

# Research on the Protection Mechanism of Corporate Creditor's Interest under the Company Capital Subscription System

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## Abstract

With the continuous development of China's socialist market economy, companies play a more and more important role in commercial activities, corporate creditors as an important external stakeholders of the company has a very important impact on the development of the company. Recorded in 2013, the company law of the system of registered capital subscribed, cancel the company's mandatory verification program and the minimum amount of registered capital, set up the process, greatly simplifies the past mad on capital regulation mode is particularly easy, greatly improves the investor's investment enthusiasm, is helpful to stimulate the development of market economy in our country, It also fueled the subsequent "mass entrepreneurship and innovation", stimulated the entrepreneurial passion of individual businesses, and set up a blowout growth of small and medium-sized enterprises. However, with the reform of capital system, the interests of corporate creditors face new challenges. At present, the protection mechanism of corporate creditors in China still needs to be improved. At present, the protection mechanism is faced with many difficulties, such as imperfect disclosure of corporate information, unclear application of accelerated expiration system of shareholder's contribution obligation, etc., which makes corporate creditors in a relatively inferior position. This paper takes the protection of corporate creditors' interests as the starting point, aiming at perfecting the protection mechanism and protecting the interests of creditors. The first chapter mainly expounds the relevant theories of corporate creditors' interest protection, aiming to highlight the importance of protecting corporate creditors' interests. The second chapter expounds the influence of corporate capital subscription system on the protection of creditor's interests, mainly from the basis of protection, ways and consequences of three aspects. The third chapter points out the dilemma our country is facing in protecting the interests of corporate creditors. The fourth chapter is based on the difficulties of the third chapter, combined with relevant foreign experience to put forward some suggestions to improve the protection mechanism of corporate creditors' interests, through feasible measures to protect the legitimate rights and interests of corporate creditors.

## Keywords

Capital Subscription System; Protection of Creditor's Interest; Denial of Corporate Personality; Obligations of Shareholders.

## 1. Introduction

With the continuous development of China's market economy, excessively strict capital controls and procedures have been unable to adapt to the rapid development of the economy. In the capital system reform in 2013, the minimum requirement for registered capital was abolished, the subscription system of registered capital was established, and shareholders' contribution was more flexible and free. This greatly promotes the establishment of companies and market investment, but it cannot be ignored that the relaxed investment environment also greatly increases the risk of creditors in market transactions. The protection mechanism of

creditors is not perfect, such as corporate information disclosure, corporate personality denial system has not played a good role and effect to protect the legitimate rights and interests of corporate creditors.

In many social practices, it is common that the creditor is difficult to realize the creditor's rights due to maturity, which is largely due to the abuse of investor's capital subscription system, and the imperfection of creditor protection mechanism. System as the background, based on the company's capital subscribed to improve the company creditor benefit protection mechanism as the goal, to find out problems, analyze and solve problems, using the experience of foreign relevant measures, through the perfect legal means and ways, as far as possible maintenance under the system of company capital subscribed to the weak party interests of the company's creditors, Mainly through the limit in a relatively advantageous one side right of the shareholders of a company. The company creditor's rights and interests' protection, to further make the company creditor and shareholder status equality, makes system of company capital subscribed to better operation, to achieve it should have the function of this system, establish an effective company creditor rights and interests protection mechanism, practical and creditors' interests.

## 2. Related Theories of Corporate Creditor's Interest Protection

To protect the interests of the creditors are in place is the important measure of transaction security, the company operating activities in the market is always around the trading object, in the commercial activities of the company's creditors have claims on the company, difficult to achieve, to the extent of the obligee's right when the company must also means that it has great influence on the transaction security, If it is left unchecked and not protected, it will continue to deteriorate and hinder the development of market economy. Therefore, the protection of creditors' interests is particularly important.

### 2.1. Company Creditors Overview

At present, the company law and there is no clear definition about the company's creditors, but in the civil code, based on the main body for the company's debt and debt in a natural man as major body has similarity in essence, can be referenced in the civil law rules "creditors is based on contract, tort, negotiorum gestio others or such other legal actions have not for a certain behavior of civil subject." Although the concept of corporate creditors has something in common with the basic concept, it is special, that is, the subject of corporate creditors should be the company. In different commercial activities, there will be different types of creditor's rights, corresponding to the emergence of different types of creditors, further speaking, there will be different protection measures. Therefore, the author believes that before protecting the interests of corporate creditors, the types of corporate creditors should be established first.

