Understanding Chinese Company Law

Third Edition

Gu Minkang

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General Introduction

I. SHORT HISTORY OF CHINESE COMPANY LAW

The People's Republic of China (hereinafter referred to as "China") did not have any formal national company law until the National People's Congress (hereinafter referred to as the "NPC") promulgated the Company Law of the People's Republic of China in 1993 (hereinafter referred to as the "1993 Company Law")[1] and substantially amended it four times.[2]

In the more than twenty years since the implementation of the Chinese company law, many achievements have been made both in theory and in practice. In terms of theoretical research, there are many publications in Chinese and English, addressing various issues related to Chinese company law. However, it is regrettable to see only a few English books comprehensively discussing this particular topic.[3] Furthermore, it is even rarer to see

1. The Company Law of the People's Republic of China (*Zhonghua Renmin Gongheguo Gongsi Fa*) was adopted on 29 December 1993 by the Fifth Session of the Standing Committee of the Eighth NPC and took effect on 1 July 1994.
2. The first amendment was made on 25 December 1999 by the Thirteenth Session of the Standing Committee of the Ninth NPC. The second amendment was made by the Eleventh Session of the Standing Committee of the Tenth NPC on 28 August 2004. The third amendment was made by the Eighteenth Session of the Standing Committee of the Tenth NPC on 27 October 2005. The fourth amendment was made by the Sixth Session of the Standing Committee of the Twelfth NPC on 28 December 2013.
3. At the time of revising this book, a few English books on the Chinese Company Law were discovered in the library at the City University of Hong Kong: (1) Shaowei Lin, *Derivative Actions in Chinese Company Law*, Kluwer Law International (Alphen aan den Rijn, Netherlands), 2015; (2) Jane Fu, *Corporate Disclosure and Corporate Governance in China*, Wolters Kluwer (Alphen aan den Rijn, Netherlands), 2010; (3) Peter Koh Soon Kwang,

an English book discussing Chinese company law using a comparative approach or method. Therefore, due to language constraints and cultural differences, many foreign law students, legal practitioners, and other legal professionals are not able to obtain a comprehensive picture of Chinese company law and cannot fully understand its background.

China's national company law has a short history. However, there is no doubt that the modern concept of the company has played a very important role in standardizing Chinese enterprises, especially state-owned enterprises (hereinafter referred to as "SOEs"). As a modern business form, the company was initially used as a tool to reform SOEs in China.[4] In other words, companies were recommended as an effective way to combine public ownership with the market economy.[5] Even though Chinese company law contains theories and concepts that are similar to those of Western countries, it needs more substantial improvements in the near future, because loopholes and ambiguities have been discovered from time to time. When the 1993 Company Law was promulgated, one author pointed out that although China had spent fifteen years drafting the law, it would need another fifteen years to seriously implement it.[6] His prediction was absolutely right, as evidenced by the four amendments made over the subsequent twenty years. A better interpretation of this statement is that China required time to accumulate sufficient experience of implementing and improving the law, and now it seems that the time is ripe to comprehensively review that law.

Major Issues in Company Law, Sweet & Maxwell (Singapore), 2010; (4) Chao Xi, *Corporate Governance and Legal Reform in China*, Wildy, Simmonds, and Hill Publishing (London), 2009; and (5) Jian Fu and Jie Yuan, *PRC Company and Securities Laws: A Practical Guide*, CCH (Singapore), 2006.

4. Many scholars understand that one of the fatal problems of the 1993 Company Law was its use to specifically restructure SOEs. As a result, although the 1993 Company Law was designed to be suitable for the needs of SOEs, it probably went against the principles of the market economy. See Fang Liufang, "Gain New Insights Through Restudying Old Materials—Comments on Reform of the Company Law" (*Wenguzhixin—tan gongsi fa xiugai*), in Guo Feng and Wang Jian (eds.), *Vertical and Horizontal Discussion on Reform of the Company Law* (*Gongsi fa xiugai zhongheng tan*), The Law Press (Beijing), 2000, p. 40.
5. "The Several Major Decisions of the Central Committee of the Chinese Communist Party regarding the Reform and the Development of SOEs" (*Zhonggong Zhongyang guanyu guoyou qiye gaige he fazhan ruogan zhongda wenti de jueding*), *Guangming Daily*, 27 September 1999, p. 1.
6. "State Enterprise Taking the Corporate Plunge Faces Numerous Difficulties", *South China Morning Post*, 4 June 1994.

II. OVERVIEW OF EXISTING PROBLEMS

The 1993 Company Law cannot be regarded as a well-drafted law for various reasons, such as its short history, insufficient experience, and changeable circumstances during the transitional period. Another major reason was that China needed to protect existing SOEs rather than get rid of them. Thus, many provisions under the 1993 Company Law cannot be considered as compatible as those of developed countries or regions.

Comments have been made that the 1993 Company Law contained at least the following main problems.

- It was the product of a planned economic system and reflected state administrative interference, especially interference in establishing companies.
- It was closely related to SOEs. The 1993 Company Law was used as a justifiable tool to reform the SOEs. Hence, it offered too many advantages and benefits to the SOEs, which were not compatible with the idea of a modern market economy. Other company investors were less protected.
- The threshold for establishing a company was much too high.[7] The minimum statutory registered capital was said to be the highest in the world. Individuals considered that this threshold was a heavy economic burden and provided no incentive to establish their companies. This threshold was fundamentally unsuitable for the quick development of private enterprises in China.
- The 1993 Company Law contained too many systemic problems. For example, it limited a company's ability to invest in other enterprises. The Law required that such investments not exceed 50 per cent of the company's net assets.[8] This kind of limitation was not often seen in other jurisdictions.
- Other problems included a limitation on transferring shares by promoters; a limitation on transferring shares by senior managers; a limitation on the scope of business operations; a compulsory allocation of statutory common reserve funds, which injured the interests of shareholders; a limitation on the statutory powers of boards of directors and managers, which went against the principle of company autonomy; and a weak protection of small shareholders with no clear civil remedies provided in the case where their legal interests were violated.[9]

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7. This will be discussed in detail in the following relevant chapters.
8. The 1993 Company Law, Article 12(2).
9. For detailed information, see Guo Feng and Wang Jian (eds.), *Vertical and Horizontal Discussion on Reform of the Company Law* (*Gongsi fa xiugai zhongheng tan*), The Law Press (Beijing), 2000.

Fortunately, those problems were seriously addressed and substantially resolved by subsequent amendments in 1999, 2004, 2005, and 2013. Both the 2005 and 2013 amendments are especially important. Hereinafter, they are described as the "2005 Company Law" and the "2013 Company Law", respectively. For convenience, any reference to "Company Law" in this book means the 2013 Amendment.

Despite the existence of the 2005 and 2013 amendments, Chinese company law could still be improved in the following respects: (1) to enhance the checks-and-balances relationship between a shareholders' general meeting and a board of directors, (2) to improve the checks-and-balances relationship between a board of directors and a board of supervisors (or a supervisory committee), and (3) to improve the mechanism in place to protect minority shareholders.[10]

Furthermore, it is important to note that Chinese company law is an important achievement from both a pragmatic and an ideological perspective. One would be optimistic to point out two advantages of the law: in the small private sector, it is likely to be highly useful because a corporation is a good tool to promote stable business development; and in the far larger state sector, the effects on SOEs are much more significant, because standardized companies are competent enough to compete with their rivals in the international markets.

III. RESEARCH METHODOLOGY OF THIS BOOK

Chinese company law could be better understood through a wide range of comparisons between it and company law in other jurisdictions. Thus, a method of comparative law is applied throughout this book. As a term of art, "comparative law" must rank as one of the most unique tools within the scenario of legal research and study.[11] Furthermore, comparative law is primarily a method of study rather than a legal body of rules.[12] As Zweiaert and Koetz point out, "The primary aim of comparative law, as of all sciences, is knowledge. If one accepts that legal science includes not only the techniques of interpreting the texts, principles, rules and standards of a national system, but also the discovery of models for preventing or resolving social conflicts, then it is clear that the method of comparative law can provide

10. Liu Junhai, "Entry of WTO and Perfection of the Company Law", *Legal Daily*, 16 January 2000, p. 3.
11. Peter de Cruz, *Comparative Law in a Changing World* (2nd ed.), Cavendish Publishing Limited (London), 1999, p. 1.
12. Ibid., p. 5.

a much richer range of model solutions than a legal science devoted to a single nation, simply because the different systems of the world can offer a greater variety of solutions than could be thought up in a lifetime by even the most imaginative jurist who was corralled in his own system."[13]

Certainly, the use of a comparative method never implies that foreign experiences should be simply transplanted onto Chinese soil. One must seriously examine whether there exists a proper cultural or economic background. Thus, according to the theory of selective adaptation, learning from the legal regime of foreign jurisdictions involves a complex process of selectively adapting foreign norms and institutions.[14] Thus, comparison for the purpose of establishing differences is one thing and comparison for the purpose of adopting foreign norms and institutions is another.

This book emphasizes comparisons between Chinese company law and company law in the United States, Hong Kong, and Taiwan. It is understandable that company law in the United States has a major influence on the whole world because it is considered to be advanced with many innovations. Hong Kong company law bears resemblances to the company law of the United Kingdom on the one hand, and has exercised a great influence on the Chinese company law on the other hand. It has been observed that many of the principles stated in Chinese company law are borrowed from Taiwanese company law. Company law in other jurisdictions such as the United Kingdom, Germany, France, and Japan are mentioned from time to time in order to interpret particular provisions of the Chinese company law. In this regard, it is necessary to briefly introduce company law as it is practised in the United States, Hong Kong, and Taiwan.

