

# **THE ESTABLISHMENT AND DEVELOPMENT OF THE CHINESE ECONOMIC LEGAL SYSTEM IN THE PAST SIXTY YEARS**

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Since the establishment of the People's Republic of China (PRC) in 1949, the Chinese economic legal system has gone through multiple transformative stages, exhibiting different characteristics at each stage as a result of the interaction between the changing economic system and legal ideology of the time. Due to the differences between the prevailing economic systems and legal ideologies at different stages, the structural concepts, content, governing systems, implementation mechanisms and effects of the economic legal system vary significantly at each stage.

#### I. CHINA'S ECONOMIC LEGAL SYSTEM WITHIN A HIGHLY CENTRALIZED PLANNED ECONOMIC SYSTEM (1949–1978)

Before the implementation of the Reform and Opening Up policy in 1978, China had a highly centralized planned economic system. Under the planned economic system, the formulation and implementation of state plans resembling administrative orders were the essence of the economy. "The essential feature of economic activities was state planning," which meant that "the economic activities were to be implemented according to the state plans."<sup>1</sup> Because economic activities were based on the plans formulated by government agencies, the enterprises carrying out specific business operations were actually affiliates of government agencies. As a result, laws were basically unnecessary in the governing of economic activities, and played little part throughout the formation, existence, and evolution of the planned economic system, which was initiated in the early 1950s, took shape in the late 1950s and declined by the mid-to late-1970s.

The laws, legal institutions and legal interpretation of the former government were abolished at the time of the establishment of the PRC.<sup>2</sup> In particular, the old civil laws were dismantled.<sup>3</sup> Thus, without inheriting any legal tradition from the past, the economic legal system of the PRC was reestablished over time in an inconsistent and unsystematic manner. In the early 1950s, several major economic regulations and rules were formulated, including the Decision on Unifying the State's Financial and

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<sup>1</sup> 王家福、谢怀栻等著, 合同法 [WANG JIAFU, XIE HUAISHI ET AL., CONTRACT LAW] 8 (中国社会科学出版社 [China Social Science Press] 1986).

<sup>2</sup> See 中共中央关于废除国民党的六法全书与确定解放区的司法原则的指示 [Instruction of the Central Committee of the CPC Regarding the Repeal of "The Complete Book of Six Codes" of the Kuomintang and the Establishment of Judicial Principle in the Liberated Areas] (1949), available at <http://www.dffy.com/sifashijian/jj/200809/20080921204129.htm> (last visited Nov. 4, 2009).

<sup>3</sup> See 中国法学四十年 [FORTY YEARS OF LEGAL STUDIES IN CHINA] 327 (张友渔 [Zhang Youyu] ed., 上海人民出版社 [Shanghai People's Press] 1989).

Economic Work, the Provisional Regulations on Budget and Final Accounts, the Provisional Rules on Infrastructure Work, the Agrarian Reform Law, the Model Articles for Higher-Stage Agricultural Producers' Cooperatives, and the Provisional Regulations on Industrial Enterprises of Joint Public and Private Ownership. Meanwhile, economic legal institutions, such as the Economic Protection Tribunal, were also established.<sup>4</sup> However, very few economic laws were enacted in the following thirty years, and the ones which were enacted were vague and general in content, consisting mostly of administrative orders rather than laws passed by the legislature. With the exception of certain specific statutes, such as the Agrarian Reform Law, only a small number of these economic laws were consistently and effectively enforced.

The Common Program of the Chinese People's Political Consultative Conference adopted in 1949 effectively served as the interim Constitution for the country,<sup>5</sup> which stipulated that the state should coordinate and regulate the state-owned economy, the cooperative economy, the individual economy of peasants and manual laborers, the private capitalist economy and the state capitalist economy. In this way, all components of the social economy could, under the leadership of the state-owned economy, carry out division and coordination, and play their respective parts in promoting the development of the social economy as a whole.<sup>6</sup> Such provisions dealing with the basic Chinese economic system were further confirmed in the Constitution of 1954.<sup>7</sup> However, this policy was soon changed. From 1953 to 1956, China carried out a large-scale socialist transformation of the private economy, including the individual economy of peasants and manual laborers, private capitalist industry and commerce. This approach consisted mainly of directing individual agriculture and manual laborers towards cooperative economy, and to purchase capitalist industries and businesses.<sup>8</sup> This conversion from an individual agriculture to cooperative economy was implemented through the adoption of three economic institutions, namely, the mutual aid group, the lower-stage agricultural pro-

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<sup>4</sup> See 经济法 [ECONOMIC LAW] 25 (王家福 [Wang Jiafu] ed., 中国经济出版社 [China Economic Press] 1988).

<sup>5</sup> 宪法学 [CONSTITUTIONAL LAW] 92 (吴家麟 [Wu Jianlin] ed., 群众出版社 [Qunzhong Press] 1983).

<sup>6</sup> 中国人民政治协商会议共同纲领 [Common Program of the Chinese People's Political Consultative Conference] (1949) art. 26, available at <http://china.findlaw.cn/fagui/gj/21/2.html> (last visited Nov. 4, 2009).

<sup>7</sup> 1954年宪法 [The Constitution of 1954] (promulgated by the Nat'l People's Cong., Sept. 20, 1954, effective Sept. 20, 1954) NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 5.

<sup>8</sup> See 张卓元, 从百年积弱到经济大国的跨越 [Zhang Zhuoyuan, *Leap From a Century of Weakness to Economic Power*], 光明日报 [GUANGMING DAILY], Aug. 27, 2009, at 11, available at [http://www.gmw.cn/01gmrb/2009-08/27/content\\_970632.htm](http://www.gmw.cn/01gmrb/2009-08/27/content_970632.htm) (last visited Nov. 4, 2009).

ducers' cooperative and the higher-stage agricultural producers' cooperative.<sup>9</sup> The higher-stage agricultural producers' cooperatives were mostly established by the end of 1956, which marked the completion of the socialist transformation of rural areas and agriculture in China. The movement of people's communes was launched in September 1958, and communization was completed by the end of that year. The people's communes in the rural areas were a form of collective ownership economy,<sup>10</sup> an "integration of the administrative and the economic entity."<sup>11</sup> The collective economy in cities and towns formed gradually, starting from the 1950s,<sup>12</sup> and was formed mainly as a result of the cooperativization of individual manual laborers enterprises in urban districts. The state-owned economy was the dominant economic system. All enterprises of national economic significance or wielding a controlling influence over people's livelihoods were under the centralized operation of the state.<sup>13</sup> However, there were no comprehensive legal regulations governing the organization of enterprises during this period. It was not until more than a decade after the end of this period that the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People (1988), the Regulation on Collective Ownership Enterprises in Rural Areas (1990), and the Regulation on Collective Ownership Enterprises in Urban Areas (1991) were enacted, though all these enterprises were then faced with the challenges posed by the new wave of reform.

The importance of the legal system in regulating economic activity diminished after China established a highly centralized planned economy based on state ownership. The contract law of economic transactions provides an example of this. The Finance and Economy Committee of the Government Administrative Council promulgated the Provisional Regulations on Concluding Contracts Between Government Agencies, State-Owned Enterprises and Cooperatives in 1950 (the first contract law in the

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<sup>9</sup> "Mutual aid groups" refers to the mutual assistance of farmers who owned the means of production; "lower-stage agricultural producers' cooperative" involves the unified operation of agriculture with private ownership of the means of production; "higher-stage agricultural producers' cooperative" means the unified operation of agriculture with public ownership of the means of production. See 农业合作化运动 [The Agricultural Cooperativization Movement], available at [http://news.xinhuanet.com/ziliao/2003-01/20/content\\_697957.htm](http://news.xinhuanet.com/ziliao/2003-01/20/content_697957.htm) (last visited Nov. 4, 2009).

<sup>10</sup> 1975 年宪法 [The Constitution of 1975] (promulgated by the Nat'l People's Cong., Jan. 17, 1975, effective Sept. 20, 1954) NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 7.

<sup>11</sup> The integration of the administrative and the economic entity means the combination of political power at the town level and at the level of economic organizations.

<sup>12</sup> See 王兆国, 在第十届全国人民代表大会第五次会议上的《关于〈中华人民共和国物权法(草案)〉的说明》 [Wang Zhaoguo, Speech at the Fifth Session of the Tenth National People's Congress: Explanation on the Draft of the Property Law of the PRC] (2007), at section 3(4).

<sup>13</sup> 中国人民政治协商会议共同纲领 [Common Program of The Chinese People's Political Consultative Conference] (1949) art. 28.

