

Normalization and Expansion of Non-profit Legal Persons in China's Civil Code: A Perspective on the Legal Attributes of Arbitration Institutions

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The “non-profit legal persons” in the Civil Code of China does not normalize the basic classification and specific classification of legal persons, and does not follow the “general to specific” rule of code compilation, which may bring confusion to the application of potential non-profit legal persons. Therefore, combined with the current rapid development of social organizations, it can be considered to normalize and expand the provisions of “non-profit legal persons” in the Civil Code. As a social organization with different legal attributes in China, arbitration institutions have certain representativeness. In-depth analysis of their legal attributes can help to understand the concept of “non-profit legal persons”. The normalization and expansion path include dividing “non-profit legal persons” into two basic types: “association legal persons” and “consortium legal persons”. On this basis, the necessary transformation and expansion of the civil legal system and domestic practice are combined. One is to expand the definition of “non-profit”, the other is to expand the connotation and extension of “association legal persons” and “consortium legal persons”.

Keywords: non-profit legal persons, civil code, arbitration institution, association legal persons, consortium legal persons

Introduction

In Chinese civil law, the definition of “legal persons” has undergone significant changes. In 1986, the General Principles of Civil Law introduced the concept of “legal persons” for first time, dividing them into two categories: enterprise legal persons and non-enterprise legal persons, which include government agencies, institutions, and social organizations. In 2017, the General Provisions of Civil Law abandoned the approach of the General Principles and made a fundamental revision to the definition of “legal persons”, categorizing them into three types: for-profit legal persons, non-profit legal persons, and special legal persons. The 2020 Civil Code replicated the provisions of the General Provisions regarding “legal persons”. It can be observed that the concept of “non-profit legal persons” firstly appeared in the General Provisions of Civil Law in 2017 and has been in effect for less than seven years. Its maturity is slightly lagging behind the rapid economic and social development

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of the present day. Meanwhile, Chinese arbitration institutions, as non-profit legal persons, exhibit significant differences in their own legal attributes¹ (Chen, 2009, p. 84). Moreover, arbitration institutions cannot find a precise legal status, which hampers their development. Therefore, studying the legal attributes of arbitration institutions can, to some extent, reflect on the shortcomings of “non-profit legal persons” in China’s Civil Code and then propose targeted suggestions for improvement.

The Paradigm of “Non-profit Legal Persons” and Its Deficiencies

Chapter 3 of the “General Provisions” of Part 1 of the Civil Code stipulates “legal persons”, which divides legal persons into three categories: for-profit legal persons, non-profit legal persons, and special legal persons. Section 3 of this chapter stipulates “non-profit legal persons” separately. This classification continues the practice of the General Principles of Civil Law in 2017, which is innovative compared with the General Principles of Civil Law in 1986, but has its shortcomings.

The Definition of “Non-profit Legal Persons” in the Civil Code and Its Deficiencies

Article 87 of the Civil Code defines “non-profit legal persons” as “non-profit legal persons are what established for public welfare purposes or other non-profit purposes and does not distribute profits to the investors, founders or members.” According to some scholars in earlier times before the promulgation of the Civil Code, this definition belongs to the “purpose-profit” paradigm² (Shui, 2010, pp. 109-116). Shui Bing believes that from the four standards of convenience, significance, persuasion, and regularity of the legal concept, the “purpose-profit” paradigm is the most consistent with the legal definition compared with other paradigms (Shui, 2010, p. 112).

In fact, the definition of Article 87 covers both “purpose” and “profit”. “Purpose” is the first half of the sentence “established for public welfare purpose or other non-profit purpose”, which emphasizes the public welfare of non-profit legal persons. At the same time, “other non-profit purpose” is used to leave space for “non-profit” purposes outside the possible “non-public welfare”, which reflects a kind of openness. “Profit” is the second half of the sentence “do not distribute the profits to the investors, founders or members”, which clearly forbids the three types of investors, founders, and members. This provision not only strengthens support for “non-profit” purposes, whereby founders and other entities cannot pursue “profit-making” interests from the outset if profits cannot be distributed, but also provides a channel for employees and other entities of non-profit legal persons to receive normal remuneration. In other words, it does not consider regular salary payments and operational expenses as profit distribution.

¹ According to the 2006 questionnaire survey conducted by the Beijing Arbitration Commission, the self-determination of Chinese arbitration institutions is mainly divided into five categories: administrative organs, administrative institutions, corporate institutions, tax-free public welfare organizations, and other categories.

