Study on the Application of the Corporate Personality Denial System in the Case of Significant Undercapitalisation

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Abstract: The establishment of the corporate personality denial system is due to the existence of a part of the shareholders abuse of the principle of limited liability, so that creditors risk more than the normal limit, to the detriment of the rights and interests of creditors or the public interest of society, contrary to the original intent of the corporate system, and therefore will be in individual cases of the company's legal personality for the relative negation of the shareholders who actually play a decisive role behind the company to assume joint and several liability, to maintain the balance of interests of different subjects. The company’s legal personality is therefore relatively negated in individual cases, with the shareholders who actually decide on the company bearing joint and several liability, in order to maintain the balance of interests of different subjects. However, the establishment of the company law personality denial system in China is relatively late compared to the West, the relevant theoretical development is not mature, lack of practical experience. The relevant provisions in the Company Law are only in principle and lack operability, and there is a lack of relevant judicial interpretations and guiding cases. As a more controversial situation, the concept of “significant capital deficiency” is vague, confusing and difficult to determine in practice. In order to solve the above problems, firstly, relevant laws and regulations and judicial interpretations should be improved, the scope of the determination of capital should be broadened, and the application of voluntary and involuntary creditors should be distinguished; secondly, the judicial mechanism should be improved, capital assessment expert assistants should be introduced and relevant guidance cases should be increased; finally, the improvement of the enterprise information disclosure system should be promoted, so as to overcome the above problems.

Keywords: Corporate law personality denial, Significant undercapitalization, Involuntary creditors.

1. Theoretical Overview of the Application of the Corporate Law Personality Denial Regime in Cases of Significant Undercapitalisation

1.1 Concept of the Corporate Law Personality Denial Regime

The company participates in the market business activities with an independent legal personality, the income is shared by the shareholders according to the law or agreed in the articles of association, the debts arising from the operation are repaid by the company with its own property, the shareholders, as investors, are not at risk of bankruptcy and the debts to be repaid are limited and will not exceed their capital contribution in the company, this is the basic principle of modern company law and company system, but these principles are not eternal. In commercial activities, there are some shareholders, unrestrained use of the company’s independent personality to operate illegally, to capture improper benefits, even if the business failure is held accountable, only a relatively small amount of capital loss, this unhealthy way of doing business, often leading to the loss of market relatives, or damage to the public interest. In order to uphold the principle of fairness and justice in the market economy, the judiciary will deprive the shareholders involved of their right to assume limited liability in individual cases and force them to bear joint and several liability, i.e. the corporate law personality denial system, which originated from the case law of the United States and has been established in other countries one after another.

The system of corporate personality denial is commonly referred to as “Piercing the corporate veil or Doctrine of veil-piercing” in American law, “Lifting the veil of incorporation” in English law, and “Jurisprudence of corporate personality denial” or “Doctrine of perspective” in Japanese law. Lifting the veil of incorporation’, commonly referred to as the ‘jurisprudence of legal personality denial’ or the ‘doctrine of perspective’ in Japanese law. In German law, there is also “direct liability”, and in China it is generally referred to as “company law personality denial”. Although the name of the system has not yet been standardised and the formulation of the system varies from country to country, the interpretation of the basic meaning of the system is generally consistent.

Professor Zhu Ciyun of Tsinghua University believes that the theory of legal personality denial, is to prevent the abuse of corporate personality and to protect the interests of the company’s creditors and the public interest, on the specific facts of the specific legal relationship, the company and its shareholders behind the denial of their respective independent personality and shareholders’ limited liability, ordering the shareholders of the company (including natural persons and legal persons shareholders) to be directly responsible for the company’s creditors or public interest. A legal measure set up to achieve the requirements of equity and justice[1]. This is a legal measure to achieve the requirements of fairness and justice. Professor Zhu Ciyun’s definition of the system was widely accepted by Chinese theoretical and practical circles, and his theory was also generally accepted as the theoretical basis for the 2005 amendment to the relevant provisions of the Company Law.

