

LEGAL ENTITIES AS THE MAIN PARTICIPANTS IN BUSINESS ACTIVITY IN RUSSIA AND CHINA

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The legal entity is one of the most common forms of business activity in the Russian Federation and the People's Republic of China. The regulation of legal entities in Russia and China has changed in recent years, which makes the study of this issue especially relevant. This article explores and compares the concept of business activity, the system of legal entities and several types of particular legal entities in regard to companies found in Russia and China. The research concludes that the system of legal entities in the Russian Federation has an exhaustive regulation that facilitates the interpretation of the civil legislation and allows distinguishing the relevant characteristics of any type of organization. In China, there was no unified system of legal entities until 2017. While the General Provisions of the Civil Law of the People's Republic of China adopted in 2017 is a serious and important attempt to establish a system of legal entities, the law does not contain the essential characteristics of legal entities; additionally, a number of the provisions of the legal acts in force devoted to the regulation of the activities of legal entities have not yet been brought in line with the new law.

Keywords: business activity; legal entities; General Provisions of the Civil Law of the People's Republic of China; Civil Code of the Russian Federation; BRICS.

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Introduction

Understanding what modern legal families and legal systems are represents one of the main objectives of legal theory in the 21st century. Yet, researchers often come across visible and hidden language and cultural barriers. Without knowing the historical, cultural and mental peculiarities of other peoples, the reasons why an institution has been included in or eliminated from a foreign state's legislation cannot be determined.

Studying the legal systems of other countries is important for lawmaking, because it can provide legislators a clue, based on another country's experience, as to what kind of legal practices are effective and can be borrowed or, conversely, what kind of norms proved inefficient and should be avoided.

So it is not surprising that the legislation of the People's Republic of China (PRC) is of special interest to researchers these days. This is due to a whole range of factors. First of all, China is one of Russia's major strategic partners. The long-standing cooperation between the two countries based on the similarity of political courses is characterized by a steady growth. Russia and China collaborate in various fields including trade and economic relations, humanitarian work and international cooperation in organizations such as BRICS, Shanghai Cooperation Organisation (SCO), Asia-Pacific Economic Cooperation (APEC) and the World Trade Organization (WTO).¹

The importance attached to Russian-Chinese bilateral contacts is also reflected in Russia's legal acts. For example, the Russian National Security Strategy sets as its priority

the development of all-embracing partnership and strategic cooperation with the People's Republic of China, as it plays the key role in maintaining global and regional stability.²

¹ Irina Mikheeva & Anastasia Loginova, *WTO Accession of BRICS Countries: The Chinese Experience*, 4(1) BRICS Law Journal 84, 98 (2017).

² Указ Президента РФ от 31 декабря 2015 г. № 683 «О Стратегии национальной безопасности Российской Федерации» // Собрание законодательства РФ. 2016. № 1 (ч. 2). Ст. 212 [Presidential Decree No. 683 of 31 December 2015. On the National Security Strategy of the Russian Federation, Legislation Bulletin of the Russian Federation, 2016, No. 1 (part 2), Art. 212].

Moreover, this document demonstrates that Russia understands the crucial importance of strengthening its relationship with its fellow member states of the international organizations mentioned above.³

The need for developing legal cooperation is determined by the two countries' active cooperation in a variety of fields. Nowadays, many forums for Chinese and Russian lawyers have been organized, among which, for example, the Russia-China Law Society.⁴

The research into the legal cooperation between Russia and China mainly focuses on each country's legislation and their similarities and differences.

The Chinese legal system is characterized by the following features. On the one hand, it still preserves the tradition originating in Chinese-Soviet cooperation from the period 1940–1950.⁵ On the other hand, China appears to have assumed some of the Western legal practices. Chinese lawmakers are implementing more and more the norms of Anglo-Saxon law in their legal system, making it even more distinct from the Russian legal system, but not less interesting a matter of research.

Since one of the priorities in Russian-Chinese cooperation is expanding bilateral economic cooperation, both countries' governments pay close attention to the development of business. In Russia and China, this is in large part represented by the legal entities that are the subject matter of this research.

Considering the latest civil law reforms in Russia and China as well as for the sake of the development of the two countries' economic and legal cooperation, a comparative study of legal entities regulation in Russia and China shall be undertaken.

1. Definition of *Business Activity* in Russia and China

Well-functioning and efficient business encourages the development of society. It favors economic growth, helps attract funds for various economic sectors and creates employment, and besides, it is a huge source of tax revenue. No matter the country, business has its peculiarities depending on existing legal regulation, the custom of business turnover and the population's mentality. However, every country understands the need for constant improvement and expansion of business activities both within the domestic market and internationally.

³ Presidential Decree No. 683, *supra* note 2.

⁴ The Russia-China Law Society is a non-profit organization created by the Law Faculty of Lomonosov Moscow State University. Our main goal is to develop Russian-Chinese relations in the field of law and to assist in establishing professional contacts between representatives of the legal community of the Russian Federation and the People's Republic of China; information about the Society is available at <http://rc-law.ru/association/>.

⁵ Lei Chen, *The Historical Development of the Civil Law Tradition in China: A Private Law Perspective*, 78(1-2) *Legal History Review* 159, 174 (2010).

An effective development is only possible provided that there are certain legal mechanisms to ensure the smooth operation and protection of economic activities. The Constitution of the Russian Federation being the state's major normative legal act provides the following guarantees for economic entities.⁶ First of all, it guarantees economic freedom and support of competition, this being the main factor for improving the quality of services, works and goods. An integral economic space shall be provided to ensure the free flow of goods, services and financial resources in the Russian Federation (Art. 8). The establishment of any other barriers to the free flow of goods, services and financial resources shall not be allowed in the Russian Federation. Limitations shall only be introduced should it be necessary to ensure security, protect the life and health of the people, protect nature and items of cultural value and in accordance with the procedure specified in the federal laws (Art. 74). In the Russian Federation, recognition and equal protection shall be given to private, state, municipal and other forms of ownership (Art. 8). Everyone shall have the right to make use of their abilities and property for entrepreneurial and other economic activities not prohibited by law (Art. 34).

Thus, there are regulations that ensure the normal operation of business turnover and business activity in Russia.

The Constitution of the People's Republic of China differs from that of the Russian Federation. Firstly, it does not proclaim the freedom of economic activity. Secondly, it does not mention competition, although Chinese legal scientists claim that

present day business in China is characterized by a quickly growing competitive environment.⁷

China also has its own approach to defining the forms of ownership. China's legislation distinguishes state (owned by the people as a whole) ownership, collective ownership and private ownership.⁸ State ownership includes all types of property stipulated by law. The ownership of such property is exercised by a special authorized state institution assigned by the PRC's State Council and by local state-property control bodies. Collective ownership includes the property of collective urban and rural economic organizations. Private ownership has to do with the property that belongs to organizations or individuals.

⁶ Конституция Российской Федерации (принята всенародным голосованием 12 декабря 1993 г.) // Собрание законодательства РФ. 2014. № 31. Ст. 4398 [Constitution of the Russian Federation of 12 December 1993, Legislation Bulletin of the Russian Federation, 2014, No. 31, Art. 4398].

⁷ Шуньхуэй Ч. Особенности организации предпринимательства в Китае // Экономические науки. 2007. № 2(27). С. 22 [Zhan Shunhui, *Features of the Organization of Entrepreneurship in China*, 2(27) Economic Sciences 22 (2007)].

