

ARTICLES

ANALYSIS OF THE PUBLIC AND PRIVATE LAW DIMENSIONS OF
THE PRIVATE SECTOR PROMOTION LAW*Guan Bohao*

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ANALYSIS OF THE PUBLIC AND PRIVATE LAW DIMENSIONS OF THE PRIVATE SECTOR PROMOTION LAW

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The Private Sector Promotion Law is formulated in the background of an increasingly mature market mechanism and a gradually optimized business environment, thus bearing a strong hallmark of the times. The rule of law values embedded in it also exhibit a distinct perspective aligned with the current era. In the context of Chinese modernization, the Private Sector Promotion Law takes reform and opening-up as its core theme and aims for full and balanced economic development. It focuses on the development of new quality productive forces and the empowerment of big data, with a key emphasis on highlighting Chinese characteristics in economic development. Meanwhile, the Private Sector Promotion Law demonstrates the rule of law values that balance public and private law dimensions. On the one hand, it encourages market participants to engage in fair competition, pursue independent development, operate with integrity, and assume the corresponding social responsibilities. On the other hand, it requires public authority entities to treat every market participant equally. They should provide the necessary support and guidance through means such as administrative payment and administrative guidance and adopt a restrained attitude in the application of administrative penalties, thereby safeguarding the legitimate rights and interests of market participants.

On April 30, 2025, the 15th Session of the Standing Committee of the 14th National People's Congress passed the *Private Sector Promotion Law of the People's Republic of China*, which systematically standardized and guaranteed the development of China's private economy. This law consists of 9 chapters and 78 articles, which provide comprehensive and detailed provisions on the principles of private economic development, the protection of the rights and interests of the private economy, and the standardized operation of the private economy. This reflects the legal value and practical significance of the *Private Sector Promotion Law* under the new historical conditions. The 20th Central Committee of the Communist Party of China (CPC) convened its Fourth Plenary Session in Beijing from October

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20 to 23, 2025. The communique points out that ‘We should stimulate the vitality of all market entities, work faster to improve the institutions and mechanisms for market-based allocation of production factors, and make macroeconomic governance more effective’.¹ This article interprets the law from the perspectives of its legislative background, regulatory matters, the era perspective of the rule of law value, the private law dimension of the rule of law value, and the public law dimension of the rule of law value.

I. THE LEGISLATIVE BACKGROUND OF THE PRIVATE SECTOR PROMOTION LAW

The private economy has developed and improved in a complex market competition pattern. Although it plays an important role in the national economic system and is an organic component of the national economy, its development has bottlenecks. Therefore, in recent years, China has issued a series of policy documents that provide corresponding regulations for the development and protection of the rights and interests of the private economy, with the aim of enabling its healthy and orderly development. However, the development of the private economy is still insufficient to be adjusted solely through policy documents, which led to the promulgation of the *Private Sector Promotion Law*. Specifically, the formulation of the *Private Sector Promotion Law* has a corresponding social, economic, and even cultural background.

A. The Top-Level Design for Private Sector Promotion

On February 17, 2025, a private enterprise symposium was held, which is a high-end symposium on the development of private enterprises. Well-known private entrepreneurs, economists, and other people from all walks of life participated in the symposium. The delegates presented a series of high-level views on the development of private enterprises in the new era. On the one hand, they have full confidence in the future development of private enterprises. On the other hand, the development of private enterprises in the future still faces some problems to be solved, including the impact of a new round of scientific and technological revolution and industrial reform, and the difficulties caused by changes in the external environment. Some enterprises

¹ THE COMMUNIQUE OF THE FOURTH PLENARY SESSION OF THE 20TH CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA, at 9 (People’s Publishing House, 2025).

face problems such as blind diversified development and poor management. There are also problems that need to be addressed in the implementation of relevant policies and measures.² General Secretary *Xi Jinping* attended the symposium and pointed out that ‘We should resolutely dismantle obstacles that prevent enterprises from accessing production factors equally and competing in the market fairly, further open the competitive areas of infrastructure to various business entities in a fair manner, and continuously make solid efforts to address the difficulties faced by private enterprises in obtaining affordable financing. We should strengthen law enforcement supervision and effectively protect the legitimate rights and interests of private enterprises and private entrepreneurs in accordance with the law’.³ The symposium laid a solid foundation for the formulation of the law on the promotion of private economy, which is an important background for the introduction of the *Private Sector Promotion Law*.

On July 18, 2024, the Third Plenary Session of the 20th CPC Central Committee was held, and the *Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization* (hereinafter referred to as the Resolution) was issued, which made a plan for comprehensively deepening reform and promoting Chinese modernization in the new era. The Resolution has 60 articles and more than 30,000 words, including the significance and overall requirements of comprehensively deepening reform and promoting Chinese modernization in the new era; building a high-level socialist market economy; promoting the improvement of the system and mechanism of high-quality economic development; and enhancing the administrative law enforcement system, ecological civilization construction, national security, etc. The Resolution also stresses the issue of how the private economy can play a role in reform and opening up and how to improve it. ‘We will continue to implement principles and policies that help foster a favorable environment and create more opportunities for the development of the non-public sector. We will formulate a private sector promotion law. We will do more to remove barriers to market access, work to see that the competitive areas of infrastructure are open to market entities in a fair manner, and improve the long-term mechanism by which private enterprises participate in major national projects. We will support capable private enterprises in leading

2 See ‘IT IS TIME TO SHOW YOUR TALENTS’: SIDELIGHTS OF GENERAL SECRETARY XI JINPING’S ATTENDANCE AT THE SYMPOSIUM ON PRIVATE ENTERPRISES AND HIS IMPORTANT SPEECH, at https://www.gov.cn/yaowen/liebiao/202502/content_7004472.htm (Last visited on June 10, 2025).

3 *Id.*

national initiatives to make breakthroughs in major technologies and provide them with greater access to major national scientific research infrastructure. We will refine financing support policies and systems for private enterprises to resolve the difficulties they face in accessing affordable financing.⁴ These provisions are relatively specific requirements for the private economy to deepen reform and promote Chinese modernization. From another perspective, it reflects that the development and improvement of the private economy must be guaranteed by the corresponding legal mechanism, which also lays the foundation for the formulation of the *Private Sector Promotion Law*.