Although the definition of the corporate personality denial regime differs from country to country in theory and practice,
and there are many differences in the details of its application, the understanding and interpretation of the internal logic of the regime is basically the same: in specific individual cases, the basic principles of corporate law are amended accordingly, so that the independent legal personality of the company is no longer supported and the shareholders involved, who hold the actual control of the company’s operations, no longer bear limited liability but The shareholders in question no longer have limited liability but are jointly and severally liable for the relevant debts. Such a system design can regulate the unlawful shareholders to use the limited liability system to seize improper interests to destroy the market, protect the legitimate rights and interests of the counterparties in the market transactions and the public interest, protect the balance of interests of the enterprise business subjects and external market subjects, and maintain the normal order of market transactions.

1.2 Meaning of Capital

The term “capital” has a rich connotation and has different meanings in different fields of knowledge. In the field of economics, the factors of production are usually referred to as capital, and in the field of corporate law, capital is the total amount of property constituted by the shareholders’ contributions, as stipulated in the articles of association of a company[2]. In the field of company law, capital is the total amount of property constituted by the shareholders’ contributions as stipulated in the articles of association[3]. The term “capital” is used in the above context. “Capital” in the above context is not too controversial, but if you focus on the company law personality denial system in the “significantly undercapitalised” situation, its meaning has a variety of very different interpretations.

In the theoretical debate, Professor Zhu Ciyan argues that “capital” generally refers to registered capital[4]. Professor Feng Guo and others argue that the “capital” in “significantly undercapitalised” is not the registered capital, but rather the net assets and other expected profitability of the company[5]. and Judge Yu Wei and others argue that the “capital” in “significantly undercapitalised” includes the paid-up capital and other assets accumulated by the company. The “capital” in “significant deficiency of capital” includes paid-up capital and other assets accumulated by the company[6]. The definition of “capital” in the context of “significant undercapitalisation” is widely divergent in the theoretical community, with some scholars still adhering to the concept of “registered capital” and others providing a richer definition. In the operation of judicial practice, the “capital” in the “significant shortage of capital” is the registered capital of the company as the object of investigation and identification.

1.3 Meaning of Significant Undercapitalisation

The mainstream view of foreign experts and scholars on the interpretation of “significant undercapitalisation” is basically the same. According to Professor Robert Hamilton, capital is derived from the economic needs of the business rather than from legal requirements, and “undercapitalisation” means that the level of a company’s capital is very low compared to the level of risk it faces in its operations[7]. Professors Thomas Leisel and Rüdiger Fairer of Germany argue that shareholders do not invest the necessary capital commensurate with the scale of the business”[8]. The mainstream views of foreign experts and scholars on the criteria for determining “significant undercapitalisation” are also largely consistent, with all agreeing that economic factors should be used to determine whether capital is insufficient, rather than relying on legal criteria.

The mainstream view in Chinese academia is basically the same as that of foreign scholars. According to Professor Feng Guo, “significantly undercapitalised” does not mean that the amount of capital invested by shareholders in the company is significantly lower than the minimum amount of capital required by the enactment of the law, but that it is significantly lower than the business of the company and the implied risks[9]. According to Professor Zhu Ciyan, the significant undercapitalisation is based on economic requirements rather than legal requirements, and does not mean that the company’s capital does not reach the minimum capital of the company as stipulated in the company law, but that the company’s capital is very small compared to the business, the risk and the scale of the company’s operation[10]. The company’s capital is very small in comparison with the business, the risk and the scale of the business. Professor Zhao Xudong believes that the company’s capital deficiency is judged on the basis of operational needs rather than the specific provisions of the law, and that the amount of capital actually invested by shareholders in the company is clearly insufficient compared to the risks implied by the company’s operations[11]. The attitude of Chinese judicial practice, and that of the law, is that the amount of capital actually invested by the shareholders in the company is clearly insufficient in relation to the risks implied by the operation of the company. The attitude of the Chinese judicial practice, which is quite different from that of the academic community, is that “significantly undercapitalised” means that the registered capital of the company in question is less than the minimum capital limit of the company under the enacted law.

2. Elements of the Application of the Corporate Law Personality Denial Regime

The elements of the application of the corporate personality denial system generally include the subject matter element, the conduct element and the result element[12].