⁸ Property Law of the People's Republic of China, adopted at the 5th Session of the 10th National People's Congress on 16 March 2007 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=6642&lib=law&SearchKeyword=&SearchCKeyword=>.

The Constitution of the PRC prioritizes the state and collective types of ownership over the private type, for it is the socialist communal property (state or collective) which is considered to be the basis on which China's socialist economic system rests (Art. 6), and it is sacred and inviolable. The state-property sector of the economy is believed to be the economy's most important actor. It is that sector that receives the state's benefits and protection.

The Chinese Constitution acknowledges an important role that the non-state sector of the economy based on private ownership plays in the development of the socialist market economy (Art. 11). At the same time, Chinese lawmakers use rather loose wording when it comes to describing the state's responsibilities regarding the non-state sector of the economy. While the government guarantees benefits and development for the state property sector, with the private sector its responsibilities are confined to just encouraging, supporting and directing the sector's development.

Though the Constitution of the PRC does not establish the right to conduct a business and gives priority to state property over private property, data obtained in 2016 shows that the number of private businesses in the country amounted to over 12 million entities at that time while the number of individual entrepreneurs exceeded 44 million.⁹ These statistics demonstrate that,

The private sector forms an important part of the ownership structure and plays a crucial role in China's economy growth.¹⁰

A basic comparative study of the constitutions of Russia and China leads to the conclusion that in Russia the state offers certain firm guarantees that ensure the normal operation of businesses. The Chinese Constitution, in its turn, does not specify any such guarantees although lawmakers appear to be aware of the need to encourage this type of economic activity.

To get a deeper understanding of what business activity is, first of all, its definition should be analyzed. In Russia, this concept is defined at the legislative level. According to Article 2 of the Civil Code of the Russian Federation, business activity is

an independent activity performed at one's own risk, aimed at systematically deriving a profit from use of property, sale of commodities,

⁹ Xinhua News Agency, 11 June 2017 (Sep. 25, 2019), available at http://russian.news.cn/china/2017-06/11/c_133399915.htm.

¹⁰ David Ahlstrom & Zhujun Ding, *Entrepreneurship in China: Progress and Challenges in Developments in Chinese Entrepreneurship* 1 (D. Cumming et al. (eds.), New York: Palgrave Macmillan, 2015); Длин Н.А. Ю.В. Чудодеев. На глазах меняющийся Китай. М.: ИВ РАН, 2008. 160 с. // Восток. Афро-азиатские общества: история и современность. 2010. № 2. С. 215 [Nikolay A. Dlin, Yu.V. Chudodeev. *China Is Changing in Its Eyes. Moscow: Institute of Oriental Studies of the Russian Academy of Sciences, 2008. 160 p., 2 East. Afro-Asian Societies: History and Modernity* 215, 215 (2010)].

performance of work or delivery of services by the persons registered in this capacity conforming to the procedure established by law.¹¹

And thus, several traits of business activity in Russia can be distinguished and a description of each of them can be provided.

Independence of business activity. The participants in business relations act of their own will and in their own interest. A participant's independence implies the right to choose the type of business, methods of work and contractors; free execution of rights and their protection. Business activity can only be restricted by federal laws.

Risk-bearing character of business activity. In O.M. Oleynik's opinion, business activity risks consist in

the possibility of not getting the planned or expected positive result as well as the possibility of negative consequences of some actions no matter what they are.¹²

She underlines that, besides not gaining a profit, a businessperson may come across many other risks, e.g. monetary, credit, innovation, investment risks that can consist in not getting a project or an object that has been ordered, etc.¹³

Orientation to systematic profit generation. As I.V. Ershova has rightly stated, the legislation does not offer any criteria to distinguish between systematic and non-systematic profit.¹⁴ However, by analyzing judicial practice certain legal positions which the courts adhere to can be determined. The profit-generation process is of a systematic character if the business entity's objective is not a one-time profit, but rather getting a regular source of profit.¹⁵ The business activity through which the profit is made is of a systematic character, too. At the same time, the lack of profit

¹¹ Гражданский кодекс Российской Федерации (часть первая) от 30 ноября 1994 г. № 51-ФЗ // Собрание законодательства РФ. 1994. № 32. Ст. 3301 [Civil Code of the Russian Federation (Part One) No. 51-FZ of 30 November 1994, Legislation Bulletin of the Russian Federation, 1994, No. 32, Art. 3301].

¹² Олейник О.М. Понятие предпринимательской деятельности: теоретические проблемы формирования // Предпринимательское право. 2015. № 1. С. 6 [Oksana M. Oleynik, *The Concept of Entrepreneurial Activity: Theoretical Problems of Formation*, 1 Business Law 6 (2015)].

¹³ *Id.* at 7.

¹⁴ Эршова И.В. Понятие предпринимательской деятельности в теории и судебной практике // Lex Russica. 2014. № 2. С. 163 [Inna V. Ershova, *The Concept of Entrepreneurial Activity in Theory and Judicial Practice*, 2 Lex Russica 160, 163 (2014)].

¹⁵ Постановление Пленума Верховного Суда РФ от 24 октября 2006 г. № 18 «О некоторых вопросах, возникающих у судов при применении Особенной части Кодекса Российской Федерации об административных правонарушениях» // Российская газета. 2006. 8 ноября. № 250 [Resolution of the Plenum of the Supreme Court of the Russian Federation No. 18 of 24 October 2006. On Some Issues Arising from the Courts in the Application of the Special Part of the Code of Administrative Offences of the Russian Federation, Rossiyskaya Gazeta, 8 November 2006, No. 250].

does not mean that such an activity cannot be qualified as a business since profit-making is just an objective of business activity but not its only possible result.¹⁶

Participants are registered in conformity with the procedure established by law. Persons who are not registered in conformity with the procedure established by law may not participate in a business activity and, depending on the size of the damage or profit, are subject to administrative¹⁷ or criminal¹⁸ sanctions.

Activity consisting in the use of property, sale of commodities, performance of work or delivery of services. According to the Russian judicial practice, Article 2 of the Civil Code of the Russian Federation does not name all the types of economic activity that can be used in business, though at first sight this norm may seem quite exhaustive. For example, non-deliverable forward contracts are considered to be a type of bank business activity by the court in spite of the fact that they do not imply the use of property, sale of commodities, delivery of services or performance of work. The bases for such a position of the Constitutional Court of the Russian Federation are as follows. Firstly, the definition of business activity set by Article 2 of the Civil Code of the Russian Federation “does not have as its goal to cover all types of business activity”¹⁹ while Article 34 of the Constitution of the Russian Federation establishes a general legal principle of freedom to execute any business activity that is not against the law.²⁰ Secondly, non-deliverable forward contracts are considered business activity since disputes and controversies related to their execution are resolved in the Russian arbitral tribunals that are authorized to consider the cases connected to business activity and other types of economic activity.²¹ Another difficulty is to

¹⁶ Письмо Верховного Суда РФ от 14 октября 1997 г. «Некоторые вопросы судебной практики по гражданским делам» // Бюллетень Верховного Суда РФ. 2017. № 10 [Letter of the Supreme Court of the Russian Federation of 14 October 1997. Some Issues of Judicial Practice in Civil Matters, Bulletin of the Supreme Court of the Russian Federation, 1997, No. 10].

