Chapter Thirteen

Law on Business Entities

1. Introduction

The evolving Chinese law on business entities typically reflects the tension between socialist ideology and ‘bourgeois’ legal institutions. At the centre of the legal framework are the ‘bourgeois’ private law institution of legal personality, and a politico-economic structure heavily dictated by the changing socialist ideology. The two do not sit comfortably together.

On the one hand the conventional conception of socialist civil law, by virtue of its ‘sacred’ principle of upholding socialist public ownership and transforming or eliminating forms of private economy, has long involved certain principles opposing those of the ‘bourgeois’ private law, such as economic equality and freedom. Since the inception of communism as an ideology in China the whole politico-economic system has been built upon the distinction between forms of ownership, relations of subordination, and geographical location. Economic entities have not been treated as abstract and autonomous subjects of rights and duties on an equal footing. Thus, instead of a uniform legal framework for business entities, different enterprises in China have been subject to various individual laws and regulations on specific forms of enterprises. These laws have effectively established a system of legal persons in which economic entities are differentiated and accorded different legal status and legal capacities according to such variable factors as forms of ownership and departmental and regional subordination relations. This differentiation also existed at a higher level until very recently, in the Chinese Constitution of 1982.

On the other hand, such inequality has become increasingly at odds with the declared principle of equality among civil law parties in a market economy. For many years great efforts have been made to reform the fundamental politico-economic structure, and hence to provide equal treatment for all business entities, both through civil legislation,¹ and partly through constitutional revisions undertaken since 1988.²

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¹ Meng Qinguo, ‘Civil Legislation during Economic Structural Reform’, (no. 6, 1988) Social Sciences in China (Zhongguo Shehui Kexue) 82, at 83.
² See discussions in Chapter 3.
Indeed, economic equality was formally written into the General Principles of Civil Law (GPCL) (Articles 2-4) in 1986. As discussed in Chapter Nine on civil law, the establishment of the civil law institution of legal personality was meant to provide formal legal status to economic entities, to establish a uniform legal framework applicable to all economic entities, and to lay down a foundation upon which further details could be built. This apparent principle of equality is not, however, followed consistently in the remaining provisions of the GPCL, nor in other laws and regulations. In fact, the generally applicable Company Law was not enacted until December 1993, and only took effect in July 1994.

The promulgation of the Company Law in 1993 was one of the most significant efforts of Chinese law-makers to implement the principle of economic equality under the civil law. However, this supposedly generally applicable law has a rather narrow scope of application. Laws on different business entities thus continue to apply until an enterprise is transformed into a company, having met the strict requirements under the Company Law. Further, although efforts have been made to converge the two distinct legal frameworks governing foreign-related and domestic businesses, foreign investment business entities continue to be regulated by a separate set of laws, at least until after China’s transitional period (2001–2008) for WTO membership has expired. The civil law provisions on legal persons, though out of date, continue to be the unifying force for laws on business entities, at least theoretically.

This Chapter first outlines the differentiated structure of business entities under the Chinese Constitution and other laws governing business activities. It then examines the Individual Sole Investment Law, the Partnership Enterprise Law, and the Company Law. Foreign investment enterprise laws will be discussed in Chapter 17.

2. Business Entities in Transition

2.1. An Overview

Under the original 1982 Constitution of the PRC, socialist public ownership, which includes ownership by the whole people and collective ownership by the working people, was the basis of the socialist economic system; individual economy was then