

Research on the Protection of Creditors' Interests under the Reform of Corporate Capital System

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Abstract: *In 2003, China's "company law" carried out a major change in the company capital system, which greatly reduced the market access threshold of enterprises and radiated market vitality, but also brought challenges and impacts to the protection of creditors' interests. Under the background of capital system reform, the relevant supporting measures to protect the interests of creditors in China are not perfect. There are deficiencies and defects in the company information disclosure system, shareholder's contribution obligation and disregard of legal personality system in practice, which need to be further solved. Based on this, we should ensure that the creditors fully enjoy the right to know, improve the credit constraint mechanism, and at the same time, add the pre procedure of directors, supervisors and senior executives to call for the payment of capital, expand the scope of application of accelerating the maturity of capital contribution, and clearly determine that "the capital is significantly insufficient", and appropriately reduce the burden of proof of creditors, so as to establish a comprehensive protection system for the interests of creditors.*

Keywords: *Capital System Reform; Protection of Creditors' Interests; Information Disclosure; Capital Contribution Obligation; Personality Denial*

1. Introduction

Before the amendment of the Company Law in 2013, China's corporate capital system was a strict statutory capital system, with significant capital guarantee function, which was conducive to the realization of creditor's rights. Subsequently, the law gradually relaxed the control of capital and stimulated the enthusiasm of entrepreneurs. However, the protection function of the capital system for the legitimate rights and interests of creditors was also weakened, and the relevant supporting systems could not keep up with the pace of a series of reforms. As a result, the interests of enterprise shareholders and creditors were in an increasingly unbalanced state. If it continues, it will certainly affect the steady development of the market economy. Through detailed analysis and research on the institutional difficulties faced by creditor protection under the background of corporate capital system reform, this paper proposes targeted improvement paths, aiming to improve the existing creditor protection system and promote the stable and orderly development of the market economy.

2. The Reform of Corporate Capital System in China and Its Influence

The meaning of corporate capital system is generally divided into broad sense and narrow sense. In the narrow sense, the corporate capital system mainly focuses on the system design of the formation, increase and decrease, and withdrawal of corporate capital; On the basis of the former, the capital system in a broad sense covers a series of contents such as capital transformation and profit distribution, thus forming a complete supporting system with the company's capital operation as the core. Because corporate capital plays an important role in protecting creditor's rights and reducing transaction risks, countries around the world generally regulate this content in the form of corporate legislation.

2.1. The Reform Course of China's Corporate Capital System

So far, China's corporate capital system has roughly undergone the following key reforms: the first one occurred in 1993. Under the background of the economic environment at that time, the abuse of corporate capital was very common. In order to standardize the market order, the state has formulated a strict legal capital system. While defining the minimum registered capital limit of the company, it has also stipulated the registration system for the paid in amount of shareholders' contributions, Raised the

company's market access threshold. Subsequently, under the influence of the capital system, its compulsion has continuously compressed the space for independent development of enterprise operation, and the high standard of establishment conditions has undoubtedly hit the enthusiasm of entrepreneurs, and increased the incidence of illegal and criminal acts such as shareholders' false capital contributions and capital withdrawals. Based on this, the State amended the Company Law in 2005, which to some extent slowed down the control of the original capital, specifically reducing the requirements for the minimum registered capital; The capital contribution registration system will be changed to the installment payment system to extend the time limit for capital payment. Although this reform has developed a relatively loose capital system, it has not fundamentally solved the problem of high threshold for the establishment of companies. In order to cater to the new round of development trend of market economy, China's Company Law was revised again in 2013. This adjustment has greatly and thoroughly revised the capital system. It not only abolished the minimum registered capital of the company, converted the registration system from the paid in system to the subscription system, but also cancelled the legal capital verification system, and clarified the amount, method, duration and other issues of shareholders' capital contributions. This not only reduces the investment cost of entrepreneurs, mobilizes people's enthusiasm for entrepreneurship, but also provides a large number of jobs for the society. On October 26, 2018, the amendment to the new Company Law was successfully passed and began to be implemented. Article 142 of the Company's share repurchase system is the focus of this amendment. Relevant provisions related to the capital system were modified and improved to give the Company more autonomy.