¹⁷ See Кодекс Российской Федерации об административных правонарушениях от 30 декабря 2001 г. № 195-ФЗ // Собрание законодательства РФ. 2002. № 1 (ч. 1). Ст. 1 [Code of Administrative Offences of the Russian Federation No. 195-FZ of 30 December 2001, Legislation Bulletin of the Russian Federation, 2002, No. 1 (part 1), Art. 1], Art. 14.1.

¹⁸ See Уголовный кодекс Российской Федерации от 13 июня 1996 г. № 63-ФЗ // Собрание законодательства РФ. 1996. № 25. Ст. 2954 [Criminal Code of the Russian Federation No. 63-FZ of 13 June 1996, Legislation Bulletin of the Russian Federation, 1996, No. 25, Art. 2954], Art. 171.

¹⁹ Определение Конституционного Суда РФ от 16 декабря 2002 г. № 282-О «О прекращении производства по делу о проверке конституционности статьи 1062 Гражданского кодекса Российской Федерации в связи с жалобой коммерческого акционерного банка «Банк Сосьете Женераль Восток»» // Собрание законодательства РФ. 2002. № 52. Ст. 5291 [Determination of the Constitutional Court of the Russian Federation No. 282-O of 16 December 2002. On Termination of Proceedings in the Case on the Verification of the Constitutionality of Article 1062 of the Civil Code of the Russian Federation in Connection with the Complaint of the Commercial Joint-Stock Bank 'Bank Societe Generale Vostok,' Legislation Bulletin of the Russian Federation, 2002, No. 52, Art. 5291].

²⁰ *Id.*

²¹ *Id.*

define the services rendered by private notaries and advocates. Although Article 1 of the Fundamental Principles of Legislation of the Russian Federation on the Notariate clearly states that notarial activity is not considered to be business and is not aimed at deriving profit, there is not unanimous agreement on this matter in judicial practice.²² To resolve the issue, the Supreme Court did not just refer to the principles of the notariate legislation, but it also explained that notaries involved in private practice provide for the protection of the rights and legal interests of citizens and legal entities. As well as public notaries, they exercise particular legal activity on behalf of the state that determines their public legal status.²³

According to Article 2 of the Federal Law "On Advocacy and the Bar in the Russian Federation," an advocate is a person who obtained the status of advocate in conformity with the existing legal procedure and therefore has the right to exercise legal practice. Advocates may not participate in business activity or register legal entities.²⁴ Besides judicial practice, it is also reflected in a range of laws. For example, the Labor Code of the Russian Federation indicates the following examples of natural person employers: natural persons registered as established by law as individual entrepreneurs and who are pursuing entrepreneurial activity without the formation of a legal entity, as well as private notaries, advocates who have established legal offices, and other people whose professional activities require state registration and/or licensing according to the federal laws.²⁵ In other words, the Labor Code of Russia distinguishes between individual entrepreneurs who exercise business activities and advocates. The same conclusion can be made if we consult Articles 23, 31, 54 et al. of the Russian Tax Code that enumerate the types of taxpayers and draw the same distinction as the Labor Code.

The Russian legislation offers a rather detailed description of what business activity is and provides specific characteristics that distinguish it from other types of economic activity. And although there are controversies related to the interpretation and application of the legal definition of business activity,²⁶ courts whose primary function is to apply the laws have worked out a uniform solution to the interpretation of such issues, as proven by the abovementioned examples.

The Chinese legislation does not provide any definition of business activity. Basic civil provisions (while there are no codes available) were determined in the PRC Law

²² Определение Верховного Суда РФ от 30 ноября 2016 г. № 307-ЭС16-17860 [Determination of the Supreme Court of the Russian Federation No. 307-ES16-17860 of 30 November 2016].

²³ *Id.*

²⁴ Решение Верховного Суда РФ от 19 марта 2003 г. № ГКПИ03-87 [Decision of the Supreme Court of the Russian Federation No. GKPI03-87 of 19 March 2003].

²⁵ Трудовой кодекс Российской Федерации от 30 декабря 2001 г. № 197-ФЗ // Собрание законодательства РФ. 2002. № 1 (ч. 1). Ст. 3 [Labor Code of the Russian Federation No. 197-FZ of 30 December 2001, Legislation Bulletin of the Russian Federation, 2002, No. 1 (part 1), Art. 3].

²⁶ Oleynik 2015, at 10.

“General Principles of the Civil Law in the PRC” adopted in 1986. That law used the term “activity” for all entities involved in economic activity in China and failed to give it any additional qualitative characteristics. Nor does “General Provisions of the Civil Law of the People’s Republic of China” adopted in 2017 contain any definition of business activity. It uses the term civil activity in its broad sense towards all situations and subjects connected with civil law relations.

Mention of business activity (business operation) can be found in China’s normative legal acts. Their formal interpretation allows one to determine the civil subjects that have the right to exercise business activity. For instance, the Chinese Law “Partnership Enterprise Law of the People’s Republic of China” uses the term *business operation* when speaking about a partnership enterprise’s liabilities for the execution of business activity (Art. 6). The same law mentions that a partnership enterprise shall obtain a business license (Art. 10).²⁷ The law regulates their establishment and operation and indicates a partnership’s obligation to pay business operation income taxes.²⁸

Mention of the term *business activity* (operations) in question can be seen in other legal documents, too.²⁹ However, the analysis of the Chinese legislation does not allow determination of what that concept implies exactly. According to Chinese legal scientists, such a situation is due to the fact that it took the Chinese government too many years to realize the importance of private business for economic development.³⁰ At the beginning of the 1980s, some influential economists, actually, argued that the level of business activity did not slow down the pace of a country’s development.³¹

On the one hand, considering the slow rate of the modernization of legislation (some acts are amended once in a decade), it is not surprising that there is still no clear definition of business activity in China. On the other hand, the PRC Communist Party calls for mass entrepreneurship and innovation in their declarations.³²

A survey on how the Chinese understand the concept of business in the PRC, conducted by the Southwest University of Political Science & Law in Chongqing,³³

²⁷ Partnership Enterprise Law of the People’s Republic of China, amended and adopted at the 23rd Session of the Standing Committee of the 10th National People’s Congress of the People’s Republic of China on 27 August 2006 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=5428&lib=law>.

²⁸ *Id.*

²⁹ Law of the People’s Republic of China on Individual Proprietorship Enterprises, adopted at the 11th Meeting of the Standing Committee of the 9th National People’s Congress on 30 August 1999 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=6239&lib=law&SearchKeyword=&SearchCKeyword=>.

³⁰ David Ahlstrom & Zhujun Ding, *Entrepreneurship in China: An Overview*, 32(6) *International Small Business Journal: Researching Entrepreneurship* 610 (2014).

³¹ *Id.*

³² Edward Tse, *The Rise of Entrepreneurship in China*, *Forbes*, 5 April 2016 (Sep. 25, 2019), available at <https://www.forbes.com/sites/tseedward/2016/04/05/the-rise-of-entrepreneurship-in-china/#388438a03efc>.

³³ There were 80 respondents (between the ages of 21 and 37).

revealed that 95% of the respondents believe that business activity focuses on producing goods, providing services, performing works and using property; 87% of the respondents noted an independent character of business activity; 95% mentioned that it is exposed to risks. Ninety percent of the respondents said that business activity is different from other forms of economic activity due to its systematic profit-making objective, while 98% noted that it should be legally registered (a business undergoes the state registration procedure).