IV. THE EVOLUTION OF CHINESE COMPANY LAW

From a legal perspective, China did not have a concept of a "company" or a "corporation" until the end of the Qing Dynasty, when the government promulgated the first Chinese corporation law, the *Da Qing Gongsi Lü*, in 1904.[15] Although many scholars have argued that only family businesses

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13. K. Zweiaert and H. Koetz, *An Introduction to Comparative Law*, Clarendon Press (Oxford), 1998, p. 15.
14. Pitman B. Potter, "Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices", *Washington University Global Study Law Review*, Vol. 2, 2003, p. 120.
15. The contents of *Da Qing Gongsi Lü* can be found in Wang Baoshu and Cui Qingzhi, *The Principles of the Chinese Company Law* (*Zhongguo gongsi fa yuanli*), The Social Science Documents Press (Beijing), 1998, pp. 7–8.

existed in China before 1904,[16] several have noted that many traditional families were really "corporations" in an economic sense: the members of large clans worked together not merely out of affection for their kin, but also to accumulate capital and pursue profit more effectively.[17] Even if this argument is persuasive, it is important to note that so-called "modern" business enterprises[18] only came into existence in China after 1840, the year the British government launched the Opium War against China and forced the Qing dynasty to open China's doors to foreign investment and businesses. Data indicate that in 1913 Western businessmen invested in 136 enterprises in China. Each enterprise had more than US$100,000 invested in it, and the total investment amounted to US$103 million. Among those enterprises, ninety-six were solely financed by Western businessmen and forty were financed through the form of joint ventures.[19] From the very beginning, foreign companies in China were translated using the Chinese word *yanghang*, such as Jardine, Matheson & Co. (Yi He Yanghang). This was also the case in Hong Kong and Macao. This term can still be seen today.

As mentioned previously, the term "company" became a formal legal term in China in 1903 when the Qing dynasty published its *Da Qing Gongsi Lü*. The purposes for publishing this law were bifurcate. One was to use the law as a tool to promote China's industrial development. At that time, it was recognized that the establishment of a modern business structure was the only way to compete with foreign counterparts. On the other hand, the Qing government had no other choice in order to get rid of extraterritorial legal systems. During that time, many Western "big powers" (*lieqiang*) imposed their various influences on China. England, Japan, America, and other countries promised the Qing government that they would give up their "consular jurisdictional power" (*lingshi caipanquan*) if the Qing government would abolish its cruel punishment system and agree to establish another legal system. In order to maintain political control, the Qing government began the reform of its legal system with a consideration of adopting other legal

16. Max Weber said that in the absence of a law governing voluntary associations most businesses were "merely" family businesses. Teemu Ruskola, "Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective", *Stanford Law Review*, Vol. 52, No. 1599, 2000, p. 1605.
17. Hill Gates, "China's Motor: A Thousand Years of Petty Capitalism, citing Teemu Ruskola, Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective", *Stanford Law Review*, Vol. 52, No. 1599, 2000, p. 1605, n. 15.
18. "Modern business enterprises" were created in Western jurisdictions in the forms of companies, partnerships, and sole proprietorships along with notions of the separate legal entity and limited liability of shareholders.
19. Liu Fengming, *Joint Stock Company and Joint Venture Enterprise Laws* (*Gufen gongsi yu zezi qiye fa*), The China University of Politics and Law Press (Beijing), 1998, p. 1.

systems, specifically those of European countries, the United States, Japan, and other countries. For this reason, the *Da Qing Gongsi Lü* was drafted based primarily on the British Joint Stock Company Act (1856), the British Company Act (1862), and the Japanese Commercial Code (1899). Thus, the *Da Qing Gongsi Lü* was a combination of the traditions of both common and continental law jurisdictions.[20] The comparatively modern Chinese company law was created in 1929 by the Guomindang (Kuomintang) government, which was under the influence of German and Japanese Commercial Codes. The relevant law has been amended many times and is still applied in Taiwan today.[21]

Following the establishment of the People's Republic of China in 1949, the development of company law can be divided into three periods.

Firstly, between 1949 and 1956, in order to encourage private enterprises to continue their operations in China and to protect their legal status, the government passed the Provisional Regulations on Private Enterprises (1950) and Implementing Methods for the Provisional Regulations on Private Enterprises (1951). At that time, there were five forms of companies in the country:

(a) unlimited liability companies (*wuxian gongsi*);
(b) limited liability companies (*youxian zeren gongsi*; hereinafter referred to as "LLCs");
(c) companies limited by shares (*gufen youxian gongsi*);
(d) companies formed by one or more shareholders with unlimited liability and one or more shareholders with limited liability (*lianghe gongsi*); and
(e) companies formed by one or more shareholders having unlimited liability and one or more shareholders having liability limited to their share contributions, plus the company capital was divided into equal shares (*gufen lianghe gongsi*).

In 1954, the Provisional Regulations on Joint Venture Enterprises by Public Ownership and Private Ownership were issued. The enterprises established under these Regulations were more or less like LLCs. However, when China completed its socialist reformation in 1956, those company forms disappeared across the country. SOEs (formerly state-run enterprises)

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20. Common law is a case law (or judge-made law) system, and its two major representative countries are the United Kingdom and United States. Continental law is a written law (codified law) system, and its two major representative countries are Germany and France. Before World War II, Japanese law was heavily influenced by continental law traditions.
21. Jiang Ping (ed.), *New Company Law Textbook* (*Xin gongsi fa jiaocheng*), The Law Press (Beijing), 1997, p. 16.

and collectively owned enterprises[22] became predominant business forms in China until 1992, when local regulations on companies appeared in Shanghai and Shenzhen.

Secondly, during 1957 to 1978, there existed only SOEs and collectively owned enterprises in China. According to the Working Regulation on State-Owned Industry Enterprise (1961), all factories had to establish co-operational relations if they manufactured similar products or had similar needs. Some special companies in charge of factories making the same or similar products were established. Although at that time the word "company" (*gongsi*) was used for these special companies, it did not contain the same meaning as in Western countries. Indeed, those special companies were not established for the purpose of operating for profit, but were administrative institutions that were mainly responsible for organizing production and sales in line with the state plan.[23]

Thirdly, during 1979 to 1993, companies under a modern concept became in demand in China. The state recognized the need to establish modern companies in order to implement the economic reform in China. One of the major tasks of the economic reform was for the state to release the heavy burden of poorly managed SOEs. It was believed that companies were one of the best business forms to realize the goal of decreasing government intervention and to separate investors from direct management. Thus, several important laws enacted during this period must be mentioned.

- The Enterprise Bankruptcy Law of the PRC (For Trial Implementation) was adopted on 2 December 1986 and took effect on 1 November 1988.[24]
- The Law of the PRC on Industrial Enterprises Owned by the Whole People was adopted on 13 April 1988.

22. In China, the term "collectively owned enterprises" refers to business organizations in which all of the production materials are owned by workers or economic organizations with a collective nature. All workers work together and enjoy compensation based on their contributions. These enterprises are autonomously managed and responsible for profits and losses. Unlike SOEs, collectively owned enterprises can elect to either hold or refuse legal person status. For detailed information, see Gan Peizhong, *Legal Science on Enterprises and Companies* (*Qiye yu gongsi faxue*), Beijing University Press (Beijing), 1998, p. 152.
23. For detailed information, see Jiang, supra note 22, p. 16.
24. The long-awaited new Enterprise Bankruptcy Law of the People's Republic of China was finally promulgated by the Twenty-third Session of the Standing Committee of the Tenth NPC and took effect on 1 June 2007.

- The State Council also promulgated several important regulations such as the Provisional Regulations on Management of Company Registration (1985) and the Provisional Regulations on Private Enterprises.
- On 29 December 1993, the 1993 Company Law was adopted, and it has since been substantially amended several times.

Like much of the recent legislation, the Chinese company law uses forms and conventions drawn from company law in the United States and other Western countries. This approach represents an important step towards engaging in international business practices. For example, Chinese company law provides for stocks and dividends; shareholders with limited liability, pre-emptive rights, and the power to elect directors; and directors with fiduciary duties and the power to appoint officers.[25] Those features enable foreigners to grasp the major ideas of Chinese company law, even though some of the concepts must be interpreted by taking into account Chinese culture and tradition.

V. A BRIEF INTRODUCTION TO HONG KONG COMPANY LAW

Although Hong Kong was returned to Chinese sovereignty on 1 July 1997, company law in Hong Kong has taken a substantially different approach from that of China, mainly because of their different legal backgrounds and philosophies. It is necessary to introduce Hong Kong company law, as it has exercised a great influence on the Chinese company law.

In Hong Kong, the Companies Ordinance (Cap. 32) was the most important legislation regulating companies in Hong Kong for more than five decades. Among the other company law legislation, the Companies Ordinance was considered one of the largest and most complex statutes. The new Companies Ordinance (Cap. 622) took effect on 3 March 2014, superseding a substantial amount of the provisions in the old Companies Ordinance (Cap. 32).

The new Companies Ordinance is supplemented by subsidiary legislation, including the Companies (Words and Expressions in Company Names) Order, Companies (Disclosure of Company Name and Liability Status) Regulation, Companies (Accounting Standards (Prescribed Body)) Regulation, Companies (Directors' Report) Regulation, Companies (Summary Financial Reports) Regulation, Companies (Model Articles) Notice, Company Records (Inspection and Provision of Copies) Regulation,

25. Robert C. Art and Minkang Gu, "China Incorporated: The First Corporation Law of the PRC", *Yale Journal of International Law*, Vol. 20, No. 2, 1995, p. 273.

