

THE EVOLVING CHINESE ENTERPRISE

James V. Feinerman*

Despite much discussion of economic reform in the People's Republic of China and of the "expanded autonomy" which is being given to factory managers in order to improve China's economic performance,¹ little attention has been focused on the legal changes which have accompanied these phenomena over the past decade. If, indeed, Chinese enterprises are becoming the equivalent of Western corporations, then what does Chinese corporate law look like? Are there corresponding legal enactments which support the historic decentralization of China's industrial production and embrace of market mechanisms?²

Briefly, the answer is, "Yes, there are Chinese laws which embody many of these changes." Recent legislation³ detailing the newest powers of Chinese enterprises and factory managers is, in fact, merely the latest lawmaking in an area which has seen prodigious activity since 1978. Given the collectivist and state-centered nature of the Chinese economy from 1949 until the death of Chairman Mao, it would have been very unlikely that much change could have occurred without some legislative protection. Chinese managers are not prone to radical change, especially of a sort which was - in historical context - politically suspect. In addition to the assurances of the state leadership that, in the post-Mao era, it was now "glorious" to get rich,⁴ these veterans of many earlier "reforms" and campaigns were not about to alter their longstanding business practices and institutional relationships without some sort of protection. A growing body of enterprise law passed over the last ten years has so provided.⁵

* Associate Professor, Georgetown University Law Center. Portions of this article have also appeared in *E. ASIAN EXEC. REP.* 9 (June, 1988).

1. See, e.g., Wong, *The Second Phase of Economic Reform in China*, *CURRENT HISTORY*, Sept. 1985, at 260. See also *THE POLITICAL ECONOMY OF REFORM IN POST-MAO CHINA* (E. Perry and C. Wong, eds. 1985).

2. Lichtenstein, *Law and the Enterprise*, *CHINA BUS. REV.*, Mar.-Apr. 1987, at 38.

3. Law Concerning Enterprises Owned by the Whole People of the People's Republic of China (adopted Apr. 13, 1988) (effective Aug. 1, 1988) (promulgated by the First Session of the Seventh National People's Congress) ("State Enterprise Law").

4. O. SCHELL, *TO GET RICH IS GLORIOUS: CHINA IN THE EIGHTIES* (1984) (detailing economic reforms since the late 1970s and their effects on the Chinese populace; the phrase in the title is attributed to China's paramount leader, Deng Xiaoping).

5. See Selected Laws Governing Enterprise Establishment and Operation, *CHINA BUS. REV.*, Mar.-Apr. 1987, at 40. (Listing 22 laws in the following categories: Enterprise Registration, Enterprise Operation, Economic Contracts, and Specific Types of Contracts).

Yet, it may still be too soon to hail the conversion of the Chinese to capitalist modes of economic activity. The present Chinese enterprise, even under the new legal regime, is still far from the modern corporation known to the developed world. With the vast bulk of China's economy still largely under state control, it may be premature to talk of Chinese "corporations." On the other hand, the problems which are now emerging from the reform process in the operation of Chinese enterprises may suggest both new areas of concern for the economists and legislative needs for the political leadership. The difficulties which have thus far impeded the momentous changes center on three areas: ownership, control, and organization. This article will first attempt to analyze the stages of economic and legal reform which have resulted in the present state of the Chinese enterprise and then suggest the prospects for future development in the light of recent legislation.

Ownership of socialist enterprises has long been legally problematic in the People's Republic of China (PRC). According to both socialist theory and constitutional pronouncement,⁶ only the state or collective entities can carry out large-scale economic activities. Since the early 1950s, theory and economic reality have been congruent, due to the elimination of any significant private ownership of the means of production. Even with the economic reforms of the last decade, there has been little erosion of these two basic forms of ownership.⁷ With no individual owners to demand an accounting of economic performance, however, the pattern had emerged of state or collective subsidization of enterprises (coupled, of course, in rare instances with their ability to take all the profits of those enterprises which earned any). Partly to discourage continuation of this practice and partly to draw upon additional sources of investment for growth, the PRC government has experimented lately with new forms of ownership such as bondholding and shareholding, encouraging individuals and groups to purchase ownership interests in large enterprises. One of the results of this process, it has been hoped, would be closer monitoring of the indi-

6. 1982 CONST. OF THE PEOPLE'S REPUBLIC OF CHINA, art. 6, col. 1:

The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people.

