

On the Collective Ownership of Cooperative Notary Public Institutions

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Abstract

Notary system reform is a part of judicial reform in China. Cooperative notary institution is a new form of organization arising from the notary system reform whose ownership of property requires clarification. The thought of cooperative economy can be understood from the two dimensions: ownership and system of ownership. The “cooperative” of cooperative notary public institutions is collective ownership, which is one of the forms of public ownership economy. The capital contribution by the funders and the operating incomes after the establishment of the cooperative notary institution jointly constitute all the assets of the cooperative notary institution to bear civil liabilities.

Keywords

Notary System Reform, Cooperative Notary Public Institutions Public, Collective Ownership, Cooperative Economic Organizations

1. Origins of Question

Notary system reform traces back to the 1990s in China, marked by the official launch of the *Program on Deepening the Reform of Notary Public Work* approved by the State Council and published by the Ministry of Justice (Hong, 2015). The notary system reform takes the institutional reform as the breakthrough and has entered the stage of in-depth promotion with priorities on “optimizing the institutional mechanism of notary institutions in the public service system” and “promoting the pilot of cooperative notary institutions” through comprehensive de-administration.¹

The Opinions of the Ministry of Justice on Promoting the Pilot Work of Co-

¹Opinions on Deepening the Reform of Notary System and Mechanism to Promote the Healthy Development of Notarial Undertakings (Si Fa [2021] No. 3).

operative Notary Institutions (hereinafter referred to as “the *Opinions*”) was published in September 2017, within which the organizational forms of cooperative notary institutions were initially defined to include the following aspects: 1) They are jointly financed by notaries voluntarily; 2) They are under democratic management and operate independently; 3) Property of the cooperative notary institution is collectively owned by the partners; 4) They undertake limited liability externally.² By its name and the organizational form initially defined by the *Opinions*, cooperative notary institution is a cooperation economic organization.

As a highly inclusive economic form, cooperative system is prevalent in countries of different political systems while undergoing a transformation from the form of economic organization (cooperatives) to the form of ownership (collective ownership) in socialist countries, which also includes the transformation from individual ownership to collective ownership. The *Opinions* defines the property ownership of cooperative notary institutions while ignoring the transformation of property ownership from individual ownership to collective ownership during the establishment of such institutions, thus causing disputes over the nature of ownership of cooperative notary institutions. This paper intends to analyze the thought of cooperative economy from two dimensions: ownership and the system of ownership, aiming to clarify that the “cooperative system” of cooperative notary institutions is the collective ownership of the socialist public ownership economy as a matter of fact, rather than the classic cooperatives that retain individual ownership, so as to contribute to the smooth progress of the in-depth reform of the notary system.

2. Dimension of Ownership of Cooperative System: Classic Cooperatives with Private Ownership

2.1. Cooperative System from the Perspective of Classic Cooperative Economy Thought

1) Emergence of classic collective economy thought

Cooperative economy is the product of industrial workers in modern times striving for workers’ rights. To understand the content of its concept, it is necessary to probe into it from four perspectives: cooperation, cooperative economy, cooperatives and cooperative system (Liu, 2006). First of all, cooperation is joint labor based on common will, which has not been interrupted in the history of human beings. Secondly, cooperative economy is a specific product of social development at a certain stage: From the angle of economic thought, it started from utopian socialism or even earlier; From the angle of specific economic ac-

²Article 4 of the *Opinions of the Ministry of Justice on Promoting the Pilot Work of Cooperative Notary Institutions*: 1) Organization: A cooperative notary institution shall be composed of qualified individual notaries on a voluntary basis to participate in and contribute jointly; It does not need the state’s staffing and funding, carries out business on its own initiative, bears civil liability independently, and all its partners share the property, and assumes limited liability for debts with all its assets; It implements democratic management and operates according to market rules and self-discipline mechanism.

tivity models, its intention is cooperative system, and its extension is the specific practice of various types of cooperatives (Hong, 1996). Thirdly, cooperatives are the general term for all kinds of cooperative economic organizations. Lastly, the cooperative system is a summary of the institutional characteristics shared by all types of cooperatives (Liu, 2006).

