

Privatization and its varied forms due to the differences between legal cultures

1

DIVISION OF LEGAL CULTURES BY THE MODE OF OWNERSHIP

During Cold War, legal cultures of the world had divided into the two blocs; namely the first one which maintains traditional ownership based on the notion of private property and the others which were dominated by the Marxist theory demanding a transfer of ownership and of the means of production to the community and which we have called socialist countries. In this type of socialist country the government has not in principle recognized private property as a means of production and instead the property was administrated by state. Exception was Yugoslavia, where a different type of socialism was provided, where the property was treated as a social ownership belonging to the society as a whole¹.

Privatization or re-privatization which has proceeded since the end of the 1990s in former socialist countries is associated with their total reforms of sociopolitical system and the process of assimilation to the European legal culture.

In addition, these European countries, as a result of their emerging membership in the Council of Europe, are legally bound by an international treaty, Protocol no.1 of the European Convention on Human Rights, to

¹ A.G. Chloros, *Yugoslav Civil Law*, Oxford 1989.



implement privatization, because this protocol extends the guarantees of the convention to the fundamental right of private ownership².

In most of the European socialist countries, the dominant notion of ownership is based on the Soviet doctrine, one of total control over property. From this, it is but a natural progression to the central planning of all economic activities by a monopolistic state administration. For this purpose, and because of principal inspiration by the Soviet model (The Communist Party of USSR's instructions), the existing laws on private ownership in Eastern European countries were progressively repealed throughout the 1940s by the socialist governments through the implementation of programs of nationalization.

It is very important to take into consideration, however, the fact that there are some differences of nationalization measures from the Soviet precedence of the 1917–18 due to the differences of legal structures from the legal culture in Russia. Nationalization laws of European socialist countries after the Second World War were enacted based on popular support expressed through popular votes-like referendums or similar events; the contents of which should be reflected by the laws. Therefore, from the legal point of view, the laws on nationalization were formulated within the framework of the existing constitutional order of the previous European legal cultures (note social democratic trends of these constitutions during the 1920s).

Accordingly, in most of the cases, laws allowed to expropriate private property for the purpose of state reconstruction but also included some expressions regarding adequate restitution for the nationalized property. In fact, however, Eastern European Socialist governments had in the process of implementation neglected the restitution clauses and did not really pay compensations. The legal provisions for them was meant only as a political pretext, at least at that time³.

In contrast to this practice, the nationalization measures in Russia during the 1917–1918 were implemented as a confiscation process and any kind of restitution relating to this had never been discussed, mainly because there were no firm institutions of protection of private property established in the pre-revolution period of Russia. Indeed, there were some regulations, like the land reform law at the period of the Stolypin's reform in 1906, but it was

² T. Suzuki, *Privatization as a Fundamental Socio-Economic Reform* (in:) *Rule of Law and Transition to a Market Economy*, UniDem, European Commission for Democracy through Law, Council of Europe, Sofia 1993: Proceedings, Legal Aspects of Privatisation, Council of Europe, Budapest 1993.

³ S. Friedmann, *Expropriation in International Law*, London 1953.

said that only about the 20% of the national assets, mainly land, was privatized at the time. The Russian peasants preferred to maintain traditional commune ownership called “Mir” than that of modernized private property. That ambiguous status of property was in fact maintained until the Bolshevik Revolution in 1917⁴.

2

ECONOMIC REFORMS IN THE 1960S

In the second half of the 1960s, when the criticism of the socialist command economic system became acute, partial reforms were introduced in some countries like Hungary, Yugoslavia and Poland (later also in the USSR). During this period, the idea of a “Socialist Market Economic System” was introduced, whereby a partial mechanism of relative independence in the management of state economic activities was permitted as a functional improvement on the command system.

In these circumstances, although public ownership of the means of production was maintained as an ideological core of the socialist sociopolitical system, the notion of ownership was slightly enlarged in its conceptual parameters and liberated somewhat from the notion of absolute state control over property⁵.

In the European legal history, particularly since the period of the reception of Roman law, ownership has been theoretically introduced and later, it was defined by the professional lawyers. Accordingly, the content of ownership is understood as an absolute control over property. The notion of private property has been elaborated more in detail by codified civil laws of the 19th century like the Napoleonic code and the German Civil Law (BGB)⁶.

