LAW AND CONTEMPORARY PROBLEMS

Volume 52

Summer 1989

Number 3

ENTERPRISE LEGAL PERSONS: THEIR IMPORTANT STATUS IN CHINESE CIVIL LAW

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I

INTRODUCTION

The establishment and development of a national economy, following the founding of the People's Republic of China ("PRC") in 1949, created a need for new economic and social organizations. These groups, organized to increase production and to facilitate the exchange, allocation, and consumption of resources, have gradually become important actors in Chinese law and society. The legal status of these "legal persons" has long been acknowledged through the drafting and the adoption of special laws and regulations as well as by the incorporation of such rules into international treaties.

There are abundant examples of explicit recognition of the legal status of state enterprises in Chinese civil law. The fifth provision of the Temporary Resolutions for the Execution of Contract by Government Agency, State Enterprise, and Cooperation Brigade, which were promulgated by the Financial and Economic Committee of the State Council on October 3, 1950, provides that "a contract or treaty must be executed by a legal person and represented by the person with management responsibility of the legal person." The Resolutions further command that "a contract or treaty cannot be made with an individual and the obligation of the contract cannot be refused to be performed upon the ground that the legal representative of the legal person has been replaced or changed." Recent developments in this

area include the promulgation of the PRC Economic Contract Law, adopted at the Fourth Session of the Fifth National People's Congress on December 13, 1981. Article 2 of the Contract Law provides that "an economic contract is an agreement between legal persons for achieving a certain economic purpose and for defining each other's rights and obligations." Article 8 of the Provisional Regulations for State Industrial Enterprises, issued by the State Council on April 1, 1983, stipulates that "an enterprise legal person and the head of the enterprise are its legal representatives. The enterprise exercises its rights in accordance with law on the state property which the government assigns it to run and manage in the following ways: to occupy, utilize, and dispose of independently; to engage in productive activities; to bear the responsibilities imposed by the state; and to sue and to be sued independently in a court."

The Treaty Agreement on the Trade Relations between the United States and the People's Republic of China, signed in Peking (Beijing) on July 7, 1979, serves as an example of the recognition of legal person status in international treaties. The term "legal person" is mentioned three times in article 6 of the Treaty. According to article 6, section 2, of the Treaty, both sides agree that a legal or natural person of either side may, on a mutually beneficial basis, apply for the registering of its own trademarks in accordance with the laws and regulations of the registering state, and obtain the exclusive rights of usage of the trademarks on the territorial lands of the other country. Article 6, Section 3, provides that both parties agree that each should provide the legal or natural person of the other party with the same patent rights and trademark production it itself is entitled to so far as it is within each party's power to do so. Section 5 of article 6 also stipulates that both parties agree to render appropriate copyright protections to each other, under each party's laws and regulations, as well as under universally accepted international practices.

The *General Principles of Civil Law of the People's Republic of China*, adopted April 12, 1986, at the Fourth Session of the Sixth National People's Congress, which took effect on January 1, 1987, is an apparent sign of the development of Chinese civil law from separate, single pieces of legislation to a systematic and comprehensive legal system; and it demonstrates an important stage of its historical progress. It unambiguously provides that "the civil law of the People's Republic of China regulates property relations and personal relations between subjects of equal status—between citizens, between legal persons, and between citizens and legal persons." Chapter 3 deals specifically with legal persons and defines legal persons as "organizations that have civil capacity, are competent to perform civil acts, and according to law independently enjoy civil rights and assume civil duties." (Article 36) Legal persons have been classified into four categories: enterprise legal persons, government agencies legal persons, institution legal persons, and association legal persons. Beyond doubt, the enterprise legal person occupies the most prominent and important position among all these legal persons.

II

ORGANIZATIONS OF ENTERPRISE LEGAL PERSONS

Enterprise legal persons consist of all different kinds of enterprises and can be categorized according to different criteria: (1) by ownership of enterprises: there are state-owned enterprise legal persons; collectively owned enterprise legal persons; and equity joint ventures, contractual joint ventures, and wholly foreign-owned enterprises which engage in business and transactions within the territory of China; (2) service industry, commodity business, transportation, restaurant, hotel enterprise legal persons, and the like; (3) by virtue of names and structure of the enterprise legal persons, there exist factories, department stores, companies, centers, development center legal persons, and the like.

III

FUNCTIONS OF ENTERPRISE LEGAL PERSONS

A. The Enterprise Legal Persons System is a Legal Means to Protect the Economic Activities of Enterprises

The purposes of the system, which vests those qualified enterprises with the status of enterprise legal persons, are (1) to recognize legally enterprises as relatively independent and economically profitable producers and managers of their businesses; (2) to define the civil rights and civil duties of enterprise legal persons within the legal framework; (3) to acknowledge and protect through the law the business activities of enterprises; and (4) to make enterprises flexible and vigorous.

