

A Great Leap Forward: How the Private Sector Promotion Law Reshaped China's Property Rights Protection Framework

Qiye XU¹

Abstract

The Private Sector Promotion Law of the People's Republic of China (2024) represents a landmark in the institutionalization of the developmental rule of law and the transformation of state–market relations in China. This article explores the legal philosophy, normative design, and regulatory mechanisms embedded in the Law, arguing that it constitutes not merely a policy formalization but a structural reform aimed at embedding the private economy within the constitutional order. Through a systematic examination of the Law's principles equal protection, fair competition, and government accountability—the study demonstrates how legislative rationality reshapes the traditional dynamics between administrative power and private autonomy. The Law establishes a dual-function mechanism: it enhances substantive legal security for private entities while simultaneously delineating the administrative boundaries of state intervention. By anchoring “promotion” in the language of rights and duties, the Law redefines the relationship between development and regulation, converting the protection of private enterprises from a discretionary administrative policy into a legally enforceable guarantee. Moreover, its expressive and normative functions jointly promote public confidence, correct ideological prejudice against private capital, and foster a more predictable business environment under the rule of law. The article concludes that the Private Sector Promotion Law signals a paradigmatic shift from policy-based governance to rule-based governance, embodying China's evolving model of law-led economic modernization.

Key words

Private Sector Promotion Law of China; Property Rights Protection in China; Administrative Boundaries in China

¹ Faculty of Law, Macau University of Science and Technology.

Introduction

Since the founding of the People's Republic of China, the identity and status of the private enterprises have undergone multiple transformations, evolving from a target of socialist transformation to a suppressed entity, and subsequently to one that is nurtured and encouraged. In the contemporary context of China's economic system reform and the progressive development of the socialist market economy, the private economy has emerged as a pivotal force driving the nation's rapid economic advancement. It contributes over 50% of tax revenue, more than 60% of the Gross Domestic Product (GDP), in excess of 70% of technological innovation achievements, over 80% of urban labor employment, and accounts for more than 90% of the total number of enterprises.² Consequently, it has become a vital new force in advancing Chinese modernization. In July 2023, the "Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Growth and Expansion of the Private Economy" were issued. In October 2024, the Ministry of Justice and the National Development and Reform Commission published the "Law of the People's Republic of China on the Promotion of the Private Economy" on their respective portals to solicit public feedback. Subsequently, in March 2025, the "Report on the Work of the State Council in 2025" proposed to solidly implement policies and measures for promoting the development of the private economy, effectively protect the legitimate rights and interests of private enterprises and entrepreneurs in accordance with the law, and encourage qualified private enterprises to establish and improve modern enterprise systems with Chinese characteristics. These developments underscore the state's emphasis on private enterprises and the private economy. Private enterprises, serving as the primary vehicle of the private economy, constitute a significant force in economic and social development. To broadly convey the central government's commitment to fostering a supportive environment for private enterprise growth, President Xi Jinping has repeatedly stated during dialogues with private entrepreneurs that "private entrepreneurs are our own people."³

Currently, China has established a largely comprehensive legal framework for protecting the lawful rights of private enterprises. A legal system for the protection of property rights has been preliminarily established, built upon the "Constitution of the

² China Daily (中国日报网), "56789': The private sector has become a driving force in advancing Chinese-style modernisation." <<http://ex.chinadaily.com.cn/exchange/partners/82/rss/channel/cn/columns/h72unc/stories/WS64ba3e82a3109d7585e45ecf.html>> accessed 10 October 2025.

³ Xi Jinping, 'Speech at the Symposium with Private Enterprises (在民营企业座谈会上的讲话)' (Beijing, 2 November 2018) People's Daily (人民日报).

People's Republic of China" as its foundation, supported by legal norms such as the "Civil Code of the People's Republic of China," the "Company Law of the People's Republic of China," the "Partnership Enterprise Law of the People's Republic of China," and the suite of intellectual property laws, and supplemented by laws including the "Law of the People's Republic of China on the Promotion of Small and

Medium-Sized Enterprises," as well as numerous regulatory documents such as the "Opinions of the General Office of the State Council on Further Optimizing the Business Environment and Reducing Institutional Transaction Costs for Market Entities" and the "Opinions of the Central Committee of the Communist Party of China and the State Council on Improving the Property Rights Protection System and Protecting Property Rights in Accordance with the Law." An institutional framework for property rights protection has thus taken initial shape. The "Constitution" stipulates that "Individual, private and other non-public sectors of the economy that operate within the limits prescribed by law are major components of the socialist market economy. The state protects the lawful rights and interests of the individual, private and other non-public sectors of the economy."⁴ Furthermore, it declares that "The lawful private property of citizens is inviolable. The state protects the right of citizens to own private property and the right to inherit private property in accordance with the law. The state may, in the public interest and in accordance with the law, expropriate or requisition private property of citizens and pay compensation."⁵ The "Civil Code" mandates that "The state practices the socialist market economy to ensure the equal legal status and rights to development of all market entities," and that "The property rights of the state, the collective, the individual, and other right holders are equally protected by law, and no organization or individual may infringe upon them."⁶

Decades ago, the Chinese scholar already recognized that public power is a double-edged sword: wielded properly, it becomes a sharp tool for protecting property rights; conversely, when abused, it may become the greatest threat to property rights. Therefore, while serving as a protector of property rights, the government must be subject to adequate constraints to prevent coercive power and expropriation. In an orderly economy, protecting property rights is the government's responsibility.⁷ However, in practice, certain shortcomings persist. Precisely because the existing

⁴ Constitution of the People's Republic of China 2018, Art 11.

