

The Legal Positioning of Group Standard-Setting Entities from the Perspective of the Civil Code

Zijing Liu

School of Law, China Jiliang University, Hangzhou, Zhejiang, China

Abstract: One of the highlights of the new "Standardization Law" is the establishment of group standard, which gradually returns standard to the market. However, there is a problem of inconsistency between institutional regulations and practice in the subject of group standard formulation: the institutional level requires that the subject of group standard formulation is a legal persons, but they have also formulated a lot of alliance standard. Therefore, this article mainly discusses what the legal positioning of the group standard-setting subject should be, whether legal persons qualifications are necessary, especially in the context of the new civil subject system of the Civil Code, whether it is feasible to relax it to an "unincorporated organizations". The core purpose of the legal persons system is the independent assumption of legal responsibilities. Through analysis, it was found that there is no legal liability for the group standard-setting subject. Therefore, under the civil subject system of the Civil Code and combined with the attributes of the standard itself, it is recommended to cancel the restriction on legal persons qualifications and allow group standard-setting entities carry out group standard-setting activities as unincorporated organizations. At the same time, the relevant provisions of the "Regulations on the Registration and Management of Social Organizations (Draft for Comments)" and the "Regulations on the Management of group standard" must be revised in a timely manner to achieve consistency with the civil subject system of the Civil Code.

Keywords: Group Standard; Industry Alliances; Social Organizations; Legal Persons; Unincorporated Organizations

1. Question Raising

The new "Standardization Law" promulgated

in 2017 created a new type of standard - group standard. In order to promote the smooth implementation of group standard, it is first necessary to clarify what the legal positioning of the group standard-setting subject should be. Paragraph 1 of Article 18 of the "Standardization Law" stipulates that "the state encourages social organizations such as societies, associations, chambers of commerce, federations, and industrial technology alliances to coordinate relevant market entities to jointly develop group standard that meet the needs of the market and innovation". This article provides an enumerated description of the entities formulating group standard, but did not define its legal attributes; Article 3 of the "group standard Management Regulations" clarified this issue: "group standard are social organizations established in accordance with the law to coordinate relevant activities to meet market and innovation needs. Standard jointly formulated by market entities". "Established in accordance with the law" is not a semantic expression in the general sense. It has a clear meaning in law. According to Article 3, Paragraph 2 of the 2016 "Regulations on the Registration and Management of social organizations", "social organizations should have legal persons conditions", it can be seen that Article 3 of the "Provisions on the Management of group standard" "social organizations established in accordance with the law" refers to social organizations with legal persons status. Therefore, the legal position of the group standard-setting subject are legal persons.

Before the legal status of group standard was established, China had the practice of engaging in standard-setting activities in the form of industrial alliances. However, after the 1998 "Regulations on the Registration and Management of social organizations" restricted the legal attributes of social organizations to legal persons, this puts a large number of industrial alliances into the embarrassing

situation of being unable to register as legal persons. For example, the "Mongolian" word mark certification alliance initiated and established by the Inner Mongolia Autonomous Region Market Supervision Administration cannot be registered as legal persons. According to the existing regulations, such an alliance does not belong to the group standard-setting subject because it does not have legal persons qualifications. Although the China National Certification and Accreditation Administration issued a reply in June 2019, agreeing to carry out the "Mongolian" word mark certification through alliance certification, the reply did not have universal applicability and did not solve the problems faced by most industry alliances.

The subject of group standard formulation is related to the quantity and quality of group standard, as well as the development of group standard themselves. Therefore, focusing on the legal positioning of the subject of group standard formulation is undoubtedly the primary factor that needs to be resolved for group standard. Although some industrial alliances do not have the legal persons attributes stipulated in the existing system, they have accumulated rich experience in practice and gained the ability to formulate corresponding standards, playing an important role in promoting the transformation and upgrading of industrial development. More importantly, the Civil Code promulgated and implemented in 2021 has made major adjustments to the civil subject system, adding "unincorporated organizations" in addition to natural persons and legal persons. Therefore, under the background of this system, the discussion of group standard Issues such as whether the formulation subject must be limited to legal persons and whether unincorporated organizations can also be the subject of group standard formulation are of great practical significance.

