Working Paper

An Insight into the Need for Introducing Legislation for Social Enterprises and the Ecosystem of Social Enterprises in China

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An Insight into the Need for Introducing Legislation for Social Enterprises and the Ecosystem of Social Enterprises in China[*]

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Abstract

The development of social enterprises in China has been underway for many years, but there are as yet no laws regulating them. Even though several local governments or private platforms have issued a few social enterprise certification documents in the past years, it is only confined to the standards for social enterprise certification, and such standards are not identical, one reason is the lack of a superior law, i.e., the gap in the regulation and law at the national level, as well as the absence of legal status for social enterprises. Meanwhile, the rapid growth in the number of social enterprises has raised new demands for the legal recognition of social enterprises. As a result of covid-19, the collapse of the real economy and the rise in unemployment due to the delinking of China's economy from globalization is also awaiting a breakthrough in the legitimacy of social enterprises to seek a solution. The role played by the Chinese government will also have an impact on the need for social enterprise legal frameworks. The introduction of social enterprise legislation in China, especially the timing of the adoption of this legal framework, cannot be separated from the situation of the development of the local social enterprise ecosystem, which is not isolated and closely related to the Chinese social system, economic development, political environment, and cultural background. This paper employs a literature-based analysis, supplemented by a comparative approach, to explore and analyze the need and timing of the introduction of legislation for social enterprises, with the hope of shedding some light on social enterprise stakeholders, potential investors, legal practitioners, lawmakers, and researchers in other fields.

Keywords: social enterprise, legislation, need, time, ecosystem[1], China
JEL Codes: K22, L30, L31

[1] European Commission (2020), Social enterprises and their ecosystems in Europe. Comparative synthesis report, Publications Office of the European Union. "The term presupposes an integrated approach: it is used to describe the environment within which social enterprises operate. It reflects the fact that social enterprises evolve with and develop relationships with their beneficiaries, lead producers, suppliers, stakeholders, governments, and even competitors."

I. Introduction

In China, the development of social enterprise regulations and policies has been uneven. There is no legislation that is specifically against social enterprises at the national level, while a propaganda-type document[2] only mentions the support for the development of social enterprises[3]. The existing laws that regulate social enterprises are general by nature, covering company law, charity law, farmers' specialized cooperative law, etc. Whereas a different picture is presented by both local governments and private agencies, a total of eight local policies (provincial or municipal)[4] have been issued regarding the certification of social enterprises, as well as several platforms[5] for the private certification of social enterprises to date. However, even so, these certifications of social enterprises cannot fully compensate for the issues stemming from the absence of legitimacy status, legal or support mechanisms, without forgetting the financing dilemma.

In China, the lack of legislation to regulate social enterprises in this process – while the diversity of social enterprises and the emergence of new organizational elements have led to the dilemma that the legal system of social enterprises falls far behind the real practice, and their development – requires the support of social policies and the regulation of laws and regulations. Alternatively, entities essentially social enterprises[6] have existed for many years and were observed by practitioners and academics which require formal legal recognition. Yet this does not mean that China has to introduce legislation for social enterprises, as legal frameworks can act as strong enablers for social enterprise development,

[2] "Opinions on Deepening the Innovative Development of the Guangcai Project in the New Era" issued by the UFWD. (UFWD is short for "United Front Work Department of the Central Committee of the Chinese Communist Party", a department of the Central Committee of the Chinese Communist Party). Retrieved 12th January 2023, from https://tzb.nantong.gov.cn/nttzb/tzzc/content/8cd91ebf-be41-4f69-86ab-3ee393e3e664.html

[3] In fact, supporting the development of social enterprises at the national level is only at the stage of slogans, and there are yet no specific measures to be taken so far.

[4] They are Peking, Chengdu, Shenzhen, Foshan, Wuhan, Mianyang, Neijiang, and Sichuan Province.

[5] Such as China Social Enterprise Certification Center (CSECC) and China Charity Foundation (CCF) Social Enterprise Certification.

[6] There are five categories of social enterprises in China, depending on their specific social goals and service areas: employment-oriented social enterprises dedicated to the employment of people with disabilities; service-oriented social enterprises dedicated to the aged care field; policy-advocacy social enterprises dedicated to poverty alleviation and development and cultural development of ethnic minorities; rural cooperatives, and fair trade dedicated to green agriculture; and initiative-oriented social enterprises dedicated to education and cultural training and initiatives.

but countries have the right to choose not to adopt them[7]. As to whether social enterprises need to be regulated by law, should not only consider the status of the development of social enterprises as well as the existence of social problems to be solved and the emergence of related social phenomena, but also contemplate other factors underlying social enterprises' conditions of survival and room for developing.

The response to the question of when to introduce the legal framework of social enterprises in China, or in other words, whether is it appropriate for China to presently introduce social enterprise legislation, becomes meaningful only if the necessity of introducing social enterprise legislation is clarified. With regard to the question of the appropriate timing of the introduction of social enterprise law in China, the answer to such question is related to the maturity of the social enterprise ecosystem, or rather to the state of evolution of the ecosystem, with reference to some European countries. Nevertheless, due to the peculiarities of Chinese societies and institutional systems, the extent of its social enterprise ecosystem evolution varies with respect to other countries. There are four main aspects of politics, economy, culture, and society that have an impact on the establishment and development of the social enterprise ecosystem, and thus, influence the judgment of the suitability of the timing of the introduction of social enterprise legislation in China.

Inspired by the OECD manual 2022[8] on designing legal frameworks of social enterprises, the author intends to proceed by presenting a portrait of the current state of development of social enterprises in China and analyzing their demand for legislation. Bearing in mind the particular period of time in China, i.e. the "zero policy" implemented by China in the context of the covid-19, this probably increases the desire to legislate on social enterprises, on the one hand, because the legitimacy status of such enterprises that would be effective in solving social problems like unemployment, and on the other hand, social enterprises have an alleviating function for the plight of the real economy suffering from a collapse. Furthermore, the role of the Chinese government in contributing to or hindering social enterprise legislation should also be addressed. Based on the assessment of the need for social enterprise legislation, the analysis of the current situation of social enterprise in China shall be carried out with the aim of replying to the problem of the timing of its introduction, focusing on four dimensions, as mentioned before, namely: the political dimension corresponding to the impact of the social contract on

[7] OECD (2022), Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers, Local Economic and Employment Development (LEED), OECD Publishing, Paris.
[8] idem.

the social enterprise ecosystem; the economic dimension responding to the influence of the small farmer economy and the market economy on the social enterprise ecosystem; the cultural dimension conforming to the impact of the rural culture and the rule of law on the social enterprise ecosystem; and the social dimension to the level of the civil society development on the social enterprise ecosystem. Finally, the paper will conclude with the author's view on if social enterprise legislation should be introduced in China today, according to the analytical study of the need for social enterprise legislation and the ecosystem of social enterprises.