⁵ Constitution 2018, Art 13.

⁶ Civil Code of the People's Republic of China 2020, Art 206.

⁷ See Lyu Zhiwang, 'A Literature Review on Property Rights Protection and Enforcement (一个关于产权保护和实施的文献评述)' (2003) 1 Jiangsu Social Sciences (江苏社会科学).

protections sometimes lack specificity and direct targeting, private enterprises in China may still encounter inequitable law enforcement practices, restricted market access in certain sectors, unequal financing costs, and other challenges during their operations. To address these issues, the Central Government of China has resolutely embarked on the formulation of the "Private Sector Promotion Law" and enacted a series of supporting regulations to facilitate its effective implementation. This approach, adopted during a period of economic slowdown, has helped to restore operational and investment confidence among China's private enterprises. It serves as a crucial reminder to local governments and various market actors of the imperative to respect the legitimate rights and interests of private enterprises. Moreover, a suite of measures focusing on rights protection, innovation incentives, and investment and financing facilitation is heralding a new chapter for the future of private enterprises in China, unveiling a distinct era tailored for their growth and contribution.

Structural Arrangement and Key Functions of the Private Sector Promotion Law

The structural arrangement of the Private Sector Promotion Law centers on the property rights system, directly confronting historical issues in the protection of China's private economy. Its functions encompass both normative and expressive dimensions: it alters behavior and redistributes interests through mandatory norms, while simultaneously reshaping social consensus through symbolic expression. This legislation not only reflects China's deepening understanding of the market economy system but also demonstrates the government's firm resolve to foster the development of the private economy through the rule of law.

1. The Private Sector Promotion Law as a Property Rights Institution

As a significant component of China's legal development, the structural arrangement and functional orientation of the Private Sector Promotion Law reflect not only the state's high regard for the private economy but also a profound comprehension of the refinement of the market economy system. Enacted in 2025, the Private Sector Promotion Law spans multiple domains in its content, including civil, commercial, economic regulation, criminal, and administrative law, incorporating both substantive and procedural norms. This cross-sectoral, comprehensive legislative design showcases the Chinese government's precise grasp of the multidimensional legal support required for the efficient development of the private economy. As a civil law country, China, drawing upon the traditions of the civil law system, features legal scholars who are typically accustomed to defining laws accurately based on the scope of their regulatory content (e.g., Civil Law, Company Law, Civil Procedure Law).

However, the organization of content within the Private Sector Promotion Law makes it challenging to provide a very precise definition of its legal nature.

Here, the perspective of law and economics provides an answer. Institutional economists Acemoglu and Johnson categorize institutions in institutional economics into two types: the first are property rights institutions, designed to protect citizens from expropriation by the government; the second are contracting institutions, designed to ensure the effective operation of contracts among citizens.⁸ From a doctrinal standpoint, the Private Sector Promotion Law functions as a quasi-constitutional economic law, bridging the divide between public and private law domains by constitutionalizing the state's duty of protection and equal treatment. If we employ the lens of property rights institutions versus contracting institutions to analyze the Private Sector Promotion Law, we can observe that its structural arrangement significantly emphasizes property rights institutions. This orientation is not accidental but rather a direct response to China's long-standing issues of insufficient property rights protection.

For a period in the past, deficiencies in China's property rights protection system created opportunities for rent-seeking and rent extraction by power holders. Over the years, scholarly and practical circles have continuously proposed strategies to enhance the effectiveness of property rights protection. Issues ranging from profit-driven law enforcement, campaign-style law enforcement, and inappropriate government interference in private enterprise operations, to the long-criticized problem of "ownership discrimination" (where private enterprises face market access restrictions in certain industries, higher financing costs compared to state-owned enterprises, and a tendency for government tenders to favor state-backed companies) clearly indicate that property rights have consistently been the most prominent and crucial issue in the protection of China's private economy. Property security is a prerequisite for property owners' survival, investment, and transactions. Only when various factors in the market are efficiently mobilized can the economy achieve development. Chinese legal scholars and economists have recognized that more complete protection of property rights leads to greater exclusivity of those rights, stronger economic incentives, and fuller realization of the economic functions of property. They have called for China to promptly improve the property rights protection system for private enterprises.⁹

Observing from an institutional perspective, it becomes evident that the Private Sector Promotion Law accurately recognizes the importance of property rights protection. The vast majority of its content constitutes property rights institutions. Most evidently, provisions such as the expropriation and requisition of property, Article 61 concerning

⁸ See Daron Acemoglu & Simon Johnson, 'Unbundling Institutions' (2005) 113 *Journal of Political Economy* 949.