Because of the different classification standards, there will be a lot of classification of corporate creditors. The author mainly studies the classification of creditors according to whether the acts of creditor's rights and debts are voluntary or not, mainly divided into voluntary creditors and involuntary creditors. During the negotiation and negotiation between companies, because both parties have reached an agreement, the debtor-creditor relationship is established, and the party who enjoys the creditor's right is the voluntary creditor. If the company causes fault and loss due to its own behavior, the other party passively enjoys the right of claim for damages, and the party enjoying the right of claim for damages is an involuntary creditor. The author focuses on the protection of voluntary creditors.

### 2.2. Overview of Corporate Capital System

There are broad and narrow definitions of corporate capital. Capital used to define the source of the company's capital, such as equity capital, debt capital, for the broad sense of the

company's capital. The main source of corporate capital is equity capital. Narrow capital refers to the company registration of establishment, the company's registered capital, is also in accordance with the "company law" regulation, must have the capital, but the broad and narrow sense, narrow sense of corporate capital compared with slightly rigid, and general corporate capital in contrast is more comprehensive, more accurately reflect a company's condition of capital.

In 1993, China promulgated the first "company law", in order to make our economy get effective control, strict legal capital system, outstanding performance for the minimum amount of registered capital is extremely high, and want to one-time pay sufficient capital, strict verification procedures to set up the company, its core for determination of capital, and capital the same three principles of capital maintenance, to keep the capital in place and keep the trade safe.

In 2001, China joined the WTO, and China's economy has become more active and open. The old and rigid 1993 Company Law is no longer suitable for the rapid economic development and efficient circulation of resources, and cannot play a good role in promoting economic development. After China's accession to the WTO, China is more closely connected with the international community, and the lax capital system of other countries has also had an impact on China. In 2005, the strict legal capital system in the Company Law was revised. The strict paid-in capital was replaced by installments, and the minimum registered capital was lowered, which greatly lowered the threshold for establishing a company.

In 2013, the Company Law completely abolished the minimum limit of registered capital and established the subscription system of registered capital, which changed the high-intensity control on capital in the past decades and again reduced the threshold for company establishment, greatly stimulated the enthusiasm of market participants and promoted the rapid development of China's market economy.

To sum up, during the decades from the reform and opening-up to 2013, the Contents of registered capital of companies have been amended several times in the Company Law. The general characteristic is that the registered capital system is increasingly relaxed and the system content is increasingly perfect, which greatly promotes the establishment of companies and the efficient circulation of resources, and promotes the development of market economy. However, at the same time, the loose and flexible capital environment highlights the loopholes in the protection mechanism of corporate creditors' interests.

### **2.3. The Necessity of Protecting the Interests of Corporate Creditors**

For the necessity of protecting the interests of creditors, the author thinks that there are the following points:

First, to help the company's sound and stable business development. Whether corporate creditors are exposed to too much risk or better enjoy the rights and interests will directly affect the enthusiasm of this subject to participate in commercial activities. Therefore, the effective protection of corporate creditors is conducive to the development of corporate business activities; On the contrary, if the interests of corporate creditors are not effectively protected, Adam Smith's hypothesis of "rational man" will inevitably affect their enthusiasm to participate in commercial activities.

Second, it is the inevitable requirement under the limited liability of shareholders. Modern company established the shareholder's limited liability company with legal person's assets of foreign debt, shareholders with its stake in the company's operating risk, the risk of shareholders be externalized, reduces the shareholders in the company the risk in the process of trading, but this part at the expense of transaction security, and for the company in terms of its creditors take more risk. The balance between efficiency and safety is one of the important values that the creditor's interests should be protected. Efficiency and safety cannot be

neglected, protecting the interests of corporate creditors is the inevitable requirement of shareholders under limited liability.

Third, it is convenient to protect trade security and promote healthy economic development. Further, protect the interests of the creditors is to protect the market transaction security, is beneficial to maintain a good market order, the extent of the obligee's right, only to protect company creditor investment benefits will only be guaranteed, the investment cost will reduce accordingly, so as to stimulate the enthusiasm of the creditors to participate in the activities of the market and the market competition, In the long run, this will also help promote social and economic development.