B. Increasingly Mature Market Mechanism

From November 14, 1993, when the Third Plenary Session of the 14th CPC Central Committee deliberated and adopted the *Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of a Socialist Market Economic System*, to now, the establishment of market economy in China has been more than 30 years. After more than 30 years of development, China's market economy is becoming increasingly mature. China's market economy has obvious Chinese characteristics,⁵ and the relevant laws and regulations supporting the market economy and its mechanism are improving.⁶ In recent years, China has taken many targeted measures in the construction of social integrity and government integrity because the market economy and its operation must be based on the mutual trust of social parties. Through mutual trust, the relevant rules of market operations can be implemented. China has made significant achievements in constructing social and government integrity. Awareness of abiding by contracts and rules has become a social fashion. However, there are still some deficiencies in market operations. Some of these deficiencies are at the level of market participants, some are at the level of public power entities, and some are at the level of other participants.

4 THE RESOLUTION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA ON FURTHER DEEPENING REFORM COMPREHENSIVELY TO ADVANCE CHINESE MODERNIZATION, at 7-8 (People's Publishing House, 2024).

5 See THE PUBLICITY DEPARTMENT OF THE COMMUNIST PARTY OF CHINA CENTRAL COMMITTEE, STUDY OUTLINE FOR XI JINPING THOUGHT ON SOCIALISM WITH CHINESE CHARACTERISTICS FOR A NEW ERA, at 28 (Xuexi Publishing House, People's Publishing House, 2023).

6 For example, the *Anti-Monopoly Law*, *Anti-Unfair Competition Law*, *Advertising Law*, *Product Quality Law*, *Cybersecurity Law*, *Food Safety Law*, *Consumer Rights and Interests Protection Law*, *Foreign Investment Law*, *Government Procurement Law*, etc.

C. Gradual Optimization of Business Environment

The business environment is a major concern for all countries with market economies. The main reason for this is that a high-quality business environment can promote economic development. In contrast, a poor business environment blocks economic development and dampens the enthusiasm of market players. Based on its importance, China has taken comprehensive measures to optimize the business environment in recent years, such as the openness of legislation and the strictness and standardization of law enforcement, so that the administrative entity should not only exercise power according to the law but also fully protect the rights and interests of market participants. On the judicial side, it is required to ‘strive to make the people feel fairness and justice in every judicial case’.⁷ In recent years, legislative and policy documents have been formulated to optimize the business environment.⁸ Taking the legislation at the central level as an example, China revised the *Administrative Penalty Law* in 2021. In this revision, full consideration was given to the business environment, such as the establishment of a system of no administrative penalty for first-time violations and exemption from administrative penalty for minor violations,⁹ so that China’s administrative system can establish the awareness of optimizing the business environment in administrative law enforcement. In the exercise of public power, they should be kind to market participants and administrative counterparts. In a deeper sense, they should be kind to private enterprises. The optimization of the business environment is not achieved overnight. It is an issue with a long-term strategy. This is a time of progress, not completion. The rational construction of the business environment also requires the protection of the rule of law.

7 XI JINPING, ON UPHOLDING COMPREHENSIVE LAW-BASED GOVERNANCE, at 17 (Central Party Literature Press, 2020).

8 Policy documents such as the *Opinions of the General Office of the State Council on Further Optimizing the Business Environment and Reducing the Institutional Transaction Costs of Market Participants* issued by the General Office of the State Council on September 15, 2022; local legislation such as the *Regulations of Shanghai Municipality on Optimizing Business Environment* adopted at the 20th Session of the Standing Committee of the 15th Shanghai Municipal People’s Congress on April 10, 2020.

9 Article 33 of the *Administrative Penalty Law* stipulates that ‘Where a person commits a minor violation of law, rectifies it in a timely manner, and causes no harmful consequences, he shall be exempted from an administrative penalty. Where a person commits a violation of law for the first time causing slight harm, and he makes correction in a timely manner, he may be exempted from an administrative penalty. No administrative penalty shall be imposed on a party who has sufficient evidence to prove that he has no subjective fault. Where there are other provisions in laws or administrative regulations, those provisions shall apply. Administrative organs shall educate parties who commit violations of law, but are exempted from administrative penalties according to law’.

II. THE ERA PERSPECTIVE OF THE LEGAL VALUE OF THE PRIVATE SECTOR PROMOTION LAW

In the general provisions section, the *Private Sector Promotion Law* stipulates its legislative basis, the principles that should be adhered to in the promotion of the private economy, the status of the private economy in the national economy, the duties and obligations that the relevant public and private rights parties of the private economy should perform in promoting the development of the private economy, and the self-discipline and mechanism of private economic organizations. In terms of regulatory matters, the focus is on ‘fair competition’, ‘investment and financing promotion’, ‘scientific and technological innovation’, ‘standardized operation’, ‘service guarantee’, ‘rights and interests protection’ and other aspects. The choice of these contents is neither accidental nor random. The choice of each regulation item is based on the context of Chinese modernization, and it is also a problem that China’s private economy must deal with and solve in the current development. In the final analysis, the choice of each problem has the characteristics of the times and is formed under the current market mechanism and the pattern of big data. This epochal character proves that the formulation of the *Private Sector Promotion Law* is at the right time, and it provides a clear target in the choice of the regulation matters of the *Private Sector Promotion Law* and other related issues. All these deeply depict a proposition, that is, the *Private Sector Promotion Law* has a strong era attribute, and its legal value has a strong era perspective. The Fourth Plenary Session of the 20th Central Committee of the Communist Party of China adopted the *Recommendations of the Central Committee of the Communist Party of China for Formulating the 15th Five-Year Plan for National Economic and Social Development* (hereinafter referred to as the Recommendations). Among them, the private economy and its legal construction have the following deployment: ‘Acting in line with the *Private Sector Promotion Law*, we should leverage legal and institutional safeguards to see that all economic entities have equal access to factors of production and compete in the market on a level playing field and that their lawful rights and interests are effectively protected. All this will help the private sector grow bigger and stronger’.¹⁰

10 THE RECOMMENDATIONS OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA FOR FORMULATING THE 15TH FIVE-YEAR PLAN FOR NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT, at 16 (People’s Publishing House, 2025).