PRC), and more than forty further regulations concerning contracts were adopted by relevant authorities by 1956. However, the contract system was abolished from the late 1950s until the early 1960s due to the prohibition on free production and exchange of goods. The contract system was reestablished temporarily from 1962 to 1966, but it was abandoned again at the start of the Cultural Revolution before ever being generally implemented.<sup>14</sup> In fact, the definition of “contract” during this period was fundamentally different from that under a market economy. Contracts in this period were executed and performed according to state plans, instead of being the product of the freedom of contract exercised by the relevant parties. Rather, they served as tools and mechanisms for the implementation of state plans. As late as 1978, policy makers saw breach of contract as prejudicing the socialist planned economy.<sup>15</sup> Since the economy during this period was basically limited to the state-owned economy, most production and consumption goods were assigned and distributed according to state plans. Trade credit was limited or abolished. After 1952, individuals could not write checks, and both promissory notes and bills of exchange were forbidden domestically. Bills of exchange could be used only for international trade.<sup>16</sup> Furthermore, free trade of goods that violated or evaded state plans (so-called “speculation”) continued to be regarded as criminal offenses for a prolonged period of time, even after the commencement of reform and opening.<sup>17</sup>

There had long been a lack of a basic civil law system in China under the planned economy. Although the Standing Committee of the National People’s Congress organized the drafting of the Civil Law in 1954 and finished a draft Civil Law in December 1956, the drafting process was suspended soon thereafter due to political unrest. The drafting process of the Civil Law resumed in 1962 when China attempted to develop the basis for the production and exchange of goods. A proposed draft was completed in July 1964, but the drafting process was suspended again due to the political movement that started in 1964.<sup>18</sup> Also, the property law in China during this period was underdeveloped. The Constitution of 1954 provided that the state should protect peasants’ land ownership and the

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<sup>14</sup> See WANG JIAFU, XIE HUAISHI ET AL, *supra* note 3, at 142–46.

<sup>15</sup> *Id.* at 146.

<sup>16</sup> See 谢怀栻, 票据法概论 [XIE HUAISHI, THE LAW OF NEGOTIABLE BILLS OF EXCHANGE] 27 (法律出版社 [Law Press] 1990).

<sup>17</sup> 刑法 [Criminal Law] (1979), 1979–1984 法律汇编 [COLLECTED LAWS] 98, *translated in* 1 P.R.C. LAWS 87, arts. 117, 118. 刑法 [Criminal Law] (1997), 1997 法律汇编 [COLLECTED LAWS] 87, *translated in* 9 P.R.C. LAWS.

<sup>18</sup> See 梁慧星, 制定民法典的设想 [Liang Huixing, *Thoughts on the Making of Civil Law Code*], 现代法学 [MODERN LAW SCIENCE], Vol. 2, 2001, at 3.

ownership of other means of production.<sup>19</sup> However, due to the socialist transformation and the movement for communization, peasants as well as other individuals had no ownership stakes in land or major means of production. The state only protected “the ownership of the labor income, savings, housing and other consumption goods.”<sup>20</sup> Other types of property, such as shares, and intellectual property, were almost non-existent in economic life. China had not yet established an intellectual property legal system at this time. Although there were several regulations that could be categorized as laws relating to intellectual property, the content thereof was simple and not comprehensive. For instance, the trademark system was incomplete and the patent system essentially did not exist. Only four patents were granted from the adoption of the Provisional Regulations on Protecting the Right of Invention and Patents in July 1950 until its abandonment in November 1963.<sup>21</sup> The protection of copyrights mainly relied on certain administrative legal rules, which were general in content, such as the Rules on Combating the Copying of Books Without Authorization (1953), the Draft Provisional Rules on the Remuneration of Authors of Literature and Social Science Books.<sup>22</sup>

With regard to the financial and taxation system, the distribution of financial resources between central and local governments had long been the key to the reform of the financial system. The Regulations on the Reform of the Financial Administration System, adopted in 1957, stipulated the scope, allocation and type of financial revenue and expenditure for the central and local governments. The Key Principles of the National Tax Administration, promulgated in 1950, marked the unification of the Chinese tax administration and the establishment of a new tax system.<sup>23</sup> The Regulation on the Agricultural Tax, promulgated in 1958, set up a proportional tax system for agricultural taxation. The Regulations on the Consolidated Industrial and Commercial Tax, promulgated in 1958, was the second major reform of industrial and commercial tax.<sup>24</sup> In 1973, a trial implementation of industrial and commercial tax was carried out, marking the third major reform of industrial and commercial tax. Thereafter, only the industrial and commercial tax was levied on state-owned en-

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<sup>19</sup> The Constitution of 1954, *supra* note 7, art. 8.

<sup>20</sup> *Id.* art. 9.

<sup>21</sup> See 李顺德, 知识产权法律基础 [LI SHUNDE, FUNDAMENTALS OF INTELLECTUAL PROPERTY LAW] 69 (知识产权出版社 [Intellectual Property Press] 2005).

<sup>22</sup> 知识产权法 [INTELLECTUAL PROPERTY LAW] 64 (李明德 [Li Mingde] ed., 社会科学文献出版社 [Social Science Academic Press] 2007).

<sup>23</sup> 北京经济学院财政金融教研室, 新中国税制演变 [FINANCE DEPARTMENT OF THE BEIJING ECONOMY ACADEMY, REFORM OF THE TAXATION SYSTEM IN CHINA] 7 (天津人民出版社 [Tianjin People's Press] 1985).

<sup>24</sup> *Id.* at 35.

terprises, while the industrial and commercial tax and the industrial-commercial income tax were levied on collective enterprises. The basic feature of tax reform at this stage was that the number of different taxes was reduced and the tax system was simplified.<sup>25</sup> China had also tried to increase financial revenue by issuing public debt. For instance, the Decision on Issuing People's Victory Parity Bonds in Kind, which approved the issuance of such bonds in 1950, was passed in December 1949.<sup>26</sup> To accelerate national economic development, China adopted specific regulations on the issuance of public debt for national economic development each year from 1954 to 1958. However, the issuance of public debt was suspended at the end of the 1950s, due to China's policy of having "neither international debt nor domestic debt."<sup>27</sup>

Overall, the economic legal system at this stage fluctuated significantly. It received much attention from 1949 to 1956, was ignored from 1957 to 1961, was on the verge of resumption from 1962 to 1964, and was then abolished from 1965 to 1978. The rise and fall of the economic legal system during this period can be attributed to several factors. First, from the standpoint of legal ideology, legal nihilism and legal instrumentalism gained popularity in turn, with legal nihilism prevailing.<sup>28</sup> Even though for a short period, considerable attention was paid to the economic legal system, this was merely a reflection of legal instrumentalism. Second, in connection with the social governance system, the "rule of man" prevailed over the rule of law. Often, leaders' words were regarded as law and thus the so-called law changed with leaders' pronouncements.<sup>29</sup> Third, with regard to economic administration policies, the political doctrines of "policy can replace law," "only policies, no laws" and "policy itself is law" were the dominant values.<sup>30</sup> Finally, in the economic system, the operational mechanism of the planned economy system left little room for the functioning of laws.

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<sup>25</sup> *Id.* at 51–53.

<sup>26</sup> "In kind" means that the par value of the People's Victory Parity Bonds was calculated on the basis of the prices of daily necessities.

<sup>27</sup> 周恩来, 在第四届全国人民代表大会上的《政府工作报告》[Zhou Enlai, Speech at the Fourth National People's Congress: Government Work Report] (1975), *translated in* DOCUMENTS OF THE FIRST SESSION OF THE FOURTH NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA 45–65 (Foreign Languages Press 1975).

<sup>28</sup> 当代中国法学研究 [CONTEMPORARY CHINESE LEGAL RESEARCH] 26–32 (陈甦 [Chen Su] ed., 中国社会科学出版社 [China Social Science Press] 2009).

<sup>29</sup> 邓小平文选第2卷 [SELECTED WORKS OF DENG XIAOPING VOL. 2] 146 (人民出版社 [People's Press] 1994).

<sup>30</sup> See FORTY YEARS OF LEGAL STUDIES IN CHINA, *supra* note 3, at 90.

## II. THE ECONOMIC LEGAL SYSTEM IN THE EARLY STAGE AFTER THE POLICY OF REFORM AND OPENING (1978–1992)

Starting in 1978, China abandoned the political theme of “using class struggle as a principle” and decided instead to focus on economic development. It thus began to implement the Reform and Opening-Up Policy<sup>31</sup> that is still ongoing to date. Since the adoption of this new policy, with deepened knowledge obtained through experience and implementation, the economic system underwent a number of vital changes. In 1982, the economic system was described as a “planned economy supplemented by market mechanism”; in 1984, as a “planned commodity economy based on public ownership”; in 1987, the principle was that “the socialist planned commodity economy shall be the internal unification of the planned and market mechanisms”; in 1989, it was “the establishment of an economic system and operational mechanism that combines planned economy and market mechanisms, and capable of adapting to the socialist planned commodity economy”; and in 1992, China put forward a new aim for its economic system reform: the creation of a “socialist market economy.”<sup>32</sup> Generally, the basic approach underpinning the Chinese Reform and Opening Up Policy consisted of three major themes: firstly, in terms of its foreign economic policy, attracting foreign capital and expanding exports; secondly, in terms of its domestic policy in rural areas, the key to reform was the policy of “a contract system with remuneration linked to output”;<sup>33</sup> thirdly, in terms of its domestic policy in urban areas, the key was to increase the independence and vitality of enterprises and to adjust the relationship between the state and enterprises (most of which were state-owned).<sup>34</sup> The economic legal system at this stage was also based on the three policies above.

In order to expand international economic cooperation and technological exchange, China enacted the Law on Chinese-Foreign Equity Joint Ventures, allowing foreign companies, enterprises and other economic

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<sup>31</sup> See 中共中央十一届三中全会决议 [Resolution of the Third Session of the Eleventh Central Committee of Chinese Communist Party] (1978).