Owen is the enlightener of the thought of modern cooperative economy. In his opinion, private ownership is the source of the polarization between the rich and the poor in capitalist society. A reasonable society should have no private ownership, that is, except for private goods purely for personal use, everything else should be public property. When public property can meet all demands of the people, or in other words, when the artificial value of wealth no longer exists and only the intrinsic value of wealth is needed, people will understand the superiority of public ownership of property, and people living in such society will truly lead a happy life. Owen took cooperatives as the core of his social reform thought and practices, confirmed that the working class is the backbone of social reform, and put forward the general principle of the Labor Theory of Value, that is, all wealth comes from labor and knowledge, which should be paid according to the time spent. On that basis, he proposed that the common property and joint labor of workers are the groundwork for realizing cooperation among workers, and carrying out the cooperative practice of “overall unity of production, circulation and distribution”. In Owen’s cooperatives, members have equal rights, and people work together to “work according to their ability and distribute according to their needs”. In addition, Owen carried out new education on the members’ moral awareness, values, labor skills and labor literacy, so as to achieve the unity of economy, culture and politics within the cooperatives (Liu, 2006).

2) Development and practices of classic cooperative economy thought in the West

Howarth, Owen’s follower, founded the well-known Rochdale Society of Equitable Pioneers and formed the famous Rochdale principles, including 1) Open and voluntary membership; 2) Democratic management; 3) Moderate capital reward/restricted allocation of shares; 4) Return of surplus; 5) Education in cooperatives; 6) Cooperation among cooperatives. These six principles reflect Owen’s basic thought and are the guidelines for the international cooperative movement (Ma & Song, 2001).

2.2. Allocation of Corporate Ownership from the Perspective of New Institutional Economics

In his book *The Ownership of Enterprise*, Prof. Henry Hansmann deemed the cooperative system as one of the forms of corporate ownership from the perspective of corporate ownership, and analyzed that assigning ownership to producers is the most efficient way of allocation for certain types of enterprises from the angle of reducing transaction and information costs. The analysis by Prof. Henry Hansmann is based on acknowledging the following view: an enterprise is

in essence the signatory of a series of contracts, and the function of the corporate organizational laws (company law, partnership law, etc.) is to authorize a legal entity to exercise the right to sign contracts.

1) Enterprise costs determine allocation of ownership

Prof. Henry Hansmann classified contract-based transacting objects of an enterprise into four categories: suppliers of raw materials or services (sellers), suppliers of labor force required by enterprises (employees), marketing targets of enterprise products (buyers) and capital providers (creditors). These four types of transacting objects, which are called clients of enterprises by Prof. Henry Hansmann, are all likely to become owners of the enterprise. Whoever is allocated with the ownership is also the one allocated with the power of control of the enterprise. The factor determining the allocation is the transaction costs, which refer to the impact and value arising from the transaction between the enterprise and its clients, including both monetary and non-monetary costs. The costs of an enterprise have two components. One is the market transaction costs, that is, the costs of transactions between the enterprise and non-owners, and the other is the costs of ownership, that is, the costs of corporate governance (Henry, 2001). The most efficient way to allocate ownership is the way to minimize the costs.

2) Reasons for enterprise costs

First, market transaction costs arise from market failure, namely, transaction failure or high costs caused by situations of market failure, such as asymmetric market dominance and information asymmetry. It includes the following circumstances: a) A certain type of enterprise enjoys superiority of price monopoly over a certain type of client under the influence of scale economy or other factors restricting competition; b) The enterprises squeeze monopoly profits from clients due to the locked transaction relationship; c) A long-term cooperative relationship established to reduce the losses to itself caused by opportunistic behaviors or to agree on the sharing of certain special risks may cause huge losses to one of the parties; d) There are ultrahigh transaction costs and failure of negotiations as a result of information superiority of one transacting party; e) Negotiations are inefficient due to blocked information transmission; f) Some forms of ownership are not accepted or recognized caused by ideological value judgments.