### **3. The Influence of Capital Subscription System on the Protection of Corporate Creditors' Interests**

With the establishment of the company's capital registration subscription system, not only the rights and obligations of the company and the shareholders of the company, but also the other party in the commercial transaction - the company's creditors caused a very great impact.

#### **3.1. Company Credit Basis -- Asset Credit**

The company has an independent legal personality, shareholders of the company to their own shares as limited liability, so in the process of transaction, the creditor is faced with the risk of the company to assume limited liability, then how can the creditor judge whether the other party is able to perform the contract? In practice, corporate credit is usually used as a method to judge transaction security and commercial risk. After the establishment of the capital subscription system in 2013, the judgment is usually based on the credit of the company's assets. The company has an independent legal personality and takes responsibility with all its property. The core of the company is to take responsibility with its assets. Corporate assets include both owned assets and liabilities, and the ratio of owned assets to liabilities reflects the change of the company's actual ability to repay debts. In other words, the company's net asset credit is the company's asset credit. In short, the more net assets a company has, the stronger its debt solvency will be. There are many forms of corporate assets, among which monetary assets are the most able to directly repay debts. There are also some assets with poor solvency, such as long-term investment, which has obvious uncertainty and no specific amount, and has poor solvency compared with currency and fixed assets. Single corporate assets cannot provide perfect guarantee for corporate bonds, but this does not affect the realization of the external guarantee of assets creditor's rights. The transformation from capital credit to asset credit is a liberation of the company and a correct understanding of the capital function, but only relying on a single asset credit cannot completely protect the legitimate rights and interests of the company's creditors, and other mechanisms are needed to cooperate with each other.

#### **3.2. The Protection Path of Company Creditor -- after the Event Protection**

Loose and free corporate standards make creditors in a passive position in market activities, unable to clearly judge the company's debt solvency, and face more complex transaction risks, which also shows that it is more important to protect the interests of creditors. When shareholders of a company are unable to repay debts by making false investment or withdrawing investment by various means, the law should be more inclined to creditors to highlight the value objective of both fairness and efficiency. The creditor's ex post protection measures are different from the ex-ante protection. If the ex-ante protection is to be effective, it needs external and internal "double insurance" measures. External measures need the administrative supervision of relevant departments to play a practical role, while internal measures are composed of the company's perfect credit system, transparent and real-time information disclosure system and other relief measures. So, the reform of the company's

capital system makes the construction and improvement of the company's creditor's interest protection mechanism appear urgent.

### **3.3. It has become Harder for Corporate Creditors to Judge the Risks of a Deal**

Before the company capital subscribed system establishment, the company creditors is mainly to the company's registered capital is paid in capital to judge the solvency of the debtor, in the establishment of strict requirements and procedures prescribed by the law clearly, even if the firm purpose of the debt repayment ability by creditors questioned, but rely on almost harsh laws and regulations and market regulation mechanism, This at least ensures the real capital of the company, but also more clearly reflects the solvency of the company. The minimum amount of registered later cancelled, the theory of "one yuan company" can also be set up, and on the amount of capital subscribed capital deadline is by the autonomy of the articles of association agreed, in practice there is a lot of subscribed capital is very high but paid in small companies, optional contribution is also common occurrence, the period stipulated for creditors, Only subscribed capital contribution to judge the company's solvency is obviously insufficient, they tend to need more information, but in addition to the amount of information, and the company's commercial secrets easily confused, creditors are often not very comprehensive information collection, information asymmetry of embarrassment, so that creditors in judgment when trading risk is more difficult.

## **4. The Dilemma that Our Country Company Creditor Interest Protection Mechanism Faces**

At present, the protection mechanism of corporate creditors' interests in China is facing many problems. In practice, the company creditors need to understand the relevant information to have a clear understanding on risk, but your company information has not carried out in accordance with the provisions of the public, there is still a false disclosure, the phenomenon such as not timely disclosure, whether the bankruptcy cases, the creditor shall have the right to request the shareholders give up term interests of capital contribution obligations exist great differences in advance, The application of the denial system of corporate personality as legal person, which has always been the focus of attention, is not clear, which makes it difficult to make effective progress in the protection of corporate creditors in China.