B. Enterprise Legal Persons Act as the Major Force in Carrying Out and Completing the National Economic Plan

Under the guidance of the national economic plan, enterprises, whether state-owned, collectively owned, or under other forms of ownership, can, after acquiring the status of legal persons, make full use of the property they own or manage. They may participate independently in a variety of economic activities by fulfilling the tasks of business corporations; and by steadily raising and enlarging the economics of scale, the enterprises assure the realization of the national economic plan.

C. Enterprise Legal Persons Serve as an Effective Means to Ascertain Business Accounting of the Enterprise Unit

Once an enterprise acquires the status of a legal person, and until that status is terminated, the enterprise has the capacity to enjoy civil rights and assume civil duties without regard to its form of organization. Enterprise legal persons, recognized by both law and commercial producers and managers, have the right to exercise self-control, to assume sole responsibility for the enterprise's profits or losses, and to utilize business accounting based

on those fixed assets and circulating capitals owned or controlled by them. Their rights are protected by law and are not allowed to be interfered with by unlawful means.

D. Enterprise Legal Persons are Essential in Strengthening and Developing International Economic Relationships

The rapid progress the Chinese economy has undergone in recent years has not only animated the domestic markets, it also has moved the economic ties of China with foreign countries into a new era. Enterprises are active participants in international economic contacts. By possessing the status of legal person, the enterprise is legally recognized and has legal apparatus as well as independent assets. The enterprises could also assume obligations of their own. Thus, it is significant that they could therefore be trusted by foreign enterprises and businessmen. They can operate joint ventures with foreign co-investors or they can sign all different kinds of contracts or agreements with those foreign investors, thereby promoting international economic exchange on an equal and mutually beneficial basis.

IV

ESTABLISHMENT OF ENTERPRISE LEGAL PERSONS

There are four general requirements for legal persons set forth in article 37 of the *Principles*. In addition, enterprise legal persons must satisfy the following requirements:

A. Formation upon Approval and Registration by the Competent Authority

Enterprise legal persons differ from government agencies legal persons in that the latter are not required to register since they are set up according to state laws or administrative agencies' resolutions and orders, while the former are established by two steps: approval and registration. The *Principles* provides that state-owned and collective enterprises that meet the requirements for legal persons acquire that status only upon approval and registration by the responsible agency. Sino-foreign equity joint venture enterprises (Sino-foreign contractual joint ventures and wholly foreign-owned enterprises established in the territory of the PRC that meet the requirements for legal persons) acquire the status of Chinese legal persons upon approval and registration in accordance with the law of the administrative agencies for industry and commerce (article 41). The first step in establishing an enterprise legal person is approval. The primary purpose for this approval lies in the following needs: determining whether the establishment would satisfy the necessities of the state and the society to make arrangements, to promote production, to bring convenience to lives, to avoid waste, and to increase efficiency. Of course, the prior examination for the approval also depends upon the legality of the request by an enterprise. If, for example, an

institution legal person or an association legal person applies to engage in the production and operation of a business other than one within the scope of its own responsibility, the application is unlikely to be accepted.

Once the establishment of an enterprise legal person has been approved, it must be registered. The aims of registration are to verify and specifically administer the entire enterprise, including its personnel, assets, and property, in accordance with the laws or regulations of the administrative agencies for industry and commerce. Those satisfying these requirements are given the status of enterprise legal persons. Article 8, entitled “The Tentative Provisions for State-owned Industrial Enterprises,” stipulates that the status of legal persons may be acquired only upon application, registration with different agencies of industry and commerce, and issuance of a business certificate. The registration of all classes of industrial and commercial enterprises must be dealt with under the Provisions of Registration and Management for Industrial and Commercial Enterprises published by the State Council on August 8, 1982. To accommodate the development of various types of enterprises, the National Bureau of Management on Industry and Commerce, after approval by the State Council, published the Tentative Provisions of Registration and Management for Enterprises on August 25, 1985. The Provisions require that the following documents or copies of them must be presented when an enterprise applies for registration:

1. Application form for the registration signed by the responsible persons of the enterprise who initiate the enterprise;
2. Document of approval by the government, authorized government agencies, or responsible departments. Those collective enterprises without direct government agencies may directly apply for registration to the responsible/authorized agencies of industry and commerce;
3. The charter of the enterprise. Joint operations must also present the contracts or agreements of each side, made in accordance with the law.
4. A credit certificate issued by a financial organ, bank, or responsible administration.
5. A list of names of the main representatives of the enterprise and their identification cards. In addition, approval and registration of those enterprises dealing with foreigners must be done in accordance with the Law of the People's Republic of China in Joint Ventures Using Chinese and Foreign Investment and its implementing regulations — Regulations of the PRC on the Registration of Joint Ventures Using Chinese and Foreign Investment and Regulations of the PRC on Enterprise Using Foreign Investment, and their respective implementing regulations.