2.2. Influence of the Reform of Corporate capital system

2.2.1. The Significance of Corporate Capital System Reform

In 2013, the Company Law abolished the provisions on the minimum registered capital, and changed the registration system of capital contributions from the installment payment system to the subscription system, greatly reducing the difficulty of establishing the company, relaxing the market access standards, creating a good investment atmosphere for entrepreneurs, enabling more and more capital to flow into the market, stimulating market vitality, and stimulating the emergence of a large number of small, medium-sized and micro enterprises represented by emerging e-commerce industries. We will promote the steady and long-term development of the market economy. At the same time, due to the gradual slowing down of the national economic growth and the continuous expansion of the population base in recent years, the employment pressure has also become increasingly serious and one of the major problems facing the current society. The cancellation of the capital standard for the establishment of the company has enabled more enterprises to be born, create employment opportunities, alleviate the social employment pressure, and also promote the company's competitiveness and optimize the allocation of market resources. In addition, the reform of the company's capital system has weakened the government's control over the company's operation, given enterprises more free space for independent operation, more clearly demarcated the boundaries between the government, the market and enterprises, and made good use of the "two hands" of the market and the government.^[1]

2.2.2. The Impact of Capital System Reform on the Protection of Creditors' Interests

The reform of corporate capital system is an inevitable requirement to conform to the trend of economic development and improve corporate governance, but it also has a serious impact on the rights and interests of creditors. First, the creditors' right to know is impaired, making it difficult for them to make an accurate judgment on the company's property status. Under the original strict legal capital system, the Company Law stipulated the minimum standard of registered capital and the paid in registration system, and the mandatory capital verification procedure was adopted for the capital contributions paid by shareholders when applying for the company's establishment registration, so that creditors could infer the actual property status of the enterprise. The existing corporate capital system has abolished the provisions on the minimum registered capital and the statutory capital verification system, no longer requires shareholders to actually pay their capital contributions, but instead implements the subscription system. As a result, there may be a big difference between the registered capital and the actual assets recorded in the articles of association, the guarantee effect of the registered capital for external debt liability has been weakened, increasing the transaction risk of creditors. Moreover, the uncertainty of the company's property makes it impossible for creditors to judge the company's asset status and solvency based only on the registered capital. Instead, they choose to fully grasp the company's true situation through self investigation to ensure transaction safety and increase the creditors' transaction costs.^[2]

Second, it has aggravated the occurrence of illegal acts of enterprise shareholders. In order to attract capital injection and gain a better competitive advantage, shareholders of the Company usually exaggerate their economic strength by overstating their registered capital. The statutory capital verification system compels shareholders to submit a capital verification report to the registration authority at the time of the establishment of the enterprise to ensure the authenticity of the company's real assets, effectively curbing the occurrence of the above situation to a certain extent. However, in the process of the revision of the Company Law, the mandatory capital verification procedure was abolished, and shareholders' contributions were no longer strictly controlled by intermediaries and registration authorities, so that shareholders became more unscrupulous, and the probability of various illegal and criminal acts increased significantly. [3]The intensification of these capital violations has challenged the company's credit and damaged the relevant interests of creditors.

3. The System Predicament of the Protection of Creditors' Interests in China

One of the main tasks of formulating the Company Law of China is to protect the due interests of the company, shareholders and creditors. However, during the development of the company, the conflict of interests between shareholders and creditors has always existed and cannot be avoided in any case. At first, the Company Law stipulated the minimum registered capital, the paid in registration system, the legal capital verification procedure, etc. In fact, all of them are a safeguard for the legitimate interests of creditors, and are the embodiment of fair and safe values. After the reform of the capital system, the legislators obviously paid more attention to efficiency and gave shareholders greater autonomy to achieve the purpose of raising capital to set up a company, but also exposed the deficiencies of the relevant system for the protection of creditors' interests.