<sup>32</sup> See 江泽民, 在第十四届全国人民代表大会上的《加快改革开放和现代化建设步伐, 夺取有中国特色社会主义事业的更大胜利》谈话 [Jiang Zemin, Speech at the Fourteenth National People's Congress: Accelerate Opening Up Reform and the Pace of Modernization, Strive for the Success of Socialism with Chinese Characteristics] (1992), available at [http://news.xinhuanet.com/ziliao/2003-01/20/content\\_697148.htm](http://news.xinhuanet.com/ziliao/2003-01/20/content_697148.htm) (last visited Oct. 18, 2009).

<sup>33</sup> The “contract system with remuneration linked to output” was a form of production used in the Chinese rural collective economy, under which individuals or families contracted for the use of land or other means of production, and enjoyed autonomy in operation and management.

<sup>34</sup> 厉以宁, 社会主义政治经济学 [LI YINING, SOCIALIST POLITICAL ECONOMICS] 45 (商务印书馆 [Commercial Press] 1986).



organizations or individuals to establish joint ventures with their counterparts in China.<sup>35</sup> This law established the legal status of Chinese-foreign joint ventures and the protection of their property. From a legal perspective, these are important landmarks of the Opening Up policy. In 1980 and 1981, China passed the Law on Income Tax on Chinese-Foreign Equity Joint Ventures and the Law on Income Tax on Foreign Enterprises respectively, which provided exemptions or other favorable tax treatment for foreign enterprises that needed encouragement and development. By the end of 1986, there were more than 3,000 Chinese-foreign equity joint ventures in China.<sup>36</sup> At the same time, to further improve the investment environment, protect the legitimate interests of foreign investors, and enrich the organizational forms of foreign enterprises as a means of attracting more foreign investment, China passed the Foreign-Invested Enterprise Law in 1986 and the Law on Chinese-Foreign Contractual Joint Ventures in 1988, and revised its Law on Chinese-Foreign Equity Joint Ventures in April 1990. By means of these laws, a comprehensive legal system regarding foreign enterprises was established.

In August 1980, the Fifteenth Session of the Fifth Standing Committee of the National People's Congress ratified the Regulation on Special Economic Zones in Guangdong Province, which set up three special economic zones in Shenzhen, Zhuhai and Shantou in Guangdong Province. In October of the same year, the State Council also granted approval to the city of Xiamen to set up its special economic zone. The legal basis for the special economic zones system with Chinese characteristics was thereby established. These special economic zones were designed with reference to the experiences of free trade zones and export processing zones in other countries, where more favorable policies, including exemption and reduction of taxes, were implemented in international economic activities.<sup>37</sup>

Beginning in the spring of 1979, different forms of the agricultural production responsibility system appeared in rural China and the "contract system with remuneration linked to output" eventually became the major form of agricultural production. Although there was considerable political controversy in the intervening period, 99.5%<sup>38</sup> of farmers' pro-

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<sup>35</sup> 中国合资经营企业法 [Law on Chinese-Foreign Equity Joint Ventures] (promulgated by the Standing Comm. Nat'l People's Cong., July 8, 1979, effective July 8, 1979) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 1.

<sup>36</sup> 经济法要义 [UNDERSTANDING ECONOMIC LAW] 605 (王家福 [Wang Jiafu] ed., 中国财政经济出版社 [China Finance and Economy Press] 1988).

<sup>37</sup> *Id.* at 637-38.

<sup>38</sup> The "farmer's production team" was the basic unit of rural production during the period of the movement for communization.

duction teams<sup>39</sup> had adopted the “contract system with remuneration linked to output” by November 1982. The “contract system with remuneration linked to output” was not only a form of production—more importantly, it served as a framework for property rights and legal relationships. Based on this contractual system, individual peasants and their families would enjoy autonomy of agricultural production and property rights in their means of production. The implementation of the “contract system with remuneration linked to output” not only increased the income of peasants and promoted economic development in rural areas, but also made the people’s communes redundant. The Constitution of 1982 changed the system of “integration of administrative and economic entities” into a system based on the separation of political and economic entities. While people’s communes were solely preserved as economic organizations, local governments were established at the town level.<sup>40</sup> By the end of 1984, the people’s communes that had existed in China for more than twenty years had disappeared.<sup>41</sup> However, it was not until the amendment of Constitution of 1993 that the people’s communes were abolished as a matter of law.<sup>42</sup> The establishment and expansion of the “contract system with remuneration linked to output” not only benefited rural China, but served as a pioneering example for the reform of urban China. In particular, the framework for property rights and obligations within that system helped to provide the conceptual foundation and practical experiences for creating further civil and commercial laws, which focused on property relationships. The development of agriculture was strongly influenced by national policy rather than law,<sup>43</sup> and so the rural reforms relating to major legal issues and property rights were also mostly determined by policy. Except for a handful of administrative rules, such as the Regulation on Collective Ownership Enterprises in Rural Areas, legislation concerning agriculture lagged behind.<sup>44</sup>

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<sup>39</sup> See 罗汉平, 农村人民公社史 [LUO HANPING, THE HISTORY OF PEOPLE’S COMMUNES IN RURAL CHINA] 387–400 (福建人民出版社 [Fujian People’s Press] 2003).

<sup>40</sup> 1982 年宪法 [Constitution of 1982] (promulgated by the Nat’l People’s Cong., Dec. 4, 1982, effective Dec. 4, 1982) NAT’L PEOPLE’S CONG. GAZ. (P.R.C.), arts. 8, 95.

<sup>41</sup> See LUO HANPING, *supra* note 39, at 413.

<sup>42</sup> 1993 年宪法修正案 [Amendment to the Constitution 1993] (promulgated by the Nat’l People’s Cong., Mar. 29, 1993, effective Mar. 29, 1993) NAT’L PEOPLE’S CONG. GAZ. (P.R.C.), art. 6.

<sup>43</sup> 李成贵, 中国农业政策—理论框架与应用分析 [LI CHENGGUI, CHINA’S AGRICULTURAL POLICY: THEORETICAL FRAMEWORK AND ANALYSIS OF APPLICATION] 3 (社会科学文献出版社 [Social Science Academic Press] 1999).

<sup>44</sup> 王存学、骆友生, 中国农村经济法律基本问题 [WANG CUNXUE & LUO YOUSHEG, FUNDAMENTAL LEGAL ISSUES OF THE CHINESE RURAL ECONOMY] 11 (法律出版社 [Law Press] 1998).

Serving as the focus of urban reform during this period, the reform of state-owned enterprises followed the basic principles of separating enterprises and government and expanding the autonomy of enterprises. In 1979, the State Council issued certain regulations including the Rules on the Expansion of the State-Owned Enterprises' Autonomy of Operation and Management and launched pilot projects in a few state-owned enterprises within the public transportation sector. To promote state-owned enterprise reform, several relevant regulations were issued, including the Provisional Regulation on Worker Representative Congresses in State-Owned Industrial Enterprises (1981), the Provisional Regulation on Factory Managers of State-Owned Enterprises (1982), the Regulation on Rewards and Penalties for Enterprise Employees (1982), and the Provisional Regulation on State-Owned Industrial Enterprises (1983). The Law on Industrial Enterprises Owned by the Whole People was enacted in 1998 based on practical experience gained from prior reforms, paying particular attention to the actual situation and the need for reform of the then more than 90,000 "industrial enterprises owned by the whole people" (which accounted for over 70% of the gross industrial domestic product).<sup>45</sup> This law abolished the relationship of non-separation between government and enterprises and recognized the autonomy of enterprises. It also gave them independent property rights through the separation of ownership rights and management rights. At the same time, the law overcame the disadvantages of enterprises "eating from the same pot"<sup>46</sup> as the state.<sup>47</sup>

During the process of state-owned enterprise reform, another important trend in the Chinese economy was gaining momentum: the emergence and development of private economy. At the time of the enactment of the Constitution of 1982, the only individual economy that was allowed was the individual economy of urban laborers.<sup>48</sup> However, a large number of private enterprises which owned assets and hired workers did

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<sup>45</sup> See 吕东, 在第七届全国人民代表大会第一次会议上的《关于〈全民所有制工业企业法(草案)〉的说明》 [Lü Dong, Speech at the Seventh Session of the First National People's Congress: Explanation on the "Draft Law on Industrial Enterprises Owned by The Whole People"] (1988), available at <http://www.law-lib.com/fzdt/newsthtml/20/20050721212402.htm> (last visited Oct. 18, 2009).

<sup>46</sup> "Eating from the same pot" is a metaphor for the extreme egalitarianism characteristic of the Chinese income system, wherein the people's income was not determined by the operation of enterprises or the performance of workers. This was considered analogous to a situation where each person shared the same amount of food from the same pot.

<sup>47</sup> See ECONOMIC LAW, *supra* note 6, at 34–36.

