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Private Economy and Government Intervention: A Research on Balance Mechanism from the Perspective of Economic Law

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ABSTRACT

As a vital component of China's socialist market economy, the sound development of the private economy cannot be separated from appropriate government intervention and institutional safeguards under economic law. Centered on economic law, this paper explores the dialectical relationship between the private economy and government intervention, and analyzes the legal boundary of government intervention as well as adjustment approaches under economic law. The study finds that economic law provides institutional guarantees for the private economy and regulates government intervention by establishing the principle of equal market access and improving macro-control mechanisms. At present, government intervention suffers from both excessive regulation and insufficient oversight. It is necessary to realize the organic integration of private economic vitality and government regulatory efficiency by improving the legal system, clarifying intervention boundaries and strengthening judicial remedies.

KEYWORDS

Private Economy; Government Intervention; Economic Law; Market Order

1. INTRODUCTION

1.1. Practical Value of the Private Economy

General Secretary Xi Jinping attaches great importance to the development of the private economy. He has delivered important speeches on advancing private economic work in the new era on multiple occasions, putting forward a series of new ideas, viewpoints and judgments. These elaborations profoundly clarify major issues including the important status, strategic orientation, key tasks and supporting guarantees for the development of China's private economy, offering fundamental guidelines and a roadmap for boosting the private economy in the new era. On February 17, 2025, General Secretary Xi Jinping attended a forum for private enterprises and fully recognized the remarkable achievements made by the private economy and its significant contributions to national economic and social development. He stressed consistent adherence to the fundamental Party and state policies for private economic development, called for unified thinking and firm confidence to advance the sound and high-quality development of the private economy, and pointed out that the private economy boasts broad prospects and enormous potential. Private enterprises and entrepreneurs are well-positioned to fully display their talents, injecting strong confidence and momentum into the growth of the private economy in the new journey. The shift in the legal status of the private economy—from an "auxiliary component" in the early stage of reform and opening-up to an "important component" today—reflects the deepening of China's market economic system. Currently, as a core pillar of China's economy, the private economy actively integrates into the new development pattern and drives high-quality development, playing an increasingly critical role in economic growth, employment expansion and people's wellbeing improvement. Targeting high-quality development, the primary task for building a modern socialist country in all respects, private enterprises have clarified their strategic directions and strengthened internal corporate development. In recent years, the private economy contributes over 50% of tax revenue, more than 60% of China's gross domestic product, over 70% of technological innovation achievements, above 80% of urban employment and more than 90% of all market entities in China. Its position as a major innovation subject keeps strengthening: private tech enterprises account for the majority of national high-tech enterprises, with continuous growth in invention patents, technological innovations and new products. Its international competitiveness also rises steadily. From 2012 to 2023, the import and export volume of private enterprises registered an average annual growth rate of 11.1%, with their share of national total foreign trade climbing from around 30% to over 50%. Since 2019, private enterprises have become China's largest foreign trade operators and a key participant in international economic and trade cooperation. These data fully demonstrate the private economy's role as a vital force advancing high-quality economic development in China. This elevation in economic status is not only reflected in statistical indicators but also institutionally confirmed through amendments to the Constitution and a series of economic law norms.

1.2. Theoretical Logic of Government Intervention and Its Connection with Economic Law.

Government intervention in the private economy is not arbitrary conduct, but an institutional choice based on the theory of market failure. Under the market economy, the profit-driven nature of private enterprises may lead to monopolies, unfair competition, insufficient supply of public goods and other market defects, which require government intervention to remedy. As the sum of legal norms regulating economic relations arising from state administration and coordination of economic operations, economic law endows the government with power to intervene in the market while setting legal boundaries for such intervention. It serves as the core institutional carrier balancing independent development of the private economy and national macro-control.

2. EVOLUTION OF THE PRIVATE ECONOMY'S LEGAL STATUS AND BASIS FOR LEGAL PROTECTION

The 1982 Constitution only recognized the auxiliary status of individual economy. The 1999 constitutional amendment first established the non-public economy as "an important component of the socialist market economy". The 2004 constitutional amendment stipulated that "citizens' legitimate private property shall not be infringed upon". The 2018 constitutional amendment further emphasized "encouraging, supporting and guiding the development of the non-public economy". This evolutionary process mirrors the rising role of the private economy in the national economy and provides constitutional grounds for economic law to protect the private economy. The principle of equal civil subject status established by the Civil Code delivers fundamental protection to the private economy, while economic law implements this principle through targeted institutional design. The Company Law abolished requirements such as the paid-in capital system and minimum registered capital limits, lowering barriers for private enterprise establishment. The Small and Medium-Sized Enterprises Promotion Law contains a special chapter on "financing promotion", requiring financial institutions to reasonably raise the non-performing loan tolerance for micro and small enterprises. The Anti-Monopoly Law explicitly prohibits "abuse of administrative power to eliminate or restrict competition", removing market access barriers for private enterprises. These laws jointly build an institutional environment where private enterprises participate in market competition on an equal footing.

