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The Disappearance of the Ultra Vires Doctrine in Greater China: Harmonized Legislative Action or (Simply) an Accident of History

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The Disappearance of the *Ultra Vires* Doctrine in Greater China: Harmonized Legislative Action or (simply) an Accident of History?

*Lutz-Christian Wolff**

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I. INTRODUCTION

In the context of company law, the term "*ultra vires*" is normally used to describe acts that are beyond the scope of the powers of a corporation.¹ Rules concerning *ultra vires* acts of companies have changed in recent years in mainland China,² Taiwan and the Hong Kong Special Administrative Region ("Hong Kong"). It appears that in all of these parts of Greater China,³ the legal frameworks are now rather similar to each other and seem to resemble the rules that are applied in the Macau Special Administrative Region ("Macau").⁴ This, of course, provokes questions: what are the reasons for these seemingly synchronized legislative developments, given the different political, economic and legal systems of these areas in Greater China? In particular, can any conclusion be drawn in regard to attempts to harmonize lawmaking in the region, or do the reasons for the aforementioned changes follow a global trend?⁵

The *ultra vires* doctrine was originally developed in the common law world but has ceased to be popular in many of these jurisdictions.⁶ Consequently, it is further interesting to inquire if (1) the reasons for abandoning the doctrine are the same in the West and in the Far East, and (2) if this means anything for the significance of the *ultra vires* doctrine.

This article is divided as follows. Part II will briefly introduce the historical development and function of the *ultra vires* doctrine in the Western world. Part III is devoted to the discussion of the development and current status of the legal framework governing *ultra vires* acts of corporations in the different parts of Greater China. Part IV will carry out an analytical comparison of the legislative approaches taken towards *ultra vires* acts of

¹ For details see *infra* Part II.

² The term "mainland China" is used to refer to the People's Republic of China ("P.R.C."), excluding the territories of Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan.

³ See Xian-chu Zhang, *The Practice of "One Country, Two Systems" in the Economic Integration of Mainland China and Hong Kong: Review and Prospects*, 35 KOBE U. L. REV. 103, 118 (2001).

⁴ The common origin of the different areas of Greater China makes it particularly interesting to compare their historical legal development, which will be discussed *infra* Parts III(A)(1), III(B)(1), III(C)(1), and III(D)(1), without a need to justify the selection of compared jurisdictions. Compare, e.g., Marieke Oderkerk, *The Importance of the Context: Selecting Legal Systems in Comparative Legal Research*, 48 NETH. INT'L L. REV. 293, 303 (2001).

⁵ For discussion of tendencies to establish standardized company law regimes in capitalist jurisdictions, see Bernhard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 HARV. L. REV. 1911 (1996); Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. J. 439 (2000); John Gillespie, *Transplanted Company Law: An Ideological and Cultural Analysis of Market-Entry in Vietnam*, 51 INT'L & COMP. L.Q. 641, *passim* (2002).

⁶ For details see *infra* Part II.

companies in Greater China and the West. Part V will address final remarks.

II. THE *ULTRA VIRES* DOCTRINE

In a broad sense, the Latin expression "*ultra vires*" is used by lawyers to describe acts which have been conducted "beyond the legal powers of those who have purported to undertake them."⁷ As indicated above,⁸ in the context of company law, "*ultra vires*" normally stands for acts which are beyond the scope of the powers of a corporation as they are described in the corporation's foundation documents, such as a memorandum of association, the articles of association, or by the law governing its establishment and operation.⁹

During the 19th century, courts in common law¹⁰ jurisdictions developed the rule that *ultra vires* acts of companies were void due to the lack of

⁷ PAUL L. DAVIES, *GOWER'S PRINCIPLES OF MODERN COMPANY LAW* 202 (6th ed. 1999).

⁸ See *supra* Part I.

