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On the Limited Liability of Cooperative Notary Public Institutions

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Abstract

Article 4 of the *Opinions of the Ministry of Justice on Promoting the Work of Cooperative Notary Public Institutions* stipulates that a cooperative notary public institution is featured by "being jointly financed by eligible notaries public" and "the assets of which being jointly owned by the cooperators and the liabilities of the institutions being limited to their total assets". The controversy thus arises over the liabilities of cooperative notary public institutions. Limited liability is a special application of civil liability in the field of commercial law. It is a statutory risk allocation mechanism, which is part of the organization laws regarding the separation of assets and liabilities and not necessarily related to legal personality. Defining cooperative notary public institutions as "non-legal person organizations", through the adoption of notary public legislation, not only meets the practical needs of the reform of the notary public system, but also conforms to the framework of civil subjects under the *Civil Code*.

Keywords

Cooperative Notary Public Institutions Public, Notary System Reform, Types of Civil Subjects, Non-Legal Person Organizations

1. Introduction

Notary public system is an important preventive judicial system, and notary service is an important part of public legal services. In the processes of the modernization of the national governance system and governance capacity, the improvement of a diversified dispute and conflict resolution mechanism as well as the acceleration of the construction of the public legal service system, a flexible system consisting of cooperative notary public institutions is more conducive to the functional role and unique advantages of notaries public. Regulating and promoting the development of cooperative notary institutions have become an

important element in deepening the reform of the notary public system. Liability is one of the basic theoretical issues that need to be solved promptly to regulate the development of a system of cooperative notary public institutions, which originates from the controversy over the characteristics of cooperative notary public institutions as civil subjects. This paper intends to discuss the feasibility of limited liability of cooperative notary public institutions from the perspective that limited liability is actually a risk allocation mechanism in terms of commercial law, and that a moderate separation should be made between a risk allocation mechanism and the theory on different types of civil subjects.

2. Theoretical Controversy over the Liability of Cooperative Notary Public Institutions

The cooperative notary institution is a new type of social organization that emerged along with the reform of the notary public system, and its organizational form has the following characteristics: 1) it is a voluntary organization consisting of individual eligible notaries public who join and co-fund the institution; 2) it is not a state-organized institution, nor does it need state-funding. It independently runs business operations and is independently responsible for civil liabilities it incurred; 3) its assets are owned by cooperators and its liabilities are limited up to its assets; 4) it is democratically managed and operates in accordance with the laws of the market and self-regulatory mechanism.[1] Currently, there are four main views on what type of civil subjects cooperative notary public institutions should be categorized into.

Firstly, the social service institution theory. This theory advocates that it is better to categorize cooperative notary public institutions as a type of non-profit legal person-social service institutions, for the reason that cooperative notary public institution fits the conditions for the establishment of legal persons and has the attributes of a non-profit. As such, it can be identified as a non-profit legal person in the first place; secondly, based on examining its functions, we can rule out the options of other types of non-profit legal persons and therefore confirm cooperative notary public institutions are social service institutions (Tang & Duan, 2021).

Secondly, the donative legal person theory. This theory considers that the capital contribution of the funders of the cooperative notary public institution should be classified as "donative", which is more consistent with the non-profit nature of notary public institutions, and also conforms to the Ministry of Justice's definition that the cooperative notary institution's liability is limited liabil-

[1]Opinions of the Ministry of Justice on Promoting Pilot Cooperative Notary Public Institutions: "IV. Organizational form of cooperative notary public institutions, rules of procedure and rights and obligations" subsection (1) Organizational form, cooperative notary public institution is formed by eligible individual notaries voluntarily. Notaries shall jointly participate and fund the operation; state establishment and funding are not needed; independently operate the business; independent assume civil liability, its property is jointly owned by the cooperators, its liability towards debt shall be limited to its total assets; it is democratically managed and operates according to market regulation and self-governing mechanism.

ity. Categorizing cooperative notary public institutions as a type of "donative legal person" can solve the current dilemma of the categorization unclarity of cooperative notary public institutions and benefit the development of the pilot reform of cooperative notary public institutions (Liu, 2019).