² Shui Bing categorizes the definition paradigm of non-profit organizations into four types: the “structure-operation” paradigm, which satisfies the characteristics of organizational, civil, non-profit distribution, autonomous, and voluntary in organizational structure and operation mode; the “income-cost” paradigm, where income depends on donations rather than profits, and the services and products provided are priced below cost; the “function-benefit” paradigm, which equates “non-profit” entirely with “charity” and “public welfare”; and the “purpose-profit” paradigm, where the purpose is non-profit, and there is no profit distribution to members.

However, the above provisions still raise some questions. Firstly, “established for public welfare purposes or other non-profit purposes” should not be interpreted as prohibiting non-profit organizations from engaging in profit-making activities, but rather that their purpose is not profit-seeking, although necessary profit-making activities may be conducted to sustain their existence. This raises the question of what constitutes the boundary of “non-profit”. Secondly, the prohibition of profit distribution applies only to contributors, founders, and members. Can other individuals within non-profit organizations, such as institutional decision-makers and managers, distribute profits? How do we differentiate between normal remuneration and profit distribution?

The Types and Deficiencies of “Non-profit Legal Persons” in the Civil Code

Article 87 of the Civil Code stipulates that “non-profit legal persons include administrative institutions, social organizations, foundations, social service institutions, etc.” These four categories are the specific forms of non-profit legal persons. Articles 88, 90, and 92 respectively summarize the types of non-profit legal persons in China into three types of institution legal persons, social organization legal persons, and donor legal persons. A careful comparison can be found that the legislation corresponds institutions to public legal persons, social organizations to social legal persons, and foundations and social service institutions to donor legal persons. In the above three categories of non-profit legal persons, except for the unique institution legal persons in China, the social organization legal persons and the donor legal persons correspond to the “association legal persons” and “consortium legal persons” of the civil law system respectively³ (Shui, 2007, p. 69). Article 90 of the Civil Code defines “social organizations legal persons” as “entities with legal persons status, established based on the common will of members, for public welfare purposes or the common interests of members and other non-profit purposes”. Article 92 defines “donor legal persons” as “entities with legal persons status, established with donated property for public welfare purposes, such as foundations and social service organizations”.

According to the characteristics of personal and capital integration (Shui, 2007), “Social organization legal persons” possess characteristics of personal integration, which can be seen as “association legal persons”. Similarly, “donor legal persons” possess characteristics of capital integration, which can be seen as “foundations legal persons”. Therefore, China essentially adopts the classification method of non-profit legal persons in the continental legal system. It's just that the examples and classifications are not very standardized. The “donor legal persons” were not initially listed but were suddenly introduced later, which seems logically confused. According to usual logic, it would be more reasonable to first enumerate the types of “non-profit legal persons” in the general provision in Article 87, and then proceed to further classify the specific forms of “donor legal persons” later, introducing “foundations” and “donor legal persons”. This would align better with the logic of the compilation of the Civil Code, which follows a “general to specific” structure. This deviation from the compilation logic is evident in the provisions regarding “non-profit legal persons”.

³ According to Shui Bing, the common law system divides non-profit legal persons into public welfare legal persons and mutual benefit legal persons, while the civil law system divides it into non-profit association legal persons and non-profit consortium legal persons. Shui Bing believes that the association legal persons are the collection of people, the consortium legal persons are the collection of things. The purpose of the association legal persons is variable, so they are suitable for non-public welfare undertakings. The purpose of the consortium legal persons is not variable, so they are suitable for public welfare undertakings.

Absence of legal provisions for Chinese Arbitration Institutions' Attributes

Chinese arbitration institutions are collectively referred to as "Arbitration Commission", which are mainly subject to the provisions of the Arbitration Law. However, both the Arbitration Law and other laws do not stipulate the legal attributes of non-profit legal persons of arbitration institutions. It is more conducive to the healthy development of arbitration institutions by exploring their legal attributes and making clear legislative provisions on them.