B. Enterprise Legal Persons Must Possess Their Own Property

Enterprise legal persons must possess a certain amount of independent assets that serve as a material safeguard for engaging in economic activities and in satisfying the legal requirements of their daily activities. The independent assets of state-owned enterprises are those assets that are owned by the state but operated and managed by those enterprises, including fixed assets (or real estate) and circulating capital. These independent assets must be kept separate from the assets of the state treasury and the assets of other state-owned enterprises. Without such a separation of accounts, the state-owned enterprises cannot be qualified as enterprise legal persons. The

independent assets of collectively owned enterprises legal persons belong to those collective enterprises. The independent assets of joint operation legal persons are those enterprise assets invested by each participant of the joint operation. The independent assets of a joint-stock limited liability company are those assets of the company which are invested by stockholders in return for stock in the company. A substantial portion of the assets of the aforementioned enterprise legal persons are from the collective or personal assets of those who founded the enterprise. However, those assets must also be kept strictly separate and distinct, once the assets of enterprise legal persons are set up.

The amount of independent assets required depends on the nature, capability, size, and scope of an enterprise and should be detailed in the charter of the enterprise. The various asset requirements are set forth in the following provisions. The *General Principles* requires generally that enterprise legal persons must possess necessary assets. The Provisional Regulations on the Registration and Management of Enterprises provides that "the circulating capital of those manufacturing companies should not be less than 100,000 yuan. Those commercial corporations with wholesale practices as their main business should not be under 200,000 yuan, while those retail commercial companies should be less than 100,000 yuan; consultant service companies must not be under 50,000 yuan." (Article 7) Article 12 stipulates that "the registered capital of those companies applying for registration should be in accord with their real capital except for those approved by the State Council." The Provisional Regulations on the Percentages of the Registered Capital and Total Amount of Investment of Joint Ventures Using Chinese and Foreign Investment, published by the National Administrative Bureau of Industry and Commerce on March 1, 1987, provides in article 3 that: if the total amount of investment is less than \$3,000,000, its registered capital should be at least 7/10 of the total investment; if total investment exceeds \$3,000,000 but is under \$10,000,000, the registered capital should at least be 1/2 of the total amount; if total investment exceeds \$10,000,000 but is below \$30,000,000, the registered capital should be at least 2/5 of the total investment; if the total amount of investment exceeds \$30,000,000, the registered capital should be at least 1/3 of the total investment. Article 4 adds that where the above requirements cannot be met, joint ventures using Chinese and foreign investment may nonetheless be approved under exceptional circumstances by the Ministry of Foreign Economic Relations and Trade and the National Administrative Bureau of Industry and Commerce with respect to the percentage of the registered capital in the total amount of investment.

C. Enterprise Legal Persons Must Possess Their Own Names, Organizational Structure, and Premises

Enterprise legal persons, like natural persons with their own names, must possess their own names, which enable them to distinguish themselves from

other enterprises. The name of the enterprises indicates the nature of their businesses and facilitates the operation and management of the business by establishing a reputation and building goodwill. The Provisional Regulation on the Management of Registration of Names of Industrial and Commercial Enterprises, published by the National Administrative Bureau of Industry and Commerce on June 15, 1985, after the approval by the State Council on May 23, 1985, explicitly states that names of enterprises must be verified by the administrative agencies of industry and commerce. After registration, enterprises may enjoy exclusive rights to that name within a certain scope and are protected by state law. In principle, an enterprise is allowed to use/adopt one name only. Those which adopt "China" or "Chinese" as part of their name must be verified by the Administrative Bureau of Industry and Commerce. It is prohibited for an enterprise to use "China" or "Chinese" as part of a name unless the business is a large nationwide company. It is further forbidden to use the following names:

1. Those names which may cause detriment to the interests of the state, society, or public well-being;
2. Names of foreign countries or areas;
3. Names of international organizations;
4. Names made up by foreign language or Chinese Pingying;
5. Names constituted by numbers.

The Regulation provides that names of enterprises are transferable, but a transfer must be accomplished by written agreement signed by both parties or through a registration procedure and upon approval by the Administrative Bureau of Industry and Commerce.

Enterprise legal persons must have a complete organizational structure of their own to reflect their independent enjoyment of civil rights and the capacities of legal persons. Those which do not possess independent organizations, such as a department of a factory, sales section of a shop, and so on, cannot be qualified as enterprise legal persons. The organizational structure of enterprise legal persons is usually referred to as the "office of legal persons." According to laws, charters of enterprises or companies, and stipulations of organizational by-laws, an office may be classified as either a power office or an executive office. These two may be further categorized as a person office or a collective office. Power offices of legal persons are the offices in which purposes are expressed, such as a general conference of peasants, stockholders or representatives of a stockholders' conference of a stock limited liability company, and the board of directors and general director of a joint venture using Chinese and foreign investment. Executive offices of legal persons are those offices in which purposes are realized and activities of business are operated and managed. This category includes heads of factories, managers of companies and joint ventures, and leaders of cooperatives. The *General Principles* provides in article 38 that: "The legal representative of a legal person is the person with management responsibility (*fuzeren*) who, in accordance with law or the provisions of its charter, exercises authority on behalf of a legal person."