II. The need for a legal framework for social enterprises in China

New legislation often lags behind the actual situation in the national or local context. When relevant social problems arise requiring a solution or a social phenomenon that has developed spontaneously over a long period, legislatures would realize the need for such kind of law. This applies to social enterprises as well, such as in South Korea where the Act of Social Enterprise Promotion was enacted in 2007 because of the global economic crisis and welfare state decline[9], with Italy's social cooperative law No. 381/1991 is a typical example[10] of the latter one. Consequently, the need for a legal framework for social enterprises is closely related to the specific state of social enterprise development at that time, so the first step in assessing the need for social enterprise legislation in China is to evaluate the actual situation of their development. Additionally, on the basis of the preceding assessment, it is also essential to observe two contextual factors that significantly impact the development of local social enterprises, namely, the desire for economic recovery under covid-19 and the role of the Chinese government.

[9] Soogwan Doh (2020), Social Entrepreneurship and Regional Economic Development: The Case of Social Enterprise in South Korea, *Sustainability*, Vol. 12 No. 21. Retrieved 29th January 2023, from https://doi.org/10.3390/su12218843

[10] Galera Giulia & Carlo Borzaga (2009), Social enterprise: An international overview of its conceptual evolution and legal implementation, *Social Enterprise Journal*, Vol. 5 No. 3, pp. 210-228.

1. Current situation of the development of social enterprises

The need for a legislative framework for social enterprises in China is, above all, strongly connected with their development situation. This can be manifested in the following ways:

On one hand, the expansion of enterprises that pursue the social mission and economic objectives. The need for legal recognition is spurred by the rise, in other words, a large number of social enterprises in China implies the need to regulate social enterprises. According to a recent industry research report pertaining to social enterprises[11], the volume of non-self-conscious social enterprises reached 1.75 million by 2017, consisting mainly of cooperatives and civil non-enterprise units, while the amount of self-conscious social enterprises was 1684 until 2017.[12] Even though the report's result might be inaccurate due to the existence of many "shell" or "zombie" cooperatives[13] in practice, there is no deniable that the number of Chinese social enterprises is rather huge. These entities engaged in activities with a wide range of social missions, covering sectors of work integration, social care, health care, poverty alleviation, education, etc., which presents the potential and vigor for the field of social economy and contributes to the development of their service targets (for example, the overall volume of clients served by social enterprises in Beijing is 1.054 billion)[14].

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[11] China Social Enterprise and Impact Investment Forum & Narada Foundation (2019), the industry research report on Chinese social enterprise and social investment (中国社会企业与社会投资行业扫描调研报告 2019), pp. 8-11 (In Chinese). Retrieved 17th January 2023, from http://www.naradafoundation.org/Uploads/file/20190415/5cb43bf85e07f.pdf

[12] According to this report, non-self-conscious social enterprises refer to organizations that are not yet aware of their status as social enterprises and which are not known or accepted by the industry, while self-conscious social enterprises refer to entities that identify themselves through participation in industry activities and that are accepted and recognized by their peers.

[13] It refers to any cooperative that meets one of the following circumstances: 1) No actual participation of farmer members, 2) No substantial production and operation activities, 3) The operation is stopped due to poor operation, 4) suspected of fraudulent use of state financial incentives and project support funds in the name of cooperatives, 5) the masses reported illegal clues, 6) Engaged in illegal financial activities, according to the Part II of Specialized farmers' cooperative "empty shell society" special clean-up work program. Retrieved 17th January 2023, from http://www.moa.gov.cn/nybgb/2019/0201903/201905/t20190525_6315400.htm

[14] Beijing Social Enterprise Blue Book Group (2020), Beijing Social Enterprise Report: 2019 (北京社会企业发展报告 2019), Social Sciences Literature Press, pp. 40 (In Chinese).

Despite the growth in the importance of the aforementioned organizations in delivering social activities and services, there has been no new regulation for social enterprises since 2017. Furthermore, farmers' specialized cooperatives were the organizations equipped to provide social service but constrained not only to the range of activities they could participate in (*art.3*) but also their subjects: mainly peasants (*art.4, para.1*), both by law and bylaws. Another concern is the nuanced purpose between farmers' specialized cooperatives and social enterprises even though cooperatives are perceived as a "natural dress" for social enterprises[15], the former is for members' interests while the other is to realize their social missions. In addition, there are legal obstacles that prevent other nonprofit organizations from conducting entrepreneurial activities without constraints, for example, foundations, charities, and civil non-enterprise units (*para.2 art.4, Interim Regulations on Registration and Administration of Civil Non-Enterprise Units*) except some civil education institutes, civil elderly care institutes, and civil healthcare institutes. These constraints explain the need for a legal concept of social enterprises and to discover an appropriate way to regulate them.

On the other hand, the development of social enterprises can be approached through their financial situation and backing system in China. According to the latest statistics from CSECC, there are 314 accredited social enterprises to date[16], and almost half of them fail to break even. Besides, unlike social enterprise funding support policy strength and approach in Europe where it provides four categories of financial resources covering public and private support[17], the financing level of Chinese social enterprises and their support institutions remains low overall, and the investment scale of social investment institutions is also quite low, no matter based on the results of the social enterprise development survey ten years ago[18] or the recently released social enterprise

[15] Fici, A. (2017), A European statute for social and solidarity-based enterprise, European Union.