<sup>48</sup> Constitution of 1982, *supra* note 40, art. 11.

emerge.<sup>49</sup> Under Article 1 of the Constitution as amended in 1988, “[t]he state permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The state protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy.” Accordingly, the Provisional Regulation on Private Enterprises was passed in 1988 to stimulate and regulate private enterprises as well as to protect their legal interests.<sup>50</sup>

The country’s Reform and Opening Up Policy led to the adoption of foreign-inspired mechanisms regarding production and the exchange of goods. As a result, the enactment of laws regarding property and transactions was placed on the agenda of the legislature. In November 1979, which marked the beginning of the Reform and Opening Up, a drafting group was set up to draft the Civil Law Code.<sup>51</sup> Considering the difficulties in enacting a comprehensive civil law code within a short period of time, the legislature adopted an approach of enacting separate, specific civil laws first, and then consolidating them in a comprehensive civil law code when conditions permitted.<sup>52</sup> The *General Principles of the Civil Law* passed in 1986 included nine chapters: Basic Principles (Chapter I), Citizens (Natural Persons) (Chapter II), Legal Persons (Chapter III), Civil Law Acts and Agency (Chapter IV), Civil Rights (Chapter V), Civil Liability (Chapter VI), Limitation of Action (Chapter VII), Choice of Law in Civil Relations with Foreigners (Chapter VIII), and Supplementary Provisions (Chapter IX). This law laid down the basic principles and institutions of civil law and served as the fundamental civil law in China before the Civil Law Code was enacted.<sup>53</sup>

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<sup>49</sup> According to statistics, in 1988 there were more than 90,000 private enterprises with about 1,640,000 employees, see 聚焦共和国第一个宪法修正案 [Report on the First Amendment of the Constitution], 检察日报 [PROSECUTION DAILY], Apr. 12, 2008.

<sup>50</sup> 私营企业暂行条例 [The Provisional Regulations on Private Enterprises] (promulgated by the St. Council, June 25, 1988, effective July 1, 1988) ST. COUNCIL GAZ. (P.R.C.), art. 1.

<sup>51</sup> For example, on Dec. 23, 2002, the draft of the Civil Law Code was submitted to the Standing Committee of the National People’s Congress for deliberation. There were nine chapters in this draft, namely, General Principles, Property Law, Contract Law, Personal Right Law, Marriage Law, Adoption Law, Inheritance Law, Torts Liabilities Law, and Choice of Law for Foreign-Related Civil Activities. See 新华网 [XinhuaNet.com], 民法草案首次提请人大常委会审议 [The Draft of the Civil Law Code First Submitted for NPC Standing Committee’s Review], available at [http://news.xinhuanet.com/newscenter/2002-12/23/content\\_667932.htm](http://news.xinhuanet.com/newscenter/2002-12/23/content_667932.htm) (last visited Oct. 18, 2009).

<sup>52</sup> 梁慧星, 民法总论 [LIANG HUIXING, FUNDAMENTALS OF CIVIL LAW] 19 (法律出版社 [Law Press] 1996).

<sup>53</sup> 梁慧星, 民法 [LIANG HUIXING, CIVIL LAW] 10 (四川人民出版社 [Sichuan People’s Press] 1998).

Within civil law legislation, the evolution of land law was particularly notable. The forms of the ownership of land in China at the time included state ownership and collective ownership. Before the reform of the economic system, the law stipulated that no organization or individual may appropriate, buy, sell, or lease land or otherwise engage in the transfer of land by unlawful means.<sup>54</sup> But in reality, Article 5 of the Law on Chinese-Foreign Equity Joint Ventures (1979) provided that the "right to the use of a site" could be a form of contribution to joint ventures. The law did not specify whether the "right to the use of a site" contributed to a joint venture was a "contractual right" or a "property right." However, since the term of a joint venture was generally ten to thirty years, or even fifty years or more for special projects, this "right to the use of a site" could be regarded as an early form of "land use rights" in the nature of "property rights."<sup>55</sup> Due to the subsequent diversification and extension in the terms of the use of land, China adjusted its land law and created "land use rights" based on the idea of the separation of the ownership right in land and the right to use the land.<sup>56</sup> Such an arrangement laid the institutional foundation for the subsequent rapid development of the Chinese real estate market.

With the implementation of the policy of "revitalizing the domestic economy, and opening up to the outside world," the production and exchange of goods inevitably became important drivers of the economy. As a result, contract law gradually came to play a leading role in economic transactions. In 1981, the Economic Contract Law was enacted, which represented a significant development in the field of Chinese contract law. Thereafter, given the differences which existed between foreign-related contracts and domestic contracts, China passed its Foreign-Related Economic Contract Law in order to promote foreign trade. In 1987, to advance the development of science and technology and to control increasingly significant technological development, technology transfer, technology consulting and technology services, China passed the Law on Technology Contracts. By then, China had essentially laid the foundations of its contract law.<sup>57</sup>

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<sup>54</sup> Constitution of 1982, *supra* note 40, art. 10.

<sup>55</sup> 中国物权法研究 [STUDIES IN CHINESE PROPERTY LAW] 599 (梁慧星 [Liang Huixing] ed., 法律出版社 [Law Press] 1998).

<sup>56</sup> 城镇国有土地使用权出让和转让暂行条例 [The Interim Regulations Concerning the Assignment and Transfer of the Right to the Use of the State-Owned Land in the Urban Areas] (promulgated by the St. Council, May 19, 1990, effective May 19, 1990) ST. COUNCIL GAZ. (P.R.C.), art. 1.

<sup>57</sup> 王利明、崔建远, 合同法新论·总则 [WANG LIMING & CUI JIANYUAN, CONTRACT LAW: GENERAL PROVISIONS] 94-95 (中国政法大学出版社 [China University of Political Science and Law Press] 1996).

For the purpose of fair adjudication of economic disputes, the Chinese courts at all levels began to set up economic tribunals in the second half of 1979. All intermediate courts (with the exception of some courts in remote areas) and 93% of lower courts had set up economic tribunals by April 1985.<sup>58</sup>

The emergence of the Chinese securities market was another notable economic development during this period. Starting in 1981, China promulgated several Regulations on the Treasury Bonds of the People's Republic of China in consecutive years and issued treasury bonds to the public. The purpose of the treasury bond issuances was to cut the financial deficit and to maintain fiscal balance. The treasury bonds were not transferable. The issuances of treasury bonds marked the reappearance of securities in China after three decades, and marked also the emergence of the modern Chinese securities market. In November 1984, the Shanghai Feiyue Audio Company issued public shares, which was the first public offering in China since the initiation of the Reform and Opening Up Policy. In September 1986, the Shanghai Trust Investment Company, which was affiliated with the Industrial and Commercial Bank of China, began to operate the first stock exchange counter in China. In December 1990, the Shanghai Stock Exchange was established. Soon after that, the Shenzhen Stock Exchange was established in July 1991. The Chinese securities market developed rapidly thereafter.<sup>59</sup>

The establishment of the intellectual property system was initiated at the end of the 1970s and started to develop with the implementation of the Reform and Opening Up Policy.<sup>60</sup> In 1979, the registration of trademarks was resumed and approximately 26,000 trademarks were registered in 1980 alone.<sup>61</sup> In 1984, the *Patent Law* was enacted. By April 1, 1985, the day on which the *Patent Law* came into effect, a total of 3,455 applications had been received, setting a new world record in patent history at the time, according to the World Intellectual Property Organization (WIPO).<sup>62</sup> The General Principles of the Civil Law for the first time stipulated that "[c]itizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the

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<sup>58</sup> See UNDERSTANDING ECONOMIC LAW, *supra* note 36, at 731.

<sup>59</sup> See 新证券法论 [SECURITIES LAW] 12-13 (周友苏 [Zhou Yousu] ed., 法律出版社 [Law Press] 2007).

<sup>60</sup> See LI SHUNDE, *supra* note 21, at 69.

<sup>61</sup> See 中国商标局 [Chinese Trademark Bureau], 历年商标注册申请及核准注册商标统计表 [Statistics for Trademark Applications and Trademarks Approved in Force over Previous Years], available at <http://sbj.saic.gov.cn/tjxx/TJTableLNSBTJ.asp?BM=09> (last visited Nov. 5, 2009).

<sup>62</sup> See 熊志云, 浅谈专利档案及其管理 [Xiong Zhiyun, Trademark Documents and Management], 档案学研究 [RESEARCH IN ARCHIVAL SCIENCE], No. 1 1988, at 58.

law.”<sup>63</sup> In 1990, the Copyright Law was passed, and in 1991, the Regulation for the Protection of Computer Software was adopted. With the Reform and Opening Up Policy, the integration of the Chinese intellectual property system into the global system proceeded at an unprecedented pace. As early as 1980, China had submitted its application for membership to WIPO and became a member of the organization that same year. In 1984, China also submitted its application to join the Paris Convention for the Protection of Industrial Property and has been a member since 1985. In 1989, China submitted its application to WIPO to join the Madrid Agreement Concerning the International Registration of Marks, and has been a member since 1989. In July 1992, China submitted applications to WIPO and the United Nations Educational, Scientific and Cultural Organization to join the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, respectively. In October of that year, China was accepted as a member of those two conventions.<sup>64</sup>

Before the reform of the economic system, China lacked a clear conception of modern environmental protection, as well as a system of environmental law.<sup>65</sup> However, contrary to common belief, China's approach was not one of “development first, environment later.” Rather, it adopted a new environmental policy around the same time as the Reform and Opening Up Policy, and maintained a heavy emphasis on environmental legislation even as it developed its economy. Numerous laws and regulations in this field were enacted during this period, including the Environmental Protection Law (For Trial Implementation) (1979), the Marine Environment Protection Law (1982), the Provisional Regulation on Pollutant Discharge Fee Collection (1982), the Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation (1983), the Regulations of the People's Republic of China on the Control over Prevention of Pollution by Vessels in Sea Waters (1983), the Law on Prevention and Control of Water Pollution (1984), and the Law on Prevention and Control of Atmospheric Pollution (1987). For all of this legislation, however, China's current environmental laws remain far from ideal, and these laws have not been enforced in a

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<sup>63</sup> 民法通则 [General Principles of Civil Law] (promulgated by the President of the People's Republic of China, Apr. 12, 1986, effective Jan. 1, 1987), art. 94.