But the nature of ownership undergoes a change through the transfer of ownership from private persons or corporations to the state under a socialist system. Since the state does not exercise its property rights as a private owner or corporation, the management rights of state enterprises, to whom the exercise of property rights is entrusted, forms the real and substantial

⁴ E.H. Carr, *The Bolshevik Revolution 1917–1923*, London 1950.

⁵ W. Brus, K. Laski, *From Marx to the Market*, Oxford 1989.

⁶ G. Eorsi, *Comparative Civil (Private) Law*, Budapest 1979; I. Send, *The Political Institutions of Private Property*, Cambridge, UK 1997; A. Watson, *The Evolution of Western Private Law*, Baltimore and London 1985.

content of ownership. Therefore, when, the content of ownership is transferred to management rights, the ownership by the state becomes extremely abstract and devoid of substance and reality⁷.

In legal terms, the traditional notion of ownership or property rights, irrespective of the legal status of the owner, is defined in terms of collective rights of custody, usufruct, alienation and destruction of property. However, these were far from the realities of the socialist system, it being understood there that all such rights were unambiguously vested in the administrative organs of the state. Even economic entities of the state such as state enterprises enjoyed no rights of ownership as such, but were rather the holders of specific administrative rights and duties, notwithstanding the fact that they might constitute a monopoly in any given sector of the national economy. In practice, therefore, the state organ as an exclusive administrator of the particular state property had no need to distinguish those conceptual differences between ownership, management and entrepreneurship which go to the very basis of an understanding of a market-orientated economic system. In particular, most of the civil law experts had to question whether civil law did indeed need to exist further for the state economy or not?⁸

In consequence, an adequate understanding of the privatization process demands that one looks beyond the question of transferring particular objects of ownership from the state to private persons. It requires instead an examination of the whole process of transformation, in particular the social backgrounds related to the advanced market economy and the traditional legal cultures.

3

DIFFERENT LEGAL SYSTEMS AMONG SOCIALIST COUNTRIES AND NATIONALIZATION MEASURES

It is necessary to recognize at the outset the differences between legal processes of privatization deriving from different legal systems among the former socialist countries. In those so-called “People’s Democratic Countries”

⁷ T. Suzuki, *Economic Reforms and Law, The European Socialist Countries and China*, Year Book of Socialist Legal Systems 1988.

⁸ Regarding the relation of civil law to economic law, and the notion of property, there are interesting discussions in Poland, see: W. Pańko, *O prawie własności*, Katowice 1984; M. Bednarek, *Przemiany własności w Polsce*, Warszawa 1994; A. Stelmachowski, *Wstęp do teorii prawa cywilnego*, Warszawa 1984.

like Poland, Czechoslovakia, Hungary, Bulgaria and Romania, some or part of the prior legal institutions were not explicitly abolished, but survived at the socialist period as a symbol of continuity with the pre-socialist legal tradition or as a part of legal practice to complement the existing system, whereas in the USSR the practice was to abolish pre-revolution legal institutions in their entirety. In the former case, the process of privatization has as its first concern the restoration of rights of private ownership which were unlawfully interfered with by the legal and political procedures created during the 1940s. By contrast, in the Republics of the former USSR (apart from the Baltic states) the process of privatization necessarily entails a process of denationalization of state-owned and controlled property because without such measures there exists in law no private property which may be the subject of legal regulations for restitution.

In systems governed by the rule of law, where private ownership rights are secured under a constitution and the related civil laws, expropriation of private property by the state for specific public purposes is firmly conditioned by the principles of restitution, in particular according to constitutions of the 1920s by the principles of adequate, prompt and effective payment of compensation (as in the case of the Mexican Revolution of 1938)⁹.

In cases of restoring rights of private ownership, therefore, it follows that restitution should be the normal legal remedy.

In practice, however, the process of restoring rights of private ownership which existed before the socialist sociopolitical changes in the 1940s, is not so decisive in an economic sense as that of transforming the almost wholly state-owned industrial sector. The socialist governments had been ambitiously involved in industrial development and, as a result of their investments over the half of century of the Socialist period, the huge amount of state property had been created by them.

The task of privatizing large-scale state assets should, therefore, be focused upon.

⁹ R.B. Lillichi, B.H. Weston, *International Claims. The Settlement by Lump Sum Agreements*, Charlottesville 1975.

4

ALIEN PROPERTY

The external aspects of restitution in the case of nationalized alien property were indeed seriously debated in the 1920s as one of the hottest issues concerning international public order¹⁰.