All in all, it is possible to conclude that although the concept of business activity is not legally specified in China, in practice it is understood in the same way as in the Russian Federation.

Understanding what business activity is and differentiating it from other types of activity is of both theoretical and practical importance. It allows avoiding the obligation to pay taxes and abiding by special legal regulations that control the work of the subjects of business activity.

In Russia, the freedom of business activity is stated in the main normative legal act, the Constitution. The concept of business activity has a detailed definition that allows distinguishing all its relevant characteristics. As mentioned before, though there may be difficulties concerning the application of the said norms, the courts manage to resolve the issues by judicial interpretation and by working out a uniform application practice. The Chinese legislators as well as most of the Chinese legal scientists do not reveal much interest in the definition of business activity;³⁴ nor does the existing Constitution of China mention the right to exercise business activity.

However, despite the fact that there is no clear legal definition of business activity in the PRC, the Chinese, in fact, understand it almost in the same way as the Russians do.

2. Legal Entities Exercising Business Activity in Russia and China

Both in Russia³⁵ and in China³⁶ business activity is mainly exercised by means of legal entities. Many legal entities go through the state registration procedure and start their operation every year. An important factor of a legal entity's effective operation is, without doubt, its legal regulation.

Russia's civil legislation has seen considerable changes in recent years and therefore the system of legal entities has been subject to alterations, too.

³⁴ Ahlstrom & Ding 2014.

³⁵ Reports of the Federal Tax Service of the Russian Federation on the work on state registration of legal entities and individuals (Sep. 25, 2019), available at https://www.nalog.ru/rn77/related_activities/statistics_and_analytics/regstats/.

³⁶ Statistics of state registration of legal entities in China according to the National Statistics Bureau of the People's Republic of China (Sep. 25, 2019), available at <http://data.stats.gov.cn/english/easyquery.htm?cn=A01>.

First of all, it should be pointed out that the system of legal entities is well defined in the Civil Code of the Russian Federation. All existing types of legal entities are divided into commercial and non-profit organizations. Commercial organizations have the generation of profit as their main objective. Non-profit organizations do not set such a goal and usually aim at achieving

social, charitable, educational, scientific and managerial purposes, as well as those related to the protection of public health, development of physical culture and sports, satisfaction of the population's spiritual and other nonmaterial needs, and any other purposes that pursue public wellbeing.³⁷

They can get involved in profit-making activity only to achieve the objectives they were created for, and thus are not included in the subject matter of our research.

This research focuses on commercial organizations. The division of all legal entities into corporations and non-corporations (unitary) is rather new for the Russian Federation. As for corporate legal entities,³⁸ their founders possess corporate rights, in particular the right to participate in the management of the corporation, in the appointment of the board of directors, etc. In the case of non-corporate legal entities,³⁹ the founders have ownership rights to the organization's assets.

As mentioned above, the system of legal entities has not been legally codified in China. An obvious reason for this is the lack of a single civil code that contains all the important provisions of civil law,⁴⁰ as is the case in Russia. Thus, a thorough analysis of the Chinese legislation is required in order to determine the types of legal entities that exist in the PRC.

Institutions and norms connected to the general issues of civil law, including the norms regulating the work of legal entities, were included in the General Principles of Civil Law of the PRC. This law was in force from 1986 to 2017, therefore it had a considerable impact on the understanding of legal entities and their nature. The status of legal entities is specified in Chapter 3 of the law and consists of four paragraphs (Arts. 36–53): (1) General provisions; (2) Enterprises as legal entities; (3) Government agencies, institutions, and associations as legal entities; and (4) Joint operations.

³⁷ Федеральный закон от 12 января 1996 г. № 7-ФЗ «О некоммерческих организациях» // Собрание законодательства РФ. 1996. № 3. Ст. 145 [Federal Law No. 7-FZ of 12 January 1996. On Non-Profit Organizations, Legislation Bulletin of the Russian Federation, 1996, No. 3, Art. 145].

³⁸ Corporate legal entities: Companies, Partnerships, Production cooperatives, Economic partnerships, Peasant farms (registered as legal entities).

³⁹ Non-corporate legal entities: Unitary enterprises (state, municipal).

⁴⁰ Понька В.Ф., Кирсанов А.Н. Общие положения о юридических лицах в КНР // Транспортное дело России. 2014. № 6. С. 3 [Victor F. Ponka & Alexey N. Kirsanov, *General Conditions on Legal Entities in China*, 6 Russian Transport Business 3, 3 (2014)].

The General Provisions do not focus on the concrete types of legal entities, as they are discussed in other sections of that law. Government agencies, institutions and associations as legal entities are not the subject of our research as they do not consider business activity as their main objective. They are established for economic, cultural and other purposes related to public well-being. One paragraph of the General Principles of the Civil Law is devoted to enterprises as legal entities. There is no legal definition of the concept, but the analysis of the norms allows distinguishing the following types of enterprises: enterprises owned by the people as a whole, Chinese-foreign cooperative joint ventures and foreign-equity joint ventures. The new law adopted in 2017 (General Provisions of the Civil Law of the People's Republic of China) does not mention enterprises, though some special laws devoted to the legal regulation of enterprises are still in force.⁴¹ Enterprises owned by the people as a whole are

a socialist commodity production and operation unit which shall, in accordance with the law, make its own managerial decisions, take full responsibility for its own profits and losses, and practice independent accounting.⁴²

The assets of such an enterprise are considered as owned by the people as a whole and are given to the enterprise for operation and management. The enterprise has the right to possess, make use of and dispose of the said property, in accordance with the law. The enterprise obtains the status of a legal entity in conformity with the law and takes on the liability for the property given to it by the state for operation and management.

There is a similar legal form in Russia called a unitary enterprise. In addition to issues regulated under the Civil Code, issue pertaining to its establishment and operation are regulated by the Federal Law "On the State and Municipal Unitary Enterprises."⁴³ A unitary enterprise is created for the main purpose of exercising business activity and deriving profit. The participants in such an enterprise have the right to the economic management and use of its assets but do not possess any ownership right to it that in this case belongs to the Russian Federation, a subject of the Russian Federation or a municipal entity. A unitary enterprise has the right to, in its own name and on its own behalf, acquire and realize rights, bear responsibilities, start litigation as plaintiff or participate in litigation as a defendant.

⁴¹ Law of the People's Republic of China of Industrial Enterprises Owned by the Whole People, adopted at the 1st Session of the 7th National People's Congress and promulgated by Order No. 3 of the President of the People's Republic of China on 13 April 1988 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=22757&lib=law&SearchKeyword=&SearchCKeyword=>.

⁴² *Id.*

⁴³ Федеральный закон от 14 ноября 2002 г. № 161-ФЗ «О государственных и муниципальных унитарных предприятиях» // Собрание законодательства РФ. 2002. № 48. Ст. 4746 [Federal Law No. 161-FZ of 14 November 2002. On the State and Municipal Unitary Enterprises, Legislation Bulletin of the Russian Federation, 2002, No. 48. Art. 4746].

In other words, unitary entities in Russia and enterprises owned by the people as a whole in China prove quite similar when it comes to comparing their qualitative characteristics. They are established by the state for the purpose of resolving a state-related issue on a financial basis and are active participants in the economic turnover both in Russia and in China.

