legislative processes are very pragmatic. Pilots are often administered as experiments to test the merits of policies. The pilot law-document themselves give these experiments legal backing.

document that regulates them. The Urban Old-Age Pensions Social Insurance Contribution is a formal tax. Although it is not called a tax, it is regulated by the *Social Insurance Law*¹¹⁵⁸ and its associated lower level law-documents, and it is administered by the Local Tax Bureaus of the State Administration of Taxation.

As an illustration of the disperse nature of tax laws, in 2009, there were 21 types of formal taxes in the PRC,¹¹⁵⁹ including the Value Added Tax, Individual Income Tax, Enterprise Income Tax, Consumption Tax, the five Social Insurance Contributions and the Pollution Discharge Fee.¹¹⁶⁰ Up to September 2015, these 21 formal taxes are still in place.

Formal taxes usually experience a longer legislative process, where the tax is first regulated by temporary regulations made by the State Council. After the pilot period according to the *Legislation Law*¹¹⁶¹ has passed, the tax may continue to be levied by a new Temporary Regulation or by Legislation made by the National People's Congress or its Standing Committee, or cease to exist. This longer legislative process means the shell-life for formal taxes is longer, and there is a smaller chance of changes to legal requirements, implementation policies and tax rates.

If any lower level government purports to levy an additional amount on top of that permitted by the formal taxes legislation or Temporary Regulation, the levy is illegal because those lower level law-documents will be in conflict with the legislation. If the amounts are not specifically regulated by the formal taxes legislation or Temporary

¹¹⁵⁸ Above note 729.

¹¹⁵⁹ Above note 747, at 15.

¹¹⁶⁰ Above note 811.

¹¹⁶¹ Above note 1033.

Regulation, additional levies may be collected if they are supported by lower level law-documents.

The constitutional structure of the PRC means it is a centralised State, not a federal one. Currently in the PRC, formal taxes are regulated centrally. Different levels of local governments do not have rights to make legislation, they can only undertake minor adjustments to the tax rates of taxes such as the Individual Income Tax, Enterprise Income Tax and the VAT; or minor adjustments to policies of some small tax types (such as Urban Land Usage Tax, Real Estate Tax, etc.).¹¹⁶² The adjustments to tax rates are made within the rate scale that is nominated in the national level law-documents.

Sundry Levies are levies collected by non-tax law-documents, that is, the regulatory law-document does not have the word “tax” in it and the State Administration of Taxation is not the levy administrator. They are compulsory in nature. Therefore they behave like taxes. Often they are collected by Ministerial Rules. The Ministry of Finance sometimes participates in the levying process by being a signatory on the law-document, sometimes it does not.

Most often, central government committees (as part of the State Council) make decisions about whether Sundry Levies should be levied. They appear as government funds, fees and levies in the budget. Sundry Levies are earmarked for a particular type of expenditure. One major problem with having Sundry Levies in the PRC is that the administration of the collection of the levy, and the administration of the expenditure

¹¹⁶² For example, the *Pilot Real Estate Tax Implementation Rule* in Shanghai and Chongqing have different provisions in relation to when the tax applies, and the rates to be applied on the non-primary residence residential real estate. See 《上海市开展对部分个人住房征收房产税试点的暂行办法》 *Temporary Implementation Rule for the Shanghai Pilot on the Levying of Real Estate Tax for Selected Individual Residential Real Estate 2011* (Shanghai People’s Government); and 《重庆市人民政府关于进行对部分个人住房征收房产税改革试点的暂行办法》 *Temporary Implementation Rule for the Chongqing Pilot on the Levying of Real Estate Tax for Selected Individual Residential Real Estate 2011* (Chongqing People’s Government).

from those funds are done by the same functional ministry, or its lower level government departments. This means, there is a lack of independence and transparency in the administration of the earmarked funds. As illustration, Table C-3 in Appendix C is a list of Sundry Levies effective at the end of 2012.

For a long time in the PRC, central government and local governments at each level levied a large amount of revenue by charging funds, fees and levies. The revenue from these items were not listed in the budget for planning and transparency purposes, therefore, they were treated as extra-budgetary funding. Some administrative fees are not collected with an aim to provide government services; or although they aimed to provide government services, the amounts collected exceeded the costs to provide the service; these two types of levies are also Sundry Levies. Some organisations and agencies in their organisational accounts even list the Sundry Levies they administer as part of organisational petty cash.¹¹⁶³

The lack of regulation attached to these fees, funds and levies meant that there was a lack of fiscal supervision by the People's Congresses of each level of government, leading to serious arbitrary levying and careless spending. It does not just create disorder in the transfer payment between levels of governments and income redistribution, it also increases the possibility of corruption.¹¹⁶⁴ For this reason, from 1993, the State Council and the Ministry of Finance began to manage arbitrary levies, repealing a large amount of funds that were not strictly levied by law-documents made according to the *Legislation Law*.¹¹⁶⁵ This process gradually brought government funds and administrative fees into the budgetary management process.

¹¹⁶³ Above note 747.

¹¹⁶⁴ 《国务院关于加强预算外资金管理的决定》 *Decision on Improving Management of Extra-budgetary Funds* 1996 (State Council).

¹¹⁶⁵ Above note 1033.

Sundry Levies now mainly consist of the so called government funds and administrative fees that are levied by the State Council and other authorities by delegated law-documents. In official documents such as the budget, these revenue items are treated as non-tax revenue. From an administrative point of view, this is not inappropriate; but economically, if these levies are in substance taxes, they should be treated as taxes.¹¹⁶⁶

Economically, most government funds and administrative fees have characteristics of taxes, because they are not “fees”, nor returns on capital, nor purchases of goods and services. People who pay the Sundry Levy (fee-payers) cannot directly use facilities that are funded by the funds or fees, therefore the payments by fee-payers are non-compensating. Fee-payers cannot choose how much to pay or when to pay, because the payment is regulated by levying law-documents.¹¹⁶⁷ The Sundry Levies are compulsory, because whenever the levying instance occurs the fee payer has to pay, otherwise they face penalties. The amount or rate of payment is determined by the law-document. As long as the fee-payers have the same circumstances, the levy types and amounts are the same.

The Sundry Levies that appear in the budget are money that government departments or agencies collect from residents in three situations. Firstly, fees levied to provide specific services to residents, or fees collected for the use of specific national resources. Although compulsory, these levies take on user- pays characteristics, they are the price of a service.¹¹⁶⁸ However when some levying agencies levy further administrative fees

¹¹⁶⁶ Huang E and Yang B, ‘Substance over Form? Principle based vs. Rules based drafting? Why doesn't this good theory work in reality in drafting income tax laws? -the difficulties from two different words’, in *Other Governance: Business Regulation in China*, 2010 (Sydney, 2010).

¹¹⁶⁷ A type of red letterhead document.

¹¹⁶⁸ Including passport fees, notary fees, visa fees, normal high school fees, higher education fees, higher education accommodation fees, various examination fees, certificate making fees, property ownership registration fees, waste water testing fees, maritime mediation fees, satellite transformer channel fees, radio channel occupancy fees, telecom numbering resource occupancy fees, farming irrigation water source and equipment occupancy compensation fees, the Yangtze river sand and gravel resources fee, measuring instruments usage fees, patent fees, etc.

above the funding they receive from consolidated revenue, the levies become extra Sundry Levy burdens on residents.

Secondly, compulsory contributions collected by public institutions authorised by governments or their departments to issue licences, registrations, tests and assessments.¹¹⁶⁹ In substance, these compulsory contributions are taxes, because on the one hand, the funding for the operation of these institutions are already sourced from consolidated revenue; on the other hand, the fees calculated for these activities are not based on services, but collected for government regulative and administrative purposes.

Hidden taxes are other economic mechanisms that in effect give rise to government revenue that exhibit characteristics of taxation.¹¹⁷⁰ An example is the agriculture “scissors difference”, where the government buys agricultural goods collectively at prices lower than the market price, but sells farming equipment to farmers at higher than market prices.¹¹⁷¹

5.4.3.2 Fiscal Revenue Types in the PRC According to Administrative Jurisdiction

Administrative jurisdiction here refers to whether the tax is collected by Local Tax Bureaus, or National Tax Bureaus. The literature talks about taxes in the PRC as central and local taxes.¹¹⁷² The central and local distinction does not always mean the same thing. Taxes can be categorised into national taxes and local taxes according to the level of the tax administrative jurisdiction, or according to the destination of revenue. The

¹¹⁶⁹ These compulsory contributions include: automobile safety test fees, foreign law firm annual review fees, ship and shipping equipment testing fees.

¹¹⁷⁰ Above note 747.

¹¹⁷¹ Above note 747.

¹¹⁷² In Chinese, 中央税 and 地方税.

former looks at the revenue side of the budget, and the latter looks at the expenditure side.

The taxes collected and administered by national legislation made by the National People's Congress or its Standing Committee, or Temporary Regulations by the State Council, where the central government controls spending, are national taxes. They are administered by National Tax Bureaus of the State Administration of Taxation. In the budgeting process, national taxes work in the same way as federal taxes in a federal country, such as those listed in the Australian Commonwealth Budget.

Local taxes are taxes levied by national law-documents but administered by the Local Tax Bureaus at each level of government, or Sundry Levies that have tax characteristics that were collected by local government law-documents. Some of these local taxes are exclusively levied to fund local government expenditure needs.

Revenue collected from national taxes has to be remitted to central consolidated revenue, and the central budgeting process appropriates the funds. Local taxes often gets returned directly to the local government area once they entered consolidated revenue. Local governments may appropriate funds in their own budgets.¹¹⁷³

There are also shared taxes, where the National Tax Bureaus and Local Tax Bureaus collect their relevant share of tax revenue. An example is the Value Added Tax (VAT),¹¹⁷⁴ the 75% central share works like national taxes in the budgetary process, the 25% local share works like local taxes.

¹¹⁷³ 《中华人民共和国预算法》 *Budget Law of the People's Republic of China* 2014 (Standing Committee of the National People's Congress).

¹¹⁷⁴ 新华网,《楼继伟:分税制遗留营业税“尾巴”“营改增”倒逼财税改革》, Xinhua Net, 'Lou Jiwei: The Tax Sharing System Left a Business Tax "Tail" "The Business Tax to VAT Reform" Pushes for Fiscal Policy Reform', *Ministry of Finance*, 17 April 2013, <http://www.mof.gov.cn/zhuantihuigu/ygz2013/mtbdygz/201304/t20130417_828738.html> (30 May 2013).

5.4.3.3 The Sources of Tax Laws in the PRC¹¹⁷⁵

From March 2015, Article 8 of the *Legislation Law*¹¹⁷⁶ requires tax laws to be promulgated by the National People's Congress or its Standing Committee.¹¹⁷⁷ Article 9 of the *Legislation Law*¹¹⁷⁸ allows delegation to the State Council to make Administrative Regulations in the form of Temporary Regulations. In addition, an earlier Decision made by the National People's Congress, the *Decision to Delegate to the State Council the Power to Make Provisional Regulation during the Systemic Reform to the Economy and about Issues Arising from the Implementation of the Open Door Policy*¹¹⁷⁹ gives a blanket delegation to the State Council to make law-documents in relation to particular issues is still in place. One of the issues in this blanket delegation is taxation in the period after the implementation of the Open Door Policy.

5.6 Conclusion

Researchers who contributed to the prevailing literature on sustainably funding Urban Old-Age Pensions in the People's Republic of China (PRC) made the presumption that Old-Age Pensions insurance contributions in the Social Insurance Fund formed the only legitimate funding source for Urban Old-Age Pensions. This presumption resulted in the argument that the PRC has a “historical Old-Age Pensions insurance debt”¹¹⁸⁰ problem.

¹¹⁷⁵ Section C.3 in Appendix C lists the important law-documents and their sections in relation to the law making powers in the PRC, including those specific on tax law making powers.

¹¹⁷⁶ Above note 1033.

¹¹⁷⁷ Above note 1033, Art 8, para (6).

¹¹⁷⁸ Above note 1033, Art 8, para (6).

¹¹⁷⁹ 《关于授权国务院在经济体制改革和对外开放方面制定暂行规定决定》 *Decision to Delegate to the State Council the Power to Make Provisional Regulation during the Systemic Reform to the Economy and about Issues Arising from the Implementation of the Open Door Policy* 1985 (National People's Congress). This decision is legislation according to the *Constitution*.

¹¹⁸⁰ 谭喜祥, 《中国养老保险历史债务偿还的法律思考》 Tan X, 'Legal Considerations of the Repayment of the Historical Social Insurance Debt in China' (2005) 146 *Lanzhou Academic Journal* (5) 213.

The presumption did not change from 1997, when research on Urban Old-Age Pensions reform as a result of the issuing of the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pensions Insurance Systems*¹¹⁸¹ was first performed. Around 1997, scholars were researching to prepare for reform, and they assumed that the PRC did not have a practicable set of institutions and fiscal revenue structure, thereby the contributed funds are the only assured source of funding for Old-Age Pensions. The presumption was correct at the time.

The existing academic analysis did not provide reasons for why further reform considerations and sustainable funding analyses persisted with the presumption. Researchers neglected formal institutional developments when presuming that Urban Old-Age Pensions insurance contributions in the Social Insurance Fund was the only legitimate source of funding. The analysis in chapter addresses this gap in the literature by documenting the significant events in formal institutional developments in the PRC, with specific references to Urban Old-Age Pensions.

The post 1949 institutional developments are examined according to time periods marked by events that are significant for Urban Old-Age Pensions reform. This chapter divides the PRC's post 1949 history into three time periods. The first period is the pre Open Door Policy era, that is, 1949 – 1978.¹¹⁸² The second period is the Open Door Policy era, that is, 1978 – 1997.¹¹⁸³ The third period is the Post Open Door Policy era,

¹¹⁸¹ 《国务院关于建设统一的企业职工基本养老保险制度的决定》 *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pensions Insurance Systems* 1997 (State Council).

¹¹⁸² 《中国共产党第十一届中央委员会第三次全体会议公报》 *Communiqué of The Third Plenum of the Eleventh Central Committee of the Communist Party of China* 1978 (The Central Committee of the Communist Party of China); 人民网, 《中共党史上的 80 件大事 (65) 党的十一届三中全会》, *People's net*, '80 Important Events in the History of the Communist Party of China', *people.cn*, 13 June 2001, <<http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488120.html>> (21 Feb. 2016); and 新华网, 《中共十一届三中全会 (1978年)》, *Xinhua Net*, 'The Third Plenum of the Eleventh Central Committee of the Communist Party of China (1978)', *Xinhua Net*, <http://news.xinhuanet.com/ziliao/2003-01/20/content_697755.htm> (21 Feb. 2016).

¹¹⁸³ Woo WT, 'The Real Reasons for China's Growth', (1999) 41 *The China Journal* (January) 115, at 115.

that is, 1997 – present.¹¹⁸⁴ 1997 is significant because it marked the beginning of the reforms that ultimately resulted in the *Social Insurance Law*¹¹⁸⁵ welfare framework in the PRC.

The formal institutions in the PRC evolved along with its country's economic development. Albeit confusing and complicated, the PRC now has a government structure and laws that enable it to look after its peoples' livelihoods. One of the groups that it looks after is the urban elderly.

The building of the legal structure and government structure happened as a reaction to significant events in the PRC's history, where the more material developments occurred as a reaction of marketisation. After nearly 40 years of post-Open Door Policy reforms, formal institutions have developed in the PRC to give it a legal framework that is practicable. Although this framework is still not in essence or in substance¹¹⁸⁶ comparable to those of western developed countries, the framework is allowing effective and efficient implementation of policies,¹¹⁸⁷ execution and administration of laws and compliance of laws.¹¹⁸⁸

During the post Open Door Policy economic and institutional developments, the demography of the PRC has experienced increasing urbanisation. This increase in urbanisation requires the PRC's government to focus policy attention on the finessing of the Urban Old-Age Pensions scheme, with full consideration of its fiscal revenue structure within the formal institution to source funding for the scheme.

¹¹⁸⁴ Ibid.

¹¹⁸⁵ Above note 728.

¹¹⁸⁶ See above notes 845 & 1088.

¹¹⁸⁷ Above note 1027.

¹¹⁸⁸ Above note 1028.

The institutional, legal¹¹⁸⁹ and demographic developments¹¹⁹⁰ in the PRC have facilitated the development of its fiscal policies, and the mechanisms for intergovernmental transfers in the budgeting process.¹¹⁹¹ The next chapter is a fiscal analysis to analyse the possible sources of funds in the PRC's fiscal structure that could contribute to funding Urban Old-Age Pensions.

¹¹⁸⁹ Saich T, 'The Fourth Constitution of the People's Republic of China', (1983) 2 *Review of Socialist Law* 113.

¹¹⁹⁰ See the demographic analysis in Chapter I.

¹¹⁹¹ Wong C, 'Fiscal Reform: Paying for the Harmonious Society', (2010) 14 *China Economic Quarterly* (June 2010) 20; and Wong C, 'Reforming China's Public Finances for Long-term Growth', in Garnaut, R & Song, L eds, *China Update 2013* (Canberra: Australian National University, 2013), 199-219.

Chapter VI Fiscal Analysis

6.1 Introduction

The “empty individual accounts problem” and its solutions was an important component of the prevailing literature. Two gaps in the literature arose in relation to this problem and its suggested solutions, namely, the lack of reasons to explain why individual accounts have to be accounted for separately; and identifying other sources of revenue in the PRC’s fiscal revenue structure to subsidise Urban Old-Age Pensions funding as allowed by the *Social Insurance Law*.¹¹⁹² This chapter utilises a fiscal analysis to address these two gaps.

The institutional analysis in Chapter V showed that legally, the PRC has three types of fiscal revenue. The first type is formal tax revenue regulated by laws made by the National People’s Congress or its Standing Committee, or by Administrative Regulations made by the State Council. These formal taxes are collected by the National or Local Tax Bureaus of the State Administration of Taxation. The second type is Sundry Levy revenue regulated by regulations or rules made by administrative functional ministries, and collected by the regulating ministry or its local government level departments. The third type is hidden taxes. As hidden taxes have mostly disappeared and are difficult to account for,¹¹⁹³ this analysis is only concerned with formal tax revenue and Sundry Levies.

The fiscal analysis reported in this chapter has three steps. Step one identifies Old-Age Pensions as a public good to be funded through the budgetary process in the PRC. It

¹¹⁹² 《中华人民共和国社会保险法》 *Social Insurance Law of the People’s Republic of China* 2010 (Standing Committee of the National People’s Congress).

¹¹⁹³ Yang B and Huang E, ‘Characteristics of the Chinese tax system and its cultural Underpinnings: a comparison with the west’, (2011) 1 *Journal of Chinese Tax and Policy* 13.

emphasises that the legal provisions to make budgets for the payment of Urban Old-Age Pensions in the *Budget Law of the People's Republic of China*¹¹⁹⁴ (*Budget Law*) and the *Social Insurance Law*¹¹⁹⁵ did not specify that Old-Age Pensions are required to be funded by an earmarked revenue source. Earmarking means the matching of the revenue source to the expenditure item.¹¹⁹⁶ The generational contract model in Germany's Old-Age Pension scheme is taken to be the policy benchmark in this analysis.

Step two collates the types of formal tax revenue and Sundry Levies in the PRC and identifies that the PRC could source additional funds from formal taxes, but not from Sundry Levies. This step analyses the ten year fiscal revenue trend in the PRC from 2005 and 2014, that although total revenue and total formal tax revenue are growing, the proportion of total revenue taken by formal tax revenue is decreasing. This trend is significant for the purposes of adequately funding Urban Old-Age Pensions, because Sundry Levies are collected for specific purposes, and could not be otherwise appropriated in the budget.

Step three identifies that the contributions base of Urban Old-Age Pensions Social Insurance Contributions is the same as the Individual Income Tax tax-base for the participants of the Urban Old-Age Pensions Social Insurance scheme. The Individual Income Tax tax-base thereby captures Urban Old-Age Pensions Social Insurance Contributions, and economically, they fall within the same head of revenue. This allows for an argument to be made that if the PRC government wishes to source additional funds from consolidated revenue, Individual Income Tax revenue would be the priority.

¹¹⁹⁴ 《中华人民共和国预算法》 *Budget Law of the People's Republic of China* 2014 (Standing Committee of the National People's Congress).

¹¹⁹⁵ Above note 1192.

¹¹⁹⁶ Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2016 Forthcoming), ch 1.

6.2 Funding for Urban Old-Age Pensions as a Public Good in the PRC's Budget

6.2.1 Old-Age Pension as a Public Good

The PRC government promised to fully fund Old-Age Pensions as part of the people's livelihoods policy aim in the *Twelfth Five-year Plan*.¹¹⁹⁷ This promise entrenched in the *Social Insurance Law*¹¹⁹⁸ suggests that Old-Age Pensions are selected as public goods by the PRC government to be provided for from its public revenue.

General definitions of public goods usually distinguish between pure public goods and publically provided private goods. Pure public goods are perfectly non-rival and non-excludable.¹¹⁹⁹ What this means is that everyone can enjoy the goods freely and each person's enjoyment of the goods does not impact on the enjoyment of another. No one could be excluded from enjoying it without incurring significant costs. For example, air, water and the defence of a State.

Those goods that are not pure public goods, but can only be provided efficiently by governments are usually called publically provided private goods.¹²⁰⁰ They are treated as public goods by economists. This research refers to publically provided private goods as normal public goods, and makes the distinction between pure and normal public goods. The government has to make provisions for the normal public goods because of market failures¹²⁰¹ and the free rider problem. Under-consumption and undersupply are

¹¹⁹⁷ 新华社,《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, Xinhua Press, 'Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People's Republic of China', *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012).

¹¹⁹⁸ Above note 1192.

¹¹⁹⁹ Stiglitz JE, *Economics of the Public Sector*, (New York: W.W.Norton & Company, 3rd ed, 2000), at 132 - 133.

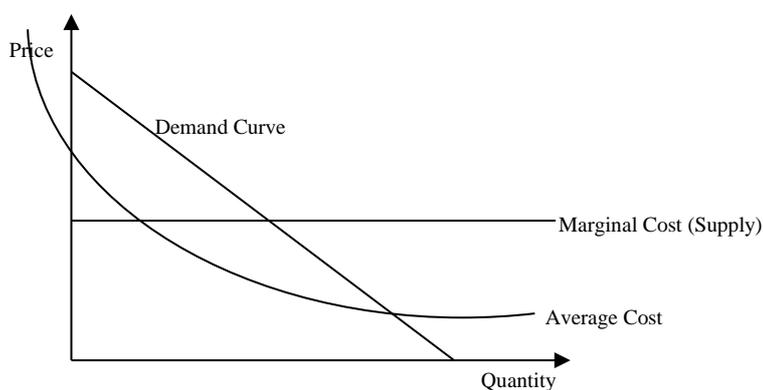
¹²⁰⁰ *Id.*, at 127 - 155.

¹²⁰¹ *Id.*, at 6-8.

the two basic forms of market failure associated with public goods.¹²⁰² If the normal public goods are provided privately, there will be under-consumption and/or undersupply. Governments often place user fees on public goods or goods that resemble public goods to mitigate the free-rider problem, and it is viewed as an equitable means to raise revenue. Free-riders are people who enjoy the goods without having to pay for them. Unlike pure public goods, countries choose the types of normal public goods to be supplied by the government.

Collectively,¹²⁰³ Old-Age Pensions in the PRC exhibit qualities of a normal public good. There is a high marginal cost associated with providing an additional unit, and the government has a natural monopoly because it is the only party that could provide the desirable supply to the economy. The Social Insurance Contributions in the generational contracts model are similar to raising taxes, similar graphs to Figure 6.3 in Stiglitz's *Economics of the Public Sector* could also be drawn for the provision of Old-Age Pensions.¹²⁰⁴ For illustrative purposes, Figure 6-1 reproduces Stiglitz's diagram.

Figure 6-1 Government Natural Monopoly to Provide Old-Age Pension



¹²⁰² Id, at 129.

¹²⁰³ Above note 1197.

¹²⁰⁴ Above note 1199, at 137.

In a welfare economics model¹²⁰⁵, the analysis of Old-Age Pensions Social Insurance as a funding source for Old-Age Pension is similar to the analysis of the funding of other social welfare policies by earmarked taxes that are compulsory Social Insurances. The policy maker identifies the market failure, information asymmetry and the mechanism for income redistribution, and then provide the particular item of the normal public good.

In the PRC, policy makers identified Old-Age Pensions as a normal public good to be provided. It is different from private insurance that pays benefits as a lifetime annuity, because the private insurance market has a transaction based profit motive, where the contract has to specify clearly the insured object, scope, time period and responsibility of parties. In the language of the insurance paradigm, the risk event is “retirement”. This similarity in the language means that the confusion between insurance and Social Insurance apparent in the prevailing literature, and the subsequent choice of the insurance analytical paradigm is understandable.

In private insurance, there is generally a principle of equal exchange for the payment of final benefits when the risk event occurs. As soon as the contract between the insurer and the beneficiary lapses, the insurer’s insurance responsibility ceases to exist.

The PRC has also developed a private tier of pension provision where insurance companies offer lifetime annuity products that are based on current income. These products are similar to Old-Age Pensions Social Insurance schemes up to a certain point – the products are designed around the provision of a pension in retirement and the premiums are designed around working life income. However, the insurance company

¹²⁰⁵ Above note 1199.

has to approximate different risk factors for different levels of payment, then demand different premiums.

If a government's social Old-Age Pension system relies on a private insurance scheme, there will be few policyholders. The market then contracts in size and becomes less able to provide insurance effectively. Since there is information asymmetry, when the insurance company is unable to acquire information based on the probability of different risk factors for different persons, the only possibility is to provide the same policy to each person. However, those policy holders with higher risk factors will be more likely to demand insurance benefits, and these are also the less desirable customers for insurance companies. In order to maximise benefit levels and minimise risk, the insurance company would be more willing to choose customers with opposite characteristics, leading to adverse selection. The existence of this phenomenon means that the private insurance market is unable to solve the conflict between risk uncertainty, profitability and contract stability, because it could not make a profit and provide equal benefits to all retirees. It is also not able to solve the conflict between the long term nature of the insured activity and the short term nature of efficient capital returns sought by the insurance industry. Therefore it is not possible for an effective and efficient private insurance market to provide Old-Age Pensions, as well as health care, unemployment benefits, and work injury compensation.¹²⁰⁶ The market failure is obvious. The government, therefore, has to step in to provide for Old-Age Pension as a normal public good in its policy choice.¹²⁰⁷

The PRC government's policy choice is to have an Urban Old-Age Pensions scheme that covers urban enterprise employees and government employees. This scheme is to

¹²⁰⁶ Above note 1199, at 127 – 155, and 76-90.

¹²⁰⁷ Above note 1199, at 76 - 90.

be partially funded by Old-Age Pensions Social Insurance Contributions. Through compulsory Social Insurance, it is not necessary to consider insurance premium discrepancies between members of the society that have different retirement needs. In the relative long term, it is even possible to achieve a balance between risk and benefit through cross generational capital balance – that is, the generational contracts model.¹²⁰⁸ In times of inflation, the society can provide insurance indexing, which cannot be provided by private insurance companies, in order to inflation proof benefits.

6.2.2 The Generational Contract Pension Funding Model

The requirements in the *Social Insurance Law*¹²⁰⁹ for the PRC government to fully fund Urban Old-Age Pensions, by allowing subsidies from consolidated revenue means that the PRC has chosen to fund Urban Old-Age Pensions through a generational contracts model.¹²¹⁰ The generational contract pension funding model means the current working age population bears the burden of funding Urban Old-Age Pensions for current retirees.¹²¹¹ A brief discussion of Germany's pension funding model illustrates the elements of a generational contracts model.

Germany has the oldest social security system, with pension social insurance laws first issued in 1889.¹²¹² It went through several reforms, and the latest reform was in 1997.¹²¹³ Most countries that have a social insurance as part of their social security

¹²⁰⁸ Verbon HAA, 'Explaining Pay-as-you-go Financed Public Pension Systems' (1988) 28 *Economics Letters* 181; and Veall MR, 'Public Pensions as Optimal Social Contracts', (1986) 31 *Journal of Public Economics* 237.

¹²⁰⁹ Above note 1192.

¹²¹⁰ Above note 1208.

¹²¹¹ Above note 1208.

¹²¹² *Deutsche Sozialversicherung (German Social Insurance)*, Online <<http://www.deutsche-sozialversicherung.de/en/Old-age-Pension/history.html>> (21 Feb. 2012).

¹²¹³ 刘翠霄,《主题研讨 :德国法巡礼-德国社会保障制度》, Liu C, 'Keynote Address: Travel through German Law - The German Social Security System', (2001) *Global Legal Comments* 423, at 424.

system (that included Old-Age Pensions) took the German system as their policy design benchmark.

Germany's pensions are funded through a generational contracts model, also known as the two-overlapping-generations model.¹²¹⁴ What this means is that the current working age population is contributing to fund the Old-Age Pension needs of the currently retired population. This funding model works in a similar way as paying earmarked taxes to fund other public goods supplied by the government. The generational contract Social Insurance model is distinctly different to how normal private insurances are funded: usually participants of private insurance pay premiums to insure against a "risk" event in the future, and the premiums correspond with expected payment levels. Social Insurances are compulsory payments required by laws, they are like taxes.

Liu analysed Germany's social security system.¹²¹⁵ Below is a brief discussion of the German system to give context for the fiscal analysis to collate sources of possible funding for Urban Old-Age Pensions in the PRC.

The German social security system consists of four types of policies: Social Insurance, social compensation, social welfare promotion and social relief, where the Social Insurance is the core.¹²¹⁶ Both social compensation and social relief are social policies that provide a safety net for citizens. Social welfare promotion policies are policies to promote awareness.¹²¹⁷ Social Insurance policies are codified in the *Sozialgesetzbuch*, which is the German Social Code. There are five types of Social Insurances in Germany –occupation accident (which is workers compensation insurance), health, long-term

¹²¹⁴ Above note 1208.

¹²¹⁵ Above note 1213, at 424.

¹²¹⁶ Above note 1213, at 424.

¹²¹⁷ Above note 1213, at 424..

care, Old-Age Pensions and unemployment.¹²¹⁸ This means a compulsory Social Insurance system is an important component of Germany's social security system.

The policy aim of the Old-Age Pensions Social Insurance in Germany, akin to other Social Insurance systems, is based on three principles: the contribution principle, the subsidies principle and the relief principle.¹²¹⁹

Benefits are paid according to the contribution principle, which means if the participant of Old-Age Pensions Social Insurance contributed towards the Social Insurance fund during their working life, they then receive Old-Age Pension benefits calculated based on the amounts contributed. The government provides subsidies¹²²⁰ when the amounts in the Social Insurance fund could not meet pension payment needs.

Benefits are also paid according to the subsistence principle, where the government provides benefits to those who have contributed to society in a special way, such as public servants, victims of wars and soldiers; and compensation for victims of crime and the failure of vaccination. The funding for those benefits is from tax revenue.¹²²¹

Benefits paid according to the relief principle is where an individual is not entitled to receive benefits from Social Insurance, they could receive residual benefits from the safety net, which is also funded by tax revenue.¹²²² Old-Age Pensions "Social Insurance Contributions" in Germany for employees are paid by both the employer and the employee; an employee can participate in voluntary insurance supplied by the

¹²¹⁸ Above note 1213, at 424; and *Deutsche Sozialversicherung (German Social Insurance)*, Online <<http://www.deutsche-sozialversicherung.de/en/old-age-pension/history.html>> (21 Feb. 2012).

¹²¹⁹ 刘翠霄译, 霍尔斯特·杰格尔著, 《社会保险入门:论及社会保障法的其他领域》, Jäger H, *Einführung in die Sozialversicherung und in die sonstigen Bereiche des Sozialrechts mit Schaubildern und Beispielen (An Introduction to Social Insurance and Other Issues Relating to Social Security Law)*, Liu C, trans, (Beijing: China Legal System Press, 2000), at 5.

¹²²⁰ *Ibid.*

¹²²¹ *Ibid.*

¹²²² *Ibid.*

private sector – if their income exceeds the benchmark level. The cost of the voluntary insurance is born by the individual.¹²²³

In Germany, approximately 80% of Old-Age Pension benefits are sourced from the insurance contributions by beneficiaries during their working life.¹²²⁴ The rest is made good by subsidies by the government from consolidated revenue.

There are three types of Old-Age Pensions Social Insurance in Germany: employee, public servants and miners.¹²²⁵ The standard of Old-Age Pension benefits correlate to the income level of the contributor, as the level of contribution is calculated based on the level of income.¹²²⁶

From 1957, Germany's Old-Age Pensions Social Insurance has been funded through a generational contract model, where Old-Age Pensions benefits of the current period are funded by Social Insurance Contributions of the working age population in the current period. The first month's Social Insurance Contributions by any contribution unit¹²²⁷ is saved as a reserve, the rest of the Social Insurance Contributions are invested in short term instruments according to actuarial calculations of the requirements for Old-Age Pensions of the current period.¹²²⁸

¹²²³ Above note 1213, at 424.

¹²²⁴ Above note 1213, at 424.

¹²²⁵ Above note 1219, at 5.

¹²²⁶ Above note 1213, at 424.

¹²²⁷ Here contribution unit refers to the person who Old-age Pensions Social Insurance Contributions are made on their behalf.

¹²²⁸ Above note 1213, at 424.

6.2.3 Old-Age Pensions in the PRC's Budget

The PRC has a “multiple budgets” fiscal structure regulated by the *Budget Law of the People's Republic of China*¹²²⁹ (*Budget Law*). This legislation is made by the Standing Committee of the National People's Congress.

The PRC's national budget consists of four separate budgets: the general public budget,¹²³⁰ the budget for government-managed funds,¹²³¹ the budget for State capital operations,¹²³² and the budget for Social Insurance Funds.¹²³³ Each level of government in the PRC prepares its own budgets.¹²³⁴

For the national budget, the general public budget also includes intergovernmental transfers.¹²³⁵ The funds in the general public budget for the PRC is what is known more commonly as government consolidated revenue.

The government-managed funds¹²³⁶ are earmarked in nature, where the revenue collected are for a specific purpose, these are known as Sundry Levies revenue in the PRC.

The Social Insurance Fund Budget is also regulated by the *Social Insurance Law*.¹²³⁷ Chapter VIII of the *Social Insurance Law*¹²³⁸ requires centralised administration of Social Insurance Contributions, where Article 65¹²³⁹ sets out that the balancing of

¹²²⁹ Above note 1194.

¹²³⁰ Above note 1194, Art 5, and more specifically, Art 6.

¹²³¹ Above note 1194, Art 5, specifically Art 9.

¹²³² Above note 1194, Art 5. More specifically, Art10. State capital operations relate to the government's function as an asset owner. It deals mainly with State Owned Enterprises and sovereign investments. Art 10 made provisions for funds to be transferred from this budget to the general public budget.

¹²³³ Above note 1194, Art 5, and more specifically Article 11. For detailed provisions on the line items of the Social Insurance Funds Budget, see 《国务院关于实行社会保险基金预算的意见》 *Guiding Opinion of the State Council on Implementing a Social Insurance Funds Budget* 2010 (State Council).

¹²³⁴ Above note 1194, Art 3.

¹²³⁵ Above note 1194, Art 6.

¹²³⁶ Above note 1194, Art 9

¹²³⁷ Above note 1192.

¹²³⁸ Above note 1192.

¹²³⁹ Above note 1192.

revenue and payments in the Social Insurance Fund is through the budgets of governments above county level. Governments will subsidise when payment levels exceed funds contributed. This shows that payments of social security, including Old-Age Pension are funded by consolidated revenue, or fiscal revenue of each local government areas. Article 71¹²⁴⁰ sets out that the national government establishes a national social security fund that is funded by the national budget. The funding acts as supplement and adjustment funding for the Social Insurance Fund.

The *Budget Law*¹²⁴¹ mentions the different methods the PRC could source funding for social insurance purposes. These funding sources include arrangements made via the general public budget, that is, subsidies made from consolidated revenue. As required by the *Social Insurance Law*,¹²⁴² a line item called “government subsidies” already exists – listing the separate Social Insurance types in the Social Insurance Funds Budget,¹²⁴³ where an amount is directed to the fund through the general budgeting process. These subsidies are part of the public expenditure that funds Old-Age Pensions. It illustrates that the PRC government, by taking the responsibility to fully fund Urban Old-Aged Pensions, an important component of its policies to look after the elderly, is following tradition where the sovereign is obligated to look after the elderly from general revenue.

Article 64 of Chapter VIII of the *Social Insurance Law*¹²⁴⁴ is the requirement, which specifies that the Social Insurance Fund consists of the separate funds of the five types of Social Insurances – basic Old-Age Pensions, basic health, workers compensation,

¹²⁴⁰ Above note 1192.

¹²⁴¹ Above note 1194, Art 11

¹²⁴² Above note 1192.

¹²⁴³ 《国务院关于试行社会保险基金预算的意见》 *The Decision of the State Council on Piloting a Social Insurance Funds Budget* 2010 (State Council), and above note 1192, Art 65, 66 and 68.

¹²⁴⁴ Above note 1192.

parental and unemployment. The five Social Insurance funds are to be accounted for separately according to national public accounting standards.¹²⁴⁵ The Social Insurance Fund therefore is earmarked. Earmarking means funds collected should not be spent for other purposes. The Urban Old-Age Pensions Social Insurance is one of the line items in the Social Insurance Funds budget as it is a separate Social Insurance type.¹²⁴⁶

6.3 The PRC's Fiscal Revenue Structure

The contributions of Urban Old-Age Pensions Social Insurance is a line item in the PRC's Social Insurance Funds Budget.¹²⁴⁷ These contributions are an integral part of the PRC's fiscal revenue structure. Formal tax revenue and Sundry Levies are analysed in the PRC's fiscal revenue structure to collate the possible sources of funding that could add to the Social Insurance Funds Budget to fund Urban Old-Age Pensions. Formal tax revenue is first analysed through an analysis of the PRC's tax system structure, then it is analysed together with Sundry Levies with reference to a ten year (2005-2014) fiscal revenue trend.

6.3.1 The Tax System Structure of the PRC

6.3.1.1 Terminology: the Components of Taxes

Before analysing the tax system structure in the PRC, it is important to note the component of taxes for definitional purposes. Modern taxes have a few elements, namely jurisdiction, tax base, tax incidence and tax rates.

¹²⁴⁵ Above note 1192.

¹²⁴⁶ Above note 1192.

¹²⁴⁷ Above notes 1194 and 1192.

The Organisation for Economic Co-operation and Development (OECD)'s working definition of taxes¹²⁴⁸ reflects today's views on what a tax is: "a tax is a compulsory unrequited payment to the government".¹²⁴⁹ This definition illustrates that modern taxes are monetised levies by modern governments to satisfy their expenditure needs, which includes the provision of public goods such as the Old-Age Pension that is the focus of this research.

Each country's taxes have to be levied by its government through tax laws made according to the country's constitution.¹²⁵⁰ This tax law making process gives the country the jurisdiction to tax. A country's jurisdiction¹²⁵¹ to tax is based on the sufficient connection¹²⁵² a taxpayer has to that jurisdiction. Sufficient connection can be manifested in the following ways:¹²⁵³

- 1) Based on the citizenship of the taxpayer, that is whether the taxpayer has political allegiance to the jurisdiction; and based on the residency or domicile of the taxpayer, giving the country jurisdiction over the world wide income of the taxpayer. This is to say, people who choose to reside in the country as residents or are born as citizens who reside in the country have tax liabilities to the country, no matter whether their income or property is derived from the country.¹²⁵⁴
- 2) Based on temporary residence of the taxpayer;

¹²⁴⁸ Above note 1199, at 452-453.

¹²⁴⁹ OECD, Centre for Tax Policy and Administration, 'Glossary of Tax Terms', *OECD*, Online <<http://www.oecd.org/ctp/glossaryoftaxterms.htm>> (10 Jul. 2013).

¹²⁵⁰ See Woellner RH, & others, *Australian Taxation Law* (Sydney: CCH, 23rd ed, 2013), at 40-52, for an example on Australia's tax law making.

¹²⁵¹ Above note 1196; and Dirkis M, *Is it Australia's?: Residency and Source Analysed*, (Sydney: Australian Tax Research Foundation, 2005).

¹²⁵² Dirkis M, *Is it Australia's?: Residency and Source Analysed*, (Sydney: Australian Tax Research Foundation, 2005), at 22-24.

¹²⁵³ *Ibid.*

¹²⁵⁴ See an example in s 6 *Income Tax Assessment Act 1936*, for a definition of "resident" in Australia.

- 3) Based on the location of the property or where the income is sourced, this is also called the territorial principle of taxation;¹²⁵⁵ and
- 4) Based on the economic interest or economic allegiance of the taxpayer.¹²⁵⁶

Each tax has a tax base¹²⁵⁷ – directly on income, or indirectly on consumption or wealth that are the results of receiving income.¹²⁵⁸ For example, the Individual Income Tax and Enterprise Income Tax in the PRC are direct taxes; the Value Added Tax (VAT) is an indirect tax. Tax laws legitimise and systematise the compulsory levying of a sum by the government from different tax bases as a response to economic need.

An important tax economic concept is taxable items,¹²⁵⁹ these items specify the scope of the tax base. Tax item as a concept is more important when analysing taxes of the PRC, because the tax scope of different tax types are constantly changing as the economy develops. A good example is the different types of income taxes. Countries such as Australia have a broad income tax tax-base – where the tax laws are global in nature, that is, including all types of income.¹²⁶⁰ Countries such as the PRC employ a more scheduler approach,¹²⁶¹ evidenced by two income tax laws – the *Individual Income Tax Law*¹²⁶² and the *Enterprise Income Tax Law*,¹²⁶³ where the different types of income are listed and taxed differently. Regardless of the type of income tax a country chooses to levy, the tax is levied on net income; that is, the tax base is the same,

¹²⁵⁵ Coleman C, Hart G, Bondfield, B, McKerchar M, McLaren J, Sadiq K & Ting A, *Australian Tax Analysis: Cases, Commentary, Commercial Applications and Questions*, (Sydney: Thomson Reuters, 8th ed, 2011), at 11-47.

¹²⁵⁶ Above note 1252, at 22-24.

¹²⁵⁷ Above note 1196.

¹²⁵⁸ Burgess P, Cooper GS, Stewart M and Vann RJ, *Cooper, Kreyer & Vann's Income Taxation Commentary and Materials*, (Sydney: Thomson Reuters, 7th ed, 2012), at 6-7.

¹²⁵⁹ Above note 1196.

¹²⁶⁰ Auldt HJ & Arnald BJ, *Comparative Income Taxation A Structural Analysis*, (Chicago: Aspen Publishers, 3rd ed, 2010), at 197-198.

¹²⁶¹ *Ibid.* 1260

¹²⁶² 《中华人民共和国个人所得税法》 *Individual Income Tax Law of the People's Republic of China* 2011 (Standing Committee of the National People's Congress), Art 1, para(1).

¹²⁶³ 《中华人民共和国企业所得税法》 *Law of the People's Republic of China on Enterprise Income Tax* 2007 (National People's Congress), Art 1.

but the tax scope is different. Tax scope refers to how broad the reach of the tax is. For example, Australia's Goods and Services Tax is a broad base consumption type VAT.

The next concept is tax incidence. Each tax has a legal and an economic incidence, and they often differ. The legal incidence is what the law states as the object of taxation, and the economic incidence is the tax burden.¹²⁶⁴ Tax incidence is the final resulting tax burden or the ultimate destination of the tax burden. The tax burden can be shifted, but tax burden shifting does have a limit. There is always an economic entity who is unable to shift the tax, therefore making it the incidence of the tax burden.

There are two concepts that are related to the concept of tax incidence: the taxpayer¹²⁶⁵ and tax bearer. The taxpayer is the person¹²⁶⁶ who pays the taxes, that is, the person who is the legal incidence. The tax bearer is the person who bears the tax burden, therefore he or she is where the economic incidence falls. What this means is, when there is tax burden shifting, the taxpayer is not the same as the tax bearer, and the legal incidence differs from the economic incidence. When there isn't tax burden shifting, the taxpayer and tax bearer are the same person, and the legal incidence and economic incidence of taxation are the same.

Each tax has rates.¹²⁶⁷ Depending on the structure of tax rates, a tax can be considered as progressive, proportional or regressive.¹²⁶⁸ A progressive tax takes an increasing proportion of income as taxes when income rises, so that higher income earners pay

¹²⁶⁴ For a full treatment of the incidence of taxation, see Rosen & others, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008), at 305-328; and above note 1199, at 482-517.

¹²⁶⁵ Above note 1196.

¹²⁶⁶ Person refers to both natural and legal persons.

¹²⁶⁷ Above note 1196.

¹²⁶⁸ Woellner RH, & others, *Australian Taxation Law* (Sydney: CCH, 23rd ed, 2013), at 11-12; and Rosen & others, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008), at 307.

more of their income in taxes.¹²⁶⁹ The progressive tax rate can be further classified into full-value progressive rate and marginal value progressive rate.

Full-value progressive rates treat the whole tax base as the basis for progressivity. When the tax base exceeds a certain bracket, the tax rate appropriate for that bracket is applied. Marginal progressive rate treats the amount above the bracket as the basis for progressivity, it applies the tax rate appropriate for the next bracket on the amount exceeding the lower bracket. The tax rate appears to be the same, but the after tax result is different.

A proportional tax takes the same proportion of income at all levels, a tax that is designed to be proportional is also called a flat tax.¹²⁷⁰

A regressive tax is one where a decreasing proportion of income is paid as taxes when the income level increases. Consumption or turnover taxes are usually regressive as the tax base is the amount that is consumed or spent on goods and services.¹²⁷¹

The Individual Income Tax tax-rate scale in the PRC is progressive, and the Old-Age Pensions Social Insurance Contribution acts as a flat tax with a rate of 28% in addition to each bracket of that progressive rate scale.

6.3.1.2 Tax Typologies – Comparing Old-Age Pensions Social Insurance Contributions to Individual Income Tax

There are several ways to classify a tax, these are according to tax base, whether the tax is a specific or ad valorem tax, whether the tax is a direct or indirect tax, whether the tax is an earmarked or non-earmarked tax, and whether the tax is events based or

¹²⁶⁹ Ibid. 1268

¹²⁷⁰ Woellner RH, & others, *Australian Taxation Law* (Sydney: CCH, 23rd ed, 2013), at11.

¹²⁷¹ Ibid. 1270

activity based. Prima facie, the Old-Age Pensions Social Insurance Contribution can be classified according to these categories. These characteristics add to the methodological framework to analyse Urban Old-Age Pensions Social Insurance Contributions as part of the Individual Income Tax tax-base of the urban population in the PRC.

Tax Base Types

There are three main types of tax bases – on consumption, on income and on wealth. Taxes may be broad or narrow based depending on their reach to the taxpayer or the tax incidence,¹²⁷² that is, the specific tax items of the tax type influences the scope of the tax.

Turnover taxes are levied based on the turnover amount (gross sales revenue or the value add, sales volume, acquisition value) of goods and services. The tax burden is borne by the final consumer of the turnover, that is, the tax is levied indirectly on businesses, but passed on to consumers. Therefore the real tax base is consumption.¹²⁷³

Some turnover taxes are: Sales Tax, full value turnover taxes, VAT (often broad based, such as the Goods and Services Tax in Australia and New Zealand),¹²⁷⁴ consumption taxes, the Business Tax in the PRC etc.

Some taxes have different tax bases compared to their nominal tax base (that is, the tax base suggested by its name). For example, the current tax base for the Resource Tax in the PRC is the sales volume of the taxable resource product, although it is an ad valorem (taxed calculated on price), its tax base is still a measure of turnover.

¹²⁷² Above note 1258, at 6.

¹²⁷³ Above note 1258, at 12.

¹²⁷⁴ Above note 1258, at 6.

Income taxes are levied based on the gross income derived by resident or non-resident taxpayers less deductible expenses; in other words, the income for a person which is above the tax free threshold. The income tax therefore is levied based on net income. For example, the Individual Income Tax and Enterprise Income Tax in the PRC. Wealth taxes¹²⁷⁵ (property taxes) are levied based on the stock value (price or quantity) of real or personal property. For example, the Real Estate Tax that is currently being debated in the PRC,¹²⁷⁶ and inheritance taxes.

For tax practitioners, taxes that are levied by the government on income and the stock value of property for specific purposes, or on specific behaviour are called behaviour taxes. Strictly speaking behaviour taxes will fall under one of the above three categories depending on their tax base. For example, the narrowly based Land Tax, or broad based on total wealth.¹²⁷⁷

For urban employees, Urban Old-Age Pensions Social Insurance Contributions in the PRC has the same tax base as the Individual Income Tax.

Specific Taxes and ad valorem Taxes¹²⁷⁸

According to whether the tax base is calculated based on price or quantity, taxes can be classified as specific taxes (on volume) or ad valorem taxes (on price). This tax typology focuses on turnover taxes. It is usually not applied to analyse income taxes.¹²⁷⁹

¹²⁷⁵ Above note 1258, at 6.

¹²⁷⁶ See for example, Long Z & Bao N, 'The Impact of Tax and Non-Tax Policies on Adjusting Housing Prices in China', (2014) 4 *Journal of Chinese Tax and Policy* 73; and Zhu Y, 'The Practical Choice for Real Property Tax Reform', (2014) 4 *Journal of Chinese Tax and Policy* 114.

¹²⁷⁷ Above note 1258, at 6.

¹²⁷⁸ Above note 1196.

¹²⁷⁹ For a discussion of the distinction between specific and ad valorem taxes, please see above note 1199, at 488-490; above note 1258, at 6; and Rosen & others, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008), at 313-314.

Direct Taxes and Indirect Taxes¹²⁸⁰

A tax can be classified as direct taxes or indirect taxes depending on whether the taxpayer and the tax-bearer are the same person, that is, whether the tax burden shifts to another person. Tax burden shifting¹²⁸¹ is the process where the taxpayer is able to, through different means, shift his or her economic tax incidence to another party.

Direct taxes are taxes on individual income, enterprise wealth or individual wealth, where the tax burden cannot be shifted onto another party. Indirect taxes are taxes with the turnover of goods and services as their tax bases, thereby requiring the tax burden to be shifted to a person's income away from the tax base. The Urban Old-Age Pensions Social Insurance Contribution is a direct tax that has some indirect characteristics.

Earmarked Taxes and Non-earmarked Taxes¹²⁸²

Taxes can be classified according to whether they are earmarked or non-earmarked taxes, depending on whether the revenue is used for a specific purpose. The majority of taxes itemised in the general budget¹²⁸³ without a matched expenditure item are non-earmarked taxes. Most non-earmarked taxes are formal taxes.

Earmarked taxes have specialised purposes. For example, in the PRC, after collecting the ship tonnage tax, the revenue is allocated to the Ministry of Transport to be used for specific purposes, such as the construction and maintenance of ports and public signals on sea routes.

¹²⁸⁰ Above note 1196.

¹²⁸¹ Above note 1199, at 482-484.

¹²⁸² Above note 1196.

¹²⁸³ Above note 1194.

In the PRC, there are many fiscal revenue types levied in the names of funds or fees, they are usually Sundry Levies that are in substance earmarked taxes. For example, the Rural Electricity Re-networking Fee is an earmarked tax levied on provincial level Rural Electricity Re-networking Loans;¹²⁸⁴ and the Civil Airport Management and Construction Fee is an earmarked tax levied by the government for airport construction purposes.

In terms of sourcing subsidies, the government cannot source subsidies from earmarked taxes. As the Old-Age Pensions Social Insurance Contribution is contributed towards the Social Insurance Fund to fund Old-Age Pensions, in effect, it is an earmarked formal tax.

Events Based Taxes and Activity Based Taxes¹²⁸⁵

Taxes can be classified as events based taxes or activity based taxes depending on the tax incidence. Events based taxes are taxes that are levied when a taxable activity or transaction occurs. For example, the different types of turnover taxes where tax is levied whenever the taxable transaction occurs; and inheritance taxes and gift taxes, where tax obligation occurs when the property owner dies or gifts the property before death.

Activity based taxes are taxes which are levied on the cumulated outcomes of an activity within a period (the tax period), such as income taxes, where the tax base is the net income, that is, receipts less expenses in the tax period.

¹²⁸⁴ This is the so called “one province, multiple loans” policy (referring to the loans offered by multiple electricity providers for provincial level rural electricity re-networking projects) for electricity users, it is specifically used to repay the principal and interest on rural electricity re-networking loans.

¹²⁸⁵ Above note 1196.

Urban Old-Age Pensions Social Insurance Contributions is levied as an activity based tax – the activity is income earned by urban employees as defined by the *Individual Income Tax Law*.¹²⁸⁶

Summary

For urban employees, it is possible to account for Urban Old-Age Pensions Social Insurance Contributions in their Individual Income Tax tax-base. It has a flat rate and it is an earmarked direct activity based tax that has some indirect characteristics.

They have indirect characteristics because if the elasticity of demand of a certain type of employee is high, it is possible to shift the burden of the contribution of Urban Old-Age Pensions Social Insurance to the employee by lowering their nominal wage levels, thereby lowering their real wages.

6.3.1.3 The Nature of the PRC's Composite Tax System Structure

The PRC has a composite tax system structure dominated by turnover taxes and income taxes. Figure 6-2 below is reproduced from Figure D-1 in Appendix D. It illustrates the percentage proportion of each tax type in the PRC's fiscal revenue structure for 2013. Other taxes represent revenue from Sundry Levies (not including Urban Old-Age Pensions Social Insurance Contributions).

¹²⁸⁶ Above note 1262.

Figure 6-2 2013 Fiscal Revenue Proportions of the PRC (RMB Billion)¹²⁸⁷

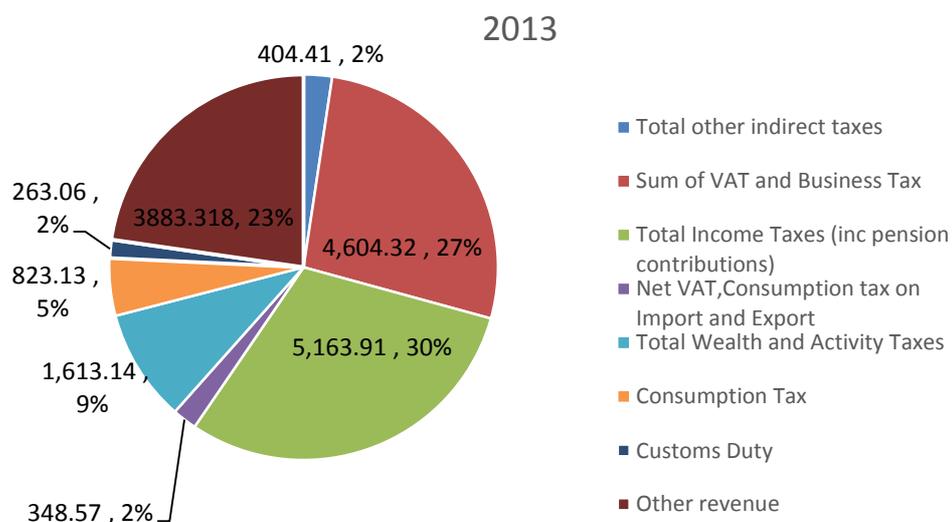


Figure 6-2 shows that total turnover taxes make up 34% of total fiscal revenue; and income taxes including Urban Old-Age Pensions Social Insurance Contributions make up 30% of total fiscal revenue in the PRC. These two major forms of taxes make up 64% of total fiscal revenue in the PRC in 2013. In other words, turnover taxes make up 49% of formal tax revenue, and income taxes including Urban Old-Age Pensions Social Insurance Contributions make up 43% of formal tax revenue. Therefore, the PRC has a composite tax system structure with two dominant tax groups – turnover taxes and income taxes. Together, these two tax types accounted for 92% of formal tax revenue in 2013.

The two major types of turnover taxes in terms of revenue collection are the VAT and the Business Tax. The PRC is currently undergoing a reform of its turnover taxes, and

¹²⁸⁷ Pension Contributions is short for Urban Old-Age Pensions Social Insurance Contributions. Other revenue refers to Sundry Levies.

the VAT and the business tax will gradually merge into a single tax, where the VAT captures the tax base of the Business Tax.¹²⁸⁸

In this fiscal analysis, the tax system structure of the PRC is analysed to determine the major revenue types that additional funding can be sourced to fund Urban Old-Age Pensions in the PRC's budgeting process. Formal taxes are the focus because they are non-earmarked, and are able to be appropriated at the discretion of the government in the budgeting process.

The tax system structure of the PRC demonstrates characteristics of tax system structures dominated by turnover taxes, and tax system structures dominated by income taxes. Appendix G is a detailed analysis of the PRC's tax system structure for the purposes of this fiscal study. It is performed based on the roles different formal taxes play in their contribution to fiscal revenue, and assessments are made according to efficiency, equity, simplicity of collection¹²⁸⁹ and appropriateness.¹²⁹⁰ Appropriateness is a traditional Chinese measure to analyse tax systems. The emperor-centric society allowed by a social contract¹²⁹¹ drawn based on the body of *Li* rules meant taxation was a "way to gather wealth"¹²⁹² by the emperor. One of the most common proposals by ancient Chinese thinkers is for the emperor to "Gather with limit", where the thinkers oppose extorting excessive taxes and levies, and likens policies that do so to drying the pond to gather fish.¹²⁹³ "Light taxes" is an important element of

¹²⁸⁸ 新华网,《楼继伟:分税制遗留营业税“尾巴”“营改增”倒逼财税改革》,Xinhua Net, 'Lou Jiwei: The Tax Sharing System Left a Business Tax "Tail" "The Business Tax to VAT Reform" Pushes for Fiscal Policy Reform', *Ministry of Finance*, 17 April 2013,

<http://www.mof.gov.cn/zhuanjihui/ygz2013/mtbdygz/201304/t20130417_828738.html> (30 May 2013); and 《中华人民共和国增值税暂行条例》 *Temporary Regulation of the People's Republic of China on Value Added Tax 2008* (State Council).

¹²⁸⁹ Smith A, *The Wealth of Nations*, Skinner AS, ed, (London: Penguin Books, 1999), at Book V; and above note 1255, at 6-7.

¹²⁹⁰ Above note 1196.

