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THE 1-YUAN CHINESE COMPANY:

IMPACTS OF PRC COMPANY LAW AMENDMENTS ON SHAREHOLDER LIABILITY AND CREDITOR PROTECTION

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Abstract:

This article analyses recent reforms to the *PRC Company Law* in 2014, which removed minimum capital requirements for most limited liability companies in China. Using Chinese court cases, the article demonstrates that previous high mandatory minimum capital levels did in fact protect creditors by making shareholders who abused the capital rules personally liable for unpaid corporate debts. The Chinese government clearly intends its newly introduced system of public disclosure of information by enterprises to replace the cumbersome registered capital requirement. This will allow investors to check the credit-worthiness of enterprises before they invest -- a more market-based, "buyer beware" approach similar to jurisdictions such as the UK, US and Australia. However, loopholes in the new enterprise disclosure system mean that Chinese courts will still need to wrestle with the difficult issue of liability for intentional corporate under-capitalization that has troubled courts in so many other countries. At the same time, doing away with minimum capital requirements removes a major financial obstacle for those seeking the benefits of incorporation, and may help to stimulate a new wave of entrepreneurialism in China.

Keywords:

China – company law – creditors – shareholder liability – registered capital

The 1-Yuan Chinese Company: Impacts of PRC Company Law Amendments on Shareholder Liability and Creditor Protection

I. INTRODUCTION

Following amendments to the *Company Law of the People's Republic of China* in 2014 (the "2014 *Company Law*"), which removed minimum registered capital requirements for most limited liability companies ("LLCs"), it is now theoretically possible to establish a Chinese company with only 1 yuan of capital.[1]

[1] The 2014 amendments were exclusively aimed at removing minimum capital requirements and adjusting any provisions of the *PRC Company Law* that referred to minimum capital. See Zhou Tian, "Gongsifa xiugai yi'an huo tongguo: zhuce renjiaozhi queli" (Proposal to amend the Company Law is approved: a subscribed capital system will be established), *Caixin Online*, 29 Dec 2013, available at: http://china.caixin.com/2013-12-29/100623093.html; and Ron Cai & Alan Huang, "Amendments to the Company Law of the People's Republic of China" (28 Jan 2014) Davis Wright Tremaine LLP, Hong Kong, available at: http://www.dwt.com/Amendments-to-the-Company-Law-of-the-Peoples-Republic-of-China-01-28-2014/. There will be some exceptions to the new rule, including joint stock companies (which are the Chinese version of public companies), and companies in certain specified businesses, such as banks, various kinds of finance companies, securities firms, insurance firms, direct sales companies, and labour

This is a significant change to the Chinese corporate regulatory regime. It is not unusual in civil law jurisdictions to require relatively high levels of registered capital – in Germany, the *Gesellschaft mit beschränkter Haftung* (GmbH), which is roughly equivalent to the LLC, still sets a minimum capital requirement of 25,000 euros.[2] Yet China's capital requirements were among the highest in the world until the 2014 amendments. Prior to 2006, the PRC *Company Law* required shareholders establishing an LLC to collectively pay in at least 500,000 yuan (approx. 60,000 euros, or US$80,000) in cash or equivalent-value assets over a regulated time period in order for the LLC's registration to be valid.[3] While the 2006 *Company Law* reduced this amount to 30,000 yuan for an LLC with two or more shareholders, and 100,000 yuan for a single-shareholder LLC, no opportunity was given for previously registered companies to reduce

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agencies. These companies will continue to follow the current capital rules for their specific industry or type. See State Council, *Guowuyuan guanyu yinfa zhuce ziben dengji zhidu gaige fang'an de tongzhi* (Notice of the State Council on the issuance of the reform plan to amend the registered capital registration system), Guofa (2014) No.7, available at: http://www.gov.cn/zwgk/2014-02/18/content_2611545.htm [hereafter "State Council Notice"].

[2] Approx. RMB 210,000 yuan. By contrast, the German *Aktiengesellschaft*, which is equivalent to the Chinese joint stock company, requires minimum capital of 50,000 euros. Germany introduced a new corporate form in 2008, the *Unternehmergesellschaft* (UG), which can be established with only 1 euro capital. The UG, however, must create a legal reserve in its balance sheet amounting to at least 25% of its annual surplus. See Martin Schulz and Oliver Wasmeier, *The Law of Business Organizations: A Concise Overview of German Corporate Law* (Springer, 2012) at 40, 80 and 90.