However, there was no resulting compromise. Despite the hard bilateral negotiations between the governments whose nationals had suffered from the nationalization in Russia and the new government of Soviet Union, and also the international conferences which were continually held in the 1920s for resolving of the claims, all those attempts had failed to reach any constructive agreements.

It should be taken into consideration that despite some international tensions due to the Revolution, the Russian government had stubbornly defended its stance by maintaining that Russian nationalization measures were lawfully executed based on sovereign rights of international law and so, from their point of view, the related restitution was never regarded as a necessary measure to rescue the previous owners. Therefore, after the nationalization, Soviet Union had in practice paid no restitution to the aliens, just as in the domestic cases.

In the case of European countries, however, the nationalization procedures, which were implemented after the Second World war, were differently formulated. Despite the international tensions due to the Cold War, those new governments were eager to establish normal diplomatic relations with the West. Against such background, restitution was discussed by the concerned governments¹¹.

The socialist countries of Europe after the Second World War that ideologically imposed the same policies as in the case of the USSR, which demanded that the private property as a means of production should be nationalized, had in practice managed to compromise at the negotiations and to agree to the restitution by paying compensation as a form of a lump sum payment for restoring normalized trade relations with the West¹².

¹⁰ I. Foighel, *Nationalization and Compensation*, Copenhagen 1964.

¹¹ C.F. Amerasinghe, *Issue of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice*, International and Comparative Law Quarterly 1992, Vol. 41.

¹² See 9, 10.

The legal character of the international arrangements in a form of lump sum payment was a inter-governmental settlement. Each private claim relating to restitution should be settled by the governments concerned according to national laws. Therefore, all private claims have to be exempted from direct negotiations. In the case of the USA, for example, the government-based “the Claim Commission” was established for that purpose and had to distribute proportionally the amount of compensation for individual claim holders.

The form of lump sum payment was very different from the conventional restitution rules, which practically ask to pay directly prompt, adequate and effective compensations based on civil laws, but it was a political solution¹³. However, it was the first step to recognize private property rights by the socialist governments, because those governments had later established in addition advanced trades relation with the West by direct investment agreements, which admitted protection of alien private rights as investments in their national territories¹⁴.

5

PRACTICAL ASPECTS OF PRIVATIZATION

From the experience of the past years, it is possible to identify certain difficulties in implementing programs of privatization which, to some extent, can be seen to have been exacerbated by conceptual confusion on the appropriate policy goals of privatization¹⁵. Although there are evidently also difficulties which derive from institutional defects, particularly in the field of financial systems, like Stock exchange, which is not yet functioning as a advanced institution including transactions of various commercial papers related to cases of voucher privatization, this conceptual confusion makes government policy decisions extremely difficult.

It is generally observed that the following attitudes to privatization policy can be discerned in the recent political arguments in these countries (naturally there are some differences among the countries due to the progress

¹³ Ibidem.

¹⁴ T. Suzuki, *Joint Venture Enterprises in Socialist Countries*, Co-existence 1981, Vol. 18, No. 1.

¹⁵ T. Surdykowa, *Prywatyzacja*, Warszawa 1996.

of their procedures, but more or less similar political trends are very much common)¹⁶. The first argues for the complete restoration of private ownership through the distribution of state owned property among the people in equal shares and without payment and for allowing the subsequent sale of such shares through the market mechanism. In short, this policy is the complete restoration (partly creation) of private ownership. It was indeed realized in the case of privatization of state-owned housing enterprises.

The second approach views de-nationalization as the first stage and then, utilizing existing industrial capacities and sometimes retaining established technocrats in positions of management, looks to a new form of ownership at least for a transitional period.

The first approach is represented by populist groups, the second by realist ones, and as a result of often long and serious debates between them, the outcome in practice is a political solution which agrees upon a compromise between the above two stances. In general, a variant of the first type of privatization has been employed in most countries in Eastern Europe as well as in the Baltic States, whereas forms of denationalization as a first step to privatization are prevalent in the Republics of former Soviet Union¹⁷.

When it comes to the difficulties of implementing privatization programs in respect to large-scale state enterprises, it is necessary to distinguish small-scale privatization from large-scale ones. It is true that privatization on a small scale has been relatively successful, although the question may be still be asked in terms of economic policy, taking market competitiveness into consideration, as to whether or not “small is beautiful” is an adequate watchword for restructuring the former command economies.