Arbitration Law Lacks Clear Provisions on Non-profit Status of Arbitration Institutions

From the promulgation of the Arbitration Law in 1994 to its revision in 2017, there were no changes in the provisions regarding arbitration institutions. Using the 2017 Arbitration Law as a case study, its Chapter 2 specifically addresses "arbitration commissions". Article 10 stipulates that "arbitration commissions are jointly established by the relevant departments of the municipal people's government and chambers of commerce as specified in the preceding paragraph," while Article 14 states that "arbitration commissions are independent of administrative organs and are not subordinate to them. There is also no subordinate relationship between arbitration commissions." Although these two articles do not explicitly define the legal attributes of arbitration institutions, there is a conflict between them and it indirectly reflects the legislative position of arbitration institutions. Specifically, Article 10 specifies that arbitration commissions are jointly established by the government and chambers of commerce, while Article 14 stipulates the independence of arbitration commissions from administrative organs. From a social perspective, it is not persuasive because Chinese arbitration institutions have been operated under government control for long time⁴ (Chen, 2009, p. 453). Practice has shown that despite Article 14 stipulating the independence of arbitration commissions, Chinese arbitration commissions have been seen as an extension of governmental organs.

Based on the above, although the Arbitration Law does not clarify the legal attributes of the arbitration commissions, the contradictory psychology of the legislators behind it is obvious. On the one hand, the legislators want to control the arbitration commissions through the government. On the other hand, they try to use the "independence" of the arbitration commissions to bring China's arbitration system in line with the international standards. Although the Arbitration Law has been legislated for 30 years, the "independence" of China's arbitration institutions is still being questioned, and there has been much discussion in the academic circles⁵ (Luo, 2012, p. 146; Jiang, 2019, p. 143).

⁴ For example, Chen Fuyong believes that the Arbitration Law says the arbitration institutions are independent, but people do not fully believe in the legal provisions and pay more attention to the practical effect.

⁵ For example, Luo Chuxiang believes that in the arbitration practice in China, many arbitration institutions show obvious administration. And the administration of arbitration institutions has a Chinese characteristic, which is not in line with the international practice. He believes that the reason lies in the unclear positioning of the arbitration law and China's outdated thought of administrative arbitration learned from the former Soviet Union. Another example, Jiang Lili thinks that the legislators in the draft of the arbitration law deleted "arbitration institution is a non-profit institution legal person", and the arbitration institutions' attributes are deliberately blurred. But this deliberate omission lead the arbitration institutions' attributes to a more puzzling place. According to the 231 feedbacks received from more than 250 arbitration institutions surveyed by the former Legislative Affairs Office of the State Council in 2017, 187 arbitration institutions were state-owned institutions, accounting for 81%, 35 arbitration institutions were unclear, and 9 arbitration institutions were social organizations and intermediary organizations.

“Non-profit Legal Persons” Provisions in the Civil Code Are Hard to Apply to Arbitration Institutions

The Civil Code does not directly address arbitration institutions. However, arbitration institutions are recognized as non-profit legal persons. The Opinions on Improving the Arbitration System and Enhancing the Credibility of Arbitration issued by the Central Committee and the State Council categorizes arbitration committees outside the law: arbitration committees are non-profit legal persons providing public welfare services (General Office of the CPC Central Committee and General Office of the State Council, 2018). This provision highlights the public welfare and non-profit nature of arbitration institutions, so the regulations of “non-profit legal persons” in the Civil Code are applicable to arbitration institutions.

Among the four categories of state-owned institutions, social organizations, foundations, and social service institutions listed in Article 87 of the Civil Code, only state-owned institutions correspond to existing arbitration institutions.⁶ From the view of the four subjects, the Civil Code has a weak relationship with the existing arbitration institutions, which is closely related to the establishment method and management system of arbitration institutions in China. According to “A Plan to Form Arbitration Institution” and “Interim Measures for the Arbitration Commissions registration” issued by State Council in 1995, the staff of new arbitration commissions include officials, hired by the municipal government, officials can also serve as arbitrators. The early funds, houses and staff memberships shall be settled with reference to state-owned institutions. The registration authority of the arbitration commissions are the judicial administration departments rather than the civil affairs departments. Which indicates the official attitude to think the arbitration institutions as the judicial extension institutions. This weakens the civil nature of the arbitration institutions, because the civil organizations should usually be managed by the civil affairs departments. It can be seen that since the very beginning of the reform about the arbitration system in China in 1995, the arbitration institutions have lacked a civil foundation, the government's hands are too long, and its control of the arbitration institutions is too strong.

It is precisely because of the weak relationship between Chinese arbitration institutions and the Civil Code, it is more necessary to discuss how to expand some possibility in the “non-profit legal persons” of the Civil Code to enhance the civil nature of arbitration institutions and clearly define their legal attributes.