<sup>64</sup> See INTELLECTUAL PROPERTY LAW, *supra* note 22, at 511, 518, 532, 538.

<sup>65</sup> 马骧聪、蔡守秋, 中国环境法制通论 [MA XIONGCONG & CAI SHOUQIU, GENERAL INTRODUCTION TO CHINESE ENVIRONMENTAL LAW] 42-43 (学苑出版社 [Xueyuan Press] 1990).

uniform and rigorous manner. These remain issues to be solved by Chinese environmental law.<sup>66</sup>

Generally, China made significant progress in the construction of its economic legal system during this stage. Firstly, the laws became integrated into the country's economy in all aspects. The legal system played an important role in protecting the rights of individuals in economic activities, maintaining economic order and promoting economic development. Secondly, legal ideology changed substantially during this period. The importance and necessity of the law in the economy was recognized and legal nihilism was abandoned. Thirdly, although certain economic laws remained general and incomplete, and their contents inconsistent with one another, the basic content and direction of the economic legal system were properly established. This foundation would promote the further development and reform of the Chinese economy.

### III. THE ECONOMIC LEGAL SYSTEM UNDER THE SOCIALIST MARKET ECONOMY SYSTEM (1992–2009)

In 1992, China proposed the establishment of a socialist market economy system, which had long been a goal of the country's reform.<sup>67</sup> In 1993, Article 15 of the Constitution was amended. The Article had formerly stated that "the country will implement a planned economy on the basis of socialist public ownership," and this was now amended to state that "the country will implement a socialist market economy."<sup>68</sup> In order to develop the socialist market economy, China comprehensively strengthened the construction of its economic legal system, which went through a significant expansion during this period.<sup>69</sup> This development was marked by the following trends: firstly, the legislation and standards set by the economic legal system were designed to focus on practicality, in order to reflect the practices and inherent requirements of China's market

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<sup>66</sup> See 李恒远、常纪文, 现状、问题与走向: 中国环境法治 30 年之评析 [Li Henyuan & Chang Jiwen, *Current Situation, Problems and Future: Thirty Years of Chinese Environmental Law*], in 中国环境法治 (2007 年卷) [CHINESE ENVIRONMENTAL LAW (2007)] 12–13 (法律出版社 [Law Press] 2008).

<sup>67</sup> See JIANG ZEMIN, *supra* note 32.

<sup>68</sup> Amendment to the Constitution 1993, *supra* note 42, art. 7.

<sup>69</sup> By March 2008, China had 229 currently effective laws in total, nearly 600 administrative regulations, and more than 7,000 local regulations, among which economic laws and regulations account for a large proportion. See 吴邦国, 在第十一届全国人民代表大会第一次会议上的《常务委员会工作报告》 [Wu Bangguo, Standing Committee Work Report at the First Session of the Eleventh National People's Congress] (2008), available at [http://www.jconline.cn/Contents/Channel\\_4095/2008/0321/74363/content\\_74363.htm](http://www.jconline.cn/Contents/Channel_4095/2008/0321/74363/content_74363.htm).



economy.<sup>70</sup> Secondly, an emphasis was placed on the democratization of the economic legal system. Numerous measures were taken to increase democracy within the legislative process, particularly after 2000. In the creation of several major economic laws, such as the country's property law, labor contract law and social insurance law, actors in relevant sectors and fields were asked to comment on the draft laws. These drafts were also published in order to solicit opinions from the public.<sup>71</sup> Thirdly, the economic legal system focused on making systematic changes. In 2001, China proposed the development of a "socialist legal system with Chinese characteristics" to be completed by 2010, which would include seven bodies of law, namely, the Constitution and relevant laws, civil and commercial law, administrative law, economic law, social law, criminal law, litigation and non-litigation procedural law.<sup>72</sup> Fourthly, the economic legal system was built with a focus on globalization. In particular, emphasis was placed on making domestic laws conform with international rules in the period immediately preceding and following China's accession to the World Trade Organization (WTO). For example, in order to join the WTO, China adopted, revised and abolished a large number of laws, administrative regulations, rules and other legal documents that were not in accordance with WTO rules and various other international obligations that the country had undertaken.<sup>73</sup>

One distinctive feature during this period was that theoretical studies of law began to have a direct and significant impact on the economic legal system. For example, the Chinese Academy of Social Sciences Institute of Law first put forward the theory that "a socialist market economy is an

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<sup>70</sup> E.g., the "CPC Central Committee's Decision on the Establishment of a Socialist Market Economic System" (1993) pointed out that great importance should be attached to the legal system, and to laws and regulations incompatible with the establishment of a socialist market, which should be abolished or amended. See 中共中央关于建立社会主义市场经济体制若干问题的决定(1993) [CPC Central Committee Decision on the Establishment of a Socialist Market Economic System (1993)], available at <http://www.china.com.cn/chinese/archive/131747.htm>.

<sup>71</sup> E.g., in 2005, the full version of the Draft Property Law was published. From July 10th to August 20th, citizens sent in 11,543 opinions, in the form of both online and written letters. The Standing Committees in twenty-six provinces (including autonomous regions and cities with provincial status), as well as fifteen large cities, forty-seven governmental agencies, sixteen large companies, twenty-two legal teaching and research institutions also expressed their views on the draft. See 全国人民代表大会法律委员会 [NAT'L PEOPLE'S CONG. LAW COMM.], 关于物权法(草案)修改情况的汇报 [Report on the Revision of the Draft Property Law] (Oct. 22, 2005), available at <http://www.cctv.com/news/china/20051022/100618.shtml>.

<sup>72</sup> See 李鹏, 在第九届全国人民代表大会第四次会议上的《常务委员会工作报告》 [Li Peng, Standing Committee Work Report at the Forth Session of the Ninth National People's Congress] (2001).

<sup>73</sup> By the end of 2001, China had formulated, revised and repealed about 1,150 laws in its process of legal reform. See 新华网 [XINHUANET], 履行入世承诺, 我国清理法规 1150 余件 [Reviewing 1150 Regulations to Fulfill Our Promise under WTO Laws], Dec. 28, 2001, available at [http://news.xinhuanet.com/fortune/2001-12/28/content\\_216380.htm](http://news.xinhuanet.com/fortune/2001-12/28/content_216380.htm) (last visited Oct. 18, 2009).

economy that is under the rule of law” in 1993, stating that China should establish a socialist market economic legal system. The Institute also detailed the ideologies and basic structure that the socialist market economic legal system should adopt.<sup>74</sup> This work provided an important theoretical basis as well as policy suggestions for the development of the economic legal system that China subsequently undertook. In another example, legal scholars proposed in 1995 the legislation of a nationwide property law, while scholars in civil law also drafted proposals for a property law.<sup>75</sup> The country’s Property Law was finally adopted in 2007, twelve years after these proposals were first made, with much effort and participation from academics.<sup>76</sup> As a third example, after China initiated the drafting of its Contract Law in 1993, scholars from twelve law schools around the country drafted proposals in 1995 which, after extensive discussion, served as the basis of the official draft prepared by the legislature and submitted to the Standing Committee of the National People’s Congress.<sup>77</sup> Since then, the field of Chinese legal theory has continued to draw from numerous legal theories and the experiences of legal construction from different jurisdictions (including those from outside the country).<sup>78</sup> This absorption of various theories and experiences has served as

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<sup>74</sup> 中国社会科学院法学研究所课题组, 建立社会主义市场经济法律体系的理论思考和对策建议 [Chinese Academy of Social Sciences, Institute of Law Research Group, *Theories and Policy Proposals for the Construction of a Socialist Market Economy Legal System*], 法学研究 [CHINESE JOURNAL OF LAW], No. 6, 1993, at 3.

<sup>75</sup> 中国社会科学院法学研究所课题组, 制定物权法的基本思路 [Chinese Academy of Social Sciences Institute of Law Research Group, *General Thinking on the Making of Property Law*], 法学研究 [CHINESE JOURNAL OF LAW], No. 3, 1995.

<sup>76</sup> See 中国物权法草案建议稿 [SUGGESTED DRAFT OF PROPERTY LAW OF CHINA] (梁慧星 [Liang Huixing] ed., 社会科学文献出版社 [Social Science Academic Press] 2000); 中国物权法草案建议稿及说明 [DRAFT OF PROPERTY LAW OF CHINA AND EXPLANATION] (王利明 [Wang Liming] ed., 中国法制出版社 [China Legal Press] 2001).

<sup>77</sup> See 合同法 [CONTRACT LAW] 10 (崔建远 [Cui Jianyuan], ed., 法律出版社 [Law Press] 2003).