¹²⁹¹ Rousseau JJ, 'The Social Contract That We Must Always GO Back to an Original Compact', excerpt in Freeman MDA, *Lloyd's Introduction to Jurisprudence*, (London: Sweet & Maxwell, 8th ed, 2008), at 147-150.

¹²⁹² 《管子》 *Guanzi*, <http://so.gushiwen.org/guwen/book_34.aspx> (2 Nov. 2015).

¹²⁹³ *Ibid.*

limit,¹²⁹⁴ and the idea of limit includes a much earlier iteration of the Laffer Curve,¹²⁹⁵ where LI Ao¹²⁹⁶ in the Tang dynasty argued that lighter taxes are better at growing fiscal revenue than heavier taxes.

In summary, the PRC's tax system structure is dominated by the two turnover taxes – business tax and the VAT, and income taxes. The benefits of the business tax, which is a full value turnover tax contributes to the tax system structure is that it is effective in achieving fiscal revenue goals. This was important for the PRC before the current merger between the business tax and the VAT¹²⁹⁷ because the PRC required a pro-revenue tax design model. The current reform to merge Business Tax with the VAT signals that the PRC government now has other policy goals than simply collecting revenue efficiently. As the VAT becomes the only major type of turnover tax, it is relatively simple to collect and administer, the tax system structure of the PRC would be fairer. The income tax¹²⁹⁸ contributes to fairness and efficiency. The VAT and income tax together achieves the tax system design goals of fairness, efficiency, simplicity and appropriateness.

The PRC's tax system structure is currently balancing between ease of revenue collection and equity. The phasing out of the Business Tax means the revenue policy goal is moving away from collecting as much as the government can. The institutional developments achieved in the PRC allows income taxes to play a more dominant role

¹²⁹⁴ 《尧曰》，‘Rao Yue’, in 《论语》Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015); and “百姓足,君孰与不足; 百姓不足,君孰与足”《颜渊》, ‘Yan Yuan’ in 《论语》Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015).

¹²⁹⁵ Laffer AB, ‘The Laffer Curve: Past, Present, and Future’ (2004) *Backgrounder #1765 on Taxes*, <<http://www.heritage.org/research/reports/2004/06/the-laffer-curve-past-present-and-future>> (9 Feb. 2016).

¹²⁹⁶ Above note 1196, ch 4.

¹²⁹⁷ See above note 1288.

¹²⁹⁸ See Wan Y, ‘An Empirical Study of Income Distribution by the Individual Income Tax in the PRC’, *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015); Du L, ‘Measuring the Redistributive Effect of Personal Income Tax Using Generalized Entropy Indexes with an Application to China’, *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015); and Sawyer A, ‘Individual Income Tax Reform in China, New Zealand Experience’, *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015).

in the fiscal revenue structure of the PRC because revenue collection mechanisms are stronger than when the VAT and Business Tax were first recognised as major tax types in the 1994 tax system reform.¹²⁹⁹ This changing nature in the PRC's tax system structure simplifies the process when the government budgets for discretionary spending, which includes budgeting for Urban Old-Age Pensions. This simplification allows the PRC government to budget for Urban Old-Age Pensions transparently from consolidated revenue, giving it access to a larger pool of funds for the funding of Urban Old-Age Pensions. Sustainability assessments of the PRC's Urban Old-Age Pensions scheme could be made with reference to the PRC's whole fiscal revenue that is not earmarked.

Below is a holistic analysis of the PRC's fiscal revenue with the aid of statistics. The analysis includes formal taxes and Sundry Levies, that is, including non-earmarked and earmarked revenue sources. The analysis shows that Sundry Levies still accounts for a large proportion of total fiscal revenue in the PRC. This revenue proportion could not be budgeted for Urban Old-Age Pensions purposes because of their earmarked nature.

6.3.2 Fiscal Revenue Statistics

The fiscal revenue statistics account for total fiscal revenue in the PRC, including Sundry Levies. Sundry Levies in the PRC are made up of fiscal revenue collected by functional ministries and their lower level government departments for specific purposes. They are usually called government funds or administrative fees. Government funds are accounted for in the PRC's budget.

¹²⁹⁹ 《国务院关于实行分税制财政管理体制的决定》 *The Decision of the State Council on Implementing a Tax Split Public Finance Management System* 1993 (State Council).

Although the number of funds and fees are dramatically decreasing, when this research began in 2009, there were still thirty-four types¹³⁰⁰ of government funds, accounting for RMB 422.8 Billion¹³⁰¹ in the budget. When Sundry Levies were re-examined in 2012,¹³⁰² there were still thirty types of government funds, accounting for RMB 3.75 Trillion¹³⁰³ in the budget.

Sundry Levies in the PRC are summarised in Appendix C. Table C-2 lists 2009 Sundry Levies accompanied by their regulating law-document, and levels of fund management; and Table C-3 lists 2012 Sundry Levies.

The statistics collected here relate to the most recent decade – 2005 to 2014. Analysis on 2014 could not be performed because the full set of data is not available as at October 2015.¹³⁰⁴ Appendix D reports in detail the analysis on fiscal revenue statistics of the PRC between 2005 and 2013. This section briefly reports on the fiscal revenue statistics to illustrate the PRC's current fiscal system structure. The change of terminology from tax system structure to fiscal revenue structure takes into account the contribution to revenue by Sundry Levies.

Table D-1 in Appendix D collates statistics on all revenue types in the PRC for 2005 to 2014. Data for 2014 is incomplete as at October 2015. Table 6-1 is an excerpt from

¹³⁰⁰ 《财政部关于公布 2008 年全国政府性基金项目目录的通知》 *Circular on Publishing the List of National Government Funds 2008* (Ministry of Finance).

¹³⁰¹ RMB 422.802 Billion This is approximately AUD 84.56 Billion. Calculated according to the data provided by 财政部, 《关于 2008 年中央和地方预算执行情况与 2009 年中央和地方预算草案的报告——2009 年 3 月 5 日在第十一届全国人民代表大会第二次会议上》, Ministry of Finance, 'Report on the Administering of Central and Local Government Budgets of 2008 and the Central and Local Government Budget Drafts of 2009, to the National People's Congress', *Xinhua Net*, 15 March 2009, <http://news.xinhuanet.com/newscenter/2009-03/15/content_11014326_1.htm> (11 Nov. 2015).

¹³⁰² Above note 1196.

¹³⁰³ RMB 3,753.49 Billion. This is approximately AUD 750.7 Billion. 《关于公布 2012 年全国政府性基金项目目录的通知》 *Circular on Publishing the List of National Government Funds 2012* (Ministry of Finance).

¹³⁰⁴ *Database of the National Bureau of Statistics of China (Chinese Version)*, Online <<http://data.stats.gov.cn/>> (25 Aug. 2015). A limited English version of the data are available at: <<http://data.stats.gov.cn/english/>>. Data assessed for this research came from the Chinese version.

Table D-1. It includes the statistics for 2012 and 2013 to illustrate the complex nature of the composition of fiscal revenue in the PRC.

Table 6-1 Fiscal Income of the PRC 2012 and 2013¹³⁰⁵

Unit: RMB Billion

			2012 (RMB Billion)	2013 (RMB Billion)
Total National Income		National Fiscal Income	11,725.35	12,920.96
		National Tax Income	10,061.43	11,053.07
Indirect Taxes	Turnover Taxes	Domestic VAT	2,641.55	2,881.01
		Consumption Tax	787.56	823.13
		Customs Duty	278.39	263.06
		Business Tax	1,574.76	1,723.30
		Sum of VAT and Business Tax	4,216.32	4,604.32
		VAT and Business Tax as percentage of Total Revenue	28.14%	27.48%
		Sum of Turnover Tax	5,282.27	5,690.51
	Turnover Tax as percentage of Total Revenue	35.26%	33.96%	
	Other Indirect Taxes	City and rural area maintenance development tax	312.56	341.99
		Tobacco Leaf Tax	13.18	15.03
		Vehicle Purchase Tax	39.30	47.40
Sum of Indirect Taxes	Total Indirect Tax	5,647.31	6,094.92	
Imports and Exports	Consumption taxes on Imports and Exports	VAT, Consumption tax on Imported Goods	1,480.22	1,400.46
		VAT, Consumption tax on Exported Goods	(1,042.89)	(1,051.89)
		Net VAT, Consumption tax on Import and Export	437.33	348.57

¹³⁰⁵ Ibid. Data for 2014 is incomplete as at October 2015.

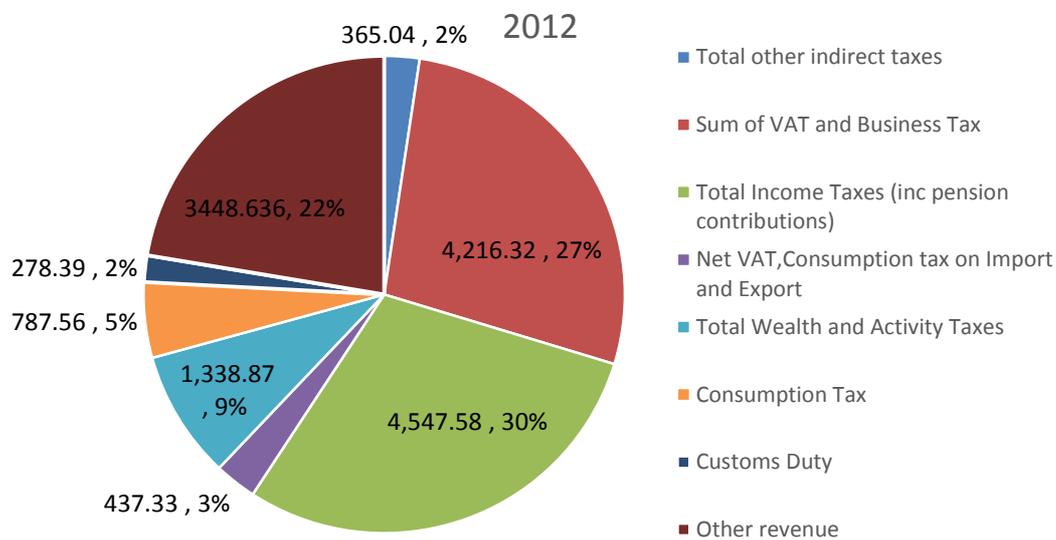
Income Tax	Types of Income Taxes	Enterprise Income Tax	1,965.45	2,242.72
		Individual Income Tax	582.03	653.15
		Pension Insurance Contribution (Revenue Collected)	2,000.10	2,268.04
	Sum of Income Taxes	Sum of Individual Income Tax and Pension Insurance Contribution	2582.128	2921.193
		Individual Income Tax and Pension contribution as a Percentage of Total Revenue	17.23%	17.43%
		Total Income Taxes	4,547.58	5,163.91
		Total Income Tax as Percentage of Total Revenue	30.35%	30.82%
	Individual and Enterprise Income Taxes as a Percentage of Formal Taxes	25.32%	26.20%	
Wealth and Activity Taxes	Real Estate Tax	137.25	158.15	
	Deed Tax	287.40	384.40	
	Arable Land Occupancy Tax	162.07	180.82	
	Urban Area Land Usage Tax	154.17	171.88	
	Land Capital Gains Tax	271.91	329.39	
	Ship Tonnage Tax	4.10	4.36	
	Vehicle and Shipping Tax	222.89	259.63	
	Stamp Duty	98.56	124.44	
	Other tax type	0.52	0.07	
	Total Wealth and Activity Taxes	1,338.87	1,613.14	
Formal Taxes	Total Formal Taxes	9,533.66	10,603.93	
	Total Formal Taxes Plus Pension Insurance Contribution	11,533.76	12,871.97	
Other Fiscal Revenue¹³⁰⁶	Resources Tax	90.44	100.57	

¹³⁰⁶ Other Fiscal Revenue refers to Sundry Levies.

	Deed Tax from Securities Transactions	30.35	46.97
	Non-tax revenue	1,663.92	1,867.89
	National Dedicated Revenue (Earmarked)	323.26	352.86
	National Administrations Fees	457.95	477.58
	Penalty Revenue	155.98	165.88
	Other revenue	726.73	871.57
Total	Total	14,982.40	16,755.29
	Proportion of Formal Tax	76.98%	76.82%
Note: National Fiscal Income does not Include Domestic and Foreign Debt Incomes			
Total government expenditure		12,595.30	14,021.21

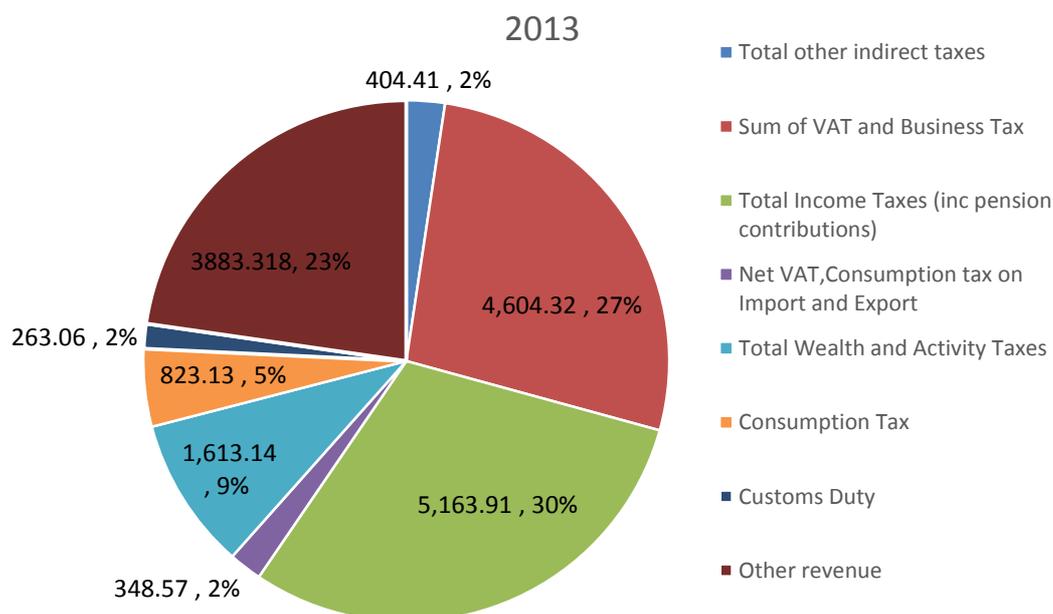
Figures 6-3 and 6-4 are reproduced from Figure D-2 in Appendix D. They are pie charts that illustrate the composition of fiscal revenue in 2012 and 2013 to present an image of the fiscal revenue structure of the PRC in recent years.

Figure 6-3 Fiscal Revenue Structure of 2012 (RMB Billion)¹³⁰⁷



¹³⁰⁷ Pension Contributions is short for Urban Old-Age Pensions Insurance Contributions. Other revenue refers to Sundry Levies.

Figure 6-4 Fiscal Revenue Structure of 2013 (RMB Billion)¹³⁰⁸



Total revenue in the PRC significantly increased every year from 2005 to 2013. Figure 6-5 below is reproduced from Figure D-1 of Appendix D. It illustrates this increasing trend. The composition of revenue, however, changes each year, and the proportion of fiscal revenue that is sourced from formal taxes has decreased in the decade. This decrease is significant as it represents a decrease in the proportion of revenue for discretionary expenditure, as well as the increase in revenue that is not administered independently by the tax authority in the PRC’s institutional structure. It also means that the statistics on Sundry Levies, that is the revenue not administered by the tax authorities are harder to verify, further signaling the importance of focusing on formal taxes in the budgeting process.

¹³⁰⁸ Ibid. Data for 2014 is incomplete as at October 2015.

Figure 6-5 Total Fiscal Revenue (RMB Billion)

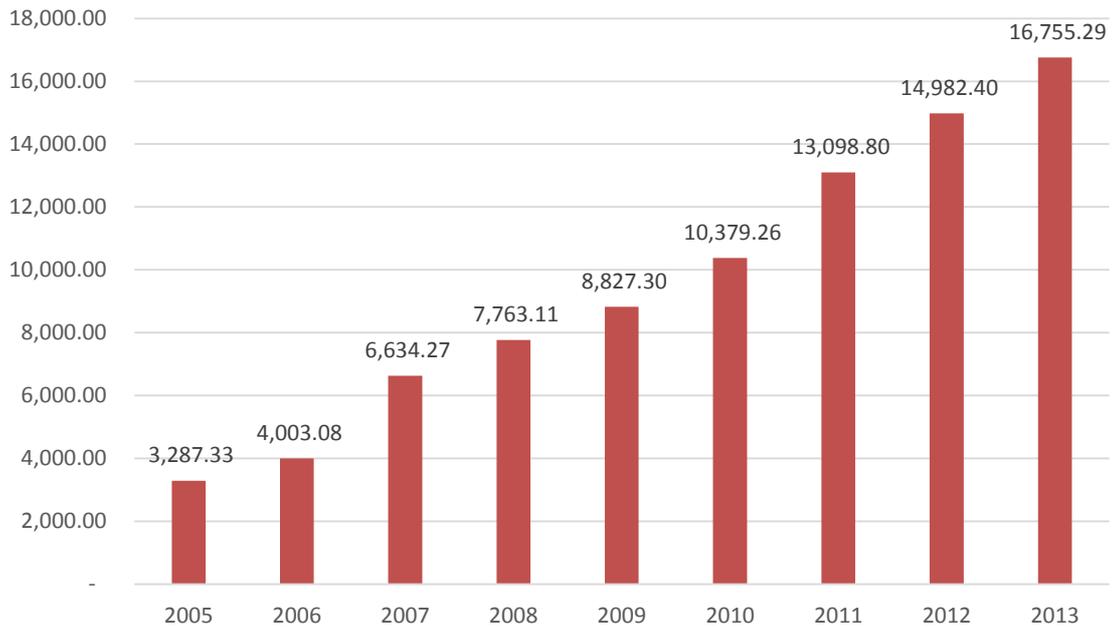


Figure 6-6 and 6-7 are reproduced from Figure D-2 and Figure D-4 in Appendix D. They illustrate the trends of income sourced from the two dominant tax types in the PRC.

Figure 6-6 Trend in VAT and Business Tax Revenue (RMB Billion)

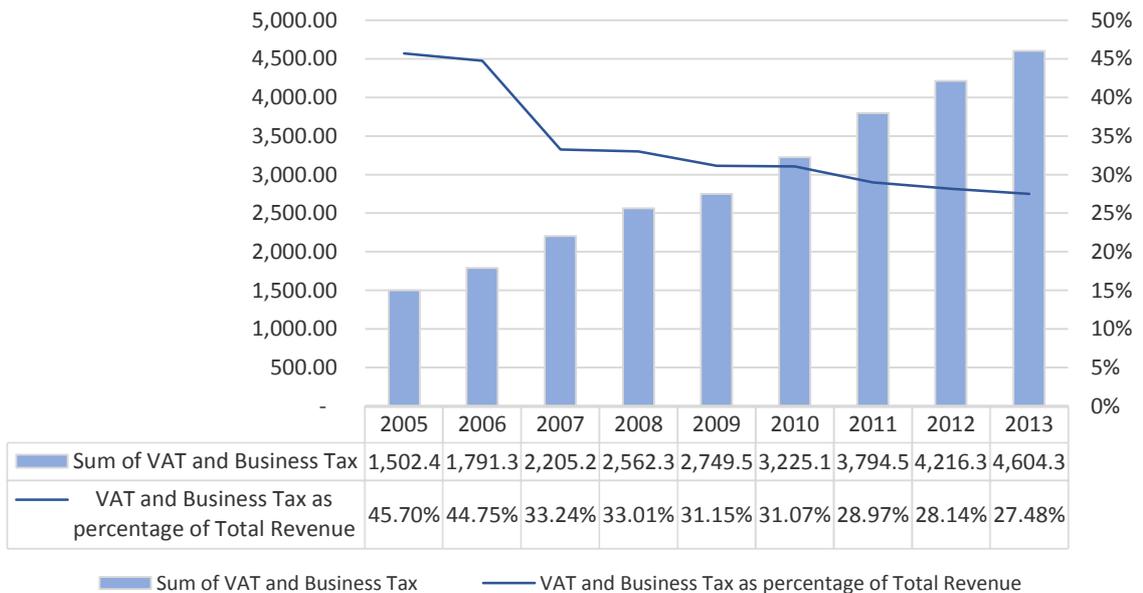


Figure 6-6 illustrates that total revenue from the VAT and Business tax is increasing, but its contribution to total fiscal revenue is decreasing. This means the PRC is relying less on these two major types of turnover taxes for its fiscal revenue needs.

Figure 6-7 Trend in Income Tax Revenue – including Urban Old-Age Pensions Social Insurance Contributions (RMB Billion)

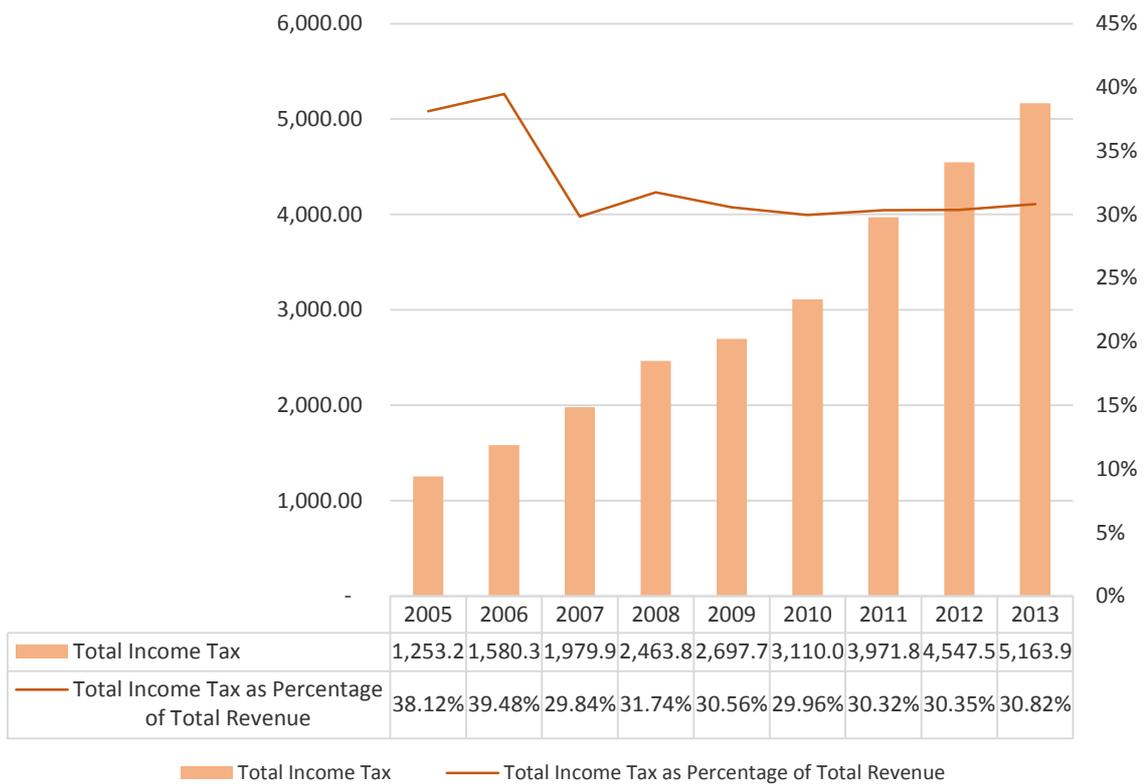


Figure 6-7 illustrates that total revenue from income taxes (including Old-Age Pensions Social Insurance Contributions) is increasing significantly during the data period, but its contribution to total fiscal revenue is decreasing. This means the PRC is also relying less on income taxes for its total fiscal revenue needs.

Figure 6-8 Trend of Formal Taxes Revenue (RMB Billion)

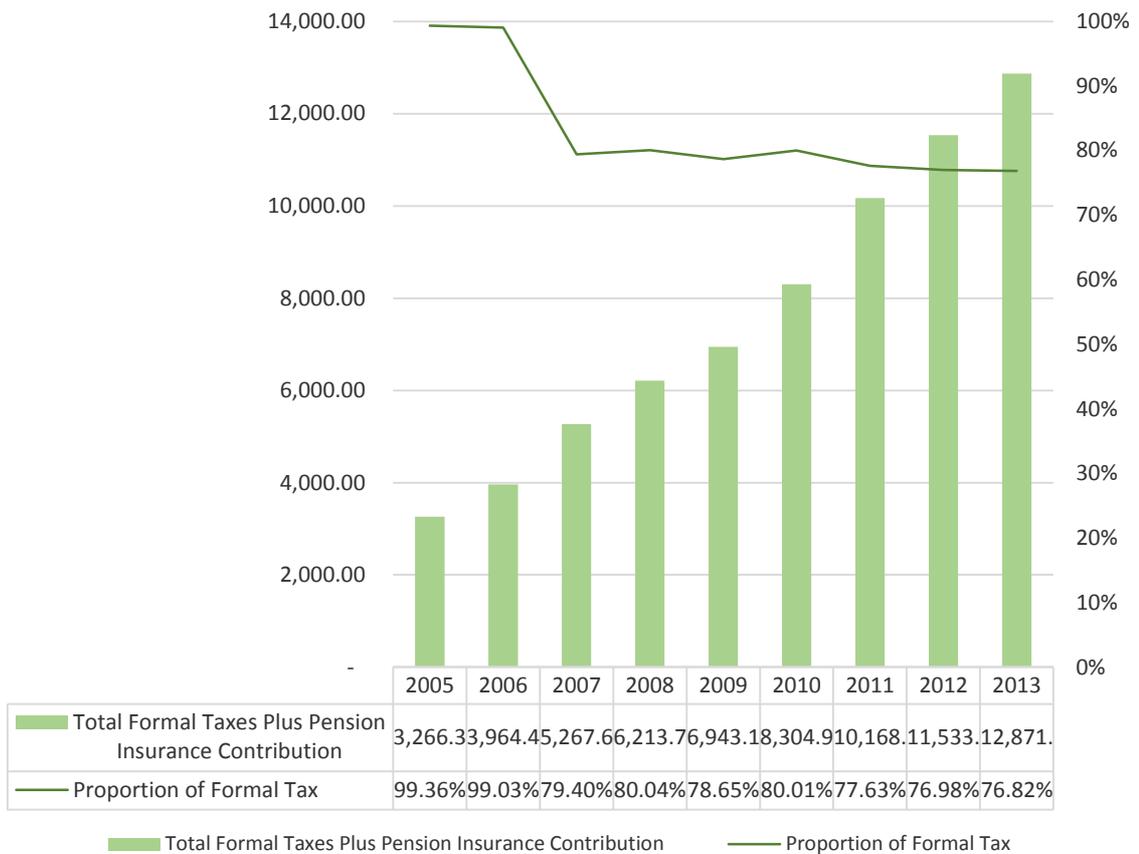


Figure 6-8 illustrates the decreasing trend in the proportion formal taxes are contributing to total fiscal revenue in the PRC. This means Sundry Levies are contributing more to fiscal revenue. As explained above, Sundry Levies are not administered independently by the State Administration of Taxation. This trend in the PRC’s fiscal revenue structure means the PRC is sourcing more fiscal revenue from earmarked Sundry Levies. The government cannot source subsidies from these earmarked Sundry Levies to fund Urban Old-Age Pensions.

6.4 Capturing Urban Old-Age Pensions Social Insurance into the Tax Base of Individual Income Tax for Urban Employees

6.4.1 The PRC's Individual Income Tax Tax-base in its Tax System Structure

The Individual Income Tax is a tax on income, its legal and economic incidences are the same – the individual's annual income, therefore the tax bearer and the taxpayer are the same. This section identifies the nature, jurisdiction, taxpayer and tax rates of the Individual Income Tax in the PRC, in order to provide context for capturing the Urban Old-Age Pensions Social Insurance Contribution into the tax base of Individual Income Tax.

6.4.1.1 The Scheduler Nature of the Individual Income Tax in the PRC

The PRC has a scheduler income tax structure with two income taxes, namely the Individual Income Tax and the Enterprise Income Tax. The Individual Income Tax is itself a scheduler income tax,¹³⁰⁹ where different types of individual incomes are taxed in a different manner. Article 2 of the *Individual Income Tax Law of the People's Republic of China*¹³¹⁰ stipulates 11 types of taxable income for an individual.

Income computation is regulated by Article 6.¹³¹¹ How Individual Income Tax is computed is prescriptive in the PRC' laws. Paragraph (1) of Article 6 deals with the income of wages and salary earners, which corresponds to paragraph (1) of Article 2.¹³¹²

¹³⁰⁹ 马海涛主编,《中国税制》,Ma H, ed, *China's Tax System*, (Beijing: China Renmin University Press, 3rd ed, 2007), at 171; and 钱淑萍主编,《税收学》,Qian S, ed, *Taxation Studies*, (Shanghai: Shanghai University of Finance and Economics Press, 2005), at 307-309.

¹³¹⁰ Above note 1262.

¹³¹¹ Above note 1262.

¹³¹² These two articles are reproduced in Appendix E. Above note 1262.

The paragraph prescribes a statutory deduction of RMB 3,500 per month, this is equivalent to an annual tax free threshold of RMB 42,000¹³¹³ for resident wages and salary earners. Taxpayers whose annual income do not exceed this level do not have to pay Individual Income Taxes, but the *Social Insurance Law*¹³¹⁴ requires Urban Old-Age Pensions Social Insurance Contributions to be paid on behalf of them as soon as they start earning income.

6.4.1.2 The Jurisdiction and Taxpayer of the Individual Income Tax in the PRC

The PRC chooses to use residence and source as the basis for determining sufficient connection¹³¹⁵ for its tax jurisdiction. Therefore there are two types of taxpayers according to jurisdiction – the resident and non-resident taxpayers.¹³¹⁶ For the purposes of this study, jurisdictional issues for Urban Old-Age Pensions Social Insurance Contributions are taken to be the same as the Individual Income jurisdiction for wage and salary earners. Table 6-2 illustrates how income is taxed for residents and non-residents of the PRC for income tax purposes.

¹³¹³ This is approximately AUD 8,400 per annum.

¹³¹⁴ Above note 1192.

¹³¹⁵ Above note 1252, at 22-24.

¹³¹⁶ Above note 1196, ch 19.

Table 6-2 Tax Responsibility of Individual Income Tax on Wages and Salaries of Residents and Non-residents

	Income derived onshore (Onshore working periods)		Income derived offshore (Offshore working periods)	
	Payment Onshore	Payment Offshore	Payment Onshore	Payment Offshore
Below 90 (183) days	Taxable	Exemption	Exemption	Exemption
90 (183) Days - 1 year (275 days) ¹³¹⁷	Taxable	Taxable	Exemption	Exemption
1 - 5 years	Taxable	Taxable	Taxable	Exemption
Over 5 years – PRC tax residents	Taxable	Taxable	Taxable	Exemption

Jurisdictional issues are regulated by Article 1 of the *Individual Income Tax Law of the People's Republic of China*.¹³¹⁸ The practical issues of tax residence means that the provisions in Article 1 are not enough. Domicile in Paragraph 1 of Article 1 is further defined to mean individuals who habitually reside in the PRC in relation to their residence registration (*Hukou*), family ties or economic interests.¹³¹⁹

“Habitual place of residence” is an important concept to distinguish whether an individual is a tax resident of the PRC. The State Administration of Taxation of the PRC in a Circular¹³²⁰ defines “habitual place of residence” to mean the place an individual returns to when the purpose to reside elsewhere ends. These purposes include study, employment or visiting family. It doesn't mean the actual place of residence, or the place of residence of a particular time. What this means is, if a Chinese individual has to return to the PRC after the study, employment or the visit to family finishes, the PRC is the person's “habitual place of residence”.¹³²¹

¹³¹⁷ The 275 days take into account the time the non-Chinese resident spends outside of the PRC.

¹³¹⁸ Above note 1262.

¹³¹⁹ 《中华人民共和国个人所得税法实施条例》 *Regulation for the Implementation of the Individual Income Tax Law 2015* (State Council), Art 2.

¹³²⁰ 《关于印发〈征收个人所得税若干问题的规定〉的通知》 *Announcement to Circulate the 'Decision on A Few Issues Relating to the Collection of Individual Income Tax'* 1994 (State Administration of Taxation).

¹³²¹ *Ibid.*

The *Regulation for the Implementation of the Individual Income Tax Law*¹³²² clarified “residing for one year” in more detail. The “year” refers to a calendar year, and the calendar year is deemed to have 365 days. Temporarily leaving the PRC is considered as residing in the PRC, those days outside of the PRC are not subtracted from the 365 day calendar year. The *Regulation*¹³²³ defined “temporarily leaving the PRC” as leaving for no more than 30 days in one trip, or no more than 90 days in total, within the calendar year. Once the individual has resided in the PRC for more than five years, income from all sources are taxable from the sixth year of residence.¹³²⁴

The *Implementation Regulation*¹³²⁵ also regulates Individual Income Tax for taxpayers who are non-PRC residents, but have resided in the PRC for more than one year, their taxable income includes worldwide income. Non-PRC residents who have resided in the PRC for more than one year, but less than five years are liable for Individual Income Tax arising from wages and salaries that have world-wide source, but only during the time they are in the PRC. During the time they temporarily leave the PRC, only wages and salaries sourced from the PRC are taxable.

The Ministry of Finance in a Circular clarified that residing in the PRC for more than five years means an individual resided in the PRC continuously for five years, and for the full year of every year.¹³²⁶ For a non-resident,¹³²⁷ the PRC’s *Individual Income Tax Law*¹³²⁸ prescribes that income with a PRC source are taxed. Different provisions

¹³²² Above note 1319, Art 3.

¹³²³ Above note 1319, Art 3.

¹³²⁴ Above note 1319, Art 6.

¹³²⁵ Above note 1319, Art 3.

¹³²⁶ 《关于在华无住所的个人如何计算在华居住满五年问题的通知》 *Circular on How to Calculate the Five Years of Residence in the People’s Republic of China by Non-residents* 1995 (Ministry of Finance and the State Administration of Taxation).

¹³²⁷ Defined by above note 1262, Art 1, para 2. It is the opposite of resident.

¹³²⁸ Above note 1262.

for the types of income in the schedule in Article 2 are prescribed in the Circular¹³²⁹ and Article 5 of the *Implementation Regulation*.¹³³⁰

Special rules and double tax agreements with different countries vary the residence and source rules in the PRC,¹³³¹ giving rise to the 90 days and 183 days rules for temporary residents.¹³³²

Urban Old-Age Pensions policies are developed to look after the urban elderly who are residents for income tax purposes. This analysis focuses on Individual Income Tax provisions for residents.

6.4.2 The Income Tax Model to Capture Urban Old-Age Pensions Social Insurance Contributions into the Individual Income Tax Tax-base

This research focuses on the Urban Old-Age Pensions scheme because the PRC continues to urbanise at an increasing rate. The number of participants in the Urban Old-Age Pensions scheme will grow as a consequence. The generational contract pension funding model means the current working age population bears the burden of funding Urban Old-Age Pensions for current retirees. The Urban Old-Age Pensions Social Insurance Contributions is ultimately calculated based on the individual income of the employee. Therefore Old-Age Pensions Social Insurance Contributions add onto their Individual Income Tax tax-burden. This section performs an income tax analysis

¹³²⁹ Above note 1320.

¹³³⁰ See above note 1319, Art 5.

¹³³¹ Above note 1319; and 《关于对临时来华人员按实际居住日期计算征免个人所得税若干问题的通知》 *Circular on Issues Relating to Calculating Actual Days of Residence for the Purposes of Individual Income Tax for Temporary Residents in the People's Republic of China* 1988 (Ministry of Finance and the State Administration of Taxation).

¹³³² See above note 1319; and 《关于对临时来华人员按实际居住日期计算征免个人所得税若干问题的通知》 *Circular on Issues Relating to Calculating Actual Days of Residence for the Purposes of Individual Income Tax for Temporary Residents in the People's Republic of China* 1988 (Ministry of Finance and the State Administration of Taxation).

to capture Urban Old-Age Pensions into the Individual Income Tax tax-base for urban employees.

The model is based on a tax incidence analysis and an effective marginal income tax rate analysis. Section 6.4.2.1 explains the income tax model as the methodology used in this analysis. Section 6.4.2.2 identifies that the Old-Age Pensions Social Insurance Contribution's contributions base is the same as the Individual Income Tax tax-base for urban employees. Section 6.4.2.3 then performs an Average Income Tax Rate and an Effective Marginal Income Tax Rate analysis to illustrate how the Individual Income Tax captures Urban Old-Age Pensions Social Insurance Contributions into its tax base; and effectively, the magnitude of the increase in tax burdens for urban employees.

6.4.2.1 Income Tax Analysis Methodology

The methodology of this analysis is adapted from the income tax theories proposed by Edgeworth¹³³³ and Stern¹³³⁴ and the optimal income tax model proposed by Mirrlees.¹³³⁵ These theories are the basis for performing income tax analyses on public policies. They are integral parts of the public economics and tax economics literature.¹³³⁶ A brief summary of the three theories is included in Appendix E.

¹³³³ Edgeworth FY, 'The Pure Theory of Taxation', (1897) 7 *The Economic Journal* (25) 46.

¹³³⁴ Stern NH, 'On The Specification of Models of Optimum Income Taxation', (1976) 6 *Journal of Public Economics* 123.

¹³³⁵ Mirrlees JA, 'An exploration in the theory of optimal income taxation', (1971) 38 *Review of Economic Studies* 175; and Mirrlees JA, 'Optimal tax theory: A synthesis', (1976) 6 *Journal of Public Economics* 327.

¹³³⁶ See for example, the following well known texts: Kaplow L, *The Theory of Taxation and Public Economics*, (Princeton and Oxford: Princeton University Press, 2008); Rosen, HS & Gayer T, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008); Stiglitz JE, *Economics of the Public Sector*, (New York: W.W.Norton & Company, 3rd ed, 2000); and 萨拉尼、伯纳德著,陈新平、王瑞泽、陈宝明、周宗华译,《税收经济学》, Salanié B, *The Economics of Taxation*, Chen X & others, trans, (Beijing: China Renmin Press, 2009).

6.4.2.2 Tax Incidence of Urban Old-Age Pensions Social Insurance Contributions and its Effective Tax base

Each tax has a legal tax incidence and an economic tax incidence. The following analysis is interested in the economic incidence of Urban Old-Age Pensions Social Insurance Contributions. The Social Insurance Contributions are treated as *prima facie* formal taxes in the PRC, because the contributions are requirements of the *Social Insurance Law*,¹³³⁷ which is legislation promulgated by the Standing Committee of the National People's Congress; and the levy of the contributions are administered by the Local Tax Bureaus of the State Administration of Taxation. This analysis aim to illustrate how the effective tax base of the Urban Old-Age Pensions Social Insurance Contributions is the same as the Individual Income Tax tax-base for the urban population.

Methodologically, the analysis is performed according to the partial equilibrium model of tax burden analysis. Tax burden and how it shifts within an income tax framework is a good indicator of where the economic incidence of the tax actually lies.

6.4.2.2.1 Brief Explanation of the Partial Equilibrium Analysis

Partial equilibrium¹³³⁸ analysis is a method of analysis focusing on a single market with a single consumer and a single supplier, assuming that market participants have no impact on each other. In recent decades, this method of analysis has received much criticism because it could not reflect and illustrate the complex relationships between

¹³³⁷ Above note 1192.

¹³³⁸ Above note 1199, at 505-510; and Rosen, HS & Gayer T, *Public Finance*, (Beijing: McGraw-Hill Companies, Inc. & Tsinghua University Press, 8th ed, 2008), at 309-321.

market participants in real life. It is, however, an effective model in illustrating economic tax incidence and tax burden shifting.

Price elasticity of demand and supply in the market is the key to evaluate tax burden shifting in a partial equilibrium model. For the purpose of Urban Old-Age Pensions Social Insurance Contributions, that is, to understand its tax incidence, the market is the labour market. In the labour market for Urban Old-Age Pensions purposes, the demand of labour is from urban employers, the supply from the urban working age population, and the price is wages. If the elasticity of demand of a certain type of employee is high, the burden of the contribution of Old-Age Pensions Social Insurance can be shifted to the employee by lowering their nominal wage, thereby lowering their real wage.

6.4.2.2 Incidence of Urban Old-Age Pensions Social Insurance Contributions

The following brief partial equilibrium analysis¹³³⁹ is an illustration of how burden shifting with regard to price (income) elasticity happens in relation to Urban Old-Age Pensions Social Insurance Contributions.

Demand elasticity is the elasticity of demand relative to price, which is the degree of responsiveness of the quantity demanded according to price change.¹³⁴⁰ The specific form of price elasticity here is the taxable income elasticity. Analysis is the same as a normal elasticity function.¹³⁴¹ The elasticity of demand is measured by the Price Elasticity Quotient of Demand E_{dp} :

$$E_{dp} = \frac{\Delta Q}{Q} \div \frac{\Delta P}{P} = \frac{\Delta Q}{\Delta P} \times \frac{P}{Q}$$

¹³³⁹ Above note 1196, ch 6.

¹³⁴⁰ Above note 1196, ch 6.

¹³⁴¹ For further discussion about taxable income elasticity, please see Kaplow L, *The Theory of Taxation and Public Economics*, (Princeton and Oxford: Princeton University Press, 2008), at 82-90.

E_{dp} = price elasticity of demand

Q = Quantity Demanded,

ΔQ = Changes in Quantity Demanded,

P = Price,

ΔP = Changes in Price,

$\Delta Q/Q$ = Quantity Demanded Change Index.

$\Delta P/P$ = Price change quotient.

When $E_{dp} > 1$, the elasticity of demand is high, reflecting that the changes in quantity demanded is greater than changes in price, or that the consumer (here the employer) is sensitive to changes in price (here wage levels). The lowering of the price will lead to a larger increase in consumption quantity (number of employee hours). Also, price increases will lead to a larger decrease in consumption quantity.

When $E_{dp} < 1$, the elasticity of demand is low, reflecting that the consumer is not sensitive to price changes.

When $E_{dp} = 1$, demand is unit elastic where price changes leads to the same changes in quantity.

When $E_{dp} = \infty$, demand is perfectly elastic, reflecting a theoretical extreme, where the smallest change in price will lead to extreme changes in consumption quantity – a tiny decrease in price will lead to unlimited demand, and a tiny increase in price will lead to no demand.

When $E_{dp} = 0$, demand is not elastic, which means no matter how prices change, quantity demanded does not change.

Assume that the price elasticity of supply and other conditions do not change, then the more sensitive quantity demanded is relative to price changes (that is, a higher E_{dp}), the more difficult for the taxpayer to forward shift the tax burden to the purchaser or consumer through raising the price. To the contrary, the less sensitive quantity demanded is relative to price changes, (that is, a smaller E_{dp}), the easier it is to forward shift the tax burden. Within the employment relationship, what this means is that the burden of Urban Old-Age Pensions Insurance Contributions can be forward shifted to the employee, when the price elasticity of demand for that type of employee is high. For the majority of employment relationships, a high price elasticity of demand can be assumed, this research assumes this high E_{dp} .

As the urban economy continues to grow, it is likely that the price elasticity of supply of labour from the majority of urban employees will be lower than the price elasticity of demand. The burden of the Social Insurance Contributions actually fall on the employee when the employer designs their remunerations options. This research therefore assumes demand elasticity is higher than supply elasticity for the urban population, and tax burden shifting of Urban Old-Age Pensions Social Contributions occurs. The employee bears the burden of the contributions, therefore the economic tax incidence of Urban Old-Age Pensions Social Insurance Contributions for urban employees is on the employee. This makes the tax incidence equal to that of Individual Income Tax for those urban employees, which means the Individual Income Tax tax-base captures Urban Old-Age Pensions Social Insurance Contributions.

6.4.3 Impact of Urban Old-Age Pensions Social Insurance Contributions on the Individual Income Tax Burden of Urban Employees

The following analysis calculates the actual changes in the Individual Income Tax tax-burden of urban employees, after including Urban Old-Age Pensions Social Insurance Contributions into the Individual Income Tax tax-base. The analysis is performed by ascertaining the effective marginal tax rate after the changes to the tax base, according to the theories proposed by Edgeworth, Stern and Mirrlees.¹³⁴²

6.4.3.1 Assumptions and Data Selection

Urban Old-Age Pensions benefits are for domestic retirees. For the purposes of calculating Effective Marginal Tax Rate and Average Tax Rate as a result of Urban Old-Age Pensions Social Insurance Contributions by urban employees, this research assumes a closed economy. Resident Individual Income Tax tax-rates are used.

Calculations are performed using both the before and after Individual Income Tax reform income brackets and tax rates. Analysis is only performed on wage and salary income because contributors are employers on behalf of employees, and not on other individual income types, such as business income and income of sole traders. The same inference can be drawn when analysis are performed with regards to the international sector, by using non-resident Individual Income Tax tax-rates;¹³⁴³ and the same inferences can be drawn when analysis is performed on tax rates of other types of individual income. It is assumed that the Urban Old-Age Pensions Social Insurance

¹³⁴² See Appendix E for theoretical discussion.

¹³⁴³ The *Social Insurance Law* does provide for contributions and Old-age Pension of foreign employees, or retirees who have participated in basic Old-age Pension insurance who have migrated overseas. Above note 1192.

Contribution's contribution burden can be forward shifted to employees due to high elasticity of labour demand.

Calculations are performed by incorporating the rates from Tables 6-1 or 6-2 and the contribution rates stipulated by the *Proposal to Pilot Improvements to the Urban Social Security System*¹³⁴⁴ issued by the State Council in 2000. The reason to use both the before and after reform rates is because the *Social Insurance Law*¹³⁴⁵ took effect in 2010, which was during the Individual Income Tax tax-rates reform process.

The *Proposal*¹³⁴⁶ stipulated that enterprises contribute an amount of Urban Old-Age Pensions Social Insurance equivalent to 20% of the employee's total wage income to the Social Contributions Account, and income redistribution occurs at the provincial level. The employee contributes an amount of Old-Age Pensions Social Insurance equivalent to 8% of the individual's wage income to the individual's Individual Contributions Account. Since the Social Insurance Contributions burden can be forward shifted to the employee, this analysis combines the employer and employee contribution rates, the total rate is 28%.

Table 6-3 is adapted from the pre-reform Resident Marginal Individual Income Tax Rate Table.¹³⁴⁷ Table 6-4 is adapted from the post-reform Resident Marginal Individual Income Tax Rate Table.¹³⁴⁸

¹³⁴⁴ 《完善城镇社会保障体系试点方案》 *Pilot Proposal on Improvements to the Urban Social Security System* 2000 (State Council).

¹³⁴⁵ Above note 1192.

¹³⁴⁶ Above note 1344.

¹³⁴⁷ 《中华人民共和国个人所得税法》 *Individual Income Tax Law of the People's Republic of China* 1993 (Standing Committee of the National People's Congress).

¹³⁴⁸ 《关于修改〈中华人民共和国个人所得税法〉的决定》 *Decision to Amend the Individual Income Tax Law of the People's Republic of China* 2011 (National People's Congress).

6.4.3.2 Adapting the Rate Tables from the Individual Income Tax Law

The *Individual Income Tax Law*¹³⁴⁹ regulates tax rates by referring to a general deductions amount. This format is difficult to apply in an income tax model. Before applying the income tax model to test tax incidence that identifies the tax bearer, for the purposes of arguing that Urban Old-Age Pensions Social Insurance Contributions forms part of the Individual Income Tax tax-base, it is necessary to adapt the Individual Income Tax rate tables from the *Individual Income Tax Law of the People's Republic of China*¹³⁵⁰ into a more workable form.

Firstly, it is necessary to incorporate the rate table into marginal tax rate table format.

The following formula is applied:

$$T_n = T_{\max Y_{n-1}} + MTR (Y - \max Y_{n-1})$$

T = Tax payable

n = current tax bracket

n-1 = previous tax bracket

max Y_{n-1} = maximum income from the previous tax bracket.

Table 6-3¹³⁵¹ Pre-reform Resident Monthly Marginal Individual Income Tax Rate (effective before 1 September 2011)¹³⁵²

Taxable Income (RMB)	Tax Rate	Tax Payable (RMB)
0-500	5%	nil
501-2,000	10%	nil
2,001-5,000	15%	175+ 15% of excess over 2,000
5,001-20,000	20%	625 + 20% of excess over 5,000
20,001-40,000	25%	3,625+ 25% of excess over 20,000
40,001-60,000	30%	8,625 +30% of excess over 40,000
60,001-80,000	35%	14,625 + 35% of excess over 60,000
80,001-100,000	40%	21,625 + 40% of excess over 80,000
Over 100,000	45%	25,625 + 45% of excess over 100,000

¹³⁴⁹ Above notes 1262 & 1263.

¹³⁵⁰ Above notes 1347 and 1348.

¹³⁵¹ Adapted from above note 1347.

¹³⁵² Above note 1347.

Table 6-3 presents the results from turning the pre-reform rate table into marginal tax rate format.

Table 6-4¹³⁵³ Post-reform Resident Monthly Marginal Income Tax Rate (effective from 1 September 2011)¹³⁵⁴

Taxable Income (RMB)	Tax Rate	Tax Payable (RMB)
0-1,500	3%	nil
1,501-4500	10%	45 + 10% of excess over 1,500
4,501-9,000	20%	345 + 20% of excess over 4,500
9,001-35,000	25%	1,245 + 20% of excess over 9,000
35,001-55,000	30%	7,995 + 30% of excess over 35,000
55,001-80,000	35%	13,995 + 35% of excess over 55,000
Over 80,000	45%	22,745 + 45% of excess over 80,000

Table 6-4 presents the results of turning the post-reform rates into marginal tax rate format.

Take the average national annual wage income of 2013 as an example. The wage amount is RMB 51,483,¹³⁵⁵ equivalent to monthly wages of RMB 4,290.25. It falls into the second bracket in Table 6-4. The monthly taxable amount is:

$$\text{RMB } 45 + (\text{RMB } 4,290.25 - 1,500) \times 10\% = \text{RMB } 324.03 \text{ per month.}$$

This is equivalent to RMB 3,888 per year.

6.4.3.3 Combining the Individual Income Tax Tax-base and Old-Age Pensions Social Insurance Contributions

Table 6-5 combines the rates from Table 6-3 and the *Proposal to Pilot Improvements to the Urban Social Security System*¹³⁵⁶ issued by the State Council in 2000.

¹³⁵³ Adapted from above note 1262, sch 1.

¹³⁵⁴ Above note 1262.

¹³⁵⁵ See Table F-6. This is approximately AUD 10,297.

¹³⁵⁶ Above note 1344.

Table 6-5 Pre-reform Individual Monthly Marginal Income Tax Rate + Old-Age Pension Social Contributions

Taxable Income (RMB)	Tax Rate	Tax Payable (RMB) + Old-Age Pensions Social Insurance Contributions
0-500	5%	nil + 28%
501-2,000	10%	nil + 28%
2,001-5,000	15%	175+ 15% of excess over 2,000 + 28%
5,001-20,000	20%	625 + 20% of excess over 5,000 + 28%
20,001-40,000	25%	3,625+ 25% of excess over 20,000 + 28%
40,001-60,000	30%	8,625 +30% of excess over 40,000 + 28%
60,001-80,000	35%	14,625 + 35% of excess over 60,000 + 28%
80,001-100,000	40%	21,625 + 40% of excess over 80,000 + 28%
Over 100,000	45%	25,625 + 45% of excess over 100,000 + 28%

Table 6-6 combines the rates from Table 6-4 and the *Proposal to Pilot Improvements to the Urban Social Security System*¹³⁵⁷ issued by the State Council in 2000.

Table 6-6 Post-reform Individual Monthly Marginal Income Tax Rate + Old-Age Pension Social Contributions

Taxable income (RMB)	Tax Rate	Tax Payable (RMB) + Old-Age Pensions Social Insurance Contributions
0-1,500	3%	nil + 28%
1,500-4500 ¹³⁵⁸	10%	45 + 10% of excess over 1,500 + 28%
4,500-9,000	20%	345 + 20% of excess over 4,500 + 28%
9,000-35,000	25%	1,245 + 20% of excess over 9,000 + 28%
35,000-55,000	30%	7,995 + 30% of excess over 35,000 + 28%
55,000-80,000	35%	13,995 + 35% of excess over 55,000 + 28%
Over 80,000	45%	22,745 + 45% of excess over 80,000 + 28%

Continuing the illustration from the Marginal Tax Rate calculations, by using the average national annual wage income of 2013 as an example. The wage amount is RMB 51,483,¹³⁵⁹ equivalent to monthly wages of RMB 4,290.25. For Individual Monthly Marginal Income Tax Rate + Old-Age Pension Social Contributions purposes, it falls into the second bracket in Table 6-6. The new monthly taxable amount is:

¹³⁵⁷ Above note 1344.

¹³⁵⁸ Monthly income below RMB 3,500 is exempt, this is approximately AUD 700 per month. Above note 1348.

¹³⁵⁹ See Table F-6 in Appendix F.

$$\text{RMB } 45 + (\text{RMB } 4,290.25 - 1,500) \times 10\% + 28\% \times \text{RMB } 4,290.25$$

= RMB 1525.30 per month.

This is equivalent to RMB 18,303.60 per year, which is a significantly higher burden than when calculations are made for the marginal income tax rates alone. It increased the Individual Income Tax burden of a participant in the Urban Old-Age Pensions scheme by RMB 14,415.6¹³⁶⁰ per year.

6.4.3.4 Average Tax Rate and Effective Marginal Tax Rate Calculations

Calculation of the Average Tax Rate (ATR) assuming that the measure of income is sufficiently well correlated with the pre-tax living standards of individuals gives an indication of the distributional or equity merits of a tax system. A system is said to be progressive, proportional or regressive as the ATR rises, remains constant or falls with income.¹³⁶¹

Calculation of Effective Marginal Tax Rate (EMTR)¹³⁶² is an efficiency measure. Along with equity, progressivity or regressivity, efficiency is another important factor when analysing taxes and benefits. Taxes can give rise to efficiency costs if there are behavioural responses to changes in relative prices and wage rates induced by the system.

In the case of contributions to Urban Old-Age Pensions Social Insurance in the PRC, the contribution is an additional levy, changing the measures of both ATR and EMTR

¹³⁶⁰ This is approximately AUD 2,883.

¹³⁶¹ Apps P, *LAWS 6257, Public Policy Course Readings*, (Sydney: The University of Sydney, 2009), at 147.

¹³⁶² *Ibid.*

in the fiscal system, thereby affecting economic decisions made by employees and other participants of the Urban Old-Age Pensions Social Insurance scheme.

In the following calculations:

T = tax payments,

Y = Income,

C = Consumption,

RIC = Old-Age Pensions Social Insurance Contributions, and

MTR = marginal tax rate.

Average Tax Rate from 2009-10 Nominal Marginal Tax Rates¹³⁶³

$$ATR = (T-C)/Y$$

Since marginal tax rates are listed for an income range, and Average Tax Rate calculations could only be performed at an income level, for the purposes of illustrating the distributional effects of the PRC's Individual Income Tax system, Average Tax Rate calculations are made for the higher number of each nominal marginal tax rate bracket. Further for illustrative purposes, RMB 150,000¹³⁶⁴ is assumed to be the highest monthly individual wage income level.

Table 6-7 Pre-reform ATR

Y	T	Nominal MTR	ATR	ATR as a Percentage
500	0	5%	0.00	0%
2,000	0	5%	0.00	0%
5,000	625	15%	0.13	13%
20,000	3,625	20%	0.18	18%
40,000	8,625	25%	0.22	22%
60,000	14,625	30%	0.24	24%
80,000	21,625	35%	0.27	27%
100,000	29,625	40%	0.30	30%
150,000	48,125	45%	0.32	32%

¹³⁶³ Note: ATR is calculated based on the linear income tax model proposed by Stern in above note 1334. See Appendix E for a summary of Stern's model.

¹³⁶⁴ This is approximately AUD 30,000.

Table 6-8 Post-reform ATR

Y	T	Nominal MTR	ATR	ATR as a Percentage
1,500	0	3%	0.00	0%
4,500	345	10%	0.08	8%
9,000	1,245	20%	0.14	14%
35,000	7,745	25%	0.22	22%
55,000	13,995	30%	0.25	25%
80,000	22,745	35%	0.28	28%
150,000	54,245	45%	0.36	36%

These tables show that based on nominal marginal tax rates, before the Old-Age Pensions Social Insurance Contributions is added onto the Individual Income Tax tax-base for the urban population, the PRC tax system is progressive. Higher income earners are actually paying more in income tax. Also, after the reform, the Individual Income Tax for wage and salary earners has a flatter structure because there are fewer brackets.

6.4.3.5 Effective Marginal Tax Rate and Average Tax Rate after Old-Age Pensions Social Insurance Contributions

When the Urban Old-Age Pensions Social Insurance Contributions is added onto the Individual Income Tax tax-base for Urban Old-Age Pensions participants, it is necessary to also perform the EMTR calculation to measure whether contributions of Urban Old-Age Pensions Social Insurance alters the tax burden for urban employees, and if it does, by how much.

Similar to the ATR calculations based on nominal Marginal Tax Rates, for the purposes of demonstrating the impact on equity and efficiency of the PRC's Individual Income Tax system by capturing Urban Old-Age Pensions Social Insurance Contributions into the Individual Income Tax Tax-base, EMTR and ATR calculations are performed for

the higher number of each tax rate bracket in Table 6-6. Further, for illustrative purposes, assume RMB 200,000¹³⁶⁵ is the highest individual income level.

$$EMTR = \Delta(T+RIC-C) / \Delta Y$$

$$ATR = (T+RIC-C)/Y$$

Table 6-9 Pre-reform Average Tax Rate and Effective Marginal Tax Rate with Old-Age Pensions Social Insurance Contributions

Y	Nominal MTR	T + RIC	ATR	ATR as a Percentage	EMTR	EMTR as a percentage
500	5%	140	0.28	28%	0.28	28%
2,000	5%	560	0.28	28%	0.28	28%
5,000	15%	2025	0.41	41%	0.49	49%
20,000	20%	9225	0.46	46%	0.48	48%
40,000	25%	19825	0.50	50%	0.53	53%
60,000	30%	31425	0.52	52%	0.58	58%
80,000	35%	44025	0.55	55%	0.63	63%
100,000	40%	57625	0.58	58%	0.68	68%
150,000	45%	90125	0.60	60%	0.65	65%

Table 6-10 Post-reform Average Tax Rate and Effective Marginal Tax Rate with Old-Age Pensions Social Insurance Contributions

Y	Nominal MTR	T + RIC	ATR	ATR as a Percentage	EMTR	EMTR as a percentage
1,500	3%	420	0.28	28%	0.28	28%
4,500	10%	1605	0.36	36%	0.40	40%
9,000	20%	3765	0.42	42%	0.48	48%
35,000	25%	17545	0.50	50%	0.53	53%
55,000	30%	29395	0.53	53%	0.59	59%
80,000	35%	45145	0.56	56%	0.63	63%
150,000	45%	96245	0.64	64%	0.73	73%

Tables 6-9 and 6-10 showed that Urban Old-Age Pensions Social Insurance Contributions adds to the EMTR for those who are participating in Urban Old-Age

¹³⁶⁵ This is approximately AUD 40,000.