### **4.1. Company Information Disclosure is not Comprehensive**

Corporate information disclosure refers to the mechanism by which the information generated in the operation process of the company, such as the company's assets and operating conditions, which may affect investment risks, is released to the outside world through specific procedures. Whether the information disclosure system is perfect directly affects the creditors' understanding of the company's debt repayment ability and the creditors' judgment of the transaction risk. Although The State Council issued the Interim Regulations on Enterprise Information Disclosure in 2014. However, the regulation cannot build a perfect information disclosure system, there are still several problems. First, the information disclosure content is not comprehensive. According to relevant laws, the financial statements of an enterprise reflect the operation status of the company in a period of time. However, because the financial statements contain a large number of company secrets, the Company Law does not give the creditors the right to browse the financial statements. It can judge the debt repayment ability of the company it deals with and assess the transaction risk only by relying on the information announced by the company and the information registered by the market supervision department. According to the provisional regulations on enterprise information public article 9, article 10 can be seen that required by the laws of the public information range is relatively narrow, the total amount of assets, liabilities, provide guarantee security and operating revenue,

etc. belongs to the enterprise shall have the right to choose to open it or not, it also makes creditors do not get some effective information to judge, Unable to protect creditors in information asymmetry, affecting creditors to make correct decisions. Second, there may be false information disclosure. The annual report system reduces the intervention of administrative organs. For the purpose of making profits, the company is likely to cover up some negative information that is not conducive to the company, so it is difficult to judge the authenticity and accuracy of information disclosure. Third, the relevant responsibility supervision mechanism is not perfect. For example, the punishment measures for breach of disclosure obligation are not perfect. In view of the internal responsibility of the company is not clear, unlisted companies often become the relevant provisions of the fish. There are also flaws in the administration's approach to supervision, such as spot checks.

#### **4.2. The Application of Accelerated Maturity System of Shareholder's Contribution Obligation is not Clear**

Subscription system gives shareholders the right to stipulate the amount of capital contribution and the term of capital contribution in the articles of association, but also brings some problems, such as the agreement of too high subscription capital, too long term of capital contribution, arbitrarily extend the term of capital contribution, etc., resulting in the imbalance between the interests of shareholders and creditors. Shareholder's contribution is of guarantee significance to the company's debt. When the company is unable to repay its debt, the essence of shareholder's undertaking supplementary compensation liability within the scope of its contribution is to undertake corresponding guarantee liability. the author thinks that accelerating the expiration of shareholders' contribution obligation is more in line with the efficiency spirit of the commercial law, which can satisfy the creditor's will to protect their rights and avoid the bankruptcy of the company. However, in the specific judicial practice, the courts still have disputes on whether to apply the acceleration of shareholder's contribution to maturity, and in most cases, do not support the acceleration of maturity shall prevail.

#### **4.3. The Corporate Personality Denial System is not Perfect**

The independent corporate personality is a significant characteristic of a company. If the independent personality of the legal person is abused, the way to fight against it is "denial of the personality of the legal person", also known as "unveiling the veil of the company". However, because this system is established and developed in the form of case law in the Common law system, its application mainly depends on the rich case experience and diversified case law, while China is a country of written law mainly established this system with abstract general provisions. Therefore, when China applies this system, it is inevitable that there will be problems. For example, the scope of the subject is not clear, mainly stipulated in Article 20 and Article 63 of the Company Law. Moreover, the applicable conditions of this system are difficult to be standardized and quoted. Finally, the current burden of proof is flawed. In current judicial practice, the responsibility distribution principle is still "who claims, who provides evidence". However, sometimes the information collected by creditors cannot involve the detailed operation and assets of the company, and they will have to bear excessive litigation costs such as time and money, and it is difficult to provide evidence, which hinders rights protection.

