

# Countermeasures for Common Legal Risks of Private Enterprises in the New Situation

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**Abstract:** Private economy is an inherent element of China's economic system, and private enterprises have become an important supporting force of the social economy. In the new situation, private enterprises have become the focus of stabilizing employment, and promoting the long-term stable development of private enterprises is undoubtedly beneficial to the people's livelihood. However, due to the incomplete protection systems related to various laws, private enterprises have to bear greater legal risks in the course of their operations. Among the legal risks faced by private enterprises, property rights, criminal law, financing, trade secrets, and intellectual property rights attract greater social attentions. There should be specific prevention and response strategies for different legal risks.

**Keywords:** private enterprises, legal risks, countermeasures

One of the reasons why private enterprises can play an important role in China's market economy is their representative flexible operating mechanism. But how to continue to carry forward their excellent mechanisms in the process of social and economic development and make private enterprises bigger and stronger is a question that we need to explore and think deeply. In order for private enterprises to achieve sustainable and healthy development, in addition to preventing commercial risks, they should also attach great importance to preventing legal risks. "Legal risks" cannot become a stumbling block to the continuous development of enterprises. In a sense, the biggest risk faced by private enterprises is not operation risk, but legal risk. Private entrepreneurs must have a full understanding of legal risks themselves and the enterprise borne in order to ensure the legal operation and stable development of the enterprise.

## 1. Composition and features of China's current private enterprises

In the socialist market economy system, private enterprises are relative to state-owned enterprises. The main feature of private enterprises is private operation, which is a form of enterprise other than state investment and state-run enterprises. From the perspective of ownership, a private enterprise is a group that basically constitutes a non-state-owned economy. Before fully understanding the legal risks undertaken by private enterprises in the operation process, we should first discuss the types of private economy involved in the operation of private enterprises. The private economy mainly includes the following types: (1) the individual economy, which mainly refers to the individual industrial and commercial households that have been registered with the national industrial and commercial administration; (2) the private economy in wage labor relation, which is also a private economy; (3) the foreign-funded economy, which is what we call foreign-funded enterprises. Enterprises invested and established by foreign countries in mainland China belong to this type, such as Sino-foreign joint ventures, Sino-foreign cooperation, wholly foreign-owned enterprises, etc., and investment in Hong Kong, Macao and Taiwan also belongs to the type of foreign-funded economy.

Although with the continuous changes of the socialist market economic system, private enterprises have become an important part of China's market economic system. However, compared with state-owned enterprises, private enterprises still have certain restrictions on their scale of operation, that is, small scale and weak technical force, relatively backward management system, and whether in terms of fund raising, market access, and information technology acquisition they are still in a weak position.

## 2. Analysis of the legal risks undertaken by private enterprises during the operation process

Due to the short development process of private enterprises, the state has not formulated adequate

legal protection measures for private enterprises. In some legal expressions, the expressions of the state-owned economy and the private economy are different. The public-owned economy, especially the state-owned economy, is placed in a superior legal position over the private economy, which affects social perceptions, hides greater legal risks and legal loopholes, and makes private enterprises unable to fully receive reasonable legal protection during their operations.

### ***2.1 Property rights risks faced by private enterprises***

In the early stage of reform and opening up, the socialist economic system began to change. Many private enterprises were affiliated with state-owned enterprises, but actually invested in individual capitalists. This phenomenon was extremely common at that time. In terms of all systems, such enterprises are clearly owned by individuals, but they are registered as collectively owned enterprises in order to meet the needs of ownership. If the concept of collective ownership is studied from the law, the concept of collective ownership is relatively vague, and there is no clear law on its specific direction. [2]. However, such a vague concept has led to more serious consequences. The property rights of such collective enterprises are not regulated by certain laws, and the subject status, acquisition, transfer and other related legal procedures and legal forms of its property rights are not followed by reasonable legal terms. When such enterprises execute related procedures that it cannot be strictly operated as a legal regulation, but can only be operated as a policy regulation. Even if the economic system continues to develop to the present, there are still some private technology enterprises and collective enterprises whose property rights cannot be clearly divided according to the law. Enterprise property rights are vague and unclear, which brings huge risks to the execution of enterprise-related procedures.