7. See, e.g., 1982 CONST. OF THE PEOPLE'S REPUBLIC OF CHINA, art. 7 (state economy under the ownership of the whole people is "the leading force in the national economy") and art. 7, cl. 1 (the individual economy is "a complement to the socialist public economy").

cia of economic performance by interested investors.⁸ It should be noted, however, that such investment has never been intended to reach a level of majority ownership and that the state and collective remain in control of virtually every sizable enterprise in China. Thus, significant changes within the Chinese enterprise may await meaningful alteration of ownership relations in the larger economy.

Similarly, the new attention to enterprise management and greater autonomy for individual enterprise managers and factory directors has yet to be supplemented by realistic measures which might insure independent decision-making. In both financing and operating large-scale enterprises in the PRC today, Chinese managers lack real control. The planned sector of the economy remains predominant, while market needs are only grudgingly recognized. Allocation of necessary inputs for production, prices for finished goods, transport and communication facilities are all beyond the manager's ability to control. Access to capital, particularly to scarce foreign exchange if needed, is restricted by both an antiquated banking system and by a labyrinthine process of exchange control. In the worst cases, Chinese managers are exhorted to make profits - with the threat of bankruptcy looming for poor performers - at the same time their hands are tied with respect to adjusting their operations so as to fulfill this new mandate.

The ever-present yardstick by which reforms in the industrial enterprise sector are measured is the success of agricultural reform in the Chinese countryside, where roughly 85% of the Chinese population lives. The landmark policy change announced in October, 1984⁹ remains the watershed event of recent Chinese economic history. By entrenching the reformist policies of de-collectivizing agriculture, encouraging production outside the State plan and allowing considerable latitude in pricing, hiring help and even allocation of state-controlled resources, this decision of the central government convinced China's agricultural workforce that the changes in economic regulation of that sector were permanent.¹⁰ Such a reversal in, or reconciliation of, the relationship between the

8. Regulations of the State Council Concerning the Balance of Foreign Exchange Income and Expenditure by Sino-Foreign Joint Equity Ventures (promulgated Jan. 15, 1986). The Chinese text and an English translation appear in 1 CHINA L. FOREIGN BUS. 385 (1987). See also Note, *Chinese Solutions to Legal Problems: Repatriating Business Profits from the People's Republic of China*, 19 L. & POL'Y INT'L BUS. 385 (1987).

9. Decision of the Central Committee of the Communist Party of China on Reform of the Economic Structure, reprinted in 27 BEIJING REV., at I-XVI (1984).

10. Wong, *supra* note 1, at 260 ("... dramatic successes were achieved in the rural sector").

mandatory plan and the guidance mechanisms promoting markets has not yet occurred in the industrial sphere.

No examination of the reforms now being proposed for the regulation of Chinese enterprises can ignore the existence of a number of enemies of change which retain considerable power in Chinese society. The reduction of the role of the State plan, the acknowledgment of new forms of ownership and the accumulation of funds for separate use by individual enterprises all threaten systems of belief and powerful institution, including Marxism-Leninism-Mao Zedong Thought,¹¹ the Communist Party of China and the People's Bank of China. Individual workers and their families are also made uncomfortable by the prospect of significant change in economic organization which may threaten their current equilibrium. Accustomed to low, stable prices and egalitarian income distribution, they are also fearful of what price decontrol and performance-based policies may portend.¹² Finally, deficiencies in Chinese economic infrastructure such as the lack of accounting standards, the failure to distinguish "firms" (individual enterprises) from their supervising ministries, excessive localism and poor transportation and communications facilities may thwart attempts to reform the industrial economy.¹³

The legal status of enterprises which is addressed by the new enactments discussed below may mark a departure from the post-1949 reluctance of central government ministries to provide lower-level entities with meaningful independence. Gradually, autonomy could be achieved by allowing enterprises to have some control over their own funds, to make independent decisions about production and marketing and to develop or to purchase needed technology.¹⁴ The crucial underpinning of these powers can now be found in the provisions of the General Principles of Civil Law, in force since only 1986.¹⁵ By giving the sanction of law to the "legal person,"¹⁶ these principles enable enterprises to claim the law's im-

11. L. Sullivan, *Assault on the Reforms: Conservative Criticism of Political and Economic Liberalization in China, 1985-86*, 114 CHINA Q. 198 (1987).