Thirdly, the special legal person theory. The starting point of this theory is the same as that of the "social service institution theory", which is also based on the non-profit and legal person attributes of notary public institutions. But this theory further explores the distinction between for-profit and non-profit legal persons as stipulated by the *Civil Code* and considers cooperative notary public institutions as special legal persons due to the reason that these institutions are both revenue-generating and beneficial to public welfare (Xie, 2017).

Fourthly, non-legal person organization theory. This non-legal person organization theory is agreed upon by mainstream academia. It advocates that cooperative notary public institutions should be classified as "non-legal person organizations that should bear unlimited liability", and scholars holding this view include Lixin Yang[2], Qing Ye, Weiping Zhang, Xiaoyan Sun[3], Gongyi Wang[4] and

[2]Lixin YANG believes that the "non-legal person organizations" in General Principles of the Civil Law is a new type of civil subject. This type's characteristics are that it does not have a legal personality, but can engage in civil activities in its own name, is entitled to civil rights, civil obligations, and civil liability, and is the third category of civil subjects in China. The vast majority of partnership law firms in China are non-legal person organization that does not have legal personality and provides professional service. Notary public institutions and law firms are of the same nature, and should be characterized as professional services institutions that do not have legal personality. See Lixin YANG, The Legal Nature of Notary Public Institutions and Three Models, published in China Notary, Vol.2018 No.1, p. 14.

[3]Qing YE believes that notaries public and lawyers are legal service providers and belong to the modern service industry that provides professional services to society, and that "notaries public jointly fund the establishment of cooperative notary public institutions, with individual notaries public being the actual contributors. Therefore cooperative notary public institutions should be defined as non-legal person organizations according to Article 102 of the Civil Code. Weiping ZHANG pointed out that "cooperative notary public institutions and even government-affiliated notary public institutions are in fact operated by each notary who faces the client and carries out the notary activities prescribed by law", and he believed that "the nature of cooperative notary public institutions as civil subjects is understood from the basic principles of the Civil Code ... can be characterized as an non-legal person organization clearly defined in the Civil Code"; Xiaoyan SUN believes that "the establishment of cooperative notary public institutions is of great significance in accelerating the socialization of notary institutions and the professionalization (specialization) of notaries in China and that positioning cooperative notary public institutions as non-legal person organizations is "conducive to the organizational role of notary public institutions as legal professional institutions in notary activities and the supervision on the role of notaries in providing independent notary services; it reflects the professional status of notary institutions and stimulates the professional vitality of notary works". See "Written Comments to the Public Legal Services Administration of the Ministry of Justice (October 21, 2020)," unpublished manuscript. Quoted in Jinyi ZHANG, Cooperative Notary Public Institutions Should Be Qualified as Non-legal Person Organizations and Evolve toward Notary Partnerships: An Overview of Views on the Nature of Cooperative Notary Public Institutions in Legal Sciences, published in WeChat Publications Selected Articles on Notary Publics, October 13, 2021.

[4]Gongyi WANG believes that when China's notary legislation was enacted, reference was made to the legislative experience of partnership notary offices in civil law countries, and an industry-wide insurance protection mechanism, a departure from the state protection mechanism, and a market-oriented operation were established, implying the value of unlimited liability for notary public offices, which is of the same nature as partnership organizations such as law firms, accounting firms, physician firms, and design firms. See Gongyi WANG, The Civil Law Status of the Organizational Form of Notary Publics, published in WeChat Publication Mongoose Report, dated October 11, 2021.

Guodong Xu[5]. They have different perspectives when discussing this issue. Still, they all point to a common conclusion: cooperative notary public institutions, similar to cooperative law firms and accounting firms, are all "non-legal person organizations". They are all professional service organizations that do not qualify as legal persons, and should bear unlimited liability.