[3] See the 1994 *PRC Company Law*, Art 23. Certain industries had lower capital requirements: 300,000 yuan for retail companies, and 100,000 yuan for technology development, consulting and services companies.

their capital without going through a cumbersome procedure involving shareholder and creditor approval.[4]

In the official announcement of the 2014 amendments, the reasons given for removing minimum capital requirements included making the company registration process cheaper, more efficient, and less complex, reducing government interference in the market decisions of investors, and replacing a paternalistic administrative regulatory system with a market-based disclosure and monitoring system. The ultimate aim is to stimulate innovation among businesses and foster economic development.[5]

These reasons could have been drawn almost verbatim from the pages of vocal critics of the European company law legal capital rules.[6] These critics have roundly attacked the normal justification for high minimum registered capital levels, which is that the capital provides a financial "buffer" to protect unsecured or involuntary creditors. They point out the most serious flaw in this creditor protection argument: the company's capital is not retained in a segregated fund, but may be used by the company for its normal business purposes. Thus, if the company is

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[4] For minimum capital under the 2006 *PRC Company Law*, see Arts 24 & 59. For the general prohibition on reducing capital below the minimum, see Art 36; and for the procedure to reduce excess capital, see Art 178. For joint stock companies, minimum capital levels were even higher, at 10 million yuan prior to 2006 and 5 million yuan since 2006: see 1994 *PRC Company Law*, Art 78; 2006 *PRC Company Law*, Art 81.

[5] See State Council Notice, n 1.

[6] See, for example, the heated attack on European minimum capital rules in Jonathan R. Macey and Luca Enriques, "Creditors Versus Capital Formation: The Case Against the European Legal Capital Rules," (2001) *Faculty Scholarship Series* Paper 1413. Available at: http://digitalcommons.law.yale.edu/fss_papers/1413.

poorly managed, its liabilities will soon outweigh its capital, and any security that the capital was supposed to provide to creditors will prove illusory.[7]

But is it really true that high registered capital requirements provide no protection for creditors, especially in the Chinese corporate environment? And if they do protect creditors, what is the likely impact of removing those minimum capital levels altogether? In this paper we will first analyze over one hundred recent Chinese court cases on unauthorized capital transactions to demonstrate that high minimum capital requirements have in fact offered a level of protection to company creditors, though not necessarily in ways that either proponents or detractors of the capital rules would expect. In light of this analysis, we then offer a critique of the contractarian approach adopted by the 2014 *Company Law* amendments and accompanying "Provisional Rules for Public Disclosure of Information by Enterprises."[8] In the conclusions, this paper would offer some thoughts as to why the Chinese government made those amendments.

[7] Macey and Enriques, n 6, p 1186. Macey and Enriques give several other criticisms of the legal capital rules: see part III of their article. They conclude, at p 1165: "The European Union should abandon its current legal capital rules in favor of more flexible, contractarian rules in order to facilitate entrepreneurship and business development in European markets."

[8] PRC State Council "Qiye xinxi gongshi zanxing tiaoli" (effective 1 October 2014), available online at: http://www.gov.cn/zhengce/content/2014-08/23/content_9038.htm (accessed 20 January 2016, hereafter "Disclosure Rules").

II. SHAREHOLDER LIABILITY FOR UNAUTHORIZED CAPITAL TRANSACTIONS

In our recent survey of published Chinese court judgments on shareholder liability decided between 2006 and 2012, we found that a significant proportion of cases in our dataset (103 out of 355 cases, or 29%) involved claims that shareholders had engaged in unauthorized capital transactions.[9]

In these capital transaction cases, the vast majority of defendant companies were registered prior to 2006, hence they were subject to the hefty minimum capital requirements of the 1994 *PRC Company Law*, in other words, at least 500,000 yuan for most kinds of LLC.