A. The Era Perspective of Full and Balanced Development

The 19th National Congress of the Communist Party of China clearly pointed out that ‘As socialism with Chinese characteristics has entered a new era, the principal contradiction facing Chinese society has evolved. What we now face is the contradiction between unbalanced and inadequate development and the people’s ever-growing needs for a better life’.¹¹ It is clear that the main contradiction in the new era is between people’s pursuit of a better life and the inadequacy and imbalance of social development. This proposition has philosophical value. On the one hand, the public is full of confidence, enthusiasm, and expectation for China’s politics, economy, culture, and society; on the other hand, China still has problems of inadequacy and imbalance in the above aspects. The solution to this contradiction is to enrich the economy, society, and culture of our country and make them develop and improve constantly. Among these factors that need to be improved, economy is the top priority. The *Report to the 20th National Congress of the Communist Party of China* and the Recommendations have taken economic development as the core content.¹² The proportion of the private economy in China’s national economy and its development cannot be ignored. Full development requires the private economy to advance hand-in-hand with the state-owned economy, while balanced development requires the private economy to enjoy equal status with the state-owned economy in many aspects. To this end, the *Private Sector Promotion Law* specifically stipulates that ‘the State implements a national unified negative list system for market access. In areas outside the negative list of market access, various economic organizations, including private economic organizations, can enter equally according to law’.

B. The Era Perspective of the Theme of Reform and Opening-Up

The Resolution has such specific requirements in the overall goal of deepening reform: ‘We will continue to improve and develop the system of

11 XI JINPING, SECURE A DECISIVE VICTORY IN BUILDING A MODERATELY PROSPEROUS SOCIETY IN ALL RESPECTS AND STRIVE FOR THE GREAT SUCCESS OF SOCIALISM WITH CHINESE CHARACTERISTICS FOR A NEW ERA, at 11 (People’s Publishing House, 2017).

12 The issues related to the economy and its development in the *Report to the 20th National Congress of the Communist Party of China* mainly include: building a high-standard socialist market economy, modernizing the industrial system, advancing rural revitalization across the board, promoting coordinated regional development, promoting high-standard opening up, improving systems for scientific and technological innovation, accelerating the implementation of the innovation-driven development strategy, implementing the workforce development strategy, improving the system of income distribution, implementing the employment-first strategy, advancing the Healthy China Initiative, accelerating the transition to a model of green development, working actively and prudently toward the goals of reaching peak carbon emissions and carbon neutrality, etc.

socialism with Chinese characteristics and modernize China's system and capacity for governance. By 2035, we will have finished building a high-standard socialist market economy in all respects, further improved the system of socialism with Chinese characteristics, generally modernized our system and capacity for governance, and basically realized socialist modernization. All of this will lay a solid foundation for building China into a great modern socialist country in all respects by the middle of this century'.¹³ It clearly defines reform and opening-up as the necessity of improving the socialist system with Chinese characteristics, the necessity of realizing Chinese modernization, the necessity of modernizing the governance system and governance capacity, and the necessity of laying a solid foundation for a socialist modern power. We can definitely say that in the new historical era, reform and opening up is the main theme, and one of the core issues in the reform and opening up is the reconstruction of the economy, enrichment of the economic pattern, and restandardization of the market mechanism. The market economy is a multi-agent and diversified economy. Private enterprises and their full development exist within this diversified market pattern. From this perspective, another era perspective of the legal value of the *Private Sector Promotion Law* is the theme of reform and opening-up.

C. The Era Perspective of the Development of New Quality Productive Forces

New quality productive forces refer to 'integrating scientific and technological innovation resources, and leading the development of strategic emerging industries and future industries'.¹⁴ This is an academic interpretation of new quality productive forces proposed by scholars. After summarizing new quality productive forces and their development over the past one or two years, the Recommendations provide a new summary of new quality productive forces, which generally includes 'promoting advances in original innovation and breakthroughs in core technologies in key fields, promoting full integration between technological and industrial innovation, pursuing the integrated development of education, science and technology, and human resources, and advancing the Digital China Initiative'.¹⁵ This also shows from one aspect that new quality productive forces are in a continuous

¹³ *Supra* note 4, 4.

¹⁴ LIU DIAN, NEW QUALITY PRODUCTIVE FORCES: THE NEW DRIVING FORCES FOR CHINA'S ECONOMIC DEVELOPMENT, at 11 (Chinese Financial & Economic Publishing House, 2024).

¹⁵ *Supra* note 10, 11-13.

process of development. New quality productive forces present a brand-new state, that is, a brand-new element or combination of elements in productivity. They include key generic technologies, cutting-edge leading technologies, modern engineering technologies, disruptive technologies; artificial intelligence, aerospace, new energy, new materials, high-end equipment, biomedicine, quantum technology; digital intelligence technology and green technology; and other new technologies in productivity, such as new models, new industries, new kinetic energy. New quality productive forces and their development are social projects and strategies. In other words, the state-owned economy and new quality productive forces should be related and play a corresponding and even decisive role in the development of new quality productive forces. Simultaneously, the private economy is a new force to promote the development of new quality productive forces, which is fully proven by the emergence of DeepSeek in the field of information technology in China.¹⁶ It can be said that the advent of DeepSeek has prompted widespread recognition of the role of private economy in the development of new quality productive forces. The *Private Sector Promotion Law* incorporates various new expressions to describe the status of the private economy.¹⁷ This reflects that the *Private Sector Promotion Law* has taken into account the phenomenon of the times of new quality productive forces and their full development.

D. The Era Perspective of Big Data Empowerment

‘We should refine our foundational systems for data as a factor of production, foster an integrated national data market characterized by openness, sharing, and security, and advance the development and utilization of data resources. We should promote full integration between the real and digital economies and advance the project for the innovative development of the industrial Internet. We should accelerate innovation in digital and intelligent technologies such as AI, make breakthroughs in basic theories and core technologies, and ensure more efficient supply of computing power,

16 DeepSeek was developed and launched by the Hangzhou DeepSeek Artificial Intelligence Basic Technology Research Co., Ltd., which is a private enterprise.