2. Analysis on the Necessity of Limiting the Subject of Group Standard Setting to Legal Persons Attributes

2.1 The Reason for the Hard Restriction to Legal Persons Attributes

The specific meaning and legal attributes of "social organizations" mentioned in the "Group Standard Management Regulations"

can be found clearly in the "Social Organizations Registration Management Regulations". Article 14 of the 1989 "Regulations on the Registration and Management of Social Organizations" stipulates that "Social organizations that have been approved for registration shall be issued social organizations registration certificate: those that meet the qualifications of the legal persons will be issued social organizations legal persons registration certificate; those that do not meet the qualifications of the legal persons will be issued social organizations registration certificate. "Issuance of Registration Certificate to social organizations", it can be seen that at that time, both legal persons social organizations and unincorporated social organizations existed; the "Regulations on the Registration and Management of social organizations" revised in 1998 restricted social organizations to legal persons and continues to this day. Judging from the change in the registration requirements for social organizations, the government is inevitably worried that inadequate management will produce a series of social problems, increase the cost of risk control, and is not conducive to social stability; this concept is also reflected in China's standard system. The original standard were mainly formulated by the government, showing that administrative management is lagging behind the development of the market economy and makes it difficult to respond to market demand in a timely manner. Therefore, group standard are established to unleash the vitality of market entities. However, from the perspective of standardization, the social organizations involved in standardization activities and the social organizations controlled by the national civil affairs department are actually two dimensions. The core work of the former is to carry out group standardization activities^[1]. In group standardization activities, the government should also play the role of service provider^[2]. Although the new "Standardization Law" does not reflect the old concepts of the past, the "Regulations on the Management of group standard" still stipulates that there are restrictions on the legal personality of the

entities formulating group standard.

Whether it is the management activities of the national civil affairs department or the group standard-setting activities, they all reflect the recognition and pursuit of the qualification of legal persons. The essence of legal persons is a legal construct. Legal persons is an "imitation of a natural person" and is another legal natural person created by the legislator, that is, a fictional person with independent personality^[3]. Therefore, legal persons is a type of civil subject that can independently engage in civil activities, independently enjoy civil rights and bear civil obligations in accordance with the law, and most importantly, can independently bear civil liabilities in accordance with the law. This also constitutes the core difference between a legal persons and an illegal persons. Therefore, from the perspective of group standard formulation, whether the standard-setting organization will incur corresponding legal liabilities when formulating group standard directly affects whether it is necessary for the group standard-setting entities to be restricted by legal persons attributes. If the group standard-setting activities will not generate legal liability, It would be too strict to limit liability to legal persons.

2.2 Whether There Is Legal Responsibility of the Group Standard-setting Entities

Article 18 of the "Standardization Law" stipulates that group standard "are adopted by agreement among the members of the group or are voluntarily adopted by society in accordance with the regulations of the group". This indicates that the use of group standard is voluntary, even if the stakeholders involved in the formulation of group standard have The selection of this standard is also agreed upon by the group members themselves, fully respecting the autonomy of will among market entities with equal legal status. As for whether other social market entities adopt the group standard, it is entirely voluntary. The group standard-setting entity does not have the right to force any entity to adopt it. Therefore, the group standard-setting entity has no obligation to other market entities to voluntarily adopt its group standard. Since the prerequisite for assuming legal responsibility is legal obligations, the group standard-setting entities

have no corresponding obligations. After the group standard are formulated, they are completely chosen and voluntarily adopted by market entities. Therefore, the group standard-setting entities have no legal responsibilities to bear.

In addition, the issue of standard essential patents is also involved in the process of formulating group standard. It is inevitable to use patents when formulating standards. For example, the group standard formulated by the China Communications Standards Association (CCSA) with the Internet of Things, M2M, mobile fast charging, etc. as standard technical content involve patents. At this time, the patentee needs to fulfill the standard essential patent information. Disclosure obligations. Patent owners must disclose information if they know that their patents have been included in standard, or members participating in the formulation of standard must disclose information if they know that a patent of a certain party has been included, so as to facilitate the standard-setting organization to take the next step, that is let the patentee promises to abide by the FRAND principle and license standard implementers to use standard essential patents under "fair, reasonable and non-discriminatory" conditions. At this time, the standard setting organization has completed the formulation of the standard, and the patentee has also complied with the FRAND principle. Issues such as patent licensing fees arising from the future use of the standard will occur between the patentee and the standard implementer, and with the standard setting entity. There will no longer be any legal connection between rights and obligations, nor will there be any legal liability. In addition, the obligation to disclose information is an obligation arising from the principle of good faith^[4]. If the patentee fails to fulfill its obligation to disclose information, it will bear the adverse consequences itself, and the standard-setting organization will not bear legal responsibility. Therefore, the body that establishes group standard will not incur legal liability in terms of standard adoption or standard essential patents, and does not need to face adverse consequences caused by the formulation of group standard.