Companies (Revision of Financial Statements and Reports) Regulation, Companies (Disclosure of Benefits about Directors) Regulation, Companies (Fees) Regulation, Companies (Unfair Prejudice Proceedings) Rules, and Companies (Non-Hong Kong Companies) Regulation.[26]

The development of Hong Kong company law has a close connection with Hong Kong's historical status as a colony of the United Kingdom. The development of company law in Hong Kong can be traced back to four distinct periods. The first period covers 1865 to 1948, during which the first Company Ordinance was implemented; the second period covers 1948 to 1984, during which the Companies (Amendment) Ordinance 1984 was introduced; the third period covers 1984 to 2013, during which "a thorough review of the Companies Ordinance was called for in 1994" and "a comprehensive rewrite of the Companies Ordinance was launched in mid-2006"; and the fourth period covers 2014 to today, during which the new Companies Ordinance (Cap. 622) was implemented.[27]

It has been said that Hong Kong company law has been intentionally kept similar to British company law. The Companies Ordinance of 1865 mirrored the English Companies Act of 1862, which incorporated both the Joint Stock Companies Registration and Regulation Act of 1844 and the Limited Liability Act of 1855.[28] The Companies (Amendment) Ordinance of 1991 mirrored the corresponding legislative provisions of the British Companies Act of 1985 with respect to share buybacks, redeemable shares, and dividends, differing only slightly with respect to the issue of financial assistance, which was extended to all public companies in Hong Kong regardless of whether they were listed or not.

However, it is reasonable to think that Hong Kong and British company law will move in different directions in the near future. Hong Kong has become a part of China, and the different legal systems in Hong Kong and on the mainland will be further harmonized. On the other hand, as still a member of the European Union (hereinafter referred to as the "EU"), British legislators will have to modify existing company law in order to accommodate the different legal demands imposed by the EU. As has been observed, EU laws were established predominantly based on continental legal traditions represented by Germany and France. Furthermore, the initial countries that established the European Community (hereinafter referred to

26. Stefan H. C. Lo and Charles Z. Qu, *Law of Companies in Hong Kong*, Sweet & Maxwell (Hong Kong), 2013, pp. 52–53.
27. Ada L. L. Chung, *Charting a New Course*, retrieved from http://www.cr.gov.hk/en/publications/docs/studyreport-foreword-e.pdf on 10 September 2015.
28. K. Arjunan and C. K. Low, *Liption and Herzberg's Understanding Company Law in Hong Kong*, LBC Information Services (North Ryde), 1996, p. 3.

as the "EC") were France, Germany, Italy, Belgium, the Netherlands, and Luxembourg. These countries represent the continental legal system. The United Kingdom was not accepted as a member of the EC until December 1969 (twelve years later).[29] In this situation, the United Kingdom will have to compromise its position of maintaining its own common law system.

Furthermore, according to the Basic Law, company law in Hong Kong will generally remain the same as before even though it became a part of China after 1 July 1997. Under the policy of "One Country, Two Systems", it will be quite difficult to establish a unified economic system shared by both Hong Kong and the mainland; this will not happen for at least fifty years.[30] In this situation, the governments on both sides will have to operate with limitations on their administrative authority. For example, companies in mainland China can be listed on the Hong Kong Stock Exchanges. According to Hong Kong's securities law, those companies should be supervised by the Hong Kong authorities. However, authorities in mainland China also have the power to supervise the companies because they are registered in mainland China. This raises two questions: What would happen if the companies or enterprises of mainland China were to become major listed companies or enterprises on the Hong Kong Stock Exchange, and how would the powers and functions between the Securities and Futures Commission of Hong Kong and Securities Regulatory Commission of China be divided?[31] It would not be desirable for Hong Kong's securities market to become overwhelmingly occupied by companies and enterprises from mainland China, as this would hinder the diversified share listings in Hong Kong. On the other hand, it is necessary to see the convergence and inter-influence between Hong Kong company law and company law in the mainland.

In Hong Kong, company laws are reviewed by the Law Reform Commission from time to time. The Commission was established in January

29. Cao Jianming, *The Law of the European Union*, Zhejiang People's Publishing House (Hangzhou), 2000, pp. 6, 8, 83–84. On 23 June 2016, the people of Britain voted for a British exit from the EU through a historic referendum. However, the exit talk between the UK and the EU has not been started to date.

30. Article 5 of the Basic Law states that the socialist system and policies shall not be practised in Hong Kong and the previous capitalist system and way of life shall remain unchanged for fifty years.

31. Zhou Bajun, "The Major Conflicts of a Unified Economy between Hong Kong and Mainland China", *Xinpao Financial News*, 12 April 1999, p. 24. The prediction was made fifteen years ago and the situation has gradually become more worrisome. According to the data released on 31 August 2015, the Hong Kong Stock Exchange had 1,810 listed companies (Main Board or Growth Enterprise Market), with 920 from mainland China, 788 from local jurisdictions, and 102 from other jurisdictions. See HKEx, "Our Markets", retrieved from http://www.hkex.com.hk/eng/listing/listhk/our_markets.htm on 10 September 2015.

1980 and survived after the handover. It considers such reforms of the laws of Hong Kong as may be referred to it by the Secretary for Justice or the Chief Justice. The members of the Commission at present are legal professionals from various institutions and organizations.[32]

It is important to know that company law reformers in Hong Kong will have to consider certain elements. Firstly, Hong Kong is not an easy place to introduce fundamental law changes because of its diverse background and historical past. Secondly, Hong Kong cannot avoid the strong influence of mainland China in the near future. Thus, it is necessary to consider the future of Hong Kong company law and its harmonized relationship with company law in mainland China. One thing is certain: commercial law in both Hong Kong and mainland China became more similar following the adoption of the "Closer Economic Partnership Arrangement" on 30 June 2003 and the mutual recognition and enforcement of judgments in civil and commercial matters in July 2006.[33]

For example, Tsingtao Brewery, the largest brewer in China, is listed in both Hong Kong and Shanghai. Anheuser-Busch, the world's largest brewer, is increasing its ownership in Tsingtao by subscribing US$182 million worth of convertible bonds. Thus, Anheuser-Busch will increase its holding in Tsingtao to 27 per cent over a period of up to seven years.[34] As Tsingtao is listed in both Hong Kong and Shanghai, the deal has takeover implications under both the Hong Kong Takeover Code and the takeover rules on the mainland. The takeover rules in both places should be similar to encourage famous companies to list their shares on both the Hong Kong and Shanghai (or Shenzhen) Stock Exchanges.

VI. A BRIEF INTRODUCTION TO TAIWANESE COMPANY LAW

Company law in Taiwan was developed based on company law in the Qing dynasty (hereinafter referred to as the "Qing Company Law"), which was heavily influenced by the German Commercial Code and Japanese Commercial Code. According to Lin Faxin, the Taiwanese company law has gone through three stages.

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32. The Law Reform Commission of Hong Kong, "Commission Members and Staff", retrieved from http://www.hkreform.gov.hk/en/members/members.htm on 10 September 2015.
33. In June 1999, the arrangement to mutually enforce arbitral awards was signed between Hong Kong and the mainland. See Department of Justice, "Enforcement of Civil and Commercial Judgments between Hong Kong and the Mainland", retrieved from http://www.doj.gov.hk/eng/public/enforcement.html on 10 September 2015.
34. David Barbozadec, "World's Largest Brewer Increases China Stake", *Asian Legal Business*, June 2003, p. 6.

The first stage was to invoke the Qing Company Law. On 10 January 1911, the Temporary Government issued an order to the whole country that provisions of the Qing Company Law would be applied if they did not conflict with the existing systems.

The second stage was to make a Company Ordinance (*Gongsi Tiaoli*). In 1941, the government made the Company Ordinance based on amendments to the Qing Company Law. The Company Ordinance was published on 13 January 1914 and contained 251 provisions. Nevertheless, it was adopted through a legislative process and could only be referred to as an "ordinance".

The third stage was to promulgate and reform the Company Law. The Company Law, which is still implemented in Taiwan today, was promulgated on 26 December 1929. The contents of the Company Law indicate that it was a continuation of the Qing Company Law and made based on the Company Ordinance.[35]

Since 1929, Taiwanese Company Law has been modified many times in order to adapt to changing situations. Nevertheless, it has been recognized as having a continental law tradition.

Taiwanese company law has had a great influence on the formation of Chinese company law. For example, the three important principles (the principle of maintaining capital, the principle of not changing capital and the principle of identifying capital) stated in Chinese company law are copied from Taiwanese company law.[36] This situation is understandable, because when the Chinese company law was established, many scholars looked for references only from Taiwan for two reasons: they shared the same culture and traditions, and most mainland scholars at that time were not proficient in foreign languages.

VII. A BRIEF INTRODUCTION TO AMERICAN COMPANY LAW

The United States is one representative country to adopt the common law system. The source of US law is British common law. On the other hand, US laws have been developed independently,[37] and most of its commercial laws have played a leading role around the world.