⁹ See ROBERT C. CLARK, *CORPORATE LAW* 675 (1986); DAVIES, *supra* note 7, at 202; LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 518 (2d ed. 1985); Kent Greenfield, *Ultra Vires Lives! A Stakeholder Analysis of Corporate Illegality*, 87 VA. L. REV. 1279, 1283, 1302 (2001); Stephen Griffin, *The Rise and Fall of the Ultra Vires Rule in Corporate Law*, at <http://www.solent.ac.uk/law/mjls/papers/griffen.htm> (last visited Sept. 12, 2003); ROBERT W. HAMILTON, *THE LAW OF CORPORATIONS IN A NUTSHELL* 66 (1996); STEPHEN W. MAYSON ET AL., *COMPANY LAW* 72 (17th ed. 2000); VANESSA STOTT, *HONG KONG COMPANY LAW* 45 (9th ed. 2000). Sometimes, however, the term *ultra vires* is also used for acts of representatives of a company who exceed their authority. See, e.g., DAVIES, *supra* note 7, at 203; Nicholas C. Howson, *China's Company Law: One Step Forward, Two Steps Back? A Modest Complaint*, 11 COLUM. J. ASIAN L. 127, 150 (1997); Klaus Vorpfeil & Robert J. Wieder, *Vertretungsbefugnis und Legitimationsprüfung bei englischen Kapital- und Personengesellschaften [Legitimacy Checks for English Capital—and Personal Companies]* 41 RECHT DER INTERNATIONALEN WIRTSCHAFT [hereinafter RIW] 285, 288 (1995). Unlawful acts of companies are sometimes called "*ultra vires*" as well. See, e.g., DAVIES, *supra* note 7, at 203; TONY KHINDRIA, *FOREIGN DIRECT INVESTMENT IN INDIA* 94 (1997).

¹⁰ Here "common law" shall mean the English law applied in Commonwealth countries. For discussion of the meanings of the term "common law," see SHARON HANSON, *LEGAL METHOD* 34 (1999); ROSCOE POUND, *THE HISTORY AND SYSTEM OF THE COMMON LAW* 22-23 (1939); William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 LA. L. REV. 677, 670 (1999). Many continental European civil law countries have not and do not apply the *ultra vires* doctrine. See, e.g., Klaus-Peter Hess, *Der "ultra-vires"-Grundsatz im britischen Gesellschaftsrecht [The "ultra-vires"—principle under British company law]* 38 RIW 638 (1992); KARSTEN SCHMIDT, *GESELLSCHAFTSRECHT [COMPANY LAW]* 183 (2d ed. 1991) (regarding *ultra vires* in Germany); Karsten Schmidt, *Ultra-vires Doktrin: tot oder lebendig? [Ultra-vires-Doctrine: dead or alive?]* 184 ARCHIV FÜR CIVILISTISCHE PRAXIS 529, 530 (1984). Other European jurisdictions had developed structures similar to the *ultra vires* doctrine. See, e.g., HANS T. SOERGEL & ALEXANDER LÜDERITZ, *BÜRGERLICHES GESETZBUCH [CIVIL CODE]* VOL. 10 Art. 10 No. 18 (12th ed. 1996) (regarding France and Belgium).

legal capacity¹¹ of the respective company.¹² Moreover, these acts could not be ratified, even by unanimous vote of the shareholders.¹³ The reason for the establishment of this rule was to prevent "trafficking in company registration" and to protect shareholders and creditors by guaranteeing that the capital of a company be used only for its known and declared business.¹⁴ The limitations of corporate power under the *ultra vires* doctrine also reflected "distrust of corporate power and the desire to constrain the corporation's ability to accumulate socially threatening economic power."¹⁵

The business world was, of course, not always satisfied with the restrictions imposed by the *ultra vires* rule and successfully invented ways to circumvent it. This was done by (1) drafting the objects clause (the passage of the memorandum of association that defines a company's scope of business) as widely as possible, and, (2) when the courts reacted by distinguishing the powers from the objects and applying the *ejusdem generis* rule of construction, to include a clause according to which the company had the power "to carry on any other trade or business whatsoever which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with or as ancillary to any of the above businesses or the general business of the company."¹⁶ As a result of these developments, it

¹¹ SIMON GOULDING, *COMPANY LAW* 156 (2d ed. 1998).