The Challenges of “Non-profit Legal Persons” in the Civil Code Reflected in the Chinese Arbitration Institution Legal System

The current arbitration institutions system in China mainly includes one law: Arbitration Law in 1994 (revised in 2017); and three administrative regulations: Plan for Reestablishing Arbitration Institutions, Interim Measures for Registration of Arbitration Commissions, and Arbitration Fee Measures of Arbitration Commissions promulgated by the State Council in 1995.

The Shortage of “Donor Legal Persons” Reflected in Relevant Administrative Regulations of Arbitration

The Plan for Reforming Arbitration Institutions (the Plan) imposes strict restrictions on the establishment of arbitration institutions, requiring each prefecture-level city to establish only one arbitration commission, and

⁶ The most typical is the Shenyang Arbitration Commission Office, as an institution operated under the control of municipal government directly. And it is a bureau-level institution. Source from the website of Shenyang Arbitration Commission: <http://syzcb.shenyang.gov.cn/sysldzyzcy/gywm/jgjs/glist.html> (2020-4-3), last accessed on 29 March 2024.

not to establish a separate professional arbitration commission. It also requires that the name of the city must be listed before the name of the commission. At that time, the Plan was necessary and could better regulate the establishment order of arbitration institutions. However, about 30 years later, the Plan, which is still in effect, is already out of place. First, requiring each prefecture-level city to establish only one arbitration commission is unreasonable. Because there are three arbitration commissions in Beijing, namely, China International Economic and Trade Arbitration Commission (CIETAC), China Maritime Arbitration Commission (CMAC), and Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC). Although the first two are national special approval institutions, yet in terms of the agglomeration effect, compared with other cities, the arbitration industry in Beijing is in an unfair competitive advantage position; Next, with the rapidly evolving new economic and social forms in China, there is an increasingly urgent demand for more specialized and refined dispute resolution methods. Therefore, China has also set up professional judicial institutions such as intellectual property court, internet court, financial court, and international commercial court. If the establishment of specialized arbitration institutions is directly prohibited, it would obviously result in unfair competition between judicial institutions and arbitration institutions. Moreover, the inherent advantage of arbitration institutions in professionalism compared to courts would also be underutilized. Finally, mandating the inclusion of city names before the names of arbitration institutions is also not logical. If China and foreign entities collaborate to establish joint arbitration institutions, such a requirement would impose unnecessary constraints on the naming process.

The above problems existing in the Plan itself also reflect the flaw of “non-profit legal persons” in the Civil Code—the concept of “donor legal persons” is too narrow. The plan limits the diversity of arbitration institutions, and “donor legal persons” may also limit the diversity of “non-profit legal persons”.

On the one hand, the definition of “donor legal persons” is inadequate. Article 92 of the Civil Code only lists foundation⁷ (Zhu, 2021, pp. 48-49), social service organizations, and religious venues as donor legal persons. Some argue that this designation only refers to public-benefit endowment foundations and religious endowment foundations in the civil legal system, excluding other types of endowment foundations with intermediate purposes. They argue that the concept of “donor legal persons” does not exist in civil law theory and legislative precedent, but was coined by some scholars in China to refer specifically to public-benefit endowment foundations. Moreover, endowment foundations can exist for specific private purposes beyond public benefit objectives (Luo, 2017, p. 52). Based on this point of view, the connotation of “donor legal persons” is indeed limited, and some social organizations that should belong to “non-profit legal persons” may have the dilemma of not finding legal attribution. Therefore, perhaps the direct adoption of “consortium legal persons” is more conducive to standardizing the potential, unknown, or newly emerged “non-profit legal persons” form. So as to create legal space for the new form subject of consortium legal persons in the rapid development of economy and society, so that they can find their belonging in the law.

⁷ It is worth noting that the invalid 1989 “Social Organizations Registration Management Regulations” (the State Council Order No. 43) Article 2 took the foundation as a social organization. But in the subsequent revision it canceled this example taking. So social organizations in China have experienced a process from mixed using with “donor legal persons” to having a clear boundary with “donor legal persons”. Before the General Provisions of the Civil Law in 2017, social organizations were both types of legal persons and specific organizations. After the publication of the General Provisions of the Civil Law, social organizations were unified in the types of legal persons and specific organizations.