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35. Lin Faxin, *The Comparison of Company Systems in Taiwan and the Mainland* (*Haixia liang'an gongsi zhidu zhi bijiao*), the People's Court Press (Beijing), 1997, pp. 17–18.
36. Fang Liufang, *Gain New Insights through Restudying Old Materials: Comments on Reform of the Company Law*, Guo and Wang, supra note 9, p. 41.
37. There are two aspects showing the independence. Firstly, courts frequently re-explain precedents to adapt to the real circumstance, and the Federal Supreme Court can overrule the precedents it previously made (the United Kingdom started this practice in

In the United States, company law was uncommon before 1800. One author pointed out that "almost all of the colonial corporations were churches, charities or cities or small towns".[38] Before the middle of the nineteenth century, most commercial enterprises took the form of partnerships. These partnerships were small in size and involved two or three partners who were relatives.[39] However, following economic development, entrepreneurs paid more attention to the corporation form because it "was a more efficient way to structure and finance their ventures".[40] In this situation, the special charter system became more troublesome: "It was a waste of the legislature's time as well—or would have been, if in fact each charter was carefully scrutinized".[41] Therefore, the general incorporation laws became in high demand.[42]

The most significant point of United States company law is that incorporation is handled by individual states rather than by the federal government. Each state has the right to promulgate its own company law. Among state company laws, Delaware Corporation Law is the most famous one because of its flexibility, simple procedures, and lower taxes and fees. One scholar pointed out that the United States had a national corporation law: "it is the law of Delaware".[43] In 1950, the American Bar Association proposed a standard company law, which was called the Model Business Corporation Act (which has since been revised). The purpose was to provide a standardized company law for the whole country. So far, substantial contents of the Model Business Corporation Act have been adopted by the majority of US states.

There was a new development in corporate law following the collapse of Enron[44] and other big companies. Because of these scandals, the Sarbanes-Oxley Act of 2002 (hereinafter the "2002 Act") was adopted to govern accountants and directors of public companies in even more restrictive ways

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1966). Secondly, many written laws were promulgated at the beginning of independence. See Pan Huafang, *English and American Common Law* (*Ying Mei fa lun*), The Chinese University of Politics and Law (Beijing), 1997, pp. 48–49; and Dong Maoyun, "The Tradition of Case Law of the Common Law System" (*Putong faxi de panli fa chuantong*), retrieved from http://www.gongfa.com/dongmypanlifa.htm on 10 September 2015.

38. Lawrence Friedman, "A History of American Law", in Jesse H. Choper, Hohn C. Coffee, and C. Robert Morris (eds.), *Cases and Materials on Corporations* (3rd ed.), Little, Brown and Company (Boston), 1989, p. 9.
39. Ibid.
40. Ibid.
41. Ibid.
42. Ibid.
43. Lewis S. Black, Jr., "Why Corporations Choose Delaware", retrieved from https://corp.delaware.gov/pdfs/whycorporations_english.pdf on 10 September 2015.
44. The story of Enron is available at CNN Library, Enron Fast Facts, at http://edition.cnn.com/2013/07/02/us/enron-fast-facts/ (10 September 2015).

to prevent public companies from engaging in fraudulent activities. The 2002 Act not only had a great effect on United States companies, but also was significant to China's development of its company and securities law. Dr Wang Jianxi, Deputy Secretary General of the China Securities Regulatory Commission, listed three ways in which the 2002 Act was important to China: "it is important to accounting practice, to the regulation of the capital market and to the Chinese companies listed in the USA."[45] The 2002 Act states that foreign firms are subject to its regulations, and as many Chinese companies engaging in oil, telecommunications, power, and Internet businesses are listed on the New York Stock Exchange and Nasdaq, these companies cannot be exempted from its impact.[46] Thus, it is fair to state that the problem for China becomes more than a corporate governance issue. One important resolution made was to further cope with the market economy in order to survive various challenges in foreign markets. Nevertheless, it must be noted that the 2002 Act will help to establish even healthier corporate governance and set a good example for the whole world.

45. "Corporate Governance in the Wake of Enron: From Failure to Reform", retrieved from http://www6.cityu.edu.hk/puo/CityUMember/Story/Story.aspx?id=20040903000016 on 10 September 2015.
46. Ibid.

13

Future Chinese Company Law

I. CHINESE COMPANY LAW SHOULD BE FURTHER IMPROVED

It is evident that research books and papers around the world have criticized the 1993 Company Law for being underdeveloped. Most of these comments are not groundless. However, some flaws in the 1993 Company Law should be examined by reviewing its legislative background and economic condition. During the drafting stage, the Legal Working Committee of the NPC Standing Committee sent the 1993 Company Law (Draft) to more than two hundred various government agencies, companies, enterprises, and legal research institutions in order to solicit views from them.[1] To a large extent, the view-seeking process reflects the democratic nature of law drafting and law making in China. On the other hand, however, the 1993 Company Law was virtually and unavoidably the product of various compromised interests. For example, during the drafting period, there was a debate concerning whether the 1993 Company Law should identify the role and function of the organization of the CCP. One view was that the 1993 Company Law should not include this political organization. Another view was that the 1993 Company Law should include the organization and that its role and function should be clearly identified. Eventually, the compromised approach was adopted and Article 17 of the 1993 Company Law contained a general statement: "Activities conducted by the primary organisations of the Communist Party of China through companies shall be handled in accordance with

1. The Report of the Examination Result of the NPC's Legal Committee Concerning the Chinese Company Law (Draft), issued on 17 December 1993.

the Party Constitution." Because of this, the 1993 Company Law contains inevitable internal drawbacks and was gently criticized for being "one step forward and two steps back".[2] Despite this kind of criticism, the existing Company Law still treats the CPC's primary organizations as important organizations within companies because they are able to play an active role in protecting the legal interests of workers.

The 1993 Company Law had problems in at least the following areas. Some of these problems have been resolved by the existing Company Law, but others should be further improved in due course.

Firstly, there was a serious problem with the internal structure. Under the 1993 Company Law, there was a checks-and-balances problem among the SHM, the BOD, and the BOS. Generally speaking, the SHM did take away some important functions and powers from the BOD, such as the making of business policies. The latter should routinely exercise those functions or powers in Western countries. The BOS was given the supervisory power to watch and correct the wrong behaviour of directors or managers, but in reality supervisors could hardly do anything. The legal representative of a company could represent the company to do various things without consulting the BOD or the SHM. Furthermore, he or she might have easily abused his or her powers. In the past, if a company wanted to sue someone who injured the interests of the company, the lawsuit should be filed through the legal representative. Naturally, the legal representative would not sue himself or herself. In this situation, the derivative action could be a good resolution. However, the 1993 Company Law did not provide this type of action for shareholders, especially minority shareholders. Due to its existing flaws, the 1993 Company Law could not be utilized as the general law for the foreign investment laws, even though in theory it should have been. Therefore, foreign investors preferred to choose the foreign investment laws because these laws offered more benefits to them.

Secondly, there were some technical problems under the 1993 Company Law. The term *ultra vires* is an old doctrine that closely relates to the business scope of a company. Under the 1993 Company Law, a company's business

2. Nicholas Howson, "China's Company Law: One Step Forward, Two Steps Back? A Modest Complaint", *Columbia Journal of Asian Law*, Vol. 11, No. 1, 1977. For example, before the 1993 Company Law was promulgated, there were two legal documents issued by the State Economic System Reform Committee on 15 May 1992, i.e., the "Standard Opinion Concerning Joint Stock Companies" (*Gufen Youxian Gongsi Guifan Yijian*) and "Standard Opinion Concerning Limited Liability Companies" (*Youxian Zeren Gongsi Guifan Yijian*). Article 23 of the "Standard Opinion Concerning Joint Stock Companies" provided common shares and preferred shares. Obviously, the 1993 Company Law ignores these different shares.

activities should strictly comply with the scope of business stated in the articles of association. When there was an *ultra vires* transaction made between the company and third party, the transaction was announced as invalid. The rationale behind this principle might have lain with the administrative management by the government. In practice, this principle was easily abused. One might have adopted as many business activities as there were in the articles of association in order to conduct as many business activities as possible. On the other hand, this principle might have hindered the businessperson's ambitions to expand his or her business as long as his or her business activities were lawful. Today, there is a global tendency to completely abandon the doctrine of *ultra vires*. Furthermore, the law intends to protect third parties with no knowledge of the irregularity of a company.

Although the 1993 Company Law maintained the doctrine of *ultra vires*, new legislation has paid attention to protecting the interests of a third party. The new contract law has made a substantial move towards the protection of an innocent third party if a contract is formed but the legal representative has committed an *ultra vires*.[3] The reform of the doctrine of *ultra vires* should take into consideration the national policy towards foreign investors as well.

The ownership of property was provided by Article 4 of the 1993 Company Law, which stated that "a company shall, as a legal entity, enjoy all rights over legal entity property formulated by investments from the various shareholders and shall enjoy civil rights and assume civil liability in accordance with the law". However, it also stated that "the ownership of State-owned assets in a company shall reside with the State". With regard to this language, many scholars questioned the unfairness among various shareholders. However, some scholars pointed out that the "state-owned assets" (*guoyou zichan*) especially referred to natural resources such as land, forest, and minerals. Once these resources have been invested in a company, the company acquires only operational rights but not ownership rights.[4] This is only a personal opinion and is subject to further debate. It is a well-accepted principle that a company has independent legal status after its official establishment. The company owns all of the property invested in by shareholders. Shareholders are not permitted to withdraw their invested

3. Article 50 of the Contract Law (promulgated on 15 March 1999 and effective as of 1 October 1999) states, "if the legal representative or a responsible person of a legal person or another organization acts ultra vires when concluding a contract, the act of representation is valid unless the other party knew or ought to have known that the contract was concluded ultra vires."

4. Lei Xinghu, *Research on Legal Issues of Joint Stock Companies* (*Gufen youxian gongsi falü wenti yanjiu*), Chinese Procuratorial Press (Beijing), 1998, p. 122.

property. The compensatory advantage is that they are given dividends and bonuses and enjoy limited liability towards the company's debts. If the state is permitted to retain ownership of its invested State-owned assets, a dilemma results: on the one hand, the state is the shareholder of the company and enjoys all of the benefits given to shareholders; on the other hand, the state is not liable for a company's debts, and the third-party creditors have no right to dispose of those assets. This is obviously unfair to other shareholders. Regardless of which view will prevail, the law itself should provide a clear definition of state-owned assets.