¹² The landmark decision in England was *Ashbury Carriage Co. v. Riche*, L.R. 7 H.L. 653 (1875) (Eng.). See DAVIES, *supra* note 7, at 203; GOULDING, *supra* note 11, at 156; HAMILTON, *supra* note 9, at 66, 590; MAYSON et al., *supra* note 9, at 73. In the United States, for example, a Maryland court decided that a contract with a company which had been incorporated to operate steamboats between Baltimore and Fredericksburg was void because the contract involved improvements of the waterway beyond Baltimore. See *Abbott v. Baltimore & Rappahannock Steam Packet Co.*, 1 Md. Ch. 542, 549-550 (1850); FRIEDMAN, *supra* note 9, at 518-19 ("Once, nothing was so central to the legal nature of corporations as the doctrine of *ultra vires*."); David Millon, *Theories of the Corporation*, 1990 DUKE L. J. 201, 209 (1990).

¹³ GOULDING, *supra* note 11, at 156; Millon, *supra* note 12, at 209.

¹⁴ DAVIES, *supra* note 7, at 203; GOULDING, *supra* note 11, at 157; Greenfield, *supra* note 9, at 1283, 1302-1309, 1305-1306

("[T]he agency costs inherent in the difference between shareholder interests and management interests are currently kept in check by numerous legal and non-legal mechanisms. These legal duties and market protections did not exist to anywhere near the same degree during the time at which the *ultra vires* doctrine was at its peak In a context where management's legal and non-legal incentives to look after the interests of the shareholders were low by modern standards, the doctrine of *ultra vires* made eminent sense to shareholders.").

Millon, *supra* note 12, at 218.

¹⁵ *Id.* at 209; see also GREENFIELD, *supra* note 9, at 1302-04.

¹⁶ See *Bell Houses Ltd. v. City Wall Props. Ltd.*, 2 Q.B. 656, 656 (Eng. 1966); DAVIES, *supra* note 7, at 204; GOULDING, *supra* note 11, at 158; Hamilton, *supra* note 9, at 68. For developments in the United States, see Friedman, *supra* note 9, at 519 and Millon, *supra* note 12, at 219.

was felt that any value the *ultra vires* doctrine might have had with regard to shareholders' or creditors' protection was destroyed; "it became instead merely a nuisance to the company and a trap for unwary third parties."¹⁷ In addition, once the rule that managers have the legal duty to protect shareholder interests was acknowledged, it was no longer necessary to limit the use of shareholder capital by applying the *ultra vires* doctrine; on the contrary, this could be counterproductive by restraining managers from taking advantage of all possible business opportunities.¹⁸ Consequently, the rule was abolished in many common law countries.¹⁹ In particular, in the United States, the *ultra vires* doctrine had become basically insignificant in all states by 1930.²⁰ Legal scholars have observed that this development was

¹⁷ DAVIES, *supra* note 7, at 204; Friedman, *supra* note 9, at 519 ("The corporate firm was the chosen form of American enterprise. *Ultra vires* was nuisance, and an obstacle to corporate credit. The doctrine had to go."). See also GOULDING, *supra* note 11, at 157; Greenfield, *supra* note 9, at 1284, 1310.

¹⁸ GOULDING, *supra* note 11, at 1313 ("Once better mechanisms came along, the costs of the *ultra vires* doctrine simply outweighed its benefits, and the doctrine fell away.").