### ***2.2 Financing risks faced by private enterprises***

Compared with state-owned enterprises, one of the difficulties that private enterprises face in the process of development and growth is financing difficulties. This is also one of the important reasons that restrict the rapid development of private enterprises in a relatively long period of time. Until now, this status quo has not yet been substantially improved. The main two financing channels in the process of enterprise development are bank loans and direct financing from the capital market, but neither of these two channels can be implemented smoothly for private enterprises. Judging from the current private capital, the fact is that about 70% is private self-financing, and the loans are only obtained from state-owned banks, which is less than 30% of the total assets and is the lowest among enterprises with different ownership systems. Although the loan satisfaction rate of private enterprises is 60%, it is still lower than the average level. In terms of loan satisfaction rate, private enterprises are among the most difficult group of enterprises to obtain loans. When private enterprises need capital, due to the lack of more formal, effective and rapid financing channels, they have to raise funds from the private sector through a series of methods such as borrowing, fund-raising and illegal borrowing. Even in some critical situations, in order to ensure the normal operation of private enterprises, they will not hesitate to obtain the funds needed in the operation process by defaulting on loans, which invisibly creates potential legal risks. Under extremely difficult circumstances, private enterprises, in order to survive, will use private loan usury, or even raise funds from employees, relatives and friends, to achieve short-term financing needs. However, if the enterprise encounters capital turnover difficulties, and the usury is asking for debt repayment, it is easy to cause legal risks, civil liability, criminal liability, and even the tragedy of family destruction.

In the case of raising private funds, some enterprises, in order to gain more trust in order to obtain more funds, or even create false documents to achieve their goals, the incident was finally convicted of loan fraud.

### ***2.3 Commercial secrets and intellectual property risks faced by private enterprises***

In the development process of private enterprises, due to entrepreneurs' lack of understanding of the legal protection of intellectual property rights, intellectual property rights such as trade secret rights often lack legal protection. This is also one of the issues that private entrepreneurs worry most. Private enterprises often have executives and senior technical personnel who have mastered their core technology or other business secrets, then move to another enterprise and copy the core technology or business of the former to other enterprises. This kind of leakage of core technology and business secrets poses a threat to the stable development of the enterprise, and in severe cases may even cause

the enterprise to directly push the enterprise growing downwards. The legal risks behind it are worth pondering. Once an employee of a private enterprise resigns the core technology of the enterprise he left as a new patent, he will in turn sue the original enterprise for infringement of its patent rights, and the original enterprise is often passive because there is no evidence to support it.

### **3. Preventive strategies of private enterprises in dealing with legal risks**

If private enterprises want to achieve substantial and stable development, they must rely on institutionalized guarantee mechanisms. How to prevent the legal risks of private enterprises in the operation process and provide effective legal protection to the private enterprises is a problem that needs to be solved urgently during the operation of private enterprises.

#### ***3.1 Analysis and reflections on the current legal status of the protection of private enterprises***

Some scholars believe that China is currently unable to impose effective legal protection on private enterprises. Most of the existing laws and regulations for private enterprises are only formulated by the State Council or the ministries and commissions directly under the State Council. The level of legal effect is low and unsystematic. The actual status of China's current legal system is that the legislation on the protection of private enterprises includes both a single legislative model and a decentralized legislative model. These two legislative models are basically able to cover all the specific types of private enterprises, but the current implementation is still not satisfying. The reason may be the coordination matching, and the update and improvement of content between the various laws and regulations. Therefore, in order to further promote the legal protection of private enterprises, with the continuous development of private enterprises, the specific rules in the legal protection clauses of private enterprises should be revised in time, which can not only solve the coordination and cooperation with the current laws and regulations, but also can minimize the legislation costs and improve the efficiency of law enforcement.

#### ***3.2 Countermeasures for legal risks of private enterprises***

The legal risks of private enterprises come from various aspects, and the reasons are complicated. Neither it can be eliminated by the enterprise itself, nor can it be completely relied on by government supervision. The prevention requires the organic combination of government supervision and the enterprise's own prevention and control to achieve the best effect.

##### ***3.2.1 Standardize the establishment behavior and clarify the property rights of private enterprises.***

Promoters of private enterprises should give priority to adopting the organizational form of the company, fundamentally regulate the establishment of the enterprise, and make good use of the enterprise's regulations of association to avoid possible legal risks.

Regulatory agencies in registration and review must be cautious of those fake enterprises that are not true. Regarding the issue of property rights, if an enterprise has objections, it must clearly determine the ownership of its property rights on the basis of careful evaluation of its industrial assets. It is necessary to avoid the loss of state-owned assets in the process of property rights determination, and it is also necessary to strictly avoid malicious encroachment on the property of private enterprises.