As regards large-scale state enterprises in these countries, most have been denationalized and transformed into legal personality under civil laws. However, most of their capital has been reserved to state agencies for privatization or such, and has been assimilated to state property as a temporary measure. Having the exclusive function of privatization, such newly established agencies are characterized by their transitional character. In principle, therefore, it was to be expected from the beginning that these institutions would gradually wither away as the privatization process neared completion, as in the case of the German State Trust Agency, called

¹⁶ Ibidem.

¹⁷ Ibidem.

“Treuhandanstalt”, which was established in 1990 and functioned until the end of 1994¹⁸, and in the case of Poland, where the ministry of privatization was also established temporally. In Germany, the objects of reprivatization included not only those from the Socialist period but also those damaged during the Third Reich from 1933.

When these temporary measures on denationalization and the associated privatization are over, the residual property as a part of state treasure is to be managed on a continuous basis by conventional state administration like ministry of treasure, whose functions are also formally limited.

6

AMORTIZATION AND EVALUATION OF PROPERTY

There is another aspect of ownership, namely the material value of property, whose examination is important in practice. It is universally understood in the theory of market economics that for the purposes of property valuation, the investment value of materials, and particularly of equipment, is calculated by reference to an adequate scale of amortization. In the socialist economic system, however, the investment value of property was maintained as initially registered in the books, with no rule of amortization being recognized. Although this problem was principally adjusted with the European Union rules during the accession treaty negotiations that lasted until 2004, it became serious among political groups that discussed a large-scale privatization. It can be seen as simply a matter of accounting, but privatization based on market-oriented values cannot proceed without adequate, universal rules of bookkeeping¹⁹.

In addition, there are evident and serious differences in attitudes to intellectual or intangible property. According to the socialist economic rule, it is unnecessary to take account of or to recognize such intellectual property as management, marketing, know-how, software technology and so on. In so far as specific technology may be protected by conventional socialist laws through state as patent laws (only in Hungary and Yugoslavia) or certificate of innovations in the other countries. However, those patented technologies

¹⁸ S. Hirowatari, *Legal Changes due to the Unification of Germany* (in Japanese), Tokyo 1996.

¹⁹ White Paper, the EU Commission COM995)163, final 03.05.1995; *Polska w Unii Europejskiej*, ed. C. M. Milk, Toruń 1997.

were not private rights and all controlled by state agency for technology development. Except this innovation was never regarded as an incentive for development.

In complete contrast, the evaluation of corporate worth in a free market is formulated principally by reference to complex aspects of the company's market activities extending beyond the material value of its assets to non-material elements affecting its competitiveness in the market place.

In large-scale state enterprises in the countries under discussion, there is almost nothing in the way of management, marketing or software value which could be accounted for as part of their intellectual or intangible property in a market economy context, especially after the collapse of the national command system and COMECON. Within the framework of monopolistic position in the domestic distribution and COMECON, state enterprises of the former socialist countries were guaranteed to share a portion of the given market which derived from international accords, as determined by planning in the international division of labor among the socialist countries. After the collapse of COMECON in 1990 and liberalization of state control on economy, particularly the reforms in currency systems through which most of the national currencies became convertible, those state enterprises have totally lost such assignments and they had to manage independently for the first time and to seek new market shares in both domestic and international markets. Apart from a few cases, they are faced with serious financial difficulties and in some cases are close to bankruptcy. In such an economic situation, the privatization of large-scale state enterprises in particular becomes heavily dependent on the restructuring of the whole national economy and on the creation of macroeconomic conditions which enable those enterprises to secure an adequate portion of the relevant market in the new international economic order.

7

FORMATION OF PRIVATE PROPERTY NOTION IN CHINA

After a long domestic battle with the Nationalist Party of China led by Chan Kai Shek for hegemony in the mainland China, the Communist Party of China has finally taken territorial control and then, declared that Socialist People's Republic of China was established and her Socialist government was recognized as the only *de iure* government in China by the governments of

the related Socialist countries in 1949. Since then, the Communist leaders of China had intensively learned socialist socioeconomic model, in particular Soviet experiences and precedences. Then, many Soviet types of socialist institutions were introduced to China like, for example, the idea that private property as a means of production was to be nationalized. However, it was not an imitation of the Soviet model, but there were constantly reforms related to ideological arguments on building of the Chinese ways of socialism, which, being different from Eastern Europe, is much dependent on her cultural backgrounds. After serious criticism due to the failures of the socio-political reforms, particularly those of chaotic movements called the Cultural Revolution in the 1966 to 1976, the Communist party of China has finally decided to change its basic attitude toward the socialist policies of state building by partly abolishing her command system in the economy and instead, introducing in China a partial market mechanism, which was later called "Socialist Market Economic System"²⁰.