Second, the costs of ownership arise from the supervising costs and opportunism costs under the agent system or the invalidity/inefficiency and excessively high costs of collective decision-making. The costs of corporate ownership are the costs required to achieve the two core powers of corporate control and residual income claim contained in corporate ownership, including the supervising costs of managers, the costs of collective decision-making and the costs of risk bearing: a) The supervising costs of managers occur in enterprises with a large number of owners, such as commercial companies with dispersed equity and large cooperative enterprises, where the power of corporate control needs to be entrusted with full-time managers or executives and other agents. The agents'

salary, the supervision of the agents and the possible opportunistic behaviors of the agents based on their position as managers all give rise to business costs. b) The considerable costs of collective decision-making may occur when there is a conflict of interests among corporate owners, which can be divided into costs caused by the invalidity of the decision and costs caused by the decision-making process. Circumstances of invalidity of decision include that when there is a significant difference between the preferences of the medium members and the general members in the group with the voting power (the owners), the majority party occupies the interests of the minority, and the unrepresentative minority, through controlling the political procedure, makes the decision that only represents its own interests rather than the interests of the greater majority to be adopted. c) The high costs of decision-making process refer to the considerable time and efforts spent on obtaining all people's preferences to reach a decision that is effective for everyone, holding meetings and implementing collective decisions even if no person who has the power of control is motivated by opportunism. d) Risk-bearing costs are related to major risks in business operations. Among the several types of clients who have transacting relations with enterprises, there is always one type of client more suitable to bear such risks. Different types of enterprises will also choose different forms of ownership allocation.

3) Ownership allocation scheme for corporate costs caused by different factors

First, in respect of different circumstances of market failure, adopting different ownership allocation methods can minimize transaction costs. For example, ownership by producers (producers' cooperatives) is the optimal ownership allocation scheme when enterprises have absolute market dominance over raw materials and service suppliers. Ownership by producers can effectively prevent enterprises from squeezing down prices when purchasing raw materials and services. Ownership by consumers (consumers' cooperatives) is the best ownership allocation scheme in the face of the seller's monopoly. Making consumers owners of enterprises (consumers' cooperatives) can prevent or eliminate consumption shortage and other problems caused by the chronic high price of certain products or services.

Secondly, the allocation of ownership caused by ownership costs also varies from situation to situation: Locking caused by labor contract relationship promotes the popularization of ownership by employees; The opportunism and special risks arising from long-term contracts lead to the development of mutual insurance companies, which are cooperatives of policyholders; Transaction failure caused by the information superiority of one party, bargaining or ineffective transmission of customer preference information can be solved through allocation methods such as the producers' cooperatives, consumers' cooperatives or ownership by employees; Ownership by employees and non-profit organizations with non-ownership can be a good solution to market failure as a result of ideological value judgments.

To sum up, both the claim to residual incomes in the Rochdale's Principles and the ownership allocation methods to lower down corporate costs are recog-

dition of workers' ownership of the means of production. In other words, from the dimension of ownership, classic cooperatives all recognize that workers/individuals are the owners of the property of cooperative economic organizations.

3. Cooperative System in the Dimension of Ownership: Public Economic Form of Transforming Private into Public

On one hand, Owen's thought of cooperative economy was further improved and developed through the cooperative movement in various countries, and became an organizational form of enterprises and a method of ownership allocation in the vision of modern economics. On the other hand, it developed in another direction through the interpretation by creators and practitioners of socialist thought, and finally evolved into collective ownership where the state/society has replaced individuals as the owners of the means of production through the cooperative transformation of private ownership of the means of production.