⁹ Zhou Linbin and Li Shenglan, 'Preliminary Discussion on the Legal Protection of Property Rights of Private Enterprises in China: A Law and Economics Perspective (我国民营企业产权法律保护思路刍议——一种法律经济学的观点)' (2003) 2 *Journal of Institutional Economics (制度经济学研究)* 34, 50.

the seizure of involved property,¹⁰ Article 62 concerning handling economic cases,¹¹ and Article 63 concerning cross-jurisdictional law enforcement,¹² within the dedicated "Rights Protection" chapter are all designed to prevent infringement of private rights by public power. In contrast, the arrangements for contracting institutions are fewer in number and more scattered. Within the "Rights Protection" chapter, the Private Sector Promotion Law contains numerous provisions addressing improper infringement of the property rights security of private enterprises and entrepreneurs by public power, directly responding to the issue of profit-driven law enforcement; it imposes restrictions on illegal acts such as "seizure, detention, and freezing"; and requires strict delineation of the legal property boundaries between enterprises and their owners. Furthermore, content related to property development rights, including provisions concerning equal access to and use of production factors, and equal rights in investment and financing,¹³ also fall within the broad category of property rights institutions. As an organic supplement to China's property rights system, the Private Sector Promotion Law effectively addresses the property rights protection problems that indeed existed in China's past.¹⁴

Protecting property rights entails both benefits and costs. While enhanced property rights protection may temporarily harm social welfare if costs outweigh benefits in the short term, its positive impact on the economy and society will inevitably surpass its costs in the long run.¹⁵ This approach of examining the Private Sector Promotion Law through the lens of property rights is highly necessary. It not only helps us understand the institutional arrangement of the Law more intuitively but also aids in comprehending China's approach to understanding the market economy and the government's determination to firmly protect and promote the development of the private economy from all fronts.

2. Key Functions of the Private Sector Promotion Law

When assessing the effectiveness of laws and even social norms, law and economics typically considers two effects simultaneously: The first is the actual effect of the norm, i.e., how people's material interests are altered due to the norm's coercive nature. The second is the symbolic or expressive function of the norm. The law guides and coordinates human activity by shaping conceptions and forming a certain social

¹⁰ Private Sector Promotion Law of the People's Republic of China, Art 61.

¹¹ Private Sector Promotion Law, Art 62.

¹² Private Sector Promotion Law, Art 63.

¹³ Private Sector Promotion Law, Art 24.

¹⁴ Lu Xianxiang, 'Exploring the Development of China's Private Economy from Three Institutional Dimensions (从三个制度维度探讨我国民营经济发展)' (2019) 8 *Academics in China (学术界)* 60, 61.

¹⁵ Lu Xianxiang and Teng Yubing, 'Property Rights Protection and Its Economic Performance: A Discussion on the Quantitative Evolution of Property Rights Protection and the Essence of the China Puzzle (产权保护及其经济绩效——兼论产权保护量化演变和“中国之谜”的实质)' (2020) 11 *Economic Dynamics (经济动态)* 50, 66.

consensus, which is also one of its important functions. These two functions complement each other and together constitute the core of legal efficacy.

The Normative Function of the Private Sector Promotion Law

Empirical research analysis suggests that due to imperfections in the property rights system, political connections are prevalent among private enterprises in China. To protect or realize the value of their property rights, maintaining good relationships with the government has become a pathway for enterprises to seek protection through informal institutions.¹⁶ Some private enterprises might even transfer partial equity to state-owned enterprises as a means of seeking protection.¹⁷ To change this situation, the Private Sector Promotion Law explicitly articulates from the outset that property rights protection is a core legislative objective. Specifically, the law is formulated to optimize the development environment for the private economy, ensure fair competition, and promote its healthy growth. It identifies "equal treatment, fair competition, equal protection, and common development" as the four fundamental principles for safeguarding the development of the private economy.

The draft law is divided into nine chapters: General Provisions, Fair Competition, Promotion of Investment and Financing, Scientific and Technological Innovation, Standardized Operations, Service Guarantees, Protection of Rights and Interests, Legal Liability, and Supplementary Provisions. Notably, Chapter VII is exclusively dedicated to the "Protection of Rights and Interests." It stipulates that "the personal rights, property rights, operational autonomy, and other lawful rights and interests of private economic organizations and their operators are protected by law, and no unit or individual may infringe upon them." Within this chapter, directly addressing the current situation where private enterprise property faces infringement, the draft law confronts objectively existing issues such as problematic administrative law enforcement and administrative breaches of contract – instances where public power improperly infringes upon the property rights of private enterprises. It mandates that state organs must investigate cases, and implement measures such as sealing up, seizing, or freezing the property of private enterprises in accordance with relevant laws and administrative regulations. This serves as a direct response to the widespread problems of profit-driven law enforcement, selective law enforcement, and campaign-style law enforcement observed across various regions in China. Furthermore, the Private Sector Promotion Law addresses the practice, observed in reality, of coercively restricting the personal freedom of entrepreneurs under the pretext of economic disputes—for example, prolonged deprivation of personal freedom

¹⁶ Zhang Shuo and Song Zengji, 'Research on the Impact of State-Owned Shareholding on the Level of Private Property Rights Protection (国有股权对私有产权保护水平的影响研究)' (2016) 12 Chinese Journal of Management (管理学报) 1873, 1881.