[16] CSESC refers to China Social Enterprise Service Center, as one of the most influential private platforms to be certified as social enterprises in China. Retrieved 11th January 2023, from https://csecc.csedaily.com

[17] European Commission (2020), Social enterprises and their ecosystems in Europe. Comparative synthesis report, Publications Office of the European Union, Retrieved 29th January 2023, from https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8274

[18] Social Enterprise Research Center, Social Innovation, Penn Social Policy & Practice, 21st Century Business Herald and Center for civil society studies of Pecking University (2013), China Social Enterprise and Social Impact Investment Development Report (中国社会企业与

industry report. For example, according to the findings of the 2019 study[19], more than 60% of social enterprises have a cumulative total financing of less than 1,000,000 RMB, while 23.9% of them have a total financing of less than 100,000 RMB,[20] and if worse, they probably suffered a shortage of funds and be unable to guarantee workers' basic wages or even go bankrupt. One of the main causes behind it is the absence of legal status for social enterprises in China, and difficulties in accessing bank loading owing to still-limited presence and structuring as well as to the insufficient knowledge of the peculiarities of social enterprises on this side. Thus, the need to clearly identify the distinctive features of social enterprises to attract patient capital as access to financial resources is of critical importance for social enterprises.

For the time being, in municipalities or provinces that have implemented certification policies for social enterprises, the financial policies associated with these include tax incentives and financial subsidies. As mentioned earlier, many other financial supports have not yet been deployed, for instance, equity or securities fundraising, credit loans, etc., since the legal recognition of social enterprises in China is not available, and the awareness of the industry is inadequate. Furthermore, unlike farmers' specialized cooperatives that empower capital at the beginning of their establishment[21], for example, confirming that members who contribute can participate in the residual distribution (*art. 44*) or that those who have contributed a larger amount can enjoy an additional 20% of voting rights (*art. 22*), while social enterprises are not legally regulated at the national level and some local authorities have implemented policies to accredit social enterprises, due to the lack of a superior level of law despite the fact that there is no explicit prohibition for investors to be included

社会影响力投资发展报告), sponsored by UBS Group, pp. 17 (In Chinese). Retrieved 29th January 2023, from http://www.yongzhen.org/layout/xz/xz1.pdf

[19] China Social Enterprise and Impact Investment Forum & Narada Foundation (2019), the industry research report on Chinese social enterprise and social investment (中国社会企业与社会投资行业扫描调研报告 2019), pp. 28 (In Chinese). Retrieved 17th January 2023, from http://www.naradafoundation.org/Uploads/file/20190415/5cb43bf85e07f.pdf

[20] Depending on the exchange rate of EUR to RMB in 2019 (Google Access Results #1, retrieved 7th November 2023), 1 EUR = 7.7255 RMB, thereby yielding 1 million and 100,000 RMB for that year would be approximately 129,440 and 12,944 EUR, respectively.

[21] Rongrong Xiao & Dapeng Ren (2020), Explanatory framework and development trend of capitalization of cooperatives (合作社资本化的解释框架及发展趋势), *Agricultural Economic Issues*, Vol. 7, pp. 108-117 (in Chinese).

in cooperatives and become members like cooperatives (*art. 2*),[22] both social impact investors and other types of potential investors are still apprehensive and uneasy about investing in social enterprises. As for the non-profit organizations, a different picture as well. Even though these organizations do not have ownership and are reliant on external donations, they have some tax incentives such as the foundation and its donors, as well as beneficiaries, enjoy tax benefits (*art. 26, Regulation on Foundation Administration*[23]), whereas social enterprises, given the wait-and-see attitude of most investors to social enterprises, as well as fewer tax incentives than nonprofits, may have larger funding gaps as they are engaged in for-profit activities.

2. The effect of covid-19 drives the need to regulate social enterprises

In the context of China's accelerated de-globalization and economic decoupling[24], covid-19 could highlight the adaptability of social enterprises, thus further catalyzing the desire for a legal framework for social enterprises in China against the background of the epidemic.

This capacity to quickly adapt to rapidly changing operating conditions and spiraling demand for assistance enabled social enterprises across the state to weather the crisis while contributing to the welfare of their communities. On one hand, social enterprises possess the resilience to survive an economic crisis. According to experiences of recent crises in European countries [25] social enterprises have proven both their "repair" potential to address immediate problems and their resilience in the face of economic shocks. Besides, a piece of evidence is based on the result of a recent survey[26] on the surviving landscape

[22] Provisions referred to in this article are from the law on cooperatives, namely, Law of the People's Republic of China on Farmers' Specialized Cooperatives (2017 Revision), [CLI Code] CLI.1.307426. (unless otherwise expressly indicated in this article by other laws and regulations).

[23] This regulation was issued by the State Council in 2004, which is an Order of the State Council of the People's Republic of China (No. 400).

[24] Wen Jiandong, Li Sixuan (2021), The covid-19 pandemic and China's economic prospects against a de-globalization background: with reference to three major economic crises (新冠疫情下去全球化背景下的中国经济前景：镜鉴三次重大经济危机), *Journal of South China University (social science edition)*, Vol.1 No.1, pp. 39-48 (in Chinese).

[25] OECD (2022), Legal frameworks for the social and solidarity economy, OECD Local Economic and Employment Development (LEED) Papers, OECD Publishing, Paris.

[26] China Social Enterprise and Impact Investment Forum & DBS (2021), How to survive under covid-19 for Chinese social enterprises: a study on the survival of social enterprises in China

of Chinese social enterprises under covid-19, among the non-certified social enterprises interviewed, 35.85% of respondents perceived that the epidemic had less than a minimal impact on their business, and even 5.66% felt almost no impact. Moreover, during the three years, certified social enterprises in China were more anxious than the other two types of organizations (non-certified social enterprises and non-profit organizations) and expected more from policy or law responses[27], particularly in four areas: access to financial resources, support for employment incentives, social insurance fees, and rent reduction.