3.1. The Company's Information Disclosure System has Defects

Corporate information disclosure is the direct source and channel for creditors to learn about the specific situation of the company, and also the key basis for them to make scientific decisions in the transaction process. It plays a key role in ensuring the realization of creditor's rights and transaction security. However, the current information disclosure system in China is not complete, and the creditors' right to know the relevant information cannot be fully guaranteed. The existing problems and deficiencies need to be solved urgently.

From the perspective of the scope of information disclosure, the Interim Regulations on Enterprise Information Publicity (hereinafter referred to as the Interim Regulations), adopted and implemented in 2014, for the first time stipulated the information disclosure mechanism of non listed companies in China, making the company's information open to the whole society. However, compared with listed companies, the provisions on the scope and content of information disclosure of non listed companies are too general and not operable. For example, Article 3 of the Interim Regulations clearly states that enterprise information publicity should be true and timely, while the Measures for the Administration of Information Disclosure of Listed Companies set a higher standard for information publicity, that is, to ensure the authenticity, accuracy, integrity, timeliness and fairness of information disclosure; In terms of disclosure content, the Interim Regulations only stipulate that the basic information of the company, such as registered capital, survival status and equity change, should be publicized, but it does not require the disclosure of the company's financial information. This makes it impossible for creditors to accurately judge the actual assets and operating conditions of the company only from the information disclosed by the company. From the perspective of the corporate credit supervision mechanism, at this stage, China's control over corporate capital is basically in a state of complete relaxation. The corporate credit system is mainly maintained and strengthened by listing enterprises that have failed to perform their publicity obligations or whose public content does not have authenticity in the "blacklist". However, whether the credit restraint measures can achieve the expected effect depends on whether the severity of the punishment will deter the company. However, Article 17 of the Interim Regulations stipulates that the punishment for enterprise dishonesty is relatively small, which is not enough to serve as a warning to the company, making it a mere formality.^[4]

3.2. The System of Shareholders' Liability for Capital Contribution is not Perfect

Shareholders' liability for capital contribution refers to the legal consequences that the shareholders of the company should bear if they fail to perform or perform the obligation of capital contribution with defects within the agreed period and still refuse to perform after being urged to do so. In essence,

corporate capital is the amount of capital contributed by shareholders, which is the basis for the operation and development of enterprises. Therefore, a complete system of shareholders' responsibility for capital contribution is an inevitable requirement to protect the interests of creditors and promote the prosperity of enterprises. However, at this stage, the country's institutional arrangements in this regard are not complete and need to be further improved.

First of all, under the current capital system, the legal control over corporate capital has been relaxed, and the registration system of capital contribution subscription has been implemented. The time limit and payment method for shareholders to make full capital contributions are stipulated by the Articles of Association. This means that the law gives the shareholders of the company the right to agree on the time limit for capital payment without any restrictions. At this time, the shareholders are likely to deliberately extend the time limit for capital delivery, and invest the property originally used for capital contribution in other areas to obtain income. What's more, they can take this opportunity to evade the responsibility for capital contribution, thus damaging the interests of creditors and shareholders who have paid in full.^[5]

Secondly, Article 6, Article 13 and Article 18 of the Judicial Interpretation (III) of the Company Law of China stipulate the call system for shareholders' contributions, but the content is relatively simple, and the judicial process is complex and lengthy, which is not conducive to the protection of creditor's rights and business operation.