3.1. Evolution and Practices of the Thought of Cooperative Economy in Eastern Europe and the Former Soviet Union

The Utopian socialism thought represented by Owen is one of the sources of Marxist theory. Marxism believes that the cooperation form of joint labor genuinely reflects the workers' confrontation against capital relations and is conducive to the transformation of capitalism. The various cooperatives existing in capitalist society are the only route toward the transition to a fully communist economy. Engels divided the peasants into small, middle and large peasants, and believed that the small peasants who occupied small plots of land (ownership or tenancy) were the majority of the peasants, and the production of the small peasants was the remnants of the feudal production mode. Under the impact of capitalist commodity production, the production mode of the small peasants would inevitably come to an end, and the small peasants would be the future proletariat. The economic status of small peasants determines their two-sidedness: They support socialism as future proletariat, while as small private owners; they are unwilling to give up the concept of private ownership. Therefore, in anticipation of the inevitable demise of the small peasants, it is necessary to adopt a model of non-violent cooperation to help them transit to cooperatives, which would eventually become cooperatives of national mass production. Engels' thought of guiding peasants towards social possession through the cooperative system was carried forward by Lenin and Stalin, which is manifested as the three stages in Lenin's period and the collective farms in Stalin's period (Liu, 2006).

3.2. Thoughts and Practices of the Cooperative System in China

1) Thoughts and practices of the cooperative economy before the founding of the P.R.C.

At the beginning of the 20th Century, the thought of cooperative system was

introduced into China along with the wave of the “eastward spread of western learning”, and reached the climax for the first time before 1949. The cooperative movement before the founding of the P.R.C. mainly includes: establishing a relatively complete cooperative education system, implementing the vision of the collectivization of people’s livelihood advocated by Sun Yat-sen through administrative strength, inaugurating the Department of Cooperation under the Ministry of Industry and the Bureau of Cooperative Management under the Ministry of Economy, building cooperatives in rural areas, etc. In the early years after the founding of the P.R.C., there were 20 million cooperative members and 120,000 cooperative cadres, with a capital of 551.4 billion yuan.

2) Cooperative economy after the founding of the P.R.C. (till 1983)

Around the founding of the P.R.C., the central leadership decided to unite the decentralized small-scale peasant economy with the handicraft industry under individual operation by establishing various cooperatives to achieve collectivization and modernization of the agricultural and handicraft industries, and carried out the following cooperative practices in rural China:

1) Mutual assistance groups. In September 1951, the first National Conference on Mutual Assistance formulated the *Resolution of the CPC Central Committee on Agricultural Production Cooperation (Draft)*, which calls on peasants to carry out cooperation based on mutual assistance on agricultural production, and then to form cooperatives by pooling land as shares. The mutual assistance group is merely joint labor, where the means of production are still owned by the peasants.

2) Junior cooperatives. The mutual assistance groups did not alter the previous relations of production, and the purpose of developing the mutual assistance groups is to make preparation for the development of junior cooperatives. Land and other means of production in junior cooperatives were still privately owned by the members, but the rights of control and use uniformly belong to the cooperatives.

3) Advanced cooperatives. In October 1955, the Sixth Plenary Session of the Seventh Central Committee of the CPC adopted the *Resolution on Agricultural Cooperative Issues*, which promoted the evolution from junior cooperatives to advanced cooperatives. One of the most basic characteristics of advanced cooperatives is that all means of production are owned collectively.

4) People’s communes. People’s communes started from the Beidaihe Conference in 1958 and ended in the 1980s. The characteristics of the people’s communes are “large scale, high degree of public ownership” and “integration between governance and cooperative”. The rights of cooperatives, which are the collection of the ownership of individual labor force and the ownership of means of production of members, were replaced by the people’s communes. Cooperatives were no longer organizations based on voluntary cooperation among individual members, but a tool of highly centralized administration.

5) Collective system. In the wake of the transition from advanced rural cooperatives to the people’s communes, urban handicraft cooperatives, credit coop-

eratives, supply and marketing cooperatives, to name but a few, were also gradually transiting towards the collective system. From Owen's cooperative economy to the collective farm of the former Soviet Union and the collective system in China, the cooperative system transmuted in the socialist countries. In detail, cooperatives were no longer an organizational platform for economic activities resulting from the collaboration and combination of production, distribution, exchange and consumption among workers, but the means to eliminate individual ownership and realize collective/social/state possession.