12. Luo, *China's Economic Reforms Face Major Constraints*, FAR E. ECON. REV., Jan. 2-8, 1988, at 72.

13. Liu, *A Sweet and Sour Decade*, BEIJING REV., Jan. 2-8, 1989, at 22. (Review of ten years of economic reform).

14. Burki, *Reform and Growth in China*, FIN. & DEV., Dec. 1988, at 46.

15. General Principles of Civil Law of the People's Republic of China (adopted by the Fourth Session of the Sixth National People's Congress, Apr. 12, 1986 [hereinafter General Principles of Civil Law], translated in 34 AM. J. COMP. L. 715 (1986).

16. *Id.* arts. 36-50; translated in 34 AM. J. COMP. L. at 722-725 (1986).

primatur both for their individual status and for their activities as entities separate from their higher-level ministries. The new State Enterprise Law fleshes out the bare bones of the generalities created by the Civil Law with respect to the powers of the state industrial enterprises.

THE STATE ENTERPRISE LAW

The new Chinese "Law Concerning Enterprises Owned by the Whole of the People of the People's Republic of China" ("State Enterprise Law"), passed by the First Session of the Seventh National People's Congress in April, 1988, is a major shift in the course of China's legal and economic reform. As a key element in PRC's attempt to open its economy to market forces, the State Enterprise Law should help to clarify the vague legal status of Chinese state-owned enterprises and enhance the prospects for granting considerable independent decision-making power to these enterprises. Making factory managers responsible for the strategic planning and for profits and losses will finally be feasible. Previous uncertainties made factory managers cautious about economic reform. It should be noted, however, that the new law does not yet provide China with a complete company law or corporate code - only state-owned enterprises are covered. Numerous "companies" and "corporations" have been organized in the PRC over the past several years, but their legal status remains indeterminate.¹⁷

The 69-article law, divided into eight chapters, resolves a long-running debate between the Communist Party reformers and conservatives and removes factory management from the day-to-day oversight of Communist Party officials.¹⁸ The law also paved the way for the implementation, three months after the effective date of August 1, 1988, of the PRC's much-touted Bankruptcy Law.¹⁹ The Bankruptcy Law's final implementation had been made con-

17. Sensenbrenner, *The Evolving Enterprise*, CHINA BUS. REV., Mar.-Apr. 1987, at 36. (In 1985, there were 367,800 collective enterprises and more than 11.6 million private enterprises in China).

18. Yoshida, *In Search of a Future — From the 13th Congress of the Chinese Communist Party to the 7th National People's Congress*, 75 CHINA NEWSL., 1988, at 2.

19. The Enterprise Bankruptcy Law of the People's Republic of China (adopted on Dec. 2, 1986 by the 18th Session of the Standing Committee of the Sixth National People's Congress) (promulgated Dec. 2, 1986) (effective Nov. 1, 1988) [hereinafter Bankruptcy Law] translated in 19 VAND. J. TRANSNAT'L L. 733 (1986). See also Zheng, *Bankruptcy Law of the People's Republic of China: Principle, Procedure & Practice*, 19 VAND. J. TRANSNAT'L L. 683 (1986).

tingent upon the adoption of the State Enterprise Law.²⁰

Debate over the new State Enterprise Law continued for almost nine years, beginning in 1979 with the passage of the PRC's first new laws. Questions about the rights and obligations of state-owned enterprises, the responsibility of factory directors who ran those enterprises, and workers and their relationship with the state government and the Communist Party had all proved to be controversial.²¹ The contradictions between state planning and market forces, Party secretaries and factory managers as well as managers and workers, exacerbated the difficulty in agreeing upon a final law. Several times in the mid-1980's the law was reported to be ready for passage, only to be withheld at the last minute for further emendation.²²

The State Enterprise Law, adopted on April 3, 1988, closely followed the draft law published January 9, 1988 and another interim draft of March 3, 1988; a few significant differences between the final law and these drafts will be noted below. The first chapter, enunciating general provisions, clarifies the scope of the law's application, and limits it to state-owned industrial enterprises.²³ Article 2 also makes clear that state enterprises are legal persons under Chinese civil law, with the same status and ability to undertake obligations as all legal persons.²⁴ Article 4 and 5 contain the compulsory assurances that such enterprises must promote socialism and socialist ideals, followed by an equally hortatory Article 6 which urges enterprises to "realize the multiplication of its assets." Article 7 makes clear that the factory director bears responsibility for the enterprise's management; the Communist Party's role as guarantor and implementor of Party principles in the enterprise is stated in Article 8.²⁵ Articles 9-11 lay out the labor management

20. Bankruptcy Law, art. 43: "This law will be implemented on a trial basis three months after the Law of the Enterprises under the Ownership of the Whole People takes effect"

21. Sullivan, *supra* note 11.

22. Chao & Yang, *Private Enterprise in China: The Developing Law of Collective Enterprises*, 19 INT'L LAW. 1215 (1986). Lichtenstein, *Legal Implications of China's Economic Reforms*, 1 ICSID REV. 289 (1987).