One of the widespread forms of business activity exercised by foreign citizens in China is a joint venture company. Chinese-foreign joint ventures are mentioned in Article 18 of the PRC Constitution that

allows foreign enterprises, organizations and individuals to participate in economic activity in the People's Republic of China.⁴⁴

There is no definition of joint venture in the law, but the analysis of the existing normative legal acts of the PRC⁴⁵ allows determining its main characteristics.⁴⁶ That is, a joint venture is an enterprise created by a foreign organization or a foreign natural person (foreign participants) together with Chinese companies, enterprises or other types of economic entities (Chinese participants) on the principle of mutual benefit, equality and with the permission of the Chinese government. An interesting fact is that natural person participants are not included on China's side though there are no provisions in the Chinese law that would prohibit natural persons participating in joint venture companies.⁴⁷

In the Russian legislation the term "commercial organization with foreign investment" is used instead of "joint venture."⁴⁸ However, some authors believe *joint venture* to be a more convenient and accurate term, as it rightly demonstrates the joint character of the establishment of an enterprise and not just the participation of

⁴⁴ Constitution of the People's Republic of China, adopted at the 5th Session of the 5th National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on 4 December 1982 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=436178e5d0b17482bdfb&lib=law>.

⁴⁵ Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, adopted at the 2nd Session of the 5th National People's Congress on 1 July 1979 (Sep. 25, 2019), available at <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045777.shtml>; Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, adopted at the 1st Session of the 7th National People's Congress on 13 April 1988 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=6bd209241266ea53bdfb&lib=law>.

⁴⁶ Берзинь О.А., Рябинина Е.Н. Правовые формы ведения бизнеса российскими предпринимателями в Китае // Право. Журнал Высшей школы экономики. 2016. № 2. С. 207 [Olga A. Berzin & Evgeniya N. Ryabinina, *Legal Forms of Running a Business by Russian Entrepreneurs in China*, 2 Law. Journal of the Higher School of Economics 200, 207 (2016)].

⁴⁷ *Id.*

⁴⁸ Федеральный закон от 9 июля 1999 г. № 160-ФЗ «Об иностранных инвестициях в Российской Федерации» // Собрание законодательства РФ. 1999. № 28. Ст. 3493. [Federal Law No. 160-FZ of 9 July 1999. On Foreign Investment in the Russian Federation, Legislation Bulletin of the Russian Federation, 1999, No. 28, Art. 3493].

a foreign actor in Russian business.⁴⁹ That is why the term *joint venture* can be often found in Russian bylaws⁵⁰ and court orders.⁵¹

There are two types of joint ventures in China: equity and contractual (cooperative). Since an equity joint venture takes on the form of a limited liability company,⁵² it is subject to the norms regulating LLCs. That is to say, equity joint ventures possess legal entity status in China and the venturers' liability is limited by the size of their contributions into the authorized capital and the distribution of profit is performed in proportion to the value of the participants' respective shares in the authorized capital. Unlike equity joint ventures, the operation of contractual (cooperative) joint ventures is mostly regulated by the contractual enterprise agreement⁵³ in which the parties to the venture decide whether the company will assume the form of a legal entity, how to distribute risks and profit, what kind of body is going to undertake control over the enterprise – a board of directors or another kind of joint management body.

As for Russia, there are certain similarities between Chinese contractual (cooperative) enterprises and Russian commercial organizations with foreign investment in the form of a partnership, while equity joint ventures correlate to commercial organizations with foreign investment in the form of an LLC.

Neither in the General Principles of the Civil Law of China nor in the General Provisions of the Civil Law of the People's Republic of China has a wholly foreign-owned enterprise been mentioned. However, it is considered a legal entity, too, and has a special law that regulates it.

According to the Chinese Law on Foreign Capital Enterprises, a wholly foreign-owned enterprise is an enterprise established in China by foreign investors, with their own capital exclusively, in accordance with the relevant Chinese laws (not including branches of foreign enterprises set up in China and other foreign economic organizations).⁵⁴

⁴⁹ Olga A. Berzin & Rodion O. Koshelev, *Legal Basis of Russian and Chinese Joint Ventures Establishment and Business Activities: Challenges and Opportunities*, 2 BRICS Law Review 40, 43 (2016).

⁵⁰ Распоряжение Правительства РФ от 22 марта 2013 г. № 418-р «О подписании Соглашения между Правительством Российской Федерации и Правительством Китайской Народной Республики о сотрудничестве в строительстве и эксплуатации Тяньцзиньского нефтеперерабатывающего и нефтехимического завода и проектах в сфере разведки и добычи нефти» // Собрание законодательства РФ. 2013. № 12. Ст. 1411 [Order of the Government of the Russian Federation No. 428-p of 22 March 2013. On the Signing of the Agreement Between the Government of the Russian Federation and the Government of the People's Republic of China on Cooperation in the Construction and Operation of the Tianjin Oil Refinery and Petrochemical Plant and Projects in the Field of Oil Exploration and Production, Legislation Bulletin of the Russian Federation, 2013, No. 12, Art. 1411].

⁵¹ Постановление Шестого арбитражного апелляционного суда от 21 октября 2013 г. № 06АП-4381/2013 [Resolution of the Sixth Arbitration Court of Appeal No. 06AP-4381/2013 of 21 October 2013].

⁵² Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, *supra* note 45.

⁵³ Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, *supra* note 45.

⁵⁴ Law of the People's Republic of China on Foreign-Capital Enterprises, adopted at the 4th Session of the 6th National People's Congress, promulgated by Order No. 39 of the President of the People's Republic of China and effective as of 12 April 1986 (Sep. 25, 2019), available at <http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045800.shtml>.

A wholly foreign-owned enterprise usually assumes the form of a limited liability company. Subject to approval of the Ministry of Commerce of the PRC, any other form of legal organization that does not contradict Chinese law⁵⁵ can be chosen, e.g. a company limited by shares.⁵⁶

There is no similar type of entity in Russia. The organization of business entities by foreign investors is subject to a different approach. An economic entity being a wholly foreign-owned one or a Russian-foreign joint venture is called a commercial organization with foreign investment. It has the status of a legal entity and can assume any legal form that is not against the law of the Russian Federation. A foreign participant's contribution to the authorized capital (direct foreign investment) must be no less than 10 percent.⁵⁷

An interim conclusion of our research on Chinese enterprises as legal entities is as follows: enterprises can be both legal entities with the assets that are owned and controlled by the state (enterprises owned by the people as a whole), and private legal entities (cooperative and equity joint ventures).

A complex analysis of the Chinese legislation reveals the dual character of the *enterprise* concept. For some economic entities such as enterprises owned by the people as a whole, it means a certain organizational type of a legal entity. At the same time, when it has to do with cooperative or equity joint ventures, *enterprise* is used as a generic term for an economic entity. For example, equity legal entities and wholly foreign-owned enterprises can have the form of a limited liability company.⁵⁸

One more type of legal entity can be established in China though it was not mentioned in the General Principles of the PRC Civil Law. In the course of the modernization of legislation required for entering the WTO and introducing products to the international market, the laws regulating the operation of this type of legal entity were adopted: the Law on Companies of 1993 and the General Provisions of the Civil Law of the People's Republic of China of 2017.