Other problems such as the verification of registered capital, the type of company, and authorized capital versus registered capital also bothered many scholars in the past.

Although many people urged the reform of the 1993 Company Law, it took more than 10 years to substantially amend it. Before this happened in 2005, the 1993 Company Law was amended in only two ways in 1999. The first amendment was a compulsory requirement to establish supervisory committees in all wholly state-owned companies.[5] In order to encourage hi-tech development and engage more people in science and technology to invest their hi-tech knowledge into companies, the second amendment allowed the percentage limitation to exceed 20 per cent of the total registered capital.[6] These two amendments were not significant. Firstly, the matter of establishing supervisory committees in all wholly state-owned companies was addressed by the State Council, which served the special rule to be followed. Secondly, Article 24 already resolved the issue of the 20 per cent rule. Thus, it is not understandable why legislators wasted so much time dealing with these two unimportant issues rather than other more important issues. Subsequently, Article 131(2) was deleted to allow the issue of shares above par without prior approval.[7] This was done in order to accommodate a relevant change in the Chinese Securities Law. Eventually, a newly proposed Chinese Company Law (hereinafter referred to as the "New Draft") was suggested by the State Council and circulated for comments and suggestions. The New Draft took into consideration China's quickly changing situation: (1) China is changing from an agricultural-oriented country to a commercial-oriented country; (2) China is changing from a society with a small-scale peasant economy to a society with a commodity economy; (3) China is changing from an identity-based society to a contract-based

5. The 1993 Company Law, Article 67.
6. Ibid., Article 229.
7. The decision to delete Article 131(2) was made by the Eleventh Session of the Tenth NPC Standing Committee on 28 August 2004.

society; (4) China is changing from recognizing mainly local rules and regulations to recognizing international customary rules and principles; and (5) China is changing from mainly using local resources to using resources from all over the world.[8] All of those changes required the Chinese company law or other laws to be compatible with new developments and international practices. Almost a year later, the 2005 Company Law was promulgated on 27 October 2005 and took effect on 1 January 2006. Furthermore, on 28 December 2013, the Standing Committee of the NPC amended the Company Law (2013 Amendment).

1. The 2005 Company Law

The 2005 Company Law made many new and remarkable changes. In order for readers to have a holistic picture of those changes, it is necessary to make the following points.

Article 4(3) of the 1993 Company Law was deleted. Originally, Article 4(3) provided that the ownership of state-owned property in companies remained with the state. This provision was heavily criticized for its inconsistency with traditional company law theory. It is widely recognized that once a company is established it obtains independent legal person status. The company then owns all of the property invested in it. As one of the shareholders in a company, the state should not be permitted to retain the ownership of investment property and enjoy the rights as a shareholder at the same time. Obviously, Article 4(3) created discriminatory treatment between the state and other shareholders because the state was not required to take any responsibility for the debt of companies.[9] Thus, one contribution of the 2005 Company Law is to adopt traditional company law theory and to formally establish the ownership system of companies and equal status among various shareholders.

Article 12(2) of the 1993 Company Law has been amended. Under Article 12(2), the accumulated total investment amount of one company in another company could not exceed 50 per cent. This provision was made due to the heavy influence of the planned economy. In accordance with the international accounting system, a long-term investment should

8. Qiu Ben, "Commercial Oriented China and Its Legal Construction" (*Shangtu Zhongguo jiqi fazhi jianshe*), *The Journal of Legal System and Social Development* (*Fazhi yu shehui fazhan*), Jilin, 2004, Vol. 4, pp. 16–34.

9. For detailed arguments, please see Gu Minkang, "Several Legal Issues of Foreign-invested Joint Stock Companies" (*Shilun waishang touzi gufen youxian gongsi*), *The Journal of International Economic Law* (Beijing), 1999, pp. 336–37.

be counted as one of the four major parts of a company's capital.[10] It is reasonably believed that this amendment[11] has laid down a legal foundation for fast-growing share-controlling companies or wholly owned subsidiary companies. It is suggested that more attention should be paid to the negative impact of this amendment. For example, it should carefully deal with the issues of affiliated companies and the duty of disclosure.[12]

The 2005 Company Law expressly requires that companies strengthen their social responsibility.[13] This new proposal reflects the new development of company law theory.[14] It tries to strike a balance between company law and human rights protection law. Thus, it can be reasonably predicted that traditional theory concerning the duties of directors will be increased in order to comply with corporate social responsibility.

The 1993 Company Law has been criticized for requiring the highest minimum amount of statutory registered capital in the world.[15] For the first time, the 2005 Company Law provides that the minimum amounts of statutory registration capital for LLCs and JSC are ¥30,000 and ¥5 million, respectively.[16] Furthermore, the 2005 Company Law has changed the paid-up capital.[17] It adopts a compromised statutory capital system, i.e., shareholders of a company should make initial capital contributions of no less than 20 per cent of the total registered capital, and the rest of the contribution should be made within 2 years after the company has been established.[18] This change has the function of unifying the registered capital system between domestic companies and foreign invested companies.

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10. Liu Jipeng, "Ten Suggestions for the Amendment of the Chinese Company Law" (*Dui Gongsifa xiugai de shidian jianye*), in Guofeng and Wang Jian (eds.) *Vertical and Horizontal Discussion of Amending the Chinese Company Law* (*Gongsifa xiugai zongheng tan*), The Law Press (Beijing), 2000, p. 90.
11. The 2005 Company Law, Article 15.
12. For detailed information, please read Shi Tianshou, *Research on the Legal Issues of Affiliated Companies* (*Guanlian qiye falü wenti yanjiu*), The Law Press (Beijing), 1998, pp. 119–22.
13. The 2005 Company Law, Article 5.
14. Some Chinese scholars have started to address this issue systematically. For example, see Liu Junhai, *Corporate Social Responsibility* (*Gongsi de shehui zeren*), The Law Press (Beijing), 1999.
15. Fang Liufang, "Gain New Insights Through Restudying Old Materials: On the Issues of Amending the Chinese Company Law" (*Wenguzhixin—tan Gongsifa xiugai*), in Guofeng and Wang Jian (eds.), *Vertical and Horizontal Discussion of Amending the Chinese Company Law* (*Gongsifa xiugai zongheng tan*), The Law Press (Beijing), 2000, p. 41.
16. The 2005 Company Law, Articles 26 and 81(2). However, other laws or administrative regulations may require more than ¥30,000 as minimum registered capital for a particular LLC.
17. Ibid., Article 26.
18. Ibid. On the other hand, investment-type companies could pay the rest of the capital contribution within 5 years after the company has been established.

Although some scholars still hold the view that the Chinese Company Law should adopt the authorized capital system, which is popular in common law jurisdictions, the compromised capital system might have been the only reliable resolution in China at the time.

Article 24 of the 1993 Company Law has been amended to allow a capital contribution to take the form of intellectual property.[19] Furthermore, the 20 per cent limitation has been abolished through the provision that the total shareholders' capital contribution in cash form should not be less than 30 per cent of the total registered capital. In other words, shareholders can make other capital contributions (in the form of items in lieu, intellectual property, industrial property, non-patented technologies, land-use rights, and stock ownership) up to 70 per cent of the total registered capital. Thus, the forms of capital contribution are becoming more flexible in China.

Another major contribution of the 2005 Company Law is that it provides new rules concerning legal representatives. As discussed in the previous chapters, the 1993 Company Law could not effectively deal with the power of legal representatives, especially in situations where a legal representative refused to call and preside over the BOD meeting or SHM. According to the 2005 Company Law, the powers and functions of a legal representative should be provided by the articles of association. Furthermore, the legal representative may not necessarily be a chairman of the BOD; it can sometimes be a manager.[20] The 2005 Company Law further states that if shareholders who represent more than one tenth of the voting power or more than two thirds of directors or supervisors suggest the holding of an interim SHM, the meeting must be called.[21] A BOD meeting shall be called and presided over by the chairman. However, if the chairman is unable or refuses to exercise his or her duty, the vice-chairman shall call and preside over the meeting (there is no need to be appointed by the chairman). If the vice-chairman is unable or refuses to exercise his or her duty, more than half of the directors may elect one director to call and preside over the meeting.[22] In order to comply with the international practice, the 2005 Company Law gives the power to shareholders to remove disqualified directors whenever it is necessary.[23]

In order to change the situation where the BOS does not have sufficient power to supervise the directors, the 2005 Company Law states that the BOS

19. Ibid,, Article 27. In comparison, the New Draft has proposed that the stock ownership could also be used as a capital contribution.
20. Ibid., Article 13.
21. Ibid., Article 40.
22. Ibid., Article 41.
23. Ibid., Article 46.

can ask to hold an interim SHM. It can call and preside over the SHM if the BOD fails or refuses to do so.[24] Furthermore, in order to ensure that the BOS can exercise its duties, the 2005 Company Law provides that the BOS can carry out investigations when the operation is abnormal. If it is necessary, the BOS can hire a registered accountant firm to assist in its work, and the relevant costs should be borne by the company.[25] These changes are very helpful for improving corporate governance in China.

