

# Towards a More Efficacious Corporate Security Contract Regime for China

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## **Abstract**

This paper considers the need to reform the corporate security contract regime in China and the ways in which this reform is to be carried out. The PRC corporate security contract regime is constituted by rules on, *inter alia*, (i) corporate contracting (including those on agency and the corporate legal representative) (ii) the liability of security providers, and (iii) the location of corporate authority for committing the company as a security provider. This regime suffers from two deficiencies. First, it is biased against security providers, as it not only lacks surety protection mechanisms but also penalises alleged security providers where the purported surety contract is declared invalid. Second, it is fraught with difficulties such as internal inconsistency and a lack of necessary rules governing the solution of disputes. Under the current legal framework, these deficiencies can only be remedied by the People's Courts through an exercise of their judicial discretion.

A central issue arising from corporate security disputes is the liability of the company for a putative security contract entered into without authority. The data obtained for a pilot project on decisions on this class of disputes indicates an excessive judicial inclination to prefer creditors at the expense of the security provider, which, *prima facie*, increases both the costs for obtaining loan security and the incidents of loan disputes.

The achievement of a balance in the protection of the corporate security provider and the creditor requires both a reform of the legal framework and a reconfiguration of the general institutional environment for adjudicating the class of disputes under consideration. This paper focuses on the ways in which the first of these tasks is to be carried out. It argues that the accomplishment of this mission requires the adoption of a policy position for adjudicating corporate contracting disputes that protects all stakeholders, followed by a number of law reform steps. The effect of this reform should be that (i) the apparent authority of a professing agent is established when not only the contractor had reasons to believe that the professing corporate representative had the requisite authority but also the former's belief was attributable to the alleged principal, (ii) an alleged security provider will not be liable where the putative security contract is declared void, and (iii) the rules on the location of corporate authority for security contracts and the consequence of contravention should be clearly articulated leaving no room for interpretation. In order to provide for certainty, there is also a need for rules on the ways in which a company executes contracts, either as a principal or through agents/representatives. As a legislative amendment or law making can take time to complete, the suggested law reform can be effected by way of Judicial Interpretations by the Supreme People's Court. The proposed reform will pave the way for a wider improvement of the institutional environment for adjudicating disputes arising out of not only corporate security contracts but corporate contracts in general.