On the other hand, the covid-19 pandemic caused a crash in the real economy which drives the growth of e-commerce of social enterprises. The covid-19 led to social distancing measures such as curfews, school closures, and teleworking which have disrupted global supply chains and challenged the business models of social enterprises and traditional businesses. These consequences in China are evident in the last three years of the "zero" policy. In specific, under the policies of "zero" and internal economic cycling, China opted for relative isolation from other countries which further the delinking of China's economy from the global economy. Despite the internal circulation of the economy being expected as a way to rescue the domestic market, the effect of such an approach has been less than satisfactory[28], with many companies, factories, and businesses still forced to close and supply chains under strain. To adapt to these challenges as well as enable a domestic economic recovery, Chinese social enterprises rapidly adapted their business operations by digitizing their operations and developing new services or products such as the "Smart Health Channel" created by Meridian[29] and the online public education program for autistic children and parents through the "IDEA inside" launched by EnQi[30].

in Early 2020. Authors: Tianli Feng, Jia Li, Changmei Wang. Retrieved on 14th January 2023, from http://www.cseif.cn/Uploads/file/20200408//5e8dd601062b3.pdf

[27] Ibid.

[28] National Bureau of Statistics spokesman answered reporters' questions on the operation of the national economy in October 2022. Retrieved on 14th January 2023, from http://www.stats.gov.cn/tjsj/sjjd/202211/t20221115_1890312.html

[29] Retrieved on 14th January 2023, from https://www.mmednet.com . Meridian, known as "Meridian Smart Health Technology Beijing Ltd.", is a platform that utilizes medical AI technology to create smart health services, with the vision of "empower all with accessible health service".

[30] Retrieved on 14th January 2023, from https://www.ingcare.com . At the IDEA inside, as an empowering brand under EnQi, the results of teaching research are implemented into concrete teaching work, focusing on the practical implementation of children's rehabilitation education.

3. The role of government affects this need to regulate social enterprises

To discover the influences between this factor and the specific legislative need for social enterprises, this section will address the issue from three angles as follows:

First, the role of government and the provision of public service by China may have an impact on the development of the social and solidarity economy ecosystem and related organizations that contain social enterprises. The Chinese government plays the "big parent" position and likes to take charge of everything, which involves steering social welfare through various regulations and policies; to be more straightforward, they are holding the reins on social welfare. This kind of player virtually has a two-sided function. On the one hand, policies targeting social issue solutions are endorsed by the state apparatus and can be effectively implemented, to facilitate social equity. A typical example is that the authorities used to issue policies that request, regulate the recruitment requirements of disadvantaged employees, and solve the problem of settling laid-off workers[31]. On the other hand, however, residents simultaneously would rely on the government in more spheres of life to the exclusion of other actors including social enterprises.[32] In being so, it is highly likely to enter the odd cycle where a government is increasingly powerful over social issues, whereas the participation of society and the public is decreasing. In consequence, this state has experienced less desire to develop a strong social and solidarity economy ecosystem, albeit once having some positive effects, and the emergence of this kind of organization is limited to specific sectors. From this perspective, it seems that the Chinese government has not contributed a lot to the autonomous development of social enterprises and their legislation, nor has it left enough room for these enterprises in China. Further, it remains uncertain whether the Chinese Government has cultivated the soil required for the growth of social enterprises.

Secondly, the state, or the government, has obvious constraints in covering all social welfare, and it is also against the trend of welfare pluralism. Under the concerted impetus of China's central and local policies, the state, enterprises,

[31] To this end, authorities once issued Interim Measures for the Administration of Social Welfare Enterprises (1990), Notice on Effectively Ensuring the Basic Livelihood Standards and Re-employment of Laid-off Employees from State-Owned Enterprises (1998), and the Several Opinions on Promoting Community Employment (2001). (These policies can be found in the official website of Chinese State Council and related departments).

[32] Bhatt, B., Qureshi, I., & Riaz, S. (2019), Social entrepreneurship in non-munificent institutional environments and implications for institutional work: Insights from China. *Journal of Business Ethics*, Vol. 154 No. 3, pp. 605–630.

private organizations, and communities are gradually building a multifaceted social welfare system. One of the most momentous steps is to walk away from "government does everything" to "government-purchased services" clarified by the *Government Procurement Law 2002 and the Government purchase of services management approach (interim)*, which shifted their focus away from fixed amounts of subsidies towards tenders and public contracting, it started to pilot in some cities two decades ago and now is being implemented in almost everywhere, and it indicates that the Chinese government "assigned" the responsibility of providing certain services to social and solidarity economy organizations. This trend usually started through subsidizing and awarding grants to charitable and social welfare organizations like associations, foundations, and social welfare enterprises as complementary elements of governments, which are considered part of the traditional actors of social enterprises in China.

In addition, in China where public service provision is limited due to economic transformation or budgetary constraints which can be seen from the past statistics report issued by the Ministry of Civil Affairs, citizens or farmers started to cooperate to fill in certain gaps in the provision of public services or address new needs arising in locals. These gaps can be filled by cooperation on the community level or village level, and cooperatives that focus on members' interests as well as social welfare enterprises that focus on the employment of people with disabilities are prevalent after the Reform and Opening Up. Around the 2000s, China's economy and society entered into restructuring changes[33] that not only brought some social issues such as the aging population, smaller family size, the high speed of working and competition, etc. but created an opportunity for social enterprise to develop in the era, and since the interaction between the state and society is a constant game and mutual counterbalance that drives the emergence of social space and supplies an important context for the growth of social organizations. Beyond that, increasingly, government failure, market dysfunction, and voluntary breakdown led to the emergence of social enterprises as a suitable form of application to solve social problems in sectors such as energy, sanitation, housing, and other similar sectors.

Therefore, based on this analysis, it can be seen that the role of the Chinese government and the provision of public services is a complicated situation since the government focuses on basic support for the groups most in need by creating the legal framework for charity and social welfare work in the literature

[33] The change in socioeconomic structure has transformed social individuals from unit people to social people, and society has become fragmented. Traditional administrative management cannot respond to social needs, hence the economic and social transformation raised higher requirements for social construction and management.

on this area; but meanwhile, it is also known for its strong government intervention. Given this case, the author would argue that the functions of the Chinese government serve an aspect of the development of social enterprises to some extent, but it would be rather hard to claim that the Chinese government acts as a complete deterrent or a total catalyst in facilitating the development of social enterprises or legislation.

III. Determine when to specially regulate social enterprises in China

The introduction of legal frameworks to regulate social enterprises when the ecosystem is not yet well developed may create unnecessary barriers that constrain the development of social enterprises, such as discouraging them from operating in certain sectors or adopting specific legal forms[34], one representative example is Slovakia (Act 112/2018) that adopted the legal framework for social enterprises when the social enterprise ecosystem is still in a relatively early stage of development which leads to the hesitance to recognize the new categories of social enterprises. Consequently, the timing of the introduction of social enterprise legislation is pretty significant.

