Limited Liability and the Protection of Creditors

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Abstract

Over the last three hundred years, Company law has developed three pillars that have harnessed its strength and guided its economic development. These three pillars are the separate personality from corporate members, the limited liability of corporate members, and the division of capital into stocks or shares that are transferable. These characteristics make companies different from the traditional single traders or partnerships.

Among these developments, the concept of limited liability has been a cause for much concern, especially among corporate creditors. As a result, corporate legislation has always struggled to maintain the principle of limited liability while at the same time establishing a legal framework to protect creditors. There are several mechanisms that have been adopted to achieve this goal. This paper focuses on two commonly used theories, namely, the three principles of capital and directors' disqualification.

Based on the Company Law in Taiwan and other financial legislation, the "passive qualification" requirements are not uncommon. However, looking at the legislative purpose behind these requirements does not say much about their roots. Consequently, the following issue is raised: Why do we prohibit certain people from holding the position of a director, supervisor, manager or promoter? Is it really in the public interest or is it to punish these undesirable persons?

* [illegible]

On the contrary, a system referred to as "directors' disqualification" has been recognized in the United Kingdom. Its purposes and ambit have been clarified to a certain extent, and may serve as very good reference for Taiwan's future development in this field.

On the other hand, Taiwan's Company Law has long adopted the three principles of capital that have been transplanted from German law. In spite of all the criticism that has been heaped on the principles, these principles continue to survive. There is a pressing need to reconsider the core values of the capital principle and re-build the framework to help creditors with regard to its substance. The U.K. has embarked on the reform of her corporate legislation over the last couple of years. Based on that, some suggestions are particularly noteworthy and deserve our careful attention.

Key words: limited liability, creditors, directors' disqualification, disqualification undertaking, the three principles of capital, shadow directors, insolvency, the minimum subscribed capital, the reduction of capital, redeemable shares, distribution