17 There are some keywords in the wording of the private economy: first, the private economy is an important part of the socialist market economy; second, the private economy is a new force to promote Chinese modernization; third, the private economy is an important foundation for high-quality development; fourth, the private economy is an important force to promote China to build a socialist modern power in an all-round way; fifth, the private economy is an important force to realize the great rejuvenation of the Chinese nation.

algorithms, and data.’¹⁸ This is the overall requirement put forward in the Recommendations for further advancing the construction of a Digital China during the ‘15th Five-Year Plan’ period. Big data is an epochal proposition. It has penetrated all aspects of social life, social processes, and governance. As early as the 14th Five-Year Plan, China has made a systematic plan for big data, including cloud computing, the Internet of Things, the industrial Internet, blockchain, artificial intelligence, virtual reality, and augmented reality. In recent years, new technologies related to the digital world, such as the metauniverse, have emerged. There are two interrelated approaches to digital issues and their development: the first is the approach to the spontaneous development of digitalization that exists among the people, that is, the attempts and innovations made by relevant market or social parties in the field of digitalization, especially the rational use of digitalization, without the government making a plan; the second approach is the overall layout of the government for digital development. There is a legitimate and logical relationship between the two approaches. The former is the foundation, and the latter is a reasonable arrangement for big data and its development through the corresponding decision-making mechanisms. The development of the private economy in recent years is naturally linked to big data. First, the private economy consciously uses big data in its development,¹⁹ and improves business ability through big data. Second, with the generalization of big data, many economic entities with digital businesses have emerged. The popularization of network platforms is based on digital business, and they have become an organic part of China’s economy. Digitalization has profoundly changed the development of private enterprises in recent years. In this process, they surpassed state-owned enterprises in some aspects. The formulation of the *Private Sector Promotion Law* responds to the characteristics of the era of digitalization, and many of the contents of the *Private Sector Promotion Law* also involve digitalization in the development of private economy. Article 29 stipulates that ‘Private economic organizations are supported in participating in the research and development of common digital and intelligent technologies and the establishment of markets for data as factors of production in accordance with the law, use data reasonably in accordance with the law, develop and utilize open public data resources in accordance with the law, enhance the sharing, inclusiveness, and safety of data as factors of production, and maximize the enabling role of data’. Big

18 *Supra* note 10, 13.

19 *See* article 21 of the *Private Sector Promotion Law*.

data empowerment is an irreversible process. The deep logic of the association between the *Private Sector Promotion Law* and big data needs careful consideration. It must be affirmed that big data empowerment is another era perspective of the legal value of the *Private Sector Promotion Law*.

E. The Era Perspective Based on Chinese Characteristics

A market economy is an economic form that has a strong technical attribute in promoting economic development. Market economy also has its own laws. For example, the market economy requires an adequate competition mechanism, perfect legal guarantees, and many related market elements. As mentioned above, the participants of market players must also have integrity. However, this is only one aspect of the problem. On the other hand, market economy is also a concept of time and space. The Fourth Plenary Session of the 20th Central Committee of the Communist Party of China clearly points out: ‘A strong domestic market provides strategic support for Chinese modernization’.²⁰ This proposition aligns with the relevant attributes of China’s market economy under Chinese modernization. The emergence of digitalization can prove the dynamic nature of the market economy in time order. The market in the era of big data is qualitatively different from that in the pre-big data era. However, spatialization shows that the relevant state of the market in different countries, economic regions, and even different regions is not the same. For example, the market and its mechanisms in a country with a population of only millions cannot be compared with those of a country with a population of billions. Based on the differences in time and space of the market, the 20th National Congress of the Communist Party of China put forward the concept of Chinese modernization and clearly pointed out the five characteristics of Chinese modernization: ‘modernization with a huge population’, ‘modernization with common prosperity for all people’, ‘modernization of material and cultural-ethical advancement’, ‘modernization of harmony between humanity and nature’, and ‘modernization of peaceful development’. This judgment is high-end and forward-looking in nature. More importantly, it is a high generalization of Chinese modernization. Through the generalization of these five aspects, the concept of Chinese modernization is different from that of other modernization. For Chinese modernization, we propose a methodology that includes putting the people first, self-confidence and self-reliance, integrity and innovation, problem

²⁰ *Supra* note 1.

orientation, and system concepts. These methodologies are necessary to deal with Chinese modernization. From the judgment of Chinese modernization and the choice of methodology to deal with Chinese modernization, it is not difficult to see the special value and status of the *Private Sector Promotion Law*. Our private economy is not the same as that of some other countries. Article 33 of the *Private Sector Promotion Law* stipulates: ‘The state strengthens the protection of original innovations of private economic organizations and their operators. The state strengthens the protection of intellectual property rights of scientific and technological innovations, implements a punitive compensation system for intellectual property infringement, and punishes illegal acts such as infringement of trademarks, patents, copyrights, and trade secrets, counterfeiting, and confusion in accordance with the law’. This shows that the private economy must be protected by the public power system in many aspects. In depth, the development of China’s economy in the new era will go its own way, take Chinese characteristics as the main factor, and not be affected by external factors, which makes a basic framework for the development of the private economy under the new historical conditions.

III. THE PRIVATE LAW DIMENSION OF THE RULE OF LAW VALUE IN THE PRIVATE SECTOR PROMOTION LAW

At the Fourth Session of the Ninth National People’s Congress on March 9, 2001, China’s departmental laws were divided into seven main areas: constitution-related laws, administrative law, civil law, criminal law, economic law, social law, and procedural law. The legal classification of the law promoting the private economy is relatively complex. In the classification of the seven departmental laws listed above, the *Private Sector Promotion Law* is related to the administrative law, economic law and social law. In other words, we can consider the *Private Sector Promotion Law* an organic part of administrative law, and it can be logically classified into the category of economic law. Simultaneously, the *Private Sector Promotion Law* is closely related to social law. This is sufficient to demonstrate the complexity of the *Private Sector Promotion Law*. We would like to emphasize that after the promulgation of the *Civil Code*, there have been a large number of private law rules in China’s market mechanism, including rules regulating the relationship between equal parties and rules regulating private rights and obligations. Through the principles and rules established by the *Civil Code*, a profound spirit of private law has been fostered in the social system, and

the Recommendations further emphasize that ‘We should continue to build a law-based society and foster a favorable environment for ensuring that the rule of law is upheld, rules are observed, contracts are honored, and justice is safeguarded throughout society’.²¹ Respect for contracts and adherence to the rules mentioned therein are concentrated manifestations of the spirit of private law. The *Private Sector Promotion Law* also includes many rules regulating the relationship between equal parties. Based on this, we can think that the legal value of the *Private Sector Promotion Law* has a profound dimension of private law. Its value of the rule of law is also fully reflected in the dimension of private law.