In October 1983, the CPC Central Committee issued the *Notice on the Establishment of Township Governments by Separating Governance from Communes* nationwide. The people's communes were abolished and the rural collective system was outlawed, replaced by the household contract responsibility system. The household contract belongs to the small-scale peasant economy in essence. That is to say, from the call for mutual assistance in 1951 to the abolition of the people's communes in 1983, China's rural economy has gone through the cycle from a small-scale peasant economy to cooperative economy to collective system and then back to small-scale peasant economy, the starting point, in more than 30 years. However, in this process of development and evolution, it was confirmed that the cooperative system is the basic form of public ownership and the cooperative economy is a key component of China's public ownership economy.³ That is to say, the cooperative system in our country includes not only the organizational forms and ownership allocation of production and business activities in social and economic sectors, but also the forms of ownership under the horizon of political economy. With regard to the nature of a certain cooperative economic organization, that is, whether the cooperative is a classic cooperative or a transmuted one (the form of economic organization under the public ownership system), should be distinguished according to the Rochdale Principles with consideration of its functions, purposes and existing policies.

To sum up, the current urban and rural cooperative economic organizations in China can be divided into classic cooperatives and non-classic cooperatives (the form of economic organization under the public ownership system). Classic cooperatives refer to various cooperative economic organizations under the classical thought of cooperative economy. Such cooperatives are cooperative organizations of workers which recognize property ownership of members and return the surplus of the stock invested by members. Non-classic cooperatives refer to

³“From the perspective of ownership, the economic contradictions in modern China are mainly divided into four aspects: public ownership economy, bureaucratic capital, individual small-scale peasant economy, and private capital.” Liu Yongji, 2004 edition: *On China's Economic Contradictions*, Beijing Economic Press China, pp. 353-354. “The cooperative system is the basic form of public ownership, and the cooperative economy is also an important component of China's public ownership economy, including the new rural cooperative economy and the urban cooperative economy.” Liu Binglong: *Research on China's Cooperative Economy*, 2006 doctoral dissertation of the Minzu University of China, page 172.

collective economic organizations where, once the cooperative is established, property invested by individuals will fall into collective ownership without any dividends and bonuses produced therefrom and are not refundable when the members withdraw, and the property of the cooperative should not be distributed when it is dissolved.⁴

4. Cooperative Notary Institutions: Urban Non-Classic Cooperatives under the Framework of Public Economy

From the above, it can be seen that to analyze the nature of ownership of a specific cooperative economic organization, it is necessary to first define the nature of the ownership system of the organization. The attribute of the ownership system of the cooperative notary institution can be determined from the following two aspects: First, the cooperative notary institution is subject to Article 6 of the *Notarization Law* concerning the non-profit nature of notary institutions. That is to say, the purpose of establishing a notary institution under the cooperative system is not to gain profits, and it is not allowed to benefit from the distribution of profits and liquidated property (Shi, 2013). Second, according to the *Opinions* and the *Notarization Law*, given the functions and categorization of liabilities of cooperatives⁵, cooperative notary institutions should be service-oriented cooperatives with limited liability. Stipulating the limited liability of cooperative notary institutions is not only to align with the limited liability of notary institutions in the public service system, but also to reduce the difficulty in reform objectively. The stipulation on the unity of responsibilities of the cooperative notary institution and the public service notary institution implies that the former is in tune with the latter in its “public” status. It means that in a kinship with the public service notary institution owned by all, the cooperative notary institution should also be collectively owned rather than individually owned. In this context, we will analyze the attribute of property ownership of the cooperative notary institution from the perspective of its nature of public ownership.

4.1. Analysis of Ownership at the Beginning of the Cooperative Notary Institution: From Individual Investment to Collective Ownership

China’s ownership system is composed of state ownership, collective ownership and individual ownership, among which, the former two constitute China’s pub-

⁴Refer to Article 95 of the *Civil Code* of China on distribution of the residual assets of a non-profit legal person.