2.1 Subject Elements

The subject of the company law personality denial lawsuit, including the plaintiff and the defendant. The defendant is the shareholder who holds the actual control power in the operation of the company and abuses the independent personality of the company for improper operation, and the plaintiff is the creditor of the company who suffers losses due to the abuse of the independent personality of the company by the shareholder involved in the case.

Abuse of the company’s independent personality of shareholders, the basis for determining the shareholders in the company’s business affairs is the actual control of the size of the shareholder, rather than the share of the share in the usual sense, therefore, the company’s shareholding in a large share of the “large shareholders” is not necessarily the shareholders
involved, “small shareholders Therefore, the “major shareholder” with a larger share in the company may not necessarily be the shareholder in question, and the “minor shareholder” may also be the shareholder in question. The shareholders of a company will, by agreement or in practice, have a certain division of management rights in the company, and the shareholders’ authority in the specific affairs of the company is different. Active shareholders actually participate in the operation and management of the company, have a greater say and decision in the relevant decisions and specific affairs of the company, play a decisive role in the operation of the company and have a greater leading role in suspected cases of abuse of the company’s legal personality and should bear the relevant responsibility; negative shareholders may not have the right to participate in the operation and management of the company, or have the right but are unwilling or unable to participate, and abuse the independent personality of the company. The possibility of improper operation is lower than that of active shareholders, and the dominant role in such cases is smaller, which should be protected to a certain extent in law; the shareholders who abuse the independent personality of the company are generally the actual dominant shareholders, and the nominal shareholders are not subject to recourse; when the shareholders also serve as senior managers of the company, specific analysis must be made on a case-by-case basis to distinguish the responsibilities borne by different identities in accordance with laws and regulations, and apply different rules to pursue liability.

The victims who have the right to bring a lawsuit for the denial of corporate law personality are generally the creditors of the company who suffer losses due to the abuse of the independent personality of the company by the shareholders involved. In cases related to the denial of corporate personality, the creditors of the companies involved are generally divided into voluntary creditors and involuntary creditors according to the different reasons for the occurrence of debts, and their status in the trading market is different. Voluntary creditors are generally due to contractual debts, while involuntary creditors are generally due to tort debts. Due to the different causes and harmful consequences of debts, the relevant legal protection measures and the degree of protection should also be different, which will be discussed in detail in Chapter 4, Section 1, Part 2 of this article. The company or the shareholders of the company are damaged by the shareholders’ interests and cannot bring a lawsuit for the denial of corporate personality on this basis.

2.2 Elements of Conduct

Company law personality denial of the lawsuit is established, must be the aforementioned subject involved in the implementation of the abuse of the company’s independent personality for illegal business. Independent personality is a typical feature of the company system, the company to participate in the market business activities, theoretically can obtain the income is unlimited, shareholders through dividends to obtain the income is also unlimited; once the company fails to operate, resulting in external debts, only the company’s property to meet the repayment obligations, shareholders do not have the risk of bankruptcy, its losses are also limited, will not exceed the amount of shareholders in the company’s capital. The company system encourages market players to make reasonable use of the principle of limited liability to participate in market operations, allocate and avoid risks, maximise business interests, enhance business motivation and promote market prosperity, but the right holder must not exceed the internal limits of the right to exercise the right, otherwise it is an abuse of the right[13]. However, the right holder may not exercise the right beyond the internal limits of the right, otherwise it is an abuse of right. If the shareholders abuse the right of independent personality of the company, it will increase the risk of the relative and harm the interests of the relative. In order to ensure the smooth operation of the market economy and maintain the fairness and justice of commercial activities, the shareholders involved in the case must be denied the independent personality of the company used as a “protective umbrella” and “bullet-proof vest” in order to ensure the smooth operation of the market economy and maintain fairness and justice in commercial activities, the independent personality of the company, which was used as an “umbrella” and “bulletproof vest” by the shareholders involved, must be denied and made jointly and severely liable.

This article discusses the “significantly undercapitalised” scenario. Some shareholders invested less capital to set up the company, but manipulated the company to enter capital-intensive industries or to carry out transactions with larger underlying amounts, even if the operation fails, only a relatively small loss of investment, the benefits are much higher than the risks, the risk should have been borne by the shareholders of the company transferred to creditors, but the company’s creditors can not get through the conventional way to get considerable compensation, increased the risk of loss of interests of creditors, a serious violation of The legal principle of fairness and fairness, the destruction of the normal market order. In the face of such consequences, it is necessary to unveil the independent personality of the company “veil”, by the actual power to operate the company shareholders bear joint and several liability, in order to protect the legitimate rights and interests of creditors and social public interest, to protect the healthy and smooth operation of the market economy, to maintain social justice.