23. State Enterprise Law, arts. 1-2.

24. General Principles of Civil Law, ch. 3, §2, "Enterprises as Legal Persons", arts. 41-49.

25. State Enterprise Law, art. 8:

The basic organization of the Communist Party of China in an enterprise ensures and oversees the implementation of general and specific policies of the party and state in that enterprise. It supports the director in discharging his authority according to the law.

principles of the law, ensuring protection of the workers' "lawful rights and interests" and democratic management by means of workers' congresses and trade unions.²⁶ Articles 14 and 15 contain important statements which respectively protect the property given to enterprises to manage and which ensure the "lawful rights and interests" of enterprises.

In describing the establishment of enterprises, Chapter Two states that enterprises must comply with relevant rules of the State Council and must register with the appropriate administrative authorities for industry and commerce.²⁷ Thus, a formal licensing system for control of enterprises should be strengthened. Article 17 contains a long list of requirements which must be met before an enterprise can be established:

- the enterprise's products must be "needed,"
- the enterprise must have its own premises and name,
- the enterprise should have separate access to raw materials and energy, as well as state funds, and
- the enterprise should have its own organizational structure, etc.²⁸

The merger of the enterprises is anticipated, subject to government approval.²⁹ Most importantly, new provisions have been made for termination of enterprises which will certainly be important in implementing the Bankruptcy Law. Article 19, which envisions termination for four categories of reasons, including violation of the law and decision of government authorities responsible for the enterprise, also lists bankruptcy as a reason for the termination of an enterprise.³⁰ Liquidation according to law is called for,³¹ and changes in enterprise status must be approved by and registered with the proper authorities for industry and commerce.³²

The most important chapter of the new law, Chapter Three,

26. See also Work Regulations for Grass-Roots Organizations of the Communist Party of China in State-Owned Industrial Enterprises (effective Oct. 1986) translated in Foreign Broadcast Information Service (FBIS), Daily Report: China, Feb. 4, 1987, at K26.

27. State Enterprise Law, art. 16.

28. See also Provisional Regulations on Registration and Control of Companies (approved by the State Council, Aug. 14, 1985) (issued by the State Administration for Industry and Commerce, Aug. 25, 1985) reported in FBIS Daily Report: China, Aug. 27, 1985 as "Corporation Registration Regulations Promulgated" [hereinafter Companies Registration Regulations].

29. State Enterprise Law, art. 18.

30. *Id.* art. 19(3).

31. *Id.* art. 20. Presumably, this refers to the provisions of the Bankruptcy Law, discussed *supra* note 19.

32. *Id.* art. 21.

sets forth the rights and obligations of the enterprise. It promises an enterprise the right to arrange its production;³³ the right to request adjustment of the mandatory plan and to reject additional assignments outside the mandatory plan;³⁴ the right to sell on its own, outside the mandatory plan quotas;³⁵ the right to choose suppliers as it chooses;³⁶ and the right to set its own prices, except for those under price controls set by the State Council.³⁷ Other rights guaranteed to enterprises under the new State Enterprise Law include: freedom to deal with foreign parties and to sign contracts with them, subject to State Council provisions,³⁸ budgetary control over retained funds (retained earnings),³⁹ control over fixed assets and their disposal,⁴⁰ power to fix wages and bonuses,⁴¹ and the power to hire, fire and redeploy personnel.⁴²

One significant addition to enterprise autonomy is the promise of Article 33 that enterprises can "reject the exaction of manpower, materials and financial resources" by any state organ or unit. Article 34 also provides limited rights to engage in joint operations, rights which are also envisioned in the General Principles of Civil Law, as well as the right to issue bonds (but *not* in equity shares) in accordance with State Council provisions promulgated in 1987.⁴³

As *quid pro quo* for these rights, Chinese enterprises are expected to fulfill corresponding obligations. They must meet mandatory plan quotas and perform lawful economic contracts.⁴⁴ They must also observe applicable state economic regulations,⁴⁵

33. *Id.* art. 22 ("Guided by the state plans," of course).

34. *Id.* art. 23 (but only "for goods whose planned supply and marketing are nonessential").

35. *Id.* art. 24.