⁵“According to their functions, cooperatives can be divided into service-oriented cooperatives and production-oriented cooperatives. The former includes cooperatives that provide services for consumers and cooperatives that provide services for production, while the latter refers to production cooperation based on common labor among producers. Divided by forms of liability, there are cooperatives with limited liability and those with unlimited liability.” MA Junju and SONG Gang, *Cooperative System and Collective Ownership*, Journal of Legal Studies, Vol. 6, 2001, pp. 117-118.

lic ownership economy. ⁶As mentioned above, collective ownership in socialist countries was formed during the process of socialist transformation of agricultural and handicraft industries, that is, eliminating private possession of means of production and realizing collective possession through cooperatives. This process was previously completed by launching a political movement in the economic field. After the system of collective ownership took shape, the subsequent formation of collective ownership did not necessitate the repetition of the process of political movement, but was transformed with the establishment of the economic organization of collective ownership. Taking the cooperatives as an example, the specific emerging process of the collective ownership is as follows: When a cooperative was just founded, the capital comes from the investment of the members, which can be in the form of either ownership or the right to use. If the cooperative is invested in the form of ownership, all the initial property of the cooperative shall be owned collectively. If the cooperative is invested in the form of the right to use, part of the property is still owned collectively. If the cooperative is invested in the form of both ownership and the right to use, the initial property of the cooperative is the combination of collectively-owned property and the property of the members. However, no matter whether the initial property of the cooperative is owned collectively, individually or in a combined manner, individuals, namely, members of the cooperative, no longer have the right to control such investment, which shall be under the uniform control of the cooperative. That is to say, the cooperative will control and administer this part of property in the name of the collective.

Thus, it can be seen that whether a cooperative has collective ownership at the beginning of its establishment varies with the forms of capital contribution by the initiators: If the capital contribution is made by the right of use, collective ownership does not exist when the collective is established. If the capital contribution is made by ownership (wholly or partially), the ownership of the capital is transferred from the contributor to the cooperative when the cooperative is established, resulting in the cooperative's ownership of the property (Ma & Song, 2001). The cooperative notary institution is invested by the initiators in the form of monetary ownership. The invested capital becomes in the possession of the cooperative notary institution, a collective economic organization, when the cooperative notary institution is founded. From the perspective of ownership, private ownership is replaced by collective ownership at this time.

To sum up, although the cooperative notary institution is financed by individual notaries, it is an economic organization of public ownership where it will replace the investors and become the ownership holder of the property thereunder as soon as it is established. The collective notary institution shall have collective ownership of its property not only in the economic or political sense, but also in the legal sense. The reason is that although Item 1 in Article 4 of *the*

⁶Ma Junju & Song Gang, *Cooperative System and Collective Ownership*, Journal of Legal Studies, Vol. 6, 2001, p. 116.

Opinions defines the property of the cooperative notary institution as “jointly owned by the funders”, given the limited liability of the cooperative notary institution, the property of the cooperative notary institution shall belong to this economic organization, instead of initiators of the organization, with reference to either state-funded public service notary institutions or corporate legal persons.

4.2. Collective Ownership after the Founding of the Cooperative Notary Institution

Property status of the cooperative notary institution will change along with its operation after it is founded, which is determined by the distribution system of the cooperative notary institution. Operating incomes of the cooperative notary institution shall be distributed by the following principles: 1) The remuneration will be paid to the personnel (including funders and initiators, who are ordinary workers in the notary institution at this time) by distribution on the basis of labor. 2) Extracting public accumulation. Public accumulation includes provident fund and public welfare fund. This portion of income shall not be in possession of any individual, nor shall it be subject to distribution (even when any member quits), and shall be solely owned by the collective notary institution. In other words, the cooperative notary institution naturally enjoys the ownership of its business accumulation in the legal sense. This part failed to be covered in Item 1 of Article 4 of the *Opinions* on the definition of property ownership.