Finally, if the existing property of the enterprise is not enough to pay off the debts due before the shareholders have paid their capital contributions due, how should the legitimate rights and interests of creditors be protected? This involves the accelerated maturity of the debtor's capital contribution. For example, Article 35 of the Enterprise Bankruptcy Law makes it clear that in the case of enterprise bankruptcy, shareholders will pay their capital contributions in advance and will no longer be subject to the deadline for capital contributions. However, after the commencement of the bankruptcy liquidation procedure, even though the shareholders have paid their capital contributions in advance, it is still difficult to take into account the due interests of all creditors and also need to pay high bankruptcy liquidation costs. In fact, the protection of the legitimate rights and interests of creditors is not strong.^[6]

3.3. Difficulties in the Application of the System of Disregard of Legal Personality

The establishment of the system of disregard of corporate personality is to prevent shareholders from abusing the independent status of legal persons and the limited liability of shareholders to avoid debts maliciously, so as to safeguard the legitimate rights and interests of creditors. Under the background of capital system reform, the provisions on the contribution obligations of enterprise shareholders are no longer as strict as before, which weaken the guarantee function of capital and broaden the scope of shareholders' rights, causing them to maliciously use the independent personality of the company to hinder the realization of creditor's rights. At this time, creditors can "pierce the company's veil" and require these shareholders to bear the corresponding joint and several liability for the company's debts. In the judicial trial, because the legislative provisions concerning the personality denial system are too vague, various problems arise in the specific application of the system.

First, the distribution of the burden of proof of creditors is too heavy. As for the allocation of the burden of proof, in specific practice, except that one-man companies apply the inversion of the burden of proof, creditors of companies usually bear the relevant burden of proof according to the principle of "who claims, who provides evidence". However, the capital system implemented in China at this stage makes it very difficult for creditors to obtain the internal information of enterprises at a high cost, which is beyond the scope of creditors' ability. Finally, creditors may lose the lawsuit due to insufficient evidence.^[7]

Second, the applicable standard of "significant insufficient capital" has not yet been agreed. According to the judicial opinion of the Supreme Court, "significant shortage of capital" is defined as a significant gap between the amount of capital contribution actually paid by shareholders during the existence of the company and the transaction risk that the company may bear. In fact, shareholders overuse the "special" status of legal persons to try to transfer the risk of investment transactions to creditors. In practice, if the creditor takes this as the reason for bringing a lawsuit, it is necessary to consider the real property situation of the whole enterprise. In particular, it is the key to find out the judgment basis of "significant shortage of capital" in the specific application of this problem. Prior to the revision of the Company Law in 2013, China's recognition was mainly based on the registered capital. After the abolition of the minimum registered capital, some experts said that they would

compare the paid in capital with the operating status of the enterprise, so as to judge whether it could constitute a "significant shortage of capital". However, under the subscription system, the time for shareholders to pay their capital contribution is uncertain, which increases the difficulty of the judge's judgment, and even leads to the dilemma of "different judgments in the same case".^[8]

4. On the Protection System of Foreign Debtor's Interests

4.1. The Protection System of Creditors' Interests in the United States

The United States has always been in the forefront of the research on the company law system. Although the United States, as a typical country in the Anglo American legal system, implemented the authorized capital system, in the early days of the United States, company law also required companies to have a minimum registered capital before operating. It was not until 1969 that MBCA abolished the minimum registered capital limit. Since then, most states in the United States have abolished the requirements of the minimum capital system.

4.1.1. Capital Call System

The American capital call system is mainly embodied in the American Standard Commercial Company Law and the Delaware General Company Law. After two revisions, the American Standard Commercial Company Act was finally determined to be the 1998 version of the Standard Listed Company Act, which also witnessed the establishment and development of the authorized capital system in the United States. The current corporate law of the United States cancels the minimum capital system and capital verification procedures, resulting in a relatively loose capital control, which also increases the risk of damage to the interests of creditors. In the United States, the Board of Directors also plays the role of manager in the company. Therefore, the Delaware General Company Law of the United States gives the members of the Board of Directors certain rights to make calls. Articles 156, 162 to 164 of the Delaware General Company Law perfectly establish the capital contribution system of the Board of Directors. Both the subject and the time are given relatively clear provisions, and also explain the relief procedures when the call fails. As stipulated in Article 156 on partly paid shares, any company may issue shares, and at the time of issuing shares, the total amount of consideration and the amount of shares paid shall be stated in the company's books or records. The Company may, at any time after the issue of shares, require the shareholders to pay the consideration for the shares.^[9]

4.1.2. Creditors' Participation in Corporate Governance

Since the 1980s, countries around the world have begun to attach importance to the protection of stakeholders. The new corporate law of the United States also began to require business operators to serve not only shareholders, but also corporate stakeholders. Article 221 of the Delaware General Company Law of the United States stipulates that creditors can be granted certain inspection rights, voting rights and other rights, which means that creditors can also play a similar role as shareholders in the operation of the company.