Pensions Social Insurance. The Urban Old-Age Pensions Social Insurance Contributions adds a significant tax burden to urban employees.

The ATR still shows progressivity, but EMTR fluctuates slightly before the Individual Income Tax sets in at the tax-free threshold of RMB 1,500 per month. The reason for this fluctuation is that employer contributions for Old-Age Pensions Social Insurance begin as soon as the Urban Old-Age Pensions Social Insurance participant begins to earn income, this is much earlier than the onset of Individual Income Tax.

6.4.3.6 Results

This analysis showed that Urban Old-Age Pensions Social Insurance Contributions can be seamlessly added onto the Individual Income Tax tax-base for urban employees. It does not affect the progressive nature of the Individual Income Tax, but the earlier onset of the Urban Old-Age Pensions Social Insurance Contributions means tax liability begins as soon as an urban employee begins to earn income. The impact of the Urban Old-Age Pensions Social Insurance Contributions before and after the Individual Income Tax reform are the same. The Effective Marginal Tax Rate calculation showed that the 20% of income contributed by employer contributions is seamlessly forward shifted to the employee, as part of their Individual Income Tax tax-burden; and Urban Old-Age Pensions Social Insurance Contributions adds a significant tax burden for urban employees.

6.5 Conclusion

In the existing academic analysis, solutions to the “empty individual accounts” problem were treated as a major solution to sustainably fund Urban Old-Age Pensions. By presuming that Urban Old-Age Pensions Social Insurance Contributions in the Social

Insurance Fund was the only legitimate source of funding, researchers suggested that one of the solutions to this problem was to increase centralisation of the administration of Urban Old-Age Pensions insurance contributions.

There were two issues with the “empty individual accounts problem” and its solutions, leaving a large gap in the literature. Firstly, the significant portion of the existing academic analysis that was published in Chinese referred to the contributions as “Old-Age Pensions insurance”.¹³⁶⁶ As the reform proceeds, the terminology of “insurance” rather than “Social Insurance” confused the analysis. The insurance paradigm was applied in the analysis, instead of purely researching in a Social Insurance paradigm that is a public economics paradigm. The insurance paradigm was a major reason why researchers argued that the funds in the individual accounts in the Social insurance Fund need to be accounted for separately. Secondly, increase centralisation of the administration of Urban Old-Age Pensions insurance contributions is an administrative solution, but sustainable funding of Urban Old-Age Pensions is a substantive fiscal problem.

The gap left by the two issues is that, in order to analyse the funding sustainability of Urban Old-Age Pensions Social Insurance Contributions, an analysis of all sources of public funds in the PRC’s fiscal revenue structure is required.

This chapter is an analysis of the fiscal revenue of the People’s Republic of China (PRC) for the purposes of funding Urban Old-Age Pensions. The fiscal analysis collates the fiscal revenue types and identifies all possible sources of public funds that the PRC government could appropriate towards the payment of Urban Old-Age Pensions. It adds

¹³⁶⁶ 养老保险.

a necessary analysis of the PRC's fiscal revenue structure, for the purposes of sourcing subsidies that are allowed by the *Social Insurance Law*.¹³⁶⁷

This fiscal analysis was performed in three steps. Step one is an illustration of Urban Old-Age Pensions as a public good in the PRC that requires appropriation of public funds in the budgetary process. This illustration places analysing Urban Old-Age Pensions in the public economics paradigm, more specifically, to a Social Insurance paradigm that analyses funding Urban Old-Age Pensions in a generational contracts model.

Step two is an analysis of the PRC's total fiscal revenue structure to distinguish formal taxes revenue that are non-earmarked, from sundry levies that are earmarked. This analysis determines the possible other sources of revenue in the PRC's fiscal revenue structure, that the PRC government could utilise to subsidise the payment of Urban Old-Age Pensions.

Step three is an income tax analysis to identify the Contributions or tax base of Urban Old-Age Pensions Social Insurance Contributions. This analysis places Urban Old-Age Pensions Social Insurance Contributions for urban employees into the Individual Income Tax tax-base in the PRC's fiscal revenue structure. This analysis also illustrates that the Urban Old-Age Pensions Social Insurance Contributions significantly increases the participant's Individual Income Tax tax-burden, but does not alter the progressive nature of the Individual Income Tax in the PRC. The illustration contributes to clarifying that Urban Old-Age Pensions Social Insurance Contributions is a source of

¹³⁶⁷ Above note 1192.

public revenue, and that the new Individual Income Tax tax-base could be treated as a priority source of funds as subsidies as allowed by the *Social Insurance Law*.¹³⁶⁸

Analysing the funding capabilities in a Social Insurance paradigm means that Urban Old-Age Pensions are treated as a public good to be supplied by the government, and funded through consolidated revenue. The difference to the insurance paradigm is that Urban Old-Age Pensions individual accounts are treated as a component of the total funding structure, not as insurance accounts that the individual has proprietary rights. The funds in the individual accounts are not required to be accounted for separately in the Social Insurance paradigm, therefore the “empty individual accounts” is only an administrative issue, and it does not contribute as a substantive solution to the issue of funding sustainability in relation to Urban Old-Age Pensions in the PRC.

The analysis in this chapter ascertained that the PRC government can source subsidies from non-earmarked formal tax revenue, but not earmarked Sundry Levies. The analysis however also shows that although total formal tax revenue grew in the decade of 2005-2014, total Sundry Levies is growing in importance as a source of funding. This is alarming for the PRC in its fiscal revenue structure, because Sundry Levies are not independently administered by a tax authority, making verification of statistics more difficult. The result is that sources of verified fiscal revenue for the PRC to make discretionary public spending decisions is decreasing as a proportion of total revenue. This leads to a smaller funding pool to source subsidies as supplementary funding for Urban Old-Age Pensions payments.

¹³⁶⁸ Above note 1192.

Chapter VII Feasibility Study

7.1 Introduction

Chapter VI analysed the fiscal structure of the People's Republic of China (PRC) for the purposes of collating the types of fiscal revenue in the PRC's consolidated revenue. It identified formal taxes as the revenue category for the PRC's government to source subsidies for Urban Old-Age Pensions payment purposes. It illustrated that the contributions to the Urban Old-Age Pensions scheme, according to the requirements of the *Social Insurance Law*,¹³⁶⁹ are in effect a component of the Individual Income Tax tax-base of urban employees. As such, the Individual Income Tax revenue would be the priority as the source of subsidies.

This chapter is a feasibility study that tests the funding ability of the current Urban Old-Age Pensions scheme in the PRC against three funding pools. It is a static study¹³⁷⁰ performed with respect to the generational contracts model of funding Old-Age Pensions. That is, the current generation of working age people contribute to fund the retirements of current retirees.

In this static feasibility study, Urban Old-Age Pensions funding requirements are tested against three pools of funds, to measure the PRC government's public funding capability as a preliminary study for future sustainability analyses. This study aims to demonstrate the shift in research paradigm for the sustainability models in the literature,

¹³⁶⁹ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

¹³⁷⁰ For a full static analysis, see for example, Verbon HAA, 'Explaining Pay-as-you-go Financed Public Pensions Systems', (1988) 28 *Economics Letters* 181, at 184-185.

as a result of the fiscal analysis. The three pools of funds are chosen according to the revenue structure of the PRC.

This static feasibility study makes three assumptions.

Assumption 1: The current Urban Old-Age Pensions Social Insurance Contributions made according to the *Social Insurance Law*¹³⁷¹ are adequate to fund Urban Old-Age Pensions in the PRC.

Assumption 2: Revenue from the Individual Income Tax tax-base is adequate to fund Urban Old-Age Pensions in the PRC.

Assumption 3: The formal tax revenue in the PRC's fiscal transfer system can adequately fund Urban Old-Age Pensions.

Assumption 3 is tested to ascertain the level of non-earmarked revenue available for other expenditure needs if the PRC government does not wish to go into debt. If the Urban Old-Age Pensions payments require too much subsidies from consolidated revenue, without going into debt, the PRC government could not afford to pay Urban Old-Age Pensions at the level being tested in the study.

Three measures are taken to test these assumptions:

- 1) The level of Civil Benefits;
- 2) Actual Urban Old-Age Pensions expenditure;
- 3) The Old-Age Pensions Replacement rate.

¹³⁷¹ Above note 1369.

The chapter progresses as follows. Section 7.2 explains the choice of measures. Section 7.3 explains the methodology and notations of the study. Section 7.4 presents the results of the study. Section 7.5 concludes the chapter.

7.2 Explanation of Measures

Like the rest of this research, data sources of the feasibility study come from official data on the website of the National Bureau of Statistics of China.¹³⁷²

Measure 1 is the Civil Benefits¹³⁷³ standards. Civil Benefits are the safety net as part of the PRC's welfare policies. As only Civil Benefits standards of the most recent months are publically assessable on the Ministry of Civil Affairs' website,¹³⁷⁴ it is not possible to make meaningful calculations at this stage. For illustrative purposes, the standards are presented to compare with current level per capita Urban Old-Age Pensions expenditure. The most recent data period is July 2015.

Measures 2 and 3 have more explanatory power for the purposes of this study. The measures are taken for the ten years between 2005 and 2014 to test the assumptions. Since 2014 data are not completely available, in order to illustrate that when the PRC attains urbanisation levels of developed countries, that statically, it is still able to fund Urban Old-Age Pensions in its fiscal revenue structure; this study also tests the assumptions on 2013 data by assuming the PRC has attained the urbanisation rate of developed countries, that is, a hypothetical urbanisation rate of 80%.¹³⁷⁵

¹³⁷² *Database of the National Bureau of Statistics of China (Chinese Version)*, Online <<http://data.stats.gov.cn/>> (25 Aug. 2015).

¹³⁷³ 《国务院关于在各地建立城市居民最低生活保障制度的通知》 *Announcement on Establishing Systems of Urban Resident Low Income Safety Net by Local Government Authorities* 1997 (State Council).

¹³⁷⁴ *Ministry of Civil Affairs of the People's Republic of China*, Online <www.mca.gov.cn> (2 Feb. 2012).

¹³⁷⁵ *World Bank Database*, Online <<http://data.worldbank.org/topic/urban-development>> (18 Apr. 2016).

7.2.1 Measure 1

Civil Benefits¹³⁷⁶ in the social security system of the PRC acts as the safety net, and covers widowed elderly people without children, orphans or abandoned infants, and the disabled, etc. Calculations are not performed for this measure because of the incompleteness of publically available data.

Civil Benefits payment standards are different for each local government area because each local level government sets their own standards. The payment standards are comparable to actual payments of Urban Old-Age Pensions. Actual per capita Urban Old-Age Pensions expenditure for 2013 was RMB 5,732.87¹³⁷⁷ per year. For illustrative purposes, Table 7-1¹³⁷⁸ presents the Civil Benefits standards issued by the Ministry of Civil Affairs¹³⁷⁹ for July 2015. In July 2015, the province that paid the highest Civil Benefits was Beijing at RMB 702.37 per month, which is RMB 8,428.44¹³⁸⁰ per year. The national average was RMB 291.43 per month, which is RMB 3,497.16¹³⁸¹ per annum. This means, the actual Urban Old-Age Pensions are comparable to the minimum living standards in the PRC set at the Civil Benefits level. The measures taken at actual Urban Old-Age Pensions expenditure levels are thereby indicative of whether the PRC could look after its urban elderly at minimum living standards levels through public expenditure on Urban Old-Age Pensions.

¹³⁷⁶ Above note 1374.

¹³⁷⁷ This is approximately \$AU 1,147.

¹³⁷⁸ 《2015年7月份全国县级以上城市低保情况》‘Civil Benefits Standards Of Government Levels Above The County Level, July 2015’, *Ministry of Civil Affairs*, Online <<http://files2.mca.gov.cn/www/201508/20150827132448567.htm>> (6 Sep. 2015).

¹³⁷⁹ Above note 1374.

¹³⁸⁰ This is approximately \$AU 1,686.

¹³⁸¹ This is approximately \$AU 693.

The comparison between Civil Benefits and the actual per capita Urban Old-Age Pensions expenditure is important because OECD countries design their Old-Age Pensions with regard to the safety net in their respective countries.¹³⁸²

Table 7-1 National and Provincial Civil Benefits Levels of the PRC for July 2015¹³⁸³

	Number of Urban Persons receiving Civil Benefits	Number of Urban Families Receiving Civil Benefits	Cumulative Urban Civil Benefits Expenditure (RMB '000)	Urban Civil Benefits Standard (RMB)
National	17,830,142	9,903,126	39,121,935	291.43
Beijing	85,590	50,482	436,478	702.37
Shanghai	180,352	124,188	911,780	638.21
Tianjin	134,754	78,859	581,628	560.53
Tibet Autonomous Region	46,643	27,450	159,458	419.81
Zhejiang Province	62,647	41,582	229,037	410.83
Guangdong Province	302,516	153,390	891,673	398.18
Inner Mongolia Autonomous Region	660,356	393,501	1,840,797	385.68
Jiangsu Province	293,061	160,308	827,390	344.79
Anhui Province	679,309	413,466	1,647,337	327.21
Liaoning Province	749,794	423,508	1,937,420	325.16
Heilongjiang Province	1,275,812	725,432	3,193,322	310.83
Jilin Province	732,119	475,013	1,727,283	307.96
Shandong Province	412,018	215,912	941,465	301.14
Jiangxi Province	981,018	457,334	2,068,455	297.27

¹³⁸² OECD, 'Pensions at a Glance 2013 OECD and G20 Indicators', *OECD*, Online <<http://www.oecd.org/pensions/public-pensions/OECDPensionsAtAGlance2013.pdf>> (2 Feb. 2016).

¹³⁸³ Above note 1378.

Chongqing	376,484	225,545	859,150	295.32
Yunnan Province	989,525	614,946	2,066,049	293.55
Gansu Province	785,219	328,774	1,627,551	292.35
Fujian Province	134,850	77,925	310,412	288.48
Shanxi Province	620,198	320,654	1,331,842	286.33
Guizhou Province	425,542	235,599	948,156	279.07
Shannxi Province	547,335	270,466	1,169,303	276.00
Xinjiang Autonomous Region	838,368	399,717	1,697,084	268.19
Qinghai Province	182,480	88,388	408,847	266.91
Guangxi Zhuang Autonomous Region	427,656	219,436	817,461	266.53
Ningxia Hui Autonomous Region	157,343	81,570	312,579	260.79
Hubei Province	996,324	565,909	2,060,407	258.94
Hunan Province	1,309,551	752,703	2,415,893	257.07
Hebei Province	574,584	322,139	1,067,187	253.39
Hainan Province	98,796	44,402	193,585	249.98
Sichuan Province	1,633,421	956,964	2,682,011	227.15
Henan Province	1,136,477	657,564	1,760,895	213.36

Another data set collected for an earlier version of this study was collected at the end of 2010. The Civil Benefits standards collected was for December 2010.¹³⁸⁴ This data set is presented in more detail in Table F-2 in Appendix F. The national average standard was RMB179 per month, which is RMB 2,148¹³⁸⁵ annually. The highest standard at the time was set by Tianjin, it was RMB 428 per month, which was RMB

¹³⁸⁴ Adapted from 《2010年12月份全国县以上低保情况(城市)》‘2010 December Safety Net of Urban Government Areas Above County Level’, *Ministry of Civil Affairs*, Online <<http://cws.mca.gov.cn/article/tjsj/dbsj/index1.shtml?3>> (21 Feb. 2012).

¹³⁸⁵ This is approximately \$AU 430.

5,136¹³⁸⁶ annually. In 2010, the actual per capita Urban Old-Age Pensions Expenditure was RMB 4,105.80¹³⁸⁷ per annum. Similar to 2015, the measures taken for actual Urban Old-Age Pensions Expenditure is indicative of whether the PRC could look after its urban elderly at minimum living standards levels through public expenditure on Urban Old-Age Pensions.

7.2.3 Measure 2 Actual Urban Old-Age Pensions Expenditure

Data on actual Urban Old-Age Pensions expenditure for the ten years between 2005 and 2014 are available from the National Bureau of Statistics of China.¹³⁸⁸ Up to October 2015, the complete data for Urban Old-Age Pensions expenditure is not available for 2014. Calculations for this measure are made for the nine years of 2005 to 2013. It is worth noting that the average per capita actual Urban Old-Age Pensions expenditure is comparable to Civil Benefits standards. Table F-2 in Appendix F illustrates Old-Age Pensions expenditure for the years of 2005 to 2013.

7.2.4 Measure 3 The Old-Age Pensions Replacement Rate

The OECD defines the net pensions replacement rate as

“the individual net pensions entitlement divided by net pre-retirement earnings, taking into account personal income taxes and social security contributions paid by workers and pensioners. It measures how effectively a pensions system provides a retirement income to replace earnings, the main source of income before retirement. This indicator is measured in percentage of pre-retirement earnings by gender.”¹³⁸⁹

This research simplifies this definition and takes the Old-Age Pensions replacement rate in the PRC as the annual per capita Urban Old-Age Pensions benefit level as a

¹³⁸⁶ This is approximately \$AU 1,093.

¹³⁸⁷ This is approximately \$AU 821.

¹³⁸⁸ Above note 1372.

¹³⁸⁹ *OECD (2015), Net pensions replacement rates (indicator)* doi: 10.1787/4b03f028-en, <<https://data.oecd.org/pensions/net-pensions-replacement-rates.htm>> (9 Sep. 2015)

percentage of annual national average urban wage level calculated by the National Bureau of Statistics of China.¹³⁹⁰ Depends on whether the replacement level is given, or the Old-Age Pensions amount is given, this study performs calculations.

Several replacement rates are considered for this study, and calculations made to make the results more convincing. When calculating the replacement rate in the PRC, the literature usually uses four methods of calculation:¹³⁹¹

- 1) The target replacement rate in the policy design. This is the replacement rate of a representative participant upon retirement. That is, the Old-Age Pensions benefit of the representative retiree as a percentage of the National Average Urban Wage Level of the previous year. Currently the target rate in the PRC is 59.2%.¹³⁹²

The National Average Urban Wage Level in the PRC is an average of the annual income of employed people from the urban population.¹³⁹³ Employed people are those who are above 16 and in the workforce, including employees, re-employed retirees, sole-traders, private enterprises employees, town enterprises employees,¹³⁹⁴ rural employed people, and people otherwise employed¹³⁹⁵. Table F-6 in Appendix F captures this data as part of the calculations made for Assumption 1.

¹³⁹⁰ 《城镇单位就业人员平均工资 2005-2014》‘Urban average wages 2005-2014’, in above note 1372.

¹³⁹¹ 白天亮, 《养老金替代率衡量劳动者退休前后生活水平的差异,也反映整个养老保险制度安排是否合理 -- 养老金替代率有多高(民生视线)》, Bai T, ‘The Old-Age Pensions Replacement Rate Reflects the Living Standard Difference of a Person Before and After Retirement, it Also Reflects Whether the Old-Age Pensions Social Insurance System is Appropriate – How High is the Old-Age Pensions Replacement Rate (People’s Livelihoods Perspective)’, *people.cn*, 12 December 2014, <<http://society.people.com.cn/n/2014/1212/c1008-26193112.html>> (9 Sep. 2015).

¹³⁹² Ibid.

¹³⁹³ Above note 1390.

¹³⁹⁴ 乡镇企业. These are enterprises located in rural areas, but are usually not primary producers.

¹³⁹⁵ Defined by the National Bureau of Statistics of China, above note 1372. See also 《中华人民共和国劳动法》 *Labor Law of the People’s Republic of China* 1994 (National People’s Congress), Art 10.

The representative participant is an employee who is employed during his or her whole working age life, has continuously contributed to the Old-Age Pensions Social Insurance according to regulatory requirements, and their wage level is consistent with the National Average Urban Wage Level.

- 2) As a measure of the difference of income of a specific retiree before and after retirement, that is, the actual Old-Age Pensions Replacement Rate for the new retiree. This is the rate of the pensions received by the retiree as a percentage of his or her pre-retirement income.
- 3) The average Old-Age Pensions replacement rate of all new urban retirees. This is a measure of income differences between current period retirees and current period employees, thereby it acts as a test of how well the Old-Age Pensions policy supports the living standard of urban retirees.
- 4) Actual Old-Age Pensions replacement rate of the whole urban retiree population. Payments at this level equals actual Urban Old-Age Pensions expenditure. The unknown here is the replacement rate itself. Calculation is performed for the purposes of ascertaining current period funding adequacy.

Internationally, the target replacement rates are usually set at between 40% and 70%.¹³⁹⁶ The *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* of the International Labour Organisation¹³⁹⁷ sets the payment standard for Old-Age Pensions at a 45% replacement rate for participants who have made contributions for more than 30 years. The replacement rate in France¹³⁹⁸ is 50% for participants who have made contributions for more than 40.5 years. In Germany and Sweden,¹³⁹⁹ the

¹³⁹⁶ Above note 1391.

¹³⁹⁷ *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* 1967(International Labour Organization) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C128> (9 Sep. 2015), Art 29.

¹³⁹⁸ Above note 1391.

¹³⁹⁹ Above note 1391.

rate is approximately 40% for participants who have made contributions for more than 40 years.

For Australia, the actual replacement rate for the government Old-Age Pensions funded by consolidated revenue¹⁴⁰⁰ can be calculated. The maximum a single person could receive as an Old-Age Pensions is \$860.00 per fortnight,¹⁴⁰¹ that is, \$430 per week. The Australian Bureau of Statistics calculates the trend of All Employees Average Weekly Total Earnings for May 2015 to be \$1,136.60. This means the Old-Age Pensions replacement rate is approximately 38%.

The Old-Age Pensions replacement rates for the purposes of Measure 3 are adapted from the rate in the PRC's policy design,¹⁴⁰² the actual replacement rate of the year,¹⁴⁰³ the standard set by the *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* of the International Labor Organization,¹⁴⁰⁴ and the standards France, Germany and Sweden, and Australia. These replacement rates are:

Measure 3A – 59.2%, which is the target replacement rate in the PRC's policy design.¹⁴⁰⁵

Measure 3B is the actual replacement rate of the year as calculated from Urban Old-Age Pensions expenditure and average urban income data.¹⁴⁰⁶ Calculations are made but not reported, because the results are the same as that for Measure 2.

¹⁴⁰⁰ *Australia's Future Tax System, Retirement Income Strategic Issues Paper*: <http://taxreview.treasury.gov.au/content/StrategicPaper.aspx?doc=html/Publications/Papers/Retirement_Income_Strategic_Issues_Paper/index.htm> (24 Feb. 2012).

¹⁴⁰¹ Department of Human Services, *Age Pensions*: <<http://www.humanservices.gov.au/customer/services/centrelink/old-age-pensions>> (1 Nov. 2015).

¹⁴⁰² Above note 1391.

¹⁴⁰³ Above note 1372.

¹⁴⁰⁴ Above note 1397, Art 29.

¹⁴⁰⁵ Above note 1391.

¹⁴⁰⁶ Above note 1372.

Measure 3C – 45%, which is the standard set by the *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* of the International Labor Organization.¹⁴⁰⁷

Measure 3D – international standards for illustrative purposes: 4Da - France¹⁴⁰⁸ at 50%; 4Db - Germany and Sweden at 40%; and 4Dc - Australia (more accurately) at 37.86%.

7.3 Study Methodology and Explanation of Notations

This study is a case study¹⁴⁰⁹ of the PRC's public funding capabilities with regard to Urban Old-Age Pensions. The study is performed with regard to the generational contract model of funding Old-Age Pensions. It is a static, point in time, simple multi-variable, multi-assumptions case study. The static nature of the study allows snap shots to be taken of the PRC's public finances when considering the availability of revenue sources with regard to different pools of funding from fiscal revenue, for the purposes of funding Urban Old-Age Pensions. The static study is a good way to measure funding ability, as preliminary studies for sustainability models. If the study result is positive for a pool of funds with regard to funding Urban Old-Age Pensions, further sustainability studies could be performed that takes into consideration time variables.¹⁴¹⁰

In this case study, three assumptions are tested to answer three questions:

- 1) Does the Urban Old-Age Pensions Social Insurance Contributions alone cater for the funding of Old-Age Pensions for urban employees in the PRC?

¹⁴⁰⁷ Above note 1397, Art 29.

¹⁴⁰⁸ Above note 1391.

¹⁴⁰⁹ Yin R, *Case Study Research Design and Methods*, (Thousand Oaks CA: Sage, 4th ed, 2009), at 14.

¹⁴¹⁰ Such as the variables chosen in Yang's paper. See 杨斌, 《城镇企业养老保险个人账户给付期测算研究》, Yang, B, 'Approximating the Payment Period for Urban Old-age Pension Insurance Individual Accounts', (2012) 5 *Social Security Studies* 3.

- 2) Does the Individual Income Tax tax-base that captures Urban Old-Age Pensions Social Insurance Contributions cater for the funding of Old-Age Pensions for urban employees?
- 3) If subsidies are required from consolidated revenue, how much would the central government need to subsidise?

Note that Question one is the question asked in the existing academic analysis, where researchers presumed Urban Old-Age Pensions insurance contributions was the only legitimate source of funds.

Formulating the questions into assumptions, the assumptions are:

Assumption 1: The current Urban Old-Age Pensions Social Insurance Contributions made according to the *Social Insurance Law*¹⁴¹¹ are adequate to fund Urban Old-Age Pensions in the PRC.

Assumption 2: Revenue from the Individual Income Tax tax-base is adequate to fund Urban Old-Age Pensions in the PRC.

Assumption 3: The formal tax revenue in the PRC's fiscal transfer system can adequately fund Urban Old-Age Pensions.

There are three components to testing each assumption. These components are the size of the urban retired population for the year, the pool of funds, and the measure. For Assumption 1, the pool of funds is the total contributions of Urban Old-Age Pensions Social Insurance in the year. For Assumption 2, the pool of funds is the new Individual Income Tax tax-base of the year that captures Urban Old-Age Pensions Social

¹⁴¹¹ Above note 1369.

Insurance Contributions. For Assumption 3, the pool of funds is total non-earmarked fiscal revenue of the PRC for the year.

7.3.1 Explanation of Notations

The following are the notations used in this study.

R = Pool of Funds

E = Total government expenditure in the year;

P_{ur} = Size of the Urban Retired Population for the year;

R_u = Urbanisation Rate;

e_{up} = Urban Old-Age Pensions expenditure for the year;

C = Urban Old-Age Pensions Social Insurance Contributions for the year;

T_y = Individual Income Tax revenue for the year;

F = Total formal tax revenue for the year;

M = Measure;

CB = Monthly Civil Benefits;

W = National Average Urban Wage Level;

P_{rr} = Old-Age Pensions replacement rate.

S = Subsidies necessary from the government if the pool of funds cannot cover Urban Old-Age Pensions calculated according to the measure.

The tradition of looking after the elderly and current people's livelihoods policies as specified by the *Twelfth Five-year Plan*¹⁴¹² require the PRC government to fully fund Urban Old-Age Pensions. It promised to fully fund Urban Old-Age Pensions through the *Social Insurance Law*.¹⁴¹³

¹⁴¹² 新华社,《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, Xinhua Press, 'Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People's Republic of China', *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012).

¹⁴¹³ Above note 1369.

If S is a positive number, the assumption is correct, and the pool of funds covers Urban Old-Age Pensions funding requirements. If S is a negative number, the absolute value of the number is the subsidies required from consolidated revenue.

7.3.2 Equations for Testing Assumptions

The following equations are applied to test each assumption.

$$S = R - M \quad (1)$$

This equation measures funding ability, or requirements for subsidies from consolidated revenue. First, substitute R with the following equations for the three assumptions.

For Assumption 1:

$$R = C$$

The pool of funds tested is the total Urban Old-Age Pensions Social Insurance Contributions in the Social Insurance Fund.

For Assumption 2:

$$R = C + T_y$$

The pool of funds tested is the new Individual Income Tax tax-base as identified in the fiscal analysis. That is, the Individual Income Tax tax-base that captures Urban Old-Age Pensions Social Insurance Contributions.

For Assumption 3:

$$R = F$$

The pool of funds tested is total formal tax revenue in consolidated revenue, that is, total non-earmarked sources of revenue.

Next, substitute M in Equation (1) with the following definition:

For Measure 2:

$$M = e_{up}$$

That is, the measure is Urban Old-Age Pensions expenditure for the chosen year.

For Measure 3:

$$M = WP_{ur}P_{rr}$$

That is, the measure is a function of the chosen Urban Old-Age Pensions replacement rate.

Table 7-2 summarises the equations.

Table 7-2 Summary of Equations

S =	Assumption 1	Assumption 2	Assumption 3
Measure 2	$C - e_{up}$	$(C + T_y) - e_{up}$	$F - e_{up}$
Measure 3	$C - WP_{ur}P_{rr}$	$(C + T_y) - WP_{ur}P_{rr}$	$F - WP_{ur}P_{rr}$

In order to finally conclude whether the PRC could adequately fund its Urban Old-Age Pensions in the present period according to the *Social Insurance Law*,¹⁴¹⁴ calculations of Urban Old-Age Pensions expenditure as a percentage of total government expenditure is necessary. It is difficult to find a theoretical best practice for pensions expenditure as a percentage of total government expenditure because the underlying policy goals of countries are different. This study uses the publically available data on OECD countries as benchmarks.¹⁴¹⁵

For the data period of 2005-2014, OECD data are only available for 2007, 2010, and 2011. Comparisons between the PRC and the OECD are made for these three years. The comparatives to be used are the OECD total, France, Germany, Sweden, and Australia. The countries are chosen to continue the illustration from Measure 3D.

¹⁴¹⁴ Above note 1369.

¹⁴¹⁵ *OECD social expenditure – aggregated data*, Online <https://stats.oecd.org/Index.aspx?DataSetCode=SOEX_AGG> (10 Sep. 2015).

For the PRC:

$$e_{up} \text{ as a percentage of EXP} = e_{up} \div \text{EXP} \times 100\%$$

The OECD benchmarks and the calculated percentage expenditure for the PRC are presented in Table 7-3. For 2007, 2010 and 2011, the results for the OECD total, France, Germany, Sweden, Australia, and the PRC are highlighted in yellow.

Table 7-3 Old-Age Pensions Cash Benefits as a Percentage of Total General Government Expenditure¹⁴¹⁶

OECD - Total	2007	2010	2011
Australia	9.40	9.00	9.23
Austria	21.07	21.85	22.36
Belgium	14.38	15.06	15.23
Canada	9.62	9.34	9.71
Chile
Czech Republic	15.68	17.69	18.85
Denmark	10.18	10.26	10.76
Estonia	14.87	18.94	18.11
Finland	15.68	16.71	17.08
France	20.24	21.05	21.55
Germany	19.61	18.53	18.92
Greece	21.16	22.25	23.60
Hungary	15.60	17.07	17.37
Iceland	4.44	3.20	4.47
Ireland	7.54	6.24	8.88
Israel	9.32	9.61	9.87
Italy	24.58	26.12	26.65
Japan	20.63	21.07	20.96
Korea	5.02	6.41	6.52
Luxembourg	13.37	13.39	13.93
Mexico	5.24	6.53	6.74
Netherlands	10.09	10.06	10.57
New Zealand	10.67	9.54	10.83
Norway	10.87	11.03	11.71
Poland	20.77	20.46	20.57
Portugal	20.59	20.69	22.74
Slovak Republic	14.72	15.21	15.60
Slovenia	19.22	19.25	19.47
Spain	16.18	17.03	17.93
Sweden	13.03	13.80	13.47
Switzerland	18.30	18.12	18.54
Turkey	15.47	16.06	16.35
United Kingdom	11.51	11.12	11.51
United States	13.84	13.82	14.40
OECD - Total	14.33	14.74	15.29
PRC ¹⁴¹⁷	11.98	11.74	11.68

¹⁴¹⁶ Excerpt from above note 1415.

¹⁴¹⁷ Extracted from Table F-10 in Appendix F.

As the PRC's economy continues to grow, in anticipation that the PRC may attain urbanisation rates of those of developed countries, hypothetical calculations are also performed for 2013 to test the assumptions as if the PRC has reached urbanisation rates of developed countries. The Urban Old-Age Pensions scheme is covered by well documented law-documents, and its administration is more transparent. The hypothetical calculation provides a rough prediction of static funding ability when the PRC reaches developed countries' urbanisation levels, where the Urban Old-Age Pensions scheme could realistically cover the whole population.

The World Bank's data shows that, in 2014, the urbanisation rate of OECD countries is 80%.¹⁴¹⁸ The hypothetical urbanisation rate of the PRC for 2013 is set at 80%.

On 2013 data, assume urbanisation rate is 80%,

$$80\%P_{ur2013} = P_{ur2013} \div 80\%R_{u2013}$$

$$80\%P_{ur2013} = 322,184,000^{1419} \div 53.73\%^{1420} \times 80\%$$

Therefore, the number of participants in the Urban Old-Age Pensions scheme is 479,708,171 persons. Based on the per capita actual annual Urban Old-Age Pensions expenditure level in 2013, that is, RMB 5,732.87, the expected Urban Old-Age Pensions expenditure is RMB 2.75 Trillion.

For the hypothetical calculations based on 2013 data and the urbanisation rate set at 80%, the PRC would have increased Urban Old-Age Pensions expenditure, and thereby total government expenditure by approximately RMB 0.9 Trillion. The PRC's total

¹⁴¹⁸ Above note 1428.

¹⁴¹⁹ 2005-2014 Urban Old-Age Pensions expenditure data, in above note 1372. See Appendix F.

¹⁴²⁰ Urbanisation data, in above note 1372. See Appendix A.

Urban Old-Age Pensions expenditure as a percentage of total government expenditure is approximately 18.4%. This rough prediction demonstrates that the PRC is able to fund Urban Old-Age Pensions at 2013 average per capita expenditure levels, even at developed country urbanisation rates.

7.4 Results for the Study

7.4.1 Summary of Feasibility Study Results

Table 7-3 is a summary of results of the feasibility study. Appendix F collates the detailed results for this study. The results are summarised in Table F-1 in Appendix F.

Table 7-3 is reproduced from Table F-1 in Appendix F.

Table 7-4 Summary of Results

Measure	Assumption 1	Assumption 2	Assumption 3
M2 = Actual Urban Old-Age Pensions Expenditure	Yes	Yes	Yes
M3A: pensions replacement rate @ 59.2%	No	No	Yes
M3B: pensions replacement rate @ actual levels =M2	Yes	Yes	Yes
M3C: pensions replacement rate @ 45%	No	No	Yes
M3Da: pensions replacement rate @ 50%	No	No	Yes
M3Db: pensions replacement rate @ 40%	No	No	Yes
M3Dc: pensions replacement rate @37.86%	No	No	Yes

“Yes” means the pool of funds covers Urban Old-Age Pensions expenditure when pensions are paid at the level of the measure.

“No” means the pool of funds does not cover Urban Old-Age Pensions expenditure when pensions are paid at the level of the measure.

Note that results for the hypothetical data when the urbanisation rate is 80% for 2013 is reported separately in Table F-11 in Appendix F.

For the years of 2005 to 2013, Assumptions 1 and 2 are correct for measures 2 and 3.

That is, for Assumption 1, the pool of funds collected as Urban Old-Age Pensions

Social Insurance Contributions is able to cover Urban Old-Age Pensions paid at current per capita expenditure levels.

For Assumption 2, revenue from the Individual Income Tax tax-base, including Urban Old-Age Pensions Social Insurance Contributions is able to cover Urban Old-Age Pensions paid at current per capita expenditure levels.

For Assumptions 1 and 2, since the PRC government could sufficiently pay for Urban Old-Age Pensions in this static analysis, sustainability studies could be performed. Sustainability studies have already been performed for Assumption 1 in the existing academic analysis.

Assumptions 1 and 2 are incorrect for Measures M3A, M3C, M3Da, M3Db and M3Dc. That is, for Assumption 1, the pool of funds collected as Urban Old-Age Pensions Social Insurance Contributions is not able to cover Urban Old-Age Pensions paid when the Urban Old-Age Pensions replacement rate is at the target replacement rate in the PRC's policy design;¹⁴²¹ nor at the standard set by the *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* of the International Labour Organisation;¹⁴²² nor at the replacement levels of France, Germany, Sweden and Australia. Similarly, for Assumption 2, revenue from the Individual Income Tax tax-base, including Urban Old-Age Pensions Social Insurance Contributions is not able to cover Urban Old-Age Pensions paid at the same replacement rates noted for Assumption 1.

The incorrectness of the assumptions at these measures means that the PRC government has to make transfer payments from consolidated revenue to fund Urban Old-Age

¹⁴²¹ Above note 1391.

¹⁴²² Above note 1397, Art 29.

Pensions. The incorrectness also means that sustainability studies could not be performed for Urban Old-Pensions paid at higher pension replacement rates, since the payments could not be covered by the pools of funds selected for the static study.

Figures 7-1 and 7-2 are excerpts from Figures F-1 and F-2 in Appendix F. These figures demonstrated that the Urban Old-Age Pensions expenditure is growing at a faster rate than annual Social Insurance Contributions.¹⁴²³

Figure 7-1 illustrates the amount of subsidies required from consolidated revenue if Urban Old-Age Pensions is funded from current year contributions, or the current year's Individual Income Tax tax-base, including Urban Old-Age Pensions Social Insurance Contributions. Higher pension replacement rates lead to steeper changes in the requirements for subsidies.

Figure 7-1a Subsidies Required from Consolidated Revenue if Pool of Funds is Urban Old-Age Pensions Insurance Contributions

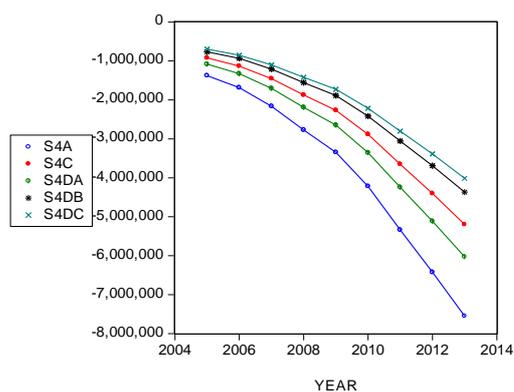


Figure 7-1b Subsidies Required from Consolidated Revenue if Pool of Funds is Individual Income Tax Base

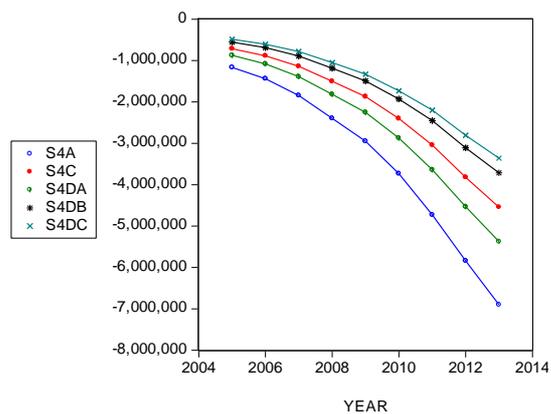


Figure 7-2 illustrates a comparison between the subsidies growth trends when urban Old-Age Pensions is funded from current year contributions, or the current year's

¹⁴²³ Please see the illustration in Figure F-3 in Appendix F.

income tax tax-base, including Urban Old-Age Pensions Social Insurance Contributions.

Figure 7-2a Subsidies growth trends when urban Old-Age Pensions is funded from current year contributions

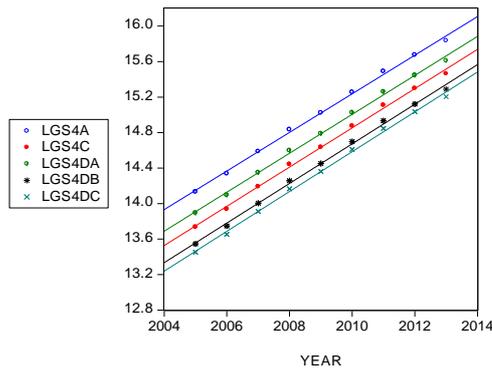


Figure 7-2b subsidies growth trends when urban Old-Age Pensions is funded from current year's income tax tax-base

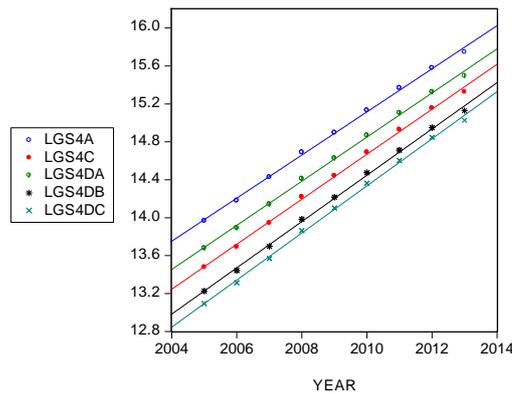
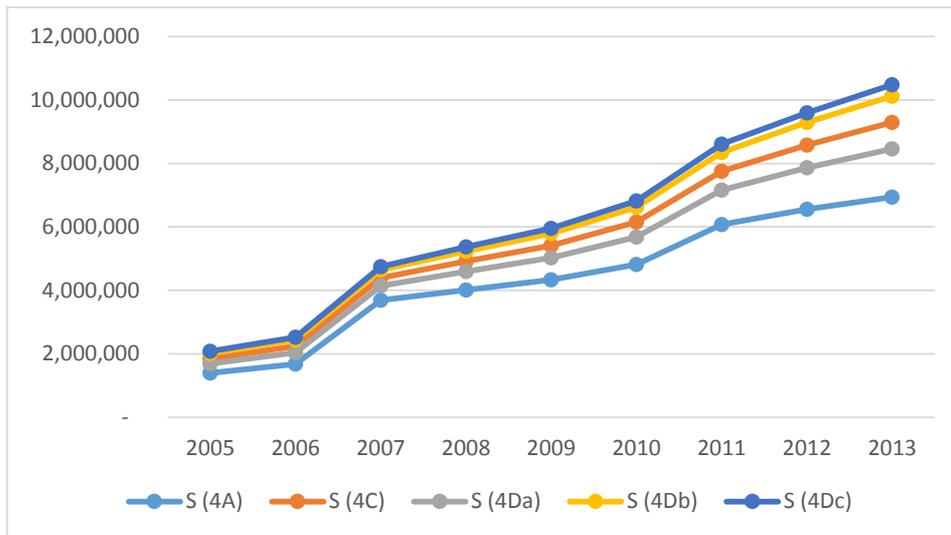


Figure 7-2 shows much more clearly, that changes are steeper when a higher replacement rate is chosen. The subsidies amount grows faster when the pool of funds is smaller

Assumption 3 takes into account the whole fiscal revenue of the PRC that are available for discretionary public finance expenditure, that is, non-earmarked formal taxes revenue. Therefore for the years of 2005 to 2013, it more than covers the funding of Urban Old-Age Pensions. The PRC could fund Urban Old-Age Pensions from its total formal tax revenue at all of the replacements rates chosen for this static study. This means sustainability studies can be performed. Care is required when designing sustainability models because the government has responsibility to fund other expenditure items.

Figure 7-3 is reproduced from Figure F-2 in Appendix F. It captures the amount of funds left for other government discretionary expenditure without going into debt.

Figure 7-3 Surplus after Measure 3



In future sustainability studies, Urban Old-Age Pensions expenditure as a percentage of total government expenditure is the most important consideration. There is no research on what is the optimal level of expenditure on Urban Old-Age Pensions, the OECD data¹⁴²⁴ are only available for 2007, 2010 and 2011 in the ten years data period chosen for this research, that is, 2005 to 2014.¹⁴²⁵

As a prima facie measurement of sustainability, at Measure 2, when Urban Old-Age Pensions are paid at actual levels, Urban Old-Age Pensions as a percentage of total government expenditure for 2005 to 2013 in the PRC are set out in Table 7-4.

Table 7-5 Urban Old-Age Pensions Expenditure as a Percentage of Total Government Expenditure

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Replacement Rate (actual %)	11.91	12.11	11.98	11.81	11.66	11.74	11.68	12.36	13.17

Table 7-5 is extracted from Table F-11 in Appendix F. The results for 2007, 2010 and 2011 are highlighted, they are 11.98%, 11.74% and 11.68%. The OECD total Old-Age

¹⁴²⁴ Excerpt from above note 1415.

¹⁴²⁵ Excerpt from above note 1415.

Pensions expenditure as a percentage of total government expenditure rates these three years were 14.33%, 14.74% and 15.29% respectively.

At current Urban Old-Age Pensions replacement rates, the PRC's expenditure on Urban Old-Age Pensions is comparable to OECD levels. At this payment levels, the PRC pays pensions at a comparable level to the Civil Benefits,¹⁴²⁶ therefore is deemed to meet minimum living standards, since the Civil Benefits is the PRC's official measure of minimum living standards.

The PRC has a much lower old age dependency ratio than OECD countries, for example, in 2014, the PRC's old age dependency ratio was 13.7,¹⁴²⁷ which was much lower than Germany at 32, Australia at 22, the USA at 22, and the UK at 28.¹⁴²⁸ Therefore, although there is research on improving pensions funding sustainability for OECD countries, the PRC is fairing better with the much lower old age dependency ratio, and a growing economy, albeit at a slower pace than the previous decade.¹⁴²⁹

If the PRC chooses to have policies that pay Urban Old-Age Pensions at the other replacement rates from Measure 3, funding is not sustainable, because Urban Old-Age Pensions will consume too high a proportion of the available formal tax revenue. For example, at the target replacement rate of 59.2%,¹⁴³⁰ payments of Urban Old-Age Pensions would account for 64.31% of total expenditure in 2011.¹⁴³¹ The Old-Age Pensions as a proportion of total expenditure in Italy in 2011 was only 26.65%, and Italy had the highest proportion out of OECD countries. Table F-10 in Appendix F

¹⁴²⁶ Above note 1373.

¹⁴²⁷ Above note 1372. Please also see Appendices A and B. With more robust data, Hu and Yang calculated the PRC's old-age dependency ratio at 11% in 2009. Hu N & Yang Y, 'The Real Old-Age Dependency Ratio and the Inadequacy of Public Pensions Finance in China', (2012) 5 *Journal of Population Ageing* 193.

¹⁴²⁸ *World Bank Database*, Online <<http://data.worldbank.org/indicator/SP.POP.DPND>> (6 Sep. 2015).

¹⁴²⁹ 凤凰网, 《经济增长放缓 中国准备好了吗》, ifeng, 'Economic Growth is Slowing Down, is China Ready', ifeng, <<http://finance.ifeng.com/news/special/jjzzfh/>> (11 Feb. 2016).

¹⁴³⁰ Above note 1391.

¹⁴³¹ See Table F-10 in Appendix F.

illustrates the Urban Old-Age Pensions expenditure proportion (out of total government expenditure).

When the urbanisation rate is at 80%, Table F-9 in Appendix F reports on results from hypothetical 2013 data. Assumption 1 takes into consideration the smallest pool of funds.

For Assumption 1, there is already a surplus of RMB 626.84 Trillion¹⁴³² at current replacement rates. At this hypothetical level, although sustainability studies can be performed with reference only to amounts in the Social Insurance Fund, the studies will be more robust when considering the whole formal tax revenue pool, in consideration of the generational contracts funding model, and the discretionary nature of public expenditure. For the purposes of Urban Old-Age Pensions in the PRC, the government has chosen to fund Old-Age Pensions as a normal public good, therefore full consideration of the whole revenue is necessary in future sustainability studies.

7.5 Conclusion

The results in this study takes consideration of funding Urban Old-Age Pensions with regard to the generational contracts model, that is, the current working age population contribute to fund the retirement of current retirees. Three pools of funds were identified from total consolidated revenue to measure the PRC government's ability to fund Urban Old-Age Pensions. Three assumptions were made in relation to these three pools of funds, to test the PRC government's ability to fund Urban Old-Age Pensions paid at different levels.

¹⁴³² This is approximately AUD 125 Trillion.

The three pools of funds from consolidated revenue varied in size. The smallest pool of funds is the Urban Old-Age Pensions Social Insurance Contributions line item in the Social Insurance Funds Budget. The existing academic analysis's conclusions on the lack of sustainability of funding Urban Old-Age Pensions in the PRC were performed based on the lack of funding in the Social Insurance Fund itself. The feasibility study illustrates that, even statically, the amount recorded in the Urban Old-Age Pensions Social Contributions line item on the Social Insurance Funds budget could not adequately fund Urban Old-Age Pensions. Authors in the existing academic analysis already performed sustainability analysis based on this pool of funds. Their conclusion was that the PRC government could not sustainably fund Urban Old-Age Pensions. The authors however wrongfully chose to analyse in an insurance paradigm.

The other two funding pools for this study are the new Income Tax tax-base that accounts for Urban Old-Age Pensions Social Insurance Contributions, and total formal taxes revenue. These two funding pools account for the available funding sources for Urban Old-Age Pensions.

This static feasibility study concludes that at present Urban Old-Age Pensions payments levels, that is, at the average replacement rate of 11.63% between 2005 and 2013¹⁴³³, the PRC is able to adequately fund Urban Old-Age Pensions to meet minimum safety net living standards. It does this by firstly making subsidies from the Individual Income Tax tax-base, then the whole formal tax tax-base. This result contributes to future sustainability studies by broadening the sources of funding that the PRC government could source subsidies as additional funding.

¹⁴³³ See Table 7-5.

The present policy choices would not allow the PRC to fund Urban Old-Age Pensions at higher replacement rates, such as the target replacement rate in the PRC's policy design¹⁴³⁴ - 59.2%; the standard set by the *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* of the International Labor Organization¹⁴³⁵ - 45%; and international standards such as that for France¹⁴³⁶ at 50%, Germany and Sweden at 40%; and Australia at 37.86%. Benefits at these higher replacement rates cannot be adequately met even by broadening the funding pool to include the whole formal tax tax-base because Urban Old-Age Pensions will consume a material proportion of the fiscal revenue sources available for discretionary expenditure, that is, available non-earmarked formal taxes fiscal revenue.

Future sustainability studies could be performed based on the results of this static case study. Since the research in the existing academic analysis in relation to the Urban Old-Age Pensions Social Insurance Contributions pool of funds were performed according to the insurance paradigm, in light of the results of this study, a paradigm shift is necessary. Lack of adequate funds is concluded from the static feasibility study, sustainability studies are not necessary at face value. If researchers chose to include the results of the studies in the literature performed on the investment of funds in a sustainability study, conclusions would add to the literature.

In relation to the new Individual Income Tax tax-base as sources of funding Urban Old-Age Pensions, the static feasibility study demonstrated that there are adequate funds if Urban Old-Age Pensions are paid at current payment rates. Future sustainability studies could be performed by taking into consideration variables such as the impact of the

¹⁴³⁴ Above note 1391.

¹⁴³⁵ Above note 1397, Art 29.

¹⁴³⁶ Above note 1391.

changing demographics in the PRC, that is, the ageing and urbanising population has on the sources of funds. The static feasibility study also demonstrated that if Urban Old-Age Pensions are paid at higher levels, there is no adequate funding. If sustainability studies are performed, including the results of the studies in the literature performed on the investment of funds would lead to meaningful conclusions that adds to the literature.

In relation to total formal taxes revenue as sources of funding Urban Old-Age Pensions, conclusions from the static feasibility study was that, at current levels of payment, there is adequate funding. Payments at higher replacement rates, however, would not be feasible, when Urban Old-Age Pensions payments were compared to total fiscal expenditure. If the PRC government wishes to raise the level of payments, many more considerations are needed before a sustainability study could be performed.

Chapter VIII Conclusion

8.1 Introduction

The promulgation of the *Social Insurance Law*¹⁴³⁷ began a new era for welfare provision in the People's Republic of China (PRC). In this era, the PRC government moves to the *Social Insurance Law*¹⁴³⁸ welfare framework, and provides welfare to its citizens including Urban Old-Age Pensions to its urban retirees. The Urban Old-Age Pensions are partially funded by Social Insurance Contributions made by employers on behalf of employees, and partially funded by subsidies from consolidated revenue to the Social Insurance Fund. Unlike the years before the Open Door Policy in 1978,¹⁴³⁹ the PRC government treats social security items, including Urban Old-Age Pensions as a public good. Urban Old-Age Pensions are no longer considered as employment remuneration for employees of the State.

Urban Old-Age Pensions policies in the *Social Insurance Law*¹⁴⁴⁰ welfare framework were developed through many years of reform. The most recent reform was during the policy formulation process for the *Twelfth Five-year Plan*.¹⁴⁴¹ The *Twelfth Five-year Plan*¹⁴⁴² aims for the country to have a set of social welfare policies to improve

¹⁴³⁷ 《中华人民共和国社会保险法》*Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

¹⁴³⁸ *Ibid.*

¹⁴³⁹ 《中国共产党第十一届中央委员会第三次全体会议公报》*Communiqué of The Third Plenum of the Eleventh Central Committee of the Communist Party of China* 1978 (The Central Committee of the Communist Party of China); 人民网, 《中共党史上的 80 件大事 (65) 党的十一届三中全会》, *People's net*, '80 Important Events in the History of the Communist Party of China', *people.cn*, 13 June 2001, <<http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488120.html>> (21 Feb. 2016); and 新华网, 《中共十一届三中全会 (1978)》, *Xinhua Net*, 'The Third Plenum of the Eleventh Central Committee of the Communist Party of China (1978)', *Xinhua Net*, <http://news.xinhuanet.com/ziliao/2003-01/20/content_697755.htm> (21 Feb. 2016).

¹⁴⁴⁰ Above note 1437.

¹⁴⁴¹ 新华社, 《授权发布: 中华人民共和国国民经济和社会发展第十二个五年规划纲要》, *Xinhua Press*, 'Authorised Publication: A Compendium to the Twelfth Five-year Plan of Economic and Social Development of the People's Republic of China', *Xinhua Net*, 16 March 2011, <http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm> (19 Sep. 2012).

¹⁴⁴² *Ibid.*

people's livelihoods, in order to achieve a *Xiaokang* society by 2020.¹⁴⁴³ The *Xiaokang* society is the achievable ideal suggested by Confucius. The people's livelihoods policy theme in the *Twelfth Five-year Plan*¹⁴⁴⁴ directed policies to be made for Urban Old-Age Pension Social Contribution to be more centrally administered.

The common theme in the prevailing literature was that the PRC government could not sustainably fund Urban Old-Age Pensions. The literature discussed the need for the PRC to have a welfare state with a fully funded Urban Old-Age Pensions system.¹⁴⁴⁵ It identified the role played by Old-Age Pensions insurance.¹⁴⁴⁶ It also considered proposals for the PRC to develop its Old-Age Pensions system, focusing separately on Urban Old-Age Pensions insurance contributions and Urban Old-Age Pensions benefits.¹⁴⁴⁷ It discussed increased levels of centralisation for the administration of contributions.¹⁴⁴⁸ It also discussed the issues arising from Urban Old-Age Pensions insurance contributions in the PRC's fiscal transfer system, where the rural and urban divide¹⁴⁴⁹ gave rise to imbalance in provisions for the two sectors.¹⁴⁵⁰

¹⁴⁴³ 《人民日报评论员：深刻把握全面建成小康社会宏伟目标——六论学习贯彻党的十八大精神，四个全面》，People's Daily editorial, 'Grasp the Grand Goal of Developing Fully a Xiaokang Society – Sixth Essay on Adopting the Sprits of the 18th Meeting of the Chinese Communist Party, Four Completes', *people.cn*, 2 March, 2015, <<http://cpc.people.com.cn/pinglun/n/2015/0302/c78779-26620196.html>> (16. Oct 2015).

¹⁴⁴⁴ Above note 1441.

¹⁴⁴⁵ 庞凤喜, 《论社会保险税的征收与社会保险制度改革的关系》, 'The Relationship between Levying a Social Insurance Tax and the Deepening Reform of the Social Insurance System' (2007) *Comments on Public Economics* (7&8) 1.

¹⁴⁴⁶ 宋晓梧, 《中国社会保障制度改革》 Song X, *Reform of the Social Insurance System in China* (Beijing: Tsinghua University Press, 2001).

¹⁴⁴⁷ Ibid.

¹⁴⁴⁸ 郑秉文, 《关于加快推进省级社保统筹的建议》, Zheng B, 'Suggestions on Speeding up Provincial Level Economical Centralised Contribution of Social Insurance', (2007) *A Guide to China's Economics and Trade* (18) 9.

¹⁴⁴⁹ 孔光、邢振航, 《城乡二元体制下农村社会养老保险的重构》, Kong G & Xing Z, 'Restructuring of Rural Social Retirement Income Insurance within a Urban Rural Dualistic System', (2011) *China Collective Economy* (9) 11.

¹⁴⁵⁰ 潘楠、钱国荣, 《我国建立城乡养老保险统筹机制问题探讨》, Pan, N & Qian, G, 'Contribution to the Discussion on Establishing a Rural and Urban Retirement Income Mechanism in China', (2008) *Legal System and Society* (32) 274; and 桂世勋, 《未来中国养老保险面临的两大压力与对策》, Gui, X 'The Two Pressures of Social Insurance in China in the Future and Proposed Solutions' (1998) *Journal of the Eastern China Normal University Philosophy and Social Sciences Edition* (4) 56.

There are several gaps in the prevailing literature. First, there was a lack of analysis for the reasons behind the PRC's policy decision to allow subsidies from consolidated revenue to supplement the funding of Urban Old-Age Pensions. Second, the researchers have not provided reasons for persisting with the presumption that the funds in the Social Insurance Fund pertaining to Urban Old-Age Pensions was the only legitimate source of revenue. Third, there is no study on possible sources of revenue as subsidies, as allowed by the *Social Insurance Law*.¹⁴⁵¹

This research took the debates before the promulgation of *Social Insurance Law*¹⁴⁵² as a good opportunity to re-evaluate the common argument in the prevailing literature, that the PRC government is not capable of sustainably funding Urban Old-Age Pensions. This thesis addresses the gaps in the prevailing literature by answering the question:

In order to meet the requirements of the *Social Insurance Law of the People's Republic of China*¹⁴⁵³ to fully fund Urban Old-Age Pensions, does the government of the People's Republic of China need to make further considerations about the funding sustainability of its Urban Old-Age Pension policies?