Based on the consensus of the first three views on "cooperative notary institutions are legal persons", the above four views can be summarized into two categories, namely, "legal person theory" and "non-legal person organization theory". The regulatory basis of the "legal person theory" is Part III (2) and Part IV (1) of the Opinions of the Ministry of Justice on Promoting Pilot Cooperative Notary Public Institutions (hereinafter referred to as the Opinions of the Ministry of Justice), which stipulate the establishment conditions, procedures, independent assets and the limited liability of cooperative notary public institutions, in line with the provisions of the *Civil Code* regarding certain aspects of a legal person including the "name, organization, domicile, assets and funds, being established in accordance with legal conditions and procedures, and independent and limited civil liability". Therefore, this theory believes that there is no doubt about the legal person status of cooperative notary institutions. The "non-legal person organization theory" is based on the provision of Part IV (1) of the Opinions of the Ministry of Justice which specify that "the assets shall be jointly owned by the funders", and believes that since the funders are the actual capital contributors to the cooperative notary public institution, it is appropriate to draw reference from overseas experience and classify cooperative notary public institutions as "non-legal person organizations" which bear unlimited liability.

3. Critics over the Legal Person Theories of Cooperative Notary Public Institutions

The Opinions of the Ministry of Justice stipulate that cooperative notary public institutions' liabilities towards their debts should be limited to their total assets. As aforementioned, limited liability is part of the traditional laws on the organization of legal persons, and people are used to the combination of a legal person with the limited liability system. Accordingly, there are three theories that advocate cooperative notary public institutions as legal persons: one is the social service institution theory, the second is the donative legal person theory, and the third is the special legal person theory. Although the author agrees that cooperative notary public institutions should have limited liabilities, the author does not concur with the current "legal person theories" and shall analyze the theories respectively as follows.

[5]According to Guodong XU, "notary public institutions should look to the existing legal system to find the basis for its positioning as civil subjects, and the positioning of non-legal person organizations is basically correct. See Roundtable|Civil Subject Positioning of Cooperative Notary Public Institutions under the Framework of the Civil Code, published in WeChat Publications, Xiamen Lujiang Notary Office, https://mp.weixin.qq.com/s/G22JoIXVCGWAZPjkJNtzug, last accessed on March 9, 2022.

3.1. Cooperative Notary Public Institutions Are Not Non-Profit Legal Person

Since social service institution and donative legal person are subordinate concepts under the non-profit legal person framework regulated by the *Civil Code* of our country, this paper will jointly analyze "social service institution" and "donative legal person". Cooperative notary public institutions and non-profit legal persons both have the trait of non-profit entities and similar organizational characteristics, but cooperative notary public institutions are not social service institutions nor donative legal persons.

1) The commonality of "non-profit" characteristics between the two

To determine whether an organization is "non-profit", we may consider two aspects: the first one is the purpose of establishing this organization. When properties and property rights, such as money, tangible objects, intellectual property, land operation rights, etc., exist only as the owner's private property and rights, they are only property and rights, not capital; when they are used to make "capital contributions" to establish an organization, if the purpose of the capital contribution is to derive profits, then regardless of the fact that the organization's business indeed generates profits or not, the essence of these properties and property rights is capital; if the purpose of the capital contributor is not to pursue profit, but for the purpose of public welfare or to provide public goods and services to society, then regardless of whether the organization operates business activities and whether the business activities are profitable or not, the capital contribution is not indeed capital; the second is to consider whether the organization distributes profits. It is not required that non-profit organizations should not operate income-generating business activities. In fact, many non-profit enterprises have surpluses on their management accounts each year. The difference between non-profit organizations and equally successful for-profit organizations is that the profits earned by non-profit organizations can only be used to pay reasonable remunerations to those who provided services or capital to the organizations, instead of being distributed to the members of the organizations, the management personnel, board of directors, etc. Even in the event of the closure of a non-profit organization, the remaining assets cannot be distributed.[6]