2.3 Outcome Elements

The result element of the company law personality denial lawsuit is that the shareholders involved in the case abuse the company’s independent personality and limited liability treatment, causing damage to the legitimate rights and interests of others or social public interests. Commercial law as the adjustment of commercial relations between equal subjects of the legal norms, on the one hand, to protect the independent personality of the company and shareholders of limited liability, maximize the advantages of the company’s system, to attract investors to enter, to maintain the institutional cornerstone of the market economy, on the other hand, also to protect the legitimate rights and interests of creditors, fair distribution of benefits and risks, to ensure the balance of interests of investors and creditors of the company, to promote the market economy Smooth operation. When the company investors abuse the independent personality of the company resulting in imbalance of interests, it may damage the interests of creditors, and the shareholders involved in the
case should be held jointly and severally liable. There must be a causal relationship between the abuse of the independent personality of the company by the shareholders involved, the relevant creditors’ rights and interests or the loss of social public interests.

3. Problems with the Application of the Corporate Law Personality Denial Regime in Cases of Significant Undercapitalisation

3.1 The Connotation of “Capital” is Contrary to the Legislative Intent

In judicial practice, the “capital” in the “significant shortage of capital”, is generally the registered capital of the company as the object of investigation and identification. Such a definition although the standard is clear, convenient and quick, improve the judicial efficiency, but this as the basis to deny the company’s personality is obviously out of touch with the reality of the situation, not the spirit of company law legislation. Company law has a natural instinct to maintain the principles of company law and the company system, in the scope of company law, as a last resort” situation, can not easily destroy or deny the basic system and principles of the company, and the so-called “as a last resort” situation in debt law, is to exhaust all legal remedies. In commercial activities, when the interests of creditors are damaged, it is of course necessary to protect their legitimate rights and interests, but at the same time it is also necessary to preserve the corporate system, which is an important cornerstone of the market system, and it is the task of qualified legislators and judicial practitioners to find a balance between the two.

When a company is “significantly undercapitalised” to the detriment of creditors and the public interest, it is necessary to protect the legitimate rights and interests of creditors and the public on the one hand, and to try to maintain the company’s system and principles on the other, without destroying the basic system and principles of company law until legal remedies have been exhausted.

A company’s solvency, not only in the company’s registered capital, the company’s legitimate possessions other than the registered capital, but also to repay the company’s debts of legitimate and reasonable content, will be included in the repayment of debts, to a certain extent is also to ensure the company’s legal survival of the effective way.

Therefore, if the veil is easily pierced simply because of the “original sin” of low registered capital at the time of the company’s establishment, although it effectively protects the interests of creditors, it easily deprives shareholders of the limited liability they should enjoy, and is not in line with the mainstream values of hard work - - It denies the company the fruits of its production and operation after its establishment. Such a simple standard of judgement, the rough way of dealing with the debt dispute at hand, but did not really deal with the interests of different market players, easily denied the survival of the company, seriously undermined the enthusiasm of investors to participate in the market, seriously undermined the basic principles and systems of company law, contrary to the legislative intent of the company law.

3.2 The Definition of “Capital” Creates a Conflict of Laws

In judicial practice, the “capital” in “significant deficiency of capital” is usually judged by the registered capital, and the registered capital is used as the criterion for judging “capital”, which is reasonable under specific The use of registered capital as a criterion for judging “capital” has its reasonableness under certain historical conditions. However, the use of registered capital as a criterion for judgement is conflicting in terms of law. The company law personality denial system is in a specific situation on the company personality individual, relative negation, and capital below the legal limit of the company does not meet the company’s establishment requirements, the legal consequences of the company should be a full and complete negation, not just in the case of negation, “registered capital below the legal minimum capital requirements, belongs to the company law orders prohibit the The legal consequences should be comprehensive and complete, not just in individual cases.[14] The use of registered capital as a criterion for judgement will undoubtedly lead to the dilemma of “unlawful judgement”, the negative impact on judicial credibility and the market economy cannot be ignored.