This thesis approaches this question from three perspectives to respectively address the three gaps in the literature. First, the reason that the PRC government made the policy decision to allow subsidies from consolidated revenue to supplement the payment of Urban Old-Age Pensions was that, in its *Social Insurance Law*¹⁴⁵⁴ welfare framework, it was returning to the Chinese tradition of the State looking after its elderly. This tradition developed according to Confucian principles that were embedded into the governance of ancient Dynastic governments by methods advocated by the Legalist

¹⁴⁵¹ Ibid.

¹⁴⁵² Above note 1437.

¹⁴⁵³ Above note 1437.

¹⁴⁵⁴ Above note 1437.

school of thought, that is, strict adherence to a set of laws. In this tradition, each dynasty had concrete policies and laws to look after the elderly. The Sovereigns in order to satisfy their *Li* behaviour standards are required to look after people's livelihoods, including those of the elderly. The Sovereigns funded their elderly care policies by general revenue.

Second, there is no reason why there couldn't be other sources of revenue for the purposes of funding Urban Old-Age Pensions, since the PRC has a practicable set of formal institutions to allow it to legitimately source revenue from consolidated revenue to fund its welfare programmes. The post 1978 Urban Old-Age Pensions reform in the PRC was implemented at the same time as formal institutional reforms in the country. The economic and legal institutions in the PRC evolved organically to react to the changing economic and social environment. 1997 was a significant year for Urban Old-Age Pensions policies, because the PRC government recognised the importance of sustainable economic development,¹⁴⁵⁵ and that it had to look after the urban elderly not as its employees, but its citizens. This change of perspective occurred because the role of State Owned Enterprises as the major urban employer gradually reduces in importance. The issue of the *State Council Decision on Unifying the Enterprise Employee Basic Old-Age Pension Insurance Systems* (the *State Council Decision 1997*)¹⁴⁵⁶ was the turning point in Urban Old-Age Pensions policy design, where the government began to develop welfare policies that are partially funded by Social Insurance Contributions.

¹⁴⁵⁵ Saich T, *Governance and Politics of China*, (New York: Palgrave Macmillan, 3rd ed, 2011), at ch 10; and Clark D & Others, 'The Role of Law in China's Economic Development', in Brandt L & Rawski TG ed, *China's Great Economic Transformation*, (New York: Cambridge University Press, 2008), at 391.

¹⁴⁵⁶ 《国务院关于建设统一的企业职工基本养老保险制度的决定》 *State Council Decision on Unifying the Enterprise Employee Basic Old-age Pension Insurance Systems 1997* (State Council).

Third, the PRC government's promise in the *Social Insurance Law*¹⁴⁵⁷ to fully fund Urban Old-Age Pensions included enabling the government to source subsidies from consolidated revenue to the Social Insurance Fund to fund Urban Old-Age Pensions. The law signalled that the PRC government is treating Urban Old-Age Pensions as a public good to be funded by consolidated revenue. A fiscal study is performed in this research to analyse the PRC's fiscal revenue structure for the purposes of sourcing funds for the payment of Urban Old-Age Pensions. The study concludes that the sum of non-earmarked fiscal revenue could be the source of subsidies for the purposes of funding Urban Old-Age Pensions according to the *Social Insurance Law*.¹⁴⁵⁸ A static feasibility study of the PRC's ability to fund Urban Old-Age Pensions is performed based on the findings of the fiscal analysis to illustrate the changes in the sources of funding as a result of the fiscal study.

The thesis concludes that in order to meet the requirements of the *Social Insurance Law*¹⁴⁵⁹ to fully fund Urban Old-Age Pensions, the government of the PRC is returning to tradition by allowing subsidies from consolidated revenue as supplement funding. If the PRC is aiming for a higher Urban Old-Age Pensions replacement rate, that is, paying a higher level of pensions, the argument in the prevailing literature on the lack of sustainable funding remains true, even when subsidies are sourced from formal taxes revenue. Further considerations need to be made in relation to the sustainability of Urban Old-Age Pensions policies, accounting for the Social Insurance research paradigm that addresses Urban Old-Age Pensions funding needs as the funding of a

¹⁴⁵⁷ Above note 1437.

¹⁴⁵⁸ Above note 1437.

¹⁴⁵⁹ Above note 1437.

public good, demographic changes, and sources of funding in the PRC's consolidated revenue.

This chapter summarises the results of the research from these three perspectives, makes discussions of the flaws in the prevailing literature, and identifies future research opportunities and challenges.

8.2 Summary of Results

Chapter II is an analysis of the current laws regulating Urban Old-Age Pensions in the *Social Insurance Law*¹⁴⁶⁰ welfare framework. Urban Old-Age Pensions Social Insurance Contributions are administered by Local Tax Bureaus of the State Administration of Taxation. The Payment of Urban Old-Age Pensions benefits are administered by Departments of Human Resources and Social Security at local government areas. The minimum contribution years before a retiree could receive government administered Urban Old-Age Pensions benefits is 15 years. The welfare framework enables extra contributions to make up the 15 years. The welfare framework also enables a retiree to benefit from Urban Old-Age Pensions when the retirement location differs from the employment location. The laws in the welfare framework entrenches the PRC government's promise to look after its urban elderly – returning to tradition.

This section focuses on summarising the results from the historical analysis in Chapter IV, the institutional analysis of the reform Urban Old-Age Pensions in the PRC in Chapter V, the fiscal analysis in Chapter VI, and the feasibility study in Chapter VII.

¹⁴⁶⁰ Above note 1437.

8.2.1 Results from the Historical Analysis

The historical analysis of the Chinese tradition where the State looks after the elderly were performed by treating the policies as having the force of law. A comparison between the functions of *Li* rules in ancient China that capture the policies to look after the elderly and the functions of modern western laws showed that the functions are comparable.

The historical analysis concluded that the ancient Chinese dynasties had continuous and one-off policies that supplied material goods to the elderly. These policies were funded by general revenue. The continuous policies focused on the status of the elderly in society, giving them travel conveniences; and tax and force labour exemptions. The tax and force labour exemptions applied to the elderly and their sons who have to look after them. The one-off policies were often implemented at specific events, such as the Emperor's coronation and other special celebrations initiated by the Emperor. Often the elderly were given gifts in the form of food and fabric.

The historical analysis illustrated that China has a long tradition of having government policies that looked after the elderly.

8.2.2 Results from the Institutional Analysis of the Reform of Urban Old-Age Pensions

The institutional analysis showed that the PRC's formal institutions for the purposes of Urban Old-Age Pensions experienced an organic development process. In China's post 1949 history, there are distinct eras, but formal institutional developments did not progress with the same clear distinction. Between 1949 and 1978, the institutional developments emphasised the role of the Communist Party in the governance of the

country, and the party's policies were in form and substance intertwined with government policy.

In relation to Urban Old-Age Pensions, the 1969 *Systemic Reform Proposals for the Accounting of State Owned Enterprises*¹⁴⁶¹ issued by the Ministry of Finance shifted funding responsibility from the State in its budgets, to State Owned Enterprises in their budgets. State Owned Enterprises budgeted for welfare for its employees and recorded expenditure in their enterprise accounts. Amongst other things, this law-document turned Urban Old-Age Pensions from a public welfare policy into an employment remuneration policy.

The Open Door Policy began soon after the end of the Cultural Revolution,¹⁴⁶² and formal institutions in the PRC reacted to the marketisation of the economy. Laws and infrastructure began to be put in place, and Five-year Plans returned to play an important role in the policy development process. There is enough evidence to show that the PRC's formal institutions are strengthened to allow for effective implementation of policies,¹⁴⁶³ so the policy aim to fully fund Urban Old-Age Pensions could be achieved by sourcing subsidies from general public revenue.

For the purposes of the Urban Old-Age Pensions policies, in the *Social Insurance Law*¹⁴⁶⁴ welfare framework, the relevant Five-year Plan is the *Twelfth Five-year Plan*.¹⁴⁶⁵ The relevant policy group was covered by the People's Livelihoods Reform

¹⁴⁶¹ 《关于国营企业财务工作中几项制度的改革意见》 *Systemic Reform Proposals for the Accounting of State Owned Enterprises 1969* (Ministry of Finance).

¹⁴⁶² 项怀诚编,《中国财政通史·当代卷》, Xiang H ed, *Public Finance History of China, Contemporary Volume* (Beijing: China Public Finance and Economics Press, 2006), ch 3.

¹⁴⁶³ See 陈太明,《中国改革开放政策有效性的定量研究》, Chen T, 'An Empirical Study on China's Reform and Opening-up Policy Effectiveness', (2011) 28 *Statistical Research* (10) 54; 陈杰、王立勇,《改革开放以来我国宏观调控的有效性研究》, Chen J & Wang L, 'Macroeconomic Control Policy Effectiveness in the Post Open Door Policy Era in China', (2015) *Macroeconomic Research* (3) 50; and 靳万军,《政府绩效管理与金税工程绩效》, Jin W, 'Government Performance Management and the Effectiveness of the Golden Tax Project', (2005) 242 *Taxation Research* (7) 24 – 32.

¹⁴⁶⁴ Above note 1437.

¹⁴⁶⁵ Above note 1441.

thematic policy goal. Law-documents developed according to this policy goal to regulate the Contributions, payments and administration of Urban Old-Age Pensions. Existing law-documents that regulated different types of fiscal revenue allow the government to source funds to subsidise the payments of Urban Old-Age Pensions benefits.

These law-documents that regulated fiscal revenue in the PRC include law-documents on formal taxes and sundry levies. Formal taxes are non-earmarked, raised either by Legislation made by the legislature (the National People's Congress, or its Standing Committee), or by Administrative Regulations made by the State Council, and administered by tax authorities. Tax authorities refer to the Local Tax Bureaus or National Tax Bureaus of the State Administration of Taxation. Sundry levies are raised by Ministerial Rules made by the relevant functional Ministry that is administering the policy. This revenue is earmarked, and the expenditure is made by the functional Ministry. Sundry levies are earmarked and less transparent.

Local Tax Bureaus collect formal tax revenue that could be redistributed to local governments in the budgeting process, these are funds local governments are entitled to in the intergovernmental-transfers process. The funds collected by National Tax Bureaus are for the national government to appropriate. Centralisation of administration of Urban Old-Age Pensions to the provincial level have been achieved, and the collection of Urban Old-Age Pensions by Local Tax Bureaus are appropriate as the funds could be transferred from consolidated revenue to pay for Urban Old-Age Pension benefits.

8.2.3 Results from the Fiscal Analysis

This fiscal analysis was performed to analyse how the PRC's fiscal structure could fund Urban Old-Age Pensions. Urban Old-Age Pensions is a separate line item in the PRC's Social Insurance Funds Budget. The fiscal study distinguished the different forms of fiscal revenue, and analysed their contribution to total fiscal revenue.

The collection of Urban Old-Age Pensions Social Insurance Contributions by Local Tax Bureaus illustrates that administratively, it is similar to a formal tax. The *Social Insurance Law*,¹⁴⁶⁶ which is Legislation made by the Standing Committee of the National People's Congress, requires Social Insurance Contributions to be collected into the Social Insurance Fund, therefore, the Social Insurance Contributions are earmarked. The Social Insurance Contributions can be treated as an earmarked formal tax.

The fiscal study also concluded that the Contributions base for Urban Old-Age Pensions Social Insurance Contributions are the same as the Individual Income Tax tax-base of urban employees. This suggests that if the government plans to identify a particular type of formal tax to source subsidies to fund Urban Old-Age Pensions benefits, the Individual Income Tax tax-base would be the obvious priority.

8.2.4 Results from the Feasibility Study

The feasibility study was performed based on 2005 to 2013 data. It is a static study that aims to illustrate the difference made by broadening the funding sources for Urban Old-Age Pensions payments.¹⁴⁶⁷ The generational contracts model is applied for this study,

¹⁴⁶⁶ Above note 1437.

¹⁴⁶⁷ For a full static analysis, see for example, Verbon HAA, 'Explaining Pay-as-you-go Financed Public Pension Systems', (1988) 28 *Economics Letters* 181, at 184-185.

that is, the model assumes that the present generation of workers are contributing to fund the retirement of the present generation of retirees.

The study took into consideration three funding pools of differing sizes, and tested whether these funding pools could adequately fund Urban Old-Age Pensions in the PRC. The smallest pool of funds was the Urban Old-Age Pensions Social Insurance Contributions line item in the Social Insurance Funds Budget. The medium pool of funds is the Individual Income Tax tax-base, including Urban Old-Age Pensions Social Insurance Contributions. This new Individual Income Tax tax-base resulted from the fiscal study. The largest pool of funds is the whole formal tax revenue in the PRC's consolidated revenue.

The result of the feasibility study was that at present Urban Old-Age Pensions payments levels, that is, at the average replacement rate of 11.63% between 2005 and 2013,¹⁴⁶⁸ the PRC is able to adequately fund Urban Old-Age Pensions to meet minimum safety net living standards, by firstly making subsidies from the Individual Income Tax tax-base, then the whole formal tax tax-base.

The study also considered payment of benefits at higher pension replacement rates, that is, the rate between the level of the pension and average wage and salary levels in the PRC. It concluded that present policy choices would not allow the PRC to fund Urban Old-Age Pensions at higher replacement rates, such as the target replacement rate in the PRC's policy design¹⁴⁶⁹ (59.2%); the standard set by the *Convention Concerning*

¹⁴⁶⁸ See Table 7-2.

¹⁴⁶⁹ 白天亮, 《养老金替代率衡量劳动者退休前后生活水平的差异,也反映整个养老保险制度安排是否合理--养老金替代率有多高(民生视线)》, Bai T, 'The Old-age Pension Replacement Rate Reflects the Living Standard Difference of a Person Before and After Retirement, it Also Reflects Whether the Old-age Pensions Social Insurance System is Appropriate – How High is the Old-age Pensions Replacement Rate (People's Livelihoods Perspective)', *people.cn*, 12 December 2014, <<http://society.people.com.cn/n/2014/1212/c1008-26193112.html>> (9 Sep. 2015).

Invalidity, Old-Age and Survivors' Benefits of the International Labor Organization¹⁴⁷⁰ - 45%; and international standards such as that for France¹⁴⁷¹ at 50%, Germany and Sweden at 40%; and Australia at 37.86%. Assuming that the government does not wish to go into debt, benefits at these higher replacement rates cannot be adequately met even by broadening the funding pool to include the whole formal tax base because Urban Old-Age Pensions will consume a material proportion of the fiscal revenue sources available for discretionary expenditure, that is, available non-earmarked formal taxes fiscal revenue.

8.3 Flaws in the Prevailing Literature

The prevailing literature argued that the PRC's Urban Old-Age Pension is underfunded for the country's ageing population, and the scheme is not sustainable. The argument is made from different perspectives. Scholars began to write about the reform to Urban Old-Age Pensions around the time of the issuing of the *State Council Decision 1997*.¹⁴⁷² This was the time that the PRC government began to rebuild a welfare state that includes the five types of social security benefits that are partially funded by Social Insurances¹⁴⁷³— Old-Age Pensions, Health, Workers Compensation, Parental Care and Unemployment.

The earlier literature around the time of the issuing of the *State Council Decision 1997*¹⁴⁷⁴ identified areas that the reform needed to focus on. These issues included: a

¹⁴⁷⁰ *Convention Concerning Invalidity, Old-Age and Survivors' Benefits* 1967(International Labour Organization) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C128> (9 Sep. 2015), Art 29.

¹⁴⁷¹ Above note 1469.

¹⁴⁷² Above note 1456.

¹⁴⁷³ The five types of Social Insurances are the Old-age Pensions Social Insurance, the Health Social Insurance, the Workers Compensation Social Insurance, the Parental Social Insurance and the Unemployment Social Insurance.

¹⁴⁷⁴ Above note 1456.

declining old age dependency ratio,¹⁴⁷⁵ reduction in the level of coverage of the Urban Old-Age Pensions,¹⁴⁷⁶ “rising enterprise burden”,¹⁴⁷⁷ and “erosion of pension benefits”.¹⁴⁷⁸ The authors argued that the administration of the enterprise contributed Social Insurance Contributions needs to be pooled at a higher level of government for administrative purposes.¹⁴⁷⁹ Later authors continued to see these issues as requiring further reform, and suggested that in the reform process, the empty individual accounts in the Social Insurance Fund is the major contributor to the lack of funding sustainability. The authors argued that the empty individual accounts problem is caused by a “historical Old-Age Pension insurance debt”¹⁴⁸⁰ problem; and administration of the Urban Old-Age Pensions scheme by lower level governments. In terms of the “historical Old-Age Pension insurance debt”,¹⁴⁸¹ the literature critiqued the governments’ practice of making transfer payments from consolidated revenue to fund Urban Old-Age Pensions. Models were built to analyse sustainability based on these arguments, and solutions to the lack of sustainability were proposed.

There are several significant flaws in this literature. Firstly, the literature spanned almost twenty years, yet the presumptions did not change. The arguments in the older literature around the issuing of the *State Council Decision 1997*¹⁴⁸² was made to prepare for reform. The authors were analysing an economy that is experiencing significant transition, including high unemployment rates from the State Owned Enterprises reform, reemployment in the private sector and increased population

¹⁴⁷⁵ West L, ‘Pension Reform in China: Preparing for the Future’, (1999) 35 *The Journal of Development Studies* (3) 153.

¹⁴⁷⁶ *Id.*, at 156.

¹⁴⁷⁷ *Id.*, at 156-158.

¹⁴⁷⁸ *Id.*, at 158-161.

¹⁴⁷⁹ *Id.*, at 173-177.

¹⁴⁸⁰ 谭喜祥, 《中国养老保险历史债务偿还的法律思考》 Tan X, ‘Legal Considerations of the Repayment of the Historical Social Insurance Debt in China’ (2005) 146 *Lanzhou Academic Journal* (5) 213.

¹⁴⁸¹ *Ibid.*

¹⁴⁸² Above note 1456.

mobility in the form of the migrant workers. The authors were contributing to initial policy reform. The Urban Old-Age Pensions policy at the time was administered and paid by employers. These employers were either the public service or government agencies, or State Owned Enterprises. The government was the employer in that Urban Old-Age Pensions Scheme.

The issue of the *State Council Decision 1997*¹⁴⁸³ was the break from the previous employer administered scheme, where Urban Old-Age Pensions became social security provided by the government to its citizens, rather than employment remuneration that looked after the employee's retirement.

Later authors continued their research from the arguments made by earlier researchers, and continued to view the accumulated funds from contributions in the Social Insurance Fund as the only source of legitimate revenue. They did not reconsider that the PRC's Urban Old-Age Pensions has become a public good within the budgeting process. The "historical Old-Age Pension insurance debt"¹⁴⁸⁴ in the *Social Insurance Law*¹⁴⁸⁵ welfare framework is not a real problem, because Urban Old-Age Pensions funding is part of general expenditure considerations for the PRC government.

The second significant flaw is that the centralisation of the administration of Social Insurance Contributions is an administrative issue, it is not a substantive solution that will contribute to the funding of Urban Old-Age Pensions. Administrative solutions could clarify the responsibility of different levels of government, as well as make the

¹⁴⁸³ Above note 1456.

¹⁴⁸⁴ Above note 1480.

¹⁴⁸⁵ Above note 1437.

policy more transparent. The administrative reforms are also within the continuous government transfers reform in the PRC.¹⁴⁸⁶

The third significant flaw is that the later authors did not take into consideration the changes in formal institutions in the PRC. It is possible to argue that before the Open Door Policy reforms, the PRC did not have a formal set of practicable institutional structures, because the early leaders governed according to Communist Ideology. The changes to formal institutions as a result of marketisation meant the legal system in the PRC is more developed, and therefore it is possible for the PRC to fund Urban Old-Age pensions as a public good, through its fiscal revenue structure.

The most significant flaw in the literature is that many papers published in Chinese referred to Old-Age Pensions Social Insurance Contributions as Old-Age Pensions Insurance Contributions. The use of the terminology meant many authors fundamentally misunderstood the scheme as a private insurance scheme, and the contributions are made as a premium to insure for the risk of future loss.¹⁴⁸⁷

This misconception meant the authors perceived that each participant's Urban Old-Age Pensions benefit requires independent verification that funds are required to be set aside for the particular individual. Individual accounts in the Social Insurance Fund was perceived as accounting provisions by the government to fund the Urban Old-Age Pensions need of the individual.

In private insurance, there is generally a principle of equal exchange for the payment of final benefits when the risk event occurs. As soon as the contract between the insurer

¹⁴⁸⁶ Wong C, 'Reforming China's Public Finances for Long-term Growth', in Garnaut, R & Song, L eds, *China Update 2013* (Canberra: Australian National University, 2013), at 199-219.

¹⁴⁸⁷ 'Insurance' in Delbridge & others, eds, *The Macquarie Encyclopedic Dictionary*, (Sydney: Macquarie Library Pty Ltd, 1995), at 482.

and the beneficiary lapses, the insurance responsibility of the insurer stops. In the private tier of pension provision, insurance companies offer lifetime annuity products that are based on current income. These products are similar to Old-Age Pensions Social Insurance schemes up to a certain point, and are designed around the provision of a pension in retirement and the premiums are designed around working life income. The insurance company, however, has to approximate different risk factors for different levels of payment and demand different premiums.

If a government's public Old-Age Pensions system relies on a private insurance scheme, there will be few policyholders. The market then contracts in size and becomes less able to provide benefits effectively. Since there is information asymmetry, when the insurance company is unable to acquire information based on the probability of different risk factors for different persons, the only possibility is to provide the same policy to each person. Those policy holders with higher risk factors, however, will be more likely to demand insurance benefits, and these are also the less desirable customers for insurance companies. In order to maximise benefit levels and minimise risk, the insurance company would be more willing to choose customers with opposite characteristics, leading to adverse selection.

The existence of this phenomenon means that the private insurance market is unable to solve the conflict between risk uncertainty, profitability and contract stability. It is also not able to solve the conflict between the long term nature of the insured activity and the short term nature of efficient capital returns sought by the insurance industry. Therefore it is not possible for an effective and efficient private insurance market to provide Old-Age Pension, as well as health care, unemployment benefits, and work

injury compensation. The market failure is obvious. As such, the government has to step in to provide for Old-Age Pension as a normal public good in its policy choice.

This funding model works in the same way as paying earmarked taxes to fund other public goods supplied by the government. The generational contracts Social Insurance model is distinctly different to how normal private insurances are funded: usually participants of private insurance pay premiums to insure against a “risk” event in the future, and the premiums correspond with expected payment levels. Social Insurances are compulsory payments required by laws, and behave similarly as taxes.

8.4 Future Research Opportunities and Challenges

The results presented in this thesis add to the literature on funding Urban Old-Age Pensions in the PRC. This research found that the reason behind the policy design of Urban Old-Age Pensions in the PRC, that is, the requirement by the *Social Insurance Law*¹⁴⁸⁸ to fully fund Urban Old-Age Pensions, could be found in the Chinese tradition of the State having policies to look after the elderly.

The formal institutions for implementing the *Social Insurance Law*¹⁴⁸⁹ is different from when authors began to publish the prevailing literature around 1997, and the regulations for government revenue could be practicably administered to adequately fund public goods. This research analysed the PRC’s fiscal revenue structure to broaden the pool of funds that could be accessed to fund Urban Old-Age Pensions as a public good. The accumulated contributions in the Social Insurance Fund is not the only legitimate source of funding for Urban Old-Age Pensions.

¹⁴⁸⁸ Above note 1437.

¹⁴⁸⁹ Above note 1437.

This thesis contributes to change the perspective on analysing the sustainability of funding Urban Old-Age Pensions in the PRC. If the PRC was to increase the Urban Old-Age Pensions replacement rate, results from the feasibility study shows that sustainability would still be an issue that needs to be addressed.

Models to address sustainability must include considerations of a broader funding pool. Additional variables need to be considered because the legal requirements in the *Social Insurance Law*¹⁴⁹⁰ welfare framework allows the government to subsidise. This research illustrates that, assuming the government does not go into debt in its public finances, the total formal tax revenue in the PRC could be treated as a funding source for Urban Old-Age Pension purposes. If the government wants to place a limit on subsidies, since for urban employees, the tax base for Urban Old-Age Pensions Social Insurance Contributions and Individual Income Tax are the same, the Individual Income Tax tax-base that include Urban Old-Age Pensions Social Insurance Contributions could be treated as the source of funding. Models could be built by adding these two larger pools of funds as variables. The challenges in rebuilding these sustainability models is in relation to forecasting the changes in the funding pools. The PRC is experiencing economic transition, and income tax revenue is growing in importance as a contributor to total fiscal revenue. The continuing legal and public finances reforms will lead to changes in the role sundry levies play in the fiscal revenue structure. It is difficult to predict the size of formal tax revenue, because there are many independent variables as components of formal tax revenue.

The changes in the demographic nature of the PRC's economy, that is, the growth of urbanisation and the growing ageing population will effect on the funding of Urban

¹⁴⁹⁰ Above note 1437.

Old-Age Pensions. These changes lead to an increase in the number of urban retirees for the Urban Old-Age Pensions scheme. As at 2014 the PRC has a much lower old age dependency ratio than the OECD¹⁴⁹¹ at 13.7 retirees per 100 employed persons, but it was predicted to increase.¹⁴⁹² For OECD countries, Germany's old age dependency ratio was 32, Australia and the USA were both at 22, and the UK at 28.¹⁴⁹³

The PRC does face an ageing population problem. Solutions for this problem are needed, but modelling should carefully consider Apps and Rees's argument,¹⁴⁹⁴ that any solution needs to consider the family structures in the country, where policies to stimulate the birth rate should be treated with caution.¹⁴⁹⁵ Apps and Rees argued that although an increased birth rate adds to the potential pool of the working age population, the social welfare cost of the ageing population needs to be balanced with that of children.¹⁴⁹⁶ The PRC has recently relaxed its one child policy¹⁴⁹⁷ to combat the ageing population problem. Modelling should take this into account, but heed Apps and Rees's caution.

Further study could also be performed to contribute to the debate in the PRC on urbanisation, specifically the dismantling of the *Hukou*¹⁴⁹⁸ system, and the merging of the dual urban-rural economies. The increasingly urbanised nature of the population is

¹⁴⁹¹ *Database of the National Bureau of Statistics of China (Chinese Version)* Online <<http://data.stats.gov.cn/>> (25 Aug. 2015), please also see Appendix A and B

¹⁴⁹² For example, see Hu N & Yang Y, 'The Real Old-Age Dependency Ratio and the Inadequacy of Public Pension Finance in China', (2012) 5 *Journal of Population Ageing* 193; and the critique of the literature in Apps P, Rees R, & Wood M, 'Population Ageing, Taxation, Pensions and Health Costs', (2007) 10 *Australian Journal of Labour Economics* 79.

¹⁴⁹³ *World Bank Database*, Online <<http://data.worldbank.org/indicator/SP.POP.DPND>> (6 Sep. 2015).

¹⁴⁹⁴ For example, Apps P & Rees R, 'Australian Family Tax Reform and the Targeting Fallacy', (2010) 43 *Australian Economic Review* 153; Apps P, 'The High Taxation of Working Families', (2004) 5 *Australian Review of Public Affairs* (December) 1; and Apps P, Rees R, & Wood M, 'Population Ageing, Taxation, Pensions and Health Costs', (2007) 10 *Australian Journal of Labour Economics* 79.

¹⁴⁹⁵ Apps P & Rees R, *Public Economics and the Household*, (Melbourne: Cambridge University Press, 2009).

¹⁴⁹⁶ *Ibid.*

¹⁴⁹⁷ 新华社,《授权发布:中国共产党第十八届中央委员会第五次全体会议公报》,Xinhua Press, 'Authorised Publication: Public Announcement of The Fifth Plenum of the Eighteenth Central Committee of the Communist Party of China', *Xinhua Net*, 29 October 2015, <http://news.xinhuanet.com/politics/2015-10/29/c_1116983078.htm> (14 Mar. 2016)

¹⁴⁹⁸ 《中华人民共和国户口登记条例》*Resident Registration Regulation of the People's Republic of China* 1958 (National People's Congress).

a signal to change the focus of the research on the demographic element in the sustainability models. The focus should change from targeting the rural economy because there is a large rural population, to looking at policies that will balance rural and urban development for social equality purposes.

The challenge in predicting demographic changes for Urban Old-Age Pensions funding purposes is whether there is a correlation between the changes in the age structure in the population and the change in urbanisation. The *Hukou* system distinguishes rural and urban employees differently to the Urban Old-Age Pensions policies. The former is a registration system, whereas the latter depends on the location of employment. Data collected on potential retirees based on their residence registration are different from data collected based on employment location. The former would be more accurate for retirement destination purposes, therefore more useful for the administration of pension payments. The latter is more accurate for the collection of Social Insurance Contributions purposes, therefore more useful for the identification of retirees who will retire from the urban population. Potential reforms in residence registration may change the models that predict numbers of urban retirees for the purposes of funding Urban Old-Age Pensions.

If the PRC government chooses to increase the replacement rate, further research can be performed to improve the funding ability. There is already literature¹⁴⁹⁹ on investing the funds in the Social Insurance Fund. This literature was an alternative that looks at how to grow the funding pool. The misconception of Urban Old-Age Pensions Social Insurance as a private insurance is a major challenge in this area of research. Since

¹⁴⁹⁹ For example, see 郑秉文, 《建立社保基金投资管理体的战略思考》, Zheng, B, 'Strategies for Establishing an Investment Management System for Social Insurance Funds', (2004) 4 *Public Administration Journal* 4; and 张志超、但芳芳, 《社保基金投资组合选择和风险防范》, Zhang Z & Dan F, 'Social Insurance Fund Investment Portfolio Choice and Risk Mitigation', (2004) 4 *Openness Digest* 99.

Urban Old-Age Pensions is a social welfare policy issue, research should reevaluate risk as a variable in the models.

The prevailing literature argued for increasing the level of centralisation in the administration of Social Insurance Contributions. This thesis argued that it is an administrative issue and requires further research on how to administer the Old-Age Pensions Social Insurance Funds themselves to increase transparency thereby preventing the loss of funds. It is part of the administrative centralisation reform. There is currently research¹⁵⁰⁰ analysing the administrative centralisation reform as part of the PRC's government transfers reform. Further contribution to this literature should incorporate careful consideration of the PRC's fiscal revenue structure.

Taking into account all available funding sources, the PRC is able to fully fund Urban Old-Age Pensions. The historical analysis carried out combined with the current complete formal institutional framework showed increased sources of funding were available that had not been taken into account by previous scholars. The thesis therefore enhances current knowledge which will allow subsequent researchers to better model and propose reform for pensions funding in the PRC.

¹⁵⁰⁰ For example, see Wong C 'Fiscal Reform: Paying for the Harmonious Society', (2010) 14 *China Economic Quarterly* (June 2010) 20; and Wong C 'Reforming China's Public Finances for Long-term Growth', in Garnaut, R & Song, L eds, *China Update 2013* (Canberra: Australian National University, 2013), at 199-219.

Appendix A Annual Urbanisation Growth of the PRC and its Provinces

Note: Beijing, Shanghai, Tianjin and Chongqing are provincial level Municipalities Directly under the Central Government.

A.1 Methodological Note

1. Collect population data of the most recent decade (2005 to 2014) from the website of the National Bureau of Statistics of China.
2. Collate data into Tables A-1 to A-31.
3. Run Least Squares analysis from EViews to calculate average annual urbanisation growth rate for each province:
 - a) Independent variable = year
 - b) Dependent Variable = Annual urbanisation rate.
 - c) The year co-efficient taken in percentage points is the average urbanisation growth rate in percentage points.
4. Collate National data and Provincial data into Table A-32.
5. Repeat Least Squares analysis for the national data.
6. Use EViews to draw scatter graph (shown in Figure A-1) to present urbanisation growth trend of the PRC and selected provinces.

A.2 Results on Provincial Urbanisation Trends

Table A-1 Annual Urbanisation Rate of the Guangdong Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	107240	106440	105940	105050	104410	101300	98930	96600	94420	91940
Urban Population ('000)	72920	72120	71400	69860	69100	64230	62690	60990	59490	55790
Rural Population ('000)	34320	34320	34540	35190	35310	37080	36240	35600	34940	36150
Urbanisation Rate	68.00%	67.76%	67.40%	66.50%	66.18%	63.41%	63.37%	63.14%	63.01%	60.68%

	Guangdong
2014	68.00%
2013	67.76%
2012	67.40%
2011	66.50%
2010	66.18%
2009	63.41%
2008	63.37%
2007	63.14%
2006	63.01%
2005	60.68%

Urbanisation Growth Rate 2004-2015¹⁵⁰¹

Dependent Variable: GUANGDONG				
Method: Least Squares				
Date: 07/06/15 Time: 12:52				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-15.4984	1.561223	-9.92709	0
YEAR	0.008036	0.000777	10.34309	0
R-squared	0.930422	Mean dependent var		0.64945
Adjusted R-squared	0.921725	S.D. dependent var		0.025223
S.E. of regression	0.007057	Akaike info criterion		-6.89281
Sum squared resid	0.000398	Schwarz criterion		-6.8323
Log likelihood	36.46407	Hannan-Quinn criter.		-6.9592
F-statistic	106.9795	Durbin-Watson stat		2.088475
Prob(F-statistic)	0.000007			

Therefore Guangdong's annual urbanisation growth rate is 0.8036 percentage points.

¹⁵⁰¹ Statistical Analysis from EViews.

Table A-2 Annual Urbanisation Rate of the Jiangsu Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	79600	79390	79200	78990	78690	78100	77620	77230	76560	75880
Urban Population ('000)	51910	50900	49900	48890	47670	43430	42150	41090	39730	38320
Rural Population ('000)	27690	28490	29300	30090	31020	34680	35470	36140	36820	37560
Urbanisation Rate	65.21 %	64.11 %	63.01 %	61.89 %	60.58 %	55.61 %	54.30 %	53.20 %	51.89 %	50.50 %

	Jiangsu
2014	65.21%
2013	64.11%
2012	63.01%
2011	61.89%
2010	60.58%
2009	55.61%
2008	54.30%
2007	53.20%
2006	51.89%
2005	50.50%

Urbanisation Growth Rate 2004-2015¹⁵⁰²

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-35.31302	2.347668	15.04175	0
YEAR	0.017862	0.001168	15.28894	0
R-squared	0.966908	Mean dependent var		0.5803
Adjusted R-squared	0.962772	S.D. dependent var		0.054997
S.E. of regression	0.010611	Akaike info criterion		-6.07691
Sum squared resid	0.000901	Schwarz criterion		-6.01639
Log likelihood	32.38454	Hannan-Quinn criter.		-6.1433
F-statistic	233.7518	Durbin-Watson stat		1.424277
Prob(F-statistic)	0			

Therefore Jiangsu's annual urbanisation growth rate is 1.7862 percentage points.

¹⁵⁰² Statistical Analysis from EViews

Table A-3 Annual Urbanisation Rate of the Shandong Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	97890	97330	96850	96370	95880	94700	94170	93670	93090	92480
Urban Population ('000)	53850	52320	50780	49100	47650	45760	44830	43790	42910	41620
Rural Population ('000)	44040	45020	46070	47270	48230	48940	49350	49880	50170	50860
Urbanisation Rate	55.01%	53.76%	52.43%	50.95%	49.70%	48.32%	47.61%	46.75%	46.10%	45.00%

	Shandong
2014	55.01%
2013	53.76%
2012	52.43%
2011	50.95%
2010	49.70%
2009	48.32%
2008	47.61%
2007	46.75%
2006	46.10%
2005	45.00%

Urbanisation Growth Rate 2004-2015¹⁵⁰³

Dependent Variable: SHANDONG				
Method: Least Squares				
Date: 07/07/15 Time: 11:19				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-21.8537	0.952923	-22.9333	1.39E-08
YEAR	0.011122	0.000474	23.45343	1.16E-08
R-squared	0.985665	Mean dependent var		0.49563
Adjusted R-squared	0.983873	S.D. dependent var		0.033917
S.E. of regression	0.004307	Akaike info criterion		-7.88019
Sum squared resid	0.000148	Schwarz criterion		-7.81968
Log likelihood	41.40097	Hannan-Quinn criter.		-7.94658
F-statistic	550.0633	Durbin-Watson stat		0.492906
Prob(F-statistic)	1.16E-08			

Therefore Shandong's annual urbanisation growth rate is 1.1122 percentage points.

¹⁵⁰³ Statistical Analysis from EViews

Table A-4 Annual Urbanisation Rate of the Zhejiang Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	55080	54980	54770	54630	54470	52760	52120	51550	50720	49910
Urban Population ('000)	35730	35190	34610	34030	33560	30550	30020	29490	28660	27960
Rural Population ('000)	19350	19790	20160	20600	20900	22210	22100	22060	22060	21950
Urbanisation Rate	64.87%	64.01%	63.19%	62.29%	61.61%	57.90%	57.60%	57.21%	56.51%	56.02%

	Zhejiang
2014	64.87%
2013	64.01%
2012	63.19%
2011	62.29%
2010	61.61%
2009	57.90%
2008	57.60%
2007	57.21%
2006	56.51%
2005	56.02%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁴

Dependent Variable: ZHEJIANG				
Method: Least Squares				
Date: 07/07/15 Time: 11:09				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-21.2999	1.857787	-11.4652	0
YEAR	0.010899	0.000925	11.78883	0
R-squared	0.94557	Mean dependent var		0.60121
Adjusted R-squared	0.938766	S.D. dependent var		0.033934
S.E. of regression	0.008397	Akaike info criterion		-6.54498
Sum squared resid	0.000564	Schwarz criterion		-6.48446
Log likelihood	34.7249	Hannan-Quinn criter.		-6.61137
F-statistic	138.9765	Durbin-Watson stat		1.563607
Prob(F-statistic)	0.000002			

Therefore Zhejiang's annual urbanisation growth rate is 1.0899 percentage points.

¹⁵⁰⁴ Statistical Analysis from EViews

Table A-5 Annual Urbanisation Rate of the Henan Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	94360	94130	94060	93880	94050	94870	94290	93600	93920	93800
Urban Population ('000)	42650	41230	39910	38090	36210	35770	33970	32140	30500	28750
Rural Population ('000)	51710	52900	54150	55790	57840	59100	60320	61460	63420	65050
Urbanisation Rate	45.20%	43.80%	42.43%	40.57%	38.50%	37.70%	36.03%	34.34%	32.47%	30.65%

	Henan
2014	45.20%
2013	43.80%
2012	42.43%
2011	40.57%
2010	38.50%
2009	37.70%
2008	36.03%
2007	34.34%
2006	32.47%
2005	30.65%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁵

Dependent Variable: HENAN				
Method: Least Squares				
Date: 07/06/15 Time: 12:56				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-31.9079	0.621943	-51.3036	0
YEAR	0.016068	0.00031	51.91736	0
R-squared	0.997041	Mean dependent var		0.38169
Adjusted R-squared	0.996671	S.D. dependent var		0.048722
S.E. of regression	0.002811	Akaike info criterion		-8.73357
Sum squared resid	6.32E-05	Schwarz criterion		-8.67305
Log likelihood	45.66783	Hannan-Quinn criter.		-8.79995
F-statistic	2695.412	Durbin-Watson stat		1.825419
Prob(F-statistic)				0

Therefore Henan's annual urbanisation growth rate is 1.6068 percentage points.

¹⁵⁰⁵ Statistical Analysis from EViews

Table A-6 Annual Urbanisation Rate of the Hebei Province 2005 – 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	73840	73330	72880	72410	71940	70340	69890	69430	68980	68510
Urban Population ('000)	36420	35280	34110	33020	32010	30770	29280	27950	26740	25820
Rural Population ('000)	37410	38040	38770	39390	39930	39570	40600	41480	42240	42690
Urbanisation Rate	49.32%	48.11%	46.80%	45.60%	44.50%	43.74%	41.89%	40.26%	38.76%	37.69%

	Hebei
2014	49.32%
2013	48.11%
2012	46.80%
2011	45.60%
2010	44.50%
2009	43.74%
2008	41.89%
2007	40.26%
2006	38.76%
2005	37.69%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁶

Dependent Variable: HEBEI				
Method: Least Squares				
Date: 07/07/15 Time: 10:33				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-25.7124	0.707652	-36.3348	0
YEAR	0.013013	0.000352	36.95194	0
R-squared	0.994175	Mean dependent var		0.43667
Adjusted R-squared	0.993447	S.D. dependent var		0.039513
S.E. of regression	0.003199	Akaike info criterion		-8.47536
Sum squared resid	8.18E-05	Schwarz criterion		-8.41484
Log likelihood	44.3768	Hannan-Quinn criter.		-8.54175
F-statistic	1365.446	Durbin-Watson stat		1.04376
Prob(F-statistic)				0

Therefore Hebei's annual urbanisation growth rate is 1.3013 percentage points.

¹⁵⁰⁶ Statistical Analysis from EViews

Table A-7 Annual Urbanisation Rate of the Liaoning Province 2005 – 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	43910	43900	43890	43830	43750	43410	43150	42980	42710	42210
Urban Population ('000)	29440	29170	28810	28070	27170	26200	25910	25440	25190	24780
Rural Population ('000)	14470	14730	15080	15760	16580	17210	17240	17540	17520	17430
Urbanisation Rate	67.05 %	66.45 %	65.64 %	64.04 %	62.10 %	60.35 %	60.05 %	59.19 %	58.98 %	58.71 %

	Liaoning
2014	67.05%
2013	66.45%
2012	65.64%
2011	64.04%
2010	62.10%
2009	60.35%
2008	60.05%
2007	59.19%
2006	58.98%
2005	58.71%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁷

Dependent Variable: LIAONING
Method: Least Squares
Date: 07/07/15 Time: 11:17
Sample: 2005 2014
Included observations: 10

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-20.4857	1.818786	-11.2634	0
YEAR	0.010504	0.000905	11.60571	0
R-squared	0.943935	Mean dependent var	0.62256	
Adjusted R-squared	0.936927	S.D. dependent var		0.032734
S.E. of regression	0.008221	Akaike info criterion		-6.58741
Sum squared resid	0.000541	Schwarz criterion		-6.5269
Log likelihood	34.93707	Hannan-Quinn criter.		-6.6538
F-statistic	134.6924	Durbin-Watson stat		0.695112
Prob(F-statistic)	0.000003			

Therefore Liaoning's annual urbanisation growth rate is 1.0504 percentage points.

¹⁵⁰⁷ Statistical Analysis from EViews

Table A-8 Annual Urbanisation Rate of the Sichuan Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	81400	81070	80760	80500	80450	81850	81380	81270	81690	82120
Urban Population ('000)	37690	36400	35160	33670	32320	31680	30440	28930	28020	27100
Rural Population ('000)	43710	44670	45610	46830	48120	50170	50940	52340	53670	55020
Urbanisation Rate	46.30%	44.90%	43.54%	41.83%	40.17%	38.70%	37.40%	35.60%	34.30%	33.00%

	Sichuan
2014	46.30%
2013	44.90%
2012	43.54%
2011	41.83%
2010	40.17%
2009	38.70%
2008	37.40%
2007	35.60%
2006	34.30%
2005	33.00%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁸

Dependent Variable: SICHUAN				
Method: Least Squares				
Date: 07/07/15 Time: 11:19				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-29.8515	0.329452	-90.6096	0
YEAR	0.015052	0.000164	91.81092	0
R-squared	0.999052	Mean dependent var		0.39574
Adjusted R-squared	0.998933	S.D. dependent var		0.045594
S.E. of regression	0.001489	Akaike info criterion		-10.0044
Sum squared resid	1.77E-05	Schwarz criterion		-9.94389
Log likelihood	52.02202	Hannan-Quinn criter.		-10.0708
F-statistic	8429.245	Durbin-Watson stat		1.761733
Prob(F-statistic)	0			

Therefore Sichuan's annual urbanisation growth rate is 1.5052 percentage points.

Table A-9 Annual Urbanisation Rate of Shanghai 2005 – 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	24260	24150	23800	23470	23030	22100	21410	20640	19640	18900
Urban Population ('000)	21730	21640	21260	20960	20560	19580	18970	18300	17420	16840
Rural Population ('000)	2520	2510	2550	2510	2460	2520	2440	2330	2220	2060
Urbanisation Rate	89.57%	89.61%	89.33%	89.31%	89.27%	88.60%	88.60%	88.66%	88.70%	89.10%

	Shanghai
2014	89.57%
2013	89.61%
2012	89.33%
2011	89.31%
2010	89.27%
2009	88.60%
2008	88.60%
2007	88.66%
2006	88.70%
2005	89.10%

Urbanisation Growth Rate 2004-2015¹⁵⁰⁹

Dependent Variable: SHANGHAI				
Method: Least Squares				
Date: 07/06/15 Time: 12:54				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-1.1492	0.607934	-1.89033	0.0954
YEAR	0.001015	0.000303	3.355541	0.01
R-squared	0.584624	Mean dependent var		0.89075
Adjusted R-squared	0.532702	S.D. dependent var		0.00402
S.E. of regression	0.002748	Akaike info criterion		-8.77913
Sum squared resid	6.04E-05	Schwarz criterion		-8.71861
Log likelihood	45.89565	Hannan-Quinn criter.		-8.84552
F-statistic	11.25966	Durbin-Watson stat		1.147937
Prob(F-statistic)	0.009998			

Therefore Shanghai's annual urbanisation growth rate is 0.01015 percentage points.

¹⁵⁰⁹ Statistical Analysis from EViews

Table A-10 Annual Urbanisation Rate of the Hunan Province 2005 – 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	67370	66910	66390	65960	65700	64060	63800	63550	63420	63260
Urban Population ('000)	33200	32090	30970	29750	28450	27670	26890	25710	24550	23410
Rural Population ('000)	34170	34820	35420	36210	37250	36390	36910	37840	38870	39850
Urbanisation Rate	49.28 %	47.96 %	46.65 %	45.10 %	43.30 %	43.19 %	42.15 %	40.46 %	38.71 %	37.01 %

	Hunan
2014	49.28%
2013	47.96%
2012	46.65%
2011	45.10%
2010	43.30%
2009	43.19%
2008	42.15%
2007	40.46%
2006	38.71%
2005	37.01%

Urbanisation Growth Rate 2004-2015¹⁵¹⁰

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-25.7615	1.023524	-25.1695	0
YEAR	0.013036	0.000509	25.59331	0
R-squared	0.987934	Mean dependent var		0.43381
Adjusted R-squared	0.986426	S.D. dependent var		0.039708
S.E. of regression	0.004626	Akaike info criterion		-7.73725
Sum squared resid	0.000171	Schwarz criterion		-7.67673
Log likelihood	40.68624	Hannan-Quinn criter.		-7.80364
F-statistic	655.0178	Durbin-Watson stat		1.347559
Prob(F-statistic)	0			

Therefore Hunan's annual urbanisation growth rate is 1.3036 percentage points.

¹⁵¹⁰ Statistical Analysis from EViews

Table A-11 Annual Urbanisation Rate of the Hubei Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	58160	57990	57790	57580	57280	57200	57110	56990	56930	57100
Urban Population ('000)	32380	31610	30920	29840	28470	26310	25810	25250	24940	24670
Rural Population ('000)	25780	26380	26870	27740	28810	30890	31300	31740	31990	32430
Urbanisation Rate	55.67%	54.51%	53.50%	51.82%	49.70%	46.00%	45.19%	44.31%	43.81%	43.20%

	Hubei
2014	55.67%
2013	54.51%
2012	53.50%
2011	51.82%
2010	49.70%
2009	46.00%
2008	45.19%
2007	44.31%
2006	43.81%
2005	43.20%

Urbanisation Growth Rate 2004-2015¹⁵¹¹

Dependent Variable: HUBEI				
Method: Least Squares				
Date: 07/07/15 Time: 10:34				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-30.7716	2.407146	-12.7834	0
YEAR	0.015556	0.001198	12.98606	0
R-squared	0.95471	Mean dependent var		0.48771
Adjusted R-squared	0.949048	S.D. dependent var		0.048202
S.E. of regression	0.01088	Akaike info criterion		-6.02687
Sum squared resid	0.000947	Schwarz criterion		-5.96635
Log likelihood	32.13435	Hannan-Quinn criter.		-6.09326
F-statistic	168.6376	Durbin-Watson stat		0.887747
Prob(F-statistic)	0.000001			

Therefore Hubei's annual urbanisation growth rate is 1.5556 percentage points.

¹⁵¹¹ Statistical Analysis from EViews

Table A-12 Annual Urbanisation Rate of the Fujian Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	38060	37740	37480	37200	36930	36660	36390	36120	35850	35570
Urban Population ('000)	23520	22930	22340	21610	21090	20200	19290	18570	18070	17570
Rural Population ('000)	14540	14810	15140	15590	15840	16460	17100	17550	17780	18000
Urbanisation Rate	61.80%	60.76%	59.61%	58.09%	57.11%	55.10%	53.01%	51.41%	50.40%	49.40%

	Fujian
2014	61.80%
2013	60.76%
2012	59.61%
2011	58.09%
2010	57.11%
2009	55.10%
2008	53.01%
2007	51.41%
2006	50.40%
2005	49.40%

Urbanisation Growth Rate 2004-2015¹⁵¹²

Dependent Variable: FUJIAN				
Method: Least Squares				
Date: 07/07/15 Time: 10:30				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-28.961	0.977823	-29.6179	0
YEAR	0.014689	0.000487	30.18723	0
R-squared	0.991297	Mean dependent var		0.55669
Adjusted R-squared	0.99021	S.D. dependent var		0.044668
S.E. of regression	0.00442	Akaike info criterion		-7.82861
Sum squared resid	0.000156	Schwarz criterion		-7.76809
Log likelihood	41.14303	Hannan-Quinn criter.		-7.89499
F-statistic	911.2689	Durbin-Watson stat		1.058076
Prob(F-statistic)				0

Therefore Fujian's annual urbanisation growth rate is 1.4689 percentage points.

¹⁵¹² Statistical Analysis from EViews

Table A-13 Annual Urbanisation Rate of Beijing 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	21520	21150	20690	20190	19620	18600	17710	16760	16010	15380
Urban Population ('000)	18580	18250	17840	17400	16860	15810	15040	14160	13500	12860
Rural Population ('000)	2940	2900	2860	2790	2750	2790	2670	2600	2510	2520
Urbanisation Rate	86.34%	86.29%	86.23%	86.18%	85.93%	85.00%	84.92%	84.49%	84.32%	83.62%

	Beijing
2014	86.34%
2013	86.29%
2012	86.23%
2011	86.18%
2010	85.93%
2009	85.00%
2008	84.92%
2007	84.49%
2006	84.32%
2005	83.62%

Urbanisation Growth Rate 2004-2015¹⁵¹³

Dependent Variable: BEIJING				
Method: Least Squares				
Date: 07/07/15 Time: 09:14				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-5.440678	0.639089	-8.513179	0
YEAR	0.003132	0.000318	9.848402	0
R-squared	0.923803	Mean dependent var		0.85332
Adjusted R-squared	0.914278	S.D. dependent var		0.009866
S.E. of regression	0.002889	Akaike info criterion		-8.67918
Sum squared resid	6.68E-05	Schwarz criterion		-8.61866
Log likelihood	45.39588	Hannan-Quinn criter.		-8.74556
F-statistic	96.99102	Durbin-Watson stat		1.23621
Prob(F-statistic)	0.00001			

Therefore Beijing's annual urbanisation growth rate is 0.3132 percentage points.

¹⁵¹³ Statistical Analysis from EViews

Table A-14 Annual Urbanisation Rate of the Anhui Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	60830	60300	59880	59680	59570	61310	61350	61180	61100	61200
Urban Population ('000)	29900	28860	27840	26740	25620	25810	24850	23680	22670	21730
Rural Population ('000)	30930	31440	32040	32940	33950	35500	36500	37500	38430	39470
Urbanisation Rate	49.15 %	47.86 %	46.49 %	44.81 %	43.01 %	42.10 %	40.51 %	38.71 %	37.10 %	35.51 %

	Anhui
2014	49.15%
2013	47.86%
2012	46.49%
2011	44.81%
2010	43.01%
2009	42.10%
2008	40.51%
2007	38.71%
2006	37.10%
2005	35.51%

Urbanisation Growth Rate 2004-2015¹⁵¹⁴

Dependent Variable: ANHUI				
Method: Least Squares				
Date: 07/07/15 Time: 09:13				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-30.1179	0.478133	-62.9907	0
YEAR	0.015199	0.000238	63.88015	0
R-squared	0.998043	Mean dependent var		0.42525
Adjusted R-squared	0.997799	S.D. dependent var		0.04606
S.E. of regression	0.002161	Akaike info criterion		4
Sum squared resid	3.74E-05	Schwarz criterion		-9.25949
Log likelihood	48.29742	Hannan-Quinn criter.		-9.19897
F-statistic	4080.673	Durbin-Watson stat		1.73369
Prob(F-statistic)	0			7

Therefore Anhui's annual urbanisation growth rate is 1.5199 percentage points.

¹⁵¹⁴ Statistical Analysis from EViews

Table A-15 Annual Urbanisation Rate of Inner Mongolia 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	25050	24980	24900	24820	24720	24580	24440	24290	24150	24030
Urban Population ('000)	14910	14660	14380	14050	13720	13130	12640	12180	11750	11340
Rural Population ('000)	10140	10310	10520	10770	11000	11460	11800	12110	12400	12690
Urbanisation Rate	59.52 %	58.69 %	57.75 %	56.61 %	55.50 %	53.42 %	51.72 %	50.14 %	48.65 %	47.19 %

	Inner Mongolia
2014	59.52%
2013	58.69%
2012	57.75%
2011	56.61%
2010	55.50%
2009	53.42%
2008	51.72%
2007	50.14%
2006	48.65%
2005	47.19%

Urbanisation Growth Rate 2004-2015¹⁵¹⁵

Dependent Variable: INNER_MONGOLIA				
Method: Least Squares				
Date: 07/07/15 Time: 10:35				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-28.2088	1.136533	-24.8201	0
YEAR	0.014306	0.000566	25.29451	0
R-squared	0.987651	Mean dependent var		0.53919
Adjusted R-squared	0.986107	S.D. dependent var		0.043584
S.E. of regression	0.005137	Akaike info criterion		-7.52779
Sum squared resid	0.000211	Schwarz criterion		-7.46727
Log likelihood	39.63894	Hannan-Quinn criter.		-7.59417
F-statistic	639.8124	Durbin-Watson stat		0.620335
Prob(F-statistic)				0

Therefore Inner Mongolia's annual urbanisation growth rate is 1.4306 percentage points.

¹⁵¹⁵ Statistical Analysis from EViews

Table A-16 Annual Urbanisation Rate of the Heilongjiang Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	38330	38350	38340	38340	38330	38260	38250	38240	38230	38200
Urban Population ('000)	22240	22010	21820	21660	21340	21230	21190	20610	20450	20280
Rural Population ('000)	16090	16340	16520	16680	17000	17030	17060	17630	17780	17920
Urbanisation Rate %	58.02%	57.39%	56.91%	56.49%	55.67%	55.49%	55.40%	53.90%	53.49%	53.09%

	Heilongjiang
2014	58.02%
2013	57.39%
2012	56.91%
2011	56.49%
2010	55.67%
2009	55.49%
2008	55.40%
2007	53.90%
2006	53.49%
2005	53.09%

Urbanisation Growth Rate 2004-2015¹⁵¹⁶

Dependent Variable: HEILONGJIANG
Method: Least Squares
Date: 07/07/15 Time: 10:34
Sample: 2005 2014
Included observations: 10

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-10.4258	0.619558	-16.8277	0
YEAR	0.005465	0.000308	17.72493	0
R-squared	0.975169	Mean dependent var		0.55585
Adjusted R-squared	0.972065	S.D. dependent var		0.016755
S.E. of regression	0.0028	Akaike info criterion		-8.74125
Sum squared resid	6.27E-05	Schwarz criterion		-8.68073
Log likelihood	45.70625	Hannan-Quinn criter.		-8.80764
F-statistic	314.1732	Durbin-Watson stat		2.222209
Prob(F-statistic)				0

Therefore Heilongjiang's annual urbanisation growth rate is 0.5456 percentage points.

¹⁵¹⁶ Statistical Analysis from EViews

Table A-17 Annual Urbanisation Rate of the Shannxi Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	37750	37640	37530	37430	37350	37270	37180	37080	36990	36900
Urban Population ('000)	19850	19310	18770	17700	17090	16210	15650	15060	14470	13740
Rural Population ('000)	17910	18330	18760	19730	20260	21060	21530	22020	22520	23160
Urbanisation Rate	52.58 %	51.30 %	50.01 %	47.29 %	45.76 %	43.49 %	42.09 %	40.61 %	39.12 %	37.24 %

	Shaanxi
2014	52.58%
2013	51.30%
2012	50.01%
2011	47.29%
2010	45.76%
2009	43.49%
2008	42.09%
2007	40.61%
2006	39.12%
2005	37.24%

Urbanisation Growth Rate 2004-2015¹⁵¹⁷

Dependent Variable: SHANNXI				
Method: Least Squares				
Date: 07/07/15 Time: 11:19				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-26.7818	1.01093	-26.4922	0
YEAR	0.013564	0.000503	26.96268	0
R-squared	0.989115	Mean dependent var		0.47557
Adjusted R-squared	0.987755	S.D. dependent var		0.041293
S.E. of regression	0.004569	Akaike info criterion		-7.76201
Sum squared resid	0.000167	Schwarz criterion		-7.7015
Log likelihood	40.81006	Hannan-Quinn criter.		-7.8284
F-statistic	726.9863	Durbin-Watson stat		0.764848
Prob(F-statistic)		0		

Therefore Shannxi's annual urbanisation growth rate is 1.3564 percentage points.