A *company* is an organization that has the status of a legal entity with a joint authorized capital divided into shares and possesses ownership rights to its assets. Two legal forms of a company are possible according to the law: a limited liability company and a company limited by shares. A limited liability company can be registered by several people as well as by an individual, an organization or the state. Companies in Russia and companies in China have similar characteristics.

⁵⁵ Rules for the Implementation of the Law of the People's Republic of China on Foreign-Capital Enterprises (2001 Revision) (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=0f762b3680c56b3abdfb&lib=law>.

⁵⁶ *Бажанов П.В. Ведение бизнеса в Китае: правовые аспекты. Вып. 1: Обзор правовой среды для бизнеса* [Pavel V. Bazhanov, *Doing Business in China: Legal Aspects. Issue 1: Overview of the Legal Environment for Business*] 138 (Moscow: Infotropic Media, 2015).

⁵⁷ Federal Law on Foreign Investment in the Russian Federation, *supra* note 48.

⁵⁸ Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, *supra* note 45.

Companies in Russia and in China constitute a significant part of both countries' economies. That is why their detailed study must be performed.

The General Provisions of the Civil Law of the People's Republic of China adopted in 2017 changed the general approach to the system of legal entities. There are three types of legal entities mentioned in the law: commercial, non-profit and special. The definition of commercial entities is quite similar to what is found in Russia although the law lists just a limited liability company, a company limited by shares and other corporative legal entities among them.⁵⁹ The list looks to be open, there are no detailed characteristics of the commercial legal entities in the law. Non-profit legal entities aim at achieving social welfare and other non-commercial goals. The non-profit legal persons include institutions, social groups, foundations and social service agencies. The special legal entities are: the governmental legal persons, the legal persons of rural collective economic organizations and the legal persons of basic-level people's self-governing organizations, which are allowed to exercise civil activities for achieving their goals.

The analysis of legal entities in China and Russia leads to the following conclusions:

1. The system of legal entities in Russia has a well-defined legal regulation that facilitates the interpretation of the civil legislation and allows distinguishing the relevant characteristics of any type of organization. There was no unified system of existing legal entities in China until 2017. The General Provisions of the Civil Law of the People's Republic of China adopted in 2017 is a very important attempt to establish a system of legal entities, but the law does not contain the essential characteristics of legal entities and, what is most important, a number of the provisions of the legal acts in force devoted to the regulation of the activities of legal entities have not yet been brought in line with the new law.

2. In Russia, the classification of legal entities into commercial and non-profit organizations is specified in the legislation. These two concepts are easily distinguishable. In China there were no such classification until 2017, although in practice it was possible to divide economic entities into those that have profit-making as their main objective and those that do not have such a goal. Such a classification was established by the special law, though the list of commercial organizations remains uncertain to some extent.

3. In both countries, the definition of some types of legal entities represents certain difficulties. For example, in the People's Republic of China there are two types of legal entities that can be established by the state and have similar legal structure and objectives. Those are the enterprises owned by the people as a whole and state (public) limited liability companies. In the Russian Federation, in its turn, the nature of an economic partnership can seem confusing, as it unites the characteristics of

⁵⁹ General Provisions of the Civil Law of the People's Republic of China, adopted at the 5th Session of the 12th National People's Congress of the People's Republic of China on 15 March 2017 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=80296634739ab0dcbdfb&lib=law>.

a company and a partnership.⁶⁰ The lack of unambiguous legal norms and clear definitions of some important concepts results in misunderstanding of the character of some legal entities.

3. Companies in Russia and China: Comparative Analysis of Legal Characteristics

According to the yearly statistics provided by Russian taxation bodies, a company is a very popular type of legal entity in the Russian Federation.⁶¹ More and more people opt for this form of legal organization for their newly registered businesses.

A company is a commercial corporate organization with joint capital to which each member makes a contribution. There are two types of companies: a limited liability company (LLC) and a joint-stock company.

In comparison with other types of legal entities, Russian companies possess a rather detailed legal basis in legislation. General provisions of their establishments can be found in the Civil Code. Additionally, there are two particular laws, "On Limited Liability Companies"⁶² and "On Joint-Stock Companies,"⁶³ that regulate the two types of companies, respectively. The state registration procedure is explained in Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs."⁶⁴ The members of a company make contributions into the authorized capital and thus determine their share in the company. The rights and obligations of the participants are in accordance with their respective contributions into the capital. The property produced at the expense of the participants' contributions or in the process of the company's activity belongs to it by the right of ownership. A company incurs personal liability for the obligations produced in the course of its activity to the extent of all its assets.⁶⁵

⁶⁰ Акимова И.А., Малая Т.Н. Особенности правового положения хозяйственного партнерства // Огарёв-Online. 2015. № 9(50). С. 5 [Irina A. Akimova & Tatyana N. Malaya, *The Peculiarities of the Legal Status of Business Partnership*, 9(50) Ogaryov-Online 1, 5 (2015)].

⁶¹ Reports of the Federal Tax Service of the Russian Federation, *supra* note 35.

⁶² Федеральный закон от 8 февраля 1998 г. № 14-ФЗ «Об обществах с ограниченной ответственностью» // Собрание законодательства РФ. 1998. № 7. Ст. 785 [Federal Law No. 14-FZ of 8 February 1998. On Limited Liability Companies, *Legislation Bulletin of the Russian Federation*, 1998, No. 7, Art. 785].

⁶³ Федеральный закон от 26 декабря 1995 г. № 208-ФЗ «Об акционерных обществах» // Собрание законодательства РФ. 1996. № 1. Ст. 1 [Federal Law No. 208-FZ of 26 December 1995. On Joint-Stock Companies, *Legislation Bulletin of the Russian Federation*, 1996, No. 1, Art. 1].

⁶⁴ Федеральный закон от 8 августа 2001 г. № 129-ФЗ «О государственной регистрации юридических лиц и индивидуальных предпринимателей» // Собрание законодательства РФ. 2001. № 33 (ч. 1). Ст. 3431 [Federal Law No. 129-FZ of 8 August 2001. On the State Registration of Legal Entities and Individual Entrepreneurs, *Legislation Bulletin of the Russian Federation*, 2001, No. 33 (part 1), Art. 3431].

⁶⁵ Civil Code of the Russian Federation (Part One), *supra* note 11.

Russian companies share a similarity with Chinese companies⁶⁶ in that they are also a popular legal entity type. A company is a legal entity that has an independent legal personality, possess a number of assets that belong to it by the right of ownership and is liable for its debts to the extent of all its assets.

The PRC Law “On Companies” adopted as a part of China’s preparation for the WTO distinguishes two types of companies: (1) limited liability company; (2) company limited by shares.⁶⁷

A limited liability company is a company where the authorized capital is divided into shares in accordance with the articles of association. An LLC must be incorporated by no fewer than two and not more than fifty members being either natural persons or legal entities. The liabilities of the parties are in accordance with their respective contributions into the capital.

By its qualitative characteristics, the Chinese limited liability company is rather close to the Russian limited liability company. The Russian LLC is a company established by one or more persons or entities with the authorized capital divided into shares; the members of a company shall not be liable for its obligations and shall bear the risk of the losses proceeding from the company’s activity within the amount of their respective contributions into the company’s capital.⁶⁸

Let us compare them in the table below:⁶⁹

Table 1: Comparison of the Chinese and Russian LLC

Limited liability company (China)	Limited liability company (Russia)
A commercial legal entity	
Has ownership rights to its assets	
Liable for its debts to the extent of all its assets	
The incorporation document being articles of association	
Has the right to open branches and representative offices	
A limited liability company shall be established by the state, citizens of both Chinese and foreign origin, and legal entities. Total number: 1 to 50.	A limited liability company shall be established by citizens of both Russian and foreign origin and legal entities. Total number: 1 to 50.