3.3 The Concept of “Significant Undercapitalisation” is Ambiguous

In judicial practice, there are few disputes involving shareholders’ liability for capital contribution, and there are many different situations in company law. Disputes involving shareholders’ capital contributions are common in practice and generally include significant deficiency of capital, insufficient capital contribution and abstraction of capital contribution, etc.[15]. However, it is not uncommon for judicial decisions to conflate them together.

There are various legal issues and liabilities involved in the liability of shareholders’ capital contribution in the company law, and in judicial practice, there are indeed decisions that confuse other situations with the situation of “significant lack of capital"[16] In this case, due to the application of the company law personality denial system will lead to the legal consequences of the shareholders involved in joint and several liability, the impact of the market economic activities, must be strictly clear “capital significantly insufficient” situation of the concept, connotation and application of the elements, strictly in accordance with the law.

3.4 The Absence of a Relevant Judgement Model for “Significant Undercapitalisation”

China’s regulations on the procedure for determining “significant lack of capital” are also very vague, and no relevant legislative interpretation, judicial interpretation or guidance documents have been issued, leaving almost a blank space for adjudication procedures, adjudication bases and adjudication standards[17]. There is almost a gap in the procedures, bases and standards for adjudication. In judicial practice, the reasoning on this part is also pale and ineffective, and, on the one hand, “significant lack of capital” is closely related to a variety of factors, highly specialized, and the process of determination is intricate and complex, and the result of the determination is difficult to clearly explain the
problem, which may easily cause new unfairness and damage the legitimate interests of the parties. On the other hand, due to economic and social development and the progress of information technology, the transparency and security of market transactions have gradually increased, and it is no longer difficult for participants in market activities to know the creditworthiness of the other party[18]. On the other hand, due to economic and social development and the progress of information technology, the transparency and security of market transactions have gradually increased and it is no longer difficult for participants in market activities to know the creditworthiness of the other party. In such circumstances, the use of the standards of the last century and the pursuit of the creditworthiness of one or both parties would inevitably interfere excessively with normal market operations. In the face of the legislative and judicial gaps, the urgent needs of the theoretical and practical communities, and the rapid development of the economy and society, relevant legislation, judicial interpretations or guidance documents and guiding cases must be introduced as soon as possible to clarify the appropriate judgment procedures, judgment methods, and judgment methods to meet the needs of theoretical research and judicial practice and to play an active role in the adjudication of such cases.

4. Suggestions for the Application of China’s Corporate Law Personality Denial Regime in Cases of Significant Undercapitalisation

4.1 Sound Laws, Regulations and Judicial Interpretations

4.1.1 Broadening the scope of the definition of “capital”

The legislation of the company law, in order to maintain the company system and the legal survival of the company as a premise, easily deny the legal personality of the company and the company system just because the registered capital is too low, although it effectively protects the interests of creditors, but easily deprives the shareholders should enjoy the limited liability treatment[19]. The company’s registered capital is not the legal personality. This is clearly not in line with the legislative intent. The registered capital as a judgment standard, in the law is also a conflict, in practice caused by the “illegal judge” dilemma.

In today’s highly developed information network technology and market economy, both market participants and judicial authorities are better equipped to grasp the relatively perfect conditions of the debtor company’s creditworthiness, and include more legal property owned by the company into the scope of “capital” recognition, which is not only more in line with the actual situation of the market, to meet the productivity development requirements, tap the potential of production factors and stimulate market vitality[20]. It also reduces the need for the public authorities to have a greater influence on the market. It also reduces unreasonable interference by the public authorities in market activities and promotes the healthy development of the market. Moreover, in the actual market operation, what is used to repay the company’s debts is not only the registered capital of the company, but also other property other than the registered capital legally owned by the company. In judicial practice, in order to ensure the fairness and justice of the decision, there must also be further screening, on the one hand, the company’s property is shared by all shareholders, can not force the shareholders outside the case for the shareholders involved in the responsibility, must respect the views of shareholders outside the case, to protect their legitimate rights and interests, part of the company’s property excluded from the scope of identification; on the other hand, different industries on different categories of company property requirements are different, to combine The market situation and the nature of the industry to different categories and forms of company property for screening, or give different calculation weight, to avoid triggering other disputes or new unfairness.