¹⁷ Li Wengui and Yu Minggui, 'Property Rights Protection and the Nationalization of Private Enterprises (国有股权对私有产权保护水平的影响研究)' (2017) 4 Economics (经济学) 1342, 1344.

under the guise of "assisting in investigations." It emphasizes that any measures restricting personal freedom must be implemented strictly in accordance with the law.

Measures for protecting the property rights of private enterprises are not confined solely to the "Protection of Rights and Interests" chapter. The draft's Chapter II, "Fair Competition," advocates for the implementation of a unified national market access negative list system and a fair competition review system. It emphasizes ensuring equal access for private economic organizations to various factors of production and public service resources, formulating policies that treat private economic organizations equally, conducting public resource transactions on an equal footing, and preventing both unfair competitive practices and actions where administrative power restricts or excludes competition. Chapter III, "Promotion of Investment and Financing," stipulates that financial institutions should treat private economic organizations equally in matters such as credit granting, loans, and fees. Chapter IV, "Scientific and Technological Innovation," goes further, stating that the state will cultivate and support private economic organizations that align with national strategic needs, industry development trends, and the global technological frontier. Chapter V, "Service Guarantees," underscores the requirement for administrative organs to exercise their functions in accordance with the law. These provisions collectively respond to the long-standing calls from jurists and economists for improving market institutions and accelerating the reform of government functions. Although these clauses are distributed across different chapters, this does not hinder their concerted role in collectively functioning to protect property rights.

The Coordinative Function of the Private Sector Promotion Law

During the period of China's rapid economic development, both the central and local governments promulgated a large number of policies (including industrial policies, tax policies, etc.). For a long time, this approach indeed contributed to economic achievements. Without government, economic development is impossible, for government itself is a necessity of the market.¹⁸ However, with the Chinese government's requirement to "play the whole nation as one chess game," the central government began to clean up outdated local policies and those creating conflicts between regions. The Private Sector Promotion Law provides the corresponding legal basis for this and also delineates the boundaries of power for future legislative and policy-making by both the central and local governments. Some scholars argue that the Private Sector Promotion Law will serve as a benchmark law for future policy formulation—a view that is reasonable.¹⁹ The task of the Private Sector Promotion

¹⁸ Zhang Weiyang, 'The Logic of the Market (市场的逻辑)' (2019) Shanghai Century Press (上海世纪出版社) 45.

¹⁹ Lu Danyun and Jin Wenhui, 'The Positioning of the 'Private Sector Promotion Law' as a Policy Benchmark Law (《民营经济促进法》的政策基准法定位)' (2025) 5 Journal of Chongqing University Social Science Edition (重庆大学学报 (社会科学版)).

Law is to coordinate existing laws, interface with policies promoting private economic development, and connect with local specialized legislation.²⁰ As the Private Sector Promotion Law began soliciting public comments, the State Council of China simultaneously initiated intensive consultations and promulgated policy documents such as the "Measures for the Implementation of the Fair Competition Review Regulation" and the "Opinions of the General Office of the State Council on Strictly Regulating Administrative Inspections Involving Enterprises." This illustrates the practical pathway for the law's implementation. The Private Sector Promotion Law is not a mere repetition of existing laws and regulations but rather a summary and refinement of the successful experiences of good governance and sound law, forming a coordinated implementation system through principles and linkages with relevant policies. This method of refining the implementation mechanism through policy documents is conducive both to reducing future costs associated with legislation and legal adjustments and to allowing policies to be flexibly applied according to regional, temporal, and industrial differences.