<sup>78</sup> The “Chinese Journal of Law” is China’s most authoritative legal journal. Chang Peng’ao has compiled statistics on the citations of articles on civil law published in the “Chinese Journal of Law” in the thirty years from 1978 to 2007, which illustrate, to a certain extent, changes in Chinese legal research that reflect the influence of foreign theories. In civil law articles published in the “Chinese Journal of Law” between 1978–1986, a total of 127 citations were to the works of Marx and Engels, thirty-five to the works of Lenin, thirteen to Soviet sources, four to Yugoslav sources, eleven to Anglo-American legal sources, six to German sources, six to French sources, four to Japanese sources, fourteen to pre-1949 or Taiwan Province sources, and four to Roman legal literature. In the papers published in 1987–1999, 468 citations were to pre-1949 and Taiwan Province sources, 296 to Anglo-American law, 214 to Japanese sources, sixty-four to German sources, thirty-five to the works of Marx and Engels, thirty to Roman law, twenty to French sources, and twenty-seven to Soviet sources. In 2000–2007, 595 citations referred to pre-1949 Chinese sources of Taiwan Province sources, 585 to German sources, 290 to Anglo-American law, 225 to Roman Law, 190 to Japanese law, fifty-nine to French sources, and 113 from other countries (including Italy, the Netherlands, Russia, and Argentina). See 常鹏翱, 《法学研究》三十年: 民法学 [Chang Peng’ao,

one of the most powerful driving forces behind the development of the Chinese economic legal system.

During this period, China's public-owned economy continued to develop in accordance with the reform policy, but the traditional state-owned enterprise development policy of simply increasing the number and scale of enterprises was replaced by policies aimed at improving the quality of corporate governance and management. By the end of March 2009, there were 97,177,000 enterprises, of which 541,600 were state-owned enterprises.<sup>79</sup> State-owned enterprises accounted for only 5.57% of the total number of enterprises, but the operational mechanisms and corporate governance structures of such enterprises saw greater improvement during this stage than those of non-state-owned enterprises. In order to protect state assets and the state-owned economy's leading role in the national economy, and to promote the development of the socialist market economy, China adopted the State-Owned Assets Law in 2008. Along with the deepening of China's economic reform and the development of its market economy, the law increasingly warmed up towards the idea of a non-public ownership economy. With the Constitutional Amendment of 1999, the original provisions stipulating that "the private economy is a complement to the socialist public economy" were revised to state that "the non-public ownership economy is an important component of the socialist market economy."<sup>80</sup> The 2004 Constitutional Amendment also amended the original provision stating that "[t]he individual economy and private economy should be under guidance, supervision and management" to state that "the country encourages, supports and guides the development of the non-public ownership economy."<sup>81</sup> Abolishing or changing laws, regulations and policies limiting the development of the non-public economy became one of the key policies for stimulating the development of this sector.<sup>82</sup> With such welcoming laws and policies, China saw the rapid development of its private economy. By the end of

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*Thirty Years of the "Chinese Journal of Law": Civil Law Studies*, 法学研究 [CHINESE JOURNAL OF LAW], No. 3, 2008, at 19, 24, 31, 38.

<sup>79</sup> See 国家工商总局 [STATE ADMIN. OF INDUSTRY AND COM.], 统计分析发布: 2009 年一季度全国市场主体发展情况报告 [*Statistical Analysis: Report on the Main Development of National Economic Organizations in the First Quarter of 2009*] (May 11, 2009), available at [http://www.saic.gov.cn/zwgk/tjzl/zhtj/bgt/200905/t20090511\\_47153.html](http://www.saic.gov.cn/zwgk/tjzl/zhtj/bgt/200905/t20090511_47153.html) (last visited at Oct. 18, 2009).

<sup>80</sup> 1999 年宪法修正案 [Amendment to the Constitution 1999] (promulgated by the Nat'l People's Cong., Mar. 15, 1999, effective Mar. 15, 1999) NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 16.

<sup>81</sup> 2004 年宪法修正案 [Amendment to the Constitution 2004] (promulgated by the Nat'l People's Cong., Mar. 14, 2004, effective Mar. 14, 2004) NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 21.

<sup>82</sup> See 中共中央关于完善市场经济体制若干问题的决定 [CPC Central Committee Decision on Improving the Market Economy System] (Oct. 14, 2003), available at <http://www.china.com.cn/chinese/zhuanti/sljzsqh/426675.htm#1> (last visited Oct. 18, 2009).

March 2009, there were a total of approximately 6,642,700 private enterprises and 29,480,000 individual businesses.<sup>83</sup>

In the early stages of reform, there was a period of confusion in the area of Chinese enterprise legislation, but gradually two approaches to such legislation developed.<sup>84</sup> Under one approach, laws were enacted according to the different types of enterprise ownership. For example, in the cases of the Law on Industrial Enterprises Owned by the Whole People (1988), the Rural Collective Enterprises Regulation (1990), the Urban Collective Enterprises Regulation (1991), the Provisional Private Enterprises Regulation (1988), the Law on Chinese-Foreign Equity Joint Ventures (1979), the Foreign Enterprise Law (1986), the Law on Chinese-Foreign Contractual Joint Ventures (1988), all of these laws were formulated before the market economy policy.<sup>85</sup> Although they are still legally in force, the scope of application of these laws has been reduced.<sup>86</sup> Under the second approach, laws were created based on the legal forms of enterprises and investors' liability. Examples include the Company Law (1993), the Partnership Enterprise Law (1997), the Individually-Owned Enterprise Law (1999), and the Farmers Professional Cooperatives Law (2006). These laws were revised and improved along with the deepening of economic reform and an increased awareness of the function of enterprise laws.<sup>87</sup> They have since become the main legal norms governing the organization and operation of enterprises, and effectively promote the development of the economy and the flourishing of business.<sup>88</sup>

The enactment and revision of the Company Law is illustrative of the evolution in Chinese enterprise laws. After China's socialist economic transformation in 1956, the company as a corporate legal form disappeared for the following twenty-three years.<sup>89</sup> But after China enacted its

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<sup>83</sup> See STATE ADMIN. OF INDUSTRY AND COM., *supra* note 79.

<sup>84</sup> See 赵旭东, 企业与公司法纵论 [ZHAO XUDONG, BUSINESS AND COMPANY LAW] 61-65 (法律出版社 [Law Press] 2003).

<sup>85</sup> See 经济法 [ECONOMIC LAW] 162 (史际春 [Shi Jichun], ed., 中国人民大学出版社 [China Renmin University Press] 2005).

<sup>86</sup> E.g., transforming state-owned enterprises into companies in order to establish a modern enterprise system has been the main thrust of state-owned enterprise reform after 1992. See CPC Central Committee Decision on the Establishment of a Socialist Market Economic System, *supra* note 70. If state-owned enterprises were reorganized into corporations, the *Company Law* would apply.

<sup>87</sup> E.g., the *Company Law* and *Partnership Enterprise Law* were modified significantly in 2005 and 2007, respectively.

<sup>88</sup> As of the end of March 2009, there were 125,500 stock corporations, 6,336,700 limited liability companies, 123,100 partnership enterprises, 1,078,900 individual wholly-owned enterprises and 139,100 farmers' cooperatives. See STATE ADMIN. OF INDUSTRY AND COM., *supra* note 79.

<sup>89</sup> See 王保树、崔勤之, 中国公司法原理 [WANG BAOSHU & CUI QIUZHI, CHINA'S COMPANY LAW THEORY] 10-15 (社会科学文献出版社 [Social Science Academic Press] 2000). In fact, the word "company" did exist at that time, but had no strict legal definitions. Often, it was used to name

Reform and Opening Up Policy, a large number of “companies” emerged within this freer economic environment, particularly after China adopted the socialist market economy policy. Companies spread rapidly across the country, with their numbers increasing from about 480,000 in 1992 to over 1,000,000 by the end of 1993.<sup>90</sup> In order to regulate the form of enterprises and to safeguard the economic order, China formulated the Company Law in December 1993. However, with the continued development of economic reform and the improvement of the market economy system, it became clear that the Company Law could not fully meet the needs of the new situation. Various problems began to emerge as a result of this inadequacy: for example, conditions that were too stringent on the incorporation of companies, inadequate corporate governance in some companies, insufficient protection mechanisms for shareholders (especially minority shareholders), and the lack of liabilities and fiduciary duties for company directors, supervisors and management.<sup>91</sup> Thus, in 2005, China enacted major changes to its Company Law.<sup>92</sup>

After the adoption of the market economy system, the development of a basic civil and commercial law, as well as economic law, became China’s most pressing legislative task. With regards to transactional law, the formulation of contract law came as the first priority. Due to the existence of three separate contract laws, namely, the Economic Contract Law, the Foreign-Related Economic Contract Law and the Technology Contract Law, there were repeated, inconsistent and sometimes even contradictory provisions in these three laws, but no basic system governing all contracts, and no regulations for new and emerging forms of contract (such as the sale leaseback contract).<sup>93</sup> China therefore embarked on drawing up a new contract law in 1993, which underwent multiple drafts and revisions. In 1999, the Contract Law was promulgated, while the Economic Contract Law, the Foreign-Related Economic Contract Law and the

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those commercial enterprises that could not be called “factories,” such as department stores and public transport companies.

<sup>90</sup> See 全国人民代表大会法律委员会 [NAT’L PEOPLE’S CONG. LAW COMM.], 《关于〈公司法(草案)〉审议结果的报告》 [*Report on the Result of Deliberation on the Draft Company Law*] (Dec. 20, 1993).