A. The Private Law Dimension of Fair Competition

The main matters regulated by the *Private Sector Promotion Law* are those related to fair competition. In this regard, six articles are set up, including the specific contents of market access, rational operation, the use of capital and technology, human resources, data, bidding, government procurement, and other market rules related to fair competition. In the legal regulation of fair competition, the code of conduct of public power entities is included, which has the attribute of public law. The author interprets this in the fourth section of this article. However, taking a comprehensive view of the provisions of the *Private Sector Promotion Law* on fair competition, it is not difficult to find that its key content is that market participants have independent legal personality, independent party qualification, independent decision-making mechanism, and independent business mode in the operation of the market. Through the provisions on the independence of market participants, every private enterprise participating in the market and other market participants can realize equality of rights and interests. Article 12 of the *Private Sector Promotion Law* stipulates that ‘The state ensures that private economic organizations have lawful and equal access to various factors of production and public service resources such as funds, technology, human resources, data, land, and other natural resources and are equally eligible for the state’s policy on support for development according to the law’. It can be seen from the provision that the private economic organizations existing in the market mechanism are all independent legal persons. As long as they participate in the market mechanism, they will have equal legal status in the market. One of the major principles of private law is the principle of equality. The *Civil Code* has made very detailed provisions

21 *Supra* note 10, 44.

on the principle of equality,²² which makes every party of civil legal relationship enjoy equal legal status under the provisions of the *Civil Code*. They have equal opportunities, equal personalities, and equal behavior results in the whole social mechanism and in the pursuit of interests. We must have a full theoretical and practical understanding of the private law value and significance of fair competition in the *Private Sector Promotion Law*, and relevant participants in the private economy should also conduct their own business activities and fully improve themselves in accordance with the principles of fair competition established in the *Private Sector Promotion Law*.

B. The Private Law Dimension of Independent Development

Article 3 of the *Private Sector Promotion Law* stipulates that ‘The private sector is an important part of the socialist market economy, a vital contingent for promoting Chinese modernization, a significant foundation for high-quality development, and a principal force for promoting the development of China into a great modern socialist country in all respects and the rejuvenation of the Chinese nation. Promoting sustainable, sound, and high-quality development of the private sector is a crucial principle and policy that the state has long upheld. The state is committed to encouraging, supporting, and guiding the development of the private sector in accordance with the law and ensures that the rule of law serves to better consolidate the foundation, stabilize expectations, and bring long-term benefits. According to the principles of equal treatment, fair competition, equal protection, and common development, the state promotes private sector development. Private economic organizations enjoy a legal status, market opportunities, and development rights on an equal footing with other types of economic organizations’. This provision provides the most basic legal positioning of the private economy. On the one hand, the positioning clearly indicates that the private economy is an important part of China’s socialist market economy. As a special economic form, it contributes to the market economy of China. On the other hand, the private economy is a new force in China’s modernization drive. This formulation affirms the private economy and its functions and distinguishes the private economy from the state-owned economy. Although related, they are two different economic forms and market elements. From the two basic orientations of the

22 Article 4 of the *Civil Code of the People’s Republic of China* stipulates that ‘All parties to civil legal relations are equal in legal status in civil activities’. Article 5 stipulates that ‘The parties to civil legal relations shall conduct civil activities under the principle of free will, and create, modify, or terminate civil legal relations according to their own wills’.

private economy, we can conclude that the private economy must be fully developed, the private enterprise is the bearer of the development of the private economy, and its development is autonomous. The *Private Sector Promotion Law* encourages the independent development of the private economy in a number of specific regulatory matters. Independent development means that the private economy is not interfered with by any external factors in the development process and should establish its independent party identity in the national economy. In the regulation and control of standardized operations, the state requires that the private economy be organically combined with the development of the national economy and the development of China's society. Article 36 stipulates that 'Private economic organizations in their production and business operations shall comply with laws and regulations on employment, work safety, occupational health, social security, environment, quality standards, intellectual property rights, cybersecurity, government funds and taxes, and finance, among others, and shall not seek illegitimate interests through bribery, fraud, or other means or disrupt the market and financial order, pursue profits through bribery, damage the environment, or infringe on the lawful rights and interests of workers or the public interest. State organs supervise and administer the production and operation activities of private economic organizations in accordance with the law'. This provision recognizes the rights of the private economy to labor, social security, ecological environment, and data security, and requires the private economy to engage in public welfare social activities. When the private economy enjoys these rights and interests, it undertakes corresponding obligations. The unification of these rights and obligations is a systematic requirement for the independent development of the private economy. We know that any party, in order to enjoy the rights and interests stipulated in the *Civil Code* and other private law codes, and to perform the obligations stipulated in the *Civil Code* and other private law codes, must have the corresponding autonomy. The independent development of the private economy should be fully reflected in scientific and technological innovation in the *Private Sector Promotion Law*. Article 28 stipulates that 'Private economic organizations are supported in participating in national science and technology research projects. Capable private economic organizations are supported in leading major national technology research tasks. Major national scientific research infrastructure should be made accessible to private economic organizations. The opening and sharing of public research and development platforms and common technology platforms is supported to provide services for private economic organizations to engage in technological innovation. Various enterprises, higher education institutions,

research institutes, and vocational schools are encouraged to work with private economic organizations to innovate cooperation mechanisms, carry out technical exchanges and commercialization and application of advances, and promote the deep integration of industry, academia, and research'. The provision has many breakthroughs in terms of the independent development of the private economy, especially regarding the right to scientific and technological innovation. The independent spirit of the private economy is not inferior to that of the state-owned economy. The state supports the private economy to undertake scientific and technological research projects, and the private economy itself can also carry out scientific research and technological innovation through public research and development platforms and other carriers. The independent development of the private economy is extremely important in contemporary society, which is centered on digitalization. In other words, if the private economy is passive in scientific and technological innovation, its independent development will be hindered. Therefore, we believe that the private law dimension of the *Private Sector Promotion Law* on the independent development of the private economy is real and operable. A series of provisions on the independent development of private economy in the *Private Sector Promotion Law* reflect the dimension of the *Private Sector Promotion Law* in the value of private law from one side.