The enactment of the Private Sector Promotion Law is of great significance. By enacting a law through the National People's Congress to address the shortcomings of the previous "governance by regulations" and "governance by policies," the Private Sector Promotion Law, as a fundamental legal institution in the realm of the private economy, establishes hard standards for central and local policies. It enables claims of rights by the private economy to rely on a clear legal text to resist arbitrary power, thereby enhancing the systematic nature and predictability of the institution.²¹

The Expressive Function of the Private Sector Promotion Law

The expressive function is often overlooked. However, game theory research shows that declaratory clauses, if they can become a "focal point" in games, effectively coordinate social action and thus possess independent value. The expressive function of the Private Sector Promotion Law operates precisely through the interaction between legislative orientation and social behavior, reshaping people's consensus and beliefs regarding the private economy. In the past, concepts such as "emphasizing agriculture and suppressing commerce" were deeply ingrained in ancient Chinese society, resulting in a long-term lack of a merchant-friendly legal and cultural environment.²² In recent years, views such as the "theory of the private economy's exit" and "the state advances, the private sector retreats" have also been rampant in public discourse, and the "original sin theory" regarding entrepreneurs has been

²⁰ Chen Yunliang, 'The Rationale, Positioning, and Systematic Expression of Special Legislation for the Private Economy (民营经济专门立法的理据、定位及体系表达)' (2024) 3 *Social Sciences in Guangdong* (广东社会科学) 255, 257.

²¹ Zhang Shouwen, 'Legislative Promotion of the Development of the Private Economy (民营经济发展的立法促进)' (2025) 1 *Modern Law Science* (现代法学) 103.

²² Liu Junhai, 'On the Six Core Principles of the Private Sector Promotion Law (论民营经济促进法的六项核心原则)' (2025) 1 *Research on Rule of Law* (法治研究) 63.

frequently mentioned.²³ This reflects social confusion and a lack of confidence in the status of the private economy. Against this backdrop, the Private Sector Promotion Law establishes the protection of the private economy in the form of a formal law and rapidly completed its third review process, making its symbolic significance self-evident. Through declaratory clauses, such as explicitly stating in the General Principles that "the state encourages, supports, and guides the development of the private economy,"²⁴ and dedicating a chapter to emphasizing "equal protection of rights and interests," the law sends a clear signal of the government's firm support for the private economy to society. This expressive function aims not only to instill investment confidence among entrepreneurs but also to guide the public in forming a social atmosphere that respects private enterprises and recognizes their contributions. Through its expressive function, the law can correct erroneous conceptions and coordinate the actions of the government, the market, and society—for example, by reducing selective law enforcement and curbing stigmatizing rhetoric in public opinion. Furthermore, the publicity and discussion efforts surrounding the Private Sector Promotion Law, such as official interpretations, academic seminars, and media dissemination, will further amplify its expressive effect, making the law a vehicle for reassuring the private economy. The expressive function operates independently of the actual legal effects, but its importance should not be underestimated: by shaping long-term consensus, it provides the socio-psychological foundation for the realization of the normative function, thereby creating a virtuous cycle between law and society.

Highlights of the Private Sector Promotion Law

The legislative process of the Private Sector Promotion Law is not merely a codification of legal provisions; rather, it represents a profound juridification and structural reconfiguration of the relationship between the State and the market, and between public power and private rights. Its institutional design transcends the mechanical aggregation of traditional regulatory norms, reflecting systematic innovation and normative breakthroughs. These highlights are embedded both in the law's overarching legislative principles and in its meticulously crafted detailed provisions, together constituting the foundational framework of legal protection for China's private economy in the new era.

1. Highlights in the Legislative Principles of the Private Sector Promotion Law

²³ Gong Wen, Xu Zhifeng, and Wu Qiuyu, 'Assessing the Big Picture in the First Quarter: Authoritative Figures Discuss China's Current Economy (开局首季问大势——权威人士谈当前中国经济)' (Beijing, 9, May 2016) People's Daily (人民日报) 1, 2.

²⁴ Private Sector Promotion Law, Art 3

Legislative principles are the soul of any law, determining its value orientation and the structural logic of its rule system. The Private Sector Promotion Law reveals two core innovations at the level of principles: first, its functional positioning of "promotion as the goal, protection as the baseline," and second, the establishment of "equal protection" as a fundamental and pervasive principle throughout the entire statute.

Promotion as the Goal, Protection as the Baseline

This principle precisely delineates the law's dual functions and clarifies the logical relationship between them. Traditional economic regulatory laws in China have tended to emphasize ex post remedies and sanctions for violations, thus displaying a reactive and defensive nature. In contrast, the Private Sector Promotion Law explicitly identifies "promotion" of development as its primary goal and central function, signifying a paradigmatic shift in legislative philosophy from a regulatory-oriented model to an enabling-oriented model.

The notion of "promotion" means that the law no longer confines itself to demarcating the "forbidden zones" of what private enterprises may not do, but rather seeks to expand the "permissible zones" of what they may do, providing active institutional support to unleash endogenous entrepreneurial vitality. This promotional function operates at multiple levels. At the macro level, the law establishes basic national policies of encouragement, support, and guidance for private economic development, thereby injecting certainty into social expectations and stabilizing long-term entrepreneurial confidence. At the meso level, it requires the government to build a "pro-business and clean" relationship (亲清政商关系) with private enterprises, optimize the business environment, and provide inclusive and efficient public services, transforming itself from a "regulator into a "facilitator." At the micro level, it empowers private enterprises through measures such as ensuring equal access to financing, encouraging technological innovation, and reducing institutional transaction costs, thereby directly enhancing their development capacity.