Article 6 of the *Notary Public Law* stipulates that notary public institutions are not for profit, and Article 87 of the *Civil Code* stipulates those non-profit legal entities are established for public benefit or other non-profit purposes and may not distribute profits generated to the contributors, founders or members. Therefore, both cooperative notary public institutions and non-profit legal per-

[6]Article 95 of the Civil Code: Upon cessation of a non-profit legal entity established for public benefit purposes, the remaining assets shall not be distributed to the contributors, founders or members. The remaining assets shall be used for public benefit purposes in accordance with the provisions of the articles of incorporation or the decision of the authority; if it cannot be disposed of in accordance with the provisions of the articles of incorporation or the decision of the authority, it shall be transferred to a legal entity with the same or similar purposes under the auspices of the competent authority and shall be announced to the public.

sons have the characteristics of "non-profit".

2) Both Are "Non-Profit Organizations"

A non-Profit Organization (NPO) is a social organization outside of the scope of governmental organizations and the market sector (for-profit enterprises) and is not for profit (Li, Xu, & Li, 2006). NPOs are business operating entities, but in the meanwhile, they are not for profit. Their business operations supply public goods that meet individuals' differential demands due to differences in income, wealth, religion, race, education, etc., thus solving the government failure caused by "insufficient differentiation in the provision of public goods". The non-profit nature of these organizations can also avoid the market failure caused by information asymmetry, which is bound to occur when public goods are provided by for-profit organizations. In an international comparative study of non-profit organizations in 12 countries, United States scholars Salamone and Anhalt summarized six characteristics of non-profit organizations: firstly, organizational characteristics, i.e., the organization should have its own constitution, its own organizational structure, relatively stable and sustainable organizational goals, and meaningful organizational boundaries; secondly, non-governmental characteristics, i.e., the organization is independent of the government, but accepts government supervision, management or support; thirdly, non-profit characteristics, that is, the organization's goal is not making profit, but the organization is also not prohibited from making profit, provided that such profit shall not be used for distribution to participants; fourth, self-governing characteristics, that is, the institution manages itself, operates independently, is self-sustainable and independently responsible for its liabilities; fifthly, voluntary participation characteristics; and sixthly, public benefit characteristics (Huang, 2012). Obviously, both cooperative notary public institutions and non-profit legal persons have the above characteristics and are non-profit organizations.

3) Uniqueness of cooperative notary public institutions

Currently, there are two views that cooperative notary public institutions are non-profit legal persons: one is the view in this industry that "cooperative notary public institutions are "donative legal persons", and the other is the academic community's proposal that "cooperative notary public institutions should be classified as social service institutions"[7]. In the author's opinion, although cooperative notary public institutions are highly similar to non-profit legal persons in terms of "non-profit" and organizational characteristics, cooperative notary public institutions are not non-profit legal persons as regulated by the *Civil Code* for the following reasons.

First of all, the donative legal person in the *Civil Code* is a Chinese interpretation of consortium legal person under the traditional civil law structuralist legislative mode, and the donative legal person's "lack of autonomy and subject to the will of the donor" is its fundamental difference from association legal person. Although a cooperative notary public institution is established by the founder,

[7]According to the provisions of the Civil Code of China, social service organizations are a type of donative legal person.

the funder's capital contribution should be considered as a start-up fund for the independent operation of the cooperative notary public institution, not as a "donation" by the funder which requires the cooperative notary public institution to spend the funds in accordance with the will of the founder. Specifically, there are three major types of non-profit legal persons regulated by the *Civil Code* in China: government-affiliated institution legal persons, social organizations, and donative legal persons (foundations, social service organizations, and legal persons of religious activity sites). There is a view that the classification of "social organizations, government-affiliated institutions and donative legal persons" is based on the logic of "the gradual weakening of the control of the contributors over the property of legal persons and the gradual strengthening of the role of property in the performance of the functions of legal persons" (Ren, 2016). The author agrees with this view and further interprets and understands that the legislation on civil subjects in China, despite its abandonment of the traditional structuralist legislative model of the civil law system, still contains its genes. Except that the government-affiliated institution legal person is an original type of legal person in China, the social organizations, and donative legal persons are actually the Chinese interpretations of the association legal person and the consortium legal person under the traditional structuralist legislative model of the civil law system.