Determining the "right" time to establish legal frameworks for social enterprises is also context-dependent. Projected onto China, the introduction of this legal framework is supposed to be supported and informed by the development of the social enterprise ecosystem. Moreover, as adopting national legislation is often a complex and time-intensive process, it may be useful to use certain autonomous regional entities to experiment with a system locally before full rollout[35]. Considering that local authorities are one of the key actors in the social enterprise ecosystem, the performance of the implementation of these policies issued by their governments for the certification of social enterprises is, strictly speaking, a component of the social enterprise ecosystem. Besides, the level of development of social enterprise ecosystems is also closely related to indigenous political, economic, cultural, and societal conditions, including the social contract theory in China, the implications of the small farmer economy on the market economy, the culture of the soil of the rural community, as well as the situation of the development of Chinese civil society. Whether these factors are conducive

[34] OECD (2022), Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers, Local Economic and Employment Development (LEED), OECD Publishing, Paris.
[35] SSE international forum (2021), Guide to the writing of law for the social and solidarity economy. Author: David Hiez.

to the development of the social enterprise ecosystem is vital in relation to this "right-timing" issue.

1. The current situation of the Chinese ecosystem of social enterprise

In reference to the time when European countries adopted a legal framework for social enterprises, in general, two scenarios[36] are observed below:

Scenario 1: If the social enterprise ecosystem is well-developed and there is a demand to specifically regulate social enterprises, it is generally a signal that it may be time to develop a legal framework.

Scenario 2: If the political will to develop legal frameworks for social enterprises is missing, awareness-raising efforts may be necessary before seeking to develop legal frameworks.

Three typical examples corresponding to Scenario 1 could be Italy, Luxembourg, and the Netherlands. A few years ago, Italy and Luxembourg already had their respective social enterprise laws, and one of the reasons is that the ecosystem of social enterprises is well-developed in both countries. The ecosystem for social enterprises in Italy is relatively mature and it is shaped by the interplay among different key actors that have contributed to acknowledging the specificity of social enterprises[37], and the Luxembourg social enterprise ecosystem, albeit small, falls into a more than satisfactory situation.[38] Despite the fact that the Netherlands has no social enterprise legislation at present, the ecosystem for social enterprises there is fairly well developed and consists of a wide variety of relevant actors,[39] which is one of the contributing factors that

[36] OECD (2022), Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers, Local Economic and Employment Development (LEED), OECD Publishing, Paris.
[37] European Commission (2020), Social enterprises and their ecosystems in Europe. Updated country report: Italy. Author: Carlo Borzaga. Luxembourg: Publications Office of the European Union.
[38] European Commission (2020), Social enterprises and their ecosystems in Europe. Updated country report: Luxembourg. Authors: David Hiez and Francesco Sarracino. Luxembourg: Publications Office of the European Union.
[39] European Commission (2019), Social enterprises and their ecosystems in Europe. Updated country report: The Netherlands. Author: Niels Bosma. Luxembourg: Publications Office of the European Union.

some scholars[40] argue that a tailor-made legal form for social enterprises is now on the way. In contrast, countries that are consistent with the second case are Denmark, Norway, and Sweden. The three countries are known for their strong government interventions regarding the welfare state[41] and given this role taken by the governments there, they have experienced less need to develop a strong social enterprise ecosystem, meanwhile, which could lead to the absence of political will to develop legal frameworks for social enterprises there[42].

In terms of the current situation of the ecosystem of social enterprise development in China, it belongs to neither of the two aforementioned situations as there is a complex and special picture, technically, it lies somewhere in between. In the first case, China's social enterprise ecosystem is still under construction while the need to regulate social enterprises is evident which was explained previously, and for the second case, the political will to develop the legal framework for social enterprises exists, but it is weak and undoubtedly requires increased awareness.

2. Related factors affect the ecosystem of social enterprises in China

An exploration of the factors influencing the environment for the living of social enterprises or the space for their ecosystem development is also necessary in order to get a clearer picture, i.e., whether it is appropriate to legislate on social enterprises at present. Considering that law evolves to a system of legal rationality more or less characteristic of the present age which relates closely to the economic, political, and social conditions,[43] in turn, politics, economics, culture, and social factors can affect the formation of the law. Accordingly, an analysis of the preceding will be presented below focusing on these four dimensions corresponding to respective factors.

[40] Lambooy, Tineke, Argyrou, Aikaterini & Bolhuis, Andrea (2021), A Tailor-made Legal Form for Social Enterprises in the Netherlands is on Its Way, *European Company Law Journal*, Vol. 18 No. 1, pp. 22–35.

[41] OECD (2022), Legal Frameworks for the Social and Solidarity Economy, OECD Local Economic and Employment Development (LEED) Papers, OECD Publishing, Paris.

[42] Nonetheless, it is noteworthy that the traditional Social Economy sector, in particular cooperatives, is well developed.

[43] Max Weber on Law in Economy and Society (1954). Cambridge: Harvard University Press, pp. lxxii, 363. Translation by Edward Shils; Edited with introduction and Annotations by Max Rheinstein.

(1) The impact of the social contract on the social enterprise ecosystem

The Chinese political environment has an impact on the formation and development of the social enterprise ecosystem, as primarily demonstrated by the social contract in China, apart from the role of the government, as has already been discussed in Part II. This will be addressed in two separate points, namely, the "uniqueness" of the Chinese social contract, or in other words, the little gap of the social contract, and the impacts of this scenario on the social enterprise ecosystem.