However, every act of "promotion" must be grounded in a robust "protection" baseline. Without security, there can be no freedom, and without freedom, no development. In the absence of market failure, equitable protection of property rights is more important than preferential protection.²⁵ If entrepreneurs' property and personal rights are constantly exposed to the threat of arbitrary state intervention, then any policy of promotion would amount to a castle in the air.

²⁵ Lu Xianxiang and He Pengfei, 'The Impact of Fairness in Property Rights Protection on Enterprise Productivity: An Analysis Based on the Two-Phase World Bank China Enterprise Survey Data (产权保护公平程度对企业生产率的影响——基于两期世界银行中国企业调查数据的分析)' (2021) 9 *Economy (经济)* 67, 77.

Accordingly, the Law enshrines protection as its bottom line. Its property rights protection clauses—such as the strict limitations on expropriation and requisition, the procedural constraints on seizure, attachment, and freezing of property, and the clear distinction between personal assets and corporate assets—collectively form a “firewall” against abuse of public power. This protection mechanism embodies a bottom-line and problem-oriented approach, directly responding to long-standing issues such as “rent-seeking behavior” and “profit-driven law enforcement.” Protection thus serves as the precondition and guarantee of promotion, while promotion represents the extension and elevation of protection. Together, they establish a legal system that “consolidates the foundation, stabilizes expectations, and benefits long-term development,” making the Private Sector Promotion Law not merely a “law of rights protection,” but a “law of development.”

Equal Protection as the Cornerstone of Property Rights

The value of property rights lies not only in their strength but also in their breadth and fairness. Chinese economists have long observed that providing various ownership forms with a neutral and competitive market environment is key to transforming China's economy from traditional to modern and from planned to market-based—indeed, it defines the basic rule for handling the relationship between public and non-public economies.²⁶

The Private Sector Promotion Law embodies the principle of equal protection throughout its text, directly confronting and rectifying the most entrenched form of property rights discrimination—ownership-based inequality. Despite repeated policy statements such as the “36 Articles on the Non-Public Economy,” phenomena like “glass doors,” “revolving doors,” and “spring doors” have persisted in practice. Private enterprises often face explicit or implicit barriers in market access, licensing, government procurement, and financial credit. Such ownership-based discrimination constitutes a structural suppression of the “developmental function” of private property rights, preventing them from realizing their full market value on an equal footing. Many scholars have emphasized that private enterprises must be granted equal market and legal status.²⁷

By elevating the principle of equality from a policy declaration to a legally binding norm,²⁸ the Law achieves a qualitative leap forward. Equality is no longer a discretionary or negotiable “preferential treatment,” but a mandatory legal obligation. By establishing principles of equal access to production factors and fair participation

²⁶ Lyu Zhiwang (n 7) 56, 59.

²⁷ Shi Jiayou and Wang Yan, ‘The Principle of Fairness in the Legal Framework for Property Rights Protection (产权保护法治框架中的公平原则)’ (2022) 3 *Journal of Soochow University* (苏州大学学报) 7, 14.

²⁸ Private Sector Promotion Law, Art 2, 3.

in market competition, the Law seeks to eliminate the depreciation of property rights value caused by ownership identity. For instance, in the financing sector, the provision on equal access to financial services directly targets the chronic issue of private enterprises' "difficult and expensive financing," urging financial institutions, especially state-owned banks, to shift from background based to credit based lending.²⁹

In public procurement and bidding, the equality principle demands the removal of all ownership-discriminatory clauses, thereby expanding private enterprises' market access. This comprehensive system of equal protection ensures that property rights under all forms of ownership can circulate freely and be efficiently allocated in a unified, open, and competitive market arena, thereby unleashing their full economic potential. In short, the Private Sector Promotion Law constructs a multi-dimensional protective network—from tangible property to procedural rights, from substantive boundaries to fair environments—anchored in the cornerstone of equal protection.

2. Highlights in the Specific Rules of the Private Sector Promotion Law

Grand legislative principles must ultimately take root through meticulous, operable rules. The Private Sector Promotion Law demonstrates remarkable craftsmanship and acute insight into real-world issues at the rule-design level, showcasing several notable institutional innovations.

Comprehensive Protection of Property and Personal Rights

The Law significantly expands the scope of rights protection—from the traditional focus on property rights to the comprehensive safeguarding of entrepreneurs' personal liberty and dignity—constituting one of its most salient highlights. Administrative enforcement, as a lawful and standardized activity of government, must never pursue economic gain as its objective.³⁰

In terms of property protection, the Law exhibits remarkable precision and responsiveness. For example, restricts the expropriation and requisition of private assets, reaffirming the prerequisites of "public interest" and "statutory procedures," while emphasizing timely, fair, and reasonable compensation. This phrasing directly addresses issues such as low compensation standards and procedural delays, aiming to prevent abuses whereby "public interest" becomes a pretext for commercial

²⁹ Yu Minggui and Pan Hongbo, 'Political Connections, Institutional Environment and Bank Loans to Private Enterprises (政治关系、制度环境与民营企业银行贷款)' (2008) 8 *Management World* (管理世界) 9, 21.