C. The Private Law Dimension of Honest Management

'We must work harder to uphold the rule of law, ethics, integrity, and security in the sphere of science and technology.'²³ Honesty and credit, as a rule, have a very profound historical origin. People often interpret honesty and credit from the perspective of ethical standards; that is, they believe that the most primitive basis of honesty and credit is the moral level. If people and different parties want to build rational relationships and form rational energy exchanges, they must take honesty and credit as the most basic creed and code of conduct. The vast majority of countries advocate good law and good governance in the construction of the rule of law. General Secretary *Xi Jinping* clearly pointed out: 'We should focus on the quality of legislation, make further headway in making laws in a well-conceived and democratic way and in accordance with the law, take coordinated steps to enact, revise, abolish, interpret, and codify laws, improve legislative efficiency, and see that legislative work is more

23 *Supra* note 10, 12.

systematic, holistic, and coordinated’.²⁴ Because the law itself needs to be considered morally, the existence of relevant moral standards is inevitable in legal norms. The norms of private law regulate the relationship between equal parties, and each party must first have the cognition of self-discipline. Based on this, the principle of good faith is established in the principles of civil law, and *China’s Civil Code* establishes this principle.²⁵ However, as mentioned above, the construction of social and government integrity in China is still in progress. This means that we have not yet established an integrity system in certain aspects. The *Private Sector Promotion Law* fully considers the current situation of the construction of China’s integrity system, and article 6 clearly stipulates: ‘Private economic organizations and their operators shall abide by laws and regulations, observe social and business ethics, be honest and trustworthy, compete fairly, fulfill their social responsibilities, protect the lawful rights and interests of workers, safeguard the national interest and public interest, and submit to government and public supervision’. This provision emphasizes that the private economy should be honest and trustworthy, and at the same time emphasizes that the private economy should abide by social morality, business ethics, and also fulfill social responsibilities. These regulations regulate the honest operation of the private economy from the general principle and also refer to the transparency and openness of private economic behavior and other issues with the spirit of honesty in fair competition. Especially in the standardized operation, it puts forward higher moral requirements for the standardized operation of the private economy. Paragraph 2 of article 39 stipulates that ‘Private economic organizations shall raise their staff’s legal awareness and create a culture of honesty, integrity, and compliance with laws and regulations’. The establishment of good faith management and its rules properly apply the principle of good faith in private law to the promotion of the development of the private economy, which enables private enterprises to be self-reliant in the face of the market.

D. The Private Law Dimension of Social Responsibility

The private economy is an economic form. Under this economic form, private enterprises, as economic entities and bearers of the private economy,

24 XI JINPING, ON UPHOLDING AND IMPROVING THE PEOPLE’S CONGRESS SYSTEM, at 174-175 (Central Party Literature Press, 2024).

25 Article 7 of the *Civil Code of the People’s Republic of China* stipulates that ‘The parties to civil legal relations shall conduct civil activities under the principle of good faith, adhere to honesty, and fulfill their promises’.

inevitably create many complex social issues. They must be related to complex social mechanisms. The relationship between the private and state-owned economies is a form of relationship. This form of relationship mainly embodies the relationship connotation of mutual support, mutual supplement, and mutual competition. Private enterprises, as the main body of the market, and the entity of state public power are another relationship category. In this relationship category, the entity of the state public power can provide legal resources for private enterprises, can provide corresponding guidance for private enterprises, and can also resolve the disputes arising in the operation of private enterprises. The relationship between private enterprises and other social parties is another category. Private enterprises are formed through social mechanisms. Without the environment and soil of social mechanism, private enterprises cannot exist. For example, their products should be exchanged and consumed in the social system, and private enterprises should provide services for other social parties through their own business behavior. In the above three relationship categories, except for the relationship between private enterprises and the entity of public power, the relationship with state-owned enterprises and the relationship with the social system are all forms of relationships in the field of private law. The *Private Sector Promotion Law* does not avoid the relationship between the private and state-owned economies. It requires that the private economy should have equal opportunities with the state-owned economy in the market. More importantly, it requires that the private economy assumes certain social responsibilities. In terms of the provisions on the performance of social responsibilities, the *Private Sector Promotion Law* has some innovations. For example, it requires the private economy to build an evaluation system of social responsibilities, that is, to evaluate the private economy and its business behavior through the social system, and require the private economy to actively perform social responsibilities under the guidance of the entity of public power, such as requiring the private economy to voluntarily participate in public welfare undertakings, charities, and emergency disaster relief. In essence, these provisions reflect the spirit of private law. By promoting the development of the private economy, the state can develop the private economy in a long-term, stable, and sustainable way and prevent short-term, irrational, and blind behaviors in its development process. Incorporating the private economy into the social system affects the private economy in a series of aspects, such as decision-making, legal operation, and commodity sales. In short, it is an indispensable aspect of the private law value of the *Private Sector Promotion Law* to let the private economy bear social responsibility and integrate it into the social system.

IV. THE PUBLIC LAW DIMENSION OF THE RULE OF LAW VALUE OF THE PRIVATE SECTOR PROMOTION LAW

The legislative purpose of the *Private Sector Promotion Law* is to fundamentally promote the development of the private economy. To promote the development of the private economy, we must place the private economy in the big system of China's economic system and market mechanism. If the entities of public power and parties of private rights in China have the obligation to promote economic development and maintain market order, they should perform the corresponding duties and obligations to promote the development of the private economy. The *Private Sector Promotion Law* involves the rights and obligations of the private economy in terms of fair competition, standardized operations, and scientific and technological innovation, and promotes self-improvement of the private economy and self-reliance of private enterprises. These regulations are the main embodiment of promoting the development of the private economy from the internal mechanism. It is only one aspect of the issue that the *Private Sector Promotion Law* boosts the development of the private economy through its internal mechanisms. More importantly, starting from the entity of public power in China, every relevant social party has the responsibility and obligation to promote the development of the private economy, especially since the provisions on the entity of public power are very comprehensive. In fact, the public law value of the *Private Sector Promotion Law* is more prominent. As is known to all, the regulation object of private law is mainly the party of private rights, while the regulation object of public law is mainly the public power entity. The *Private Sector Promotion Law* has more specific provisions on the responsibilities of China's legislative system, administrative system, judicial system and other entities of public power in promoting the private economy. This comprehensive provision is sufficient to show that the *Private Sector Promotion Law* has a very distinct public law value.