The fundamental difference between them is that the members of the association legal person have the autonomy to direct the actions of this private subject. In contrast, donative legal persons lack such autonomy and are ultimately subject to the will of the donor (Tan, 2016). From the historical origin of the concept of a donative legal person and the practices in China and abroad, there is a basic consensus that "the donor is not a member of the legal person" and "the member of the donative legal person has no right to direct the actions of this private subject and is ultimately subject to the will of the donor". On the contrary, the founder of a cooperative notary public institution is not only a member of the cooperative notary public institution, but also a core member, and the members of the cooperative notary public institution enjoy autonomy over the establishment, operation and revocation of the institution, as well as the use and disposal of the institution's assets, therefore, it is obvious that there is no donor in a cooperative notary public institution, and it is not a "puppet with no self-will, created solely to achieve the donor's objectives. Moreover, according to Professor Henry Hansmann, with respect to a non-profit donative legal person, the main purpose of the transaction between the donor (contributor) and the non-profit organization is to purchase services (charity) for others, and the non-profit organization, as a party to the transaction, provides these services to third parties (Henry, 2001). Apparently, cooperative notary public institutions do not conform to this characteristic since customers visiting the cooperative notary public institution pay for the services purchased by themselves. The reason why the industry advocates the classification of cooperative notary public institutions as donative legal persons is that "the capital contributed by the

founders of cooperative notary public institutions could not generate dividend distribution nor be inherited, so in essence, it is no different from that of the capital contributions made by donors, thus better to be classified as donated capital" (Liu, 2019). It could be seen that the idea that "cooperative notary public institutions are donative legal persons" is created after defining "the capital contributions that could not generate dividend distribution nor be inherited" as "donated capital" and mechanically matching it to the concept of a donative legal person in the *Civil Code* in order to resolve the current "need to provide a correct definition" to cooperative notary public institutions". It is not the result of scientific studies and should not be used as an approach to solving the problem of what type of civil subjects that cooperative notary institutions belong to.

Secondly, the "social service institution theory" is self-contradictory. Specifically, this theory is that cooperative notary public institutions have both legal person elements and non-profit characteristics, so they should be classified as non-profit legal persons. However, among the non-profit legal persons currently regulated by the *Civil Code*, cooperative notary public institutions do not conform to the connotation of government-affiliated institutions, social organizations and foundations (not to mention the legal persons of religious activity sites), and considering that cooperative notary public institutions, similar to institutions such as private education and private education institutions which are concepts developed from private non-enterprises, are social organizations that have the functions to provide public services to the society, they should be best regarded as "social service organizations with legal personality" (Tang & Duan, 2021). However, this theory also suggests that, in terms of the purpose of establishment, source of property, source of power (profit), legal effect, management method, disposal of surplus property, etc., cooperative notary public institutions are so different from donative legal person and therefore it is not proper to define cooperative notary public institutions as a donative legal person (Tang & Duan, 2021). However, within the framework of the non-profit legal person system regulated by the *Civil Code*, the donative legal person is the superior concept of the social service organization with legal personality, and this contradiction in doctrine shows that the non-profit legal person type regulated by the *Civil Code* in China does not include cooperative notary public institutions.

3.2. Cooperative Notary Public Institutions Are Not Special Legal Persons

In view of the fact that "cooperative notary public institutions" includes the word "cooperative", and that notaries public have the dual attributes of economic benefits and public welfare, it is easy to associate them with the "cooperation economic organizations in urban and rural areas" which are classified as special legal persons. Therefore, some scholars argue that cooperative notary public institutions should be special legal persons (Xie, 2017). This theory is also questionable:

First of all, the term "cooperative" of cooperative notary public institutions is

a concept in political economy, referring to the collective economy, which is one of the forms of public ownership economy, and it is placed before "notary public institutions" to define the form of ownership of this type of notarization institutions, highlighting its difference from the "government-affiliated notary public institutions" which are owned by all people of the state. Therefore, the word "cooperative" in cooperative public notary institutions should not be compared with the "cooperation" of cooperation economic organizations in urban and rural areas.