2.3 Summary

A legal persons is a "fictitious person" with an

independent personality as a natural person. Its most significant advantage is that it can independently bear civil liability in accordance with the law. However, after the above analysis, we found that the group standard-setting entity will not incur legal liability due to the act of formulating group standard. The selection of group standard is entirely a voluntary choice by social market entities. They have the right to choose a group standard to use according to their own wishes, and are also responsible for their own choices; members of the group standard-setting organization also agree on their own adopt group standard or not. On the issue of standard essential patents, if the patentee fails to fulfill its information disclosure obligations, it will bear the adverse consequences. If it fulfills its information disclosure obligations and allows the patent to be used, then the standard setting organization will allow the patentee to comply with the FRAND principle in intellectual property policy. Making a commitment also solves the problem of subsequent standard implementers using patents, and the standard-setting organization has no legal responsibility. Therefore, it is not necessary to limit the legal attributes of group standard-setting entities to legal persons, and too strict restrictions are not conducive to the development of group standard.

3. Under the Framework of the Civil Code: Rethinking the Legal Positioning of Group Standard-setting Entities

3.1 The Legitimacy of Unincorporated Organizations as the Group Standard-setting Entities

From the foregoing analysis, we know that organizations with legal persons attributes can fully engage in group standard-setting activities, but the subjects of group standard-setting do not need to be limited to legal persons. Since the Civil Code newly establishes unincorporated organizations as independent civil subjects in addition to legal persons, to re-understand the legal positioning of group standard-setting entities requires analysis and argumentation on the premise of complying with the institutional structure of higher-level laws. If unincorporated organizations can meet the needs of group standard-setting activities, you can serve as the

main body of group standard-setting.

Some scholars pointed out that although an unincorporated organization does not have an independent legal personality, this does not affect its qualifications and identity as a civil subject. It is just that it does not have the independent personality of an organization and cannot bear debt liabilities independently^[5]. We have demonstrated that the behavior of the group standard-setting entity in formulating group standard will not generate any legal liability, so there is no need to consider whether it has the ability to independently bear legal responsibility. The "Civil Code" was officially implemented in January 2021, but the "General Principles of the Civil Code" was passed as early as 2017, officially classifying unincorporated organizations as an independent civil subject. Therefore, unincorporated organizations have the same independent civil rights as legal persons. The core difference between the status of the subject and whether it can independently bear legal responsibility is also excluded from consideration because the subject of group standard setting has no legal responsibility. If the relevant entities such as industry alliances meet the requirements for the establishment of an unincorporated organization, they will be considered as unincorporated organizations. There is no problem setting group standard for identity.

3.2 The Legitimacy of Loose Alliances as the Group Standard-Setting Entities

3.2.1 Theoretical Considerations

Loose alliances refer to those alliances that do not have the status of civil subjects. They neither have legal personality nor are unincorporated organizations. They can only exist as a loose alliance and do not naturally become an independent civil entity in terms of legal status. main body. So can a loose alliance that does not have the status of a civil subject be unable to participate in the formulation of group standard and become the subject of group standard formulation? Theoretically speaking, this may not be the case. A loose alliance is essentially based on a contract. It is a type of alliance formed by parties independently entering into contracts in accordance with the principle of autonomy in civil law on the premise of equal legal status

and voluntariness. In practice, it is often expressed as a contract or agreement. Although a loose alliance does not have the status of a civil subject and cannot bear legal liability independently, its members can share risks and responsibilities with other parties, similar to a civil partnership. The organizational nature of a partnership is weaker than that of an unincorporated organization. Its internal members have not lost their independence, while the internal members of a legal entity have lost their independence and carry out external activities as organizational behaviors. Therefore, although the loose alliance does not have a strong organization and does not form an independent group intention, the alliance members use the contract as the basis for the relationship between the parties, and external responsibilities can be extended and borne by all alliance members. Therefore, at the appropriate level, contractual alliances can serve as the main body for formulating group standard, and formulate group standard by reaching a contract, and there is no need to consider the issue of responsibility in terms of formulating group standard alone.