The 2005 Company Law contains an independent chapter that systemically addresses the duty of loyalty, which should be fulfilled by directors. It further states that the civil liabilities should be imposed in a case where directors, supervisors, managers, and other senior management personnel violate the legal provisions and cause damage to the company. One of the achievements is that the 2005 Company Law formally adopts the derivative action, which is popular in common law jurisdictions.[26] Those provisions can effectively force senior management personnel to work for their companies with heart and soul. Furthermore, it seems that the emphasis on senior management personnel is a new feature of the 2005 Company Law. Although the 2005 Company Law fails to specifically address the role and function of company secretaries, it does mention that company secretaries are within the category of senior management personnel[27] and have the duty of loyalty imposed on them.

According to Article 58 of the 2005 Company Law, a "one-person limited liability company" refers to an LLC that has only one natural person shareholder or a legal person shareholder. To allow the establishment of one-person LLCs would rapidly stimulate the quick development of the market economy. Many Western countries used to hold a negative attitude towards one-person LLCs because of their obvious flaws, including the lack of a checks-and-balances mechanism, the easy mixture of shareholders' own property with the company's property, the abuse of corporate legal person status, and so on. That is why company laws in the United Kingdom and other jurisdictions provide the doctrine of lifting the corporate veil. In fact, one-person LLCs are becoming widely adopted by more and more countries. This shows the existing value of this type of company. It is further believed that following the perfection of the corporate system, it is possible to prevent this type of company from being largely abused.

24. Ibid., Article 41(3).
25. Ibid., Article 57.
26. Ibid., Article 152.
27. Ibid., Article 217(1).

The 2005 Company Law states that JSCs can adopt the accumulative voting system instead of the "one share, one vote" system.[28] It has been concluded that under the traditional "one share, one vote" system, big shareholders may easily control the voting result and choose all of the directors who will act on their behalf. Thus, minority shareholders do not have a proper chance to elect their reliable persons to be directors. The accumulative voting system was firstly created in the United States. It was intended to protect the legal interests of minority shareholders and it has since been widely adopted.

The 2005 Company Law contains new provisions regulating the transfer of shares by special persons. Article 142 provides that promoters cannot transfer their shares of the company within 1 year after the company has been established (The 1993 Company Law stated that promoters could not transfer their shares within three years). Under the 2005 Company Law, directors, supervisors, managers, and other senior management personnel are now permitted to transfer their shares during the terms of their positions. However, the transfer of shares may still be subjected to several limitations: (1) they should report the total amount of shares held and changes; (2) each year their share transfer shall not exceed 25 per cent of the total shares held; (3) they cannot transfer their shares within one year after the shares of their company have been listed and traded over the stock exchanges; and (4) within half a year after they leave their positions, they cannot transfer their shares. Those new provisions eliminate the differences between the Chinese company law and the Chinese securities law. On the other hand, it is not clear why the 2005 Company Law does not accept the proposal made by the New Draft, i.e., for companies whose shares are listed and traded over the stock exchanges, shareholders cannot transfer their shares within 1 year after the shares have been listed.[29]

Article 167 of the 2005 Company Law provides only the allocation of profit to the statutory accumulative fund. That means that the allocation of profit to the statutory provident fund is no longer mandatory. It further requires that after-tax profits shall be distributed to shareholders in line with their share amounts. Thus, shareholders are given legitimate expectations of their dividends. On the other hand, however, it remains a question whether companies should continue to take care of the collective welfare of workers, since the statutory provident fund is no longer mentioned. In comparison, the New Draft proposes to strike a balance between the interests of shareholders and workers. Article 207 of the New Draft provides that when

28. Ibid., Article 106.
29. The New Draft, Article 177.

a company distributes the current-year after-tax profit, it may allocate a part to the provident fund to be used only for collective welfare.

The 2005 Company Law has one independent chapter to deal with the legal liability of various violations. It generally follows the model of the original Company Law to provide only administrative sanctions and criminal punishments. One remarkable change is that the amount of fines under the 2005 Company Law has generally been increased. For example, Article 199 provides administrative sanctions to conduct such as falsely declaring registered capital, submitting false documentation and adopting other deceptive means to conceal important facts. Where a company has falsely declared its capital, a fine of 5 per cent to 15 per cent (originally a fine of 5 per cent to 10 per cent) of the amount of registered capital falsely declared shall be imposed; where a company has submitted false documentation or has adopted other deceptive means to conceal important facts, a fine of ¥50,000 to ¥500,000 (originally a fine of ¥10,000 to ¥100,000) shall be imposed. This may indicate that the previous amount of fines has not served its proper function of deterrence.

In accordance with traditional company law theory, a company must operate its business within its scope of business; otherwise, the transaction concerned will be deemed *ultra vires*. The purpose of this doctrine is to protect shareholders and creditors. The current international tendency is to abolish the doctrine of *ultra vires* so that the interest of a *bona fide* third party will be better protected and companies will be able to take the chance to adjust their operational direction as quickly as possible. For example, Hong Kong gives companies discretion to decide whether to provide a scope of business in the articles of association. Contrarily, Article 11(3) of the 1993 Company Law required that companies should engage in their business activities within the registered scope of business. Although companies may be able to alter their scope of business, the modification must go through legal procedures in order to be valid. Article 69 of the Regulations on Administration of a Company's Registration (2014 Amendment) provides relevant punishments if a company's business activity exceeds the scope of business. These two provisions reflect the idea of strict control of enterprises under the original planned economy. In reality, some changes have been made. For example, Article 50 of the Chinese Contract Law expressly treats a contract as valid even if there is an *ultra vires*. It should be noted that the Chinese Contract Law was adopted by the National People's Congress while the Chinese Company Law was adopted by the Standing Committee of the National People's Congress. It can be argued that the Chinese Contract Law is a higher-level law than the Chinese Company Law. In this situation, it can be argued that the *ultra vires* doctrine has been technically abolished.

Although the New Draft kept the *ultra vires* doctrine, the 2005 Company Law reflects the abolition of this doctrine and no longer requires that "a company shall conduct operational activities within the registered scope of its business activities". However, the 2005 Company Law does not go far enough to relax the content related to scope of business, even though one can see this relaxation has been practised. On 12 February 2004, the Administrative Bureau for Industry and Commerce of the Beijing Municipal Government published the Several Opinions on Reforming the System of Market Access and Perfecting the Economic Development Environment. In accordance with this document, the Administrative Bureau, starting from 15 February 2004, no longer restricts a detailed scope of business unless some commodities or industries are especially reserved for particular enterprises or they must be approved. In other words, the general scope of business has been abolished in Beijing.[30] Therefore, one can predict that further relaxation will happen in China in the near future.

It has been recognized in common law jurisdictions that a company is a separate legal entity that can be used as a "shelter" to protect shareholders from being directly sued. However, when a company is used as a vehicle for fraud committed by some shareholders, the courts will permit a lifting of the corporate veil to impose liabilities on those shareholders. The 2005 Company Law adopted this doctrine. Article 20(3) provided that if a shareholder abuses the principle of the separate legal entity of a company and the limited liability of the shareholder in order to escape debt obligations, and the interest of the creditors concerned has been seriously injured, he or she shall bear a joint liability. Thus, in practice, creditors could bring a civil case against the shareholder concerned directly.

Under the 1993 Company Law, only JSCs, wholly state-owned companies, and LLCs established with investment by two or more SOEs or by two or more state-owned investment bodies could issue corporate bonds. Other LLCs that were desperate for capital were denied an opportunity to raise funds from the public. This was certainly not good for fair competition among various companies. The 2005 Company Law permits all companies to issue corporate bonds once they have satisfied relevant conditions, which could be considered as a meaningful change.

Under the 2005 Company Law, companies could decide on the matters of mergers and divisions by themselves. This was a concrete reflection of China's intention to adopt a "big market and small government" situation.

30. "New Domestic Companies Established in Beijing Will Not Be Restricted in Scope of Business" (*Beijing buzai heding neizi qiye juti jingying fanwei*), retrieved from http://www.lawtime.cn/info/gongsi/jyfw/2008102632270.html on 20 October 2015.

However, the system of pre-merger approval had proved to be a good system and had to be clearly mentioned. The 2005 Company Law contained one independent chapter to systematically deal with issues of takeover, reorganization, bankruptcy, and liquidation. State wholly-owned companies were still regulated by the 2005 Company Law. One new change was that the 2005 Company Law required that the minimum number of the BOS shall be 5 and that the minimum proportion of employee representatives shall not be less than one third. Thus, at least two employee representatives could be members of the BOS to protect the legitimate interests of employees. For the first time, the 2005 Company Law stated that the number of promoters shall be two to two hundred and that a one-half majority of the promoters must have their domicile within the territory of China.[31] The 2005 Company Law also no longer required the share offer method if a SOE transforms into a JSC. One would assume that the major mission that the 1993 Company Law set out to rescue SOEs had been completed.

2. The 2013 Company Law

The 2013 Company Law has basically kept the major changes made by the 2005 Company Law with slightly different numbering. One revolutionary change made by the 2013 Company Law is the abolishment of both the statutory registered capital system and compromised registered capital system and the adoption of the capital contribution subscription system. Since this new system does not require shareholders to make full capital contributions, it is laterally called the "zero capital" system. Furthermore, this new change applies to foreign-invested enterprises with some limitations.

3. Remaining Problems

Although both the 2005 Company Law and the 2013 Company Law made remarkable changes, it is important to note that the existing Company Law cannot be perfected all at once. Some important issues have not yet been addressed.

(1) Does the Company Law Need Guiding Ideologies?