Though it is certainly true that creditors can gain no comfort from high levels of registered capital when the capital has been frittered away on risky business ventures, the Chinese court cases on unauthorized capital transactions show that some protection may be provided to creditors if they can prove there was no business justification for withdrawal of capital from the company, or that capital was never really paid into the company in the first place. In these situations, the company's shareholders will be personally liable up to the capital amounts that they either removed from the company or failed to pay into the company. This is because courts

[9] For this survey, we used Westlaw China, one of the largest national databases of Chinese court judgments currently available. We searched the Chinese terms for "Company Law Article 20" (*Gongsifa di ershi tiao*), returning 412 judgments in total. We then removed any lower court judgments where the appeal was also published, and a few duplicated judgments, leaving a total of 355 judgments on the shareholder liability provisions.

have consistently treated the failure of shareholders to pay in capital or the unauthorized removal of capital as "abuse" by shareholders leading to personal liability under Art. 20.[10]

We located a total of 77 cases where courts found shareholders personally liable for corporate debts due to failure to pay in the required capital amount or unauthorized removal of capital. In other words, in almost 75% of published cases where creditors were unable to recover their debt from the company due to alleged unauthorized capital transactions, the shareholders were ordered to pay the amounts owing to the creditors.[11]

Cases on shareholders' failure to pay in capital are less common than those on unauthorized capital reductions because until the 2014 amendments, the *Company Law* set out a rigorous procedure for obtaining a capital certificate from an authorized capital appraisal agency before a company could be registered. However, there are 20 cases in our data set where

[10] *PRC Company Law* Art 20 states: "20.1: A company's shareholders shall obey the law and administrative regulations and the company's constitution, shall exercise their shareholders' rights in accordance with the law, and … must not abuse the separate legal personhood of the company or their own limited liability to harm the interests of the company's creditors .… 20.3: Company shareholders who abuse the separate legal personhood of the company or their own limited liability to avoid debts, seriously harming the interests of the company's creditors, shall become jointly liable for the company's debts."

[11] There were 103 cases where creditors made such a claim, and in 77 of these cases the claim was upheld, a 74.8% success rate for claimants.

shareholders somehow managed to avoid paying in the required capital amounts, doubtless due to fraudulent collusion of company promoters with their chosen capital appraisal agency.[12]

Much more common are cases where shareholders removed part or all of the paid-in capital soon after the company was registered (57 cases in our data set). Obviously, with the minimum capital levels set so high, many individual shareholders in small LLCs would find it difficult to pool together 500,000 yuan. It is likely that they obtained their capital funds from family, friends, or unauthorized private lenders, and would be under pressure to repay the money as soon as possible. Or they sought to shield the money from creditors by paying it out to another company that they controlled. With the much larger minimum capital requirement for joint stock companies, the temptation to engage in this kind of fake capitalization would be even stronger.[13] Typical examples include a Qingdao company where the two shareholders removed the entire 10 million yuan capital just one day after it had been appraised, and paid it over to two other companies for no justifiable business reason;[14] and an Anhui company where the two shareholders purportedly doubled the capital of the company by paying in 5 million yuan, but

[12] For example, a decision of the Shuangfeng County People's Court in Hunan where only 100,000 of the required 300,000 yuan capital was paid in: (2010) Shuang min er chu zi di 325 hao; and the Qingpu District People's Court in Shanghai, where only 2 million of the registered 5 million yuan capital was paid in: (2010) Qing min er shang chu zi di 1923 hao.

[13] For joint stock companies, see n4 above.

[14] Qingdao Intermediate Court, Shandong Province: (2011) Qing min er zhong zi di 116 hao.

after the independent accountants had signed off on the company accounts, they then claimed the 5 million yuan was only a temporary loan and repaid it to themselves.[15]

In virtually all of these cases involving unauthorized capital transactions, courts limit shareholders' liability to the amount that each shareholder had agreed to pay in to the company when they subscribed for the shares. This cap on liability is not stated in PRC *Company Law* Art. 20, on shareholder liability, or Art. 33, which prohibits removal of capital, but is set out in the *Third Regulation of the SPC on Several Issues in the Application of the PRC Company Law* (the "Third SPC Regulation"), which became effective on 8 March 2011. Articles 13 and 14 of this Regulation deal with the failure to pay in capital and the removal of capital, and make it clear that the shareholders' liability is limited to the amount they have failed to pay in or the amount they have removed from the company.