Secondly, the cooperation economic organizations in urban and rural areas are cooperatives in the field of economics. Cooperatives are self-help mutual aid organizations established by the weaker participants in economic relations to protect their rights in the sector of production and consumption. For example, the cooperatives' customers are often also its owners, and the cooperatives distribute profits according to the amount of purchases made by its members (Ying, 2002), which is obviously inconsistent with the non-profit connotation of the notary public institutions that "no income of the organization shall benefit shareholders or individuals.

Lastly, special legal person is a statutory concept limited to the four types of legal persons explicitly listed out by Article 96 of the *Civil Code* of China. The purpose of the special legal person system is to give private law status to specific types of social organizations to meet the needs of social management, as Jianguo LI, Vice Chairman of the Standing Committee of the National People's Committee, pointed out in the Explanation of the General Provisions of the Civil Law (Draft): by including special legal persons in the legislation, in addition to the status of public legal persons, governmental organs are given private legal person status, which could greatly reduce the risk of administrative power overstepping in market economic activities; and by giving private legal person status to rural collective economic organizations, local residents' autonomous organizations as well as cooperation economic organizations in urban and rural areas, private law would be able to support rural collective land reform, local governance reform, and rural revitalization, etc. This will prevent these subject entities from losing their identities during the reform, which might affect the practical effect of the reform. As could be seen, the special legal person regime is not an open system, nor can it provide "identity proof" for any new types of social organizations that cannot be clearly included in the category of profit and non-profit legal persons, as expected by the academic community (Chen, 2021).

To summarize, cooperative notary public institutions are not special legal persons regulated by the *Civil Code* of China.

4. A New Exploration on the Form of Liability for Cooperative Notary Public Institutions

Currently, legal persons regulated by China's *Civil Code* are not adaptable to cooperative notary public institutions. Therefore, the mainstream of academia

tends to identify cooperative notary public institutions as non-legal person organizations with unlimited liability. The author believes it is more appropriate to identify cooperative notary public organizations as non-legal person organizations which bear limited liability, for the following reasons:

4.1. Liability from the Perspective of "Rights and Capacities"

Under the perspective of organizational law, the purpose of having limited liability organizations is to divide the assets and liabilities of the organization's contributors and these of the organization, which is a legal mechanism of prior risk agreement, and is not directly related to whether the organization has a legal personality or not. The German Civil Code has a similar concept to the concept of non-legal person organization in China's *Civil Code*, which is "an association without legal capacity". As the name suggests, it is an association that has not yet been given legal rights and capacity by law, but it already has the basic characteristics of an association. The reason why it is not qualified as a legal person is due to its unwillingness to register or inability to register. In the legal history of Germany, in order to guide the registration of associations to achieve effective management, the German government has granted rights and capacities to associations that were registered to obtain legal personality for the purpose of accepting governmental examination. Such registered associations were given preferential treatments, such as limited liability for association members, and civil rights and civil capacity granted to the associations, etc.; at the same time, unfavorable measures were imposed on associations that were unwilling to accept governmental examination. For example, associations without rights and capacities cannot be the subjects of property rights, does not qualify as the subjects of litigation rights and can only be the defendant of a lawsuit. In the meanwhile, the members of the association bear unlimited joint and several liabilities, etc… With the development of theoretical and judicial practices, the associations without rights and capacities have broken the original regulations in terms of independent legal personality, independent property rights, and full civil capacity, etc. The way assumption of liability has also changed which made distinctions based on whether such associations have business operations and whether different treatments are applied. For associations that have no rights and capacities or any business operations, limited liability shall apply. While for associations that have no rights and capacities but do have business operations, limited liability shall not apply (Li, 2021). In other words, in comparative law, the difference between a legal person and an association without rights and capacities lies in whether they are registered or not, not in the way of the assumption of liability; even for unregistered associations, if they are not engaged in business operation activities, they still have limited liability, and this kind of liability regulation legislation is obviously more reasonable.