¹⁵¹⁷ Statistical Analysis from EViews

Table A-18 Annual Urbanisation Rate of the Guangxi Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	47540	47190	46820	46450	46100	48560	48160	47680	47190	46600
Urban Population ('000)	21870	21150	20380	19420	18440	19040	18380	17280	16350	15670
Rural Population ('000)	25670	26040	26440	27030	27660	29520	29780	30400	30840	30930
Urbanisation Rate %	46.00 %	44.82 %	43.53 %	41.81 %	40.00 %	39.21 %	38.16 %	36.24 %	34.65 %	33.63 %

	Guangxi
2014	46.00%
2013	44.82%
2012	43.53%
2011	41.81%
2010	40.00%
2009	39.21%
2008	38.16%
2007	36.24%
2006	34.65%
2005	33.63%

Urbanisation Growth Rate 2004-2015¹⁵¹⁸

Dependent Variable: GUANGXI				
Method: Least Squares				
Date: 07/07/15 Time: 10:31				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-27.6996	0.626537	-44.2107	0
YEAR	0.013982	0.000312	44.84602	0
R-squared	0.996038	Mean dependent var		0.39805
Adjusted R-squared	0.995543	S.D. dependent var		0.042418
S.E. of regression	0.002832	Akaike info criterion		-8.71885
Sum squared resid	6.42E-05	Schwarz criterion		-8.65833
Log likelihood	45.59423	Hannan-Quinn criter.		-8.78523
F-statistic	2011.166	Durbin-Watson stat		1.988356
Prob(F-statistic)				0

Therefore Guangxi's annual urbanisation growth rate is 1.3982 percentage points.

¹⁵¹⁸ Statistical Analysis from EViews

Table A-19 Annual Urbanisation Rate of the Jiangxi Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	45420	45220	45040	44880	44620	44320	44000	43680	43390	43110
Urban Population ('000)	22810	22100	21400	20510	19660	19140	18200	17390	16780	15950
Rural Population ('000)	22610	23120	23640	24370	24960	25180	25800	26300	26610	27160
Urbanisation Rate	50.22%	48.87%	47.51%	45.70%	44.06%	43.19%	41.36%	39.81%	38.67%	37.00%

	Jiangxi
2014	50.22%
2013	48.87%
2012	47.51%
2011	45.70%
2010	44.06%
2009	43.19%
2008	41.36%
2007	39.81%
2006	38.67%
2005	37.00%

Urbanisation Growth Rate 2004-2015¹⁵¹⁹

Dependent Variable: JIANGXI				
Method: Least Squares				
Date: 07/07/15 Time: 11:11				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-29.1301	0.43459	-67.0288	0
YEAR	0.014713	0.000216	68.03297	0
R-squared	0.998275	Mean dependent var		0.43639
Adjusted R-squared	0.998059	S.D. dependent var		0.044585
S.E. of regression	0.001964	Akaike info criterion		-9.45046
Sum squared resid	3.09E-05	Schwarz criterion		-9.38994
Log likelihood	49.25228	Hannan-Quinn criter.		-9.51684
F-statistic	4628.485	Durbin-Watson stat		2.643214
Prob(F-statistic)				0

Therefore Jiangxi's annual urbanisation growth rate is 1.4713 percentage points.

¹⁵¹⁹ Statistical Analysis from EViews

Table A-20 Annual Urbanisation Rate of Tianjin 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	15170	14720	14130	13550	12990	12280	11760	11150	10750	10430
Urban Population ('000)	12480	12070	11520	10900	10340	9580	9080	8510	8140	7830
Rural Population ('000)	2690	2650	2610	2640	2660	2700	2680	2640	2610	2590
Urbanisation Rate	82.27%	82.00%	81.53%	80.44%	79.60%	78.01%	77.21%	76.32%	75.72%	75.07%

	Tianjin
2014	82.27%
2013	82.00%
2012	81.53%
2011	80.44%
2010	79.60%
2009	78.01%
2008	77.21%
2007	76.32%
2006	75.72%
2005	75.07%

Urbanisation Growth Rate 2004-2015¹⁵²⁰

Dependent Variable: TIANJIN				
Method: Least Squares				
Date: 07/07/15 Time: 11:20				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-17.0038	0.816192	-20.8331	0
YEAR	0.008854	0.000406	21.7988	0
R-squared	0.983443	Mean dependent var		0.78817
Adjusted R-squared	0.981374	S.D. dependent var		0.027031
S.E. of regression	0.003689	Akaike info criterion		-8.18996
Sum squared resid	0.000109	Schwarz criterion		-8.12945
Log likelihood	42.94982	Hannan-Quinn criter.		-8.25635
F-statistic	475.1875	Durbin-Watson stat		1.135028
Prob(F-statistic)	0			

Therefore Tianjin's annual urbanisation growth rate is 0.8854 percentage points.

¹⁵²⁰ Statistical Analysis from EViews

Table A-21 Annual Urbanisation Rate of the Shanxi Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	36480	36300	36110	35930	35740	34270	34110	33930	33750	33550
Urban Population ('000)	19620	19080	18510	17850	17170	15760	15390	14940	14510	14130
Rural Population ('000)	16860	17220	17600	18080	18570	18510	18720	18990	19230	19420
Urbanisation Rate	53.78 %	52.56 %	51.26 %	49.68 %	48.04 %	45.99 %	45.12 %	44.03 %	42.99 %	42.12 %

	Shanxi
2014	53.78%
2013	52.56%
2012	51.26%
2011	49.68%
2010	48.04%
2009	45.99%
2008	45.12%
2007	44.03%
2006	42.99%
2005	42.12%

Urbanisation Growth Rate 2004-2015¹⁵²¹

Dependent Variable: SHANXI				
Method: Least Squares				
Date: 07/07/15 Time: 11:19				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-26.7818	1.01093	-26.4922	0
YEAR	0.013564	0.000503	26.96268	0
R-squared	0.989115	Mean dependent var		0.47557
Adjusted R-squared	0.987755	S.D. dependent var		0.041293
S.E. of regression	0.004569	Akaike info criterion		-7.76201
Sum squared resid	0.000167	Schwarz criterion		-7.7015
Log likelihood	40.81006	Hannan-Quinn criter.		-7.8284
F-statistic	726.9863	Durbin-Watson stat		0.764848
Prob(F-statistic)				0

Therefore Shanxi's annual urbanisation growth rate is 1.3564 percentage points.

¹⁵²¹ Statistical Analysis from EViews

Table A-22 Annual Urbanisation Rate of the Jilin Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	27520	27510	27500	27490	27470	27400	27340	27300	27230	27160
Urban Population ('000)	15090	14910	14770	14680	14650	14610	14550	14510	14420	14260
Rural Population ('000)	12440	12600	12730	12810	12810	12790	12790	12790	12810	12900
Urbanisation Rate	54.83 %	54.20 %	53.71 %	53.40 %	53.33 %	53.32 %	53.22 %	53.15 %	52.96 %	52.50 %

	Jilin
2014	54.83%
2013	54.20%
2012	53.71%
2011	53.40%
2010	53.33%
2009	53.32%
2008	53.22%
2007	53.15%
2006	52.96%
2005	52.50%

Urbanisation Growth Rate 2004-2015¹⁵²²

Dependent Variable: JILIN				
Method: Least Squares				
Date: 07/07/15 Time: 11:11				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-3.48438	0.581337	-5.99374	0.0003
YEAR	0.002	0.000289	6.913387	0.0001
R-squared	0.856618	Mean dependent var		0.53462
Adjusted R-squared	0.838695	S.D. dependent var		0.00654
S.E. of regression	0.002628	Akaike info criterion		-8.8686
Sum squared resid	5.52E-05	Schwarz criterion		-8.80809
Log likelihood	46.34302	Hannan-Quinn criter.		-8.93499
F-statistic	47.79492	Durbin-Watson stat		0.77612
Prob(F-statistic)	0.000123			4

Therefore Jilin's annual urbanisation growth rate is 0.2 percentage points.

¹⁵²² Statistical Analysis from EViews

Table A-23 Annual Urbanisation Rate of Chongqing 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	29910	29700	29450	29190	28850	28590	28390	28160	28080	27980
Urban Population ('000)	17830	17330	16780	16060	15290	14750	14190	13600	13110	12650
Rural Population ('000)	12090	12370	12670	13130	13550	13840	14200	14560	14970	15330
Urbanisation Rate	59.61 %	58.35 %	56.98 %	55.02 %	53.00 %	51.59 %	49.98 %	48.30 %	46.69 %	45.21 %

	Chongqing
2014	59.61%
2013	58.35%
2012	56.98%
2011	55.02%
2010	53.00%
2009	51.59%
2008	49.98%
2007	48.30%
2006	46.69%
2005	45.21%

Urbanisation Growth Rate 2004-2015¹⁵²³

Dependent Variable: CHONGQING
Method: Least Squares
Date: 07/07/15 Time: 10:29
Sample: 2005 2014
Included observations: 10

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-32.4981	0.470551	-69.0638	0
YEAR	0.016433	0.000234	70.17903	0
R-squared	0.998378	Mean dependent var		0.52473
Adjusted R-squared	0.998176	S.D. dependent var		0.049795
S.E. of regression	0.002127	Akaike info criterion		-9.29145
Sum squared resid	3.62E-05	Schwarz criterion		-9.23094
Log likelihood	48.45727	Hannan-Quinn criter.		-9.35784
F-statistic	4925.096	Durbin-Watson stat		1.51564
Prob(F-statistic)	0			

Therefore Chongqing's annual urbanisation growth rate is 1.6433 percentage points.

¹⁵²³ Statistical Analysis from EViews

Table A-24 Annual Urbanisation Rate of the Yunnan Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	47140	46870	46590	46310	46020	45710	45430	45140	44830	44500
Urban Population ('000)	19670	18970	18310	17040	15970	15540	14990	14260	13670	13130
Rural Population ('000)	27470	27890	28280	29270	30050	30170	30440	30880	31160	31380
Urbanisation Rate	41.73 %	40.47 %	39.30 %	36.80 %	34.70 %	34.00 %	33.00 %	31.59 %	30.49 %	29.51 %

	Yunnan
2014	41.73%
2013	40.47%
2012	39.30%
2011	36.80%
2010	34.70%
2009	34.00%
2008	33.00%
2007	31.59%
2006	30.49%
2005	29.51%

Urbanisation Growth Rate 2004-2015¹⁵²⁴

Dependent Variable: YUNNAN				
Method: Least Squares				
Date: 07/07/15 Time: 11:20				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-27.7193	1.332609	-20.8008	0
YEAR	0.013969	0.000663	21.06463	0
R-squared	0.98229	Mean dependent var		0.35159
Adjusted R-squared	0.980076	S.D. dependent var		0.042673
S.E. of regression	0.006023	Akaike info criterion		-7.20948
Sum squared resid	0.00029	Schwarz criterion		-7.14896
Log likelihood	38.04738	Hannan-Quinn criter.		-7.27586
F-statistic	443.7187	Durbin-Watson stat		0.925662
Prob(F-statistic)				0

Therefore Yunnan's annual urbanisation growth rate is 1.3969 percentage points.

¹⁵²⁴ Statistical Analysis from EViews

Table A-25 Annual Urbanisation Rate of Xinjiang 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	22980	22640	22330	22090	21850	21590	21310	20950	20500	20100
Urban Population ('000)	10590	10070	9820	9620	9400	8600	8450	8200	7780	7470
Rural Population ('000)	12400	12570	12510	12470	12450	12980	12860	12750	12720	12640
Urbanisation Rate	46.08 %	44.48 %	43.98 %	43.55 %	43.02 %	39.83 %	39.65 %	39.14 %	37.95 %	37.16 %

	Xinjiang
2014	46.08%
2013	44.48%
2012	43.98%
2011	43.55%
2010	43.02%
2009	39.83%
2008	39.65%
2007	39.14%
2006	37.95%
2005	37.16%

Urbanisation Growth Rate 2004-2015¹⁵²⁵

Dependent Variable: XINJIANG				
Method: Least Squares				
Date: 07/07/15 Time: 11:08				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-19.6899	1.389721	-14.1682	0
YEAR	0.010005	0.000692	14.46676	0
R-squared	0.963182	Mean dependent var		0.41484
Adjusted R-squared	0.95858	S.D. dependent var		0.030865
S.E. of regression	0.006282	Akaike info criterion		-7.12555
Sum squared resid	0.000316	Schwarz criterion		-7.06503
Log likelihood	37.62773	Hannan-Quinn criter.		-7.19193
F-statistic	209.2872	Durbin-Watson stat		2.200036
Prob(F-statistic)	0.000001			

Therefore Xinjiang's annual urbanisation growth rate is 1.0005 percentage points.

¹⁵²⁵ Statistical Analysis from EViews

Table A-26 Annual Urbanisation Rate of the Guizhou Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	35080	35020	34840	34690	34790	35370	35960	36320	36900	37300
Urban Population ('000)	14040	13250	12690	12130	11760	10570	10470	10260	10130	10020
Rural Population ('000)	21040	21770	22160	22560	23030	24800	25490	26060	26770	27280
Urbanisation Rate	40.02 %	37.84 %	36.42 %	34.97 %	33.80 %	29.88 %	29.12 %	28.25 %	27.45 %	26.86 %

	Guizhou
2014	40.02%
2013	37.84%
2012	36.42%
2011	34.97%
2010	33.80%
2009	29.88%
2008	29.12%
2007	28.25%
2006	27.45%
2005	26.86%

Urbanisation Growth Rate 2004-2015¹⁵²⁶

Dependent Variable: GUIZHOU				
Method: Least Squares				
Date: 07/07/15 Time: 10:32				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-30.5474	2.09196	-14.6023	0
YEAR	0.015363	0.001041	14.75747	0
R-squared	0.964568	Mean dependent var		0.32461
Adjusted R-squared	0.960139	S.D. dependent var		0.04736
S.E. of regression	0.009456	Akaike info criterion		-6.30755
Sum squared resid	0.000715	Schwarz criterion		-6.24703
Log likelihood	33.53775	Hannan-Quinn criter.		-6.37394
F-statistic	217.783	Durbin-Watson stat		1.221311
Prob(F-statistic)	0			

Therefore Guizhou's annual urbanisation growth rate is 1.5363 percentage points.

¹⁵²⁶ Statistical Analysis from EViews

Table A-27 Annual Urbanisation Rate of the Gansu Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	25910	25820	25780	25640	25600	25550	25510	25480	25470	25450
Urban Population ('000)	10800	10360	9990	9530	9250	8910	8560	8220	7920	7640
Rural Population ('000)	15110	15460	15790	16120	16350	16640	16950	17260	17550	17810
Urbanisation Rate	41.68 %	40.12 %	38.75 %	37.17 %	36.13 %	34.87 %	33.56 %	32.26 %	31.10 %	30.02 %

	Gansu
2014	41.68%
2013	40.12%
2012	38.75%
2011	37.17%
2010	36.13%
2009	34.87%
2008	33.56%
2007	32.26%
2006	31.10%
2005	30.02%

Urbanisation Growth Rate 2004-2015¹⁵²⁷

Dependent Variable: GANSU				
Method: Least Squares				
Date: 07/07/15 Time: 10:31				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-25.5389	0.427233	-59.7774	0
YEAR	0.012886	0.000213	60.60995	0
R-squared	0.997827	Mean dependent var		0.35566
Adjusted R-squared	0.997555	S.D. dependent var		0.039057
S.E. of regression	0.001931	Akaike info criterion		-9.4846
Sum squared resid	2.98E-05	Schwarz criterion		-9.42409
Log likelihood	49.42302	Hannan-Quinn criter.		-9.55099
F-statistic	3673.566	Durbin-Watson stat		0.966906
Prob(F-statistic)	0			

Therefore Gansu's annual urbanisation growth rate is 1.2886 percentage points.

¹⁵²⁷ Statistical Analysis from EViews

Table A-28 Annual Urbanisation Rate of the Hainan Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	9030	8950	8870	8770	8690	8640	8540	8450	8360	8280
Urban Population ('000)	4860	4720	4570	4430	4330	4250	4100	3990	3850	3740
Rural Population ('000)	4180	4230	4290	4340	4360	4400	4440	4460	4510	4540
Urbanisation Rate	53.82%	52.74%	51.52%	50.51%	49.83%	49.19%	48.01%	47.22%	46.05%	45.17%

	Hainan
2014	53.82%
2013	52.74%
2012	51.52%
2011	50.51%
2010	49.83%
2009	49.19%
2008	48.01%
2007	47.22%
2006	46.05%
2005	45.17%

Urbanisation Growth Rate 2004-2015¹⁵²⁸

Dependent Variable: HAINAN				
Method: Least Squares				
Date: 07/07/15 Time: 10:32				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-18.3003	0.414931	-44.1043	0
YEAR	0.009353	0.000206	45.29508	0
R-squared	0.996116	Mean dependent var		0.49406
Adjusted R-squared	0.99563	S.D. dependent var		0.028372
S.E. of regression	0.001875	Akaike info criterion		-9.54304
Sum squared resid	2.81E-05	Schwarz criterion		-9.48252
Log likelihood	49.7152	Hannan-Quinn criter.		-9.60943
F-statistic	2051.644	Durbin-Watson stat		1.418275
Prob(F-statistic)	0			

Therefore Hainan's annual urbanisation growth rate is 0.9353 percentage points.

Table A-29 Annual Urbanisation Rate of Ningxia 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	6620	6540	6470	6390	6330	6250	6180	6100	6040	5960
Urban Population ('000)	3550	3400	3280	3190	3030	2880	2780	2690	2600	2520
Rural Population ('000)	3070	3140	3190	3210	3300	3370	3400	3420	3440	3440
Urbanisation Rate	53.63 %	51.99 %	50.70 %	49.92 %	47.87 %	46.08 %	44.98 %	44.10 %	43.05 %	42.28 %

	Ningxia
2014	53.63%
2013	51.99%
2012	50.70%
2011	49.92%
2010	47.87%
2009	46.08%
2008	44.98%
2007	44.10%
2006	43.05%
2005	42.28%

Urbanisation Growth Rate 2004-2015¹⁵²⁹

Dependent Variable: NINGXIA				
Method: Least Squares				
Date: 07/07/15 Time: 11:18				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-25.6294	1.024327	-25.0207	0
YEAR	0.01299	0.00051	25.48408	0
R-squared	0.987832	Mean dependent var		0.4746
Adjusted R-squared	0.986311	S.D. dependent var		0.039572
S.E. of regression	0.00463	Akaike info criterion		-7.73568
Sum squared resid	0.000171	Schwarz criterion		-7.67516
Log likelihood	40.6784	Hannan-Quinn criter.		-7.80207
F-statistic	649.4385	Durbin-Watson stat		1.019189
Prob(F-statistic)				0

Therefore Ningxia's annual urbanisation growth rate is 1.299 percentage points.

¹⁵²⁹ Statistical Analysis from EViews

Table A-30 Annual Urbanisation Rate of the Qinghai Province 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	5830	5780	5730	5680	5630	5570	5540	5520	5480	5430
Urban Population ('000)	2900	2800	2720	2630	2520	2340	2260	2210	2150	2130
Rural Population ('000)	2930	2980	3010	3060	3110	3240	3280	3310	3330	3300
Urbanisation Rate	49.74%	48.44%	47.47%	46.30%	44.76%	42.01%	40.79%	40.04%	39.23%	39.23%

	Qinghai
2014	49.74%
2013	48.44%
2012	47.47%
2011	46.30%
2010	44.76%
2009	42.01%
2008	40.79%
2007	40.04%
2006	39.23%
2005	39.23%

Urbanisation Growth Rate 2004-2015¹⁵³⁰

Dependent Variable: QINGHAI				
Method: Least Squares				
Date: 07/07/15 Time: 11:18				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-25.8061	1.733291	-14.8885	0
YEAR	0.01306	0.000863	15.1412	0
R-squared	0.966281	Mean dependent var		0.43801
Adjusted R-squared	0.962066	S.D. dependent var		0.040225
S.E. of regression	0.007834	Akaike info criterion		-6.68371
Sum squared resid	0.000491	Schwarz criterion		-6.62319
Log likelihood	35.41855	Hannan-Quinn criter.		-6.7501
F-statistic	229.2559	Durbin-Watson stat		0.924482
Prob(F-statistic)				0

Therefore Qinghai's annual urbanisation growth rate is 1.306 percentage points.

¹⁵³⁰ Statistical Analysis from EViews

Table A-31 Annual Urbanisation Rate of Tibet 2005 - 2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
End of Year Usual Residents ('000)	3180	3120	3080	3030	3000	2960	2920	2890	2850	2800
Urban Population ('000)	820	740	700	690	680	660	640	620	600	580
Rural Population ('000)	2360	2380	2380	2340	2320	2300	2280	2270	2250	2220
Urbanisation Rate	25.79%	23.72%	22.73%	22.77%	22.67%	22.30%	21.92%	21.45%	21.05%	20.71%

	Tibet
2014	25.79%
2013	23.72%
2012	22.73%
2011	22.77%
2010	22.67%
2009	22.30%
2008	21.92%
2007	21.45%
2006	21.05%
2005	20.71%

Urbanisation Growth Rate 2004-2015¹⁵³¹

Dependent Variable: TIBET				
Method: Least Squares				
Date: 07/06/15 Time: 12:57				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-8.75431	1.303814	-6.71439	0.0002
YEAR	0.004468	0.000649	6.88705	0.0001
R-squared	0.855678	Mean dependent var		0.22511
Adjusted R-squared	0.837637	S.D. dependent var		0.014626
S.E. of regression	0.005893	Akaike info criterion		-7.25317
Sum squared resid	0.000278	Schwarz criterion		-7.19265
Log likelihood	38.26583	Hannan-Quinn criter.		-7.31955
F-statistic	47.43146	Durbin-Watson stat		1.191858
Prob(F-statistic)	0.000126			

Therefore Tibet's annual urbanisation growth rate is 0.4468 percentage points.

¹⁵³¹ Statistical Analysis from EViews

A.3 10-year Average Urbanisation Growth Rate (trend) of the PRC and its 31 Provinces 2005-2014

Table A-32 Annual Urbanisation Rate of the PRC and its provinces 2005 - 2014

Year	National	Guangdong	Jiangsu	Shandong	Zhejiang	Henan	Hebei	Liaoning	Sichuan	Shanghai	Hunan	Hubei	Fujian
2014	54.77%	68.00%	65.21%	55.01%	64.87%	45.20%	49.32%	67.05%	46.30%	89.57%	49.28%	55.67%	61.80%
2013	53.73%	67.76%	64.11%	53.76%	64.01%	43.80%	48.11%	66.45%	44.90%	89.61%	47.96%	54.51%	60.76%
2012	52.57%	67.40%	63.01%	52.43%	63.19%	42.43%	46.80%	65.64%	43.54%	89.33%	46.65%	53.50%	59.61%
2011	51.27%	66.50%	61.89%	50.95%	62.29%	40.57%	45.60%	64.04%	41.83%	89.31%	45.10%	51.82%	58.09%
2010	49.95%	66.18%	60.58%	49.70%	61.61%	38.50%	44.50%	62.10%	40.17%	89.27%	43.30%	49.70%	57.11%
2009	48.34%	63.41%	55.61%	48.32%	57.90%	37.70%	43.74%	60.35%	38.70%	88.60%	43.19%	46.00%	55.10%
2008	46.99%	63.37%	54.30%	47.61%	57.60%	36.03%	41.89%	60.05%	37.40%	88.60%	42.15%	45.19%	53.01%
2007	45.89%	63.14%	53.20%	46.75%	57.21%	34.34%	40.26%	59.19%	35.60%	88.66%	40.46%	44.31%	51.41%
2006	44.34%	63.01%	51.89%	46.10%	56.51%	32.47%	38.76%	58.98%	34.30%	88.70%	38.71%	43.81%	50.40%
2005	42.99%	60.68%	50.50%	45.00%	56.02%	30.65%	37.69%	58.71%	33.00%	89.10%	37.01%	43.20%	49.40%

Year	National	Beijing	Anhui	Inner Mongolia	Heilong - jiang	Shaanxi (陕西)	Guangxi	Jiangxi	Tianjin	Shanxi (山西)	Jilin	Chongqing	Yunnan
2014	54.77%	86.34%	49.15%	59.52%	58.02%	52.58%	46.00%	50.22%	82.27%	53.78%	54.83%	59.61%	41.73%
2013	53.73%	86.29%	47.86%	58.69%	57.39%	51.30%	44.82%	48.87%	82.00%	52.56%	54.20%	58.35%	40.47%
2012	52.57%	86.23%	46.49%	57.75%	56.91%	50.01%	43.53%	47.51%	81.53%	51.26%	53.71%	56.98%	39.30%
2011	51.27%	86.18%	44.81%	56.61%	56.49%	47.29%	41.81%	45.70%	80.44%	49.68%	53.40%	55.02%	36.80%
2010	49.95%	85.93%	43.01%	55.50%	55.67%	45.76%	40.00%	44.06%	79.60%	48.04%	53.33%	53.00%	34.70%
2009	48.34%	85.00%	42.10%	53.42%	55.49%	43.49%	39.21%	43.19%	78.01%	45.99%	53.32%	51.59%	34.00%
2008	46.99%	84.92%	40.51%	51.72%	55.40%	42.09%	38.16%	41.36%	77.21%	45.12%	53.22%	49.98%	33.00%
2007	45.89%	84.49%	38.71%	50.14%	53.90%	40.61%	36.24%	39.81%	76.32%	44.03%	53.15%	48.30%	31.59%
2006	44.34%	84.32%	37.10%	48.65%	53.49%	39.12%	34.65%	38.67%	75.72%	42.99%	52.96%	46.69%	30.49%
2005	42.99%	83.62%	35.51%	47.19%	53.09%	37.24%	33.63%	37.00%	75.07%	42.12%	52.50%	45.21%	29.51%

Year	National	Xinjiang	Guizhou	Gansu	Hainan	Ningxia	Qinghai	Tibet
2014	54.77%	46.08%	40.02%	41.68%	53.82%	53.63%	49.74%	25.79%
2013	53.73%	44.48%	37.84%	40.12%	52.74%	51.99%	48.44%	23.72%
2012	52.57%	43.98%	36.42%	38.75%	51.52%	50.70%	47.47%	22.73%
2011	51.27%	43.55%	34.97%	37.17%	50.51%	49.92%	46.30%	22.77%
2010	49.95%	43.02%	33.80%	36.13%	49.83%	47.87%	44.76%	22.67%
2009	48.34%	39.83%	29.88%	34.87%	49.19%	46.08%	42.01%	22.30%
2008	46.99%	39.65%	29.12%	33.56%	48.01%	44.98%	40.79%	21.92%
2007	45.89%	39.14%	28.25%	32.26%	47.22%	44.10%	40.04%	21.45%
2006	44.34%	37.95%	27.45%	31.10%	46.05%	43.05%	39.23%	21.05%
2005	42.99%	37.16%	26.86%	30.02%	45.17%	42.28%	39.23%	20.71%

A.4 Urbanisation Growth Rate 2005 - 2014¹⁵³²

Dependent Variable: NATIONAL				
Method: Least Squares				
Date: 07/06/15 Time: 12:52				
Sample: 2005 2014				
Included observations: 10				
Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	-26.2538	0.387343	-67.7791	0
YEAR	0.013309	0.000193	69.04636	0
R-squared	0.998325	Mean dependent var		0.49084
Adjusted R-squared	0.998115	S.D. dependent var		0.040329
S.E. of regression	0.001751	Akaike info criterion		-9.68064
Sum squared resid	2.45E-05	Schwarz criterion		-9.62012
Log likelihood	50.4032	Hannan-Quinn criter.		-9.74703
F-statistic	4767.4	Durbin-Watson stat		1.202393
Prob(F-statistic)	0			

Therefore the PRC's annual urbanisation growth rate is 1.3309 percentage points.

¹⁵³² Statistical Analysis from EViews

Figure A-1 Scatter Graph Showing the Last 10 year Average Urbanisation Growth Rates (in percentage points) of the PRC and a few representative Provinces.

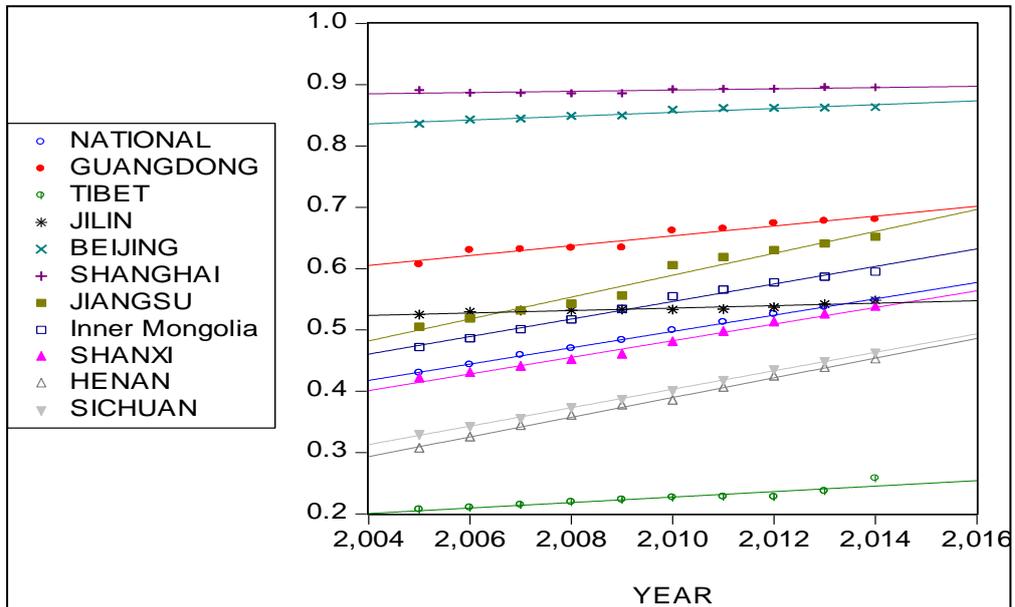


Figure A-1 presents urbanisation growth of the PRC and its representative provinces in the 10 years from 2005 to 2014. It shows the urbanisation trend.

The representative provinces were selected based on the following criteria: GDP level, nature of the economy, whether there is a dominant industry, urbanisation rate, whether the province is a major contributor of migrant workers to the more developed provinces, and whether the province has a dominant minority ethnic group. The representative provinces chosen are Guangdong, Jiangsu, Tibet, Jilin, Inner Mongolia, Shanxi, Henan, and Sichuan.

Guangdong was chosen because it had the highest GDP in 2014. Its GDP was much higher than the national average of RMB 2.2 Trillion. Its urbanisation rate was 68% and ranked 3rd nationally in 2014. Its 10 year urbanisation growth trend was 0.804 percentage points per annum, slower than the national urbanisation growth trend.

Jiangsu was chosen because it was the second richest province and it exhibited the highest urbanisation growth, at a 10 year urbanisation growth trend of 1.786 percentage points per annum. Its urbanisation growth was 0.455 percentage points faster than the national average of 1.331 percentage points per annum. Its urbanisation rate was 65.21% and ranked 4th nationally in 2014.

Tibet was chosen because it was the poorest province. Its main residents are from the Tibetan ethnic group, and its urbanisation rate was the lowest. Its urbanisation growth was very slow, but its population size was only 0.234% of the national population in 2014, which is negligible for the purposes of this research. Its 10 year urbanisation growth trend was 0.447 percentage points per annum.

Jilin was chosen because it is one of the old industrial areas,¹⁵³³ its economy moves at a very slow pace, its GDP of RMB 1.38 Trillion¹⁵³⁴ in 2014 was only approximately 62.5% of the national average of RMB 2.2 Trillion. Its urbanisation growth was also very slow. Its 10 year urbanisation growth trend was 0.200 percentage points per annum.

Inner Mongolia was chosen because it is a western province. The central government directs beneficial development policies towards western provinces. Inner Mongolia has a large population of the Mongolian ethnic group. It is also a relatively rich western province. Its 10 year urbanisation growth trend was 1.431 percentage points per annum.

Shanxi was chosen because it is a relatively poor western province. It has difficult corruption problems, especially with regard to the coal mining industry. Since the current leadership began to crack down on corruption, Shanxi is one of the provinces that had the most corruption

¹⁵³³ An old industrial area is one that is accounted for as an industrial area before 1949. The *Thirteenth Five-year Plan* targets these old industrial areas as one of its thematic policy goals. 网易财经, 《“十三五”规划最全梳理》, 163 Money, ‘The Most Comprehensive Summary of the Thirteenth Five-year Plan’, *163 Money*, <<http://money.163.com/15/1015/13/B5VK7HFR00253B0H.html>> (2 Nov. 2015).

¹⁵³⁴ RMB 1,380.38 Billion. This is approximately AUD 276.08 Billion.

investigations and convictions. Its 10 year urbanisation growth trend was 1.356 percentage points per annum.

Henan was chosen because it is one of the provinces in central China that exhibit the following characteristics: large population size, source of rural emigrant workers, lower urbanisation rates (nationally, Henan ranked 24 in 2014) and a source of the higher urbanisation rates of the wealthier provinces. Other similar provinces are Hebei, Hunan, Hubei and Shandong. Henan had the highest GDP out of these provinces in 2014, nationally, its GDP ranked No. 5. Its 10 year urbanisation growth trend was 1.607 percentage points per annum.

Sichuan was chosen because it is a south western province that exports many rural migrant workers, its population is mainly of the Han majority ethnic group. Other similar provinces are Yunnan, Chongqing, Guizhou, and Guangxi. Chongqing is a provincial level Municipality Directly under the Central Government. Yunnan, Guizhou and Guangxi have large populations of people of minority ethnic groups. These south western provinces differ from the population mix of the rest of the PRC because more beneficial development policies are directed towards these provinces. Sichuan's 10 year urbanisation growth trend was 1.505 percentage points per annum.

Internationally, the urbanisation rate of developed economies is approximately 80%.¹⁵³⁵ Beijing and Shanghai were chosen because they are developed, and they have a very high urbanisation rate. As urbanisation continues to increase in the PRC, the Old-Age Pensions policies for the urban population will grow in importance in the PRC's welfare state. Consequently, the scheme for the rural population will decrease in importance.

¹⁵³⁵ *World Bank Database*, Online <<http://data.worldbank.org/topic/urban-development>> (18 Apr. 2016).

Appendix B Dependency Ratio of the PRC

Table B-1 Population and Dependency Ratio 2005-2014¹⁵³⁶

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
Total Population (year-end)(Million Persons)	1,367.82	1,360.72	1,354.04	1,347.35	1,340.91	1,334.50	1,328.02	1,321.29	1,314.48	1,307.56
Population Aged 0-14 (Million persons)	225.69	223.16	223.42	222.31	222.59	246.88	252.32	256.33	260.27	265.43
Population Aged 15-64 (Million persons)	1,003.98	1,005.57	1,003.34	1,002.43	998.98	974.19	965.47	957.94	950.37	941.44
Population Aged 65 and Over(Million persons)	138.15	131.99	127.28	122.61	119.34	113.43	110.23	107.02	103.84	100.68
Gross Dependency Ratio (%)	36.1	35.3	34.9	34.4	34.2	36.9	37.4	37.9	38.3	38.8
Children Dependency Ratio (%)	22.5	22.2	22.2	22.1	22.3	25.3	26	26.8	27.3	28.1
Old Age Dependency Ratio (%)	13.7	13.1	12.7	12.3	11.9	11.6	11.3	11.1	11	10.7

¹⁵³⁶ National Bureau of Statistics of China, 'Population and Dependency Ratio of the PRC for the 10 Years of 2005 – 2014', <<http://data.stats.gov.cn/>> (25 Aug 2015). A limited English version of the data are available at: <http://data.stats.gov.cn/english/>. Data assessed for this research came from the Chinese version.

Appendix C Excerpts of Law-Documents

C.1 Sources of Law

C.1.1 Constitutional Provisions

This section includes the Articles from the *Constitution of the People's Republic of China* that are discussed in Chapter III and Chapter V.

Preamble

Paragraph 5

The victory in China's New-Democratic Revolution and the successes in its socialist cause have been achieved by the Chinese people of all nationalities, under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, by upholding truth, correcting errors and surmounting numerous difficulties and hardships. China will be in the primary stage of socialism for a long time to come. The basic task of the nation is to concentrate its effort on socialist modernization along the road of Chinese-style socialism. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize the country's industry, agriculture, national defence and science and technology step by step and promote the coordinated development of the material, political and spiritual civilizations, to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.

Paragraphs 11 and 12

In building socialism it is essential to rely on workers, peasants and intellectuals and to unite all forces that can be united. In the long years of revolution and construction, there has been formed under the leadership of the Communist Party of China a broad patriotic united front which is composed of the democratic parties and people's organizations and which embraces all socialist working people, all builders of socialism, all patriots who support socialism, and all patriots who stand for the reunification of the motherland. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference, a broadly based representative organization of the united front which has played a significant historical role, will play a still more important role in the country's political and social life, in promoting friendship with other countries and in the struggle for socialist modernization and for the reunification and unity of the country. The system of the multi-party cooperation and

political consultation led by the Communist Party of China will exist and develop for a long time to come.

The People's Republic of China is a unitary multi-national State created jointly by the people of all its nationalities. Socialist relations of equality, unity and mutual assistance have been established among the nationalities and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and to combat local national chauvinism. The State will do its utmost to promote the common prosperity of all the nationalities.

Chapter I General Principles

Article 3 The State organs of the People's Republic of China apply the principle of democratic centralism.

The National People's Congress and the local people's congresses at various levels are constituted through democratic elections. They are responsible to the people and subject to their supervision.

All administrative, judicial and procuratorial organs of the State are created by the people's congresses to which they are responsible and by which they are supervised.

The division of functions and powers between the central and local State organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

Article 5 The People's Republic of China governs the country according to law and makes it a socialist country under rule of law.

The State upholds the uniformity and dignity of the socialist legal system.

No laws or administrative or local regulations may contravene the Constitution.

All State organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and other laws. All acts in violation of the Constitution or other laws must be investigated.

No organization or individual is privileged to be beyond the Constitution or other laws.

Chapter III The Structure of the State

Section 1 The National People's Congress

Article 57 The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

Article 58 The National People's Congress and its Standing Committee exercise the legislative power of the State.

Article 59 The National People's Congress is composed of deputies elected from the provinces,

autonomous regions, municipalities directly under the Central Government, and special administrative regions, and of deputies elected from the armed forces. All the minority nationalities are entitled to appropriate representation.

Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress.

The number of deputies to the National People's Congress and the procedure of their election are prescribed by law.

Article 60 The National People's Congress is elected for a term of five years.

The Standing Committee of the National People's Congress must ensure the completion of election of deputies to the succeeding National People's Congress two months prior to the expiration of the term of office of the current National People's Congress. Should extraordinary circumstances prevent such an election, it may be postponed and the term of office of the current National People's Congress extended by the decision of a vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such extraordinary circumstances.

Article 61 The National People's Congress meets in session once a year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the Standing Committee deems it necessary or when more than one-fifth of the deputies to the National People's Congress so propose.

When the National People's Congress meets, it elects a Presidium to conduct its session.

Article 62 The National People's Congress exercises the following functions and powers:

- (1) to amend the Constitution;
- (2) to supervise the enforcement of the Constitution;
- (3) to enact and amend basic laws governing criminal offences, civil affairs, the State organs and other matters;
- (4) to elect the President and the Vice-President of the People's Republic of China;
- (5) to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;
- (6) to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all other members of the Central Military Commission;
- (7) to elect the President of the Supreme People's Court;
- (8) to elect the Procurator-General of the Supreme People's Procuratorate;
- (9) to examine and approve the plan for national economic and social development and the

report on its implementation;

(10) to examine and approve the State budget and the report on its implementation;

(11) to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;

(12) to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the establishment of special administrative regions and the systems to be instituted there;

(14) to decide on questions of war and peace; and

(15) to exercise such other functions and powers as the highest organ of state power should exercise.

Article 63 The National People's Congress has the power to remove from office the following persons:

(1) the President and the Vice-President of the People's Republic of China;

(2) the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council;

(3) the Chairman of the Central Military Commission and other members of the Commission;

(4) the President of the Supreme People's Court; and

(5) the Procurator-General of the Supreme People's Procuratorate.

Article 64 Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress.

Laws and resolutions are to be adopted by a majority vote of all the deputies to the National People's Congress.

Article 65 The Standing Committee of the National People's Congress is composed of the following:

the Chairman;

the Vice-Chairmen;

the Secretary-General; and

the members.

Minority nationalities are entitled to appropriate representation on the Standing Committee of the National People's Congress.

The National People's Congress elects, and has the power to recall, members of its Standing Committee.

No one on the Standing Committee of the National People's Congress shall hold office in any of the administrative, judicial or procuratorial organs of the State.

Article 66 The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it shall exercise its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms.

Article 67 The Standing Committee of the National People's Congress exercises the following functions and powers:

- (1) to interpret the Constitution and supervise its enforcement;
- (2) to enact and amend laws, with the exception of those which should be enacted by the National People's Congress;
- (3) to partially supplement and amend, when the National People's Congress is not in session, laws enacted by the National People's Congress, provided that the basic principles of these laws are not contravened;
- (4) to interpret laws;
- (5) to review and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development or to the State budget that prove necessary in the course of their implementation;
- (6) to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate;
- (7) to annul those administrative regulations, decisions or orders of the State Council that contravene the Constitution or other laws;
- (8) to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, other laws or administrative regulations;
- (9) to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions, the Auditor-General or the Secretary-General of the State Council upon nomination by the Premier of the State Council;
- (10) to decide, when the National People's Congress is not in session, on the choice of other members of the Central Military Commission upon nomination by the Chairman of the Commission;
- (11) to appoint or remove, at the recommendation of the President of the Supreme People's Court, the Vice-Presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court;

(12) to appoint or remove, at the recommendation of the Procurator-General of the Supreme People's Procuratorate, the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee and the Chief Procurator of the Military Procuratorate, and to approve the appointment or removal of the chief procurators of the people's procuratorates of provinces, autonomous regions, and municipalities directly under the Central Government;

(13) to decide on the appointment or recall of plenipotentiary representatives abroad;

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

(15) to institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks;

(16) to institute State medals and titles of honour and decide on their conferment;

(17) to decide on the granting of special pardons;

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

(19) to decide on general or partial mobilization;

(20) to decide on entering into the state of emergency throughout the country or in particular provinces, autonomous regions, or municipalities directly under the Central Government; and

(21) to exercise such other functions and powers as the National People's Congress may assign to it.

Article 68 The Chairman of the Standing Committee of the National People's Congress directs the work of the Standing Committee and convenes its meetings. The Vice-Chairmen and the Secretary-General assist the Chairman in his work.

The Chairman, the Vice-Chairmen and the Secretary-General constitute the Council of Chairmen which handles the important day-to-day work of the Standing Committee of the National People's Congress.

Article 69 The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

Section 3 The State Council

Article 86 The State Council is composed of the following:

the Premier;

the Vice-Premiers;

the State Councillors;

the Ministers in charge of ministries;
the Ministers in charge of commissions;
the Auditor-General; and
the Secretary-General.

The Premier assumes overall responsibility for the work of the State Council. The ministers assume overall responsibility for the work of the ministries and commissions.

The organization of the State Council is prescribed by law.

Article 89 The State Council exercises the following functions and powers:

- (1) to adopt administrative measures, enact administrative regulations and issue decisions and orders in accordance with the Constitution and other laws;
- (2) to submit proposals to the National People's Congress or its Standing Committee;
- (3) to formulate the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;
- (4) to exercise unified leadership over the work of local organs of State administration at various levels throughout the country, and to formulate the detailed division of functions and powers between the Central Government and the organs of State administration of provinces, autonomous regions, and municipalities directly under the Central Government;
- (5) to draw up and implement the plan for national economic and social development and the State budget;
- (6) to direct and administer economic affairs and urban and rural development;
- (7) to direct and administer the affairs of education, science, culture, public health, physical culture and family planning;
- (8) to direct and administer civil affairs, public security, judicial administration, supervision and other related matters;
- (9) to conduct foreign affairs and conclude treaties and agreements with foreign states;
- (10) to direct and administer the building of national defence;
- (11) to direct and administer affairs concerning the nationalities and to safeguard the equal rights of minority nationalities and the right to autonomy of the national autonomous areas;
- (12) to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;
- (13) to alter or annul inappropriate orders, directives and regulations issued by the ministries

or commissions;

(14) to alter or annul inappropriate decisions and orders issued by local organs of State administration at various levels;

(15) to approve the geographic division of provinces, autonomous regions, and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;

(16) in accordance with the provisions of law, to decide on entering into the state of emergency in parts of provinces, autonomous regions, and municipalities directly under the Central Government;

(17) to examine and decide on the size of administrative organs and, in accordance with the provisions of law, to appoint or remove administrative officials, train them, appraise their performance and reward or punish them; and

(18) to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign to it.

Article 90 Ministers in charge of the ministries or commissions of the State Council are responsible for the work of their respective departments and they convene and preside over ministerial meetings or general and executive meetings of the commissions to discuss and decide on major issues in the work of their respective departments.

The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with law and the administrative regulations, decisions and orders issued by the State Council.

Section 5 The Local People's Congresses and Local People's Governments at Various Levels

Article 95 People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns.

The organization of local people's congresses and local people's governments at various levels is prescribed by law.

Organs of self-government are established in autonomous regions, autonomous prefectures and autonomous counties. The organization and working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections 5 and 6 of Chapter III of the Constitution.

Article 96 Local people's congresses at various levels are local organs of state power.

Local people's congresses at or above the county level establish standing committees.

Article 97 Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are elected by the people's congresses at the next lower level; deputies to the people's congresses of counties, cities not divided into

districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies.

The number of deputies to local people's congresses at various levels and the manner of their election are prescribed by law.

Article 100 The people's congresses of provinces, and municipalities directly under the Central Government, and their standing committees may adopt local regulations, which must not contravene the Constitution and other laws and administrative regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

Section 6 The Organs of Self-Government of National Autonomous Areas

Article 112 The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties.

Article 113 In the people's congress of an autonomous region, autonomous prefecture or autonomous county, in addition to the deputies of the nationality exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

Among the chairman and vice-chairmen of the standing committee of the people's congress of an autonomous region, autonomous prefecture or autonomous county there shall be one or more citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

Article 114 The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned.

Article 116 The people's congresses of national autonomous areas have the power to enact regulations on the exercise of autonomy and other separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and other separate regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

C.1.2 Legislation Law

This section includes the Articles from the *Legislation Law of the People's Republic of China* that are discussed in Chapter III and Chapter V.

Chapter II: Laws

Section 1: Limits of Legislative Power

Article 8 The following affairs shall only be governed by law:

- (1) affairs concerning State sovereignty;
- (2) formation, organization, and the functions and powers of the people's congresses, the people's governments, the people's courts and the people's procuratorates at all levels;
- (3) the system of regional national autonomy, the system of special administrative region, the system of self-government among people at the grassroots level;
- (4) criminal offences and their punishment;
- (5) mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person;
- (6) basic taxation systems, such as the institution of taxable items, the determination of tax rates, tax collection and administration, etc.;
- (7) expropriation and requisition of non-State-owned assets;
- (8) basic civil system;
- (9) fundamental economic systems and basic fiscal, customs, financial and foreign trade systems;
- (10) systems of litigation and arbitration; and
- (11) other affairs on which laws must be made by the National People's Congress or its Standing Committee.

Article 9 If laws have not been enacted on the affairs specified in Article 8 of this Law, the National People's Congress or its Standing Committee has the power to make a decision to authorize the State Council to formulate, according to actual needs, administrative regulations first on part of those affairs, except for the affairs concerning criminal offences and their punishment, mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person, and the judicial system.

Article 10 An authorization decision shall specify the purposes, matters, scope and period of authorization, as well as the principles that the authorized organ shall adhere to when executing the authorization decision.

The period of authorization shall not exceed five years, except as otherwise prescribed in the authorization decision.

The authorized organ shall, six months prior to the expiry of the period of authorization, report to the authorizing organ the execution of the authorization decision, and issue opinions on whether relevant laws need to be formulated. Where continued authorization is needed, the authorized organ may propose relevant opinions for decision by the National People's Congress

("NPC") and its Standing Committee.

Article 11 After the administrative regulations on an affair formulated under authorization have been tested in practice and when the conditions are ripe for making a law on the affair, the National People's Congress or its Standing Committee shall make a law on it in a timely manner. As soon as the law is made, the authorization with regard to that matter shall be terminated accordingly.

Section 4: Legal Interpretation

Article 45 The power of legal interpretation belongs to the Standing Committee of the National People's Congress.

A law shall be interpreted by the Standing Committee of the National People's Congress if:

- (1) the specific meaning of a provision needs to be further defined; or
- (2) after its enactment, new developments make it necessary to define the basis on which to apply the law.

Article 46 The State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, a special committee of the National People's Congress and the standing committee of the people's congress of a province, autonomous region or municipality directly under the Central Government may request the Standing Committee of the National People's Congress to give legal interpretation.

Article 47 The working offices of the Standing Committee shall study and work out a draft for the legal interpretation, which shall be put on the agenda of the Standing Committee meeting by decision of the Council of Chairmen.

Article 48 After a draft for legal interpretation has been deliberated by the Standing Committee at its meeting, the Law Committee shall, on the basis of the deliberated opinions of members of the Standing Committee, deliberate on the draft and revise it before working out a draft legal interpretation for vote.

Article 49 The draft legal interpretation for vote shall be subject to adoption by a simple majority of the total membership of the Standing Committee and be promulgated by the Standing Committee in an announcement.

Article 50 The legal interpretation adopted by the Standing Committee of the National People's Congress has the same effect as the laws enacted by it.

Article 51 The NPC and its Standing Committee shall strengthen the organization and coordination of legislative work, and play their leading role in legislative work.

Article 52 The Standing Committee of the NPC shall enhance coordinated arrangements for legislative work by preparing legislative planning, annual legislative plans and other means. When preparing legislative planning and annual legislative plans, the Standing Committee of the NPC shall carefully study the motions and suggestions submitted by delegates, extensively solicit opinions, conduct scientific panel discussion and assessment, and determine legislative projects according to the needs of economic and social development and the development of

democracy and rule of law, so as to make legislative activities more timely, targeted and systematic. Legislative planning and annual legislative plans shall be adopted by the Chairman's Meeting, and be announced to the public.

The working bodies of the Standing Committee of the NPC shall be responsible for preparing legislative planning and drafting annual legislative plans, and shall, in accordance with the requirements of the Standing Committee of the NPC, supervise the implementation of legislative planning and annual legislative plans.

Article 53 Relevant special committees of the NPC and/or the working bodies of the Standing Committee of the NPC shall participate in the drafting of the draft laws of relevant parties in advance, and may organize the drafting of important draft laws that regulate comprehensive or fundamental issues or issues concerning overall national development.

Experts engaging in related fields may be invited to participate in the drafting of draft laws that are highly technical. Alternatively, relevant experts, teaching and research institutions, and social organizations may be entrusted with the drafting of such draft laws.

Section 5: Other Provisions

Article 61 According to the need of the contents, a law may consist of parts, chapters, sections, articles, paragraphs, subparagraphs and items.

The sequence of the different parts, chapters, sections and articles shall be marked in the order of Chinese numerals, the sequence of the paragraphs shall not be marked, that of subparagraphs shall be marked in the order of bracketed Chinese numerals and that of items marked with Arabic numerals.

The title credit line of a law shall specify the organ formulating the law and the date when the law is passed. The title credit line of a law that has gone through revisions shall specify the organs revising the law and the dates of revision in the order of revision.

Chapter III: Administrative Regulations

Article 65 The State Council shall, in accordance with the Constitution and laws, formulate administrative regulations.

The administrative regulations may be formulated to govern the following matters:

(1) matters requiring the formulation of administrative regulations in order to implement the provisions of law; and

(2) matters within the administrative functions and powers of the State Council as provided for in Article 89 of the Constitution.

When the administrative regulations governing an affair which has been formulated first by the State Council under authorization decided on by the National People's Congress or its Standing Committee, an affair on which the National People's Congress or its Standing Committee is responsible to make a law, have been tested in practice and when the conditions are ripe for making a law on the affair, the State Council shall, in a timely manner, request the National People's Congress or its Standing Committee to make the law.

Article 66 The legislative organ of the State Council shall draft the annual legislative plan of the State Council based on the overall work arrangements of the State, and submit the same to the State Council for examination and approval. Legal projects included in the annual legislative plans of the State Council shall be aligned with the legislative planning and annual legislative plans of the Standing Committee of the NPC. The legislative organ of the State Council shall promptly follow up with and learn about the implementation of the legislative plans by various departments of the State Council, and enhance organization, coordination, supervision and guidance.

Where relevant departments of the State Council consider it necessary to formulate administrative regulations, they shall report to the State Council for the establishment of relevant projects.

Article 67 Administrative regulations shall be drafted by relevant departments of the State Council or the legislative organ of the State Council, while drafts of important laws and administrative regulations governing administration shall be drafted by the legislative organ of the State Council. During the drafting of administrative regulations, the opinions of relevant organs, organizations, NPC delegates and the general public shall be extensively listened to by holding forums, panel discussions or hearings and by other various means.

Draft administrative regulations shall be promulgated to the public for comments, unless non-promulgation is decided by the State Council.

Article 68 When the drafting of the administrative regulations is completed, the drafting unit shall submit the draft, its explanation, differing opinions from the various quarters on major questions in the draft and other relevant information to the legislative affairs department under the State Council for examination.

The legislative affairs department under the State Council shall submit an examination report and a revised draft to the State Council and in its examination report explain the major questions in the draft.

Article 69 The decision-making procedures for administrative regulations shall comply with the relevant provisions in the Organic Law of the State Council of the People's Republic of China.

Article 70 Administrative regulations shall be promulgated by Order of the State Council signed by the Premier of the State Council.

Administrative regulations relating to national defense development may be promulgated by the order of the State Council and the order of the Central Military Commission as jointly signed by the Premier of the State Council and the Chairman of the Central Military Commission

Article 71 After being signed and promulgated, administrative regulations shall be promptly published on the Gazette of the State Council, the Chinese government legal information network (<http://www.chinalaw.gov.cn/>) and nationally circulated newspapers.

The text of the administrative regulations published in the Bulletin of the State Council shall be the standard text.

Chapter IV: Local Regulations, Autonomous Regulations, Separate Regulations, and Rules

Section 1: Local Regulations, Autonomous Regulations and Separate Regulations

Article 72 The people's congresses or their standing committees of the provinces, autonomous regions and municipalities directly under the Central Government may, in light of the specific conditions and actual needs of their respective administrative areas, formulate local regulations, provided that such regulations do not contradict the Constitution, the laws and the administrative regulations.

In light of the specific circumstances and actual needs of a city with districts, the people's congress of the city with districts and its standing committee may formulate local regulations concerning matters of urban and rural construction and management, environmental protection, historical and cultural protection, etc., provided that such local regulations are not in conflict with the Constitution, laws, administrative regulations and the local regulations of the province or autonomous region in which the city with districts is located. The provisions otherwise prescribed by law on the matters for which cities with districts may formulate local regulations shall prevail. The local regulations of a city with districts shall be implemented after being reported to the standing committee of the people's congress of the province or autonomous region in which the said city is located for approval. The standing committee of the people's congress of the said province or autonomous region shall review the legality of the local regulations submitted thereto for approval, and grant approval within four months as long as such local regulations are not in conflict with the Constitution, laws, administrative regulations and the local regulations of the province or autonomous region.

The standing committee of the people's congress of the province or autonomous region in which a city with districts is located shall, when reviewing the local regulations of the said city that are submitted thereto for approval, make a handling decision if it finds that such local regulations are in conflict with the rules issued by the people's government of the province or autonomous region.

Except for cities where the people's governments of provinces and autonomous regions are located, cities where special economic zones are located, and relatively large cities approved by the State Council, the specific steps and time for other cities with districts to begin formulating local regulations shall be determined by the standing committees of the people's congresses of the provinces and autonomous regions in which such cities with districts are located by taking into comprehensive consideration the population, geographic areas, economic and social development as well as legislative needs, legislative capability and other factors of the cities with districts under the respective jurisdictions of the relevant provinces and autonomous regions, and be reported to the Standing Committee of the NPC and the State Council for record-filing.

The people's congress of an autonomous prefecture and its standing committee may exercise the authority to formulate local regulations as a city with districts in accordance with Paragraph 2 of this Article. The specific steps and time for an autonomous prefecture to begin formulating local regulations shall be determined in accordance with the preceding Paragraph.

Local regulations already formulated by cities where the people's governments of provinces

and autonomous regions are located, cities where special economic zones are located, and relatively large cities approved by the State Council shall remain valid if they involve matters other than those prescribed under Paragraph 2 of this Article.

Article 73 Local regulations may be formulated to govern the following matters:

(1) matters requiring the formulation of specific provisions in light of the actual conditions of an respective administrative area for implementing the provisions of laws or administrative regulations; and

(2) matters of local character that require the formulation of local regulations.

In respect of any matters other than those prescribed by Article 8 herein for which the State has not yet formulated any law or administrative regulations, a province, autonomous region or municipality directly under the Central Government, a city with districts or an autonomous prefecture may first formulate local regulations in light of its specific circumstances and actual needs. After applicable laws or administrative regulations formulated by the State come into effect, any provision in the local regulations that is in conflict with the laws or administrative regulations shall be invalid, and the organs formulating the local regulations shall promptly revise or repeal such provisions.

Local regulations formulated by a city with districts or an autonomous prefecture under Paragraph 1 or Paragraph 2 of this Article shall be limited to matters prescribed by Paragraph 2 of Article 72 herein.

During the formulation of local regulations, repetitive provisions shall generally not be formulated with regard to contents already specified in superior laws.

Article 74 The people's congresses or their standing committees of the provinces and cities where special economic zones are located may, upon authorization by decision of the National People's Congress, formulate regulations and enforce them within the limits of the special economic zones.

Article 75 The people's congresses of the national autonomous areas have the power to formulate autonomous regulations and separate regulations on the basis of the political, economic and cultural characteristics of the local nationality (nationalities). The autonomous regulations and separate regulations of the autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval and shall go into effect upon approval. The autonomous regulations and separate regulations of the autonomous prefectures or counties shall be submitted to the standing committees of the people's congresses of the relevant provinces, autonomous regions or municipalities directly under the Central Government for approval and shall go into effect upon approval.

Where certain provisions of the laws and administrative regulations are concerned, adaptation on the basis of the characteristics of the local nationality (nationalities) may be made in autonomous regulations and separate regulations, but such adaptation may not contradict the basis principles of the laws and administrative regulations; where the provisions of the Constitution and the Law on Regional National Autonomy as well as the provisions in other laws and administrative regulations specially formulated to govern the national autonomous areas are concerned, no adaptation may be made.