Neither the SPC nor the previous judgments provide a principled justification as to why such a cap on liability is allowed for shareholders engaging in unauthorized capital

[15] Xuzhou Intermediate Court, Jiangsu Province: (2011) Xu shang zhong zi di 0085 hao.

transactions.[16] They seem to view the unpaid capital amounts or removed funds as outstanding amounts due on the shares, like partly paid shares in overseas jurisdictions.[17]

In practice, however, the negative impact on creditors of imposing this liability cap has been minimal in the vast majority of previous cases. Most cases in our data set involved companies formed with at least 500,000 yuan of registered capital – often several million yuan – and making shareholders liable to repay the company's debt to the creditor plaintiff up to the amount of their registered capital was generally more than sufficient to cover the full debt amount. In 52 out of 58 cases in our data set (almost 90%) where courts stated that the shareholders' liability was capped at their capital investment amount, the creditors were still able to receive the full amount of their debt from those shareholders, including interest.

Secondly, shareholders' liability is not totally limited in fact, because these cases are decided under the statutory veil-lifting provision in Art. 20. This means that the creditor can seek payment from the defendant shareholders directly. If it was simply a case of shareholders making up a capital shortfall to the company, the court would order them to reimburse *the company*, not

[16] No such cap is allowed for other shareholder breaches of *Company Law* Art. 20: see [citation removed to preserve anonymity]. Indeed, in his study of veil-lifting in China, Hui Huang excludes these capital transaction cases from his data set of veil-lifting cases, since he argues that the courts are merely requiring shareholders to make up the amount of their original agreed investment, hence they still maintain their limited liability. See Hui Huang, "Piercing the Corporate Veil in China: Where Is It Now and Where Is It Heading?" 60 *American Journal of Comparative Law* (2012) 743 at 747.

[17] For example Australia, where shareholders remain liable for calls on the amounts unpaid on their partly paid shares: see *Corporations Act 2001* (Commonwealth), s.254A, 254M.

the creditor plaintiff. This is a crucial distinction, because it means that where several different creditors sue the same company for unpaid debts in separate cases, the shareholders may be liable up to the amount of their agreed capital *in each case*. As a result, they may be forced to pay out an aggregate amount much larger than the agreed registered capital. This occurred in a series of four cases involving shareholders of Zhejiang Beautiful Homes and Gardens Furniture Products Co Ltd, decided by the Jinhua Intermediate Court in Zhejiang Province, where two shareholders were jointly liable for aggregate debts of over 2 million yuan in four cases involving the same company, even though their capital shortfall was only around 1.2 million yuan; and another group of five cases involving shareholders of Shanghai Subokai Enterprise Development Co. Ltd, decided by the Hongkou District People's Court in Shanghai, where the two former shareholders and the current transferee shareholder were jointly liable for aggregate debts of over 800,000 yuan, though the company's total capital was only 500,000 yuan.[18]

So despite the cap on liability, it is still plausible to refer to these cases as examples of veil lifting, because shareholders are being found personally liable to creditors rather than to the company, and in some situations they may be liable for considerably more than the amount they agreed to pay on their shares. More importantly, the high minimum capital amount did in fact protect creditors in cases involving unauthorized capital transactions, as it allowed them to sue shareholders personally when they could not recover from the company.

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[18] See (2011) Zhe jin shang zhong zi di 38, 39, 40 & 41 hao (Jinhua Intermediate Court); and (2011) Hong min er shang chu zi di 4, 417, 418, 420 & 421 hao (Hongkou District People's Court).

III. NO SHAREHOLDER LIABILITY FOR CAPITAL DEPLETION ON BUSINESS VENTURES

Although courts found shareholders liable to creditors in 77 cases of unauthorized capital transactions, there were also 26 cases in our data set where plaintiffs failed to obtain relief from shareholders, approximately one quarter of the total. In 13 of these cases, the courts found plaintiffs had not provided convincing evidence that the depletion of the company's assets was due to unauthorized removal of capital by shareholders; in another 7 cases, the defendants presented contractual and other evidence proving that payments made to parent companies or affiliated companies were justified in the normal course of business; and in 2 other cases, the court found that capital was temporarily removed by shareholders but repaid in full later.