##### ***3.2.2 Unblock the financing channels of private enterprises and promote the compliance supervision of private enterprises' financing activities.***

At the government level, it is necessary to continuously optimize the financing environment for private enterprises and broaden the financing channels for private enterprises. Various financial institutions shall give equal treatment to private enterprises and state-owned enterprises in terms of loan policies and loan interest rates no matter in terms of condition review or procedures. For the implementation of financing contracts in accordance with the law, private enterprises with good creditworthiness expand more businesses and actively innovate more financial products to meet the scope and scale of private enterprises to expand loans.

Private enterprises must conduct compliance management of their financing activities. Whether financing from financial institutions or through private loans, they must have strict internal control mechanisms and strong supervision to ensure that financing activities can withstand the test of law.

***3.2.3 Private enterprises should pay attention to the establishment of intellectual property management systems, and the government shall strengthen support for intellectual property planning of start-up enterprises.***

Private enterprises should analyze and evaluate the enterprise's intellectual property rights in accordance with the business objectives and market strategies of the enterprise, gradually establish a legal protection system for the management of intellectual property rights within the enterprise, and make overall plans for intellectual property rights. In practice, many private enterprises neglected the construction of this system because of the lack of funds at the start-up stage. The government can consider strengthening the guidance and support for private enterprises, especially for technological enterprises, and arrange special funds to encourage private enterprises to actively plan for intellectual property rights.

***3.2.4 Establish an exclusive protection agency for private enterprises***

Due to historical reasons and social cognition caused "prejudice" against private enterprises, China's relevant laws and regulations for private enterprises have certain difficulties in implementation. Therefore, in order to improve the effectiveness of law enforcement, the law enforcement process should be coordinated as much as possible. It is undoubtedly necessary to establish an exclusive protection agency. In order to improve the efficiency and ability of serving private enterprises, the departments scattered in different institutions should be integrated, special government agencies should be established, and specific functions should be assigned to their service content, requiring them to reflect the needs of private enterprises, maintain its interests and provide management and services for private enterprises.

***3.2.5 Private enterprises should increase their awareness of purchasing legal services and continuously improve their ability to prevent legal risks.***

Many private entrepreneurs know that the prevention and control of legal risks is better done by professionals, but some private enterprises are unwilling to pay for this. However, some private enterprises are unwilling to pay consideration for this. Of course, some are in the growth stage and need to reduce costs, or the business volume is small, the output ratio need to be considered. There is no lack of private enterprises that, after they have grown, they are still "stingy" in legal service fees without lack of funds. They are unwilling to pay for the prevention and control of legal risks, and in the end, they lose a great deal through trying to save a little. Private enterprises must raise their level of risk prevention and control awareness, and must understand that once the enterprise grows, the business volume has a certain scale, and the public welfare legal service or cheap legal service provided by the government alone cannot meet the demand. Legal risks cannot be treated with speculative psychology. Once the risks are fulfilled, the loss to the enterprise will be tens or even hundreds of times the cost of legal services, and it will even bring personal risk to the investors and executives of the enterprise. This requires the government's public welfare legal services to implement precise policies, mainly to increase support for start-ups. As the enterprise grows, it must exit in an orderly and timely manner.

The implementation of scientific management by private enterprises is also crucial to comprehensively preventing legal risks. This includes the management content of private entrepreneurs on the organization, coordination, command, and control of private enterprises' operating behaviors, and constantly optimize the human, financial and material resources within the scope of their control, make full use of the legal operating methods in the operation of the market economy, and reduce legal risks through scientific management. Affected by the traditional development model of private enterprises, most private enterprises have relatively limited family management models, but for their sustainable development, they must turn to scientific management and implement enterprise management with more advanced and scientific means. When formulating a management model, we can combine the features of the enterprise itself, formulate a new management model and create core competitiveness, and realize a corporate revolution in management.

## **4.Conclusion**

At present, stabilizing employment is the top of the "six guarantees", and securing employment for residents is the top of the "six guarantees." Concentrating the efforts of all parties to maintain the stability of private enterprises and prevent legal risks has important practical significance. The state should continuously improve relevant laws and regulations, and update their contents and clauses in a timely manner. The government should also set up corresponding protection agencies to provide

targeted services for private enterprises. Private entrepreneurs should also continuously update their management concepts and management models to improve the enterprise's ability to resist risks and stabilize its development. In brief, the legal risks that private enterprises need to bear in the operation process will be gradually reduced as the business environment and the rule of law environment continue to improve. As long as private entrepreneurs do their own precautions and learn relevant countermeasures, they can ensure the good operation of their enterprises.

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