36. *Id.* art. 25; An enterprise has the right to choose the suppliers of goods and buy the supplies its production needs from those suppliers. Perhaps the sweeping permission of this article is rooted in the fact that supplies of any important enterprises are already guaranteed by the state plan.

37. *Id.* art. 26.

38. *Id.* art. 27.

39. *Id.* art. 28.

40. *Id.* art. 29.

41. *Id.* art. 30 ("in a manner it considers appropriate").

42. *Id.* arts. 30 and 32.

43. As to joint operations, see General Principles of Civil Law, Ch. 3, §4 ("Joint Operations"), arts. 51-53.

The State Council's bond regulations are the Provisional Regulations on the Administration of Enterprise Bonds, promulgated by the State Council in April, 1987.

44. State Enterprise Law, art. 35.

45. *Id.* art. 37.

guarantee product and service quality,⁴⁶ and observe state standards of industrial safety and environmental protection.⁴⁷ China's state enterprises are also urged to economize,⁴⁸ to strengthen "security work" and to protect state property.⁴⁹ Further, they are urged to maintain and renew their fixed assets,⁵⁰ by reinvesting retained earnings in a productive capacity.

Two parallel chapters, Chapters Four and Five, outline the roles of factory directors and of staff and workers in state enterprises under the new law. Chapter Four states that factory directors may be appointed by the government or elected by the workers.⁵¹ The factory director is made the legal representative of the enterprise.⁵² The director has the power to decide on the enterprise plan, the administrative setup of the enterprise, the middle-level administrative personnel, as well as the power to reward or punish the staff or workers. The director is expected to be able to establish collaborative relations with his staff⁵³ and to consult with a management committee comprised of both managers and workers about any "important issues,"⁵⁴ such as long-term policy, major changes in rules and regulations, and reductions in staff. Presumably, these would include changes in workers' pay.

Staff and workers, under Chapter Five, are promised the right to participate in the enterprise's "democratic management,"⁵⁵ but they are also encouraged to observe labor discipline and fulfill their assigned production tasks.⁵⁶ Staff and workers' congresses are urged, through their trade unions, to work with the factory manager.⁵⁷ Specific powers are provided for in Article 52:

46. *Id.* art. 38.

47. *Id.* art. 41.

48. *Id.* art. 39 ("conserve energy and raw semi-finished materials and shall strive to reduce production costs").

49. *Id.* art. 40.

50. *Id.* art. 36.

51. *Id.* art. 44. A factory director who is hired or elected by the enterprise's workers must be approved by the authorized government department in charge of the enterprise.

52. *Id.* art. 45.

53. *Id.* art. 46.

54. *Id.* art. 47.

55. *Id.* art. 49.

56. *Id.* art. 50.

57. *Id.* art. 51. See also Regulations Governing the Work Factory Directors of State-Owned Industrial Enterprises, (published Sept. 1, 1986) (effective Oct. 1, 1986) reported and translated in FBIS Daily Report: China, Feb. 5, 1987, at K19; Work Regulations for Grass-Roots Organizations of the Communist Party of China in State-Owned Industrial Enterprises, published Sept. 15, 1986, effective Oct. 1, 1986, reported and translated in FBIS Daily Report: China, Feb. 4, 1987, at K26.

- to deliberate on and to forward suggestions for the long-term policy set by the director;
- to examine and to accept or to reject wage adjustments, bonus proposals and other regulatory changes;
- to decide on programs for staff welfare;
- to "supervise" administrative cadres of the enterprise; and,
- where so provided, to elect factory directors.

The staff and workers' congress is supposed to support the factory director and to educate the staff in fulfilling their obligations.⁵⁸ Cooperation is the clear goal.

Chapter Six clarifies the relationship between the enterprises and the government. Under the state plan, the government is to provide enterprises what they need to fulfill their quotas.⁵⁹ This includes advising enterprises in their organization, protecting them from infringement by competing enterprises,⁶⁰ and avoiding state encroachment on enterprise rights.⁶¹ Local governments and their departments are likewise enjoined to facilitate the work of the enterprises.⁶²

Chapter Seven, Legal Liability, prohibits the unregistered operation of a state enterprise, fraud on the registration authorities or concealment of the truth, and specifies punishment ranging from a warning or fine, to revocation of the business license.⁶³ The sale of "substandard" products may result in liability for damages and possible criminal charges.⁶⁴ This chapter also provides for an appeals process against government officials who violate enterprise prerogatives⁶⁵ and for administrative and/or criminal punishment of enterprise leaders who violate the rights of staff and workers.⁶⁶ Administrative and/or criminal penalties may also be assessed against enterprise leaders whose negligent performance causes "relatively heavy" losses to the enterprise and the state⁶⁷ and those

58. State Enterprise Law, art. 54.

59. *Id.* art. 55.