These examples show that Chinese courts are generally alive to the distinction between capital used for the company's business purposes and unauthorized removal of capital by shareholders. The mere fact that a company has effectively become an empty shell does not automatically lead to a finding of shareholder liability. As the Sanmenxia Municipality Intermediate Court put it in a 2010 decision:[19]

> Aluminum Industries Corp was a legally registered independent enterprise legal person, and once the shareholders had transferred their capital investment into the company, this became the company's financial asset, and Aluminum Industries Corp

[19] (2010) San min san zhong zi di 238 hao.

> had the legal right to hold, use, profit from, or dispose of this asset. It also had the capacity to independently develop business with other entities. The transfers of funds from Aluminum Industries Corp to its shareholder Tianrui Corp and to its ultimate holding company and other [related] companies were either loans or basic trading relationships. … Based on the auditing report … and evidence of the transfers provided by Tianrui Corp, it is clear that all the monies paid out to Tianrui and its holding company were fully repaid later, and justifiable [business] explanations were provided for how the majority of those funds were used. Therefore, Tianrui Corp's behavior did not amount to unauthorized removal of capital.

Based on the cases surveyed above, therefore, it is clear that having very high minimum capital levels in conjunction with a broad statutory veil-lifting provision has helped to protect creditors of Chinese companies in a significant number of cases where the assets of the companies were not sufficient to repay their debts. We will now examine the likely impact of the 2014 amendments to the *PRC Company Law*.

IV. IMPACT OF 2014 *COMPANY LAW* AMENDMENTS ON CREDITORS

Clearly, under the 2014 *Company Law* amendments, veil lifting on the grounds of unauthorized capital reduction or failure to pay in capital will no longer protect creditors of LLCs in the way outlined above if the company has effectively no registered capital in the first place.[20] The Supreme People's Court ("SPC") will need to provide guidance on how the removal of minimum capital requirements will impact on shareholder liability in under-capitalized companies, as currently shareholders who fail to pay in capital are only liable up to the amount that they subscribed for, which could now be as low as 1 yuan.[21] This is a huge difference from previous cases where minimum capital levels were in the hundreds of thousands of yuan.

It is true that between 2006 and 2014, capital levels were already significantly reduced, with most LLCs (except single-shareholder companies) only needing to inject 30,000 yuan to be registered.[22] This amount would not have been sufficient to cover the vast majority of debts in the cases we analyzed above, and therefore one could argue the 2014 amendments only emphasized the new reality that creditors could no longer expect any significant relief from suing shareholders of under-capitalized companies.

But if this kind of protection is no longer available, how will creditors be protected from unscrupulous shareholders who set up empty shell companies that subsequently fail to pay their debts? This question is particularly important for small trade creditors who are less able to engage in contractual means to protect themselves when doing business with or offering their services to companies.

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[20] For details, see *supra* Zhou, n 1; and State Council Notice, n 1.

[21] *Third SPC Regulation*, Arts. 13-14.

[22] 2006 *PRC Company Law*, Art 24. For single-shareholder companies, the amount was 100,000 yuan (Art 59).

Zhang Mao, Director of the Chinese corporate regulator, the State Administration for Industry and Commerce (SAIC), recently declared that removing minimum capital requirements would not lead to an increase in fraud against creditors through the use of empty shell companies. He pointed to similar experiments that have already taken place in Shenzhen and Guangzhou since early 2013, which resulted in huge increases in company registrations but no evidence of increased fraud by company controllers.[23] However, it may be too early to tell whether fraud has increased, as most unpaid debt cases will not reach the courts until several years after a company is registered. And Zhang admitted that a more effective corporate supervision system would also need to be implemented to ensure that problems do not arise in the future.[24]

The Chinese government has apparently turned its mind to this issue, introducing a new corporate disclosure system that will make it easier for potential creditors to check the creditworthiness of a company. The PRC State Council recently issued a set of regulations entitled "Provisional Rules for Public Disclosure of Information by Enterprises."[25] If implemented, these Rules would require all business enterprises to submit annual reports to SAIC containing detailed information about their business, including its contact information,

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[23] Cited in Wen Jing, "Gongshang zongju juzhang: 'Gongsifa' jiang zhuajin xiugai" (Director of SAIC declares: *Company Law* will be amended at the first opportunity), Caixin Online (7 Nov 2013), available at: http://china.caixin.com/2013-11-07/100601934.html .