4.1.2 Distinction between voluntary and involuntary creditors applies

The plaintiff of the company law personality recognition lawsuit, i.e. due to the shareholders involved in the abuse of the company’s independent personality and suffer losses, in general, is the company’s creditors. The creditors of the company in question are divided into voluntary creditors and involuntary creditors based on the different reasons for incurring the debt, and their status in the trading market is very different. Voluntary creditors are generally due to contractual debts and involuntary creditors are generally due to tort debts. In commercial activities, the subjective attitude, market information and legal status of voluntary and involuntary creditors are different, and the rights and responsibilities they enjoy and bear when participating in commercial activities should also be different, and should therefore be protected differently.

Voluntary creditors are generally contractual creditors who are actively involved in commercial activities and are typically rational economic persons in a market economy, who have a good understanding of their own situation and a good understanding of the market participants. Before entering into a commercial transaction with a market participant, a rational economic person has sufficient incentive and reason to conduct the necessary inspection of the counterparty to the transaction in order to maximise its own benefits and minimise the risks it may suffer, to understand the industry in which the counterparty is engaged, the amount of registered capital serviced, the operation and operation of the business, its credit standing and its ability to repay its debts, etc. When there is a risk that the counterparty will not be able to repay its debts, it can also reduce the risk by various means When there is a risk that the other party will not be able to pay its debts, there are various ways to reduce the risk or even cancel the transaction. It is normal market practice to work with a counterparty knowing these circumstances. Even if the other party has a debt dispute due to a “significant lack of capital”, as the creditor knows or should know the specific situation of the debtor company and does not violate the principle of fairness and justice, the law should not deny the legal personality of the debtor company and interfere with normal market activities, which is a risk-bearing behaviour in the market economy and should be borne by voluntary creditors. Creditors bear the consequences themselves.
4.2 Improving Judicial Mechanisms

4.2.1 Introduction of expert capital valuation support persons

The mainstream academic view on the determination of “significant capital deficiency” has largely reached a consensus. The adequacy of a company’s capital is an economic requirement, not a legal one. It is not for the legislature to determine what constitutes adequate capital for any company[21]. Therefore, both the legislature and the judiciary should not only focus on the legal standards of adjudication, but also consider the actual needs of the economy. This places extremely high demands on the legislature and the judiciary.

Most judges specialise in the legal field due to their profession, very few of them have extensive experience in investment and participation in company operations, and lack the necessary theoretical knowledge and practical experience to judge whether a company is significantly undercapitalised in its operations. Faced with such a dilemma, on the one hand, it is impossible to put the cart before the horse and ask judges to learn about company finance, accounting, auditing and operations, on the other hand, it is also necessary to analyse and decide cases on the basis of theoretical knowledge and practical experience in these subject areas, therefore, it becomes the best choice to have professionals assist the judges in their decisions.

In US judicial practice, there exist various ways to judge the capital status of a company, the most common of which are comparative tests and expert testimony. In order to ensure a fair and reasonable decision, a comparative test is used to compare the financial and operational information between companies in the same region and industry as the defendant company, and to analyse whether the company in question is significantly undercapitalised, as the company is in a different era and in a different region and industry. At the same time, in order to better ensure the objectivity, professionalism and credibility of the comparative analysis and the fairness and impartiality of the adjudication, third-party credit assessment agencies with a high degree of professionalism and market recognition will also be introduced and their relevant creditworthiness standards will be referred to. Expert testimony, i.e. the introduction of experienced professionals in the relevant fields, who will apply their knowledge, methods and standards in the financial, fiscal and auditing professions to make a comprehensive analysis of the defendant company to determine whether it is significantly undercapitalised. These models have played an important role in the adjudication of cases related to “significant capital deficiency” and are of great significance in judicial practice, which we need to learn from.

4.2.2 Adding relevant guidance cases

On 26 November 2010, the Supreme People’s Court issued the Regulations of the Supreme People’s Court on Case Guidance Work (Fafa (2010) No. 51), which clarified the exemplary role and important status of guidance cases in trial practice and explicitly required that people’s courts at all levels should hear similar cases with reference to guidance cases.