### **5. Suggestions on Improving the Interest Protection Mechanism of Corporate Creditors under Subscription System**

#### **5.1. Perfect Company Information Disclosure and Credit Restraint System**

Clarify the scope of information disclosure, the information disclosed by the company can be divided into investment information, asset information, credit information, etc. it is necessary to disclose shareholders' subscription and collection of capital contribution as well as the

arrangement of capital contribution period, to help creditors understand the company's capital contribution status and judge transaction risks. The disclosure of asset information in the company's annual report shall be compulsory, but it shall also be determined according to the circumstances. Information involving the company's trade secrets and not affecting creditors shall not be disclosed. To improve the authenticity and efficiency of information disclosure, it is not effective to rely on the company's consciousness. Administrative departments should also play the role of supervision, with administrative power as a solid guarantee, and relevant departments should formulate a series of rules and regulations. At the same time, with the development of big data, artificial intelligence and 5G communication network technology, information disclosure time is bound to shorten, optimize the collection and disclosure procedures, improve the efficiency of information disclosure. To broaden the channels of information publicity, third-party information publicity agencies can be introduced to provide professional information services and provide services such as market dynamic analysis after being authorized by market regulatory authorities. At present, the information source of relevant institutions in China is still the National Enterprise credit Information Publicity System, and the information provided is not comprehensive. If we can build our own database and establish an effective risk assessment system, we can provide more diversified information consulting and other professional institutions. Moreover, it is to strengthen the responsibility consciousness of the company to consciously publicize relevant information, improve the punishment intensity of the violation of the publicity system, such as being included in the blacklist, and reduce the enterprise credit. Finally, with the authorization of relevant departments, creditors can consult the financial information related to the rights and interests of the company, to make reasonable decisions. The right of the creditor to consult the financial information of the debtor company in the Company Law of Britain and Japan can be used for reference.

## **5.2. We Will Establish an Accelerated Maturity System for Shareholders' Contribution Obligations**

As mentioned above, accelerating the expiration of shareholders' capital contribution obligations is conducive to improving efficiency, helping creditors to protect their rights and avoiding corporate bankruptcy, but the applicable standards are not clear yet. First should establish perfect shareholder capital contribution obligation to accelerate the maturity of the applicable standard and applicable rules, the company with independent property cannot fulfill debt for the premise, the creditors petition the court to the specific performance, after the surety undertake suretyship liability still cannot repay all debt, the creditor can request for shareholders' capital contribution obligation acceleration. At the same time, the company should also establish the relevant internal call mechanism, urge shareholders to fulfill the obligations of capital contribution, help the company to repay the debt due. The author believes that the company's call mechanism can be used as a pre-procedure for creditors to apply for accelerating the expiration of capital contribution obligations, balance the conflicts of interest between creditors and shareholders, reduce the judicial cost and improve the efficiency of the judicial system.

## **5.3. Perfect the Corporate Personality Denial System**

Determine the scope of the subject and appropriately reduce the burden of proof on creditors. Creditors do not participate in the company, have the right to consult the company internal documents such as books, meeting minutes, if in accordance with the general rules of evidence, creditors will can't risk for adducing evidence, two sections of the burden of proof allocation, can be used by the plaintiff in advance, the preliminary evidence, again the defendant to prove that what he does not exist the abuse, if can't provide proof, Then it should be presumed that the shareholders have abusive behavior and bear the corresponding adverse consequences. by

formulating judicial interpretation and giving play to the guiding role of guiding cases, China can become a legal country, and the Supreme People's Court can add judgment criteria applicable under special circumstances to judicial interpretation to promote judicial practice and accumulate more experience, to continuously clarify the applicable conditions of corporate personality denial. More than one guiding case can be used to provide reference basis for the courts to handle relevant cases and promote the improvement of the level of rule of law in China.

## 6. Conclusion

With the continuous development of socialist market economy, the Company Law of Our country has been amended constantly, and the company law system has been gradually improved. In the relaxed investment environment, the establishment of companies becomes more convenient, creates a good business environment, and promotes the development of China's market economy. At the same time, we should also pay attention to the protection of the interests of creditors, shareholders and creditors should pay attention to both, either side of the partial waste may lead to economic development into trouble. In an increasingly complex market environment, corporate creditors and shareholders should be equally valued. In order to construct a perfect corporate creditor protection system, we need to start from creditors themselves, market supervision departments, companies and corporate creditors, and improve the relevant regulations. Forming a reasonable and effective creditor protection mechanism is a necessary link to promote the stable development of socialist market economy.

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