Enterprise legal persons must possess permanent or fixed premises for production and management. The *General Principles* states in article 39 that: "The domicile of a legal person is its principal place of business." A domicile is indispensable in the following ways. It allows for business activities of legal persons and facilitates the establishment of economic contacts/ties with other legal persons; and it provides a structure to deal with courts for the administration of the enterprise.

D. Enterprise Legal Persons Must Be Able to Assume Civil Obligations Independently

An enterprise, to be a legal person, must be able to enjoy civil rights and assume civil obligations. This is manifested by the ability to bear liabilities independently with its own name, one of the important conditions required by laws regarding enterprise legal persons. If one economic organization assumes civil responsibilities with reliance upon the ultimate accountability of a higher level, it cannot be qualified as a legal person. This requirement that an enterprise legal person bear civil responsibility of its own has a very close relationship with the requirement of independent assets of an enterprise legal person, in that the latter lays down the material foundation for the realization of the former, while the former demonstrates the utilization and disposal of the latter. However, this civil responsibility is not an indefinite obligation but a limited one based upon the totality of the assets of which an enterprise legal person may dispose. The state or any individual bears no responsibility for the debt of a legal person unless the law provides otherwise.

The *General Principles* stipulates in article 48 that: "A state-owned enterprise legal person bears civil liability to the extent of the property the state has given it to operate and manage. A collective enterprise bears civil liability to the extent of the property the enterprise owns. Sino-foreign joint venture enterprise legal persons, Sino-foreign contractual joint venture enterprise legal persons, and wholly foreign-owned enterprise legal persons bear civil liability to the extent of the property the enterprise owns, unless the law provides otherwise." This article indicates that, unless the law provides otherwise, civil liabilities of a state-owned enterprise legal person shall be satisfied from the state assets the enterprise operates and manages. It cannot shift responsibility to or be indemnified from the state treasury. It also demonstrates that collective enterprise legal persons and Sino-foreign joint venture enterprise legal persons must bear the cost of their civil liability out of their own assets.

E. The Legal Capacity and Capacity for Civil Action of the Enterprise Legal Person

The civil legal capacity of the enterprise legal person refers to the capacity of the legal person to obtain civil rights and assume civil duties while participating in civil activities. This capacity has the following characteristics: (1) Article 36 of the *General Principles* stipulates that the civil legal capacity of

various legal persons begins at the time the legal person is established and ceases at the time the legal person is terminated. According to this provision the legal person's civil legal capacity endures throughout the legal person's existence, from the moment it completes the registration procedures until it is disbanded or terminated. (2) There are distinctions in enterprise legal persons' civil legal capacity because their purposes and their duties are different. The purpose and duties of various types of enterprise legal persons are ordinarily clearly established in the enterprise legal person's regulations. For instance, an industrial legal person engaged in production and a commercial legal person engaged in operations have different civil legal capacities, as have commercial legal persons engaged in, respectively, wholesale and retail activities, and legal persons of different ownership systems. (3) The enterprise legal person's civil legal capacity is controlled by the operational scope of its business, this scope having been determined at the time the enterprise registered to be either a specialized operational scope or two ranked scopes, none of which can be willfully changed. Article 42 of the *General Principles* states: "An enterprise legal person must conduct business within its registered scope of business." Article 8 of the Temporary Regulations on Administration of Company (*gongsi*) Registration points out that a company may register its management of production or scope of service so as to have one primary and another secondary business. The enterprise legal person enjoys within its scope of operation legal capacity, but will not be given legal protection if it exceeds or deviates from it.

The content of the enterprise legal person's civil legal capacity refers to the concrete civil rights and duties that by law and regulation it respectively enjoys or shoulders. According to the provisions of the *General Principles*, the enterprise legal person has the standing to obtain property rights and personal rights: (1) As for property rights, the enterprise legal person has the right of property ownership. For example, the enterprise has the right to possess, use, receive benefit from, and dispose of its own property; the enterprise legal person also enjoys the right to manage property, as when the state enterprise receives from the state the operational right to the state's property; the enterprise legal person also enjoys the right to use property and the right to contract for the management of property, as, for example the right to extract minerals from state mines, and the right to use, benefit from, and contractually manage state-owned land, forests, mountains, grasslands, wastelands, marshes, waters, and other natural resources. The enterprise legal person can enjoy the right of obligation; that is, based on contractual agreement or legal provisions, it can create specifically established relations of obligee and obligor between itself and another subject of civil rights. It can also have the right of intellectual property, i.e., copyright, the right to sign, the right to express, the right to publish, and to receive remuneration. The enterprise legal person can also hold patent and exclusive trademark rights. (2) In terms of personal rights, the enterprise legal person has the right to use the name it took for itself at the time of registration or, under law, to transfer