The "contingent governance" mechanism is another system for American creditors to participate in corporate governance. Contingent governance means that if the company's operating conditions are normal and there is considerable profit, the company's creditors should not give any intervention to the company; If the situation of the company deteriorates and the company is unable to pay off its debts, the creditors can take over the company through some specific legal procedures, that is, the control of the company is transferred to the creditors, who manage and operate the company. At this point, the creditor's rights in the hands of the creditors become the company's equity. But when the company's operating conditions improve, creditors must withdraw and return the company's control to shareholders. However, if the company's operating condition cannot be improved under the operation of creditors, the company will enter into bankruptcy proceedings.

4.2. The Protection System of Creditors' Interests in Japan

Japan's company law is deeply influenced by the continental law system, and the statutory capital system has been applied for a long time before. In 2005, the Japanese Company Code abolished the minimum registered capital system, but Japan did not completely implement the authorized capital system, but made a transition to a compromise capital system. In recent years, Japan has amended its own company law for many times, regulating the protection of creditors' interests step by step.

4.2.1. Meeting of Debenture Holders

The Bondholders' Meeting, also known as the Creditors' Meeting, refers to a temporary resolution body composed of bondholders, i.e. creditors, which can exercise corresponding rights on matters involving the common interests of bondholders. This organization set up this bondholder meeting precisely because it took into account the large number and dispersion of creditors, and the inferior position in the company's operation compared with shareholders. This system helps creditors to supervise the company and ensure that the company can perform its obligations in a timely manner during the duration of its bonds, thereby safeguarding its legitimate interests.

Article 319 of the Japanese Commercial Code stipulates that, on the premise of the approval of the court, the meeting of the bondholders of the company may make a resolution on major matters related to the interests of the creditors of the company. The resolution shall take effect after the approval of the court and shall have effect on all creditors of the company. At the same time, the Japanese Commercial Code has also made corresponding provisions on the scope of personnel with the right to convene, voting procedures and matters of the meeting, convening time and remuneration due.

It can be seen from this that the meeting of corporate bondholders is a temporary collegiate body, so it is not convened regularly, and will be convened only when necessary. At the same time, the meeting required the creditors of the company to make resolutions on matters of common interest, which also explained to some extent that the meeting of corporate bondholders was composed of creditors of corporate bonds at the same time. In addition, the resolution made at the meeting shall be effective for all creditors of the company at the same time, regardless of whether the creditors participate or not.^[10]

4.2.2. Company Profit Distribution System

The company's surplus is an important part of the company's assets, so the distribution of surplus will certainly affect the interests of creditors. The reason is that if the surplus is sufficient, the development of the company will be good, and the creditors will get what they deserve. On the contrary, if the earnings distribution system is relatively loose, shareholders may maliciously transfer the company's property, which will also damage the interests of creditors and the company. Therefore, the Japanese Company Law is very strict in the management of earnings distribution.

Article 446 of the Japanese Company Law specifies the distribution scope of the company's earnings and the distribution proportion and method of different shareholders. In addition, Articles 453 and 459 of the Japanese Company Law stipulate a more strict earnings distribution system, that is, a joint stock limited company can distribute earnings to shareholders, but this distribution system is not only decided by the shareholders' meeting, but also by the board of directors. And when the company's net assets exceed 3 million yen, earnings distribution can be carried out.