3.2.2 Realistic Considerations

Judging from the characteristics of the standard itself, the standard itself is a technical solution that is recognized by many stakeholders through collective participation and consensus. Whether to adopt the standard is a voluntary choice by all parties, so there is no need for standard formulation itself. A very strict organizational form, the whole process is only a technical activity. Group standard is the type of standard that best reflect the characteristics of standardization activities. Therefore, unincorporated organizations other than legal persons can formulate group standard. It seems that there is no problem with loose alliances.

But on the practical side, we have to see the double-edged sword that standards are playing. Standard have certain public attributes. When they have an important impact on technological progress or even technological unification in related industries or fields, monopoly issues will also arise. Because when the industry or field achieves technical unification through standards, entities that have not joined the technology will be excluded from the market. Objective market

unification will instead form a monopoly. Some group standard-setting entities themselves are even suspected of exploiting group standard implement monopoly. For example, in China's "Raw Salmon" group standard incident, rainbow trout was forcibly included in the definition of salmon, which obviously violated public perception. The same is true internationally. Under the influence of the U.S. government's ban, five major standards organizations including the International Solid State Technology Association (JEDEC), the WIFI Alliance, and the USB-IF organization have suspended Huawei's membership, making Huawei unable to serve as a leader in related fields for a certain period of time. Rule makers have restricted Huawei from playing a leading role in the technological development of the industry. Therefore, although standard setting itself does not require a very strict organizational form, based on the huge role that standards will play in the future and the needs of market management, there should be no restrictions on the subject attributes of standard setting organizations.

3.3 Summary

On the premise that the attributes of legal persons are not necessary for the subject of group standard setting, relying on the civil subject system of the Civil Code, it is believed that unincorporated organizations can engage in group standard setting activities; in addition to the three types of civil subjects, theoretically it is said that loose alliances can also meet the needs of standard-setting activities, which is consistent with the natural state of standard-setting. Just from a longer-term perspective and perspective, today's standard-setting organizations are playing an increasingly important role and continue to exert significant influence internationally. Therefore, it is still necessary to impose certain restrictions on the legal attributes of the group standard-setting entities, so that it will not be too strict and limit the development of group standards, but will not be too loose and create huge risks of market monopoly, so as to achieve a relatively state of balance.

4. Conclusion and Suggestion

4.1 The Group Standard-Setting Entities

Should Not be Limited by the Attributes of Legal Persons

As the main body of the formulation and implementation of alliance standard, industrial alliances aim to guide the orderly development of the industry and obtain optimal benefits through the collaborative activities of alliance members. It is essentially a voluntary standardization behavior within alliance members^[6]. Alliance members voluntarily set standard internally, and the quality is tested by the market. If the standard is a high-quality standard, market entities will voluntarily choose to use it. We cannot impose a series of restrictions just for policy considerations. Having legal persons status does not guarantee group standard quality; more importantly, the formulation of group standard will not lead to legal liability, and there is no need to impose restrictions on the legal personality of the group standard-setting subject. In terms of legal status, there is no distinction between legal persons and unincorporated organizations. Therefore, the Standardization Law, as a special law for civil subjects to conduct civil activities, should maintain consistency and coordination with the Civil Code, which is a general law, the legal attributes of group standard-setting entities are no longer limited to legal persons.

4.2 The Group Standard Setting Entities can be an Unincorporated Organizations

In the context of the civil subject system of the Civil Code, it is feasible for group standard-setting entities to carry out group standard-setting activities as unincorporated organizations. Unincorporated organizations, like legal persons, are independent civil subjects and can engage in corresponding civil activities in accordance with the law. Although they do not have the ability to independently bear responsibility, there is no need to consider this issue from the perspective of the formulation of group standard. At this time, for those who do not meet the Industrial alliances that meet the requirements for legal persons registration can carry out group standard setting activities as unincorporated organizations. However, it is not recommended that loose alliances be the main body for formulating group standard, because loose alliances are not civil subjects, and the standards

themselves may form a monopoly. A structure that is too loose cannot cope with the actual situation in the development of standard. For the good development of market order and Maintenance requires appropriate strengthening of the management and intervention of group standard-setting organizations.