On the other hand, “donor legal persons” may create obstacles to the diversified forms of arbitration institutions in China in the future. Although, as mentioned above, China’s arbitration institutions system is strictly restricted by the legislature, this does not mean that this situation will not change in the future. China’s arbitration system reform Starting with the Arbitration Law publication has past nearly 30 years, practice shows that the arbitration system is very outdated. If China wants to have speaking right in the international arbitration community and provide advanced arbitration services for market entities from home and abroad, its arbitration system reform is time to start. Up to now, no one arbitration institution in China is a real association legal person or consortium legal persons. In order to achieve the possibility of establishing an arbitration institution in these two categories (especially the latter), “donor legal persons” is an obstacle to be broken through. One is that the “donor legal persons” is not suitable for the legal entities of arbitration institutions. According to Article 94 of the Civil Code, the “donor legal persons” are always subject to the supervision of donors over the use and management of property, which may cause significant interference to the independence of arbitration institutions. Second, it is possible for arbitration institutions in the consortium legal persons. So the use of “donor legal persons” would occupy the position of the consortium legal persons and hinder the expansion of the legal forms of arbitration institutions.

The Shortage of “State-Owned Institution Legal Persons” Reflected in the Arbitration Law

As mentioned above, although the Arbitration Law does not define the arbitration institutions, the Several Opinions of the Two Offices has made it clear that they are non-profit legal persons. According to the above discussion, most of Chinese arbitration institutions are state-owned institutions, and the extension of governmental institutions. As those governmental institutions are full of strong administrative colors⁸ (Qu & Zhang, 2015, p. 100), it has caused a series of problems. Such as the extreme lack of independence, civil characteristics, and neutrality of arbitration institutions. The Arbitration Law stipulates all arbitration institutions to be led by the government, which making arbitration institutions become state-owned institutions. The problem of “state-owned Institutions” in arbitration institutions caused by the Arbitration Law just reflects the major defects of the Civil Code on the “non-profit legal persons”—putting state-owned institutions under the “non-profit legal persons”.

It is not appropriate for the Civil Code to put the “state-owned Institution legal persons” under the “non-profit legal persons” into a category. Because the “governmental legal persons” also conforms to the characteristics of the “non-profit legal persons”, but it is placed under the “special legal persons”. As mentioned above, the three categories of “non-profit legal persons” in the Civil Code actually adopt the legal persons classification method of the civil law system. It includes not only association legal persons and consortium legal persons (i.e., “donor legal persons” in Article 92 of the Civil Code), but also the special subject category of state-owned institution legal persons. However, the “governmental legal persons” which also meets the characteristics of “non-profit legal persons” is stipulated under the “special legal persons” (Article 96 of the Civil Code). Although there’s a clear differentiation between “governmental legal persons” and “state-owned institution legal

⁸ Qu Maohui and others also believe that due to China’s long-term planned economy and the influence of Soviet jurisprudence, civil legislation shows more obvious public law.

persons” in the definitions provided by the Civil Code,⁹ the Civil Code does not specify any limitations on the “public interest” aspect, and while “governmental legal persons” serve administrative functions to society as a whole, their ultimate goal is directed towards public welfare. Therefore, it can be considered that “governmental legal persons” meet the criteria of “non-profit legal persons” in the Civil Code in terms of their “public interest” purpose. Moreover, although “governmental legal persons” may sometimes charge administrative fees, this does not imply a profit motive. Thus it meets the requirement of “non-profit legal persons” in terms of their “non-profit purpose”. Additionally, any fees collected by “governmental legal persons” are not distributed as profits internally. So it aligns with the characteristics of “non-profit legal persons”. Following this logic, “state-owned institution legal persons” should also be classified under “special legal persons” rather than being placed under the provisions of “non-profit legal persons”.

The Normalizing and Expanding Path of “Non-profit Legal Persons” in the Civil Code

Combined with the above discussion, the shortcomings of the provisions of “non-profit legal persons” stipulated in the Civil Code can be improved from the two aspects of normalization and expansion respectively.

The Normalizing Path of the “Non-profit Legal Persons” in the Civil Code

Firstly, remove the “state-owned institution legal persons” from the “non-profit legal persons”. “State-owned institution legal persons” is a unique type of legal persons and exhibits obvious characteristics of non-profit legal persons. However, given their affiliation with national staffing arrangements and heavy reliance on state financial support, coupled with the fact that their key personnel are often government employees, it is challenging for the general public to distinguish them from government agencies. They are often misconstrued as governmental bodies representing the state and government, operating under governmental leadership, and seen as entities reliant on government support. Therefore, it is more appropriate to exclude “state-owned institution legal persons” from the category of “non-profit legal persons” and classify them under “special legal persons”¹⁰ (Luo, 2017, p. 134).