[24] Wen, *supra* n 23.

[25] PRC State Council "Qiye xinxi gongshi zanxing tiaoli" (effective 1 October 2014), available online at: http://www.gov.cn/zhengce/content/2014-08/23/content_9038.htm (accessed 20 January 2016, hereafter "Disclosure Rules").

current operational status, shareholders, capital amounts, acquisitions of shares or investments in other enterprises, and any share transfers (if the company is not registered on a public market). All this information should also be made available to the public, presumably on the website of each business enterprise.[26] Detailed financial information must also be provided in these annual reports, including number of employees, assets, liabilities, guarantees and other security provided to other entities, owners' equity, business revenues, gross and net profits, and taxes paid. However, the detailed finances need only be submitted to SAIC; enterprises can choose for themselves whether or not to disclose such financial information to the public.[27]

Government regulators must also publicize various kinds of information submitted to them by all business enterprises in China, including all registered LLCs and joint stock companies. In particular, SAIC would have to disclose to the public details of all companies' registered shareholders, any registered personal property security agreements of the company, and any administrative penalties exacted against companies.[28] Finally, SAIC would have the power to place business enterprises that do not comply with these disclosure duties on a publicly available list of "abnormally operated" businesses for up to three years, and if the non-compliance continues after three years, or if SAIC has suspended its business license for non-compliance, the enterprise would be placed on a list of "enterprises that have seriously breached the law."[29]

[26] Disclosure Rule 8.

[27] Disclosure Rule 8(7).

[28] Disclosure Rule 6. Other relevant government institutions would likewise be required to publicly disclose details of any licences granted to business enterprises and any administrative sanctions ordered against them (Rule 7).

[29] Disclosure Rule 17.

Potential creditors and investors would see this as a warning to keep their distance from enterprises on these name-and-shame lists, and government institutions would be discouraged from granting them tenders or procurement contracts.[30]

This proposed disclosure system appears to be much broader than those in place in most other jurisdictions.[31] If properly implemented, these rules should create a more market-based system for protecting creditors and investors than the minimum registered capital provisions in previous versions of the *Company Law*. Company founders would be free to establish under-capitalized companies, but in theory it would be extremely easy for outsiders dealing with such companies to check their financial situation and levels of indebtedness before supplying goods or services to them. They would no longer have to rely so much on the uncertain remedy of lifting the corporate veil to find shareholders personally liable, as they would be less likely to contract with a poorly capitalized, heavily indebted company in the first place.

However, as noted above, these rules include a major loophole that allows companies to opt out of having much of their detailed financial information disclosed to the public.[32] There is

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[30] Disclosure Rule 18.

[31] In most other jurisdictions, such as the UK, US, Canada and Australia, only public companies or reporting issuers need to publicly disclose information about their finances and shareholders; private companies generally need only provide minimal information to their relevant corporate regulator, such as company registered office, and details of shareholders, directors and company secretary. Having said this, most jurisdictions also have a personal property registry where potential creditors can conduct searches for prior secured interests registered against the company.

[32] Disclosure Rule 8(7). Companies can opt out of publicly disclosing their total assets and liabilities, total sales, business revenues, gross and net profits, total taxes paid, and shareholders' equity.

also a rather ambiguous provision allowing information that touches on "state secrets, national security or public interest" to be kept confidential with the approval of the authorities.[33] It is true that listed Chinese companies must already disclose their financial information under stock exchange rules, thereby protecting public investors and creditors, and most other jurisdictions allow small closely-held firms to keep their financial information private. However, many of China's largest enterprises are unlisted state holding companies. These firms should not be permitted to keep their finances private, as their opaqueness has facilitated numerous cases of corruption among Chinese state-owned enterprise executives in recent years.[34]

Another uncertainty is that in their current form the rules spread responsibility for implementing the new information disclosure system over several different government agencies and among governments right down to the local levels.[35] This may result in implementation delays and multiple different databases dotted all over China rather than a unified online system, consequently creating difficulties in locating comprehensive information about companies with operations in several different provinces.