The report of the 20th Party Congress states that common prosperity is the essential requirement of socialism with Chinese characteristics.[44] According to this, it has been argued that the commonwealth is the basic viewpoint of the social contract of socialism in China[45], and it is also contended that the new social contract there cannot be separated from the Chinese historical and cultural heritage, the tradition of the Communist Party of China (CPC), and the concept of liberalism (provided that the social contract eventually takes shape)[46]. All these views are related to the former feature of the Chinese social contract. There is, though, a different perspective, suggesting that there may be a tiny gap in China's social contract[47]. The tradition of no political contract in Chinese history contributes to the first cause of the feature of the "distinctiveness" of the social contract.[48] It has been profoundly influenced by traditional thoughts of governance such as Confucianism, Mohism, and Legalism, except for Taoism, and perhaps not the only exception, as Taoism does not have an active doctrine of the state, which has led most of the Chinese people to the belief that the state must have supreme and paramount authority, or otherwise, the state will be in chaos. Yet, the supremacy of power and freedom are opposite, and contracts are unlikely to exist where there is power. The logic of power is command and obedience, while the contract is the freedom that includes the freedom to refuse and adhere/consent. The supremacy of power and the freedom of contract are

[44] Aijun Tang (2022), Common Prosperity is the Essential Requirement of Socialism with Chinese Characteristics. Retrieved on 7th November 2023, from http://theory.people.com.cn/n1/2022/1228/c40531-32595139.html

[45] Caifa Song (2023), Commonwealth is the Social Contract of Socialism with Chinese Characteristics. Retrieved on 7th November 2023, from https://www.zhonghongwang.com/show-278-273440-1.html

[46] Liangping Guo (2020), Three Sources of a New Social Contract in China. Retrieved on 7th November 2023, from https://nus.edu.sg/newshub/news/2020/2020-12/2020-12-28/THREE-lhzb-28dec-p8.pdf

[47] Qianfang Zhang (2021), From Holism to Individualism: The Fiction and Reconstruction of Social Contract Theory. Retrieved on 13th January 2023, from https://www.chinese-future.org/articles/my9lge9gpw5xrp6j9422fzc5pfe7zd

[48] Ibid.

antithetical and mutually exclusive. Given that China has held to the above-mentioned tradition of supremacy, it is rather hard to have this so-called social contract, this is one of the reasons for the existence of the little bug of the social contract in China until modern times.

As for the impacts of this "uniqueness" feature of the Chinese social contract on the social enterprise ecosystem, a direct consequence may be the lack of comprehensiveness (or missing) of metrics for evaluating the constitution. To be specific, Constitutional law plays a crucial role in the construction of the legal framework for social enterprises, meanwhile, the Constitution, as the fundamental law, is the highest-ranking law in China and the standard for other legislations. But what exactly is the benchmark for judging the Chinese Constitution? A more elementary norm than the Constitution is the social contract[49]. It is thus seen that the influence of the social contract on the Constitution and other laws is self-evident. However, such traits of the social contract probably make it frustrating to pass or enforce social enterprise legislation, or many other laws. Given that the law has been an instrument of party rule[50] reflecting the subordination and instrumentalization of Chinese justice, more or less, which subsequently may further undermine the implementation of related policy levers accompanying social enterprises as well. If the case is worse, it might deprive social entrepreneurs, vital participants, researchers in the field, etc., of confidence in the Chinese social enterprise field. Thus, it can be noted that the barren Chinese political soil in this respect indeed is not that kind to the development of the social enterprise ecosystem.

(2) Influence of small-peasant economy and market economy on social enterprise ecosystem

The long historical tradition of the small-peasant economy in China led to the lack of a base for a social and solidarity economy that is vital to the development of the ecosystem of social enterprises. The awakening of the free personality of commodity producers, the maturation of economic rationality, and the emergence of independent personality as a subject of the contract are

[49] Ibid.

[50] Department of Justice, Promoting the Rule of Law in China& Compacting the Rule of Law Foundation of Chinese Governance. Retrieved on 7th November 2023, from https://baijiahao.baidu.com/s?id=1683508382021689304&wfr=spider&for=pc According to this document, "the law is an important tool for governing the State, and the leadership of the CPC is the most essential feature of socialism with Chinese characteristics. Thus, it may make sense to understand that the law is a tool for the Party to govern and manage the country."

the principal forces on which social enterprises, especially cooperative organizations, are built. Different from the deep culture and tradition of cooperation in European countries, the commercial economy in China has a short and turbulent history, this makes it quite hard for Chinese farmers to unite and work together systematically for one thing, which at the same time might pose challenges to social enterprise legislation as well. Concretely, self-sufficient characteristics resulted in the initiative of farmers only within their families. Rural areas and farmers have experienced a self-sufficient small peasant economy in China for more than 2,000 years, which determines that their initiative lies exclusively in simple family farming and lacks the desire and ability to work together in unity. In addition, peasants started to passively accept the baptism of the commercial economy after the reform and opening. It is not until the last two or three decades of reform and opening up that Chinese farmers have been passively baptized into the commodity economy, yet the absence of a sense of solidarity and cooperation, and mutual aid has not changed significantly in rural China until today.

Besides the small-peasant economy, the market economy constitutes an integral component and ought to be brought into consideration. In the past two decades (except 2019-2022), China has witnessed rapid economic development [51] but meanwhile, it created two very different realities[52], burgeoning urban sprawl and wealth, along with poverty, domestic migration as well as other related social problems, which are manifested in growing social conflicts. Over-focusing on rapid economic growth by the government has led to insufficient attention to issues related to the elderly, the physically and mentally challenged, the socio-economically vulnerable, and the rural population as a whole.[53] Throughout the years of soaring growth in China's economy, it has subtly shaped or altered socio-cultural values and beliefs toward socio issues as well. To be more direct and specific, the focus on material gains instead of the solution of social problems would lead to the marginalization of social enterprises. Alternatively, the modern market economy has made the notion of individual interests gradually strengthen, with egotism coming into vogue, and social relations

[51] Zongsheng Chen, Xiaoyun Wang & Yunbo Zhou (2018), Building Up a Socialist Market Economy with Chinese Characteristics for a New Era: The Past and Future of China's Economic Structural Reform, *Comparative Economic & Social System*, Vol. 198 No. 4, pp. 24-41.

[52] Xiaoming Yu (2011), Social enterprise in China: driving forces, development patterns and legal framework. *Social Enterprise Journal*, Vol. 7 No. 1, pp. 9-32.