<sup>91</sup> See 曹康泰, 在第十届全国人民代表大会第十四次会议上的《关于〈公司法(修订草案)〉的说明》 [Cao Kangtai, Speech at the Fourteenth Session of the Tenth National People’s Congress: Explanation on the Draft of the Revision of *Company Law*] (2005), available at <http://www.5izy.cn/articles/h000/h01/1143710658d1198.html> (last visited Oct. 18, 2009).

<sup>92</sup> There were 230 articles in the *Company Law* at its adoption in 1993. In the National People’s Congress amendment to the law in 2005, forty-six of the original articles in the law were deleted, forty-one new articles were inserted, and 137 articles were revised. See 周友苏, 新公司法论 [ZHOU YOUSU, NEW SURVEY ON CORPORATION LAW] 3 (法律出版社 [Law Press] 2006).

<sup>93</sup> See CONTRACT LAW, *supra* note 77, at 10.

Technology Contract Law were abolished.<sup>94</sup> The Contract Law provides a basic set of rules for contracts in its “General Provisions,” and specific rules for fifteen types of commonly-seen contracts in its “Specific Provisions.”<sup>95</sup> This law comprehensively and accurately reflects the essential requirements of the market economy, establishing a complete structure for a contracts system and advanced legislation techniques.<sup>96</sup> Some scholars believe that the Contract Law is one of the best examples of civil legislation in China.<sup>97</sup>

As the foundation of the country’s market economy, China’s property system also became one of the main focuses for legislative changes during this period. In order to regulate the utilization of land and to promote the development of real estate, China formulated the Urban Real Estate Administration Law in 1994, made revisions to the Land Administration Law in 1998, and adopted the Rural Land Contracting Law in 2002. The system for the legal protection of personal property was consistently improved: in 2004, Article 13 of the Constitution was amended from stating that “the country protects the lawfully earned income, saving, housing and other property rights of citizens” to stating that “the property rights of citizens are inviolable.”<sup>98</sup> The individual’s legal right to private property is enshrined in the Constitution, and the property protected is no longer limited only to the materials necessary for subsistence, but also those needed for production. It became widely recognized in China that under the conditions of a socialist market economy, all market players should work together and operate on equal footing. They should all enjoy the same rights, observe the same rules and bear the same responsibilities.<sup>99</sup> Thus, as the country’s basic property protection law, the Property Law established the principle of equal protection of property rights, stating that “[t]he state adopts a socialist market economy, and guarantees equal legal status and the right to develop to all market players,” and that “[s]tate, collective and private property rights, as well as the property rights of other rights holders, are protected by law, which no unit or individual

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<sup>94</sup> 合同法 [Contract Law] (promulgated by the Nat’l People’s Cong., Mar. 15, 1999, effective Oct. 1, 1999) NAT’L PEOPLE’S CONG. GAZ. (P.R.C.), art. 428.

<sup>95</sup> *Id.*

<sup>96</sup> See CONTRACT LAW, *supra* note 77, at 10–11.

<sup>97</sup> 韩世远, 合同法总论 [HAN SHIYUAN, CONTRACT LAW] 27 (法律出版社 [Law Press] 2008).

<sup>98</sup> Amendment to the Constitution 2004, *supra* note 81, art. 24.

<sup>99</sup> 王兆国, 在第十届全国人民代表大会第五次会议上的关于《关于〈中华人民共和国物权法(草案)〉的说明》 [Wang Zhaoguo, Speech at the Fifth Session of the Tenth National People’s Congress: Explanation on the Draft of the Property Law of the PRC] (Mar. 8, 2007), at section 3(4), available at [www.gov.cn/2007lh/content\\_545775.htm](http://www.gov.cn/2007lh/content_545775.htm) (last visited Oct. 18, 2008).

shall violate.”<sup>100</sup> The principle confirmed in the Property Law that public and private properties are “both recognized and equally protected” was a milestone in China’s legislative history.<sup>101</sup>

After the establishment of the market economy system, China further reinforced its intellectual property legislation, which had significant social and economic impact. For example, in 1993, the year that China made its first revisions to the Trademark Law, the number of trademark applications swelled to over 130,000.<sup>102</sup> Since 2002, the annual number of trademark applications has grown by almost 100,000 applications per year, making China the world leader in this respect for the past seven years.<sup>103</sup> According to the latest statistics released by the National Intellectual Property Bureau, by the end of July 2009, China had accepted 5,341,000 patent applications, of which approximately 4,457,000 were domestic applications, and 884,000 of which were foreign applications.<sup>104</sup> China also continues to actively participate in numerous international conventions relating to intellectual property rights: in 1994, the country joined the Patent Cooperation Treaty, and in 1995, it became a member of the Protocol on Madrid Agreement for International Registration of Trademarks. In 2001, China formally signed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). In addition, China has continuously strengthened its efforts in the enforcement of intellectual property rights. For example, in the area of copyright protection, copyright administrative departments confiscated a total of 350,000,000 pirated copies of copyright-infringing materials between the years of 1995 to 2004. During that period, 51,368 tort cases were accepted for hearing by courts, of which 49,983 were decided.<sup>105</sup> To improve the quality of the trials in intellectual property rights cases, China has placed an emphasis on the consultation of intellectual property rights experts in particularly technical and difficult cases. By December 2006, there were sixty-two intermediate courts empowered to deal with

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<sup>100</sup> 物权法 [Property Law] (promulgated by the Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007), arts. 3, 4.

<sup>101</sup> 孙宪忠, 中国物权法总论 [SUN XIANZHONG, CHINESE PROPERTY LAW] 15–17 (法律出版社 [Law Press] 2009).

<sup>102</sup> See 曹中强、黄晖, 中国商标报告(第四卷) [CAO ZHONGQIANG & HUANG HUI, CHINA TRADEMARK REPORT VOL. IV] 300 (中信出版社 [Citic Press] 2005).

<sup>103</sup> See 中国商标局 [Chinese Trademark Bureau], 商标申请与注册概况表 [Table of Trademark Applications and Registration], available at <http://sbj.saic.gov.cn/tjxx/tjxx.asp> (last visited Oct. 18, 2009).

<sup>104</sup> See statistics on the website of 国家知识产权局 [State Intellectual Property Office], <http://www.sipo.gov.cn/sipo2008/tjxx> (last visited Oct. 18, 2009).

<sup>105</sup> See 国务院新闻办公室, 中国知识产权的新进展(白皮书)[STATE COUNCIL INFO. OFFICE, WHITE PAPER ON NEW PROGRESS IN CHINA’S INTELLECTUAL PROPERTY] (2005).

patent disputes in the first instance, thirty-one courts for the patent disputes in the second instance, forty-three intermediate courts for integrated circuit layout and design cases in the first instance, and thirty-eight intermediate courts for new plant variety cases in the first instance.<sup>106</sup>

During this period, China paid heightened attention to the legal structures underpinning its market system, and in particular to legislation governing financial markets. In accordance with the development of financial market conditions, China successively enacted the People's Bank of China Law (1995), Commercial Bank Law (1995), Negotiable Instruments Law (1995), Insurance Law (1995), Securities Law (1998), and Trust Law (2001). The enactment of these laws provided basic rules for the maintenance of order and the effective regulation of the financial market. Existing financial laws continued to be frequently modified with the rapid development of China's financial markets, in order to adapt to ongoing changes.<sup>107</sup> As a result, the adoption and implementation of such laws protected and promoted the development of the financial markets. By the end of September 2006, there were 1396 listed companies in mainland China, with a security market value of over RMB 5.2 trillion. The number of accounts opened by investors totaled over 76 million, making China the third-largest securities market in Asia.<sup>108</sup>

Since 1992, China's financial regulatory system has undergone frequent changes. Following the State Council's Decision on Financial System Reform of 1993, China established an independent macro-control system for the People's Bank of China, as well as a financial institution system separating policy-oriented finance and commercial finance, where state-owned commercial banks coexist with multiple financial institutions. Prior to 1994, the People's Bank of China served as the sole regulatory body for financial institutions and financial markets (with the exception of the China Securities Regulatory Commission, which was partly in charge of securities market regulation).<sup>109</sup> In 1998, China made significant alterations to its finance regulatory system, one of which was to begin constructing separate sub-sector regulatory regimes. The

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<sup>106</sup> See 中国知识产权保护体系改革研究 [CHINA'S IPR PROTECTION SYSTEM REFORM] 227-28 (中国社会科学院知识产权中心 [Chinese Academy of Social Sciences Intellectual Property Center] ed., 知识产权出版社 [Intellectual Property Press] 2008).

<sup>107</sup> See, e.g., 证券法 [Securities Law] (2005); 保险法 [Insurance Law] (2002); 保险法 [Insurance Law] (2009); 中国人民银行法 [Law on the People's Bank of China] (2003); and 商业银行法 [Commercial Bank Law] (2003), which all underwent substantial changes.

<sup>108</sup> 陈洁, 证券法 [CHEN JIE, SECURITIES LAW] 25 (社会科学文献出版社 [Social Science Academic Press] 2006).

<sup>109</sup> 中国金融法治报告 (2009) [Chinese Financial Law Report 2009] 5 (胡滨、全先银 [Hu Bin, Quan Xianyin] eds., 社会科学文献出版社 [Social Science Academic Press] 2009).