that name. It also has the right to its reputation, i.e., the result of the trust that it has acquired through the management of production or sales. Other persons may not insult or slander the legal person's reputation. The enterprise legal person also has the right to honorary titles that the state or supervising superior organizations may confer on it in recognition of its contributions, titles that may not be seized illegally. The enterprise legal person's property and personal rights enumerated above are all protected by law and may not be infringed on, but the enterprise legal person must at the same time assume its corresponding legal duties.

F. The Capacity of the Enterprise Legal Person for Civil Actions

This refers to the capacity of the enterprise legal person through its own actions either to acquire civil rights or to assume civil duties. This capacity has the following characteristics: (1) The enterprise legal person's capacity for civil actions commences at the same time its legal capacity is initiated and ends when its civil capacity is terminated. The *General Principles* treats this clearly, and its provisions are beneficial to the enterprise legal person's timely carrying out of its production management activities. (2) The scope of the enterprise legal person's capacity for civil acts is consistent with the scope of the legal capacity. If its acts exceed the limitations imposed on it by the scope of its legal capacity, the results produced by its acts may be without effect. For example, according to the Temporary Regulations on the Administration of Enterprise Bonds, issued on March 12, 1987, by the State Council, and the subsequently posted regulations to strengthen and perfect the administration of stock certificates and bonds, state-owned enterprise legal persons may, with permission from the People's Bank of China, issue debentures, but they may not issue shares to the public. Conversely, collective enterprise legal persons may, with the permission of the People's Bank of China, issue shares, but may not issue bonds. If the former issues stocks or the latter issues bonds, they have exceeded the scope of the enterprise legal person's legal capacity and will not be protected by law. (3) Implementation of the enterprise legal person's capacity for civil acts depends on its existence as an economic entity. It generally must carry out its capacity for civil acts through the legal person's organization. As stated above, the forms of legal person organization are individual and collective. Both have the right to represent the legal person in carrying out its civil legal acts. The legal person organization and the scope of its rights and limitations is stipulated by law (*fali*), rules (*tiaoli*), and regulations (*zhangcheng*).

The legal persons organization's realization of the capacity for acts occurs in two circumstances. First, the enterprise legal person's organization directly does the civil legal act. The legal person organization is the legal person's legal and natural representative and its civil legal acts in the name of the legal person are the legal person's own civil legal acts. Therefore, in regard to its organization's (its legally established representative's) managerial activities, the legal person assumes civil liability, including responsibility for

implementing contracts and compensating people for losses its acts have caused. Article 43 of the *General Principles* clearly provides for this, and article 49 raises a number of strict demands in regard to the legal person's representative. Thus in the following situations, in addition to the responsibility borne by the legal person, the legally designated representative may also be sanctioned by administrative discipline and fines, or, if its acts constitute a crime, imposition of criminal penalties if it: (a) conducted illegal business operations beyond the scope of business approved and registered; (b) willfully failed to disclose true information or resorted to deception in dealing with tax or registration agencies; (c) withdrew funds or concealed property to evade performance of an obligation; (d) disposed of property without authorization after being dissolved, cancelled, or declared bankrupt; (e) failed to apply for registration and make public announcements in a timely manner at the time of changes or termination, thereby resulting in significant loss to interested parties; (f) engaged in any other activities prohibited by law, resulting in harm to state or public interests.

Second, civil legal acts by the deputized agent of the legal person organization are also recognized. A legal person's external civil legal acts may be carried out through an individual or organization which lacks standing as a legal person organization. These natural persons or legal persons who receive the legal person's commission (or authorization) are the legal person's agents. According to article 63 of the *General Principles*, "agents perform civil legal acts in the name of the principal within the limits of their authority. Principals bear civil liability for acts performed by agents on their behalf." Therefore legal persons must be responsible for the legal consequences of civil activities in which their agents engage within the limits of their authority.

V

CHANGE OF THE ENTERPRISE LEGAL PERSON

Change refers to changes related to categories defined at registration which occur during the course of production, and normally include organizational structure, character, scope of production operations, property, name, place of operations, and other such major changes.