Secondly, define the “association legal persons” and the “consortium legal persons” clearly as the two basic legal persons category of “non-profit legal persons”. The existing provisions of the Civil Code do not specify the basic category of “non-profit legal persons” firstly, and it is very unreasonable to replace it with a specific organizational form. In Article 87, paragraph 1 is “non-profit legal persons” definition. Paragraph 2 lists institutions, social organizations, foundations, and social service agencies as four specific forms of corporate organization directly, seems to deliberately skip the “non-profit legal persons” basic law of legal person expression. However, this avoidance may reflect the legislators’ lack of confidence in clearly defining the basic category of “non-profit legal persons”. Instead of directly specifying the categories of legal persons, they firstly

⁹ Article 97 of the Civil Code stipulates that the governmental legal persons are the legal institutions with independent funds and administrative functions; Article 88 stipulates that the state-owned legal persons are “the public institutions established to meet the needs of economic and social development”.

¹⁰ A more radical view is that Luo Kun believes that the Civil Code should establish a dual system of public and private legal persons, include organizations set up by state-owned institutions and other government orders, such as the public legal persons, and manage them with special laws outside the Civil Code. At present, this view seems eager to achieve success, and it is not easy to make special legislation for state-owned institutions and other subjects alone. Therefore, it is most appropriate to put it into “special legal persons” at this stage, which also enables it to better exercise its rights as a civil subject under the Civil Code.

define specific organizational forms and then extract the basic categories of legal persons from them. Moreover, it is quite abrupt to include “places of religious activities” as another specific organizational form in later provisions, which does not align with the logical compilation of the Civil Code.

This kind of non-standard legislative expression may come from the legislators' doubts about the division of the association legal persons and the consortium legal persons in civil legal system. They may also be afraid of going into the mold of the civil legal system and unable to form the classification of legal persons with Chinese characteristics. In fact, this worry is not necessary¹¹ (Luo, 2017, p. 135). what can be useful for us is a good way. Therefore, “consortium legal persons” should replace “donor legal persons”¹² (Luo, 2017, p. 136), “social organization legal persons” should be simplified to “association legal persons”. Both “association legal persons” and “consortium legal persons” should be taken as the two basic categories of “non-profit legal persons” in Article 87, Paragraph 2 of the Civil Code. And then showing the enumeration of possible specific organizational forms in Paragraph 3.

The Expansion Path of the “Non-profit Legal Persons” in the Civil Code

Firstly, the necessary expansion of the definition of “non-profit”. First of all, the expression of “non-profit” in the Civil Code is not perfect, and the “profit” clause simply states that “it does not distribute profits to investors, founders or members”. It is not exact enough, because it seems too absolute. If only the distribution of profits to these three types of subjects is restricted, is it a default that other members of the legal persons can distribute profits? In order to avoid this dispute, it should be clear in the definition clause to extend the subject of profit distribution to all members of the legal persons¹³ (Tan & Huang, 2016, p. 45). The second, the question caused by the previous article is, how to stipulate the remuneration of employees by prohibiting the distribution of profits. In this regard, the definition clause should clearly distinguish between normal remuneration and profit distribution to support normal remuneration; The last, the extended question is: what is the boundary between normal remuneration and profit distribution? It should show that the definition of normal payment, namely the organization members in accordance with the organization's compensation system and reward mechanism of income for normal payment. And the payment should conform to the usual social cognition¹⁴ (Yu, 2018, p. 15). It should not be too strict, in case of taking some temporary task reward into illegal. In other words, it should be under the rules and keep certain flexibility.

Secondly, the specific categories of legal persons should not be specially restricted and should be open. Although Paragraph 2 of Article 87 of the Civil Code uses the word “etc.” to list the specific types of legal persons

¹¹ Luo Kun believes that it is neither necessary nor unreasonable for Chinese scholars to take the concept of “social organization” as a long-term habit to confuse “community” with “society”, and then to create the concept of “donor legal persons” to replace “consortium legal persons”.

¹² Luo Kun believes that “donor” is also easy to cause misleading, for example, the donation and the difference between donation is difficult to distinguish. This view also shows that “donor” is difficult to cover one-time, temporary funding, or donation situations, appears narrow.