People's Bank of China transferred its authority with regards to the securities market to the China Securities Regulatory Commission, and its supervision of the insurance market to the China Insurance Regulatory Commission, thus creating the basis for separate financial regulatory systems. In 2003, China reformed its financial system yet again by revising the Law on the People's Bank of China, which provides that the Bank's role is to ensure the formulation and implementation of national monetary policy, to establish and improve the Central Bank macro-control regulatory system, and to maintain financial stability.<sup>110</sup> At the same time, the government enacted the Banking Supervision Law, which clarified the authority of the banking regulatory body to monitor and regulate banking institutions and their business operations.<sup>111</sup>

The State Council's Decision on the Implementation of the Revenue-Sharing System of the Fiscal System was enacted in 1993 with regard to changes in China's taxation system. In accordance with the principle of combining financial revenue and financial expenditure, taxes were classified into three categories: central tax, local tax and shared tax. In addition, separate central and local taxation systems were established, with separate collection agencies for the two systems. Prior to the 2007 adoption of the new Enterprise Income Tax Law, estimates based on surveys of sources of corporate income tax showed that domestically funded enterprises had an average actual tax rate of approximately 25%, a figure which was 10% higher than foreign capital enterprises with a tax rate of approximately 15%. As such, there was high demand for a uniform tax rate in order to foster fair competition.<sup>112</sup> As a result of the enactment of the new Enterprise Income Tax Law in 2007, the enterprise income tax rate was uniformly set at 25% to advance equal treatment and fair competition. In addition, China revised the Tax Collection and Administration Law in 2001, which further improved the tax management system.

One legislative milestone during this phase was the enactment of the Anti-Monopoly Law. Before that, there were various rules prohibiting monopoly in the Anti-Unfair Competition Law (1993), the Price Law (1997), the Bidding Law (1999), and the Telecommunications Regulation (2000), but these rules proved insufficient in dealing with the changes in

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<sup>110</sup> 中国人民银行法 [Law on the People's Bank of China] (promulgated by the Nat'l People's Cong., Mar. 18, 1995, effective Mar. 18, 1995) NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 1.

<sup>111</sup> 中华人民共和国银行业监督管理法 [Banking Supervision Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 27, 2003, effective Feb. 1, 2004) STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), art. 1.

<sup>112</sup> 金人庆, 在第十届全国人民代表大会第五次会议上的《关于〈中华人民共和国企业所得税法(草案)〉的说明》 [Jin Renqing, Speech at the Fifth Session of the Tenth National People's Congress: Explanation on the Draft Enterprise Income Tax Law] (2007), § 1, *available at* <http://www.law-lib.com/fzdt/newshtml/20/20070308112435.htm> (last visited Nov. 4, 2009).

the socialist market economy and meeting the growing demands of international competition.<sup>113</sup> Although there were rules meant to curb monopolistic behavior dispersed throughout various laws and regulations, without a separate anti-monopoly law operating as a complete and uniform system of administrative sanctions, such scattered rules could not effectively combat anti-competitive behavior. These rules ultimately did not serve their purposes well, due to the lack of an independent and authoritative enforcement agency, amongst other reasons.<sup>114</sup> After over ten years of research and repeated rounds of revisions, China enacted the Anti-Monopoly Law in 2007, addressing issues such as monopoly agreements, abuses of dominant market positions, abuses of administrative power to eliminate or restrict competition, and the investigation of suspected monopolistic conduct. The enactment of the Anti-Monopoly Law had far-reaching importance in preventing and restraining monopolistic behavior, protecting fair competition in the market, enhancing economic efficiency, safeguarding the interests of consumers and the general public, and promoting the healthy development of the socialist market economy.

China has continued to pursue economic development while advancing the notion of building a harmonious society according to the principles of democracy and rule of law, fairness and justice, honesty and friendliness, dynamism, safety and good order, and coexistence between mankind and nature.<sup>115</sup> As such, China's economic legal system has placed a strong emphasis on promoting intrapersonal harmony, and on harmony between nature and mankind. Moreover, the government has taken into account the growing income disparity brought by the country's rapid economic growth. Thus, the government has attempted to balance the different interests of the people and deal adequately with potential social conflicts in drafting economic legislation. Statistics show that in the twelve years between 1995 and 2006, the number of labor dispute cases in China multiplied by approximately thirteen times; in particular, the figure for collective labor disputes grew fivefold.<sup>116</sup> Because emphasis

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<sup>113</sup> 曹康泰, 在第十届全国人民代表大会常务委员会第二十二次会议上做的《〈反垄断法(草案)〉说明》[Cao Kangtai, Speech at the Standing Committee of the Tenth National People's Congress: Explanation on the Draft Anti-Monopoly Law] (2006), *available at* [http://www.npc.gov.cn/wxzl/gongbao/2007-10/09/content\\_5374671.htm](http://www.npc.gov.cn/wxzl/gongbao/2007-10/09/content_5374671.htm) (last visited Nov. 4, 2009).

<sup>114</sup> See 王晓晔, 竞争法学 [WANG XIAOYE, COMPETITION LAW] 195-97 (社会科学文献出版社 [Social Science Academic Press] 2007).

<sup>115</sup> See 中国共产党中央委员会, 中共中央关于构建社会主义和谐社会若干重大问题的决定 [CPC CENT. COMM., DECISION ON ESTABLISHING A SOCIALIST HARMONIOUS SOCIETY] (2006), *available at* [http://news.xinhuanet.com/politics/2006-10/18/content\\_5218639.htm](http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm) (last visited Nov. 4, 2009).

<sup>116</sup> 全国人大法律委员会主任委员, 解读劳动合同法 [CHAIRMAN OF THE LAW COMM. OF THE NAT'L PEOPLE'S CONG., INTERPRETATION OF THE LABOR CONTRACT LAW] (2007), *available at* <http://www.xinhuanet.com/zhibo/20070723/wz.htm> (last visited Nov. 4, 2009).

has long been placed on the speed of economic growth, social legislation in China has lagged behind economic legislation for the past two decades.<sup>117</sup> However, since the notion of constructing a socialist harmonious society was first proposed in 2006,<sup>118</sup> China has reinforced legislation in the areas of labor relations and social security, by enacting and implementing the Labor Contract Law (2007), the Law on Employment Promotion (2007), the Law on Labor Dispute Mediation and Arbitration (2007), the Regulations on Paid Annual Leave of Workers (2007), and the Regulations on Labor Contract Law Enforcement (2008). These laws and regulations provide rules for the effective resolution of labor disputes. After the promulgation of the Labor Contract Law in 2008, the number of labor dispute cases submitted for arbitration increased by more than 98% compared with the number filed in 2007; these cases involved over 1.21 million workers.<sup>119</sup> In 2008, courts at all levels handled as many as 286,000 labor cases, 93.9% more than the number of cases handled in 2007.<sup>120</sup>

China has not neglected its efforts in environmental protection while developing its market economy, and has enacted a number of environmental laws and regulations such as the Law on the Prevention and Control of Atmospheric Pollution (as amended in 1995 and 2000), Law on Prevention of Environmental Pollution Caused by Solid Waste (as amended in 2004), Law on Prevention and Control of Environmental Noise Pollution (1996), Law on Anti-Desertification (2001), Law on Environmental Impact Assessment (2002), Law on the Promotion of Cleaner Production (2002), and the Law on Water Pollution Prevention and Control (as amended in 2008). Moreover, the country has established a relatively comprehensive legal system for environmental protection. With the latest scientific developments serving as a guide, China will seek to further balance the demands of both economic development and environmental protection, and strive to build an ecological and environment-friendly society.<sup>121</sup>

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<sup>117</sup> 史探径, 社会法学 [SHI TANJING, SOCIAL LAW] 35 (中国社会保障出版社 [China Labor and Social Security Press] 2007).

<sup>118</sup> See CPC CENT. COMM., *supra* note 115.

<sup>119</sup> 人力资源社会保障部、国家统计局, 2008年人力资源和社会保障失业发展统计公报 (DEPT. OF HUM. RES. AND SOC. SEC. & NAT'L BUREAU OF STAT., STATISTICAL BULLETIN OF THE DEVELOPMENT OF HUMAN RESOURCES AND SOCIAL SECURITY IN 2008) (May 19, 2009), available at [http://www.stats.gov.cn/tjgb/qtjgb/qgqtjgb/t20090519\\_402559984.htm](http://www.stats.gov.cn/tjgb/qtjgb/qgqtjgb/t20090519_402559984.htm) (last visited Oct. 18, 2009).

<sup>120</sup> 王胜俊, 2008年最高人民法院工作报告 [WANG SHENGJUN, SUPREME PEOPLE'S COURT WORK REPORT 2008] (2009).

<sup>121</sup> See 蔡守秋、王欢欢, 论加强环境法治文化建设的重要性和迫切性 [Cai Shouqiu & Wang Huanhuan, *The Importance and Urgency of Strengthening the Foundations of Environmental Law*], in 中国环境法治 (2007年卷) [CHINESE ENVIRONMENTAL LAW (2007)] 27-33 (法律出版社 [Law Press] 2008).

Despite all the ups and downs experienced over the past six decades in the construction of China's economic legal system, the overall trend is a positive one, pointing towards progress and prosperity.