Article 76 Local regulations governing especially important matters of an administrative area shall be subject to adoption by the people's congress of the area.

Article 77 The procedures for submission, deliberation and voting of bills of local regulations, autonomous regulations or separate regulations shall be enacted by the people's congress at the corresponding level in accordance with the Organic Law of the People's Republic of China on Local People's Congresses and Local People's Governments and with reference to the provisions of Sections 2, 3 and 5 in Chapter II of this Law.

The organ in charge of unified deliberation of a draft of local regulations shall prepare a report on the result of its a conclusive report on deliberation and a revised draft of the regulations.

Article 78 Local regulations formulated by the people's congress of a province, autonomous region or municipality directly under the Central Government shall be promulgated by the presidium of the congress in an announcement.

Local regulations formulated by the standing committee of the people's congress of a province, autonomous region or municipality directly under the Central Government shall be promulgated by the standing committee in an announcement.

After the local regulations formulated by the people's congress of a city with districts or an autonomous prefecture and its standing committee are approved, the standing committee of the people's congress of the city with districts or autonomous prefecture shall issue an announcement to promulgate the local regulations.

Autonomous regulations or separate regulations shall, upon approval, be promulgated by the standing committee of the local people's congress of the autonomous region, autonomous prefecture or autonomous county in an announcement.

Article 79 Upon promulgation, local regulations, and the autonomous regulations and special regulations of an autonomous region shall be promptly published in the bulletin of the standing committee of the people's congress at the same level, the official website of the NPC (www.npc.gov.cn), the website of the local people's congress and the newspapers circulated within the local administrative regions.

The text of local regulations or autonomous regulations and special regulations published in the gazette of the standing committee of the people's congress shall be the standard text.

Section 2: Rules

Article 80 The ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules.

Matters prescribed by department rules shall be matters for the application of laws or the administrative regulations, decisions or orders of the State Council. Without the bases prescribed by laws or the administrative regulations, decisions or orders of the State Council, department rules shall not contain provisions that reduce the rights or increase the obligations of citizens, legal persons and other organizations, and shall not contain provisions that enhance

the power or reduce the statutory duties of the department concerned."

Article 81 With regard to a matter that falls within the limits of power of two or more departments under the State Council, the State Council shall be requested to formulate administrative regulations, or the departments concerned under the State Council shall jointly formulate rules.

Article 82 The people's government of a province, autonomous region or municipality directly under the Central Government, a city with districts or an autonomous prefecture may formulate rules in accordance with laws, administrative regulations and local regulations of the relevant province, autonomous region or municipality directly under the Central Government.

Local governments may formulate rules to govern the following matters:

(1) matters requiring the formulation of rules to implement the provisions of laws, administrative regulations and local regulations; and

(2) specific administrative matters pertaining to their respective administrative areas.

Local government rules prescribed by the people's government of a city with districts or an autonomous prefecture pursuant to Paragraph 1 or Paragraph 2 of this Article shall be limited to matters of urban and rural construction and management, environmental protection, historical and cultural protection, etc. Local government rules already formulated shall remain valid if they involve matters other than the foregoing ones.

Except for cities where the people's governments of provinces and autonomous regions are located, cities where special economic zones are located, and relatively large cities approved by the State Council, the time for the people's governments of other cities with districts and autonomous prefectures to begin formulating rules shall be synchronized with the time for such cities and autonomous prefectures to begin formulating local regulations as determined by the standing committees of the people's congresses of the provinces and autonomous regions in which such cities with districts and autonomous prefectures are located.

Where local regulations shall be formulated, but relevant conditions are not ripe, local government rules may first be formulated due to urgent needs of administration. Where continued implementation of the administrative measures prescribed by the local government rules is needed two years after the implementation of the said rules, a request shall be submitted to the people's congress at the same level or its standing committee for formulating local regulations.

Without the bases prescribed by laws, administrative regulations and local regulations, local government rules shall not contain provisions that reduce the rights or increase the obligations of citizens, legal persons and other organizations.

Article 83 The procedures for formulating the rules of departments under the State Council and rules of local governments shall be enacted by the State Council with reference to the provisions in Chapter III of this Law.

Article 84 The Rules of departments shall be subject to decision by the executive meetings of ministries or meetings of commissions.

The rules of local governments shall be subject to decision by the executive meetings or plenary

meetings of the respective governments.

Article 85 The department rules shall be promulgated by orders signed by the heads of the departments.

Local government rules shall be promulgated by an order signed by the governor of the relevant province, the chairman of the relevant autonomous region, the mayor of the relevant city with districts or the governor of the relevant autonomous prefecture.

Article 86 After being signed and promulgated, department rules shall be promptly published in the Gazette of the State Council or the gazette of relevant departments, the Chinese government legal information network (<http://www.chinalaw.gov.cn/>) and nationally circulated newspapers."

After being signed and promulgated, local government rules shall be promptly published in the Gazette of the people's governments at the same level, the Chinese government legal information network (<http://www.chinalaw.gov.cn/>) and newspapers circulated within the administrative regions of the people's governments.

The text of rules published in the gazette of the State Council or of the department and in the gazette of the local people's government shall be the standard text.

C.1.3 Administrative Procedure Law of the PRC

Chapter I: General Provisions

Article 2 If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law.

C.2 Urban Old-Age Pensions Policies

C.2.1 Constitutional Provisions

Chapter I General Principles

Article 14

...

The State establishes a sound social security system compatible with the level of economic development.

Chapter II The Fundamental Rights and Duties of Citizens

Article 45 Citizens of the People's Republic of China have the right to material assistance from the State and society when they are old, ill or disabled. The State develops social insurance,

social relief and medical and health services that are required for citizens to enjoy this right.

The State and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel.

The State and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens.

C.2.2 Social Insurance Law of the People's Republic of China 2010¹⁵³⁷

Chapter 1 General Provisions

Article 1 This Law is formulated in accordance with the Constitution for the purposes of regulating social insurance relationship, protecting the legal right and interest of citizens in participating in social insurance and enjoying social insurance benefits, enabling citizens to share the development achievements and promoting social harmony and stability.

Article 2 The State establishes social insurance systems such as basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance so as to protect the right of citizens in receiving material assistance from the State and the society in accordance with the law when getting old, sick, injured at work, unemployed and giving birth.

Article 3 The social insurance system adheres to the principles of wide coverage, basic protection, multi-level and sustainability and the level of social insurance shall correspond to the level of economic and social development.

Article 5 People's governments above the county level shall include social insurance undertaking in the national economic and social development plans.

The State raises Social Insurance Funds through multiple channels. People's governments above the county level shall provide necessary outlay support for social insurance undertaking.

The State supports social insurance undertaking through tax incentive policies.

Article 6 The State strictly regulates the Social Insurance Funds.

The State Council and the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government establish and improve the supervision and administration system of the Social Insurance Funds, protect the security of the Social Insurance Funds and ensure their effective operation.

People's governments above the county level adopt measures to encourage and support all sectors of the society to participate in the supervision of the Social Insurance Funds.

Article 7 The social insurance administration departments of the State Council are responsible for the work with respect to the administration of social insurance throughout the country.

¹⁵³⁷ 《中华人民共和国社会保险法》[Social Insurance Law of the People's Republic of China], National People's Congress Standing Committee, 28 October 2010.

Other relevant departments of the State Council are responsible for the relevant social insurance work within their respective scope of duties.

Social insurance administration departments of the local people's governments above the county level are responsible for the work with respect to the administration of social insurance within their own administration regions. Other relevant departments of the local people's government above the county level are responsible for the relevant social insurance work within their respective scope of duties.

Article 8 Social insurance agencies provide social insurance services and are responsible for work such as social insurance registration, personal interest records and payment of social insurance benefits.

Article 9 The trade unions protect the legal interest of the workers in accordance with the law and are entitled to participate in the study of major social insurance issues, join the social insurance supervision commissions and supervise issues relating to the social insurance interest of the workers.

Chapter 2 Basic Pension Insurance

Article 10 Workers shall participate in basic pension insurance and the basic pension insurance premiums shall be paid jointly by the employing entities and the workers.

Sole proprietors who are not employed, non-full time practitioners and other workers in flexible employment who have not participated in the basic pension insurance in the employing entities may participate in basic pension insurance and pay the basic pension insurance premiums on their own.

Measures for the pension insurance of civil servants and staff governed by the civil servant laws shall be prescribed by the State Council.

Article 11 Basic pension insurance involves both social coordination and personal accounts.

The basic pension insurance fund is made up of payment from the employing entities and individuals and government subsidies.

Article 12 An employing entity shall pay the basic pension insurance premium, which shall be included and recorded in the basic pension insurance coordination fund, according to a ratio of the total wage of the worker of the entity that is stipulated by the State.

A worker shall pay the basic pension insurance premium, which shall be included and recorded in the personal account, according to a ratio of the wage of the worker that is stipulated by the State.

Sole proprietors who are not employed or non-full time practitioners and other workers in flexible employment who have not participated in the basic pension insurance in the employing entities but have participated in basic pension insurance shall pay the basic pension insurance premiums in accordance with the provisions of the State and such premiums shall be included and recorded in the basic pension insurance coordination fund and the personal accounts respectively.

Article 14 The amount in the personal account shall not be withdrawn in advance. The interest rate for the amount in the account shall not be lower than the bank's interest rate for time deposits. Interest rate tax is exempted. The balance in the personal account may be inherited after the death of the individual.

Article 19 The basic pension insurance relationship of an individual shall be transferred along with the shift of his/her employment away from the coordinated region but the premium payment period shall be accumulated. When an individual reaches the statutory retirement age, the basic pension will be calculated by phases but will be paid together. The specific measures shall be prescribed by the State Council.

Chapter 8 Social Insurance Funds

Article 64 The Social Insurance Funds include the basic pension insurance fund, the basic medical insurance fund, the work-related injury insurance fund, the unemployment insurance fund and the maternity insurance fund. Each of the Social Insurance Funds shall establish separate accounts based on the lines of social insurance and shall conduct accounting for separate accounts and implement the uniform accounting system of the State.

The Social Insurance Funds are earmarked for specific purposes and any organization and individual shall not embezzle or misappropriate the funds.

The basic pension insurance fund will be coordinated on a national basis gradually and the other Social Insurance Funds will be coordinated on a provincial basis gradually. The specific time frame and steps will be prescribed by the State Council.

Article 65 The Social Insurance Funds normally adopt balanced budgets.

When the amount in the Social Insurance Funds is insufficient to make payments, the people's governments above the county level will grant subsidy.

Article 66 The Social Insurance Funds establish budgets based on the coordination levels. The budgets of the Social Insurance Funds are prepared separately based on the social insurance items.

Article 67 The preparation, examination and approval of the drafts of the budgets and final accounts of the Social Insurance Funds shall follow the provisions of the laws and the State Council.

Article 68 The specific administrative measures governing the deposit of Social Insurance Funds into the special financial accounts shall be prescribed by the State Council.

Article 69 The Social Insurance Funds shall engage in investment operation in accordance with the provisions of the State Council to preserve and add value under the premise of guaranteeing the safety of the funds.

The Social Insurance Funds shall not engage in investment operation in violation of the rules, shall not be used to balance other government budgets, shall not be used to construct or convert office premises and pay the outlay for staff, the operation fee and management fee or used for other purposes in violation of the provisions of the laws and administrative regulations.

Article 70 A social insurance agency shall regular make known to the public the status of participation in social insurance and the income, expenditure, balance and gain of the Social Insurance Funds.

Article 71 The national social security fund established by the State shall comprise the funds allocated from the budget of the central treasury and the funds raised by other methods approved by the State Council and shall be used as replenishment and adjustment for social security expenditure. The national social protection fund shall be managed and operated by the management and operation institution for national social security fund and shall seek to preserve and add value under the premise of guaranteeing the safety of the fund.

The national social security fund shall announce to the public the status of its revenue and expenditure, management and investment operation on a regular basis. The finance departments, social insurance administration departments and audit departments under the State Council shall supervise the revenue and expenditure, management and investment operation of the national social security fund.

C.2.3 Budget Law of the People's Republic of China

Chapter I: General Provisions

Article 3 The State shall establish budget at each level of the government, namely, at the five levels: the Central Government; the provinces, autonomous regions and municipalities directly under the Central Government; the cities divided into districts and autonomous prefectures; the counties, autonomous counties, cities not divided into districts, and municipal districts; the townships, nationality townships and towns.

The national budget consists of the central budget and the local budget. The local budget consists of the general budgets of all provinces, autonomous regions and municipalities directly under the Central Government.

A local general budget at any level consists of the budget of the government at the corresponding level and the consolidated general budget at the next lower level. Where the next lower level has only the budget of the government at the corresponding level, the consolidated general budget at the next lower level means the corresponding-level budget at the next lower level. In the absence of the budget at the next lower level, the general budget means the budget at the corresponding level.

Article 5 Budgets shall include the general public budgets, the budgets for government-managed funds, the budgets for State capital operations and the budgets for Social Insurance Funds.

The general public budgets, the budgets for government-managed funds, the budgets for State capital operations and the budgets for Social Insurance Funds shall be complete and independent. The budgets for government-managed funds, the budgets for State capital operations and the budgets for Social Insurance Funds shall be connected with the general public budgets.

Article 6 The general public budget is the budget for revenues and expenditures whereby the fiscal revenues with taxes as main source are arranged to be used for guaranteeing and

improving people's wellbeing, promoting economic and social development, safeguarding national security, maintaining the normal functioning of government organs and other aspects.

The central general public budget includes the budgets of various departments of the Central Government (including the units directly under them, similarly hereinafter) and the budgets for tax rebates and transfer payments from the Central Government to local governments.

The revenues of the central general public budget include the revenues at the central level and the revenues turned over by the local governments to the Central Government. The expenditures of the central general public budget include the expenditures at the central level and the tax rebates and transfer payments from the Central Government to local governments.

Article 7 The local general public budgets at any level include the budgets as well as the budgets for tax rebates and transfer payments of the various departments at the corresponding level (including the units directly under them, similarly hereinafter).

The revenues of the local general public budget at any level include the revenues at the corresponding level, the tax rebates and transfer payments from the government at higher levels to the government at the corresponding level, and the revenues turned over by the governments at lower levels. The expenditures of the local general public budget at any level include the expenditures at the corresponding level, the expenditures turned over to the governments at higher levels as well as the tax rebates and transfer payments to the governments at lower levels.

Article 8 The budget of a department consists of the budgets of the department and the units subordinate to it.

Article 9 The budgets for government-managed funds are the budgets for revenues and expenditures whereby the funds collected, gathered or otherwise raised from specific parties within a specific period of time in accordance with laws and administrative regulations are used specifically for the development of specific public utilities.

The budgets for government-managed funds shall be compiled according to the fund projects based on the revenues and actual expenditure demand of the fund projects and ensure the expenditures are determined by revenues.

Article 10 The budgets for State capital operations are the budgets for revenues and expenditures whereby the expenditure arrangement is made for the State capital gains.

The budgets for State capital operations shall be compiled according to the principle of balance between revenues and expenditures, shall not contain deficit and shall arrange for the transfer of funds to general public budgets.

Article 11 The budgets for Social Insurance Funds are the budgets for revenues and expenditures whereby the funds from social insurance payments, arranged by the general public budgets and raised in other methods are used specifically for social insurance.

The budgets for Social Insurance Funds shall be compiled respectively according to the level of overall planning and items of social insurance and ensure the balance between revenues and expenditures.

C.3 Tax Laws

Table C-1 Formal Taxes and Type of Regulating Law-document

Formal Tax	Primary Law-Document Type
Value added tax	State Council Administrative Regulation
Business tax	State Council Administrative Regulation
Consumption tax	State Council Administrative Regulation
Customs duty	State Council Administrative Regulation
Resources tax	State Council Administrative Regulation
Urban area maintenance development tax	State Council Administrative Regulation
Tobacco tax	Legislation made by the Standing Committee of the National People's Congress
Vehicle purchase tax	State Council Administrative Regulation
Individual Income Tax	Legislation made by the Standing Committee of the National People's Congress
Enterprise income tax	National People's Congress made Legislation
Social insurance contributions	State Council Administrative Regulation
Real estate tax	State Council Administrative Regulation
Deed tax	State Council Administrative Regulation
Stamp duty	State Council Administrative Regulation
Land appreciation tax	State Council Administrative Regulation
Urban land usage tax	State Council Administrative Regulation
Arable land occupancy tax	State Council Administrative Regulation
Ship tonnage tax	State Council Administrative Regulation
Vehicle and shipping tax	Legislation made by the Standing Committee of the National People's Congress
Pollutant discharge fee	State Council Administrative Regulation

Table C-2 Sundry Levies in the PRC -- National Government Funds 2009

Number	Fund name	Levy Right	Fund Management
1	Rural Power Repayment Fund	State Council Authorised, Cai Qi [2001] No.820, Cai Zong [2007]No.3	Pay to Central and Local Coffers
2	Three Gorges Project Development Fund	Guo Fa Ban[1993] No.34, CaiQi [2002]No.651,Cai Qi [2003]No.155	Pay to Central Government Coffers
3	New Wall Construction Material Fund	Guo Fa[1992]No.66, Cai Zong [2007]No.3, Cai Zong [2007]No.77	Pay to Local Government Coffers
4	Harbour Development Fund	Guo Fa[1985]No.124, Jiao Cai Fa[1993]No.456, Cai Zong [2007]No.3	Pay to Central Government Coffers
5	Civil Aviation Airport Management and Development Fund	GuoYue[1991]No.144, Guo Ban Fa[1995]No.57, Cai Zong Zi [1999] No.147, Cai Gui [2000] No.28, Cai Zong [2004] No.51, Cai Zong [2007] No.3, Cai Zong [2007]No.78	Pay to Central Government Coffers
6	Civil Aviation Infrastructure Fund	Guo Fa[2002] No.6, Cai Zong [2004] No.38, Cai Kuai [2004]No.8	Pay to Central Government Coffers
7	Railway Construction Fund	Guo Fa[1992]No.37, Cai Gong Zi [1996] No.371, Cai Zong [2007]No.3	Pay to Central Government Coffers
8	Railroad Construction Additional Fee (Fujian Province)	Guo Fa[1998] No.17, Cai Zong [2001] No.26, Cai Zong [2007] No.3	Pay to Local Provincial Government Coffers
9	Bulk Cement Fund	Guo Han [1997] No.8, Cai Zong [2002] No.23, Cai Zong [2007]No.3	Pay to Local Government Coffers
10	Silviculture Fund	Forestry Law, Cai Shi Zi [1972] No.250, QingZong [1988] No.122, Lin Cai Zi [1991] No.74, [1991] Cai Nong No.333, [1993]Cai Nong Zi No.144	Pay to Central and Local Coffers
10-1	Collective Silviculture and Variation Fund	Si Chuan Province Lin Cai [1986] No.20	Pay to Local Government Coffers
10-2	National Silviculture and Variation Fund	Si Chuan Province Lin Cai[1986] No.20	Pay to Local Government Coffers
10-3	Continual Simple Reproduction fee	[1993] Cai Nong Zi No. 144	Pay to Local Government Coffers

10-4	Forestry Continual Simple Reproduction fee	[1993] Cai Nong Zi No.144, Qian Fu Ban [1989] No.39	Pay to Local Government Coffers
11	Forestry Fund (Shanxi Province)	Forestry Law, Cai Zong Han [2003] No.1	Pay to Local Government Coffers
12	Forestry Vegetation Regrowth Fund	Forestry Law, Cai Zong [2002] No.73	Pay to Central and Local Coffers
13	Water Conservancy Construction Fund	Guo Fa [1997] No.7, Cai Zong Zi [1998]No.117 – No.145	Pay to Central and Local Coffers
14	Large and Medium Dam Post Migration Assistance Fund	Guo Fa [2006]No.17,Cai Zong [2006]No.29, Jian Cha Bu, Ren Shi Bu, Cai Zheng Bu Ling No.13	Pay to Central Government Coffers
15	Large and Medium Dam Fund (Qinghai, Guangdong, Chongqing, Sichuan, Jilin, Shanxi, Hebei, Shanxi, Anhui, Hubei, Hunan, Guizhou, Hainan, Fujian, Guangxi, Liaoning, Yunnan Provinces)	Guo Fa [2006] No.17, Cai Zong [2007] No.26, Cai Zong [2008] No.17, Cai Zong [2008] No.29, No.30, No.31, No.32, No.33, No.34, No.35, Cai Zong [2008] No.64, No.65, No.66, No.67, No.68, Cai Zong [2008] No.85, No.86, No.87, No.88, No.89, No.90	Pay to Central and Local Coffers
16	Three Gorges Dam Area Fund	State Council Order No.299, Guo Fa [2006] No.1, Cai Zong [2007] No.69	Pay to Central Government Coffers
17	South Water to North Project Fund (Beijing, Tianjin, Hebei, Jiangsu, Shandong and Henan)	Guo Han [2002]No.17, Guo Ban Fa [2004] No.86	Pay to Central Government Coffers
18	New Vegetable Patch Development Fund	Land Law, National Construction Land Acquisition Regulation, [1985] Nong Tu ZhiNo.11	Pay to Local Government Coffers
19	Urban Public Services Additional Fee	Cai Yu Wang Zi No.380, Cai Yu No.26, [1978] Jian Fa Cheng No.584, Cai Zong [2007]No.3	Pay to Local Government Coffers
20	Cultural Development Fee	Guo Fa [1996] No.37, Cai Shui Fa [1997] No.95, Guo Fa Ban [2006]No.43	Pay to Central and Local Coffers

21	National Film Industry Development Fund	Guo Fa Ban[2006]No.43, Cai Jiao[2006]No.115	Pay to Central and Local Coffers
22	Urban Education Additional Fee	Education Law, State Council OrderNo.60, Guo Fa [1986] No.50, Guo Fa Ming Dian [1994] No.2, No.23, [1992] Cai Yu Zi No.11	Pay to Central and Local Coffers
23	Local Education Additional Fee (Liaoning, Anhui, Fujian, Sichuan, Jiangsu, Guangxi, Ningxia, Guizhou, Qinghai, Hebei, Shandong, Zhejiang, Inner Mongolia, Yunnan, Heilongjiang, Hunan, Hubei)	Education Law, Cai Zong Han [2003] No.2, No.9, No.10, No.12, No.13, No.14, No.15, No.16, No.18, Cai Zong [2001] No.58, Cai Zong [2004] No.73, Cai Zong Han [2005]No.33, Cai Zong Han [2005]No.9, Cai Zong Han [2006]No.2, No.61, Cai Zong Han [2007] No.45, Cai Zong Han [2008] No.7	Pay to Local Government Coffers
24	Local Education Fund (Beijing, Jiangsu)	Education Law, Cai Zong Han [2002] No.31, Cai Zong Han [2003] No.12	Pay to Local Government Coffers
25	Tourism Development Fund	Guo Fa [1995]No.57, Lv Fa Ban [1991] No.124, Cai Wai Zhi[1996] No.396, Cai Han [2001]No.24, Cai Zong [2006] No.3	Pay to Central Government Coffers
26	Disabled Persons Employment Guarantee Fund	Disabled Person Guarantee Law, Cai Zong Zi [1995] No.5, Cai Zong [2001] No.16	Pay to Local Government Coffers
27	Coal Sustainable Development Fund (Shanxi)	Guo Han [2006] No.52, Cai Zong Han [2007] No.3, Fa Gai Ban Nen Yuan [2007] No.1805, Jin Cai Mei [2007] No.8	Pay to Local Government Coffers
28	Water Resource Compensation Fee (Shanxi)	State Council Agreement, Ji Ji Chu [2001] No.349, Cai Zong [2001] No.62, Cai Zong [2007]No.3, Cai Ban Zong [2009] No.5	Pay to Local Government Coffers
29	Electricity Base Construction Fund (Shanxi)	State Council Agreement, Ji Jia Guan [1997] No.440, Zai Zong [2002] No.33, Cai Zong [2007] No.3	Pay to Local Government Coffers
30	Highway Vehicle Passage Additional Fee (Hainan)	Cai Zong [2008] No.84	Pay to Local Government Coffers

31	National Silk Development Risk Fund	Guoyue [1996] No.151, Guo Jian Xie [1997] No.11, Cai Zong[2004] No.40, Cai Zong [2007] No.3	Pay to Central Government Coffers
32	Central International Trade Development Fund	Guo Han [1996] No.17, Cai Zong [2007]No.3	Pay to Central Government Coffers
33	Urban Infrastructure Associated Fee	Ji Jia Ge [2001] No.58, Cai Zong Han [2002] No.3	Pay to Local Government Coffers
34	Small Dam Post Migration Assistance Fund	Guo Fa [2006] No.17	Pay to Local Government Coffers

Table C-3 Sundry Levies of the PRC -- National Government Funds 2012

Number	Fund name	Levy Right	Fund Management
1	Rural electricity-networking loans repayment fund	State Council Agreement, Cai Qi [2001]No.820, Cai Zong [2007]No.3	Pay to Central and Local Coffers
2	National Major Water Conservancy Project Development fund	Cai Zong [2009]No.90, Cai Zong [2010]No.97, Cai Shui [2010]No.44	Pay to Central and Local Coffers
3	New wall material Fund	Guo Fa[1992]No.66, Cai Zong[2007]No.3, Cai Zong[2007]No.77	Pay to Local Government Coffers
4	Harbour Development Fund	Cai Zong [2011]No.29, Cai Zong [2011]No.100, Cai Zong [2012]No.40	Pay to Central and Local Coffers
5	Civil Aviation Development Fund	Cai Zong [2012]No.17	Pay to Central Government Coffers
6	Vessel-included Oil Pollution Compensation Fund	Cai Zong [2012]No.33	Pay to Central Government Coffers
7	Railway Construction Fund	Guo Fa[1992]No.37,Cai Gong Zhi [1996] No.371,Cai Zong [2007]No.3	Pay to Central Government Coffers
8	Bulk Cement Fund	Guo Han [1997] No.8, Cai Zong [2002] No.23,Cai Zong [2007]No.3	Pay to Local Government Coffers
9	Silviculture Fund	Forestry Law, Jing Zong [1988] No.122, Lin Cai Zhi [1991] No.74, (91) Cai Nong ZhiNo.333, [1993]Cai Nong Zhi No.144, Cai Zong [2009] No.3	Pay to Central and Local Coffers
10	Nuclear Power Plant Spent Fuel Processing Disposal Fund	Cai Zong [2010] No. 58	Pay to Central Government Coffers
11	Forestry Vegetation Regrowth Fund	Forestry Law, Cai Zong [2002] No.73	Pay to Central and Local Coffers
12	Water Conservation Construction Fund	Cai Zong [2011] No. 2, Cai Zong Han [2011] No. 33, Cai Ban Zong [2011] No. 111	Pay to Central and Local Coffers
13	Large and Medium Dam Post Migration Assistance Fund	Guo Fa [2006]No.17, Cai Zong [2006]No.29, Jian Cha Bu, Ren Shi Bu, Cai Zheng Bu Ling No.13, Cai Qi [2011] No. 303, Cai Qi [2012] No. 315	Pay to Central Government Coffers

14	Large and Medium Dam Fund (Qinghai, Guangdong, Chongqing, Sichuan, Jilin, Shanxi, Hebei, Shaanxi, Anhui, Hubei, Hunan, Guizhou, Hainan, Fujian, Guangxi, Liaoning, Yunnan, Heilongjiang, Ningxia, Zhejiang, Henan Provinces)	Guo Fa [2006] No.17, Cai Zong [2007] No.26, Cai Zong [2008] No.17, Cai Zong [2008] No.29, No.30, No.31, No.32, No.33, No.34, No.35, Cai Zong [2008] No.64, No.65, No.66, No.67, No.68, Cai Zong [2008] No.85, No.86, No.87, No.88, No.89, No.90, Cai Zong [2009] No.51, No.59, Cai Zong [2010] No.15, No.16, No.43, No.113, Cai Zong Han [2010] No.10, No.39	Pay to Central and Local Coffers
15	Three Gorges Dam Area Fund	The State Council Ruling No.299, Guo Fa [2006] No.17, Cai Zong [2007] No.69	Pay to Central Government Coffers
16	South Water to North Project Fund (Beijing, Tinjin, Hebei, Jiangsu, Shandong and Henan)	Guo Han [2002] No.17, Guo Ban Fa [2004] No.86	Pay to Central Government Coffers
17	New Vegetable Patch Development Fund	Land Law, National Construction Land Acquisition Regulation, [1985] Nong Tu Zhi No.11	Pay to Local Government Coffers
18	City Public Services Additional Fee	[1964] Cai Yu Wang Zhi No.380, (78) Cai Yu No.26, [1978] Jian Fa Cheng No.584, Cai Zong [2007] No.3	Pay to Local Government Coffers
19	Cultural Development Fee	Guo Fa [1996] No.37, Cai Shui Fa [1997] No.95, Guo Fa Ban [2006] No.43, Cai Zong [2012] No. 68, Cai Zong [2012] No. 96	Pay to Central and Local Coffers
20	National Film Industry Development Fund	Guo Fa Ban [2006] No.43, Cai Jiao [2006] No.115	Pay to Central Coffers
21	Education Surcharge	Education Law, the State Council Ruling No.60, Guo Fa [1986] No.50, Guo Fa Ming Dian [1994] No.2, No.23, Guo Fa [2010] No. 35, Cai Shui [2010] No. 103	Pay to Central and Local Coffers
22	Local Education Surcharge	Education Law, Cai Zong Han [2003] No.2, No.9, No.10, No.12, No.13, No.14, No.15, No.16, No.18, Cai Zong [2001] No.58, Cai Zong [2004] No.73, Cai Zong Han [2005] No.33, Cai Zong Han [2006] No.9, Cai Zong	Pay to Local Coffers

		Han[2006] No.2, No.61, Cai Zong Han [2007] No.45, Cai Zong Han [2008] No.7, Cai Zong Han [2010] No.2, No.3, No.7, No.8, No.11, No.71, No.72, No.73, No.75, No.76, No.78, No.79, No.80, Cai Zong [2010] No.98, Cai Zong Han [2011] No. 1, No.2, No.3, No.4, No.5, No.6, No.7, No.8, No.9, No.10, No.11, No.12, No.13, No.15, No.16, No.17, No.57	
23	Tourism Development Fund	Guo Ban Fa [1995] No.57, Lv Ban Fa [1991] No.124, Cai Wai Zhi [1996] No.396, Cai Han [2001]No.24, Cai Zong [2007]No.3, Cai Zong [2010] No. 123	Pay to CentralCoffers
24	Disabled Persons Employment Guarantee Fund	Disabled Person Guarantee Law, Cai Zong Zhi [1995] No.5, CaiZong [2001] No.16	Pay to LocalCoffers
25	Coal Sustainable Development Fund (Shanxi)	Guo Han [2006] No.52, Cai Zong Han [2007] No.3, Fa Gai Ban Neng Yuan [2007] No.1805, Jin Cai Mei [2007] No.8, Cai Zong Han [2011] No. 18	Pay to LocalCoffers
26	Highway Vehicle Passage Surcharge (Hainan)	Cai Zong [2008] No.84	Pay to LocalCoffers
27	City Infrastructure Associated Fee	Ji Jia Ge [2001] No.58, Cai Zong Han [2002] No.3	Pay to LocalCoffers
28	Small DamMigration Assistance Fund	Guo Fa [2006] No.17	Pay to LocalCoffers
29	Renewable Energy Development Fund	Cai Zong [2011] No. 115, Cai Jian [2012] No. 102	Pay to CentralCoffers
30	Waste Electrical & Electronic Products Processing Fund	Cai Zong [2012] No. 34, Cai Zong [2012] No. 48, Cai Zong [2012] No. 80	Pay to CentralCoffers

C.3.1 Individual Income Tax Law of the People's Republic of China¹⁵³⁸

This section includes the Articles discussed in Chapter V

Article 1 Individual Income Tax shall be paid in accordance with the provisions of this Law by individuals who have domiciles in the People's Republic of China, or who have no domicile in China but have resided in the country for one year or more on their income gained within or outside China.

Individuals who have no domiciles and do not reside in the People's Republic of China or who have no domiciles but have resided in China for less than one year shall, in accordance with the provisions of this Law, pay Individual Income Tax on their income gained within China.

Article 2 Individual Income Tax shall be paid on the following categories of individual income:

- (1) Income from wages and salaries;
- (2) Income from production or business operation conducted by self-employed industrial and commercial households;
- (3) Income from contracted or leased operation of enterprises or institutions;
- (4) Income from remuneration for personal services;
- (5) Income from author's remuneration;
- (6) Income from royalties;
- (7) Income from interest, dividends and bonuses;
- (8) Income from the lease of property;
- (9) Income from the transfer of property;
- (10) Incidental income; and
- (11) Income from other sources specified as taxable by the department of finance under the State Council.

Article 6 The amount of taxable income shall be computed as follows:

- (1) With respect to income from wages and salaries, the amount of taxable income shall be the part remaining after the deduction of RMB 3,500 for expenses from the monthly income.
- (2) With respect to income from production or business operation gained by self-employed industrial and commercial households, the amount of taxable income shall be the part remaining after the deduction of the costs, expenses and losses from the gross income in a tax year.

¹⁵³⁸ 《中华人民共和国个人所得税法》 [Individual Income Tax Law of the People's Republic of China], Standing Committee of the National People's Congress, 12/29/2007.

(3) With respect to income from contracted or leased operation of enterprises or institutions, the amount of taxable income shall be the part remaining after the deduction of the necessary expenses from the gross income in a tax year.

(4) With respect to income from remuneration for personal services, author's remuneration, royalties and lease of property, the amount of taxable income shall be the part remaining after the deduction of RMB 800 for expenses from the amount received in a single payment not exceeding RMB 4,000, or the part remaining after the deduction of 20 percent from the amount for a single payment of RMB 4,000 or more;

(5) With respect to income from the transfer of property, the amount of taxable income shall be the part remaining after the deduction of the original value of the property and the reasonable expenses from the income gained from such transfer; and

(6) With respect to interest, dividends, bonuses, incidental income and income from other sources, the amount of taxable income shall be the full amount received in each payment.

The part of individual income donated to educational and other public welfare undertakings shall be deducted from the amount of taxable income in accordance with the relevant regulations of the State Council.

With respect to a taxpayer who has no domicile in China but obtains wages or salaries within China, or who has domicile in China but obtains wages or salaries outside China, an additional deduction of expenses may be determined on the basis of his/her average income level, living standard and the changes in exchange rates. The applicable scope and standard of the additional deduction of expenses shall be prescribed by the State Council.

Appendix D Fiscal Structure of the PRC

D.1 Fiscal Revenue Structure of the PRC

Table D-1 collates the fiscal revenue data of 2005 – 2014. Note that 2014 data is incomplete as at October 2015.¹⁵³⁹

National Fiscal Income includes revenue from formal taxes and sundry levies. A few sums are calculated to better illustrate the different tax bases:

- Sum of Value Added Tax (VAT) and Business Tax is calculated because currently the two taxes are being merged. The Business Tax will cease to exist and its tax base included in the VAT.
- Sum of Turnover Taxes is the sum of the revenue from VAT, Consumption Tax, Customs Duty and Business Tax. The ultimate tax base for these taxes is consumption.
- Sum of Individual Income Tax and Old-Age Pensions Social Insurance Contributions takes into consideration the Individual Income Tax tax-base for the urban population.

¹⁵³⁹ Database of the National Bureau of Statistics of China (Chinese Version), Online <<http://data.stats.gov.cn/>> (25 Aug. 2015).

Table D-1 Fiscal Revenue Structure of the PRC

		Data Base: Annual Data Time Period: 10 years between 2005 and 2014										
Unit: RMB Billion		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
Total National Income	National Fiscal Income	3,164.93	3,876.02	5,132.18	6,133.04	6,851.83	8,310.15	10,387.44	11,725.35	12,920.96	14,034.97	
	National Tax Income	2,877.85	3,480.44	4,562.20	5,422.38	5,952.16	7,321.08	8,973.84	10,061.43	11,053.07	11,915.81	
Indirect Taxes	Turnover Taxes	Domestic VAT	1,079.21	1,278.48	1,547.02	1,799.69	1,848.12	2,109.35	2,426.66	2,641.55	2,881.01	3,084.98
		Consumption Tax	163.38	188.57	220.68	256.83	476.12	607.16	693.62	787.56	823.13	890.68
		Customs Duty	106.62	114.18	143.26	177.00	148.38	202.78	255.91	278.39	263.06	284.32
		Business Tax	423.25	512.87	658.22	762.64	901.40	1,115.79	1,367.90	1,574.76	1,723.30	1,778.16
		Sum of VAT and Business Tax	1,502.46	1,791.35	2,205.24	2,562.33	2,749.52	3,225.14	3,794.56	4,216.32	4,604.32	4,863.14
		VAT and Business Tax as percentage of Total Revenue	45.70%	44.75%	33.24%	33.01%	31.15%	31.07%	28.97%	28.14%	27.48%	
		Sum of Turnover Tax	1,772.46	2,094.10	2,569.18	2,996.16	3,374.02	4,035.08	4,744.10	5,282.27	5,690.51	6,038.14
	Turnover Tax as percentage of Total Revenue	53.92%	52.31%	38.73%	38.59%	38.22%	38.88%	36.22%	35.26%	33.96%		
Other Indirect Taxes	City and rural area maintenance development tax	79.57	93.97	115.64	134.41	154.41	188.71	277.93	312.56	341.99		

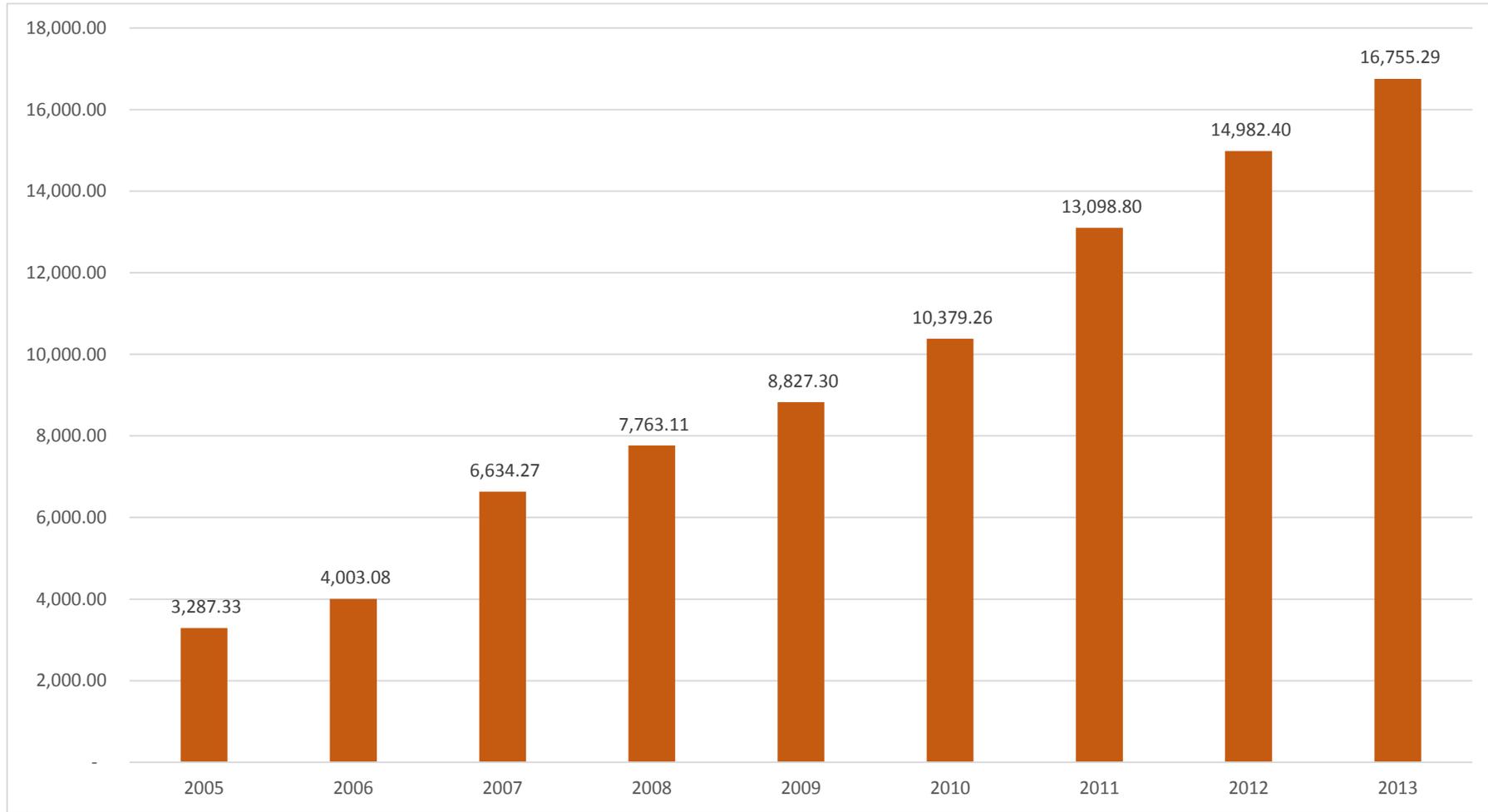
		Tobacco Leaf Tax		4.16	4.78	6.75	8.08	7.84	9.14	13.18	15.03		
		Vehicle Purchase Tax			6.82	14.42	18.65	24.16	30.20	39.30	47.40		
		Sum of Indirect Taxes		1,852.02	2,192.23	2,696.42	3,151.73	3,555.17	4,255.79	5,061.36	5,647.31	6,094.92	6,038.14
Imports and Exports	Consumption taxes on Imports and Exports	VAT, Consumption tax on Imported Goods	421.18	496.26	615.34	739.11	772.98	1,049.06	1,356.04	1,480.22	1,400.46		
		VAT, Consumption tax on Exported Goods	(404.89)	(487.72)	(563.50)	(586.59)	(648.66)	(732.73)	(920.48)	(1,042.89)	(1,051.89)		
		Net VAT, Consumption tax on Import and Export	16.28	8.55	51.84	152.52	124.32	316.33	435.57	437.33	348.57	-	
Income Tax	Types of Income Taxes	Enterprise Income Tax	534.39	703.96	877.93	1,117.56	1,153.68	1,284.35	1,676.96	1,965.45	2,242.72	2,463.25	
		Individual Income Tax	209.49	245.37	318.56	372.23	394.94	483.73	605.41	582.03	653.15	737.66	
		Pension Insurance Contribution (Revenue Collected)	509.33	630.98	783.42	974.02	1,149.08	1,341.95	1,689.47	2,000.10	2,268.04		
	Sum of Individual Income Tax and Pension Insurance Contribution	718.821	876.351	1101.978	1346.251	1544.015	1825.677	2294.881	2582.128	2921.193	737.66		
		Individual Income Tax and Pension contribution as a	21.87%	21.89%	16.61%	17.34%	17.49%	17.59%	17.52%	17.23%	17.43%		

		Percentage of Total Revenue										
		Total Income Taxes	1,253.21	1,580.31	1,979.90	2,463.81	2,697.70	3,110.03	3,971.85	4,547.58	5,163.91	3,200.91
		Total Income Tax as Percentage of Total Revenue	38.12%	39.48%	29.84%	31.74%	30.56%	29.96%	30.32%	30.35%	30.82%	
		Individual and Enterprise Income Taxes as a Percentage of Formal Taxes	25.85%	27.28%	26.23%	27.47%	26.02%	24.15%	25.43%	25.32%	26.20%	
Wealth and Activity Taxes	Real Estate Tax			57.55	68.03	80.37	89.41	110.24	137.25	158.15		
	Deed Tax	73.51	86.77	120.63	130.75	173.51	246.49	276.57	287.40	384.40		
	Arable Land Occupancy Tax	14.19	17.11	18.50	31.44	63.31	88.86	107.55	162.07	180.82		
	Urban Area Land Usage Tax	13.73	17.68	38.55	81.69	92.10	100.40	122.23	154.17	171.88		
	Land Capital Gains Tax			40.31	53.74	71.96	127.83	206.26	271.91	329.39		
	Ship Tonnage Tax	1.38	1.57	1.82	2.01	2.38	2.66	2.98	4.10	4.36		
	Vehicle and Shipping Tax	58.33	68.75	87.69	98.99	116.39	179.26	204.49	222.89	259.63		
	Stamp Duty			226.18	131.13	89.75	104.03	104.22	98.56	124.44		
	Other tax type			0.12	0.37	0.48	0.18	0.42	0.52	0.07		
	Total Wealth and Activity Taxes	161.14	191.88	591.34	598.16	690.23	939.12	1,134.95	1,338.87	1,613.14		

Formal Taxes	Total Formal Taxes	2,757.05	3,333.44	4,484.24	5,239.68	5,794.02	6,962.99	8,478.69	9,533.66	10,603.93	9,239.05
	Total Formal Taxes Plus Pension Insurance Contribution	3,266.38	3,964.42	5,267.66	6,213.70	6,943.10	8,304.94	10,168.16	11,533.76	12,871.97	9,239.05
Other Fiscal Revenue¹⁵⁴⁰	Resources Tax	14.22	20.71	26.12	30.18	33.82	41.76	59.59	90.44	100.57	
	Deed Tax from Securities Transactions	6.73	17.95	200.53	97.92	51.04	54.42	43.85	30.35	46.97	
	Non-tax revenue			569.98	710.66	899.67	989.07	1,413.60	1,663.92	1,867.89	
	National Dedicated Revenue (Earmarked)			124.19	155.41	163.70	204.07	305.64	323.26	352.86	
	National Administrations Fees			189.74	213.49	231.70	299.64	403.94	457.95	477.58	
	Penalty Revenue			84.03	89.84	97.39	107.46	130.14	155.98	165.88	
	Other revenue			172.04	251.92	406.88	377.90	573.89	726.73	871.57	
Total	Total	3,287.33	4,003.08	6,634.27	7,763.11	8,827.30	10,379.26	13,098.80	14,982.40	16,755.29	9,239.05
	Proportion of Formal Tax	99.36%	99.03%	79.40%	80.04%	78.65%	80.01%	77.63%	76.98%	76.82%	
Note: National Fiscal Income does not Include Domestic and Foreign Debt Incomes											
Total government expenditure		3393.028	4042.273	4978.135	6259.266	7629.993	8987.416	10924.779	12595.297	14021.21	15166.154

¹⁵⁴⁰ Other Fiscal Revenue refers to Sundry Levies.

Table D-2 Total Government Revenue (RMB Billion)



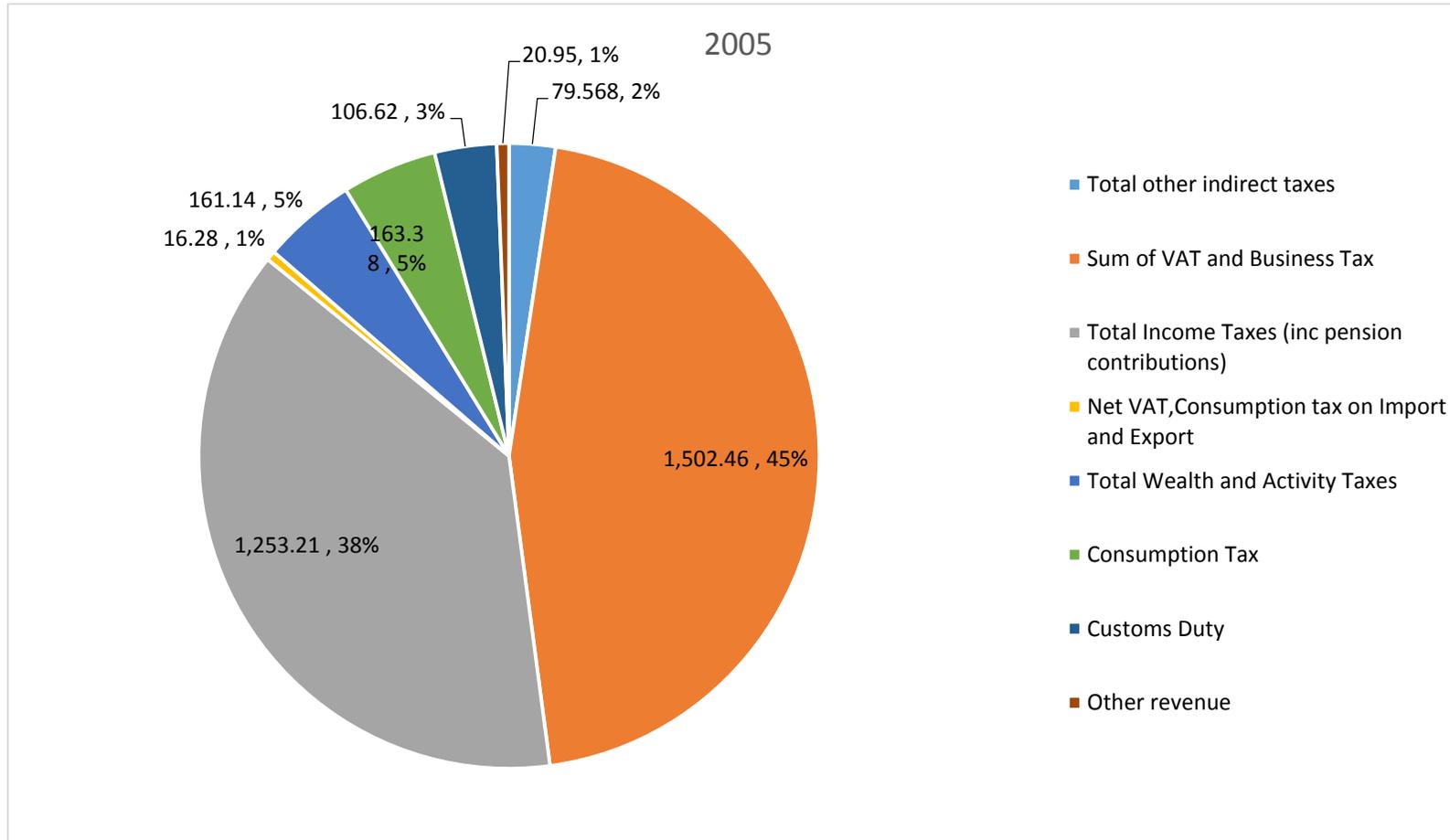
D.2 Revenue Types as a Percentage of Total Fiscal Revenue

The following pie charts illustrate the make-up of fiscal revenue for the years of 2005 to 2013. For each year, the fiscal revenue is divided into eight categories: total other indirect taxes, sum of VAT and Business Tax, total income taxes (including Old-Age Pensions Social Insurance Contributions), net VAT, Consumption Tax on Import and Export (fiscal revenue from international trade, consumption tax, customs duty and other revenue). Other revenue represents revenue from Sundry Levies.

In each pie chart, the amounts are in RMB Billions.

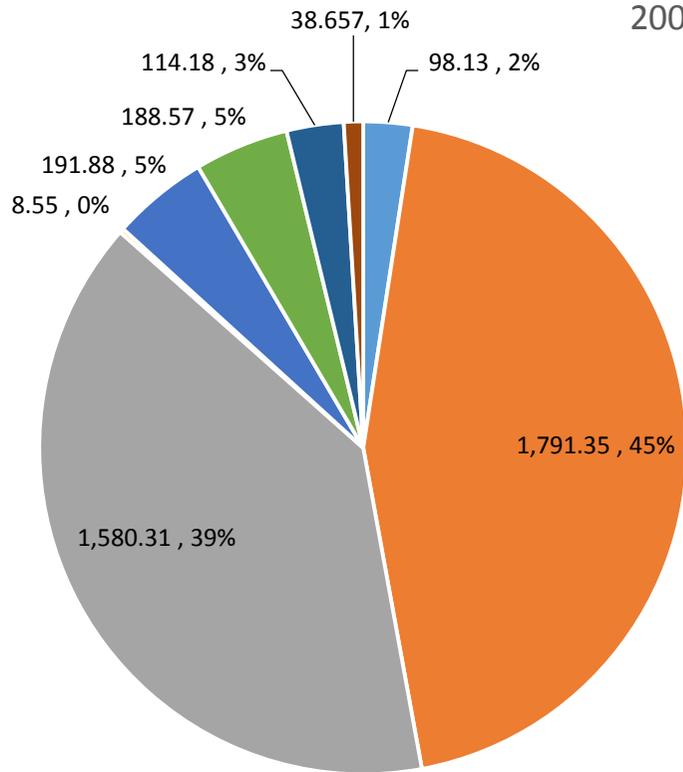
Revenue trends are illustrated in column and line graphs.

Figure D-1 Revenue Proportions 2005 – 2013 (RMB Billion)¹⁵⁴¹



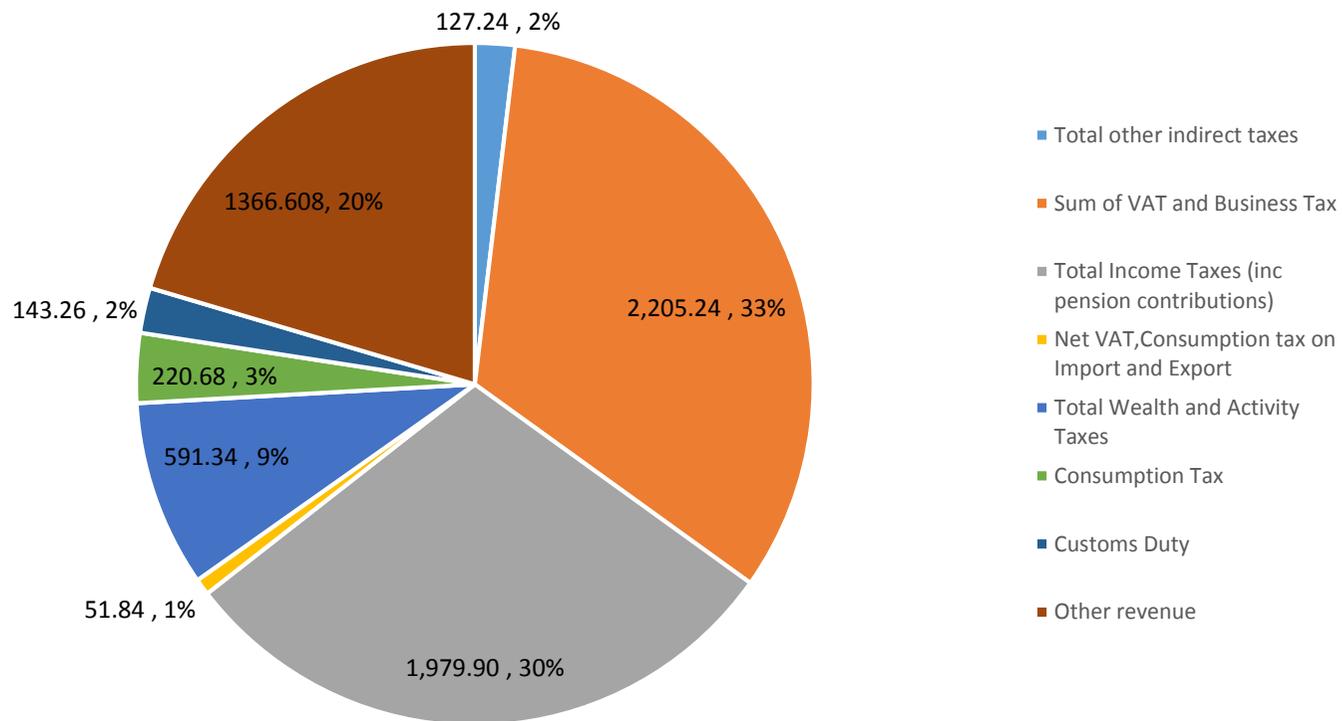
¹⁵⁴¹ Pension Contributions is short for Urban Old-age Pension Insurance Contributions. Other revenue refers to Sundry Levies.