Moreover, in order to protect the interests of creditors, the Japanese Company Law also stipulates that creditors can raise objections when the company's surplus distribution results in a decrease in capital and reserve funds. At this time, the company must publicize other creditors. The company either pays off the debts or provides security to ensure the creditor's rights effectively. Once the company illegally distributes the surplus, the law stipulates that in addition to the shareholders' return of the surplus, the executors of the surplus distribution should also bear joint and several liability for the company's negligence in the illegal distribution of profits. However, the executor of the distribution of surplus can only pursue the responsibility from the malicious shareholders after assuming the responsibility, and gives the creditor the right to request the return of the malicious shareholders.

5. The Perfection Path of Creditor's Benefit Protection under the Background of Corporate Capital System Reform

5.1. Improve information disclosure system

5.1.1. Give Creditors Relevant Inspection Right

One of the adverse effects of the reform of the company's capital system is that it increases the difficulty for creditors to judge the actual assets of the company and damages the creditors' right to know. Articles 33 and 97 of the current Company Law clearly state that shareholders have the right to view the company's accounting books and financial reports, but creditors and other interested parties do not have the right to view them. At the same time, in the Interim Regulations, the disclosure of enterprise financial information is optional, which makes it impossible for creditors to accurately infer

the actual property amount and operation of the enterprise. Therefore, it is necessary to protect creditors' access to the company's financial information and accounting books at the institutional level. Article 435 of Japan's Company Law stipulates in detail that creditors have the right to consult enterprise accounting statements. China's legislation can take this as a reference to form a corresponding financial information publicity system. Specifically, the creditor shall be given the right to check the information about the property status of the enterprise at any time; A company that has no solvency can request financial audit; Accountability shall be made for enterprises whose financial fraud and omission of financial records lead to unclear whereabouts of major assets and no reason can be given.^[11]

5.1.2. Improve the Company's Credit Constraint Mechanism

The effective implementation of enterprise information publicity system depends on a sound credit constraint mechanism. The Interim Regulations try to achieve the purpose of urging enterprises to be honest and self-disciplined by entering dishonest enterprises into the "blacklist" and taking corresponding disciplinary measures. However, due to the weak punishment, it does not play a role in deterring companies. In this regard, the "List of Abnormal Business Operations" and the "List of Serious Illegal Enterprises" can be separately stipulated: the company recorded in the "List of Abnormal Business Operations" has not been seriously dishonest, and can be given a preliminary warning by means of public announcement, which also gives the company a chance to correct itself. If the company is included in the "List of Serious Illegal Enterprises", it shows that the company is still unrepentant, so it should take more severe administrative punishment measures on the basis of the former to enhance the deterrence of credit constraints.^[12]

5.2. Improve the System of Shareholders' Responsibility for Capital Contribution

5.2.1. Add the Pre Procedure for Capital Contribution of Directors, Supervisors and Senior Executives

At the present stage, China's provisions on the capital contribution call system for corporate shareholders are relatively broad, and the relevant litigation procedures are long and complex, and the practicality is not strong. Therefore, in order to improve the call system, inspired by the Board of Directors' call system in the Delaware General Company Law of the United States, China's Company Law can add a call procedure for capital contributions by directors, supervisors and senior executives. When the shareholders of the company have not fulfilled their obligations of capital contributions at the expiration of the agreed period or perform their obligations of capital contributions with defects, the directors, supervisors and senior executives should first call the shareholders and agree on a grace period for performance. If the call is still ineffective, they can appeal to the court. The directors, supervisors and supervisors, as the business subjects of the enterprise, should maintain a loyal and diligent attitude towards the company, but the Company Law does not clearly stipulate that they have the responsibility to collect shareholders' contributions. The establishment of the pre procedure for the directors, supervisors and senior executives to call for capital contributions means that China's laws give them the right to call for capital contributions from shareholders, but it is also their obligation. When directors, supervisors and senior executives are negligent in exercising the right to call for capital contributions, they should bear the corresponding liability for compensation. This procedure not only conforms to the principle of corporate autonomy, but also is more conducive to ensuring the realization of creditor's rights.^[13]