³⁰ Zhang Xiaoyu, 'Placing Arbitrary Law Enforcement Affecting Enterprises in the Cage of Institutions (把涉企任性执法关进制度的笼子)' (Beijing, 28 October 2024), *Study Times* (学习时报).

development and property undervaluation. This Chapter which restrict the improper use of coercive measures like seizure, detention, and freezing of assets and regulate cross-regional law enforcement, strike directly at "profit-driven" and "campaign-style" enforcement practices. These provisions dismantle the grey mechanisms through which administrative coercion has been used to disrupt operations or extract rents, securing the integrity of enterprise assets and ensuring continuity of production.

Equally significant is the Law's clarification of the boundary between corporate and personal assets, which safeguards both property rights and corporate personality.³¹ In the past, blurred boundaries often led to the arbitrary freezing of all corporate assets due to personal liabilities or criminal investigations involving entrepreneurs, or to the unjust seizure of personal and family property due to corporate disputes. Such "implicative" enforcement practices violated the foundational principle of limited liability and undermined the corporation's status as an independent market entity. The Law's clarification thus reaffirms and protects a core principle of company law—the separation of corporate and personal property—providing a stable organizational foundation for entrepreneurship and innovation.

More innovatively, the Law extends protection from property rights to personal liberty and dignity. In modern economies, personal rights often carry significant economic value, and institutions must evolve to protect that value.³² The Law explicitly provides that no unlawful coercive measures restricting personal liberty may be imposed on business operators of private enterprises; even when such measures are legally necessary, they must be applied with utmost prudence and minimal interference with normal operations.³³ This reflects the recognition that entrepreneurs are the "brains" and "souls" of their enterprises, and arbitrary detention of entrepreneurs constitutes not only a violation of individual rights but also a potential death sentence for otherwise sound enterprises.³⁴

The Law's rejection of the "original sin" mentality toward private entrepreneurs and its provision for lawful and prudent treatment of historical irregularities further reflect its respect for entrepreneurial dignity and its historical sensitivity. By emphasizing both property rights and personal rights, the Law directly addresses the core concerns of private entrepreneurs, enabling them to operate and invest with peace of mind.

Building an Innovation-Oriented Intellectual Property Ecosystem

³¹ Private Sector Promotion Law, Art 62

³² Schultz, T. W., 'Institutions and the Rising Economic Value of Man' (1968) 8 *American Journal of Agricultural Economics*.

³³ Private Sector Promotion Law, Art 59

³⁴ Zhang Zhanbin, 'Promoting the Entrepreneurial Spirit and Advancing the High-Quality Development of the Private Economy (弘扬企业家精神促进民营经济健康发展、高质量发展)' (Beijing, 28 March 2025) *Guangming Daily* (光明日报).

Governments often reshape property boundaries through law to mobilize property institutions as instruments of economic development.³⁵ For modern private enterprises, especially technology-driven ones, intellectual property (IP) represents their core asset and primary source of competitiveness. Although the Private Sector Promotion Law does not contain a dedicated chapter on IP, its systemic design establishes a forward-looking, innovation-oriented incentive ecosystem,³⁶ which so called the dynamic form of property protection.³⁷ This ecosystem emerges not through isolated provisions but through the synergistic operation of multiple rules. First, a fair competitive environment and predictable legal framework themselves constitute the strongest incentive for technological innovation and brand building. When enterprises are confident that their innovation achievements will not be easily imitated or misappropriated, and that their brand reputations will not be undermined by unfair competition, they are more willing to undertake long-term, high-risk R&D investments.

Second, the Law expressly encourages and supports innovation among private enterprises, linking this to concrete institutional support. For example, its provisions on equal access to investment and financing enable innovation-driven enterprises to obtain funding based on intellectual property and market potential, addressing the chronic financing constraints faced by asset-light technology firms.³⁸ Likewise, the principle of equal access to and utilization of production factors extends, in modern economic contexts, to new factors such as data and technological standards—thus providing a legal basis for private enterprises to integrate into the national innovation system.³⁹

Finally, by emphasizing promotion as a guiding orientation, the Law indirectly but powerfully catalyzes improvements in the valuation, transaction, and commercialization mechanisms for intellectual property. When the law explicitly encourages innovation, governments and social institutions gain stronger incentives to establish IP trading platforms, develop IP-based financing and securitization instruments, and improve the overall IP financial ecosystem. When patents, trademarks, and trade secrets are not only legally protected but also readily convertible into tangible financial assets, the incentive effect of property rights reaches its zenith. This generates a virtuous cycle of "innovation → protection → transformation → reinvestment," channeling capital and talent into research and innovation and ultimately driving industrial upgrading and structural optimization.

³⁵ Levine, R., 'Law, Endowment, and Property Rights' (2025) 3 *Journal of Economic Perspectives* 61, 88.