The case guidance system can ensure a high degree of certainty in adjudication. Judges are individuals in society and can be affected by various factors in social life, leading to uncertainty in the application of the law and the implementation of procedures in adjudication, the undesirable phenomenon of “different judgments in the same case”, and even the occurrence of illegal decisions. It is true that it is impossible to reach the same verdict in different cases, and that the specific circumstances of the case and the judge hearing it may also lead to differences in the verdict. However, the differences between specific types of cases must be kept within a certain acceptable range, otherwise the interests of the parties may be harmed, and the professionalism and authority of the judiciary undermined. Due to the authority, accuracy and reasonableness of the findings of fact, application of law and reasoning of decisions, the guiding cases provide judges of the people’s courts at all levels with a uniform standard of reference, improve the accuracy of judgments, ensure judicial authority and maintain the credibility of decisions.

On the one hand, due to the lack of necessary laws and regulations, judicial interpretations and guidance documents, there is a certain degree of ambiguity in the cases related to the denial of corporate personality under the situation of “significant capital deficiency”, and there is an urgent need for the Koranic People’s Court to publish relevant guidance cases to clarify the mode of judgment, judgment standards, analysis and reasoning, so as to ensure the smooth progress of practical work. On the other hand, according to the development of the market economy and the pace of reform and opening up, the corresponding guiding cases can be issued for different stages and different fields of adjustment, which can play a positive role. At present, there are very few guiding cases on personality denial, and due to the complexity and ambiguity of the application of this system, the statutory law generally only provides for principles, and judicial practice needs cases for guidance. Therefore, it is necessary to speed up the screening and issuance of guidance cases on the application of the corporate law personality denial system in situations of significant capital deficiency, so as to play an active role in judicial practice.

4.3 Promote the Improvement of the Enterprise Credit Information Public Disclosure System

China’s enterprise credit information disclosure work is mainly undertaken by the National Enterprise Credit Information Disclosure System. Since its launch, the system has played a great role in the market economy, ensuring to a certain extent the needs of relevant departments and market participants for enterprise information and playing a positive role in maintaining the safety of market transactions. However, as the system has been in operation for a relatively short period of time and lacks the necessary technology and experience accumulation, it needs to be continuously explored in use, gradually improved and perfected to play a greater role.

The relevant departments should provide comprehensive corporate credit information services. First, clarify the supervisory responsibility of the administrative department for industry and commerce, which still needs to assume
definite supervisory responsibility for the operation of the company at the time of its establishment and after its establishment; verify and correct the corporate credit information filled in the registration by the company in a timely manner, and introduce relevant disciplinary measures to crack down on irregularities in filling in the information. Secondly, to enhance inter-departmental information linkage, as enterprise credit information is rich in connotation and scope, and involves more public authority departments, it is impossible for one department to provide the required information in a timely and comprehensive manner, and cannot guarantee the service effect of the enterprise credit information disclosure system. Therefore, information producers, obtainers and keepers, including relevant government departments, judicial organs and specific commercial institutions, should be incorporated into a unified system. Therefore, all information producers, including relevant government departments, judicial organs, specific commercial institutions, etc., should be integrated into the unified enterprise credit information service platform, and establish an effective information linkage and data sharing mechanism, so as to avoid fragmentation and closure of relevant information, break down “information silos” and provide timely and comprehensive information services for the market. Thirdly, for enterprises in breach of trust, they should not only be included in the “blacklist”, but also increase the cost of their breach of trust through fines and other means to reduce the possibility of breach of trust. “Approval rights. The national enterprise information disclosure system plays the role of a “light” in the modern market economy, purifying the business environment, reducing communication costs, improving operational efficiency, and reducing market risks. It plays an increasingly important role in the market economy by ensuring that market participants are aware of the creditworthiness of their counterparties and reducing the commercial risks associated with “significant capital deficiencies”. It is important to continuously improve the corporate credit information disclosure system in accordance with market development and public demand, to promote the continuous transparency, accuracy and efficiency of corporate credit information, and to play a greater role in the market economy.

References