However, if unincorporated organizations want to engage in profit-making activities in the future and need to have the attributes of legal persons according to relevant regulations, it should first register as a legal person and then engage in market operations other than standard setting, so as to have the ability to independently bear legal responsibility; if there is no requirement that one must have the attributes of legal persons to engage in relevant activities, it can still be carried out as an unincorporated organization. The legal basis is Article 104 of the Civil Code, which stipulates that its investors or founders shall bear unlimited liability when necessary, when the law have other provisions, those provisions shall apply. As a result, unincorporated organizations can not only formulate group standard, but also meet their needs for participating in other social activities in the future. This not only solves the practical dilemma of industrial alliances being unable to register as legal persons and formulating group standards, but also well balances the needs of government departments for market order management.

4.3 Relevant Systems Need to be Connected with the Civil Subject System of the Civil Code

The 1986 "General Principles of the Civil Law" stipulates two types of civil subjects: citizens and legal persons. Therefore, the 1998 "Regulations on the Registration and Management of social organizations" limits the legal attributes of social organizations to legal persons, which is in line with the provisions of higher-level laws. China's "General Principles of Civil Law" promulgated in 2017 established three categories of civil subjects. The "Regulations on the Registration and Management of social organizations" were last revised in 2016, so the provisions on

the legal attributes of social organizations have not changed. However, Article 2, Item 2 of the "Regulations on the Registration and Management of Social Organizations (Draft for Comments)" promulgated by the Ministry of Civil Affairs in May 2018 stipulates that "social organizations refer to voluntary organizations formed by Chinese citizens that carry out activities in accordance with their charter in order to realize the common will of members. "Activities of non-profit legal persons" still restricts social organizations to legal persons and does not systematically connect with the civil subject system of the "General Principles of the Civil Law".

Since the "Regulations on the Registration and Management of Social Organizations" are officially implemented, the three major regulations including the "Regulations on the Registration and Management of social organizations" will be abolished at the same time. Therefore, it is currently necessary to focus on Article 2 of the "Regulations on the Registration and Management of Social Organizations (Draft for Comments)", the second item is modified to connect the legal attributes of social organizations with the civil subject system of the Civil Code, allowing group standard-setting entities to engage in group standard-setting activities as unincorporated organizations, instead of only as "non-profit legal persons". At the same time, the "group standard Management Regulations" regarding the legal attributes of the group standard-setting entities must also be modified. The second paragraph of Article 20 only mentions the "social organizations legal persons Registration Certificate", and the expression "unincorporated social organizations" should be added. As for the "social organizations established in accordance with the law" expressed in Article 3 of the "Group Standard Management Regulations", it can be clarified or not specifically specified, because when the upper law "Regulations on the Registration and Management of Social Organizations" is connected with the civil subject system, according to the system Explain that "social

organizations established in accordance with the law" naturally include legal entities and unincorporated organizations.

In the end, it can not only solve the long-term practical dilemma faced by industrial alliances that is difficult to register as legal persons, making it a legal body for setting group standard; it can also play the role of the Civil Code as a basic law and achieve the coherence and consistency of relevant systems. Make the internal structure of the law more systematic. It can even stimulate the vitality of market entities to develop group standard as a whole, promote the improvement of China's industrial technology level, enhance market competitiveness, achieve high-quality development while ensuring the good development of group standard, achieve the legislative goal of establishing group standard in the new "Standardization Law", and it has even played a greater role internationally, becoming a de facto international standard and comprehensively enhancing China's standard voice and influence in the world.

References

- [1] Chen Junhua, Xu Fang, Li Meiqing. On the Identification of the Subject Boundaries of Group Standardization in My Country. *Science and Technology Management Research*, 2019(7): 245.
- [2] Yu Lianchao, Wang Yiyi. Self-Governance of group standard and Its Legal Regulation. *China Standardization*, 2016(16): 56.
- [3] Liang Shangshang. China's Concept of legal persons Does Not Need to be Reconstructed. *Modern Law*, 2016(1): 94.
- [4] Chen Yongqiang. The Natural Law Basis and Typification of the Obligation of Good Faith - the Shaping of the Image of a Person With Good Faith. *Journal of Hangzhou Normal University (Social Science Edition)*, 2012(2): 86.
- [5] Xiao Haijun. Technical Approach to Positioning the Subject of Unincorporated Organizations in the Compilation of Civil Code. *Law*, 2016(5): 27.
- [6] Yan Shaoqing, Lu Huanhuan. Analysis of Characteristics and Trends of My Country's Alliance Standards. *China Standardization*, 2014(01): 54.