¹³ Some people take the anti-poverty community cooperatives in Latin America as an example and believe that a strict ban on profit distribution will restrict similar special subjects from becoming non-profit legal persons. However, since the author of this view has not made a convincing argument, and the subject does not exist in China, it may not be considered for the time being.

¹⁴ In Japan, the remuneration of non-profit corporate members requires legal persons to limit excessive remuneration, and to formulate a compensation system based on government regulations and considering the usual compensation standards of private enterprises and their own financial situation.

to leave room for other specific forms of legal persons which not mentioned, Paragraph 1 of Article 92 also uses the word “etc.” for the specific forms of legal persons under the “donor legal persons”. However, as mentioned above, the meaning of “donor legal persons” is too narrow, that is, the use of the word “etc.” cannot fully explore the possibility of the specific legal persons forms under the “non-profit legal persons”. Therefore, under the premise that “non-profit legal persons” has two basic types of “association legal persons” and “consortium legal persons”, an open attitude should be held to the specific types of legal persons.

On the one hand, “association legal persons” and “consortium legal persons” should be redefined in combination with Chinese and foreign practices. That is, according to the connotation of “association legal persons” in the civil legal system and the connotation of capital (material) of “consortium legal persons”, the compatibility provisions should be made in combination with the needs of domestic practice. The existing provision of Article 90 of the Civil Code on “social organization legal persons” is not sufficient to directly equate to “association legal persons”, but it can be absorbed by the latter (Jiang, 1991, p. 416). “Association legal persons” can be roughly defined as non-profit legal persons established by natural persons, legal persons, or other subjects out of the joint willingness. The members of the association form the voluntary organization to jointly decide the matters of the association, and formulate the articles of association and the establishment of the executive agency. “Consortium legal persons” can be roughly defined as non-profit legal persons of natural persons, legal persons or other subjects established in the form of donation, funding, or independent investment for public welfare purposes. According to the willingness of the founders, the daily decision-making and executive institutions are set up, but the functions of the decision-making and executive institutions serve the initial establishment goal.

On the other hand, the specific organizational forms of “association legal persons” and “consortium legal persons” should be expanded. “Association legal persons” should include the types of groups for public welfare, mutual benefit, or self-benefit¹⁵ (Zhang & Wang, 2018, pp. 1-16), so as to carry out more standardized guidance and fine classification management. The “Consortium legal persons” shall also make necessary transformation on the basis of the “consortium legal persons” of the civil legal system¹⁶ (Larenz, 2003, p. 248, quoted from Jiang, 2011, p. 96), which shall include three categories:

The first category is the legal entity established by foundations, social service agencies, and places for religious activities through donations. They are subject to the supervision and suggestions of the founders, namely the donors, who are their sole sponsors.

The second category is the special entity established through temporary funding. They usually only need the support of external funds in the starting, and the subsequent funds are obtained through their own non-profit operation. Metaphorically speaking, such entities only need external blood transfusion in the initial stage of establishment, and their subsequent survival depends on their own hematopoiesis. They also follow the purpose

¹⁵ Zhang Xinbao and others believe that non-profit purposes can be divided into three categories: public welfare, mutual benefit, and self-benefit. Meanwhile, they correspond to three categories of legal persons with the same name. Although different from the division of associations and consortium legal persons, they can be used from the classification of corporate legal persons. The “3 benefit” discussed here is not to copy its concept, but borrowing its idea to expand the type division of associations. The public benefit refers to the representative organizations, such as the Chinese Foreign Exchange Association and various industry associations.

¹⁶ Larenz, a civil law scholar, defined a consortium as a permanent organization established by using the property provided for a specific purpose.

of the establishing people, but they show a combination of human and capital relative to the first type and the second type of entities. Human combination means that a group of people should set up a “association legal persons” for the common public welfare willingness, but they need to seek external support due to the lack of start-up funds. Capital combination means that external sponsors agree with the purpose of these people and are willing to provide initiating funds. Therefore, both the original founders and the sponsors are the co-founders of such legal persons, and the purpose of the co-founders is the same. However, it should be noted that the sponsors at initial time are not the purpose creators of the legal persons, so they may inquire in relevant matters in the future, but without supervision and interference.