³⁶ Private Sector Promotion Law, Art 33.

³⁷ Wang Liming, 'On the Equal Protection of Private Enterprise Property Rights (论平等保护民营企业产权)' (2023) 3 *Journal of Shanghai University of Political Science and Law (The Rule of Law Forum) (上海政法学院学报 (法治论丛))* 10.

³⁸ Private Sector Promotion Law, Art 27, 28.

³⁹ Liu Shouying & Lu Qian, 'Property Rights Arrangement and Protection: The Foundation of Modern Order (产权安排与保护: 现代秩序的基础)' (2017) 5 *Academic Monthly (学术月刊)* 41.

Confining Public Power Within the Cage of Procedure

The realization of substantive rights depends critically on procedural justice. A landmark innovation of the Private Sector Promotion Law lies in its recognition of procedural justice as an independent value, and its establishment of a detailed procedural framework designed to confine the exercise of public power within the "cage of institutions."

At its core, this procedural system strengthens both process control and remedial mechanisms. The Law requires that, before making administrative decisions likely to have a significant impact on enterprise operations—such as imposing large fines, revoking licenses, or conducting large-scale inspections—authorities must, in principle, hear the statements and defenses of affected enterprises. This embodies the natural justice principle of *audi alteram partem* ("hear the other side") and ensures prudence and objectivity in administrative decision-making. The mandatory requirements for notification and the duty to provide reasons compel administrative organs to base their decisions on facts and law, and to disclose their reasoning to public scrutiny, thereby deterring arbitrary or opaque decision-making.

The Law also standardizes administrative inspections concerning enterprises, addressing problems of excessive frequency, overlapping jurisdiction, and redundant enforcement. Through measures such as "comprehensive joint inspections" and the publication of annual inspection plans, it provides enterprises with predictable and stable expectations, enabling them to focus on business operations rather than administrative compliance fatigue. This reflects a deliberate balance between administrative efficiency and enterprises' right to operational tranquility.

Furthermore, the Law strengthens avenues for legal redress. Enterprises whose legitimate rights and interests are infringed by administrative actions are entitled to apply for administrative reconsideration, file administrative lawsuits, and claim state compensation. To enhance the effectiveness of remedies, the Law may also encourage the establishment of fast-track or "green channel" mechanisms for enterprise-related disputes. These procedural safeguards equip enterprises' substantive rights with real "teeth," transforming paper rights into enforceable, living rights. Collectively, these procedural mechanisms form a robust defensive architecture that ensures public power operates within the rule of law. They transform property rights protection from static declaration into dynamic enforcement. The Law's procedural provisions work in close coordination with concurrent State Council policies such as the Opinions on Strictly Regulating Administrative Inspections Involving Enterprises, together weaving a tight institutional network that restrains public power and protects private

enterprise. This synergy exemplifies the coordinated advancement of an "effective market" and a "promising government."⁴⁰

Conclusion

The enactment of the Private Sector Promotion Law constitutes not only a legislative milestone but also a profound institutional innovation in China's legal architecture for economic governance. It bridges the long-standing gap between policy-oriented encouragement and law-based protection, transforming the private economy from a "policy beneficiary" to a "legal subject" endowed with stable rights and predictable remedies. From a functional perspective, the Law's most significant contribution lies in its construction of a dual-order mechanism: on the one hand, it limits the arbitrary exercise of public power through procedural safeguards and transparency requirements; on the other hand, it enhances market efficiency by ensuring equality of opportunity and the protection of property rights. These provisions jointly cultivate a legal environment conducive to entrepreneurial confidence, innovation, and fair competition.

Moreover, the Law institutionalizes equal protection as a fundamental principle applicable across ownership forms. By stipulating parity in market access, government procurement, and financing channels, it dismantles the structural barriers that historically disadvantaged private enterprises. This "ownership-neutral" legislative approach resonates with global trends toward inclusiveness and sustainability, aligning China's legal modernization with international standards while preserving national characteristics. The law also embodies a symbolic function: it codifies the State's recognition of private enterprises as essential participants in socialist modernization, thereby reinforcing social trust in the legitimacy and permanence of private ownership. In doing so, it transforms the ideological discourse of "supporting the private sector" into a legal commitment enforceable through institutional channels. This legal symbolism enhances the credibility of state governance and strengthens the constitutional principle that "property rights are inviolable."

In conclusion, the Private Sector Promotion Law stands as a cornerstone in China's evolution toward a law-based economy. It rebalances the relationship between political guidance and market autonomy, transforms policy discretion into legal predictability, and embeds the logic of equality, innovation, and public trust into the nation's economic governance system. As such, it symbolizes a decisive move from "policy promotion" to "institutional guarantee," marking the maturation of China's private economy under the comprehensive rule of law.

⁴⁰ Xi Jinping, 'Economic Work Must Balance Several Major Relationships (经济工作必须统筹好几对重要关系)' (2025) 5 Qiushi Journal (求是).