Guiding ideologies can be regarded as the soul of a law because they help to make, understand, and implement that law. Chinese people may use

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31. The 2005 Company Law, Article 79.

guiding ideologies, guiding thoughts, and legislative purposes interchangeably. In this situation, it seems that the Company Law contains guiding ideologies in Article 1, which says that "this Law is enacted for the purposes of regulating the organization and operation of companies, protecting the legitimate rights and interests of companies, shareholders and creditors, **maintaining the socialist economic order, and promoting the development of the socialist market economy**". Now, let us compare this provision with Article 1 of the PRC Securities Law, which states that "the present Law is formulated in order to standardize the issuance and trading of securities, protect the legitimate rights and interests of investors, **safeguard the economic order and public interests of the society and promote the development of the socialist market economy**". Through this comparison, we can see that the guiding ideologies of these two laws are similar and too general to offer concert guidance. Thus, it is meaningful to discuss two issues in the future: (1) whether the Company Law needs specific guiding ideologies, and (2) which guiding ideologies should be included in the Company Law.

In order to answer the first question, it is necessary to look at company laws in other jurisdictions. In the United States, the two legislations have been chosen: neither the Delaware General Corporation Law nor the US Model Business Corporation Act has guiding ideologies. In Germany, neither the Stock Corporation Act nor the Limited Liability Company Law has guiding ideologies. In France, neither IX of the French Civil Code nor the French Commercial Code has guiding ideologies. In Japan, neither the Japanese Law of Limited Liability Companies nor the Japanese Law of Joint Stock Company has guiding ideologies. The Hong Kong Companies Ordinance has no guiding ideology. Thus, it seems that one characteristic of Chinese laws is that they contain guiding ideologies. In fact, it is fine to adopt guiding ideologies. However, the next question is: what should be included in those guiding ideologies? Jiang Daxing suggests two guiding ideologies: (1) to meet the needs of international competition and to comprehensively enhance the competitiveness of enterprises (thus, a company law should follow the ideologies of free market and giving more freedom to enterprises), and (2) to have sufficient legislation to deal with companies so that companies can follow detailed laws.[32] Enlightened by his wisdom, this book proposes that the guiding ideologies should contain the following three aspects: (1) the Chinese company law should show more respect

32. Sun Min, "The Company Law Opens up the Time of Corporate Autonomy", retrieved from http://www.dffyw.com/faxuejieti/ms/200511/20051111122516.htm on 6 November 2015.

for the effectiveness of articles of association and shareholders' agreements; (2) in terms of corporate governance structure, the Chinese company law should allow a company to choose a one- or two-tier system through its articles of association; and (3) the Chinese company law should fully respect the spirit of freedom of a contract. If those are acceptable guiding ideologies, it is possible to review whether the existing provisions of the Chinese Company Law are compatible. For example, Article 15 states, "a company may invest in other enterprises. However, unless it is otherwise provided for by any law, it shall not become a capital contributor that shall bear several and joint liabilities for the debts of the enterprises in which it invests." Liu Junhai criticizes this provision for taking away the autonomy of the company. In his view, the shareholders in the company should decide this matter. If the shareholders do not want the company to become a general partner, they can prevent it from becoming so through the articles of association or by resolution at the SHM with two thirds of the voting rights.[33]

(2) State-Owned Companies: Can the Government Be Separated from SOEs?

The idea of separating the government from SOEs emerged at the beginning of the economic reform and is still discussed today. In China, the relationship between the two always presents a dilemma: on the one hand, the government still pays attention to keeping or adding the value of state-owned assets based on various reasons and wears different hats (after the reform, the representatives of state-owned assets were created) to interfere with the activities of SOEs; on the other hand, the representative of the state does not perform the duties well due to the restriction of information, interests or manpower. Due to this reason, many state-owned assets leave state control or are lost.

Advocators of separation believe that asset ownership and operation rights should be separated so that SOEs can be independent enough to engage in autonomic operation and implement self-development and self-regulation. If the ownership relationship is the basis for clarifying the relationship between administration and enterprises, can it be said that once there is a clear ownership relationship, true separation can be realized? Or does the creation of a new ownership system suit the purpose of engaging

33. Liu Junhai, "Several Disputed Issues Relating to Amendment of the Company Law", retrieved from http://www.jcrb.com/xueshu/zt/200806/t20080613_22822.html on 6 November 2015.

in a deep reform of the enterprise system? One has to consider the following points in order to answer these questions. First, so long as SOEs exist, the separation is not consistent with company law theory; as an investor, the state must have a say in the operation of SOEs. The State Assets Management Authority (hereinafter referred to as "SAMA") is derived from the government and has a close connection with the government. Thus, SOEs cannot be free from government interference. SAMA, through the CPC system, is directly involved in the activities of SOEs. In fact, only private enterprises can truly realize the separation for one simple reason: the ownership of the enterprises is theirs and has nothing to do with the government. The government will supervise them within the framework of the law. On the other hand, SOEs cannot be separated from the government because their ownership is with the state. Thus, it is unrealistic to separate the government from SOEs.[34] Second, the core part of power, i.e., the appointment right of senior management personnel, is still controlled by the government and thus any major decision should be approved by SAMA. So far, about 124 giant SOEs are directly under the supervision of the central government.[35] Unlike other government organs such as the National Development and Reform Commission and State Administration for Industry and Commerce, which have the general authority to guide the development of enterprises, SAMA is representing the state to exercise the shareholder's right, which is similar to the agent of the principal.[36] Certainly, the lack of separation of government and SOEs may present a potential problem under other laws. For example, under the Chinese Competition Law, it would be regarded as an administrative monopoly if the government were to give benefits or preference to SOEs, which is an issue beyond the scope of this book.

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34. Zhu Xiaoquan, "It is Difficult to Reform SOEs Without Changing the Property Ownership", retrieved from http://finance.ifeng.com/opinion/zjgc/20121123/7338090.shtml on 7 November 2015.
35. Fang Gang and others, "The Role of SOEs in China's Economy", retrieved from http://www.chinausfocus.com/2022/china/wp-content/uploads/Part-02-Chapter-16_SC.pdf on 7 November 2015.
36. This conclusion can be further supported by Article 57 of the PRC Property Law, which states that "the authority performing the duties of administration and supervision over State-owned property and its staff members shall, according to law, exercise vigorous administration and supervision over State-owned property, promote the preservation and increase of the value of such property, and prevent its loss; and where losses are caused to State-owned property due to their abuse of power or dereliction of their duties, they shall bear legal liability according to law".

(3) Should the Protection of Human Rights Extend to Legal Persons?

Should a legal person have moral rights (personality rights)? In order to answer this question, it is necessary to define three things: (1) a legal person, (2) moral rights, and (3) a legal person's moral rights.

It has been generally recognized that the theory of the artificial person (*Fiktionstheorie*) appeared during the period of Roman law.[37] According to this theory, an enterprise is a legal person in that it is an artificial natural person and thus has acquired moral rights. The 1896 German Civil Code, for the first time, adopted the term "legal person" (juristic person). Article 36 of the General Principles of the PRC Civil Law states that a legal person shall be an organization that has a capacity for civil rights and civil conduct and can independently enjoy civil rights and assume civil obligations in accordance with the law. China adopts the concept of the legal person based on this comparison and summarized from various concepts.

However, some scholars argue that a legal person does not have personality rights because it is created by law and is a legal concept only. "Legal person" is merely a technical legal term established for the purpose of conferring the entitlement to equality in law on citizens to participate in civil activities. It lacks specific properties such as rationality, awareness, ethics, and morality that are attributed only to natural persons.[38] Others believe that it is an important corporate development to treat a company as a natural person.[39] According to relevant research, companies in the United States are protected under the Constitution as "persons" and are given such rights as the freedom to contact and freedom of speech and are subject to proper procedures.[40] In Europe, the human rights of legal persons developed a bit late. In March 1952, the European Convention on Human Rights, for the first time, stated that legal persons were the subjects of human rights. In addition, the European Court of Human Rights, through case discussions, protects companies' fundamental economic rights and freedoms.[41] If this is a tendency, it is reasonable to examine several issues. First, is the phrase "the business license shall be revoked" under Articles 198, 207, 211,

37. Huang Wenxi, "The Nature of the Personality Rights of Natural Persons and Legal Persons", retrieved from http://old.civillaw.com.cn/wqf/weizhang.asp?id=56391 on 8 November 2015.
38. Ibid.
39. Ma Yi, "Research on Corporate Human Rights", retrieved from http://cdmd.cnki.com.cn/Article/CDMD-10652-2008202117.htm on 8 November 2015.
40. Ibid.
41. Ibid.

and 213 equivalent to a death penalty?[42] If the answer is yes, then should the revocation of a business licence be decided by a court following due process? Secondly, should a legal person be entitled to spiritual damages? Article 120 of the General Principles of Civil Law states that if a citizen's right of personal name, portrait, reputation or honour is infringed upon, he or she shall have the right to demand that the infringement be stopped, his or her reputation be rehabilitated, the ill effects be eliminated and an apology be made; he or she may also demand compensation for losses. This provision shall also apply to infringement on a legal person's right of name, reputation or honour. However, the SPC, in its Interpretation on Problems concerning the Ascertainment of Compensation Liability for Emotional Damages in Civil Torts (2001), refused to give emotional damages to legal persons. All of these issues deserve further research and debate.

(4) Is the Definition of the Articles of Association Unclear?