2006

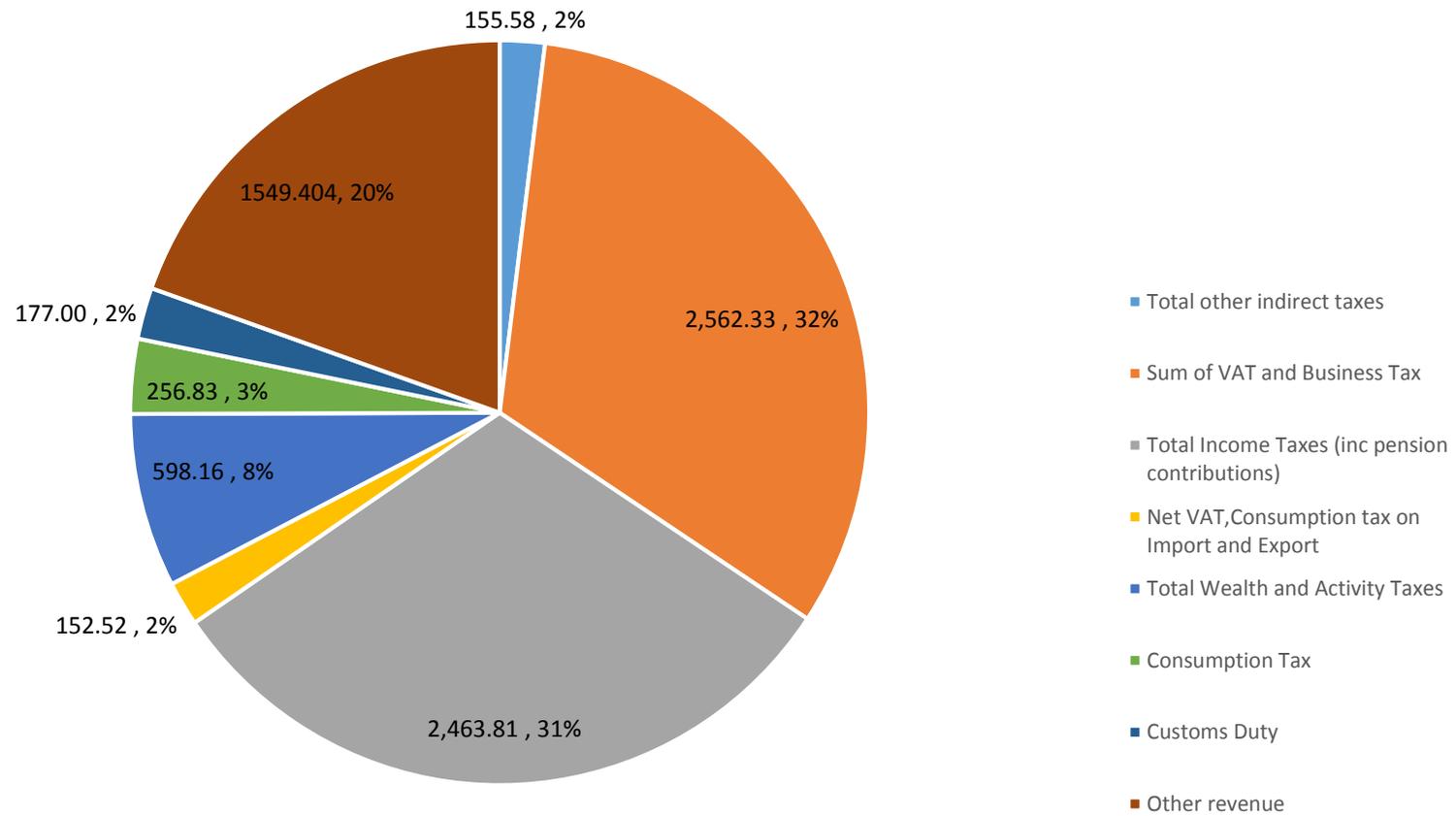


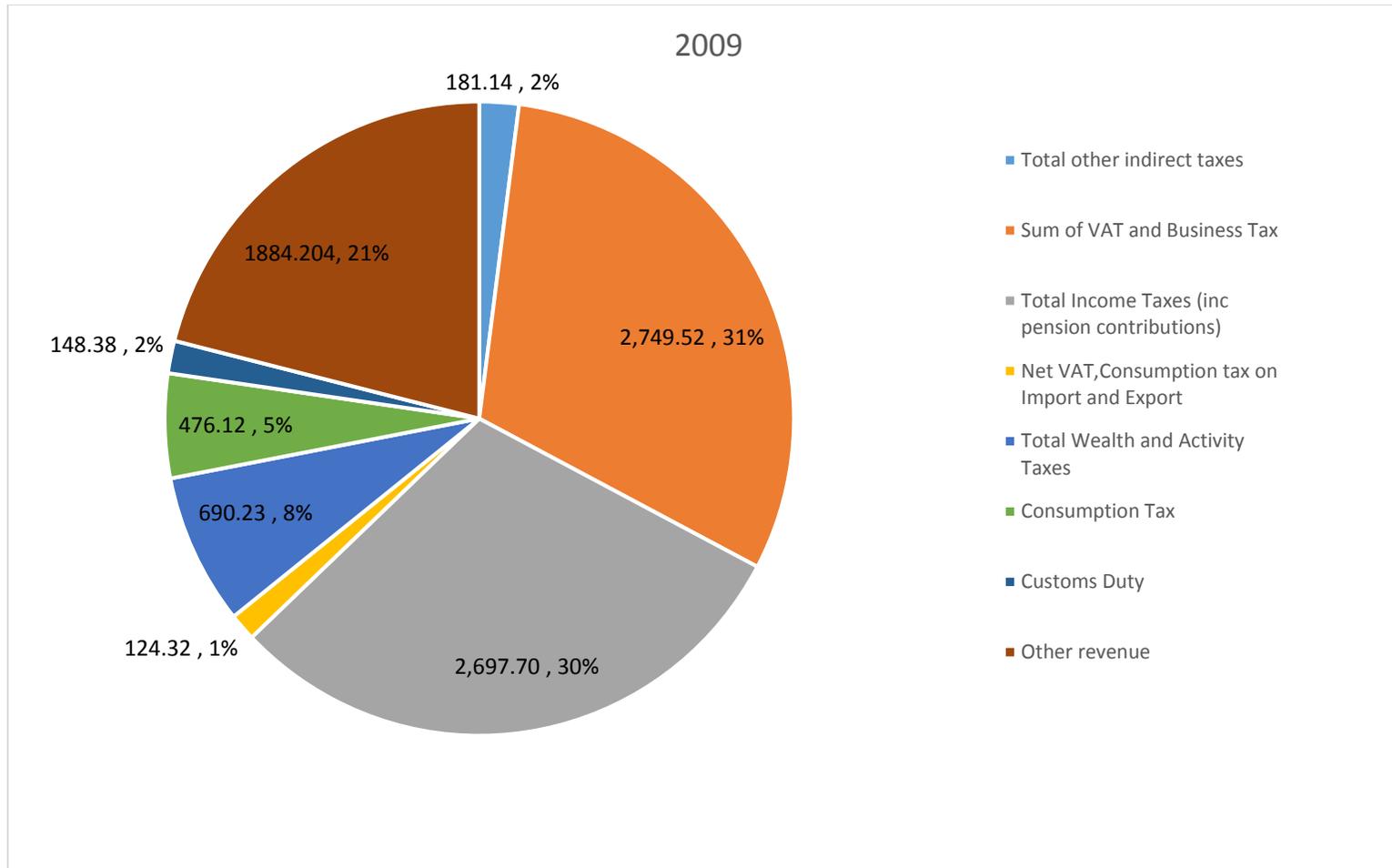
- Total other indirect taxes
- Sum of VAT and Business Tax
- Total Income Taxes (inc pension contributions)
- Net VAT, Consumption tax on Import and Export
- Total Wealth and Activity Taxes
- Consumption Tax
- Customs Duty
- Other revenue

2007

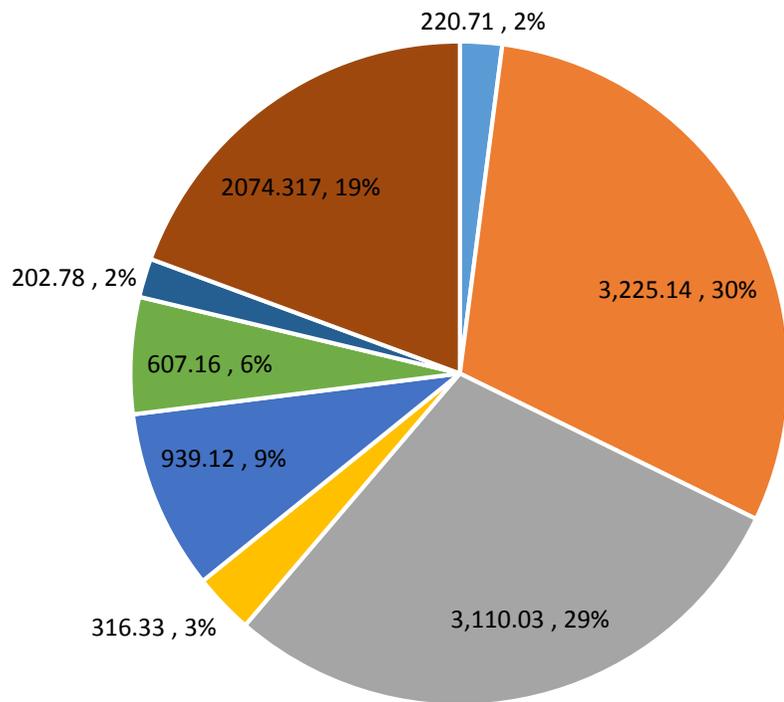


2008



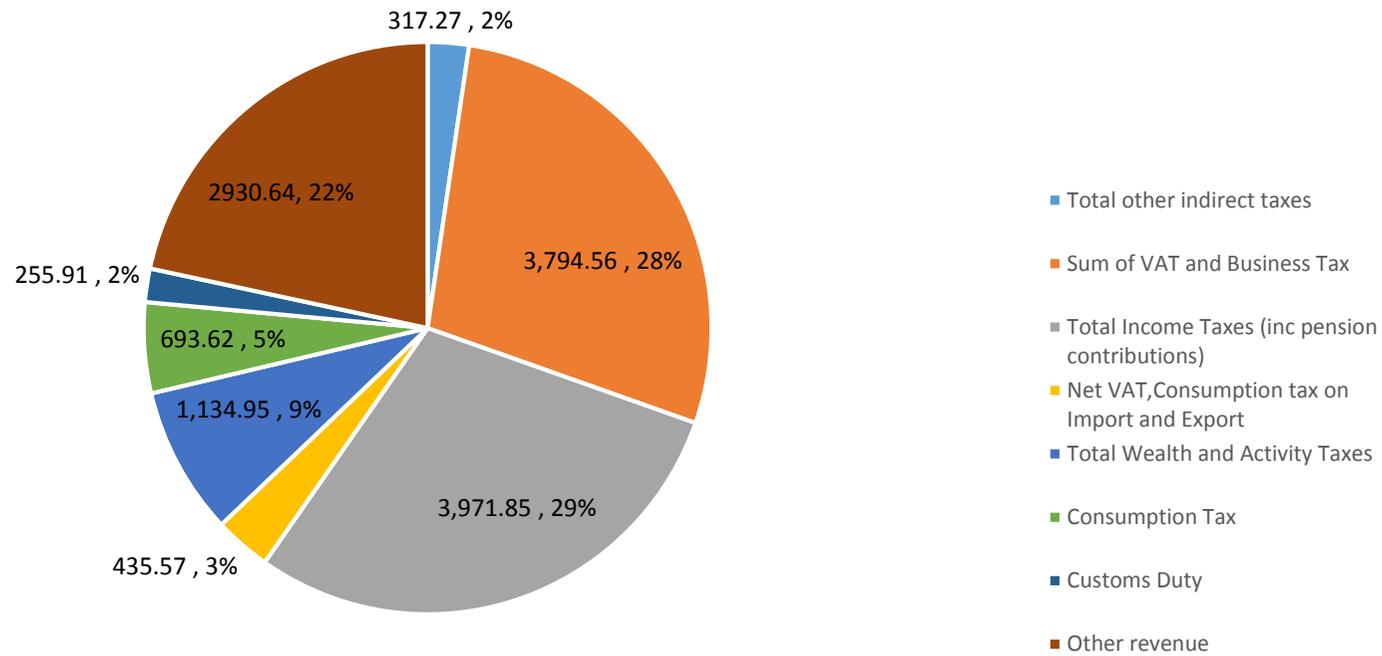


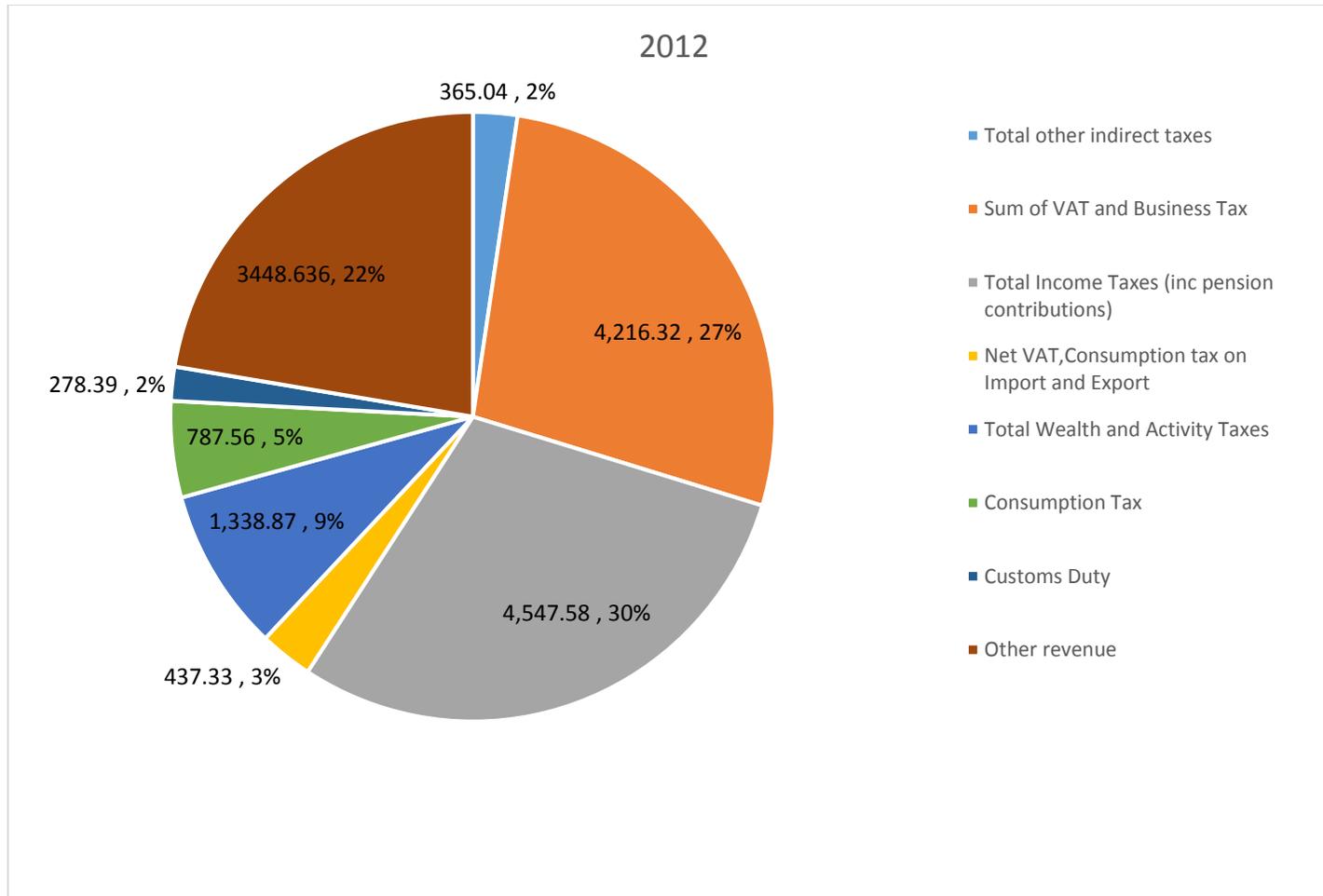
2010



- Total other indirect taxes
- Sum of VAT and Business Tax
- Total Income Taxes (inc pension contributions)
- Net VAT, Consumption tax on Import and Export
- Total Wealth and Activity Taxes
- Consumption Tax
- Customs Duty
- Other revenue

2011





2013

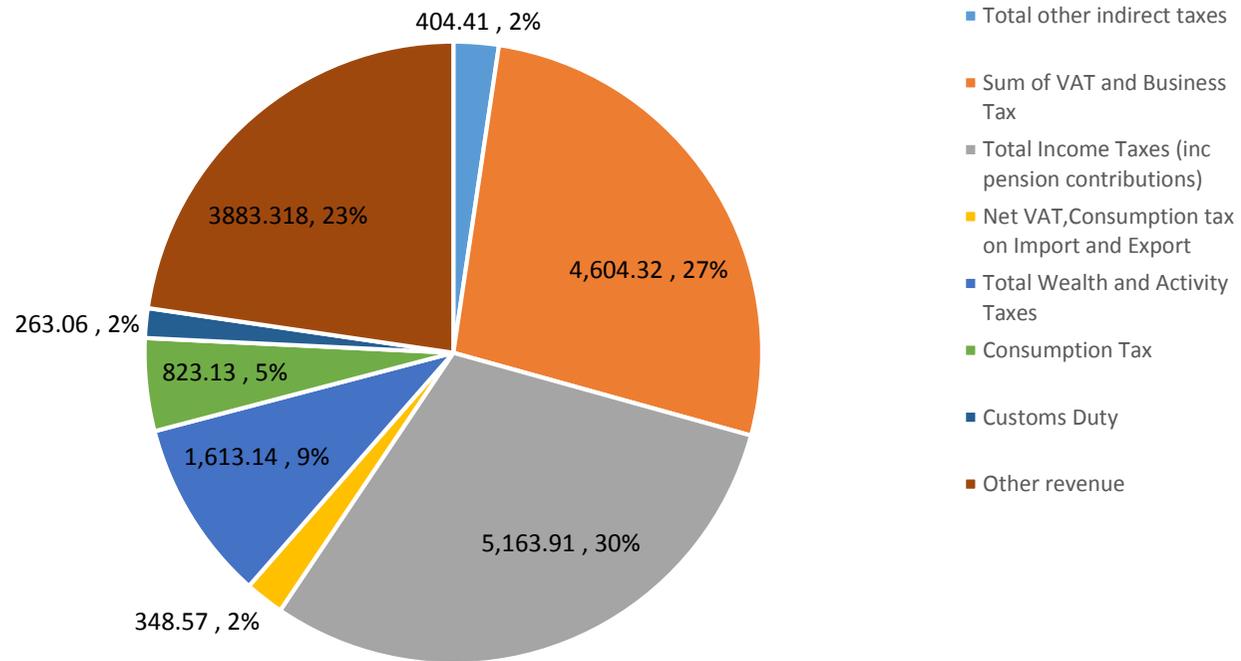


Figure D-2 Trend in VAT and Business Tax Revenue (RMB Billion)

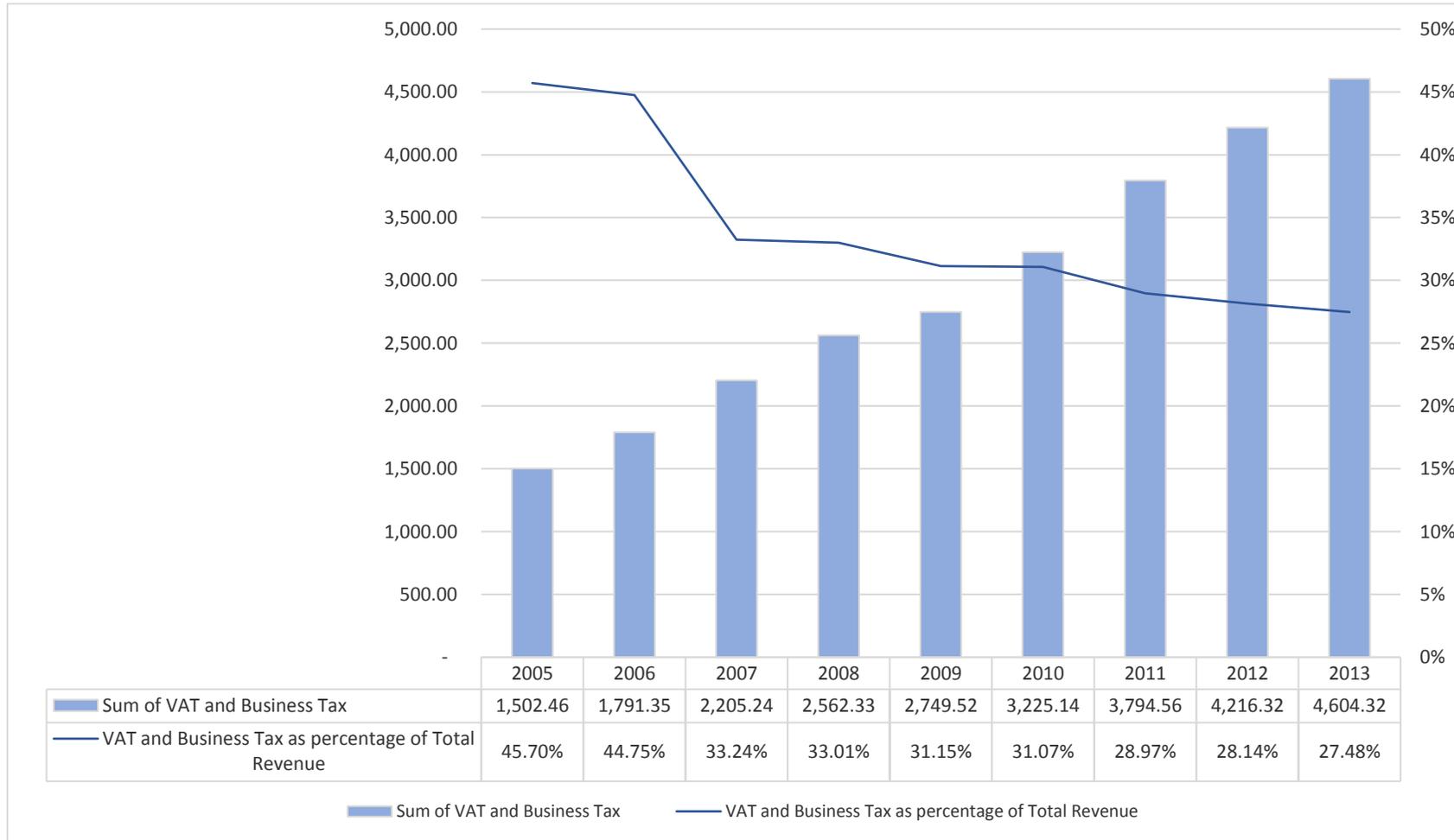


Figure D-3 Trend in Total Turnover Taxes Revenue (RMB Billion)

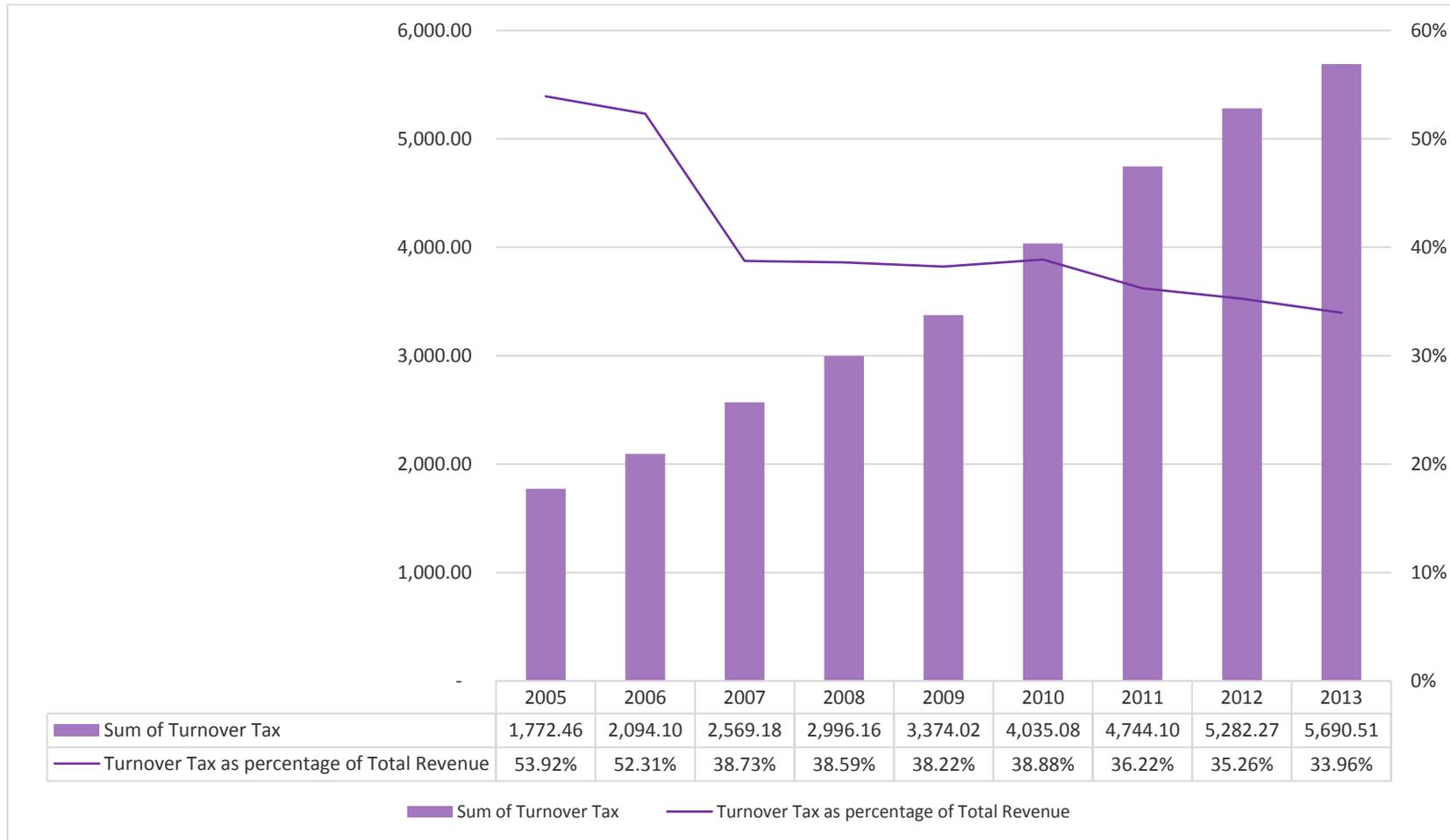


Figure D-3 Trend in Income Tax Revenue -- including Old-Age Pensions Social Insurance Contributions Figure D-3 Trend in Total Turnover Taxes Revenue (RMB Billion)

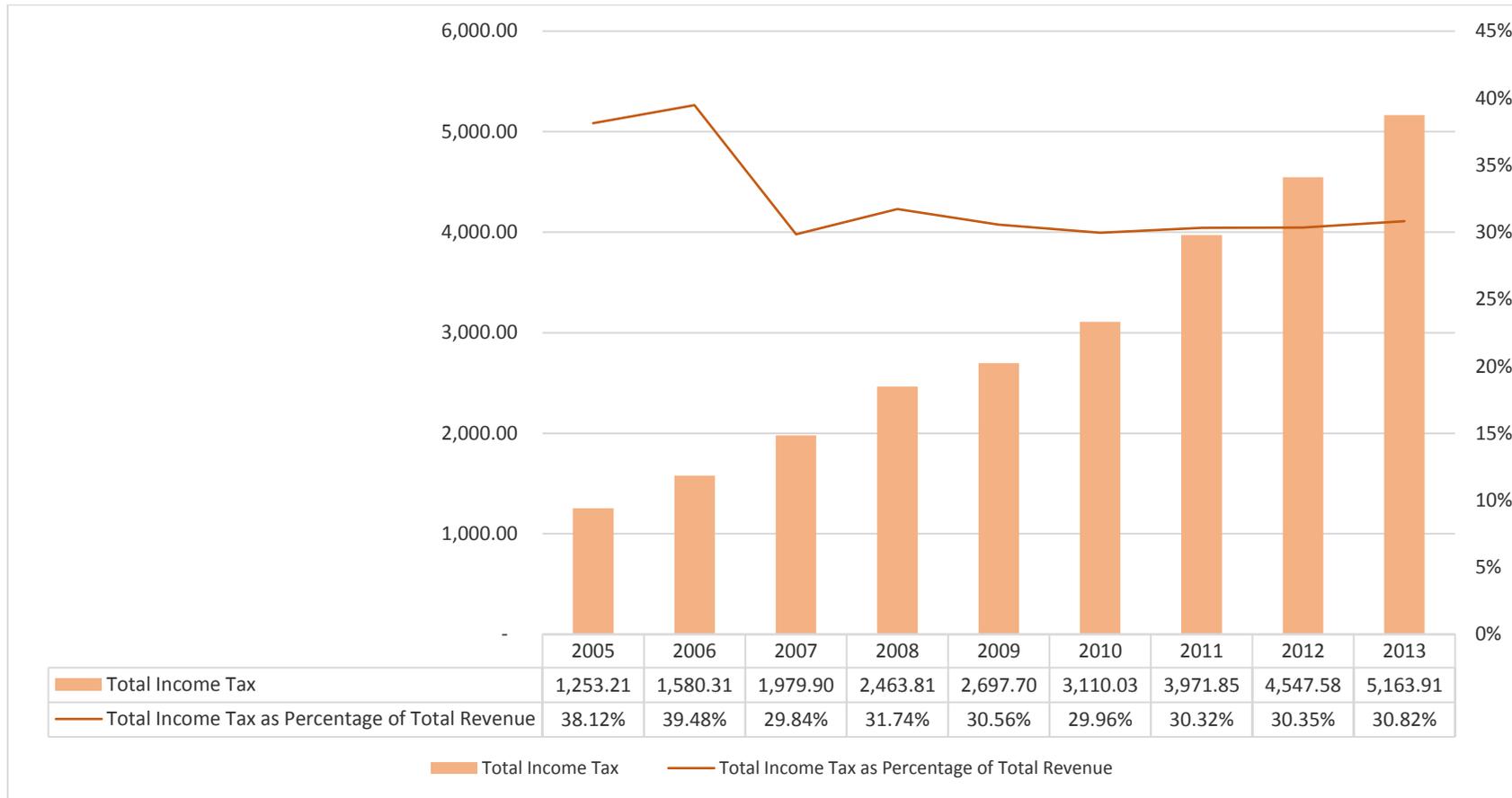
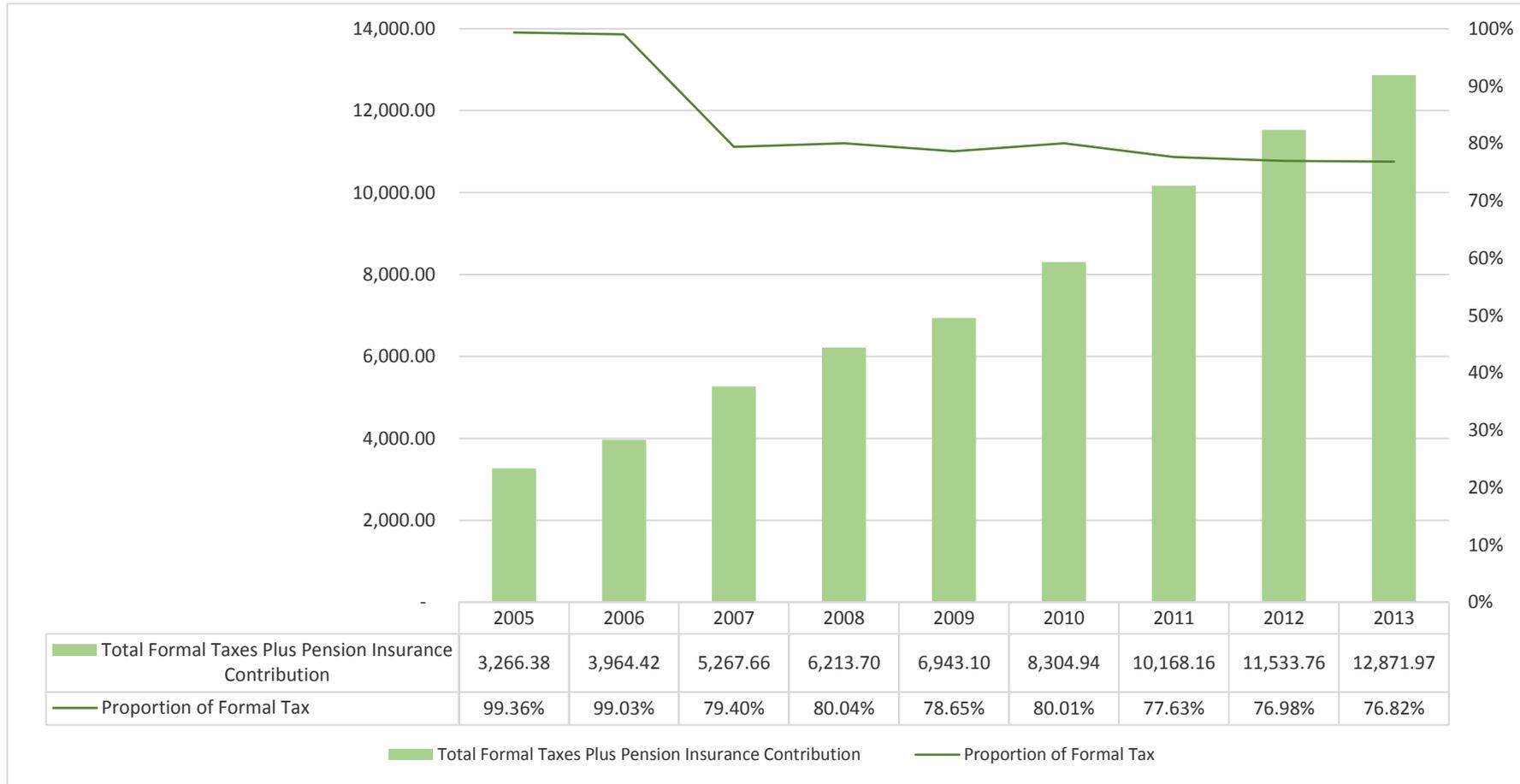


Figure D-4 Trend in Formal Taxes Revenue (RMB Billion)



Appendix E A Note on Income Tax Theory

The tax incidence and tax burden analysis in Chapter VI is performed based on an income tax that is designed to have progressive marginal tax rates within a partial equilibrium model. The research of Edgeworth,¹⁵⁴² Stern¹⁵⁴³ and Mirrlees¹⁵⁴⁴ are significant contributions to the understanding the economic impacts of a progressive income tax in a country. This appendix contains a brief summary of these three significant theories.

E.1 Edgeworth Progressive Marginal Rate Income Tax Theory

At the end of the 19th century, based on utilitarian social welfare theories, Edgeworth thought the aim of taxation is to maximise social welfare, that is, maximising total individual utility.¹⁵⁴⁵ He made the following assumptions: each person has the same utility function; the level of utility only depended on people's income levels; the marginal utility of income diminishes, and the diminishing rate exceeds the rate of increases in income; total income possibilities is constant, that is, even if the tax rate is 100%, there is no impact on production. With these assumptions, in order to maximise social welfare, each individual's marginal utility of income should be aligned. As each individual has the same marginal utility functions, the marginal utility of income would only be the same when income levels are aligned. This marginal utility alignment requires the designed tax system to allow total income inequity after taxes. Therefore the income of the wealthy should be taxed at a higher rate, because the marginal utility loss of the rich is smaller than that of the poor. If income redistribution is completely equitable, when the government wants to increase revenue, the extra tax should be evenly distributed to each individual. Edgeworth's research shows that income tax should be levied at multiple levels

¹⁵⁴² Edgeworth FY, 'The Pure Theory of Taxation', (1897) 7 *The Economic Journal* (25) 46.

¹⁵⁴³ Stern NH, 'On the Specification of Models of Optimum Income Taxation', (1976) 6 *Journal of Public Economics* 123.

¹⁵⁴⁴ See Mirrlees JA, 'An exploration in the theory of optimal income taxation', (1971) 38 *Review of Economic Studies* 175; and Mirrlees JA, 'Optimal tax theory: A synthesis', (1976) 6 *Journal of Public Economics* 327.

¹⁵⁴⁵ Above note 1542.

with high progressive marginal rates, and the marginal rates of the highest bracket of income should be levied at 100%.

Edgeworth based his conclusion on the presumption that income tax will not affect production. In reality, due to the existence of leisure, income tax does effect the preference between work and leisure. An income tax with high rates will have a restrictive effect on labour supply, thus lead to excessive tax burden. The assumption that individuals have the same utility function is also unrealistic, because the marginal utility of income for each individual cannot be represented by data; but as an analytical tool, Edgeworth's research contributes to the analysis of treating Old-Age Pensions Social Insurance Contributions in the PRC as a form of income tax that has the same tax base as the Individual Income Tax for the target segment of the population.

E.3 Stern's Linear Income Tax Model

Stern took into consideration the effect income tax has on labour supply. Combining this with the idea of a negative tax, he proposed a linear income tax model.¹⁵⁴⁶ This is a linear tax model with constant marginal tax rates and constant income brackets. That is,

$$T = -G + tY,$$

Where G = the total lump sum grant the government pays to each individual (a constant rate of deductions);

T = Tax Revenue;

t = tax rate,

Y = an individual's total income.

In the above formula,

¹⁵⁴⁶ Above note 1543.

At $Y = 0$, tax is a negative number, that is, the individual receives $\$G$ as subsidies;

At $\frac{G}{t} \geq Y > 0$, when the taxpayer receives $\$1$ of income, he/she must pay $\$t$ as taxes to the government. Therefore, t is the marginal tax rate, which is the taxable proportion of the last $\$1$ of income, this is a constant.

Stern's research shows that, when the elasticity of labour supply is higher, the marginal tax rate t should be smaller. He also calculated with regard to certain presumptions, that in order to maximise social welfare, the marginal tax rate t should be 19%. Stern's research denied the conclusion that the progressive tax rate should increase as income increases, until it gets to 100%. It is, however, uncertain whether the 19% marginal tax rate proposed by Stern is plausible, because Stern's conclusion was based on strict presumptions. These presumptions were that the substitution elasticity between income (labour) and leisure is 0.6; and the choice of social welfare function was based on a Rawlsian function, that is, focusing on the welfare improvement of the worst-off individual in society. As it is rare in real life, that the substitution elasticity between labour and leisure is 0.6, if this number changes, the 19% optimal marginal income tax rate is not plausible. The standards people use to judge social welfare are not the same. When other social welfare functions are chosen, this conclusion also does not stand. Furthermore linear income taxes are also based on a one off government lump sum grant, implementing such a lump sum grant is difficult.¹⁵⁴⁷ The average income tax rate analysis in Chapter VI is based on this linear income tax model.

¹⁵⁴⁷ See Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2015 Forthcoming), ch 5.

E.4 The Optimal Income Tax Theory of Mirrlees¹⁵⁴⁸

Some scholars focus on researching a non-linear income tax. Different to a linear income tax, it has many marginal tax rates, and a different tax rate is applied for different income levels, that is, the tax rate is progressive (or regressive). The central question for optimal non-linear income tax is how to ascertain the level of progressivity (regressivity). In other words, how best to set the marginal tax rates of income tax.

Mirrlees¹⁵⁴⁹ made important contributions to the research of optimal non-linear income taxes.

The following were his assumptions:¹⁵⁵⁰

- There is no timing considerations, that is, assuming the economy is static, taxes have no effect on savings, and taxes can only affect labour supply;
- take into consideration only labour income, not income from capital;
- there are no differences in the preferences of individuals; individuals rationally decide on the quantity and type of labour they are willing to supply; each individual has the same utilities function, and after choosing the individual utilities function, total welfare can be represented by the sum of individual utility;
- the quantity of labour provided by individuals do not affect price (wage levels); the only difference between individuals are on the before tax income they receive or their productivity (levels of skill);
- there is only one type of labour, labour of any one person is a complete substitute for another's labour;

¹⁵⁴⁸ See above note 1544.

¹⁵⁴⁹ See above note 1544.

¹⁵⁵⁰ See above note 1544.

- labour supply is continuous;
- migration does not occur;
- the government has perfect information on individual utilities and individual activities in the economy; and
- the cost to implement optimal income tax can be ignored.

Mirrlees then reached the following conclusions¹⁵⁵¹:

- A near linear income tax that has administrative benefits is most suitable. A near linear income tax is where the marginal tax rate is almost uniform, and individuals who receives an income that is below the tax free threshold should be subsidised by the government.
- Income tax, contrary to general perception, is not an effective tool to restrict inequity, because low tax rates do not necessarily lead to more jobs. When consumption level and skills level are at the optimal, working a full day will allow the individual to receive wages equal to their consumption level. Those people who do not have the level of skill will not choose to work, their preference for leisure is higher, and therefore even low tax rates would not encourage employment. There is no evidence that lower income earners should be taxed at a lower rate. Similarly, due to differences in skill levels, for efficiency reasons, individuals with the lowest level of skill should work less, and individuals who have higher levels of skill should work more. The labour supply of those with higher skill levels may be extremely scarce (assuming there is no possibility of migration), for the benefits of the poorer groups, levying higher taxes on people who have higher skill levels and who receive higher levels of income may sacrifice more production.

¹⁵⁵¹ See above note 1544.

- There is a need to design taxes that complement the income tax. If a tax policy that relied both on working hours and labour income, considerations of how to counteract the innate advantages of some individuals due to genetic and family reasons are also required.

Stern summarised the conclusions of Mirrlees and later related research into three points, and called it the Mirrlees model:¹⁵⁵²

- 1) The marginal tax rate needs to be between 0 and 1;
- 2) The marginal tax rate for the individual with the highest income should be 0; and,
- 3) If the individual receiving the lowest wage rate is working under optimal conditions, their marginal tax rate should also be 0.¹⁵⁵³

Only the first point could be found in the writings of Mirrlees.¹⁵⁵⁴ It obviously does not have much real meaning as it covers all possibilities. In most situations, the tax rate will not be lower than 0 (except when a negative income tax is used). If the marginal tax rate is 0, the government does not have additional tax revenue. The marginal tax rate cannot exceed 100%. If the marginal tax rate equals 100%, then all income received from extra labour would be spent on paying taxes. A rational individual will lower the supply of labour, and increase the consumption of leisure, thus leading to decreases in social welfare. This conclusion also differs from Stern's own proposal of using near linear income taxes. Even Mirrlees thought this conclusion was not strong.¹⁵⁵⁵ The latter two conclusions are Stern's summary of the research of Mirrlees and later scholars.

¹⁵⁵² 尼古拉斯·斯特恩著,《发展中国家的税收理论》,大卫·纽伯里、尼古拉斯·斯特恩编,许善达等译《最优商品税和所得税理论入门》 Stern N, 'Introduction to the Theory of Optimal Commodity and Income Taxes', in Newbury D & Stern N, eds, Xu S, trans, *Tax Theory for Developing Nations*, (Beijing: China Finance and Economics Press, 1992), at 54. See also Deaton A & Stern N, 'Optimally Uniform Commodity Taxes, Taste Differences and Lump-sum Grants', (1986) 20 *Economics Letters* 263.

¹⁵⁵³ Ibid.

¹⁵⁵⁴ See Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2015 Forthcoming), ch 5.

¹⁵⁵⁵ Mirrlees JA, 'An exploration in the theory of optimal income taxation', (1971) 38 *Review of Economic Studies* 175.

The second conclusion illustrated that, assuming individuals with higher natural endowments or labour skills also receive higher income, as the labour elasticity of supply for individuals with higher levels of skill is relatively higher; according to the Ramsey inverse elasticity rule,¹⁵⁵⁶ in order to improve efficiency, a lower rate of tax should be levied on their income. When they arrive at top income levels, however, the marginal tax rate should be zero, that is, the marginal income of individuals with highest natural endowments or skills level should have a marginal tax rate of zero, thereby encouraging them to contribute more, at the same time not affecting fiscal revenue and the marginal tax rate of other individuals (here the obvious assumption is that the supply of labour is continuous).

Assume a person with the highest skill level receives before tax income of \$Y, and the marginal tax rate in the rates table is a positive number. The rates table is now recalculated, any income before Y will have a positive marginal tax rate; for any amounts of income after Y, the marginal tax rate is zero. Assuming his labour supply has no biological limits (that is, the labour supply is continuous), then as the marginal hourly compensation rises, this person will choose to work more, because the total tax revenue from Y's income did not change. For the government, tax revenue did not decrease; for other individuals, their utilities did not decrease. For this person who receives the highest level of income, utility was increased. From a Pareto efficiency angle,¹⁵⁵⁷ social welfare increases, and no individual's welfare was decreased, leading to a Pareto improvement. So, the original tax table was not optimal; the marginal tax rate for the highest income should be changed to 0.¹⁵⁵⁸

The third conclusion illustrates that for individuals with relatively lower natural endowments and skill levels, as they have worked to their best ability (that is, optimal circumstances is

¹⁵⁵⁶ Zajac EE, 'Note on an Extension of the Ramsey Inverse Elasticity of Demand Pricing or Taxation Formula', (1974) 3 *Journal of Public Economics* 181.

¹⁵⁵⁷ Stiglitz JE, *Economics of the Public Sector*, (New York: W.W.Norton & Company, 3rd ed, 2000), at 57-78.

¹⁵⁵⁸ Above note 1552.

achieved), even if the tax rate is lowered, they could not contribute more, their marginal tax rate should also be 0. Therefore progressive tax rates that have higher rates for higher income levels are not reasonable from an efficiency angle.

E.4.1 The Contribution and Defects of Mirrlees' Theory

The major contribution of Mirrlees is that he attempted to find a way for the Individual Income Tax to only tax the individual's natural endowments (skill levels), but not their levels of exertion. Since natural endowments (skill levels) do not change as the level of tax changes (similar to commodities that have zero elasticity),¹⁵⁵⁹ taxing only natural endowments and skill levels would not affect production, therefore minimising the excess burden of taxation, at the end achieving the goals of optimal taxation. In real life it is difficult to accurately measure each individual's natural endowments or skill level, the only observable fact is income (that is, there is an issue of information asymmetry), but income is the combined result of individual exertion and level of skill.¹⁵⁶⁰ Furthermore, whether the relationship between income, natural endowments and skill levels is completely positively correlated is uncertain. Under many circumstances, a person with very high natural endowments may receive relatively low income (that is, there is unfair income distribution in society), but some individuals who do not have high levels of natural endowments or even have very low skill levels can receive high levels of income through property or other avenues; therefore an assumption that it is only appropriate to tax on skill levels will lead to inequity. When a known level of fiscal revenue is required, the efficiency and equity issues of income taxes cannot be solved at the same time. Following

¹⁵⁵⁹ This follows from Ramsey's research on optimal commodities tax theory, Ramsey FP, 'A contribution to the Theory of Taxation', (1927) 37 *Economic Journal* 47.

¹⁵⁶⁰ 平新乔《后记》，哈佛·S·罗森著，平新乔、董勤发等译，《财政学》，Ping X, 'Postscript', in Rosen HS, *Public Finance*, Ping X & Dong Q, trans, (Beijing: Renmin University Press, 4th ed, 2000), at 599 - 605.

Ramsey's analytical process, the difficulties arising from balancing efficiency and equity in an income tax are similar to those Ramsey faced when analysing optimal consumption taxes.¹⁵⁶¹

A further contribution of Mirrlees' research (including Stern) is that it negates the general perception of the traditional point of view. That traditional point of view was, in order to achieve equity, a marginal tax rate table should be designed where the marginal tax rate should rise as income rises. Mirrlees and Stern pointed out that under the unique circumstances they are analysing, the argument that marginal tax rates should rise as income rises does not stand, and the income tax is not an effective rule to decrease the level of inequity under all circumstances. Similarly, the conclusion of Mirrlees (or Stern) also could not be seen as a principle that has general applications, their arguments cannot be simply applied to tax system design.

¹⁵⁶¹ Ramsey FP, "A contribution to the Theory of Taxation", (1927) 37 *Economic Journal* 47.

Appendix F Feasibility Study Detailed Results

F.1 Summary of Results

Table F-1 Summary of Feasibility Study Results

Measure	Assumption 1	Assumption 2	Assumption 3
M2 = Actual Urban Old-Age Pensions Expenditure	Yes	Yes	Yes
M3A: pension replacement rate @ 59.2%	No	No	Yes
M3B: pension replacement rate @ actual levels=M3	Yes	Yes	Yes
M3C: pension replacement rate @ 45%	No	No	Yes
M3Da:pension replacement rate @ 50%	No	No	Yes
M3Db: pension replacement rate @ 40%	No	No	Yes
M3Dc: pension replacement rate @37.86%	No	No	Yes

“Yes” means the pool of funds covers Urban Old-Age Pensions expenditure when pensions are paid at the level of the measure.

“No” means the pool of funds does not cover Urban Old-Age Pensions expenditure when pensions are paid at the level of the measure.

Table F-2 Actual Urban Old-Age Pensions Expenditure¹⁵⁶²

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total government expenditure (RMBm)	3,393,028.	4,042,273.00	4,978,135.00	7,629,993.00	8,987,416.00	6,259,266.00	10,924,779.00	12,595,297.00	14,021,210.00
Urban Pension Insurance Policy Holders ('000)	174,879.00	187,663.00	201,369.00	218,911.00	235,499.00	257,073.00	283,913.00	304,268.00	322,184.00
Expenditure from Basic Pension Insurance Fund (RMBm)	404,030.00	489,670.00	596,490.00	738,960.00	889,440.00	1,055,490.00	1,276,490.00	1,556,180.00	1,847,040.00
Average per Capita Expenditure	2,310.34	2,609.30	2,962.17	3,375.62	3,776.83	4,105.80	4,496.06	5,114.50	5,732.87
If urbanisation rate is 80% ('000)									479,708.17
Expenditure from Basic Pension Insurance Fund (RMBm)									2,750,106.09

This table collates data and results on total government expenditure, numbers of Urban Old-Age Pensions Social Insurance contributors, (insurance policy holders), and expenditure for Urban Old-Age Pensions, for the years 2005 to 2013.

Average per capita Urban Old-Age Pensions expenditure is comparable to monthly civil benefits standards. Please see Tables F-2 and F-3 below. For example, the monthly average per capita Urban Old-Age Pensions expenditure in 2010 was RMB 342.15, and in 2013 was RMB 477.73. The monthly national civil benefits standard for December 2010 was RMB 179, for July 2015 was RMB 291.43.

¹⁵⁶² Database of the National Bureau of Statistics of China (Chinese Version), Online <<http://data.stats.gov.cn/>> (25 Aug. 2015).

Table F-3 National and Provincial Civil Benefits Standards of the PRC for July 2015¹⁵⁶³

	Number of Urban Persons receiving Civil Benefits	Number of Urban Families Receiving Civil Benefits	Cumulative Urban Civil Benefits Expenditure (RMB '000)	Urban Civil Benefits Standard (RMB)
National	17,830,142	9,903,126	39,121,935	291.43
Beijing	85,590	50,482	436,478	702.37
Shanghai	180,352	124,188	911,780	638.21
Tianjin	134,754	78,859	581,628	560.53
Tibet Autonomous Region	46,643	27,450	159,458	419.81
Zhejiang Province	62,647	41,582	229,037	410.83
Guangdong Province	302,516	153,390	891,673	398.18
Inner Mongolia Autonomous Region	660,356	393,501	1,840,797	385.68
Jiangsu Province	293,061	160,308	827,390	344.79
Anhui Province	679,309.00	413,466	1,647,337	327.21
Liaoning Province	749,794.00	423,508	1,937,420	325.16
Heilongjiang Province	1,275,812	725,432	3,193,322	310.83
Jilin Province	732,119	475,013	1,727,283	307.96
Shandong Province	412,018	215,912	941,465	301.14
Jiangxi Province	981,018	457,334	2,068,455	297.27
Chongqing	376,484	225,545	859,150	295.32
Yunnan Province	989,525	614,946	2,066,049	293.55
Gansu Province	785,219	328,774	1,627,551	292.35

¹⁵⁶³ Adapted from 《2015年7月份全国县以上城市低保情况》‘Civil Benefits Standards of Government Levels above the County Level, July 2015’, *Ministry of Civil Affairs*, Online <<http://files2.mca.gov.cn/www/201508/20150827132448567.htm>> (6 Sep. 2015).

Fujian Province	134,850	77,925	310,412	288.48
Shanxi Province	620,198	320,654	1,331,842	286.33
Guizhou Province	425,542	235,599	948,156	279.07
Shannxi Province	547,335	270,466	1,169,303	276.00
Xinjiang Autonomous Region	838,368	399,717	1,697,084	268.19
Qinghai Province	182,480	88,388	408,847	266.91
Guangxi Zhuang Autonomous Region	427,656	219,436	817,461	266.53
Ningxia Hui Autonomous Region	157,343	81,570	312,579	260.79
Hubei Province	996,324	565,909	2,060,407	258.94
Hunan Province	1,309,551	752,703	2,415,893	257.07
Hebei Province	574,584	322,139	1,067,187	253.39
Hainan Province	98,796	44,402	193,585	249.98
Sichuan Province	1,633,421	956,964	2,682,011	227.15
Henan Province	1,136,477	657,564	1,760,895	213.36

Table F-4 National and Provincial Civil Benefits Standards of the PRC for December 2010.¹⁵⁶⁴

Provincial Areas	December average per capita expense (RMB)
National	179
Beijing	366
Tianjin	428
Hebei	163
Shanxi	164
Liaoning	180
Jilin	192
Inner Mongolia	257
Heilongjiang	176
Shanghai	309
Jiangsu	185
Zhejiang	286
Anhui	175
Fujian	142
Jiangxi	174
Shandong	195
Henan	152
Hubei	163
Hunan	153
Guangdong	150
Guangxi	158
Hainan	183
Chongqing	173
Sichuan	152
Guizhou	148
Yunnan	154
Tibet	212
Shanxi	218
Gansu	164
Qinghai	195
Ningxia	146
Xinjiang	197

¹⁵⁶⁴ 《2010年12月份全国县以上低保情况(城市)》‘2010 December Safety Net of Urban Government Areas Above County Level’, *Ministry of Civil Affairs*, Online <<http://cws.mca.gov.cn/article/tjsj/dbsj/index1.shtml?3>> (21 Feb. 2012).

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F.2 Detailed Results

F.2.1 Assumption 1: The current Urban Old-Age Pensions Social Insurance Contributions made according to the Social Insurance Law¹⁵⁶⁵ is adequate to fund Urban Old-Age Pensions.

$$S = R - M \dots (1)$$

Table F-5 Equation (1M2)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2013 @ 80%UR
R (RMB m)	509,330	630,980	783,420	974,020	1,149,080	1,341,950	1,689,470	2,000,100	2,268,040	3,376,944
P_{ur} ('000)	174,879	187,663	201,369	218,911	235,499	257,073	283,913	304,268	322,184	479,708
e_{up} (RMB m) = M2	404,030	489,670	596,490	738,960	889,440	1,055,490	1,276,490	1,556,180	1,847,040	2,750,106
S (M2) (RMB m)	105,300	141,310	186,930	235,060	259,640	286,460	412,980	443,920	421,000	626,838
W =Urban Average Wage ¹⁵⁶⁶ (RMB)	18,200	20,856	24,721	28,898	32,244	36,539	41,799	46,769	51,483	
e_{up} / P_{ur}	2,310	2,609	2,962	3,376	3,777	4,106	4,496	5,115	5,733	
Replacement Rate (actual)	12.69%	12.51%	11.98%	11.68%	11.71%	11.24%	10.76%	10.94%	11.14%	

¹⁵⁶⁵ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China* 2010 (Standing Committee of the National People's Congress).

¹⁵⁶⁶ 《城镇单位就业人员平均工资 2005-2014》, 'Urban average wages 2005-2014', *Database of the National Bureau of Statistics of China (Chinese Version)*, Online <<http://data.stats.gov.cn/>> (25 Aug. 2015).

The more significant calculation for equation (1M2) is the actual Urban Old-Age Pension replacement rate, as highlighted. The average replacement rate for the 9 years is 11.63%.

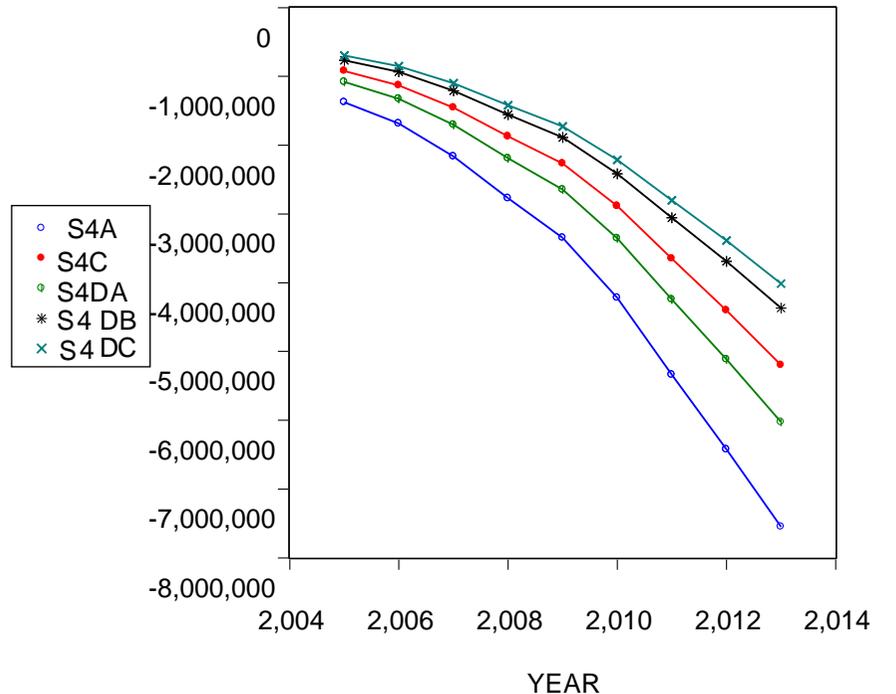
Table F-6 Equation (1M3)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2013 @ 80%UR
R (RMB m)	509,330	630,980	783,420	974,020	1149,080	1,341,950	1,689,470	2,000,100	2,268,040	3,376,944
P_{ur} ('000)	174,879	187,663	201,369	218,911	235,499	257,073	283,913	304,268	322,184	479,708
WP_{ur} (RMB m)	3,182,798	3,913,900	4,978,043	6,326,090	7,593,430	9,393,190	11,867,279	14,230,310	16,586,999	24,696,816
S (3A)	-1,374,886	-1,686,049	-2,163,581	-2,771,025	-3,346,230	-4,218,819	-5,335,959	-6,424,244	-7,551,463	-11,243,571
S (3C)	-922,929	-1,130,275	-1,456,699	-1,872,721	-2,267,963	-2,884,986	-3,650,806	-4,403,540	-5,196,109	-7,736,623
S (3Da)	-1,082,069	-1,325,970	-1,705,602	-2,189,025	-2,647,635	-3,354,645	-4,244,170	-5,115,055	-6,025,459	-8,971,464
S (3Db)	-763,789	-934,580	-1,207,797	-1,556,416	-1,888,292	-2,415,326	-3,057,442	-3,692,024	-4,366,760	-6,501,782
S (3Dc)	-695,677	-850,822	-1,101,267	-1,421,038	-1,725,793	-2,214,312	-2,803,482	-3,387,495	-4,011,798	-5,973,270

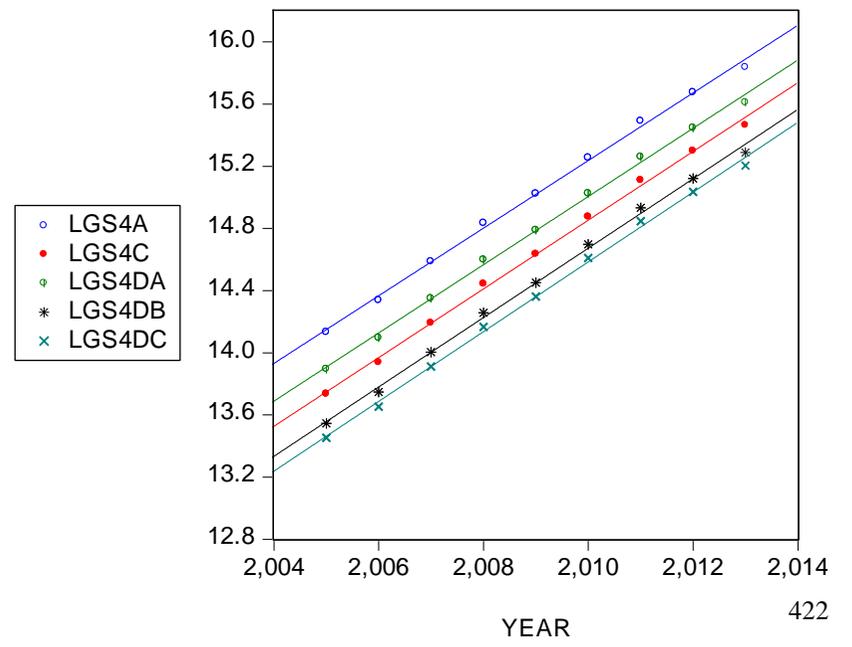
Figure F-1 Subsidies required for Measure 3

Equation (1M3)

	S (3A)	S (3C)	S (3Da)	S (3Db)	S (3Dc)
2005	-1374886.30	-922929.01	-1082068.90	-763789.12	-695677.25
2006	-1686048.52	-1130274.79	-1325969.76	-934579.81	-850822.36
2007	-2163581.49	-1456699.37	-1705601.52	-1207797.22	-1101267.10
2008	-2771025.33	-1872720.54	-2189025.04	-1556416.03	-1421037.70
2009	-3346230.42	-2267963.39	-2647634.88	-1888291.90	-1725792.51
2010	-4218818.69	-2884985.66	-3354645.17	-2415326.14	-2214311.87
2011	-5335959.46	-3650805.77	-4244169.74	-3057441.79	-2803482.01
2012	-6424243.57	-4403539.54	-5115055.05	-3692024.04	-3387495.40
2013	-7551463.33	-5196109.49	-6025459.44	-4366759.55	-4011797.77



The graphs are created by views.