⁶⁶ Сравнительное правоведение: национальные правовые системы. Т. 3: Правовые системы Азии [*Comparative Law: National Legal Systems. Vol. 3: Legal Systems of Asia*] 285 (V.I. Laifitsky (ed.), Moscow: Law Firm “Contract,” 2013).

⁶⁷ Company Law of the People’s Republic of China, adopted at the 5th Session of the Standing Committee of the 8th National People’s Congress on 29 December 1993 (Sep. 25, 2019), available at <http://www.lawinfochina.com/display.aspx?id=e797dd968c30e172bdfb&lib=law>.

⁶⁸ Federal Law on Limited Liability Companies, *supra* note 62.

⁶⁹ Berzin & Ryabinina 2016, at 207.

A natural person shall establish no more than one limited liability company.	The number of limited liability companies established by one natural person shall not be subject to any limitations.
A limited liability company incorporated by one natural person shall not establish other limited liability companies.	A limited liability company shall not be established by another company consisting of only one natural person or one legal entity.
Besides the original trade name, the full legal name of a limited liability company shall contain the words "limited liability company" as well as indicate its domicile and field and type of activity.	The full legal name of a limited liability company shall contain the original trade name of the company and the words "limited liability."
The amount of the authorized capital, the dates and methods of payment shall be decided by the participants in the incorporation documents, save the companies exercising specific types of activity. There are also requirements for the correlation between the amount of the authorized capital and the total amount of investment.	The authorized capital shall be no less than 10,000 Russian roubles. Each member shall pay the full amount of their contribution with the company within the period stipulated in the incorporation agreement or, if the company is established by a single person, by the decision to incorporate a company. The period of payment shall not exceed four months from the registration date of the company in a corresponding state body.
Participants failing to make the required contributions into the capital shall pay a penalty to the participants who have made in full their capital contributions.	Where a participant fails to make the full amount of the contribution into the capital, the part of their contribution that has not been covered shall be transferred to the other members of the limited liability company. The incorporation agreement can also stipulate a penalty for not covering the contribution in the authorized capital in the full amount and on time.
Management bodies: General meeting as the main control body; a board of directors (3 to 13 members) shall manage the company's activity and is not mandatory in small companies (it can be replaced by an executive director); the director shall ensure that the decisions of the board of directors are implemented, though this position shall not be mandatory; a supervisory board (3 or more people) or a supervisor (in small companies) shall oversee the financial affairs of the company.	Management bodies: General meeting being the main control body; a board of directors shall undertake general management of the company's affairs; it is not a mandatory management body; chief executive body (general director, president, etc.); this position shall be mandatory; collective executive body (governing board, direction, etc.) is not mandatory but can be created along with the chief executive body; a supervisory board (the number of its members shall be stipulated in the articles of association) or a supervisor shall oversee the financial affairs of the company.

The table shows that although there are similarities between the Chinese LLC and the Russian LLC, there are also significant differences.

Russian and Chinese legislation requirements differ when it comes to the company management bodies as well as the authorized capital contributions procedure. In China, the methods and dates of payment as well as the amount of contributions are specified in the articles of association according to the participants' will, except the companies whose scope of activity is subject to specific legal regulation. That is to say, Chinese lawmakers give relative freedom to businesspeople though it has not always been like this. Until 1 March 2014, limited liability companies (with one participant) had the minimum amount of capital of 100,000 yuan while the minimum for joint-stock limited companies was 5 million yuan.⁷⁰ There was also the minimum size of capital depending on a company's field of activity, for example for a company engaged in commodity wholesale the amount was 500,000 yuan while for a retail company it was 300,000 yuan.⁷¹ For establishing a company, no less than 20 percent of the contribution had to be covered (and at least 30% of that amount must be covered by financial assets), the rest paid up within two years. However, those rules no longer exist, as Chinese legislators decided to encourage the development of business turnover in the country by introducing more convenient norms.

Chinese legislation is less favorable when it comes to foreigners who would like to start a business in China than when it comes to its own residents. There is a correlation between the amount of the authorized capital and the total amount of investment, that is to say, the money that a business person will need in order to build the production installations, arrange the production or to spend on the expenditures related to the incorporation of a company in China.⁷²

For example, if the total amount of investment is 3 to 10 million U.S. dollars, then the authorized capital must amount to no less than 50 percent of that sum.⁷³ In the case of foreign citizens' companies, there are quite strict requirements with regard to the authorized capital, although it should be considered that,

The participants of a business can pay their contributions in parts that makes it more convenient a procedure.⁷⁴

A participant failing to make regular contributions into the capital on time has to pay a penalty to the other participants of the limited liability company. In the Russian

⁷⁰ Bazhanov 2015, at 36.

⁷¹ *Id.*

⁷² Rules for the Implementation of the Law of the People's Republic of China on Foreign-Capital Enterprises, *supra* note 55.

⁷³ Bazhanov 2015, at 140.

⁷⁴ Berzin & Ryabinina 2016, at 207.

legislation, a penalty is possible if it is specified in the incorporation agreement of a company.

Despite all the similarities, the managerial systems of the Russian and Chinese limited liability companies also have some important differences. In China, a company's major control body is the general meeting. It is assigned a wide range of rights, such as deciding on the business policy and financial plan of the company, amending the articles of association, adopting resolutions on matters such as the merger, division, transformation and liquidation of the company, etc. Regular general meetings take place as stipulated by the articles of association of a company. A board of directors composed of three to thirteen members is set up by the general meeting and oversees the company's activities. The term of office of the board member is stipulated by the articles of association of the company but may not exceed three years. A reelection of a director is possible. The board of directors exercises the following functions and powers: decides on the company's management, implements the resolutions of the general meetings, elaborates plans for the distribution of profits and losses, makes financial plans, etc. However, unlike in Russia, in China a board of directors is considered to be a mandatory body. At the same time, where a limited liability company has a small number of participants and is comparatively small in size, it may have an executive director instead of a board of directors.⁷⁵ A limited liability company can have a manager who is appointed by the board of directors. The manager oversees the company's operation and the implementation of the resolutions of the board of directors to whom the manager is accountable. And while in the Chinese company such a position is optional, in the Russian company appointing the chief executive is mandatory. It turns out that China prefers a collective type of management over an individual one.

The key difference as it seems is the possibility that a company is established by the state alone. A special authorized body (state-owned assets supervision and administration commission of the State Council of the PRC as well as local bodies for state-owned assets supervision) acts on behalf of the state as a company's participant.⁷⁶ The operation and management of such a company are regulated by the same rules as in the case of a legal entity and natural person participants, save small peculiarities.

That is to say, there are several types of legal entities in China that can be established by the state and have in their possession state-owned (public) assets, for example industrial enterprises and limited liability companies. In Russia, there are unitary enterprises, which are commercial legal entities that can be founded by the state. Nonetheless, they have nothing to do with companies.

Another legal form of a Chinese company is a company limited by shares. Its authorized capital is divided into a certain number of shares, and shareholders' liability is limited to the value of their shares.