[53] Bhatt, B., Qureshi, I., & Riaz, S. (2019), Social entrepreneurship in non-munificent institutional environments and implications for institutional work: Insights from China, *Journal of Business Ethics*, Vol. 154 No. 3, pp. 605-630.

become apathetic,[54] with people more inclined to strive for monetary gains rather than social benefits. This is not only unfavorable to the resolution of social problems, but since the formation of social enterprises is inextricably linked to the value of altruism, this adds to the burden on the ecosystem of social enterprises, which is not initially rich. Thus, whether it is the accentuation of social conflicts brought about by the high-speed market economy growth or the deep-seated alteration of the sociocultural values under such development, it does not only hinder the sustainable and sound evolution of the Chinese social enterprise ecosystem, which also gradually marginalizes the role and utility of social enterprises.

(3) The rural culture and the rule of law on the social enterprise ecosystem

The culture of the soil of the rural community in China, or the maintenance of social order hidden behind the "no-law" and "no-suit" society[55], has a rather considerable influential force on the emergence and development of social enterprises, the formation of their ecosystem, and the introduction of regulations for social enterprises. For one thing, against the background of the complete "acquaintance society", a very specific side effect of the prevailing judicial system used to take place in the countryside as it destroyed the original ritual order.[56] For another, after over forty years of opening and reform, especially through the village institutional reform, the countryside has become a "semi-acquaintance society"[57] where the changes in rural production and lifestyle, the traditional blood and geographical relations, and the pattern of disparity were affected, and a new stratification of rural areas emerged, with interpersonal interactions and social relations moving to inter-village and beyond. Meanwhile, the traditional rural ethical community further declined,

[54] Daoxin Qi (2020), Reflections on Man's All-Round Development—From the Perspective of Socialist Market Economy (关于人的全面发展的几点思考——基于社会主义市场经济的视阈), *Advances in Social Sciences*, Vol. 9 No. 1, pp. 105-110 (In Chinese).

[55] Xiaotong Fei (1998), Rural China Fertility System (乡土中国 生育制度), Peking: Peking University Press, pp. 49 (In Chinese).

[56] Lulu Wang (2015), Rituals and Laws in the transformation of Chinese rural society from an ethical perspective (伦理视角下中国乡村社会变迁中的"礼"与"法"), *China Social Science*, Vol. 7, pp. 94-107 (In Chinese).

[57] Shaohui He (2010), Failure of Rites to seek "law"(礼失求诸"法"), *Journal of Social Science Forum*, Vol. 5, pp. 196-202 (In Chinese).

and the law became more involved in it, which was supposed to be positive, but influenced by the conception of "no lawsuit", "aversion to the lawsuit" and "shame of lawsuit" in the established conventional rural society[58], the characteristics of "acquaintance society" or "semi-acquaintance society" retained in the village community made lawsuits become a matter of "losing face" and "losing ritual". Therefore, the vernacular culture engraved in the peasants' bones still impacts their minds and behaviors. Laws, including regulations on social enterprises, can only be converted into rules of social life recognized and followed by the villagers, or "folk laws", on the premise that they are consistent with or substantially in line with the ethical values shared by their communities.

(4) The civil society development on the social enterprise ecosystem

The development of the Chinese social enterprise ecosystem is also tightly linked to citizens' attitudes toward social issues and their awareness of social enterprises. Depressingly, yet, there is a general lack of ideas about taking autonomy over social issues and a sense of social enterprises, and even several negative views of these entities, one example is that social enterprises cannot address social problems effectively[59]. This type of perception is not an isolated case in China. The phenomenon occurs owing to a three-fold reason: one is the over-reliance on the government (discussed above), another is the absence of awareness, familiarity, and knowledge of social enterprises, and finally, these problems could be tied to the deep issue of the underdevelopment of civil society today. China is markedly different in terms of civil society as compared to the US or Europe, whose civil societies are relatively mature and share the sign of this maturity is the taking on more integrated and crucial tasks outside of the government and business sectors. Whereas in China its civil society is still in the phase of infancy and faces many obstacles for its development, such as the lack of social credibility and civic spirit, the unequal relationship between social organizations and governments, and the deep imprint of China's planned economy, etc. Another tendentious view is that the utter lack of civil society movements, an entire generation that grew up unengaged in any form of vigorous debate on the role of the state in public life, and the absence of engagement with social issues, is the result of restrictions on freedom of expression and the systematic curtailment of citizens' participation in

[58] Ibid.

[59] Bhatt, B., Qureshi, I., & Riaz, S. (2019). Social entrepreneurship in non-munificent institutional environments and implications for institutional work: Insights from China, *Journal of Business Ethics*, Vol. 154 No. 3, pp. 605–630.

an organized manner in solving the social problems that plague them.[60] Yet, very few scholars hold a different voice believing that the sense of self-government among Chinese citizens has now grown considerably, a direct manifestation of which is that the number of social organizations in China exceeded 900,000 by January 2021.[61] Such organizations, though, have a heavy dependence on government (or are led entirely by it) and thus do not embody some basic traits of social enterprises, namely voluntary, autonomous, and people governed.

As such, in terms of the perspective on the development of civil society in China, regardless of the recent optimism or the first two critical perspectives, despite a certain subjectivity, conservatively speaking, it is not very well developed at the moment. This, of course, somehow indirectly affects the ecosystem of Chinese social enterprises.

IV. Conclusion

As far as the necessity of introducing a legal framework for social enterprises in China is concerned, unconscious social enterprises, including farmers' specialized cooperatives, civil non-enterprise units, and entities within the third sector, such as foundations and social associations, are rather large in number. But they are regulated by different public sectors and the laws corresponding to that legal form, although they are themselves social enterprises, owing to the diversity of legal forms, and these laws do not always play a positive role in regulating social enterprises, and sometimes even hinder the achievement of social goals. Another piece of supportive evidence is a recent report[62] within the industry whose result shows that 95% of the respondents to the survey believe

[60] Ibid; Neng Liu (2009), Theory of Social Movement: Change of Model and its Relevance to Modern Chinese Social Study (社会运动理论: 范式变迁及其与中国当代社会研究现场的相关度), *Journal of Jiangsu Administration Institute*, No. 4, pp. 76-82 (In Chinese). What the author of the second article expresses as "the chronic absence of the political dimension" is explained as "in the context of contemporary China's social transformation, it involves at least a number of important realities, such as the discourse of political representation and social policy, the collective action of disadvantaged groups... and the political awareness and participation of the civil society".