A. The Public Law Dimension of Equal Treatment

The Recommendations point out: 'We should regulate the economic promotion activities of local governments, eliminate local protectionism and market segmentation, and address rat race competition through holistic measures. We should ensure unified law enforcement in market regulation, strengthen quality supervision, refine the standards on administrative discretion, and enhance law enforcement and judicial administration

efforts to tackle monopolies and unfair competition. Our aim is to create a market order where good quality commands good prices and healthy competition prevails'.²⁶ After the reform and opening-up, especially after the establishment of the socialist market economy in China, private enterprises gradually developed. However, in terms of the overall pattern, they cannot be compared with state-owned enterprises, including their economic scale and measurement, business model, etc. The *Private Sector Promotion Law* clearly requires that all entities of public power in the country treat private enterprises equally. This equal treatment is comprehensive and systematic, including that administrative law enforcement should treat private enterprises equally. National legislation should establish rules for the equal treatment of private enterprises, and judicial organs should treat private enterprises equally in case handling. Other entities of public power should also perform the same obligation. This is the most important provision of the *Private Sector Promotion Law* for private enterprises from a public law perspective.

B. The Public Law Dimension of Equal Protection

The relationship between the market and the government has always been a complex one. Excessive government action and market behavior seem undesirable. *Adam Smith* proposed market regulation with invisible hands in his book *An Inquiry into the Nature and Causes of the Wealth of Nations*. 'He is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it.'²⁷ This can be considered the earliest expression of the relationship between the government and the market. This means that the government is only the defender of the market order and cannot directly interfere with the behavior of market participants. Later, with the further development of the market economy, the entity of state public power cannot be outside the market, and the market also depends on the action of the public power entity, which involves the establishment and the maintenance of the relevant market order. More importantly, the state public power entity should also safeguard the legitimate rights and interests of market participants. The *Private Sector Promotion Law* clearly puts forward the concept of 'equal protection',

²⁶ *Supra* note 10, 19.

²⁷ ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS*, at 364 (A Penn State Electronic Classics Series Publication, 2005).

requiring the entity of state public power to protect the rights and interests of private enterprises as well as the rights and interests of state-owned enterprises. This concept of public law is an extension of the concept of ‘equal treatment’ of public law, but it also has a unique connotation, that is, the entity of public power should not favor one over the other in the protection of state-owned enterprises and private enterprises. The Recommendations put forward requirements in response to the newly emerging situations in the market. ‘We must ensure that the underlying institutions and rules of the market are unified across the nation. We should refine the systems for property rights protection, market access, information disclosure, social credit, mergers and reorganizations, and market exit and remove barriers related to production factor access, qualification accreditation, public bidding, and government procurement.’²⁸ This is the embodiment of the principle of fairness and justice²⁹ emphasized by the administrative rule of law in China for a long time in the promotion of private economy.

C. The Public Law Dimension of Administrative Payment

‘Administrative payment refers to the administrative act that the administrative entity decides to give certain property free of charge according to the application of the counterpart and the specific conditions of the counterpart in accordance with national laws.’³⁰ First, it is an administrative act. In the contemporary concept of administrative law, administrative payments still have deep meaning. It refers to a spirit of contemporary administrative law, which is complementary to the construction of service-oriented government proposed by China. A service-oriented government means that the government should provide public services, beneficial behaviors, and material and spiritual help for the administrative counterpart. In the documents of the Party and the government of our country, the matters related to the provision of services by the government are extremely rich, including employment services, community services, rural services, and elderly care services.³¹ The *Private Sector Promotion Law* carries forward the concept of a service-oriented government, requiring the government to provide

28 *Supra* note 10, 15.

29 See COMPILATION GROUP OF SUPPORTING PROVISIONS OF ADMINISTRATIVE LAW, SUPPORTING PROVISIONS OF ADMINISTRATIVE LAW, at 2 (China Legal Publishing House, 2005).

30 HU JIANMIAO, ADMINISTRATIVE LAW (VOLUME II), at 579 (Law Press, 2023).

31 See XI JINPING, HOLD HIGH THE GREAT BANNER OF SOCIALISM WITH CHINESE CHARACTERISTICS AND STRIVE IN UNITY TO BUILD A MODERN SOCIALIST COUNTRY IN ALL RESPECTS, at 46 (People’s Publishing House, 2022).

assistance to the private economy in one way or another in performing its duties. As article 13 stipulates, ‘People’s governments at all levels and their relevant departments shall, in accordance with their statutory powers, treat private economic organizations equally when formulating and implementing policies and measures in areas such as government funding arrangements, land supply, pollution emission targets, public data openness, qualification licensing, standard setting, project application, professional title evaluation, merit evaluation, and human resources’. The establishment of the concept of administrative payment in the *Private Sector Promotion Law* is extremely important. It has changed the relationship between the government and the administrative counterpart in China’s traditional administrative rule of law, especially the relationship between the government and the private enterprise as the administrative counterpart. By providing public services for private enterprises, the administrative system has adjusted traditional acts. It also has great guiding value for the future development of China’s public law system.

D. The Public Law Dimension of Administrative Guidance

Administrative guidance refers to: ‘The act by which an administrative organ, within the scope of its jurisdiction, uses non-mandatory means towards specific individuals, enterprises, social organizations, etc., obtains the consent or assistance of the counterpart, and guides the counterpart to take or refrain from taking a certain act, so as to achieve a specific administrative purpose’.³² The *Private Sector Promotion Law* establishes the act of administrative guidance, article 17 of which stipulates that ‘The relevant departments of the State Council shall, based on major national development strategies, development plans, and industrial policies, among others, coordinate research on and formulation of policies and measures to promote investment from the private sector, release information on major projects in which the private sector is encouraged to invest, and guide it in investing in key fields. If a private economic organization invests in and constructs a fixed asset investment project that is in the national strategic direction, it enjoys the national support policy in accordance with the law’. It establishes the issue of the administrative entity guiding the investment of the private economy. Such guidance should be a factual act, which is only a guiding act of the administrative entity to the private economy without legal

32 ZHANG ZHENGZHAO & HU JINGUANG, ADMINISTRATIVE LAW AND ADMINISTRATIVE LITIGATION LAW, at 164 (China Renmin University Press, 2021).

effect. The *Private Sector Promotion Law* also establishes several behavioral modes related to administrative guidance in matters related to scientific and technological innovation, such as the administrative entity supporting the private economy to participate in digital construction and strengthen technological innovation. Such behavior is flexible in the private economy. Although not mandatory, it is highly beneficial for the development of private enterprises. The provisions of the *Private Sector Promotion Law* on administrative guidance expand the way of administrative acts in public law in China and make administrative factual acts specific and operable, which is also beneficial to the subsequent construction of China's administrative rule of law system.