It was in 1978 that Chinese authorities began to carry out dramatic economic reforms in earnest. The main principles of reforms were based on open policy of the Chinese external relations and modernization policies based on a kind of developmental administration. Further, in 1982 the government decided on a five-year legislative plan, enacting more than 145 laws and decrees principally concerning economic affairs, in which drafts of civil law are included²¹.

According to the legislative plan (1982-1986), the general picture of Chinese laws became evident. As for economic legislation, reforms in agriculture were carried out first, followed by the laws relating to external economic affairs like a foreign investment law. Legislation on reforms in the socialized sector, centered on state enterprises which play a central role in the Chinese economy, has also been planned. In addition, an idea of encouraging private sector of economy is included.

According to the decision on economic reform adopted by the Central Committee of the Chinese Communist Party in 1984, the number of industrial enterprises owned by the state was above one million, employing more than 80 million people. The basic approach to the reform is to ease controls of central state organs over enterprises and to expand their autonomous

²⁰ T. Suzuki, see 7.

²¹ *Ibidem*.

rights. In other words, on the premise that they should maintain state control, they would be allowed to adopt management methods flexibly, make decisions regarding their production, supply and marketing activities, carry out those decisions, hold and manage their own fund, appoint and discharge their employees to and from posts according to regulations, and make decisions on methods of recruiting, selecting and hiring their employees and on the methods for wage and incentive payments. Furthermore, within the scope admitted by the state, they are allowed to make decisions on prices of their products.

It is characteristic of the legal developments in China that despite the economic activities thus allowed broadly in the multiple sectors of the Chinese economy, namely socialist sector and in addition, private sector, where many kinds of business entities are involved, for example, state enterprises, cooperatives, private entrepreneurs and foreign joint venture enterprises, no unified laws existed which would regulate legal foundations for those matters. It is so serious, that the legal discrepancy between the economic activities and the existing laws of China becomes a defect for further growth, and in some cases a source of illegal conducting of business. Although the Chinese authorities have taken the issue seriously, it is too complicated for the state organs to regulate rationally by their administrative ways. It is indeed a theoretical dilemma to unify these issues into a single rule. When a centralized administrative system is functioning firmly and, in addition, complementary relationships based on equal partnership of principle "pacta sunt servanda" is not always integrated. Then, the problems on legal status of business partners, including those of responsibility, and private property rights have been taken up as matters of civil laws.

The drafting of many laws, particularly that of civil law, according to the legislation plan had been encouraged by the concerned people. The first draft that was discussed was a complex code of civil laws which was a result of comparative studies of socialist civil law, but it had soon been changed to a separate law model (contract law, property law and so on separately), because the Authorities wanted to avoid unnecessary confusion due to debates on the matter of private ownership. That is one of the reasons why it took time to reach a constructive goal of the planned drafting work²².

²² In Soviet Russia almost same problems existed at the beginning. Then, the civil code of 1922 was provided. It was a kind of a compromise between the pure ideological system and the actual economic situation. (H. Freund, *The Code of Civil-Soviet Russia*, Berlin 1923; T. Kuniya, *The Civil Economic Law of China* (in Japanese), The Collection of Basic Laws and Decrees in China 1988.

One of the big questions is on the notion of property. The question of whether the Chinese civil law has to recognize a notion of private property right as a subject of protection by the law or not, has long been discussed. The conservative groups had insisted that according to the official doctrine of the Communist Party all property should be nationalized and then, only the state or commune property is protected by laws and no private property right should be admitted in China. However, the Communist Party declared ambitiously in 1978 that the change and its reforms should be introduced and as a result, equal development of these multiple economic sectors should also be taken seriously. Therefore, legal equality among economic entities like state enterprises, private entrepreneurs, private corporations with foreign investors and so on, means that all should be equally protected by laws.