Traditional company law theory considers the articles of association as a contract between a company and its shareholders as well as between shareholders.[43] Other employees such as non-shareholder directors and company lawyers cannot sue on the basis of violating the articles of association.[44] The 1993 Company Law stated that the articles of association had a binding force over the company and its shareholders, directors, supervisors, and managers.[45] This provision has been debated for years. However, the existing Company Law not only retains the position of the 1993 Company Law, but also extends its binding force to other senior management personnel. It is

42. Certainly, there are divided views on whether the revocation of a business licence is equal to the death penalty (termination). According to the General Principles of Civil Law, a legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person is terminated (Art. 36.2). Furthermore, an enterprise as legal person shall terminate for any of the following reasons: "if it is dissolved by law" (Art. 45). However, in the Reply Letter to Hebei Higher People's Court in 2000, the SPC stated that even though the business license of a legal person may be revoked, it is an administrative sanction. The operation qualification is deprived by legal force, but this does not mean that the enterprise loses its ability to engage in operations, nor does it mean that the legal person is eliminated immediately. The enterprise is stopped from doing anything that is outside the scope of liquidation. Only after the liquidation can the enterprise be completed eliminated.
43. For example, articles of association under the Hong Kong Companies Ordinance (Cap. 622).
44. Vanessa Stott, *Hong Kong Company Law* (12th ed.), Pearson (Hong Kong), 2008, pp. 64–65.
45. The 1993 Company Law, Article 11.

debatable whether this provision is a sign of progress or a sign of theoretical confusion.

(5) Unsolved Problem of Article 18 of the 1993 Company Law

Article 18 of the 1993 Company Law stated that the Law also covered LLCs with foreign investors. It failed to address foreign-invested JSCs. Thus, in theory, the 1993 Company Law did not apply to foreign-invested JSCs. This problem was resolved on 10 January 1995, when the Interim Rules on Several Issues Concerning the Establishment of Foreign Invested Joint Stock Companies were promulgated.[46] It was expected that the existing Company Law would address its relationship with all foreign-invested companies. However, Article 217 of the Company Law basically repeats the 1993 Company Law by stating that although the LLCs and JSCs invested in by foreign investors shall be governed by this law, priority shall be given to other laws regarding foreign investment if the provisions of other laws are different. Thus, one may expect that within a reasonable period of time the existing Company Law and other laws concerning foreign-invested companies will remain separate.

(6) The Provision of One-Person Companies Is Too Simple

The existing Company Law has seven provisions to deal with one-person LLCs. The Law states that other provisions concerning LLCs can be used as a reference.[47] However, it is not sure whether other provisions concerning LLCs can apply to one-person companies. For example, the provisions concerning corporate governance obviously cannot be applied to one-person companies. Furthermore, it is necessary to address in detail how to prevent one-person companies from being abused, especially given that the existing Company Law has abolished minimum registered capital for one-person companies.[48] China may need a special law to deal with one-person companies in the near future.

46. For a detailed discussion, please see Gu Minkang, "Several Legal Issues Concerning Foreign-invested Joint Stock Companies" (*Shilun waishang touzi gufen youxian gongsi*), *The Journal of International Economic Law*, The Law Press (Beijing), 1999, Vol. 2, pp. 327–42.
47. The Company Law, Article 57.
48. Before the 2013 Company Law was released, scholars suggested that one-person companies should be subjected to the following requirements: (1) restrictive registration and public announcement; (2) minimum registered capital and maintenance of capital; (3) special supervision of financial records; and (4) prohibition of self-dealing. Obviously,

Another issue is the possibility of allowing the establishment of one-person JSCs. Professor Liu Junhai once suggested that Chinese legislators should permit one-person JSCs and at the same time raise the member ceiling of LLCs to more than 50 persons.[49] So far, there are four types of legislation concerning the one-person company: (1) both one-person LLCs and JSCs are allowed (e.g., Canada, Holland, Germany, and Japan); (2) only one-person LLCs are allowed (e.g., the United Kingdom); (3) one-person companies are not allowed (e.g., France, Denmark, and Belgium); (4) one-person companies are generally not allowed, however, after a company is established and only one shareholder is left, the company is not required to dissolve and the shareholder is not liable (e.g., Austria and Swaziland); (5) one-person companies are not allowed, and if all of the shares of a company are in the hand of one person, the company must be closed or the shareholder bears joint liability (e.g., Greece, Ireland, Italy, and Spain). Although legislation is not the same around the world, the general tendency is clear: one-person companies will gradually be recognized. The 2013 Company Law does not accept the one-person JSC. It may require more research and discussion.

(7) Issue of the Independent Director

Professor Jiang Ping has written one article to discuss whether the Company Law should adopt the independent director system. He suggests that the independent director system should be adopted. But he points out that it is not proper to simply make it mandatory or discretionary. He then suggests that the following three types of companies should adopt the independent director system: (1) wholly state-owned companies, (2) listed companies, and (3) investment fund companies.[50] However, the Company Law provides the independent director system only for listed companies.[51] Whether this is a proper approach is questionable and should be subject to further research. Furthermore, it is important to handle the relationship between

the suggestion of minimum registered capital is no longer valid. Wang Zhaohua and Wang Li, "Legal Mechanism to Deal with the Negative Impact of One-person Companies" (*Lun yiren gongsi de fumian xiaoying de falü guizhi*), retrieved from http://fanwen.glzhe800.com/?fl/HTML/fl_20061124194322_6215.html on 20 October 2015.

49. Liu Junhai, "Six Debated Issues during the Implementation of the New Company Law" (*Xin Gongsifa shishi zhong de liu da zhengdian*), retrieved from http://finance.sina.com.cn/review/20061124/15463107843.shtml on 3 November 2015.

50. "Famous Scholar Jiang Ping's Analysis of the Company Law: Six Tough Questions Should Be Resolved" (*Faxue taidou Jiang Ping puxi Gongsifa: Xu jiejue liu da nanti*), retrieved from http://finance.sina.com.cn/roll/20040408/0447707850.shtml on 20 October 2015.

51. The Company Law, Article 122.

independent directors and the BOS.[52] The important thing is to adopt the independent director system on the basis of improving the role and function of the BOS. For this reason, it is proper to consider the viewpoints of Professor Zhu. Firstly, the role of two institutions should be clearly defined in order to avoid the cost of supervision becoming too high. Secondly, the companies that have imported the independent director system should focus on perfecting this system. On the other hand, the companies that have not imported this system should focus on perfecting the BOS system.[53]

(8) New Concept of the Affiliated Relationship

The concept of the "affiliated relationship" was not provided in the 1993 Company Law despite the fact that in reality some scholars have addressed it. The existing Company Law adopts this concept. Thus, "affiliated relationships" refer to the relationships between the controlling shareholders, actual controllers, directors, supervisors and senior management personnel, and the enterprises, which are controlled directly or indirectly by those persons, or any other special relationship that may result in the transfer of the company's interests.[54] However, the Company Law states in Article 124 only that a director of a listed company shall not exercise his or her voting right to a resolution made by the BOD if the resolution affects a particular enterprise that has an affiliated relationship with him or her. One may infer from this provision that directors of non-listed companies shall not worry about this matter. In comparison, the New Draft contains a better proposal: any shareholders or directors shall not exercise their voting power if the matter to be voted on concerns an enterprise in which they have an affiliated relationship. Otherwise, the company concerned shall have the right to appeal to a people's court to rescind relevant contracts, transactions, and arrangements within three months after the resolutions have been made.[55]

(9) Other Problems

Although Article 4 of the existing Company Law solves the problem of Article 4(3) of the 1993 Company Law, it also deletes one important

52. For a detailed discussion, please see Gu Minkang, "Questioning the Independent Director System of Listed Companies" (*Zhiyi shangshi gongsi de duli dongshi zhidu*), *The Journal of the Rule of Law* (*Fazhi luncong*), Shanghai, 2003, Vol. 3, pp. 92–95.
53. Lei Fang, *The Company Law Should Be Amended Greatly* (*Gongsifa ying da xiugai*), The Chinese Aviation Newspaper (*Zhongguo minhang bao*), 28 July 2004, p. 9.
54. The Company Law, Article 216(4).
55. The New Draft, Articles 43 and 52.

statement under Article 4(2): “a company shall, as a legal entity, enjoy all rights over legal entity property formulated by investments from the various shareholders and shall enjoy civil rights and assume civil liability in accordance with the law”. In fact, this statement articulates an important concept: that companies shall assume unlimited liability towards creditors even though shareholders’ liability is limited. Another problem remains under Article 112 of the Company Law: where a director is unable to attend a board meeting due to special circumstances, he or she may commission in writing another director to act on his or her behalf, and the letter of proxy shall stipulate the scope of authority. This provision fails to address a situation where “another director” refuses to act on his or her behalf and whether other means could be used.

4. Short Summary

Nothing is 100 per cent perfect. China may need more time to experiment with the market economy to accumulate rich experience. The Company Law has made remarkable achievements in various aspects. One important thing is that the existing Company Law tries to get rid of the bad image that the main purpose of the 1993 Company Law was to rescue SOEs. It also sends out a new message that the Chinese government has a firm intention to move towards a market economy. Thus, it is optimistic to expect that a more perfect Company Law will promote more healthy business development in China.

II. CHINA SHOULD ADOPT A UNIFIED COMPANY LAW

1. Existing Situation

After 1978, the Third Plenary Meeting of the Eleventh CPC Congress officially endorsed an open-door policy and economic reform in China. The major task in rescuing the SOEs was to expand their autonomy and management powers. In order to do so, many laws and regulations were published during 1979 and 1988. The most important one was the Law of the PRC for State-owned Enterprises, promulgated in 1988.[56] This Law intended to establish a principle of “separation of property rights and operational rights”,

56. Other laws and regulations include Regulations on Factory Heads, Regulations on the Representative Assembly of Staff and Workers, Regulations on the Grassroots Level Organization of the Chinese Communist Party, Provisional Regulations on the Contract Responsibility System and Provisional Regulations on the Leasing System for a Small Size Enterprise.

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