The reason why this kind of entities are classified as consortium legal persons is that their initiated capital is very important for the establishment of the legal persons, and their capital is the prerequisite for turning human common willingness into reality. The one corresponding example of such entities is an arbitration institution that does not exist but is very feasible. The initial funds of such an arbitration institution can come from government funding or social funding, but in view of the essential requirements of its institutional independence, the government only provides start-up funds. However, this kind of funding is temporary, that is, after the completion of the funding and the establishment of the arbitration institution, the government and the arbitration agency are divorced, neither supervision, nor interference can be added. The reason why the government is willing to act is the consideration of public welfare and respect for the essential characteristics of arbitration institutions. And also based on the consideration of optimizing the environment for social dispute settlement.

The third category is the legal entity set up through independent investment. They are characterized with the establishment of the investors and the management of the organizations, which seems to have the appearance of the association legal persons. But what different from the association legal persons is the invariance of the subject purpose and the changeability of the management personnel. Such entities can be reflected as arbitration institutions established by the industry itself. In fact, in common legal system countries like England and the United States, arbitration institutions are often established in the form of non-profit companies¹⁷ (Lin, 2007). In the case that there is no practical obstacle of legal concept, the concept of “non-profit company” may be directly introduced into the Civil Code as the third type of “consortium legal persons” here, which is more helpful to open up a broader space for the application of “non-profit legal persons” in the Civil Code of China.

Conclusion

In conclusion, it is very important to normalize and expand the provisions of non-profit legal persons in China's Civil Code, specifically in relation to arbitration institutions. The deficiencies in the current legal framework are highlighted. Clear definitions and classifications of non-profit legal persons are called for, specifically dividing them into association legal persons and consortium legal persons. The challenges posed by the unclear legal status of arbitration institutions are obvious. Defining their legal attributes in the Civil Code is conducive to improve their civil nature enhance their development. The need for targeted legal improvements in both arbitration institutions and non-profit legal entities is very urgent. Ultimately, it should be underscored that

¹⁷ Such as the London International Court of Arbitration, the Singapore International Arbitration Center, the American Arbitration Association, etc.

the great significance of implementing legislative reforms to address these issues and promote a more structured and effective legal framework for non-profit legal persons in China.

References

- Chen, F. Y. (2009a). Empirical analysis of the status quo of Chinese arbitration institutions. *Legal Research*, 31(2), 81-97.
- Chen, F. Y. (2009b). How is the independence, competence and justice of arbitration institutions. *Peking University Law Review*, 10(2), 447-477.
- General Office of the CPC Central Committee and General Office of the State Council. (December 31, 2018). Several opinions on improving the arbitration system and improving the credibility of arbitration.
- Jiang, L. L. (2019). On the legal attributes and reform direction of China's arbitration institutions. *Research on Comparative Law*, 33(3), 142-156.
- Jiang, P. (Ed.). (1991). *Dictionary of China justice university*. Changchun: Jilin People's Publishing House.
- Jiang, P. (2011). *Civil law*. Beijing: China University of Political Science and Law Press.
- Lin, Y. F. (2017). On the reform of China's arbitration institutions again. Retrieved 3 April 2024 from <https://huaian.gov.cn/zczl/zcfyjs/content/97329.html>
- Luo, C. X. (2012). The administration of arbitration and its overcome. *Jiangxi Social Science*, 32(3), 146-152.
- Luo, K. (2017). Institutional defects and improvement path of donor corporate organization structure. *Law science*, 62(10), 51-62.
- Qu, M. H., & Zhang, B. (2015). Private law defense of the concept of legal person. *Legal Science*, 33(5), 95-105.
- Shui, B. (2007). Interpretation of non-profit legal person. *Legal Research*, 54(5), 66-74.
- Shui, B. (2010). A discussion on the concept of non-profit legal person. *Journal of Anhui University (Philosophy and Social Science Edition)*, 34(2), 109-116.
- Tan, Q. P., & Huang, J. Z. (2016). Classification of legal persons in the general provisions of civil law. *Jurists*, 28(5), 34-48.
- Yu, Z. C. (2018). How to regulate the compensation of non-profit corporate employees in Japan. *Public Welfare Times*, March 6, 2018, p. 15.
- Zhang, X. B., & Wang, Y. M. (2018). On the legal person established for other non-profit purposes. *Legal Review*, 36(4), 1-16.
- Zhu, M. (2021). The evolution of the use of the concept of "social group" in law. *Civil Affairs of China* (No. 4).