From the beginning of the drafting work, the discussions had focused on this issue. Due to divided opinions, experts could not easily reach a conclusion on the draft of civil law. While earlier there had been some compromises on economic contract law, which is mainly concerned with state enterprises, and the general part of civil law, which is to regulate civil law affairs but in a limited way, it took time to complete the principles of property law. The political environment was also unfavorable for drafting civil law.

It is quite natural to observe the tendency that modern legal development in the form of civil law of civil society, has always been associated with a firm establishment of private property rights and other categories of human rights. From this context it was understandable that the people of China who supported the economic reform had acknowledged the need for those further rules by demanding respect for the other categories of human rights, including freedom of speech as a basis of democratization of the society²³.

The serious conflict which was called "Tiananmen incident" of 1989 arose as a political tension between the young people and the authorities. The opposition side, composed mainly of students and the young people, demanded a democratic process of decision making and a kind of reform for political pluralism. A large number of people gathered and demonstrated at Tiananmen square. The authorities never admitted such an unofficial movement of the people. According to the official statement of the Authorities,

²³ W. Brus, *Political Pluralism and Markets in Communist System* (in: *Pluralism in the Soviet Union*, ed. S. Gross Solomon, London 1983).

a stable social order maintained by the one Party system permits the use of police and military forces to control such movement. It was then reported unofficially, that the Authorities had suppressed the people by utilizing police and military forces which resulted in many sacrifices. After the tragic incident, all reform measures which had been gradually proceeding since 1982, were suddenly been stopped. The drafting works including the draft of civil laws were also interrupted for more than ten years, because the Communist Party and the government were especially cautious about discussing about these issues. This reluctant attitude of the Authorities towards the civil law and human rights has continued until 2002.

In practice, despite this short period of setbacks connected with the incident, the Chinese economy has continuously developed mainly through the growth of its private sector, particularly that with foreign investments, that has been accelerated by China's entry to the World Trade Organization in 2000.

8

PROPERTY RIGHT LAW OF 2007 IN CHINA²⁴

Thus, given the fact that the economy is developing fast, and is heavily dependent on private sector where no regulations formally exist, the discrepancy between it and the state legal order, even the emptiness of law, becomes a serious social problem. Under such circumstance, the second stage of the drafting works was expected to resume around the year 2002.

There is another reason why the Authorities have made this decision, namely they understand that the political climate that prevailed since the 1989 incident has improved and it is stable enough to discuss the matters.

The new drafts of property rights laws is prepared as a separate part of civil laws, and at last published for public discussion in December 2002.

The part of regulations on private property right has been the center of focus again, and some argue that it may be unconstitutional and moreover, China should maintain the socialist principles as before. Then, the discussions on the civil law draft had expanded into a problem of constitution.

²⁴ F. Kamata, *The Enactment of Property Law in China* (in Japanese), Foreign Legislation 2007, No. 9.

The Amendments to the constitution were discussed at the People's Congress in March 2004 and the following expression has been agreed upon: "legally gained private property of citizens of the Peoples Republic of China is not to be interfered with" (the amendment of the constitution, 2004)²⁵.

Based on the spirit of the Amendment to the Constitution, the public discussions on the published draft of the law on property proceeded since July to August of 2005 reportedly most of the experts and the people finally accepted it. The first property law of China has been thus formally enacted on March 16th 2007 by the People's Congress.

This is not only the first property law of China, but also the first socialist property law to admit private ownership of means of production under the Socialist Market Economic System²⁶. According to the law, subjects of the law are socialist enterprises, collectives and private persons, who are all equally treated, although socialist ownership of property has been emphasized as an important element in the Chinese society, but with no privileges described. After the law has been implemented in practice on October 1st 2007, real property of all kinds should be registered for the purpose of protection by state through the state notary offices regulated by the law which had to be established at the same time. It is said that the enactment of the property law is supported and expected by the people because illegal conducts like privatization or expropriation of state or commune properties without adequate legal process based on laws, abuses by high officials of the party or state agencies, which have often been accused by the concerned people of corruption, may be controlled by this law. From this point of view, the new law has a broad function in the society, which is not only to regulate civil activities of the society but is also expected to play a role in the prevention of such an unlawful conduct which is prevalent in today's China.

²⁵ H. Tsuchiya, *The Amendment of Constitution in China* (in Japanese), Reference 2004, No. 44.

²⁶ K. Suzuki, *The Significant Meaning of the Completion of Property Law in China* (in Japanese), Kinnyuuzaisei 2007, No. 9826.