⁷⁵ Company Law of the People's Republic of China, *supra* note 67.

⁷⁶ *Id.*

There are two types of joint-stock companies in China. The ones where the owners distribute the shares among themselves are called non-public joint-stock companies. Where a part of the shares is offered to the public (no more than 65% of the total), such companies are called public joint-stock companies.

The minimum number of participants in a joint-stock company amounts to no fewer than five persons of whom more than half must have their domicile within the territory of the People's Republic of China. The main incorporation document is the articles of association. The requirements to the authorized capital are the same as those for a limited liability company. A joint-stock company is managed by the shareholder meeting which determines the business policy and investment plan of the company and controls the company's affairs. The board of directors (five to nineteen members) and the manager accountable to it oversee the management and operation of the company. According to the PRC Law "On Companies," a supervisory board (three members) shall be created to examine the financial affairs of the company and ensure the lawfulness of the board of directors' and the manager's work.

The legal structure of a company limited by shares is familiar to Russian businesspeople, as it completely coincides with that of a Russian joint-stock company. It can also assume two possible forms: public and non-public joint-stock companies. The former offers shares to the general public (by means of an open subscription) while the latter distributes the shares among its founders and participants.

A joint-stock company is an independent legal entity and is liable for its debts to the extent of all its assets. Shareholders assume the risk of incurring losses due to unfavorable changes in the share price. A joint-stock company is managed by an authorized body (a shareholder meeting, a board of directors, a chief executive body, a supervisory commission, etc.), the system being similar to the Chinese one.

The main difference between joint-stock companies in China and Russia is the different requirements to the authorized capital. According to Article 26 of the Federal Law "On Joint-Stock Companies," the minimum amount of the authorized capital of a public company shall be no less than 100,000 Russian roubles while the minimum amount of the authorized capital of a non-public company shall be 10,000 Russian roubles. In China, joint-stock companies are regulated by the same norms as limited liability companies. The amount and method of shareholders' contributions to the capital is specified in the incorporation agreement.

Summarizing the research conducted, we should point out that when comparing companies in Russia and China both similarities and differences can be found. First of all, the Chinese legislation does not specify what a company is. However, the analysis of the legal norms reveals that Russian companies are similar to the Chinese companies with the authorized capital divided into shares; a company's participants are not liable for its obligations and bear the risk of the losses proceeding from the company's activity limited to the total value of their respective shares in the company's capital.

In the People's Republic of China, either a limited liability company or a company limited by shares can be established, and they reveal strong resemblance to Russian limited liability companies and joint-stock companies, respectively. However, despite the seeming similarity, some significant nation-specific differences between them can be observed.

1. In China, a limited liability company can be established by the state alone. In Russia, a specific type of legal entity is created for this purpose.

2. Following the example of the English legal system,⁷⁷ the requirements concerning the minimum amount of the authorized capital have been eliminated from the Chinese legislation, while in Russia they still exist.

On the one hand, this ensures more freedom for Chinese businesspeople, as previously the requirements for the authorized capital were too high and hindered many Chinese citizens from exercising business activity.

On the other hand, there is a risk of the situation where a company will not be capable of fulfilling its responsibilities. Similar problems exist in Russia, too, which is why the authorized capital-related norms are often subject to criticism by the legal community. Ten thousand Russian roubles is considered too small a sum for an LLC, as it will not be enough to satisfy the creditors' interests in the absence of other available property. That is to say, Chinese lawmakers usually characterized by a rather conservative and static approach to legal regulation, opted for a more innovative measure. The effectiveness of the said measure is yet to be determined, as very little time has passed since the date of the amendment in 2014.

3. The Chinese tend to give preference to collective management bodies. In Russia, such bodies go together with a one-man executive body.

4. Socialist ideas have permeated into practically all spheres of life in China. So, an organization of the Chinese Communist Party is created and political party activity conducted in every company. Companies in their turn provide all the necessary conditions for such an activity. Russian legal entities do not have to participate in political life.

The similarity of the approaches to the legal regulation of companies and the importance of companies as a legal organizational form can be also proved statistically. The data provided by the surveys show that both Russian⁷⁸ and Chinese⁷⁹ businesspeople give preference to limited liability companies over joint-stock companies. This popularity is due to simpler conditions of incorporation and operation as well as to

⁷⁷ Алексеев А.П., Чэнюань В. Тенденции развития корпоративного права КНР // Вестник Владивостокского государственного университета экономики и сервиса. 2016. № 2(33). С. 24 [Alexander P. Alekseenko & Wei Chengyuan, *Trends in the Development of Corporate Law of China*, 2(33) Bulletin of the Vladivostok State University of Economics and Service 23, 24 (2016)].

⁷⁸ Reports of the Federal Tax Service of the Russian Federation, *supra* note 35.

⁷⁹ Bazhanov 2015, at 133.

the fact that the methods of attracting investment into the capital are not limited to the share-issuing procedure.

Conclusion

The study of the norms of the Russian and Chinese legislation, doctrinal provisions of both countries' legal science, as well as judicial practice and empirical data allows fulfilling a comparative analysis of Chinese and Russian legal entities that are the main participants in business activity in both China and Russia.

All in all, the following conclusions can be made.

Understanding what business activity is and how it can be distinguished from other types of activity is not only of theoretical value for it also has a very important practical significance. It allows avoiding the obligation to pay taxes and abiding by special legal regulations that control the work of the participants of business activity.

In Russia, the freedom of business activity is stipulated in the main normative legal act, the Constitution. There is a clear definition of business activity that allows distinguishing its major characteristics. The application of the indicated legal norms can cause certain difficulties, however the courts manage to resolve them by means of judicial interpretation and by working out a uniform application practice.

Chinese legislators as well as most of the Chinese legal scientists do not show much interest in the definition of business activity. Nor does the existing Constitution of China mention the right to exercise business activity.

However, despite the fact that there is no clear legal definition of business activity in the PRC, the Chinese, in fact, understand it almost in the same way as the Russians do.

The system of legal entities in Russia has an exhaustive legal regulation that facilitates the interpretation of the civil legislation and allows distinguishing the relevant characteristics of any type of organization. There was no unified system of existing legal entities in China until 2017. The General Provisions of the Civil Law of the People's Republic of China adopted in 2017 is a very important attempt to establish a system of legal entities, but the law does not contain the essential characteristics of legal entities and, what is most important, a number of the provisions of the legal acts in force devoted to the regulation of the activities of legal entities have not yet been brought in line with the new law.

In both countries, the definition of some types of legal entities represents certain difficulties. For example, in the Russian Federation the nature of an economic partnership can seem confusing, as it combines the characteristics of a company and a partnership.⁸⁰

In the People's Republic of China, in its turn, there are two types of legal entities that can be established by the state and have similar legal structure and objectives. Those are

⁸⁰ Akimova & Malaya 2015, at 6.

the enterprises owned by the people as a whole and state limited liability companies. The lack of unambiguous legal norms and clear definitions of some important concepts results in misunderstanding of the character of some legal entities.

In Russia as well as in China, the most popular legal organizational form is a company. The legal acts analysis leads to the conclusion that these two forms show many qualitative similarities despite the differences in the approaches to their legal regulation. These are legal entities with the authorized capital divided into shares and whose participants shall not be liable for its obligations, and shall bear the risk of the losses proceeding from the company's activity limited to the value of their respective shares in the company's capital.

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