5. Conclusion

In conclusion, the “cooperative system” of the cooperative notary institution should be understood from two dimensions: Firstly, the dimension of ownership. Ownership is the sum of a series of systems about possession, use, usufruct and disposition exerted by right holders on objects of the right. The right holders can be the state, the joint labor (collective) or individuals. Different types of ownership can be converted, as the property ownership of the cooperative notary institution is converted from individual ownership into collective ownership. Secondly, the dimension of the system of ownership. Prof. Liu Yongji points out in his book *Studies on Economic Contradictions in China* that “The cooperative system is the basic form of public ownership, and the cooperative economy is also an important component of China’s public ownership economy. It includes two main parts: the new rural cooperative economy and the urban cooperative economy”. The cooperative notary institution is exactly a part of the urban collective economy.

The obstacles encountered by cooperative notary institutions in the process of reform lie in the following doubt: Whether the delegation of notary power, which belonged to the state public power, to the grass-root level will give rise to abuse of public power, that is, whether it will become a tool of the minority to seek benefits with its original public attribute being altered. In this regard, the *Opinions* reiterate the guiding principles identified in the Program, and clarify

that the starting point of the notarization reform is to satisfy the new requirements on notary services for comprehensively governing the country by law, actively explore new institutional forms of notarization, establish a notarization system compatible with the market economy, and better meet the new demands of the people and economic and social development. On this basis, the Ministry of Justice defines the organizational form of the cooperative notary institution as “An organization that is inaugurated voluntarily, participated jointly and funded commonly by notaries, without national staffing or budget, carries out business on its own initiative and assumes civil liability independently. Its property is collectively owned by the partners with all its assets subject to limited liability for debt. It is operated according to the market rules and self-discipline mechanism under democratic management.” In this definition, the provisions on “joint labor, democratic management, independent business and assumption of limited liability” are otherwise fine, but the provision on “collective ownership of property by partners” deduced from the simple logic of “those who funded shall own” is the result of failure to discover the evolving rules of property ownership of cooperatives, and also the reason for the controversy over the “public or private” attribute of the cooperative notary institution. As a matter of fact, after the establishment of the cooperative notary institution, contributions by its initiators are converted to property of the cooperative notary institution, and all rights of the property can only be exercised after all the members of the cooperative notary institution form collective sense based on democratic decisions. The initiator, after contributing the capital, also becomes an ordinary worker in the cooperative notary institution, who gains remuneration according to his work at the cooperative notary institution. The funds he invested will not bring him dividends, nor shall they be returned upon his withdrawal from the cooperative notary institution. The funds invested by the initiators in the cooperative notary institution and the public accumulation generated in the operation of the cooperative notary institution should not be returned to the initiators, but should be transferred to other economic organizations of similar nature, even when the notary institution is about to be dissolved, according to the legislative intention of Article 6 of the Notarization Law and Article 95 of the Civil Code. Because individual property has been completely transformed into collective property in the process of joint labor, and the value of individual labor has been realized through the way of distribution by work. The purpose of providing initial funds is to set up an organization that can operate with notary power and play the function authorized by law. Once established, the organization has its independent mission and has no direct connection with individuals.

In essence, the cooperative notary institution belongs to the public economy from the organizational form to the nature. It, together with the public service notary institution, is a component of the public economy of socialism in China with the difference between the two lies only in the property ownership of the organization. In a cooperative notary institution, the ownership of property belongs to the collective, and all members of the collective shall make joint deci-

sions on its use and disposal within the scope prescribed by laws and regulations. In a public service notary institution, the property ownership is held by all the people, which shall be used and disposed of by the public service notary institution according to national laws and regulations. Both of them are professional organizations in line with Article 2 of the Notarization Law, which perform the attesting function as authorized by law, play a critical role in providing notary legal services for the socialist market economy with Chinese characteristics and are indispensable components of the construction of the modern governance system. Therefore, in the future legislation of the cooperative notary institution, when describing its organizational form, it is suggested that the property of the cooperative notary institution should be defined as being owned by the institution itself, so as to genuinely reflect the nature of the institution as an economic organization of public ownership, and then to realize the unity of the “cooperative system” of the notary institution in both the legal and the economic sense.

Conflicts of Interest

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

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