Currently, in the context of the modernization of state governance, more and more non-profit organizations are self-governing in all sorts of sectors and in-

dustries. If no distinction is made and they are all required to bear unlimited liability only because they do not fit into the types of legal persons as stipulated by the *Civil Code*, it is not conducive to the healthy development of such organizations and will affect the soundness and perfection of the social governance system. Therefore, we should learn from overseas experience and adopt limited liability for new types of social organizations that cannot be covered by the current legal person system of the *Civil Code*, including cooperative notary public institutions.

4.2. Liability under the Perspective of "Balance of Interests"

First of all, it is the summary of the legislative experience on civil subjects in China that "non-legal person organizations should bear unlimited liability", which is not the pursuit of legislative values of the *Civil Code*. From the history of the development of associations without rights and capacity in comparative law, it is clear that the amount and completeness of legal empowerment awarded to different types of organizations is a means of state governance. Unlike Germany's original intention of limiting the civil rights and capacities of associations without rights and liabilities and imposing unlimited liability on them in order to guide their registration and thus include them in the governmental management system, China's *Civil Code* explicitly requires non-legal person organizations to register with the authority, otherwise, they cannot obtain the qualification of non-legal person organizations. In this sense, the intention of our *Civil Code* to impose unlimited liability on non-legal person organizations in principle is not the same as the intention of German law which is to guide social organizations to register with the authority and facilitate government management, but merely having the "legal distinction" between legal person organizations and non-legal person organizations. Then, a question arises: since there is no qualitative difference between non-legal person organizations and legal person organizations in terms of independent legal personality, property rights and full standing in litigation, why not register non-legal person organizations as legal persons in order to obtain limited liability status? The author believes that the establishment of the non-legal person organization system in China's *Civil Code* is not to create a class of subject entities that are completely different from legal persons, but only to include all kinds of organizations without legal personality that have already been registered under the laws of various governmental departments, and recognize their status as civil subject entities. These organizations include sole proprietorships, partnerships, other types of non-legal person organizations (homeowners' committees), other enterprises without legal personality (foreign-funded enterprises, Sino-foreign cooperative enterprises, township enterprises), other non-profit legal person organizations (charitable organizations and religious activities sites that have no legal personality, etc.), professional service organizations without legal personality, etc. Among them, professional service organizations that do not have legal personality include partnership law firms, partnership accounting firms, partnership taxation firms,

registered architects' employers that do not have legal personality, partnership evaluation agencies, etc. The reason to add the qualifier "partnership" in front of these organizations is that according to the provisions of the *Law on Lawyers*, the *Law on Certified Public Accountants*, the *Administrative Grade Regulations for Taxation Firms* (for trial implementation), the *Rules for the Implementation of the Regulations on Registered Architects*, and the *Law on Asset Appraisal*, these professional service organizations may choose to set up organizations with legal person qualifications (Zhang, 2018). The reason why these professional service organizations choose "unlimited liability" between "limited liability" and "unlimited liability" is obviously not a noble moral decision. It is the choice of the market (Cheng, 2006). The *Civil Code* summarizes and precipitates the characteristics of these organizations, including these characteristics in the legislation of this basic law. Thus the *Civil Code* makes "whether bear limited liability or not" a benchmark difference between non-legal person organizations and legal person organizations, but this is not the legislative intent of the *Civil Code* regarding the non-legal organization system, as evidenced by the provision of exception in Article 104. In other words, the unlimited liability of non-legal person organizations is a common feature of these original forms of non-legal person economic organizations that were absorbed into the *Civil Code* when the *Civil Code* adopted an inductive approach to the legislation of non-legal person organizations. This feature was formed historically and is not a man-made feature that the value of national legislation has to make these organizations bear unlimited liability.