Assumption 2: Revenue from the Individual Income Tax tax-base is adequate to Fund Urban Old-Age Pensions.

Table F-7 Equation (1M3)

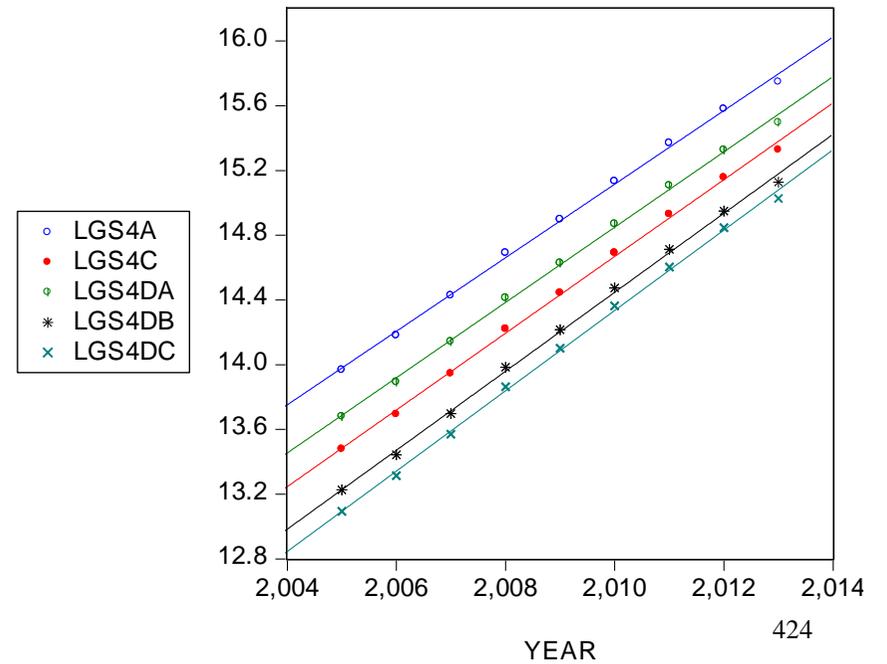
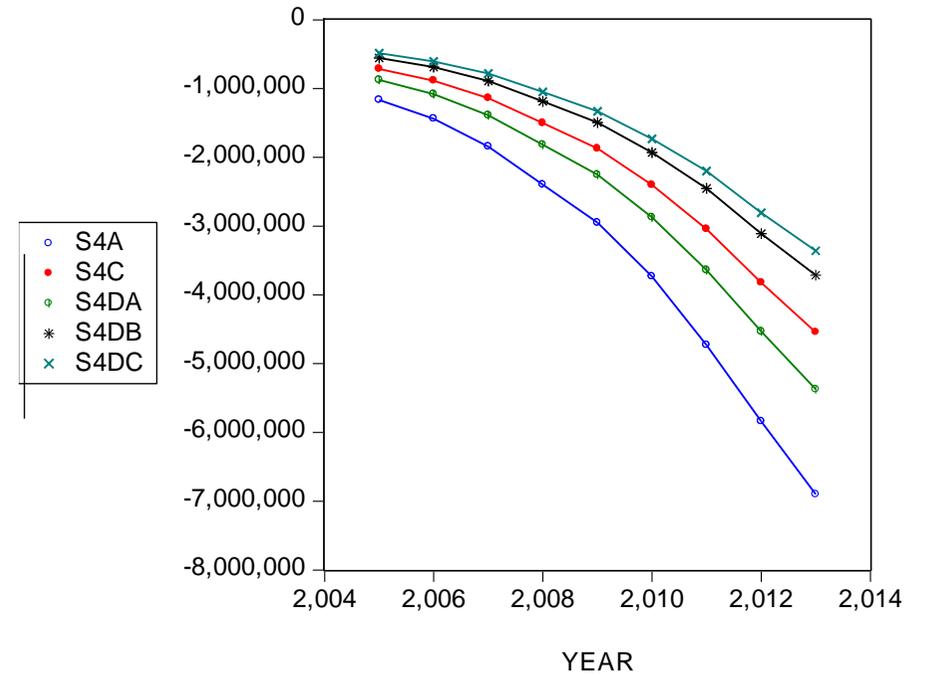
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2013 @ 80%UR
C (RMB m)	509,330	630,980	783,420	974,020	1,149,080	1,341,950	1,689,470	2,000,100	2,268,040	3,376,944
$C+T_y$ (RMB m)	718,821	876,351	1,101,978	1,346,251	1,544,015	1,825,677	2,294,881	2,582,128	2,921,193	4,349,441
P_{ur} ('000)	174,879	187,663	201,369	218,911	235,499	257,073	283,913	304,268	322,184	479,708
WP_{ur} (RMB m)	3,182,798	3,913,900	4,978,043	6,326,090	7,593,430	9,393,190	11,867,279	14,230,310	16,586,999	24,696,816
S (3A)	-1,165,395	-1,440,678	-1,845,023	-2,398,794	-2,951,295	-3,735,092	-4,730,548	-5,842,216	-6,898,310	-10,271,074
S (3C)	-713,438	-884,904	-1,138,141	-1,500,490	-1,873,028	-2,401,259	-3,045,395	-3,821,512	-4,542,956	-6,764,127
S (3Da)	-872,578	-1,080,599	-1,387,044	-1,816,794	-2,252,700	-2,870,918	-3,638,759	-4,533,027	-5,372,306	-7,998,967
S (3Db)	-554,298	-689,209	-889,239	-1,184,185	-1,493,357	-1,931,599	-2,452,031	-3,109,996	-3,713,607	-5,529,286
S (3Dc)	-486,186	-605,451	-782,709	-1,048,807	-1,330,858	-1,730,585	-2,198,071	-2,805,467	-3,358,645	-5,000,774

Figure F-2 Subsidies required for Measure 3

Equation (1M3)

	S (4A)	S (4C)	S (4Da)	S (4Db)	S (4Dc)
2005	-1,165,395.30	-713,438.01	-872,577.90	-554,298.12	-486,186.25
2006	-1,440,677.52	-884,903.79	-1,080,598.76	-689,208.81	-605,451.36
2007	-1,845,023.49	-1,138,141.37	-1,387,043.52	-889,239.22	-782,709.10
2008	-2,398,794.33	-1,500,489.54	-1,816,794.04	-1,184,185.03	-1,048,806.70
2009	-2,951,295.42	-1,873,028.39	-2,252,699.88	-1,493,356.90	-1,330,857.51
2010	-3,735,091.69	-2,401,258.66	-2,870,918.17	-1,931,599.14	-1,730,584.87
2011	-4,730,548.46	-3,045,394.77	-3,638,758.74	-2,452,030.79	-2,198,071.01
2012	-5,842,215.57	-3,821,511.54	-4,533,027.05	-3,109,996.04	-2,805,467.40
2013	-6,898,310.33	-4,542,956.49	-5,372,306.44	-3,713,606.55	-3,358,644.77

The graphs are created by views.



Assumption 3: The PRC's fiscal transfer system can sustainably fund Urban Old-Age Pensions.

Table F-8 Equation (1M3)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2013 @ 80%UR
<i>C</i> (RMB m)	509,330	630,980	783,420	974,020	1,149,080	1,341,950	1,689,470	2,000,100	2,268,040	3,376,944
<i>F</i>	3,287,326	4,003,079	6,634,269	7,763,107	8,827,301	10,379,256	13,098,795	14,982,400	16,755,292	24,947,392
<i>P_{ur}</i> ('000)	174,879	187,663	201,369	218,911	235,499	257,073	283,913	304,268	322,184	479,708
<i>WP_{ur}</i> (RMB m)	3,182,798	3,913,900	4,978,043	6,326,090	7,593,430	9,393,190	11,867,279	14,230,310	16,586,999	24,696,816
<i>S</i> (4A)	1,403,110	1,686,050	3,687,268	4,018,062	4,331,991	4,818,487	6,073,366	6,558,056	6,935,789	10,326,877
<i>S</i> (4C)	1,855,067	2,241,824	4,394,150	4,916,366	5,410,258	6,152,320	7,758,519	8,578,760	9,291,143	13,833,825
<i>S</i> (4Da)	1,695,927	2,046,129	4,145,247	4,600,062	5,030,586	5,682,661	7,165,155	7,867,245	8,461,793	12,598,984
<i>S</i> (4Db)	2,014,207	2,437,519	4,643,052	5,232,671	5,789,929	6,621,980	8,351,883	9,290,276	10,120,492	15,068,665
<i>S</i> (4Dc)	2,082,319	2,521,277	4,749,582	5,368,049	5,952,428	6,822,994	8,605,843	9,594,805	10,475,454	15,597,177

Figure F-3 Surplus after Measure 4

Equation (3M4)

	S (4A)	S (4C)	S (4Da)	S (4Db)	S (4Dc)
2005	1,403,110	1,855,067	1,695,927	2,014,207	2,082,319
2006	1,686,050	2,241,824	2,046,129	2,437,519	2,521,277
2007	3,687,268	4,394,150	4,145,247	4,643,052	4,749,582
2008	4,018,062	4,916,366	4,600,062	5,232,671	5,368,049
2009	4,331,991	5,410,258	5,030,586	5,789,929	5,952,428
2010	4,818,487	6,152,320	5,682,661	6,621,980	6,822,994
2011	6,073,366	7,758,519	7,165,155	8,351,883	8,605,843
2012	6,558,056	8,578,760	7,867,245	9,290,276	9,594,805
2013	6,935,789	9,291,143	8,461,793	10,120,492	10,475,454

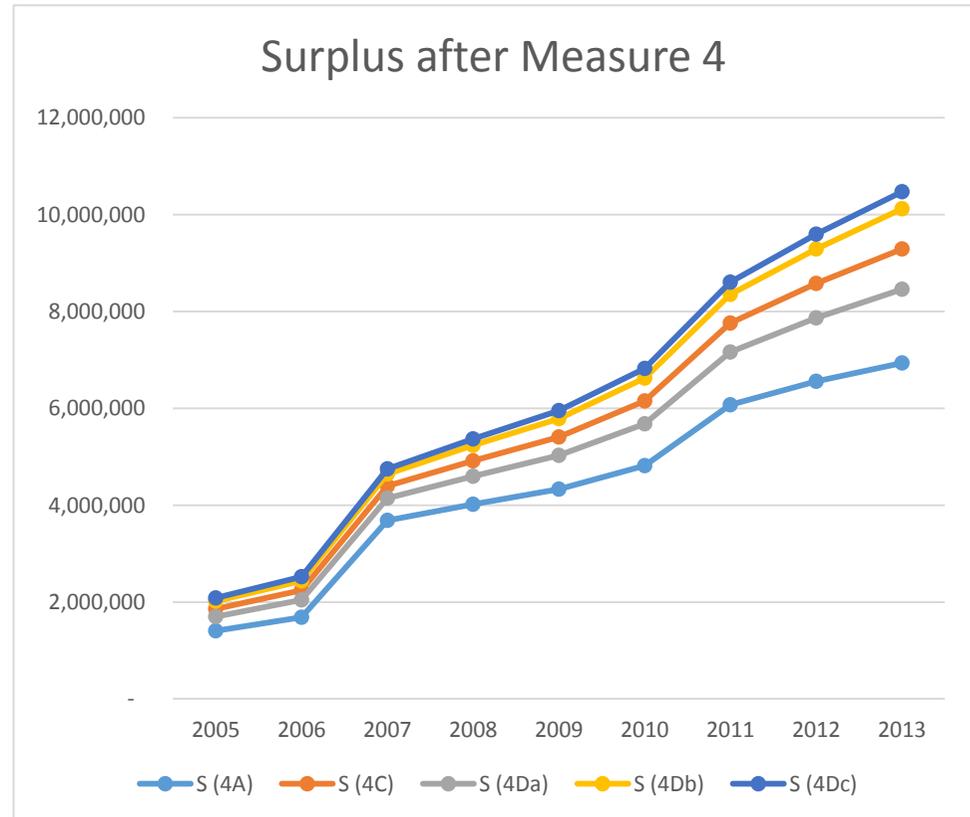


Table F-9 Results on hypothetical 2013 data with 80% urbanisation rate

	2013 @ 80%UR
C (RMB m)	3,376,943.98
P _{UR} ('000)	479,708.17
M1a (RMB m)	316,607.39
M1b (RMB m)	402,954.86
S(M1a) (RMB m)	3,060,336.59
S(M1b)(RMB m)	2,973,989.12
exp _{UP} (RMB m) = M3	2,750,106.09
S (M3) (RMB m)	626,837.89
S (1M4A)	-11,243,570.94
S (1M4C)	-7,736,623.10
S (1M4Da)	-8,971,463.89
S (1M4Db)	-6,501,782.32
S (1M4Dc)	-5,973,270.46
S (2M4A)	-1,0271,074.38
S (2M4C)	-6,764,126.55
S (2M4Da)	-7,998,967.33
S (2M4Db)	-5,529,285.76
S (2M4Dc)	-5,000,773.90
S (3M4A)	10,326,876.86
S (3M4C)	13,833,824.69
S (3M4Da)	12,598,983.90
S (3M4Db)	15,068,665.48
S (3M4Dc)	15,597,177.33

Table F-10 Sustainability: Urban Old-Age Pensions Expenditure as a Percentage of Total Government Expenditure

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2013 @ 80%UR
EXP	3,393,028	4,042,273	4,978,135	6,259,266	7,629,993	8,987,416	10,924,779	12,595,297	14,021,210	
exp _{UP} (RMB m) = M3	404,030	489,670	596,490	738,960	889,440	1,055,490	1,276,490	1,556,180	1,847,040	2,750,106
W xP _{UR} (RMB m)	3,182,798	3,913,900	4,978,043	6,326,090	7,593,430	9,393,190	11,867,279	14,230,310	16,586,999	24,696,816
W xP _{UR} (4A)	1,884,216	2,317,029	2,947,001	3,745,045	4,495,310	5,560,769	7,025,429	8,424,344	9,819,503	
W xP _{UR} (4C)	1,432,259	1,761,255	2,240,119	2,846,741	3,417,043	4,226,936	5,340,276	6,403,640	7,464,149	
W xP _{UR} (4Da)	1,591,399	1,956,950	2,489,022	3,163,045	3,796,715	4,696,595	5,933,640	7,115,155	8,293,499	
W xP _{UR} (4Db)	1,273,119	1,565,560	1,991,217	2,530,436	3,037,372	3,757,276	4,746,912	5,692,124	6,634,800	
W xP _{UR} (4Dc)	1,205,007	1,481,802	1,884,687	2,395,058	2,874,873	3,556,262	4,492,952	5,387,595	6,279,838	
exp_{UP} /EXP	11.91%	12.11%	11.98%	11.81%	11.66%	11.74%	11.68%	12.36%	13.17%	
W xP _{UR} (4A)/EXP	55.53%	57.32%	59.20%	59.83%	58.92%	61.87%	64.31%	66.88%	70.03%	
W xP _{UR} (4C)/EXP	42.21%	43.57%	45.00%	45.48%	44.78%	47.03%	48.88%	50.84%	53.23%	
W xP _{UR} (4Da)/EXP	46.90%	48.41%	50.00%	50.53%	49.76%	52.26%	54.31%	56.49%	59.15%	
W xP _{UR} (4Db)/EXP	37.52%	38.73%	40.00%	40.43%	39.81%	41.81%	43.45%	45.19%	47.32%	
W xP _{UR} (4Dc)/EXP	35.51%	36.66%	37.86%	38.26%	37.68%	39.57%	41.13%	42.77%	44.79%	

Figure F-4 Urban Old-Age Pensions Social Insurance Contributions vs Expenditure

In order to find the growth trend of Urban Old-Age Pensions expenditure and Urban Old-Age Pensions Social Insurance Contributions, log C and log exp_{UP} are calculated. The results below show that expenditure is growing at a slightly faster rate than contributions.

	C (RMB m)	expUP(RMB m) = M3	logC	logexpUP
2005	509,330	404,030	13.14085142	12.90924441
2006	630,980	489,670	13.35502945	13.10148697
2007	783,420	596,490	13.57142423	13.29881776
2008	974,020	738,960	13.78918712	13.51299907
2009	1,149,080	889,440	13.95447218	13.69834733
2010	1,341,950	1,055,490	14.10963434	13.86951567
2011	1,689,470	1,276,490	14.33992543	14.05962468
2012	2,000,100	1,556,180	14.50870774	14.25774466
2013	2,268,040	1,847,040	14.63442658	14.42909492

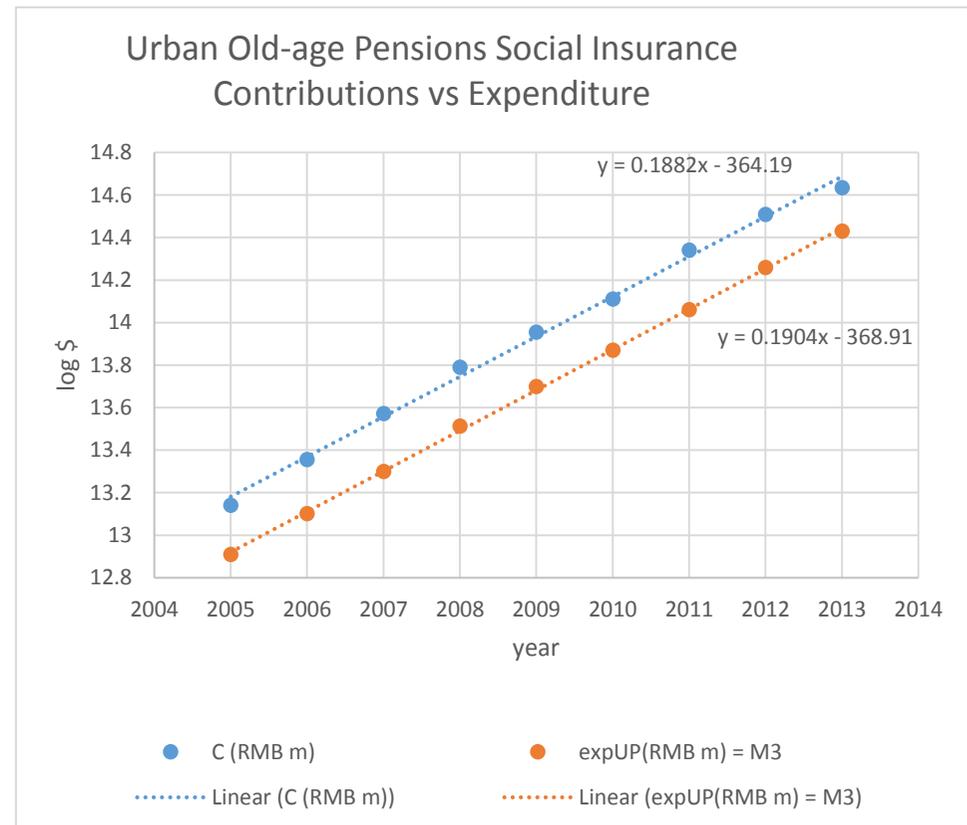
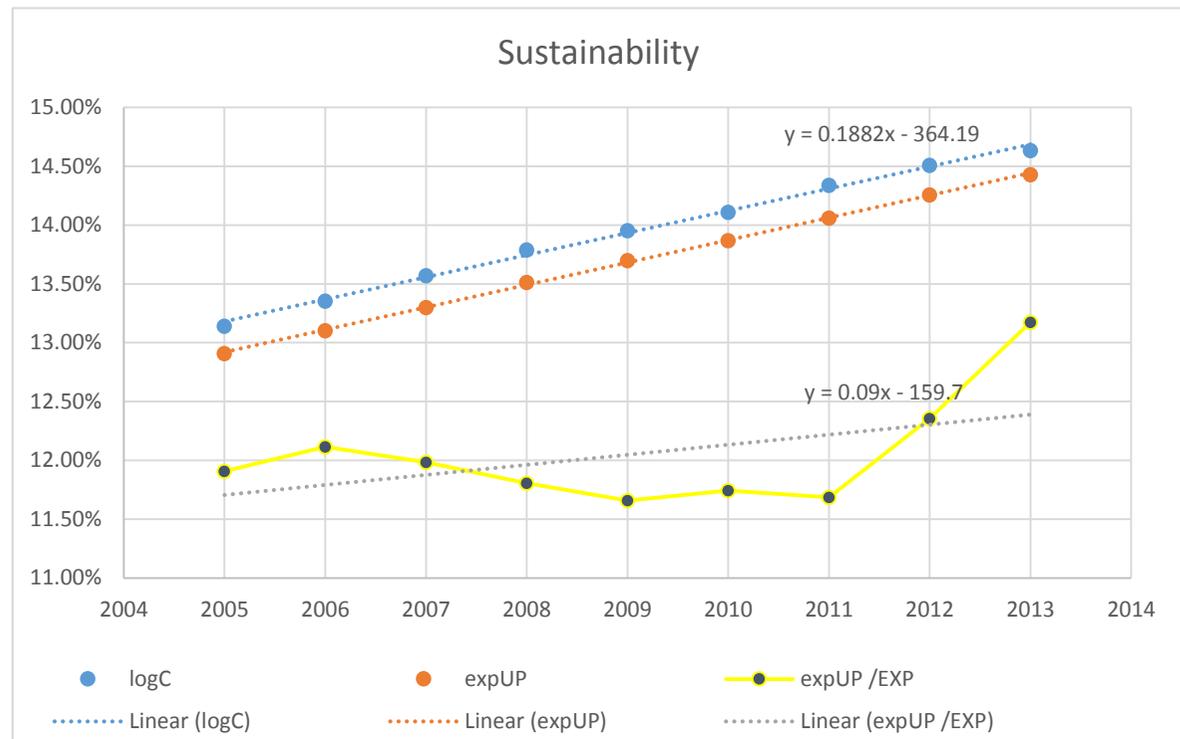


Figure F-5 Funding Sustainability

This figure illustrates the relationship between the growth of current Urban Old-Age Pensions expenditure and Urban Old-Age Pensions Social Insurance Contributions, and the trend in the proportion of total government expenditure that is made towards Urban Old-Age Pensions.

	logC	expUP	expUP /EXP
2005	13.14%	12.91%	11.91%
2006	13.36%	13.10%	12.11%
2007	13.57%	13.30%	11.98%
2008	13.79%	13.51%	11.81%
2009	13.95%	13.70%	11.66%
2010	14.11%	13.87%	11.74%
2011	14.34%	14.06%	11.68%
2012	14.51%	14.26%	12.36%
2013	14.63%	14.43%	13.17%
Ave			12.05%



Appendix G Analysis of the PRC's Tax System Structure

Theoretically, tax system structure looks at the structure of the tax system in a country.

When designing or reforming a tax system, in order to most appropriately distribute the tax burden through different tax types, a tax system structure analysis is performed. Tax system structure design considerations are necessary for the legislation, administration and implementation of tax policies and laws.

Tax system structure refers to how much revenue is collected from the different types of taxes for a tax jurisdiction.¹⁵⁶⁷ The taxes in the structure are usually what would be referred to as “formal taxes” in the PRC. Tax system structure¹⁵⁶⁸ is a systemic structure that includes several types of taxes that have different characteristics and functions. It represents the internal structure¹⁵⁶⁹ of a jurisdiction's tax system at each given time. In order to optimise revenue collection, the tax types are of different importance in relation to revenue contribution, levied at different levels, and are complementary.¹⁵⁷⁰

Countries usually have a composite tax system structure, as opposed to a single-tax tax system structure, because the single-tax tax system structure is a theoretical construct.

A composite tax system structure is a tax system structure that has multiple tax

¹⁵⁶⁷ Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2016 Forthcoming), ch 8.

¹⁵⁶⁸ For a detailed explanation of tax system structure, please see above note 1567.

¹⁵⁶⁹ Tax jurisdiction is used instead of countries because some jurisdictions are not sovereign entities, for example Hong Kong and the States of Australia.

¹⁵⁷⁰ *OECD Database*, Online <<http://www.oecd.org/tax/tax-policy/oecdtaxdatabase.htm>> (6 Sep. 2015).

types.¹⁵⁷¹ Taxes exist at the same time with different priorities, each in support of the other and rely on each other, but one or more types of taxes dominate in their contribution to fiscal revenue. The tax system structure should have certain functions, and in order to have these functions, they have to first be appropriate for the realities of the country and satisfy each tax principle. One tax type cannot satisfy all tax principles such as those promulgated by Adam Smith.¹⁵⁷²

The implementations of tax principles and their intent at all levels necessarily require multiple tax types to exist at the same time. The balance of these taxes facilitate tax collection, save on efficiency loss and complement each other, thereby allowing the tax system structure to be able to collect sufficient revenue for the government, and also promote sustainable economic growth.

The composite tax system structure with the right balance of tax types could allow the appropriate allocation of resources, as well as achieve ability to pay by taxpayers to adjust the income redistribution relationship to promote social equity.

The formal taxes in the PRC form a composite tax system structure, where income taxes and turnover taxes together contribute the most amount of fiscal revenue. The PRC's formal taxes are listed below according to tax base:

¹⁵⁷¹ Gordon RK & Thuronyi V, 'Tax Legislative Process', in Thuronyi V, ed, *Tax Law Design and Drafting*, (Washington DC: International Monetary Fund, 1996), at 1-14; see also, above note 1567.

¹⁵⁷² Certainty, simplicity, efficiency and equity. As noted in Coleman C, & others, *Australian Tax Analysis: Cases, Commentary, Commercial Applications and Questions*, (Sydney: Thomson Reuters, 8th ed, 2011), at 6-7.

- Indirect taxes (taxes on goods and services, or on consumption): Value Added Tax¹⁵⁷³ (VAT), Consumption Tax,¹⁵⁷⁴ Business Tax,¹⁵⁷⁵ Customs Duty,¹⁵⁷⁶ Resource Tax,¹⁵⁷⁷ Urban Area Maintenance Development Tax,¹⁵⁷⁸ Tobacco Tax,¹⁵⁷⁹ and Vehicle Purchase Tax.¹⁵⁸⁰
- Income taxes: Individual Income Tax,¹⁵⁸¹ Enterprise Income Tax,¹⁵⁸² and Social Insurance Contributions. The PRC's income tax is designed following the classical system,¹⁵⁸³ where the incidence of Individual Income Tax, Enterprise Income Tax and the Social Insurance Contribution¹⁵⁸⁴ are separate.
- Wealth and activity taxes: Real Estate Tax,¹⁵⁸⁵ Deed Tax,¹⁵⁸⁶ Stamp Duty,¹⁵⁸⁷ Land Appreciation Tax,¹⁵⁸⁸ Urban Land Usage Tax,¹⁵⁸⁹ Farmland Occupation

¹⁵⁷³ 《中华人民共和国增值税暂行条例》 *Temporary Regulation of the People's Republic of China on Value Added Tax* 2008 (State Council).

¹⁵⁷⁴ 《中华人民共和国消费税暂行条例》 *Temporary Regulation of the People's Republic of China on Consumption Tax* 2008 (State Council).

¹⁵⁷⁵ 《中华人民共和国营业税暂行条例》 *Temporary Regulation of the People's Republic of China on Business Tax* 2008 (State Council). See also above note 1567, cha 16 for a discussion of the current reform pilot to change from business tax to the VAT.

¹⁵⁷⁶ 《中华人民共和国进出口关税条例》 *Regulation of the People's Republic of China on Import and Export Duties* 2003 (State Council).

¹⁵⁷⁷ 《中华人民共和国资源税暂行条例》 *Temporary Regulation of the People's Republic of China on Resources Tax* 1993 (State Council).

¹⁵⁷⁸ 《中华人民共和国城市维护建设税暂行条例》 *Temporary Regulation of the People's Republic of China on Urban Area Maintenance Development Tax* 1985 (State Council).

¹⁵⁷⁹ 《中华人民共和国烟草专卖法》 *Law of the People's Republic of China on Tobacco Monopoly* 2015 (Standing Committee).

¹⁵⁸⁰ 《中华人民共和国车辆购置税暂行条例》 *Temporary Regulation of the People's Republic of China on Motor Vehicles Purchase Tax* 2000 (State Council).

¹⁵⁸¹ 《中华人民共和国个人所得税法》 *Individual Income Tax Law of the People's Republic of China* 2011 (Standing Committee of the National People's Congress).

¹⁵⁸² 《中华人民共和国企业所得税法》 *Law of the People's Republic of China on Enterprise Income Tax* 2007 (National People's Congress).

¹⁵⁸³ Above note 1571, vol 2, at 822 - 848.

¹⁵⁸⁴ The incidences of Social Insurance Contributions are discussed later in the chapter when analysing the incidence of Urban Old-age Pensions Social Insurance Contributions.

¹⁵⁸⁵ 《中华人民共和国房产税暂行条例》 *Temporary Regulation of The People's Republic of China on Real Estate Tax* 2011 (State Council).

¹⁵⁸⁶ 《中华人民共和国契税法暂行条例》 *Temporary Regulation of the People's Republic of China on the Deed Tax* 1997 (State Council).

¹⁵⁸⁷ 《中华人民共和国印花税法暂行条例》 *Temporary Regulation of the People's Republic of China on Stamp Duties* 2011 (State Council).

¹⁵⁸⁸ 《中华人民共和国土地增值税暂行条例》 *Temporary Regulation of the People's Republic of China on Land Appreciation Tax* 1993 (State Council).

¹⁵⁸⁹ 《中华人民共和国城镇土地使用税暂行条例》 *Temporary Regulation of the People's Republic of China on Urban and Town Land Use Tax* 2006 (State Council).

Tax,¹⁵⁹⁰ Ship Tonnage Tax,¹⁵⁹¹ Vehicle and Shipping tax,¹⁵⁹² and Pollutant Discharge Fee.¹⁵⁹³

Since the PRC has a composite formal tax system structure dominated by turnover taxes and income taxes, the following briefly explains the characteristics of the tax system structure based on these tax types and their impact on revenue. This explanation illustrates where the PRC government could source its revenue to subsidise the funding of Urban Old-Age Pensions.

The tax system structure of the PRC demonstrates characteristics of tax system structures dominated by turnover taxes, and tax system structures dominated by income taxes. The characteristics of tax system structures dominated by turnover taxes, and dominated by income taxes are explained below according to efficiency, equity, simplicity of collection and appropriateness.

Efficiency, equity and simplicity of collection are three of the four criteria nominated by Adam Smith¹⁵⁹⁴ in his *Wealth of Nations*¹⁵⁹⁵ as requirements for good tax system design, the fourth criterion is certainty. Certainty is determined by the existence of laws that collect taxes, it requires an analysis of the compliance and administration of laws

¹⁵⁹⁰ 《中华人民共和国耕地占用税暂行条例》 *Temporary Regulation of the People's Republic of China on Farmland Occupation Tax 2007* (State Council).

¹⁵⁹¹ 《中华人民共和国船舶吨税暂行条例》 *Temporary Regulation of the People's Republic of China on Vessel Tonnage Tax 2011* (State Council).

¹⁵⁹² 《中华人民共和国车船税法》 *Law of the People's Republic of China on Motor Vehicle and Vessel Taxes 2011* (Standing Committee of the National People's Congress).

¹⁵⁹³ 《排污费征收使用管理条例》 *Administrative Regulation on the Levy and Use of Pollutant Discharge Fee 2003* (State Council).

¹⁵⁹⁴ Coleman C, & others, *Australian Tax Analysis: Cases, Commentary, Commercial Applications and Questions*, (Sydney: Thomson Reuters, 8th ed, 2011), at 6-7.

¹⁵⁹⁵ Book V, in Smith A, *The Wealth of Nations*, Skinner AS, ed, (London: Penguin Books, 1999), at 277-551.

in the PRC, this study assumes certainty is met in the PRC's tax system structure as taxes are levied by the PRC's tax laws.

Appropriateness¹⁵⁹⁶ is a traditional Chinese criterion to analyse tax systems. For the purposes of fully funding Urban Old-Age Pension in the PRC, this section briefly explains this criterion.

China has a tradition of requiring the sovereign to govern benevolently because he is the ultimate property owner. Welfare policies targeting the elderly is a part of this tradition. Therefore historically in ancient China, even more so than in the western tradition, taxation is raised when the government need for revenue is taken as given. The emperor-centric society allowed by a social contract¹⁵⁹⁷ drawn based on the body of *Li* rules meant taxation was a “way to gather wealth”¹⁵⁹⁸ by the emperor.

One of the most common proposals by ancient Chinese thinkers is for the emperor to “Gather with limit”, where the thinkers oppose extorting excessive taxes and levies, and likens policies that do so to drying the pond to gather fish.¹⁵⁹⁹ In *Guanzi*,¹⁶⁰⁰ GUAN Zhong,¹⁶⁰¹ a famous Prime Minister of the Dukedom of Qi in the Spring and Autumn Period, and a political thinker of his time, gave a profound discussion on what it is meant by “gather with limit”. He opined that

¹⁵⁹⁶ Yang B & Huang E, *Taxation in China* (Sydney: Thomson Reuters, 2016 Forthcoming), ch1.

¹⁵⁹⁷ Roussau JJ, ‘The Social Contract That We Must Always Go Back to an Original Compact’, excerpt in Freeman MDA, *Lloyd's Introduction to Jurisprudence*, (London: Sweet & Maxwell, 8th ed, 2008), at 147-150.

¹⁵⁹⁸ 《管子》 *Guanzi*, <http://so.gushiwen.org/guwen/book_34.aspx> (2 Nov. 2015).

¹⁵⁹⁹ *Ibid.*

¹⁶⁰⁰ *Ibid.*

¹⁶⁰¹ 719BC-645BC.

(T)he land supplies wealth in its own time, men tires with exertion, but the monarch's wants are unlimited.....gather without limit from the people and spend nonstop, although the country is large, it would be in danger of ruin. ¹⁶⁰²

The idea of DONG Zhongshu's comment is that the production capacity of the land is limited at any point in time – and more generally, productive capacity is limited. There should be a reasonable line drawn for the government to gather revenue, levying taxes excessively beyond this limit would greatly damage the economy, leading to the ruin of the reign.

To ancient Confucian thinkers, “light taxes” is an important component of “limit”, it is also a component in the ideal of Hiding Wealth with the People.¹⁶⁰³ Confucius himself proposed no excessive levies, and that the tax burden should be light. ¹⁶⁰⁴ Mencius proposed “thin” taxes¹⁶⁰⁵ in order to allow the people to accumulate wealth. GUAN Zhong in *Guanzi*¹⁶⁰⁶ argued that if a tax does not have to be levied, or it is possible to not levy it, then it should not be levied. Xunzi suggested that the sovereign should lower taxes to allow the people a chance to produce, and improve production capacity.¹⁶⁰⁷ According to Xunzi, when taxes are heavy, the nation will be poor, and when taxes are light and forced labour exempt, the nation would be wealthier as the people are

¹⁶⁰² “地之生财有时，民之用力有倦，而人君之欲无穷.....取于民无度，用之不止，国虽大必危。”《权修》，‘Quan Xiu’, in above note 1598.

¹⁶⁰³ 藏富于民.

¹⁶⁰⁴ 《尧曰》，‘Rao Yue’, in 《论语》Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015); and “百姓足，君孰与不足；百姓不足，君孰与足”《颜渊》，‘Yan Yuan’ in 《论语》Confucius, *Analects*, <http://so.gushiwen.org/guwen/book_2.aspx> (2 Nov.2015).

¹⁶⁰⁵ “薄其税敛”. Means lower the tax. “易其田畴，薄其税敛，民可使富也”。《尽心上》，‘Jin Xin I’ in 《孟子》Mencius, <http://so.gushiwen.org/guwen/book_11.aspx> (2.Nov 2015).

¹⁶⁰⁶ Above note 1598.

¹⁶⁰⁷ XUN was the family name of XUN Kuang. Students of the Confucian tradition will put “zi” after the family name of an important thinker. It is similar to putting “ius” at the end of a person’s name in Latin. See “家五亩宅，百亩田，务其业而勿夺其时，所以富之也”，and “裕民则民富，民富则田肥以易”《富国》，‘Fu Guo’ in 《荀子》Xunzi, <http://so.gushiwen.org/guwen/book_30.aspx> (2 Nov. 2015).

engaging in productive activities.¹⁶⁰⁸ The light taxes proposals of Confucianism focused on calming the social conflict between the ruling class and the people, and maintaining social order in a ruler-centric society.¹⁶⁰⁹

The light taxes ideas of LI Ao in the Tang Dynasty focused purely on fiscal revenue.¹⁶¹⁰

LI also argued that lighter taxes are better at growing fiscal revenue than heavier taxes.

LI's ideas were a much earlier iteration of the Laffer Curve.¹⁶¹¹ To LI, heavy taxes led

to poverty, because people could not afford the burden.¹⁶¹² They would then escape the

land, and the land would become barren. There is in effect no material tax base, leading

to falling fiscal revenue. In contrast, light taxes attract people, and allow people to lead

stable lives, thereby stimulating farming labour productivity, which leads to wealth

accumulation at a faster pace. When the people are better off, the material tax base

improves, resulting in more fiscal revenue.

The Ming Dynasty thinker QIU Xun reiterated this view.¹⁶¹³ QIU Xun¹⁶¹⁴ took the

idea of light taxes and “gather with limit” further. His view on “limit” is that the government should not levy too much taxes, but they also should not levy too little.

“Limit” is the key and it acts on both ends of the scale. He pointed out that the ruler

¹⁶⁰⁸ See “家五亩宅，百亩田，务其业而勿夺其时，所以富之也”，and “裕民则民富，民富则田肥以易”《富国》，‘Fu Guo’，in 《荀子》*Xunzi*，<http://so.gushiwen.org/guwen/book_30.aspx> (2 Nov. 2015).

¹⁶⁰⁹ Above note 1567, ch 2.

¹⁶¹⁰ Above note 1567, ch 2.

¹⁶¹¹ Laffer AB, ‘The Laffer Curve: Past, Present, and Future’ (2004) *Backgrounder #1765 on Taxes*, <<http://www.heritage.org/research/reports/2004/06/the-laffer-curve-past-present-and-future>> (9 Feb. 2016).

¹⁶¹² Above note 1567, ch 2.

¹⁶¹³ 《经制之义》，Vol 24 “Jing Zhi Zhi Yi” in 丘浚，《大学衍义补》，Qiu X, *Da Xue Yan Yi Bu*, <<http://guji.artx.cn/article/48139.html>> (10 Nov. 2015).

¹⁶¹⁴ 《贡赋之常》，Vol 22 “Gong Fu Zhi Chang”，in 丘浚，《大学衍义补》，Qiu X, *Da Xue Yan Yi Bu*, <<http://guji.artx.cn/article/48139.html>> (10 Nov. 2015).

should not aim to gather nothing from the people, and that he does need to gather something from the people. If he does not gather from the people, he would have nothing to govern the nation with; if he gathers too much from the people, it would be difficult for him to think on behalf of the people and be benevolent. Benevolence to provide for people's livelihoods is therefore key to measuring the tax system according to appropriateness.¹⁶¹⁵

These thoughts on appropriateness have their counterparts in western economic theories.

For example, according to Adam Smith:

“High taxes, sometimes by diminishing the consumption of the taxed commodities, and sometimes by encouraging smuggling, frequently afford smaller revenue to government than what might be drawn from more moderate taxes.”¹⁶¹⁶

Appropriateness is as important in the tax system design process in the PRC as the other criteria proposed by Adam Smith. This research analyses Urban Old-Age Pensions Social Insurance Contributions within the PRC's fiscal revenue structure. Therefore whether levels of Social Insurance Contributions were appropriate is also important.

Tax System Structure Dominated by a Full Volume Turnover Tax

The ultimate tax base for turnover taxes is consumption. Turnover taxes in the form of the VAT and Business Tax, and the Consumption Tax have traditionally contributed a significant proportion of the PRC's fiscal revenue. Its influence, however, is gradually

¹⁶¹⁵ Ibid.

¹⁶¹⁶ Smith A, *The Wealth of Nations*, Skinner AS, ed, (London: Penguin Books, 1999).

reducing as the PRC's economy develops to a point to rely more on direct taxes, that is, income taxes for fiscal revenue needs.

As part of the turnover tax tax-base, the VAT contributes to revenue differently to the Business Tax, which is a full value turnover tax. The tax incidence of the VAT is on the value add in each stage of the supply chain. The incidence of the Business Tax is on full turnover, that is, the full transaction value of goods and services. The tax rate design of these taxes takes into consideration this difference, and full value turnover taxes often have much lower tax rates than the VAT. Currently, the general VAT tax rate in the PRC is 17%,¹⁶¹⁷ and the general Business Tax tax-rates are 3-5%.¹⁶¹⁸

The following are some of the characteristics of a tax system structure dominated by full value turnover taxes.

In terms of efficiency and simplicity, whether the full value turnover tax is levied with a general tax base or a selective tax base,¹⁶¹⁹ its tax base is the full transaction value of goods or services. Since there is no need for deductions and offsets, tax administration is simple - the process is convenient and the administrative cost is low.

Full value turnover taxes can be implemented, in order to better achieve the industry policy goals of the nation, improve the economic structure and improve macroeconomic

¹⁶¹⁷ Above note 1573, Art 2.

¹⁶¹⁸ Above note 1575.

¹⁶¹⁹ See Above note 1567, ch 8; and Burgess P, Cooper GS, Stewart M and Vann RJ, *Cooper, Krever & Vann's Income Taxation Commentary and Materials*, (Sydney: Thomson Reuters, 7th ed, 2012), at 6-7.

efficiency. These policy goals are often important for developing countries in the earlier stages of development.

Policies can include applying stringent tax restrictions or higher tax rates on products, enterprises and industries that should not continue to develop; and implement low tax rates on the production of high technology or other priority development products,¹⁶²⁰ and enterprises and industries that support their development. The PRC has applied full value turnover taxes in its post Open Door Policy era to promote the development of many industries.

In a tax system structure based on a full value turnover tax, with complementary tax types such as the selective transaction tax, the redistributive effects of taxes are also strengthened. For example, the PRC has implemented a consumption tax on luxury goods, tobacco products and alcoholic products to restrict their consumption; it has debated implementing a gift tax and inheritance tax to restricted inheritance of wealth in order to encourage spending and to encourage hard work to improve living standards, thereby improving social efficiency in terms of income redistribution.

Depending on the frequency of transactions in relation to the good, full value turnover taxes levied at multiple stages, and multiple sales points will (to different extents) affect the tax burden of each good. The less often the good changes hands, the lighter the tax burden and vice versa. For products produced by one producer who engages in all

¹⁶²⁰ Priority development products in the PRC are products chosen by the government to be produced at a large quantity. This is a remnant of planned economy days.

production processes, since the product was produced in the same enterprise without transactions that will attract a taxable event, the whole tax burden is light. When there is specialist division of labour between enterprises, since the throughput has to be outsourced, there would be transactions between enterprises, the output then contains a heavier tax burden. As such, selling at the same price with specialisation yields lower profits.

This tax system structure discriminates against specialisation and increases the economic cost of tax administration, thereby preventing the improvement of macroeconomic efficiency. This disadvantage is fundamental since it affects the regularity in the development of the market economy, especially in a developing economy such as that of the PRC, but the limited scope and single stage selective turnover tax similar to a VAT does not have this disadvantage.

In terms of equity, the full value turnover tax does not ask whether the taxpayer actually profits from selling goods or services or how much the profit was. As long as there was a taxable transaction, the whole transaction becomes taxable. This goes against the taxpayer's real ability to pay taxes, because only the net income after deducting costs and losses can reflect the person's ability to pay taxes.

Normally it is only possible to choose an incremental tax rate (sometimes only one fixed tax rate) for full value turnover taxes; comparing with the progressive tax rate, it is less able to balance tax ability to pay.

In a tax system structure based on taxes that have consumption as their tax base, where the tax base is the transaction value of all or the majority of consumer goods, social inequality is an obvious disadvantage. In a society where income is unevenly distributed, the income consumption ratio of each class in the society differ greatly. Therefore, consumption as a proportion of income is greater for low income earners than higher income earners. Although the rich with higher income has higher levels of consumption, that consumption is only a small part of their total income.

Proportionally, the broad base consumption tax means, each taxpayer paid the same proportion of tax from income, but the absolute effect the tax has on their living standards is different.¹⁶²¹ Selective consumption tax on luxury goods does not give rise to this inequality, and it improves the fairness of the whole tax system structure. Further, complemented by the taxes that play a major role in income redistribution such as the Individual Income Tax and Social Insurance Contributions; and taxes that regulate the uneven ownership of wealth such as the wealth tax, inheritance tax and gift tax, the unfairness in this tax system structure can be softened. This is the choice made by the PRC.

From the point of view of appropriateness, when the dominant tax is a full value turnover tax, the tax base is broad. As long as the tax rate is appropriate, enough revenue could be collected to satisfy public finance needs. If complemented by tax types such

¹⁶²¹ Stiglitz JE, *Economics of the Public Sector*, (New York: W.W.Norton & Company, 3rd ed, 2000), at 159.

as the Enterprise Income Tax in the PRC, the source of tax revenue will be even broader, thereby reaching fiscal revenue goals.

The full value turnover tax mainly taxes business income from the sales of goods or services, where the tax is realised when sales is realised. As long as there are sales income and business income, the nation has sources of tax revenue. Also, taxing total turnover means taxing the gross income of a taxpayer, regardless of the costs of goods or services, or profitability. As long as the tax rate is set at a point that balances revenue and income redistribution needs, tax revenue will fluctuate as the income from goods and services fluctuates. Therefore this tax system structure has the advantage of providing a timely and stable source of fiscal revenue.

In summary, the tax system structure with full value turnover tax as the dominant tax has fundamental flaw in efficiency, on the point of fairness it is not commendable, but it achieves fiscal revenue goals, thus making it a suitable tax system structure for a pro-revenue tax design model. The PRC chose to include Business Tax for this purpose. The current reform to merge Business Tax with the VAT meant the PRC government now has other policy goals than simply collecting revenue efficiently.

Tax System Structure Dominated by the VAT

The following are some of the characteristics of a tax system structure dominated by the VAT. The VAT will be increasingly important because it would be the only major

turnover tax in the PRC's tax system structure. As a non-earmarked tax, the government could source subsidies from the VAT tax base to fund Old-Age Pensions.

The collection mechanism of the VAT is a cross between full value turnover taxes and income taxes. The incidence is not directly on income, but it makes sure the final consumer bears the burden of the tax.¹⁶²²

In terms of efficiency and simplicity of collection, under a standard VAT system, the economic effects of levying a VAT is neutral, that is, there is no distortion on the decisions of producers or consumers; especially when making decisions on enterprise organisational structure. Objectively, a standard VAT promotes specialist division of labour, thereby improving economic efficiency.

A standard VAT has six characteristics: it is a consumption type turnover tax; it is comprehensive in coverage; there is no distinction between the types of taxpayer; there is a single or few levels of tax rates, there is invoice input-credit,¹⁶²³ and there is tax exclusive pricing.¹⁶²⁴ Since VAT is levied on the value-add, that is, the newly created value by an enterprise which was not already taxed, the design of the tax should include input-credits to offset taxes paid at purchases. For a good or service, as long as the sales price is the same, the tax burden is the same regardless of how many stages in the supply chain the product has gone through, so the all processes producers are not at an

¹⁶²² For a detailed discussion on how VAT's work in a tax system structure, see Ebrill L, & others, *The Modern VAT*, (Washington DC: International Monetary Fund, 2001); and above note 1567, chs 9 & 13.

¹⁶²³ Ebrill L, & others, *The Modern VAT*, (Washington DC: International Monetary Fund, 2001). Input-credits are the input taxes a withholding taxpayer in the supply chain could receive from the tax authorities at the end of the tax period.

¹⁶²⁴ Tax exclusive pricing is where the price shows taxes as a separate amount.

advantage and the specialist producers are not discriminated against. The VAT solves the issues of tax discrimination from increased burdens that are caused by multiple transactions by specialist producers, as would happen with a full value turnover tax. Objectively this is advantageous because the enterprise is able to choose a business organisation structure solely based on business decisions.

The direct collection cost of VAT is higher than traditional full value turnover taxes, because a standard VAT normally is linked with a unified invoice system. In practice, a computer network usually needs to be established for reasons such as: cross audit and automatic control of VAT avoidance or evasion from the input credit system through invoices; and to effectively stop fraudulent input-credit claims and VAT avoidance or evasion through falsifying invoices or wrongful filling of invoices. Also, tax file numbers need to be in place, and training needs to be implemented, this leads to large compliance costs. Further, the standard VAT generally requires either a single tax rate or very few tax rates in the system.

In terms of equity, since all input tax paid by non-final consumers in a general VAT can be credited (claimed back by the input tax payer), businesses are taxpayers, but not tax bearers. They withhold tax on the government's behalf, and the final tax burden falls on the consumer. For the VAT, whether the taxpayer is a high income earner or a lower income earner, as long as the consumption quantity and value are the same, their tax burden is approximately the same.

The VAT, like the general consumption tax does not distinguish the ability to pay by taxpayers. If a single tax rate is implemented, where necessities and luxuries are taxed in the same way, people who can bear a higher burden would be paying less taxes. People who are less able to bear a higher burden would be paying more taxes. This means the VAT, like other turnover taxes is regressive.

In order to soften the regressive nature in the VAT, necessities can be zero rated, thereby exempt from VAT; and luxury goods should be taxed at higher rates. Multiple rates however, necessarily lead to administrative complexity. In order to avoid this problem, the gap between different rates should not be too large.

Since the VAT does not have scope to internally solve inequality, support tax types are necessary to improve fairness in the tax system structure. Policies such as levying an Individual Income Tax and Social Insurance Tax that regulate the redistribution of income; levying a higher rate consumption tax or sales tax on tobacco, alcohol and luxury goods on top of the VAT; and implementing gift and inheritance taxes significantly improves the fairness in a tax system structure based on the VAT. This is what is done in the PRC. Increasingly direct taxes are playing a more important role to collect revenue in the PRC.

The scope of VAT adequately provides for the government's major public finance needs. The VAT is a tax on value add, which means it is taxing the final consumption value of a good or a service. Revenue grows with economic development and increases

in consumption. Assuming an invoice input-credit system and computerised tax administration of the VAT, social integrity would improve through voluntary compliance of the tax. Taxpayers could cross monitor each other through a chain of control mechanisms, such as demanding a tax invoice for input-credit purposes. These mechanisms effectively prevent tax avoidance and evasion, which then promote total collection of fiscal revenue.

The revenue collection ability of a tax system structure based on the VAT as the dominant tax is strong, when the VAT is supported by entity income tax (for example, the Enterprise Income Tax in the PRC), Individual Income Tax, Social Insurance Tax, Customs Duty and Selective Turnover Taxes on goods that are price inelastic in demand, such as tobacco and alcohol.

In summary, the tax system structure based on the VAT as the Dominant tax in terms of fairness and fiscal revenue collection competes well with the tax system structure based on full value turnover tax as the dominant tax. In terms of efficiency it fundamentally solves the defects of the tax system structure based on full value turnover tax as the dominant tax. These reasons led the PRC's choice to merge the full value turnover tax, that is, Business Tax into the VAT.

Tax System Structure Dominated by Income Taxes

An income tax's tax base and tax incidence are income. Income is a difficult concept to define for tax purposes. One of the earliest and best known definitions of income for

tax purposes is by Henry Simons in 1938.¹⁶²⁵ Simons' definition was formulated on the basis that income is a problem of fiscal policy, that "personal income connotes...the exercise of control over the use of society's scarce resources". Its calculation is the algebraic sum of the accumulation of personal property in a defined period, and the possibility of consumption in that period. This periodic nature of the calculation of income is the key for it to be ascertained then taxed.¹⁶²⁶ This is a concept based on a gain to the income earner. Simons' definition is the basis for the comprehensive¹⁶²⁷ or global design of income tax; that is, including all types of income in the income tax law. Australia is an example for taxing income in a global fashion.¹⁶²⁸

Another method to tax income is a scheduler income tax, where income is divided into different categories and taxed separately.¹⁶²⁹ The PRC has a scheduler income tax system with two income taxes, the Individual Income Tax¹⁶³⁰ (including Old-Age Pensions Social Insurance Contributions)¹⁶³¹ and the Enterprise Income Tax.¹⁶³² Within the two taxes, income from different sources are treated differently. This research focuses on the Individual Income Tax for the purposes of analysing Urban

¹⁶²⁵ Simons H, *Personal Income Taxation: the Definition of Income as a Problem of Fiscal Policy*, (Chicago: University of Chicago Press, 1938), as extracted in above note Burgess P, Cooper GS, Stewart M and Vann RJ, *Cooper, Kreyer & Vann's Income Taxation Commentary and Materials*, (Sydney: Thomson Reuters, 7th ed, 2012), at 7-11.

¹⁶²⁶ For example, ss 4-10 of the *Income Tax Assessment Act 1997* in Australia.

¹⁶²⁷ Burgess P, Cooper GS, Stewart M and Vann RJ, *Cooper, Kreyer & Vann's Income Taxation Commentary and Materials*, (Sydney: Thomson Reuters, 7th ed, 2012), at 12.

¹⁶²⁸ Auldt HJ & Arnald BJ, *Comparative Income Taxation A Structural Analysis*, (Chicago: Aspen Publishers, 3rd ed, 2010), at 197-199.

¹⁶²⁹ Above note 1627, at 12; and above note 1628, at 197-199.

¹⁶³⁰ Above note 1581

¹⁶³¹ 《中华人民共和国社会保险法》 *Social Insurance Law of the People's Republic of China 2010* (Standing Committee of the National People's Congress).

¹⁶³² Above note 1582.

Old-Age Pensions Social Insurance Contributions. The following are some of the characteristics of a tax system structure dominated by income taxes.¹⁶³³

When the government chooses to implement a progressive tax rate scale for income taxes, income distribution between citizens is made possible. In terms of efficiency and collection simplicity, income taxes tax net income, the policies usually include deductions and offsets. Theoretically it does not affect the production choices of taxpayers, and it does not tax productive capital.¹⁶³⁴ On the other hand, progressive tax rates mean the income tax system is price elastic, so tax revenue grows as taxpayers' income grows, and decreases as taxpayers' income decreases. The price elastic nature of income taxes make it an ideal tax system structure that automatically stabilises the economy.

Tax administration of income taxes require sound administrative practices, because the calculation of income tax is complex. Its collection cost tops all taxes. In developed economies, income taxes, especially Individual Income Taxes have a broad tax base; at the same time it requires a relatively high integrity social cultural environment, and a democratic budgeting process.¹⁶³⁵

In terms of equity, income tax is difficult to shift, the taxpayer and tax bearer are relatively consistent; expenditures incurred were deducted in the tax calculation process.

¹⁶³³ For more detail on the characteristics of income taxes, please see above note 1627, at 12; above note 1567, chs 8 & 10, and above note 1628, at 197-199.

¹⁶³⁴ Productive capital are things that are used to earn income.

¹⁶³⁵ Yang B and Huang E, 'Characteristics of the Chinese tax system and its cultural Underpinnings: a comparison with the west', (2011) 1 *Journal of Chinese Tax and Policy* 13.

There is often a tax free threshold,¹⁶³⁶ and progressive rate scales allow the taxpayer to pay according to their ability.

In summary, a tax system structure based on income tax¹⁶³⁷ as the dominant tax has a strong revenue collection ability, it can achieve fiscal revenue goals sufficiently and sustainably. In terms of achieving the fairness and efficiency goals, there are some conflicts, and the focal point of that conflict is the choice of tax rate structure. Choosing a progressive rate system with high tax rates and more brackets may affect economy efficiency. To the contrary, choosing a flat tax rate system or a progressive rate system with fewer brackets that is close to a flat rate system will decrease fairness of the whole tax system, but economic efficiency will increase.

The PRC's tax system structure is currently balancing between ease of revenue collection and equity. The phasing out of the Business Tax means the revenue policy goal is moving away from collecting as much as the government can. The economy and legal structures have developed enough to allow income taxes to play a more dominant role in the fiscal revenue structure of the PRC. For the purposes of analysing Urban Old-Age Pensions Social Insurance Contributions, the more dominant role played by income taxes allows for more justification for the government to source subsidies from consolidated revenue.

¹⁶³⁶ In the PRC, this is RMB3,500 per month.

¹⁶³⁷ See Wan Y, 'An Empirical Study of Income Distribution by the Individual Income Tax in the PRC', *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015); Du L, 'Measuring the Redistributive Effect of Personal Income Tax Using Generalized Entropy Indexes with an Application to China', *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015); and Sawyer A, 'Individual Income Tax Reform in China, New Zealand Experience', *International Conference of Chinese Tax and Policy*, 2015 (Xiamen, 2015).

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