E. The Public Law Dimension of Rational Punishment

The revision of the *Administrative Penalty Law* in 2021 fully considered the business environment and established new administrative penalty systems, such as no penalty for the first violation and exemption from penalty for minor violations. Some places have refined the provisions of the *Administrative Penalty Law* in the formulation of rules for the business environment and have achieved very good results. However, irrational administrative penalty still exists in the practice of the administrative rule of law in China. Therefore, the *Private Sector Promotion Law* has targeted and standardized law enforcement in this field. Article 51 stipulates that 'The administrative sanctions for illegal acts of private economic organizations and their operators shall be imposed on an equal footing with other economic organizations and their operators. An administrative sanction or any other measure, if required to be imposed for an illegal act in accordance with the law, shall fit the facts, nature, circumstances, and degree of social harm of the illegal act. If the illegal act falls under mitigating, lightening, or exempting circumstances as specified in the *Administrative Penalty Law*, a mitigated penalty, a penalty below the statutory range, or exemption from a penalty shall be given in accordance with the law'. This kind of legislative technology that makes special provisions for administrative penalty is rare in China's legislative system, which reflects that the *Private Sector Promotion Law* has done enough in the construction of public law on rational punishment. Regarding legal responsibility, an accountability system for the implementation of indiscriminate punishment by the administrative entity is constructed. The public law value of rational punishment in the rule of law value of the private economy provides a new technical route for improving China's administrative penalty system.

F. The Public Law Dimension of Rights and Interests Protection

The *Private Sector Promotion Law* has a dedicated chapter on ‘Rights and Interests Protection’, which contains 13 articles. From the perspective of the party of rights and interests protection, it includes the rights and interests protection of private enterprises as legal persons and private enterprise operators as individuals. From the perspective of the form of rights and interests, it has constructed a series of new rights related to private enterprises and private enterprise operators, such as property rights, personal rights, name rights, reputation rights, honor rights, privacy rights, and personal information rights, which is a major breakthrough in the category of rights and interests of private economic parties. From the perspective of protection mechanisms, these include legislative, administrative, and judicial protection mechanisms. For example, paragraph 2 of article 59 stipulates that ‘No entity or individual may maliciously harm the personal rights and interests of a private economic organization or its operator by insult, defamation, or any other means through the Internet or any other communication channel. An Internet service provider shall, in accordance with relevant laws and regulations, strengthen the management of online information, establish and improve a complaint and reporting mechanism, promptly deal with illegal information that maliciously harms the lawful rights and interests of the parties, and report to an appropriate authority’. The content of this provision is rich enough to show the strength of the *Private Sector Promotion Law* in protecting the rights and interests of private enterprises and private entrepreneurs. Article 63 stipulates that ‘When cases are handled, it is necessary to strictly distinguish between economic disputes and economic crimes and comply with the statute of limitations; production and business activities that do not violate the *Criminal Law* shall not be regarded as crimes; unclear facts and insufficient evidence, or exemption from prosecution granted by law, shall result in a case withdrawal, non-prosecution, trial termination, or acquittal. It is prohibited to illegally intervene in an economic dispute by administrative or criminal means’. This provision has a judicial dimension related to the protection of the rights and interests of the private economy, and it is also very specific. There are some more innovative contents in the protection of the rights and interests of private enterprises. Article 67 stipulates that ‘State organs, public institutions, and state-owned enterprises shall promptly pay private economic organizations in accordance with the law or by contract, and shall not refuse or delay payment on the grounds of personnel changes, fulfilling internal

payment procedures, waiting for completion acceptance approval as no such agreement has been made in the contract, or final account audit, among others; subject to laws and administrative regulations, audit results shall not be forcibly required as the basis for settlement. Audit organs shall lawfully conduct audit supervision on the payments made by state organs, public institutions, and state-owned enterprises to private economic organizations'. This provision not only establishes the obligations of the administrative entity in the protection of the rights and interests of private enterprises, but also establishes that institutions, state-owned enterprises, and other parties should also perform the obligations to protect the rights and interests of private enterprises, and makes a very specific refinement of the content of infringement. This is very powerful in protecting the rights and interests of private enterprises and their operators. The Recommendations further strengthen and expand the protection of the relevant rights and interests stipulated in the *Private Sector Promotion Law*. 'We should strengthen law enforcement and judicial administration to protect property rights and tighten judicial oversight over coercive measures such as the sealing, sequestering, and freezing of assets.'³³ With the implementation of the *Private Sector Promotion Law*, the rule of law values pursued by its public and private law dimensions will be better reflected in practice. The legitimate rights and interests of a wide range of market participants will be more effectively protected, thereby promoting the healthy development of China's private economy and further boosting the prosperity of its market economy.

(Edited by Li Jiesi)

《民营经济促进法》的公私法维度探析

内容提要 《民营经济促进法》是在市场机制日趋成熟、营商环境逐步优化的时代背景下制定的，其蕴含的法治价值有着明显的时代特征。在中国式现代化的背景下，《民营经济促进法》以改革开放为主旋律，以经济充分与平衡发展为目标，对新质生产力发展和大数据赋能给予关注，强调经济发展应凸显中国特色。同时，《民营经济促进法》展现了公私法维度兼顾的法治价值。一方面，鼓励市场主体公平竞争、自主发展、诚信经营，承担相应的社会责任；另一方面，要求公权主体平等对待每一个市场主体，通过行政给付、行政指导等手段提供必要的扶持和引导，在行政处罚的适用中采取谦抑的态度，从而保障市场主体合法权益。

33 *Supra* note 10.