3. THEORETICAL FOUNDATION AND BOUNDARIES OF GOVERNMENT INTERVENTION IN THE PRIVATE ECONOMY

3.1. Theoretical Foundation of Government Intervention

The theory of market failure constitutes the core logic of government intervention, covering monopolies, externalities, information asymmetry and other scenarios. China has formed an integrated intervention system integrating theory, policy and practice. For instance, addressing the intertwined economic and administrative monopolies, the revised Anti-Monopoly Law of 2022 added a special chapter on "abuse of administrative power to eliminate competition", explicitly banning local governments from restricting competition among private enterprises via designated transactions and regional market blockades. The Private Economy Promotion Law, which took effect in 2025, enshrined the "two unswerving commitments" into law for the first time, affirmed the equal subject status of private enterprises, and established systems including the negative list for market access and fair competition review. Economic law responds to market failure through two major branches: market regulation law and macro-control law. The Anti-Monopoly Law and Anti-Unfair Competition Law regulate unfair competitive behaviors of market entities; the Environmental Protection Law and Consumer Rights and Interests Protection Law tackle externalities and information asymmetry. The Budget Law, Tax Collection and Administration Law and Commercial Bank Law realize macro-control through fiscal, tax and monetary policies, fostering a stable economic environment for the private economy.

3.2. Legal Boundaries of Government Intervention Beyond

Granting intervention power to the government, economic law incorporates power-restraining mechanisms to prevent distorted intervention. The Administrative License Law stipulates that no administrative license shall be set if matters can be resolved through independent market adjustment, limiting government interference in the operational autonomy of private enterprises. The Administrative Penalty Law requires "combination of punishment and education" to avoid excessive penalties on private enterprises. The Regulations on Government Information Disclosure guarantee private enterprises' right to know and prevent opaque administrative operations. Such institutional design reflects the dual value of economic law: authorizing necessary intervention while standardizing intervention conduct.

3.3. Reasonableness Standard for Government Intervention: Application of the Principle of Proportionality

The principle of proportionality under economic law mandates that government intervention satisfy three criteria: suitability, necessity and balance. For example, Article 71 of the Private Economy Promotion Law requires policy measures to undergo fair competition review; Article 72 prohibits seizure, detention or freezing of involved property beyond authorized authority or scope; Article 74 provides that penalties shall match the facts, nature, circumstances and social harm of illegal acts. These provisions embed the three dimensions of proportionality—necessity (minimum harm), suitability (consistency between means and goals) and balance (proportionate penalties)—into legal texts to impose rigid constraints on government intervention. Suitability demands intervention means align with regulatory objectives: supervision of polluting private enterprises shall serve ecological protection goals. Necessity requires adoption of measures least detrimental to private enterprises: tax incentives for small and medium-sized enterprises shall take precedence over administrative subsidies. Balance requires intervention benefits to outweigh costs, avoiding blanket regulation that stifles vitality of the private economy.

4. EXISTING LEGAL PROBLEMS IN GOVERNMENT INTERVENTION IN THE PRIVATE ECONOMY

4.1. Excessive Intervention: Replacement of Market Mechanisms by Administrative

Power Some local governments directly interfere in private enterprises' operations via biased industrial policies and discriminatory access restrictions. For example, a provincial new energy vehicle industrial plan issued in 2022 designated local state-owned enterprises as key support targets while imposing extra technical thresholds on private enterprises, violating Article 32 of the Anti-Monopoly Law, which prohibits administrative organs from abusing power to compel market entities to purchase goods from designated operators. Such selective intervention undermines fair competition and deprives private enterprises of equal development opportunities in certain sectors.

4.2. Insufficient Intervention: Deficiencies in Market Supervision and Service Support

The long-standing difficulty of private enterprises in accessing financing reflects inadequate government intervention to guide rational allocation of financial resources. Although the Small and Medium-Sized Enterprises Promotion Law encourages financial institutions to develop financing products tailored to SMEs, commercial banks in practice impose higher interest rates and stricter collateral requirements on private enterprises than state-owned enterprises. Data from the People's Bank of China in 2023 shows the non-performing loan ratio of private enterprises stands 3.2 percentage points higher than that of state-owned enterprises. This gap cannot be alleviated without targeted policy guidance, exposing implementation loopholes in economic law regarding equal financing rights for private enterprises.

4.3. Disordered Intervention: Inconsistent Policies and Poor Coordination Between Policies and Laws Policy stability constitutes a critical prerequisite for sound private economic development.