[61] Jian Li, Meng Zhao, and Caiyun Xu (2023), Social Enterprises and Benefit Corporations in China, in book: The International Handbook of Social Enterprise Law: Benefit Corporations and Other Purpose-Driven Companies. Cham: Springer Nature, pp. 498-523.

[62] DBS & Social Enterprise Research Center (2017), social initiative and me (In Chinese). Retrieved 17th January 2023, from https://www.dbs.com/iwov-resources/images/dbs-foundation/home/doc.pdf

that social enterprises should be backed by corresponding legislation or policies. Furthermore, during the years of the covid-19 epidemic, the global economy was influenced, but China in particular, because on the one hand, its special epidemic control policies led to a faster collapse of the real economy, and on the other hand, the implementation of an internal circular economic policy chosen by China to be decoupled from the global economy made its economic downturn more severe. Faced with this dilemma, these social enterprises manifested themselves in relieving unemployment pressures - one of their strong resilient features - and the lack of regulation, – while social enterprises were saving the economy –, led to social oddities and contradictions in reality. In addition, the Chinese government as a centralized government plays a role in the governance of social enterprises, affecting the development of social enterprises, either by hindering or promoting them.

As for the response to the issue of the timing of the legislation for social enterprises, this is closely related to the development of the local social enterprise ecosystem, which is somewhat different in China compared to some countries in the European social enterprise ecosystem. The concept of social enterprise is still relatively fresh in China, and therefore legal awareness needs to be raised. It is worth to be noted that the development of the social enterprise ecosystem in China and the timing of the introduction of the legal framework that affects it are also affected by the political environment, economic development, cultural setting, and social structure of the country, one of the manifestations of it being China's legal system, especially laws governing the social sector, which are not fully formed.[63]

In general, there are plenty of challenges to introducing legislation for social enterprises in China at the present time, though social enterprises are in urgent need of being regulated. To this end, two approaches may be able to alleviate the dilemma at hand, waiting until the social enterprise ecosystem in China has reached a relatively mature stage and then proceeding to legislation, or considering an alternative way to regulate social enterprises, for example, via central government policies like Singapore rather than legislative means, as is the case in South Korea, or other countries in Europe.

[63] Meng Ye (2021), Building an enabling legal environment: laws and policies on social enterprises in China, *Journal of Asian Public Policy*, Vol. 14 No. 2, pp. 182-199.

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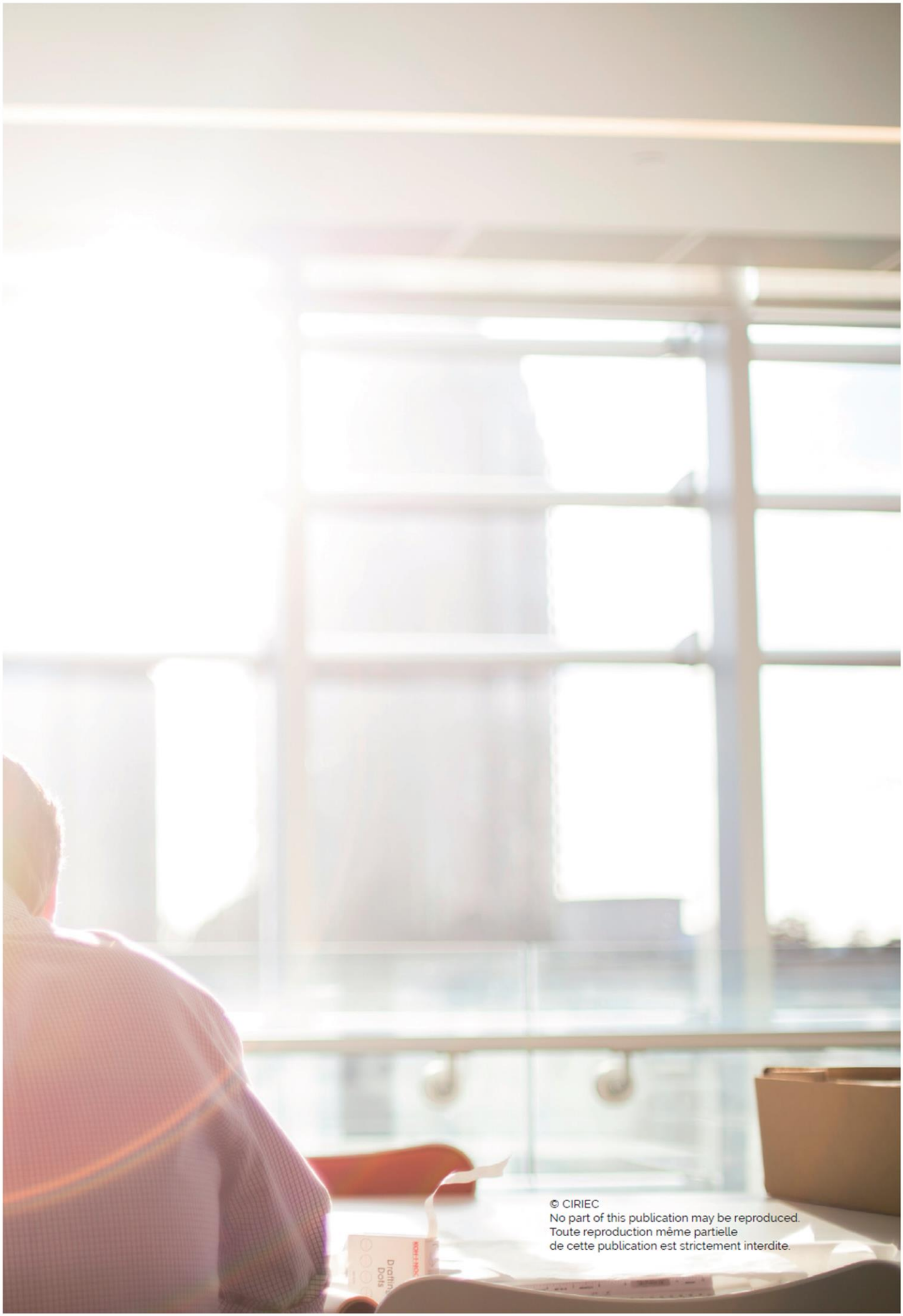

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