A. Changes in the Organizational Structure of the Enterprise Legal Person

This refers to the adoption of such adjustment measures as division or combination. Ordinarily division refers to a single enterprise legal person being separated into several enterprises, with the original enterprise legal person no longer in existence. Alternatively a part (for example, several workshops) of an enterprise legal person might be split off into new enterprise legal persons, with the original one remaining but on a smaller scale. Conversely, two, or more than two, enterprise legal persons might combine to form a new one with the original ones being extinguished, or several might merge into each other with the number of legal persons being reduced but the scale of operations being enlarged. According to article 42,

paragraph 2, of the *General Principles*, “where an enterprise legal person is divided or merged, its rights and duties are enjoyed and borne by the resulting legal persons or person.”

B. Changes in the Nature, Scope of Activities, or Property of the Enterprise Legal Person

Another common situation is for changes to occur in the nature of an enterprise in response to changing circumstances. For example, an enterprise legal person of a single ownership type might become an enterprise legal person engaged in joint operations with multiple ownership forms. The scope of operations may change as may an enterprise legal person's assets, as when a jointly operated enterprise legal person reduces capital or cedes its shareholding right.

C. Changes in the Name and Location of the Enterprise Legal Person

The name under which an enterprise legal person engages in business is an important personal right that impinges on the enterprise's reputation. That may be changed. Any changes must be implemented by an enterprise legal person in conformity with the law. According to article 44 of the *General Principles*, “where an enterprise legal person is divided or merged, or there is a change in other important matters, this must be registered with the registration agency and a public announcement made.” Substantive relevant provision are also articles 11 and 13 of the Administrative Regulations on Registration of Industrial and Commercial Enterprises.

VI

TERMINATION OF THE ENTERPRISE LEGAL PERSON

A. Reasons for Termination of the Enterprise Legal Person

Termination means that the enterprise's qualifications to act as a subject of civil rights no longer exist. According to article 45 of the *General Principles*, termination can result from any one of the follow circumstances: (1) It is cancelled in accordance with law. The enterprise legal person may be cancelled owing to adjustments in the economic system. If the production responsibilities for which it was established are completed, or the enterprise has engaged in serious illegal activities, it can be cancelled according to law, regulations, or administrative decision by the supervising department. (2) It is dissolved. Collective ownership enterprise legal persons, particularly cooperatives, can, in accordance with the cooperative's regulations and based on a meeting of all members or a meeting of the cooperative's congress at which a legal quorum exists, be dissolved by resolution. The reasons for the dissolution and views on how to handle the dissolved legal person's property, claims, and debts must be reported to the supervising department, after which it gives permission and ends the activities of the legal person. (3) It is declared bankrupt in accordance with the law. If because of poor

management or other reasons the assets of an enterprise legal person are insufficient for its debts, and it has no way to repay its creditors, the people's court may declare it bankrupt. After all claims have been settled, it is terminated. (4) Other reasons.

B. The Process of Terminating an Enterprise Legal Person

The termination of an enterprise legal person, that is, the loss of the enterprise's legal capacity and capacity to act, not only directly expresses the conclusion of the enterprise's production activities, it also has a definite effect on other legal persons, and citizens and even on society's interests. In line with the character of the enterprise legal person, the requirements at the time of termination are essentially similar to those at the time of its establishment. Article 46 of the *General Principles* states: "Upon termination of an enterprise legal person, its registration must be cancelled with the registration authority and a public announcement made." In addition to denoting that the termination activities ought to be supervised by the registration organization, this measure also requires that society be informed about the fact of the enterprise legal person's termination and finally of the completion of the work of an accounting of its assets and the settling of its debts.

C. Post-Termination Accounting

According to article 47 of the *General Principles*, when an enterprise legal person is terminated by dissolution, a liquidation organization ought to be established. This organization is usually set up by the dissolved enterprise legal person itself, and it recruits relevant people to participate, though when necessary it can also use specially solicited personnel to help with the work of accounting. Article 47 also provides that when an enterprise legal person is terminated by cancellation or declaration of bankruptcy, the liquidation organization is to be set up by competent agencies or the people's court and that related personnel should participate in the liquidation work. The competent organizations refer to commercial and industrial, tax, accounting, banking, labor, and union departments, and the relevant personnel to accountants, lawyers, etc.

The primary duty of the liquidation organization is to wind up the business, put the assets in order, and settle debts. First the enterprise legal person's extant property, claims, and debts should be checked. Then a chart of assets and liabilities should be developed and either creditors notified or a meeting of creditors called. Finally, the actual assets of the enterprise should be used to settle all debts. Every sort of enterprise legal person must bear civil liability according to article 48 of the *General Principles*. The order in which the bankrupt legal person must clear debts is based on the provisions of article 37 of the Trial State Enterprise Bankruptcy Law, which was passed by the Eighteenth Meeting of the Standing Committee of the Sixth People's Congress on December 6, 1986. It provides: "Any proposal by the liquidation organization for distribution of the bankrupt's property must be

discussed by the meeting of the creditors and reported to the people's court for judgment, after which it may be implemented. After the assets have been used to pay bankruptcy fees, debts should be settled in the following order: (1) salary and labor insurance owed to workers and staff; (2) back taxes; (3) debts. If the property is insufficient to clear all debts, then according to the same order, the property shall be proportionately distributed." This provision will not have legal effect until this law is formally implemented.