Frequent policy adjustments, inconsistent enforcement standards and ambiguous expectations exert adverse impacts on private enterprises' operational decisions, resource allocation and market confidence. Frequent policy reversals by local governments represent a prominent challenge for private enterprises. For instance, a private enterprise invested in constructing a corporate headquarters building in 2021 pursuant to a local headquarters economic support policy, yet the policy was abruptly abolished in 2023, leaving the enterprise unable to recover upfront investment. Such conduct discourages long-term investment and restrains corporate innovation and transformation. Furthermore, some economic policies conflict with existing laws. Local tax rebate policies, for example, contradict the Tax Collection and Administration Law, which stipulates that tax levying, suspension, reduction, exemption, rebate and supplementary payment shall be implemented in accordance with laws. This creates policy risks for private enterprises. The core of stable policy lies in predictability: private enterprises must clearly distinguish permitted and prohibited activities, the duration of policy benefits and defined liability for violations. Once predictability is broken, the investment-innovation-employment chain of the private economy will be disrupted, hindering long-term economic structural optimization and high-quality development momentum. Therefore, stabilizing policy expectations and eliminating arbitrary policy shifts is a key prerequisite for stimulating private economic vitality.

5. BALANCING PATHS FOR THE PRIVATE ECONOMY AND GOVERNMENT INTERVENTION

5.1. Improving the Legal System for Private Economic Protection Accelerate

The refinement of market access laws to clarify the scope of the "non-prohibited equals permitted" principle and eliminate hidden thresholds targeting private enterprises. Strengthen the fair competition review system, fully implement the Detailed Rules for the Implementation of the Fair Competition Review System, and establish a third-party evaluation mechanism to conduct legality and reasonableness reviews on administrative normative documents concerning the private economy. Policies violating fair competition principles shall be revoked or revised in accordance with the law. Among unfair competition cases released by the State Administration for Market Regulation in 2024, 37% involve abuse of administrative power, highlighting the practical urgency of reinforcing the review system.

5.2. Legal Mechanisms to Standardize Government Intervention Formulate

power lists and responsibility lists for government intervention under the principle of "no action without legal authorization". Local regulations or rules shall specify sectors, methods and procedures where government intervention in private enterprises is permitted. Corresponding responsibility lists shall define accountability mechanisms for excessive intervention and administrative inaction. For instance, the Zhejiang Provincial Private Enterprise Development Promotion Ordinance prohibits discriminatory supervision against private enterprises by administrative organs and staff, with clear provisions on administrative sanctions, offering a reference for national institutional design. Establish a participation mechanism for stakeholders in policy formulation. When drafting policies affecting the private economy, governments shall solicit opinions from private enterprises through hearings and forums. The Interim Regulations on Major Administrative Decision-Making Procedures require authorities to consult market entities, industry associations and chambers of commerce for policies involving market entity economic activities, a provision that must be strictly enforced in drafting economic policies. Policies with direct impacts on private enterprises, such as tax adjustments and industrial planning, shall undergo expert argumentation and risk assessment to prevent losses stemming from flawed policy design.

5.3. Strengthening Judicial Remedies for Private Enterprises' Rights and Interests Optimize

Dispute resolution mechanisms and expand judicial review scope over administrative intervention. Private enterprises shall be entitled to file administrative lawsuits and claim compensation against government acts including breach of administrative commitments and abuse of power to restrict private business operations. In typical judicial protection cases for the private economy released by the Supreme People's Court in 2023, the court ordered the Hunnan District Bureau of Agriculture and Rural Affairs in Shenyang to pay service fees in a dispute between Shenyang Electric Power Engineering Consulting Co., Ltd. and the bureau, safeguarding the legitimate rights and interests of the private enterprise. This case demonstrates judicial supervision over government intervention, and its guiding value shall be further promoted to guarantee effective remedies for private enterprises whose rights are infringed. Intensify intellectual property protection. Addressing the dilemma of strong innovation capacity yet weak IP protection among private enterprises, improve relevant legal systems and raise compensation standards for IP infringement, establishing a punitive damages system. Perpetrators of malicious infringement shall bear civil liabilities alongside administrative and even criminal liabilities in accordance with the law, providing legal safeguards for technological innovation of private enterprises.

6. CONCLUSION

The relationship between the private economy and government intervention essentially reflects the interaction between market forces and state power, with economic law serving as the core balancing mechanism. From a historical perspective, the rising legal status of the private economy has advanced hand in hand with the legalization of government intervention, embodying the maturity of China's market economic system. From a practical perspective, the coexistence of excessive, insufficient and disordered intervention reveals deficiencies in law enforcement. Moving forward, with the advancement of special legislation such as the Private Economy Promotion Law, economic law will deliver more systematic protection for the private economy, and government intervention will be further brought under the rule of law. Throughout this process, we must consistently uphold the principles of equal protection, appropriate intervention and integration of power and accountability, enabling the private economy to unleash greater vitality under rational state guidance and provide sustained impetus for high-quality economic development in China.

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