Finally, the proposed rules rely heavily on companies providing accurate information to SAIC, for example, about share transfers and capital transactions, but as noted in our discussion of unauthorized capital transactions above, there are many cases where shareholders and

[33] Disclosure Rule 3. This rule even suggests that "commercial secrets" and "personal privacy" may also be protected, though only with the approval of higher level authorities.

[34] [Citation removed to preserve anonymity]

[35] Disclosure Rules 4-5.

company legal representatives have failed to report such changes accurately despite the risk of personal liability under Art. 20.

So even if these disclosure rules are fully implemented in an institutionally efficient way, the market will not solve all potential problems, and courts will still need to rule on various kinds of shareholder "abuses" of the corporate form that prejudice creditors. The Supreme People's Court will need to formulate a principled approach to shareholder liability in cases involving intentionally under-capitalized ("one-yuan") companies, a controversial issue that has caused much judicial ink to be spilled in other jurisdictions.[36]

V. CONCLUSION AND COMMENTARY

This paper argued that previous high mandatory minimum capital levels protected creditors by making shareholders who abused the capital rules personally liable for unpaid corporate debts. The removal of minimum capital levels has not yet led to a spate of cases involving empty shell companies defrauding creditors. The Chinese government clearly intends its newly introduced system of public disclosure of information by enterprises to replace the cumbersome registered capital requirement. This will allow investors to check the credit-worthiness of enterprises before they invest, a more market-based, "buyer beware" approach. However, loopholes in the new

[36] For discussions on the difficulties of fixing shareholder liability for under-capitalization elsewhere, see Bruce Welling, *Corporate Law in Canada: The Governing Principles* (Mudgeeraba, Queensland: Scribblers Publishing, 2006) at 152-7; Paul L Davies, *Gower and Davies: Principles of Modern Company Law* (9th ed., London: Thomson: Sweet and Maxwell, 2012) at 223; and the famous 1966 New York Court of Appeal decision *Walkovszky v Carlton* (26 NYS 2d 585).

enterprise disclosure system mean that Chinese courts will still need to wrestle with the difficult issue of liability for intentional corporate under-capitalization that has troubled courts in so many other countries.

Furthermore, whilst a one dollar company is not a new corporate law concept and is prevalent in many jurisdictions around the world, it is a paradigm shift for the PRC. This has to be understood in the context of the PRC's economic outlook. Specifically, there were clear signs of Chinese economic slowdown as early as 2013, in conjunction with large numbers of university graduates coming into the work force; in 2014 there were over 6 million, increasing to over 7 million in 2015, and the projection for 2016 is to reach 8 million. Something had to be done to increase employment opportunities and economic growth. The Chinese government's push for new graduates to become entrepreneurs was one such measure. Logically, removing capital requirements for incorporation was a sensible reform given that young university graduates might not be able to raise vast sums of money for their startups. Tony Fu previously argued that entrepreneurship was instrumental in Hong Kong's economic development from a "barren rock" into a regional business hub and global city.[37] Maybe the Chinese government is hoping for something similar to transpire in the Mainland. Whilst previous company law reforms in 2005 had focused on the rights and liabilities of key stakeholders like shareholders and creditors,[38] the

[37] Tony Fu-Lai Yu, *Entrepreneurship and Economic Development in Hong Kong* (London: Routledge, 1997)

[38] For details of how these shareholder and creditor remedies have been applied by Chinese courts, see two papers by Colin Hawes, Alex Lau and Angus Young, ""Lifting the Corporate Veil in China: Statutory Vagueness, Shareholder Ignorance, and Case Precedents in a Civil Law System," *Journal of Corporate Law Studies* vol.15.2 (2015): 341-376; and "The Chinese 'Oppression' Remedy: Creative Interpretations of Company Law by Chinese Courts," *American Journal of Comparative Law* vol.63.3 (2015): 201-42.

one yuan company could generate further positive outcomes by changing the ‘rules of the game’ to inspire a new generation of entrepreneurs in China, and more importantly, to turn around a slowing Chinese economy.