Secondly, allowing non-legal person organizations with non-profit status to have limited liability will not infringe on the rights and interests of stakeholders. From the development of German non-legal person associations in a comparative law perspective, we can see that initially, for the purpose of state management, the purpose of imposing unlimited liability on non-legal person associations that refuse to register is to guide them into the management of the state through registration. However, with the development and change in society, politics and the economic environment, the purpose of this sort of regulation was gradually being downplayed. The current mainstream practice is to distinguish whether the associations with no rights and capacities are profit-making or not and respectively determine whether they shall have unlimited or limited liability. For profit-making organizations, the historical reason for the emergence of limited liability is to protect the interests of capital contributors who are not involved in the actual operation. Still, it is a risk for other stakeholders (Li, 2022). As a non-profit organization, cooperative notary public institutions are not established for profit-making purposes, and the profits generated from their operations cannot be distributed to their members, management and capital contributors. Therefore, their operators lack the incentive to use the limited liability rule to infringe on the rights and interests of stakeholders. As for the risks arising from notary practice, cooperative notary public institutions are also covered once the notary compensation system and the notary compensation fund

system are established. As such, allowing these institutions to have limited liability will not infringe on the rights and interests of stakeholders.

4.3. Liability under the Perspective of "Market-Oriented Reform"

Firstly, limited liability is the institutional heritage of the liability of notary public institutions in China. In 2000, the Program on Deepening the Reform of Notary Public Work, "Section (xiii) Establishing and Improving the Notary Public Compensation System" stipulates that notary public compensation is subject to the rules of limited liability and the liability for compensation is limited to the assets of the notary public institution; in 2005, the Law on Notary Public stipulates that notary public institutions are independently liable for civil liabilities (independent liability of institutions means limited liability). The 2017 Opinions of the Ministry of Justice stipulate that cooperative notary public institutions independently bear limited liability. In the process of reforming the notary system, although cooperative notary public institutions are already "social intermediary organizations" in terms of their status, the reason that the system of "the assumption of limited liability" could be inherited is that their non-profit attribute remains unchanged and the notary functions performed by them remain unchanged. The most prominent manifestation is that notary public fees are subject to government-directed pricing, i.e., cooperative notary public institutions are not organizations that fully apply the market mechanism, which is the difference between them and law firms and accounting firms, so it is not appropriate to require them to bear unlimited liability.

The second is that requiring a cooperative notary public institution to bear "unlimited liability" is not in line with the current reform of the notary system and is not conducive to the smooth promotion of the cooperative system reform. Currently, our country established around 3000 public notary institutions but there are only 133 cooperative notary public institutions. The reason for the lack of positive initiative regarding the cooperative system reform in many local areas is that notary public institutions and notaries are worried that they are not supported by financial support from the state. Once the number of notary cases is insufficient, notary public institutions will not be able to survive. In such a situation, if the notary public institution is then subject to "unlimited liability", it will inevitably cause more participants to stay on the sidelines of the reform.

In addition, China currently adopts a "dual-track" model for notary public institutions and cooperative notary public institutions. As notary public institutions are government-affiliated legal persons with limited liability, it is only logical that cooperative notary public institutions should also assume limited liability.

5. Conclusion

In view of the fact that cooperative notary public institutions are new social organizations that emerged along with the reform of the notary public system, it is

appropriate to classify them as non-legal person organizations since they do not apply to the regulation of legal persons under the *Civil Code*. Considering the public interest attribute of cooperative notary public institutions, the historical tradition of notary public institutions' liability and the risk-sharing mechanism of government-affiliated notary public institutions, it is inappropriate to require cooperative notary public institutions to bear unlimited liability. Based on this, this paper proposes to incorporate the regulation of "limited liability" of cooperative notary public institutions as stipulated by the "Opinions of the Ministry of Justice on Promoting the Pilot Work of Cooperative Notary Public Institutions" into the contents of the amendment to the Law on Notary Public. This will not only facilitate the further development of the reform of the cooperative system of notary public, but also supplement and improve the existing legislative system of civil subject entities in the *Civil Code*.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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