60. *Id.* art. 56.

61. *Id.* art. 58.

62. *Id.* art. 57.

63. *Id.* art. 59 (referencing the registration requirements of this law, art. 16).

64. *Id.* art. 60.

65. *Id.* art. 61.

66. *Id.* art. 62 (referencing China's Criminal Law, art. 146, which provides for a maximum punishment of up to seven year's imprisonment for state personnel who neglect their duty causing such losses).

67. *Id.* art. 63 (referencing China's Criminal Law, art. 187, which provides a maximum punishment of up to five years imprisonment for state personnel who neglect their duty causing such losses).

who interfere with the operation of Chinese state enterprises.⁶⁸

Article 67, one of the supplementary provisions in Chapter Eight, promises that the State Council shall formulate rules for implementation of the State Enterprise Law. If past practice is any guide, these implementing provisions may not appear for some time. For example, implementing rules for the 1979 Joint Venture Law did not appear until 1983. To heighten the State Enterprise Law's mandatory force, the provisions of the Criminal Law referred to in Article 62-64 are appended to the text of the State Enterprise Law.⁶⁹

Eventually, the provisions of the law and the implementing regulations may provide some solace for foreign investors in China concerned with the status of entities with which they contract. Past uncertainties will be somewhat alleviated, at least when the contracting party to a foreign investment contract is a state enterprise. Other questions remain, however, because the law does not provide the mechanisms expected of a "corporation" law-procedures for establishment, capital structure and voting share requirements, process for authorizing company activities, and so forth. Such rules should be included either in another new law or in revised registration regulations for enterprises.⁷⁰

A few issues which proved contentious in the drafting process may surface again in the implementation of the State Enterprise Law. For example, limits on the authority of the enterprise director, which workers' representatives have insisted be included in the final version of the law, may undermine the control which the director was meant to exercise.⁷¹ The consultative decision-making procedure suggested by the text of the law may prove cumbersome. In any case, the language is vague and may raise sticky issues of interpretation. Similarly, in toning down the injunction that Party officials must remove themselves from the management of enterprises, the final law may not make clear just what role the Party continues to play. How "supervision" differs from "centralized leadership" will have to be determined in practice and may well

68. *Id.* art. 64.

69. In the draft version of Jan. 9, 1988, the criminal law provisions were not appended but merely were referred to in the text of the enterprise law.

70. Companies Registration Regulations, *supra* note 28.

71. See, e.g., Fujimoto, *Progress in China's Enterprise Reform*, 68 CHINA NEWSL., 1987 at 2 (recounting results of a survey of 300 factory managers concerning their difficulties with enterprise self-management).

turn out to be changed in nomenclature only.⁷²

The role of labor, particularly trade unions, in the implementation of the new law may prove crucial. If workers decide that their fate is now tied to the profits and losses of an enterprise, they may (as the drafters intended) act to increase the dynamism of Chinese state enterprises and improve their economic returns. Resistance to change is now on the rise, however, and many Chinese workers are fearful of the end of the "iron rice bowl" that state employment has guaranteed for over thirty years.⁷³ Whether the provisions of the State Enterprises Law will foster new creativity or engender a labor-management standoff will only be discerned from experience.

Nevertheless, if China is to take the great strides it hopes to achieve in economic reform, this new law is a necessary step. The gaps in the law suggest the need for amendment or supplementation, but the law's overall spirit is consistent with economic progress. Future areas for legislative action include economic organization, including competition regulation, corporate forms (stock company, partnership and domestic joint venture laws), and rules for individual enterprises. The economic and political situation in China is clearly evolving rapidly, but the process of change can only be assisted by clearer and more detailed rules. The diversity of economic actors encouraged by previous laws, particularly with respect to foreign investment, now needs to be paralleled in the domestic economy. The new legislation and related economic reforms, however, are promising first steps.

72. China's Communist Party leadership has been notably loath to surrender any of its prerogatives.

73. This sensitivity is further exacerbated by the new threat of enterprise bankruptcy; see e.g., Chang, *The East is in the Red*, CHINA BUS. REV., Mar.-Apr. 1987, at 42. Unemployment insurance and other similar benefits are either limited or unavailable for most Chinese workers.