5.2.2. Expand the Scope of Application of Accelerated Expiration of Shareholders' Contributions

According to Article 6 of the Minutes of the Civil and Commercial Judicial Work Meeting of the National Court and Article 35 of the Enterprise Bankruptcy Law, the current accelerated maturity system of corporate shareholders' contributions in China mainly occurs in the following three situations: first, the enterprise has no assets available for the people's court to implement, but it does not apply for bankruptcy reasons; Second, shareholders maliciously delay the time of capital contribution after the generation of corporate debt; Third, during the bankruptcy registration period, the debtor paid the capital contribution in advance. However, the above circumstances cannot completely ensure that the legitimate rights and interests of creditors are not infringed. The scope of application of the rule that shareholders of the company pay their capital contributions in advance should be expanded. That is, except for bankruptcy, if the real property of the enterprise is really unable to bear the debts due, creditors can request shareholders who have not yet paid their capital at the agreed time to pay their capital contributions in advance.^[14] In general, the law respects and protects shareholders' term interests,

but their due contribution obligations will not be exempted. In case of conflict between shareholders' term interests and creditors' legitimate rights and interests, the latter should be placed above the former. The advance payment of subscribed capital contribution by shareholders of the Company is not only a practical protection for the legitimate interests of creditors, but also a way to prevent the Company from entering bankruptcy liquidation procedures and exiting the market.

5.3. Perfect the System of Disregard of Corporate Personality

5.3.1. Moderately Reduce the Burden of Proof of Creditors

Based on the principle of "who claims, who provides evidence", creditors generally bear the burden of proof in relevant judicial cases. However, the creditors do not participate in the actual operation and management of the enterprise, and the internal financial information of the enterprise is also very limited, which makes it difficult for them to find useful evidence to prove the fact that shareholders really have malicious abuse, thus causing judicial injustice. In view of this problem, the burden of proof of the creditor can be reduced to a certain reasonable extent. He is only required to submit preliminary evidence to prove that the shareholders of the company are indeed suspected of committing malicious acts, and then the shareholders bear the responsibility to prove the legitimacy of their own acts and that such acts have no causal relationship with the company's interests. If the shareholder fails to provide relevant evidence, it indicates that it has maliciously used the independent personality of a legal person, and the shareholder shall be jointly and severally liable for this.^[15]

5.3.2. Specify the Applicable Standard of "Significant Capital Shortage"

The essence of "significant shortage of capital" is that the shareholders of the company try to pass on the operational risk to the creditors. It consists of three elements: the amount of capital contribution actually paid by the shareholders, the capital scale required by the company's normal business activities, and the significant difference between the two. In practice, first of all, it should be clear that the reason why the company is insolvent during its existence is the excessive abuse of shareholders' rights rather than mismanagement. The former can request shareholders to bear joint and several liability, while the latter applies to enterprise bankruptcy procedures, for which shareholders only have limited liability. Secondly, the financing and borrowing behavior generated in the company's operating activities will not naturally lead to this situation, and it is necessary to make flexible judgments according to the actual operating conditions of the company at this time. Finally, even if the company's borrowings obviously exceed the total amount of existing assets, it cannot simply be considered that shareholders are maliciously exploiting the corporate personality. As long as these debts will not affect the normal operation and development of the company, the company will still have the ability to make continuous profits and pay off debts, so this kind of situation does not meet the applicable conditions of "significant shortage of capital".^[16]

6. Conclusions

The reform of the corporate capital system has brought considerable impact and challenges to the protection of the due interests of creditors in China, making creditors bear too many risks in the transaction process, but their own interests cannot be effectively maintained and protected. At present, how to strengthen the protection of the legitimate interests of creditors, ease the conflict of interests between shareholders and creditors, and give consideration to efficiency, fairness and security value is the focus of this study and discussion. Based on this, the state should further improve relevant systems such as enterprise information disclosure, shareholders' liability for capital contribution and denial of corporate personality, comprehensively ensure the due rights and interests of creditors, and promote the stable, long-term and orderly development of China's market economy.

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