VII

JOINT OPERATIONS BY ENTERPRISE LEGAL PERSONS

What are the characteristics and role of the enterprise legal person joint operations? Such joint operations refer to a form of economic activity when by legal or contractual provisions enterprise legal persons determine a fixed economic goal to achieve through joint operation. Joint operation is a civil agreement established on a basis of equality, voluntariness, equal value, and mutual benefit between the joint operators. The contents and shape of the joint operation may, based on the agreement, be either a new economic entity, a common operation, or an operation in which each side works on its own. Regardless of the content or form used to carry out the cooperative operation, the status of the joint operating enterprise legal person is not obscured, so the joint operation is not a change in the enterprise legal person.

Joint operations are an adaptation to the needs of the national economic adjustment and acceleration of the reform of the economic system and reflect the objective demands of the development of a socialist commodities economy. They have an important role in stimulating the energy of each side in a joint operation and mutually assisting and benefiting the implementation of economic coordination, in smashing the blockage of locale and department, in encouraging the appropriate use of resources and capital, in enlarging the flow of commodities, in giving full play to science and technology, in raising the competitive ability of commodities, in adapting to the demands of various levels of economic organizations, in enlivening various forms of commodity economy, and in motivating socialized, large-scale production.

On July 1, 1980, in order to implement in a variety of ways the principle of invigorating the domestic economy and opening to the outside, the State Council issued the Temporary Provisions Concerning the Stimulation of Economic Association and, on March 23, 1986, the Regulations on Several Problems Concerning the Further Stimulation of Horizontal Economic Association. These caused a significant development of horizontal economic ties at various levels and in various forms in the spheres of production, circulation, and science and technology.

Articles 51 to 53 of the *General Principles* reflect the three sorts of economic joint operation that differ in content and form.

A. The Joint Operation Enterprise Legal Person

Enterprise legal persons which participate in joint operations, under circumstances in which they each maintain themselves as legal persons and organize another new joint operations enterprise legal person, possess the qualifications of a subject of civil rights and independently assume civil liabilities. This sort of joint operation enterprise legal person is formed by joint operators from the same industry, as for example a new enterprise formed by machine industry enterprises which produce the same product; or it may be formed by enterprises from different businesses, for example an industrial and commercial enterprise establishing a sales organization. Each side, in accord with the proportions set by agreement, receives profits and assumes liability for losses.

B. The Commonly Operated Joint Operation Agreement

An enterprise legal person which participates in joint operations establishes a new joint enterprise legal person organization, but the agreement is similar to a partnership created between natural persons. Then the joint operators will commonly operate in accord with their share of investment and undertake joint and several liability or liability based on their shares. This sort of joint operation may be established between enterprises in different sectors, such as between a commercial and industrial enterprise. The industrial enterprise would sell its goods directly to the outside and provide the commercial enterprise with a fixed percentage of the profit. There are also joint operations between enterprises in the same business with a backbone enterprise in the lead or a high quality brand name product as the lead, combining with another enterprise, such as between auto industry enterprises, when a state large-scale backbone enterprise takes the lead and joins with a state or collectively managed medium- or small-scale enterprise and commonly makes some product. The backbone enterprise supplies the others with resources, or technological guidance or advice, in order to insure that the products meet a fixed standard. Each party to the joint operation possesses a proportional property right and undertakes property liability.

C. An Agreement for Association with Separate Operation

Unlike the other forms of joint operation, this sort of agreement expresses looser economic ties between enterprises. Between the enterprise legal persons a contract is established with various sorts of economic ties as the content; and each side operates independently, and each undertakes its own civil liabilities. An example would be an industrial enterprise contracting with a commercial enterprise to sell its goods retail or on commission. Compensation and costs would be handled according to contractual provisions.

VIII

CONCLUSION

From the discussion of the seven aspects which summarize the experience of Chinese socialist economic construction and lay out the relevant laws and regulations, we can see the importance of the legal status of the enterprise legal person as a subject of civil rights. Chinese legal construction has adapted to the needs of economic development and will continue to be appropriately perfected. In this way the enterprise legal person can play an even larger role in invigorating China's domestic economy and economic relations with the outside.

IX

AFTERWORD

In the last two years, with the development of China's socialist planned commodity economy, legislation has continued to appear that strengthens the legal status of the enterprise legal person. Of particular significance are the PRC Regulations on the Administration of Enterprise Legal Person Registration ("The Regulations"), which were issued by the State Council on June 3, 1988, and took effect on July 1, 1988. The Regulations are the legal basis for the unified management of enterprise legal person registration. Based on this legislation, the following enterprises may register as legal persons: enterprises owned by the whole people, that is, state enterprises; collectively owned enterprises; joint operation enterprises (*lianying qiye*); those Sino-foreign equity joint ventures, Sino-foreign cooperative management enterprises, and wholly foreign investment enterprises located in the PRC; private enterprises (*siying qiye*); and other enterprises which according to the legislation should undertake enterprise legal person registration. To obtain the qualification of legal person, these enterprises must go through the procedures of examination and registration stipulated by law.

The promulgation of The Regulations voided the legislation previously cited: Methods for Administering Registration of Sino-Foreign Joint Equity Enterprises, issued by the State Council in 1980; Regulations for Administering Industrial and Commercial Enterprise Registration, issued in 1982; and the Temporary Provisions for the Administration of Company Registration, issued in 1985 by the State Administration of Industry and Commerce.

According to the PRC Law on Enterprises Owned by the Whole People, which was passed by the First Plenary Session of the Seventh National People's Congress ("NPC") on April 13, 1988, and took effect on August 1, 1988, these enterprises are production and operation units in the socialist commodity economy, with the characteristics of autonomous operation (*zizhu jingying*), responsibility for their own profit and loss, and independent accounting. The enterprise's property belongs to the whole people. The state, based on the principle of separation of ownership and operation rights,

grants to the enterprise the right of operative management (*jingying guanli quan*). Based on the law, the enterprise obtains the qualification of legal person and, with the property granted it by the state to operate, undertakes civil liabilities.

Enterprises may, according to law, adopt different forms of operational responsibility such as contract and lease. The rules regulating these two types of operational relationships (namely, contract and lease) are the Temporary Regulations on Contracting Operational Responsibility in Enterprises Owned by the Whole People, issued by the State Council and implemented on March 1, 1988, and the Temporary Regulations on the Leasing of Small-Scale Industrial Enterprises Owned by the Whole People, which took effect on July 1, 1988.

On April 13, the First Session of the Seventh NPC passed and implemented the PRC Law on Sino-Foreign Cooperatively Operated Enterprises, which filled the large gap in the legislation concerning foreign economic cooperation, technology exchange, and "three types of investment enterprises" (*sanzi qiye*) (that is, joint equity, joint operation, and wholly foreign-owned), and legally confirmed the Chinese legal person qualifications of those cooperation enterprises that conformed to the conditions of a legal person. The PRC Temporary Regulations on Private Enterprises, which was published by the State Council on June 25, 1988, and took effect on July 1, 1988, was based on the amendment of article 11 of the Chinese Constitution approved by the First Session of the Seventh NPC. This is an important law that confirms that any profit-making economic organization in which the enterprise capital (*zichan*) belongs to a private person and which hires eight or more people is a private enterprise and applies legal regulation to these newly defined private enterprises. The enterprise may adopt the form of a limited liability company in which the investor is responsible to the company in terms of the capital committed; and the company must assume the responsibility for company debt with its entire capital. According to the law, limited liability companies may obtain the capacity of legal persons.

All of these different types of enterprise legal persons must possess property that they autonomously operate. The Legal Person Registration Regulations stipulate that one of the prerequisites for applying for registration as a legal person is "an amount of capital (*zijin*) appropriate to the scale of production, operation, and service, and in conformity with state provisions." It should be noted here that the provision cited earlier in my article, the March 1987 Temporary Regulations on the Percentage of Registered Capital and Investment in Equity Joint Venture Enterprises, has been replaced by Several Regulations on the Capital Contribution of Each Partner in Sino-Foreign Equity Joint Venture Enterprises, issued by the Ministry of Foreign Economic Relations and Trade and the State Administration of Industry and Commerce on January 1, 1988. This more recent statute makes clear that the capital each partner has agreed in the contract to put up must be its own cash, its own goods on which there are no

liens, its own industrial property, its own special technology, etc. Partners may not use as their capital contribution property belonging to anyone outside the joint venture, or loans, leased equipment, or other property obtained under the name of the enterprise. A partner also may not use the joint venture's property, rights, and interests or the property, rights, and interests of the other partner as a guarantee of its own capital contribution. The legislation also contains some concrete provisions on the deadline for contribution of capital and on legal effect.

Finally, it should be noted that the PRC Enterprise Bankruptcy Law (For Trial Use), to which I referred above, came into effect on November 1, 1988, three months after the trial implementation of the Law on Industrial Enterprises Owned by the Whole People.

In sum, the constant improvement over the last two years of legislation on the legal status of the enterprise legal person has provided a legal safeguard to the production and operation activities of the enterprise legal person and has enlarged the role played by the enterprise legal person in the invigoration of China's domestic economy and in foreign economic cooperation and exchange.