¹⁹ HAMILTON, *supra* note 9, at 68 ("[T]he modern trend has been to eliminate this doctrine from the law of corporations, or at least to sharply restrict its availability."). In England, recommendations for a reform were made as early as 1945. See GOULDING, *supra* note 11, at 159. The abolition of the *ultra vires* rule was finally carried out by the Companies Act 1989. See DAVIES, *supra* note 7, at 207-11 (discussing the preceding European Communities Act 1972 and its significance for the Companies Act 1989). See also GOULDING, *supra* note 11, at 159; MAYSON ET AL., *supra* note 9, at 640; Mark Williams & Jianhua Zhong, *The Capacity of Chinese Enterprises to Engage in Foreign Trade: Does Restriction Help or Hinder China's Trade Relations?*, 8 J. TRANSITIONAL L. & POL'Y 197, 220-21 (1999); Vorpeil & Wieder, *supra* note 9, at 288. Section 35 of the Companies Act 1989 now reads as follows:

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of the company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act done in fulfillment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from their company's memorandum; and action by the directors which but for subsection (1), would be beyond the company's capacity may only be ratified by the company by special resolution. A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

In addition to the *ultra vires* rule, the Companies Act 1985 also abolished the doctrine of constructive notice, according to which any third-party was presumed to know the contents of the foundation documents of a company. GOULDING, *supra* note 11, at 161.

²⁰ Millon, *supra* note 12, at 212; see also Greenfield, *supra* note 9, at 1312. Most states in the United States have, in principle, adopted statutes patterned on § 7 of the Model Act 1950. See HAMILTON, *supra* note 9, at 68. Section 7 of the Model Act 1950 was also the basis for § 3.04 of the Model Business Corporation Act 1984, which reads as follows: "The validity of a corporate action may not be challenged on the ground that the corporation lacks or lacked power to act." See HAMILTON, *supra* note 9, at 68-75; CLARK, *supra* note 9, at 675-76 ("In the United States, it is now a problem that is largely of historical interest."); but see

closely linked to the reconceptualization of the corporation-state relationship through the gradual rejection of the idea that a corporation is artificial in nature and possesses only such powers as the state has conferred upon it.²¹ Instead, the corporation's origin was seen more and more in the natural activities of private individuals.²²

III. THE LEGAL FATE OF *ULTRA VIRES* ACTS OF COMPANIES IN GREATER CHINA

A. Mainland China

1. General

On September 29, 1949, three days before the official establishment of the People's Republic of China ("P.R.C.") on the Chinese mainland, the communist government abolished all laws previously in force under the Nationalist government of the Republic of China.²³ All business organizations were eventually nationalized or collectivized over the next ten years.²⁴ After the chaos which occurred during the Cultural Revolution (1966-1976), the Chinese legal system²⁵ and the corporate system were reestablished in 1978.²⁶

Greenfield, *supra* note 9, *passim* (arguing that the *ultra vires* doctrine remains vibrant insofar as companies are not authorized to act unlawfully); compare REUBEN A. REESE, THE TRUE DOCTRINE OF *ULTRA VIRES* IN THE LAW OF CORPORATIONS (Fred B Rothman & Co. 1981).

²¹ Greenfield, *supra* note 9, at 1305, 1311-12 (also with regard to the "state competition for corporate charters"); see also Millon, *supra* note 12, at 211-12.

²² Greenfield, *supra* note 9, at 1312; Millon, *supra* note 12, at 211-12, 218.

²³ See *General Principles of the Political Consultative Conference of the Chinese People*, in ZHONGYANG RENMIN ZHENGFU FALING HUIBIAN [COLLECTION OF LAWS AND DECREES OF THE CENTRAL PEOPLE'S GOVERNMENT] 1949-1950 (Zhongyang renmin zhengfu fazhi weiyuanhui ed., 1950), art. 17; see also William K. Kirby, *China Unincorporated: Company Law and Business Enterprise in Twentieth-Century China*, 54 J. ASIAN STUD. 43, 56 (1995); Ulrich Manthe, *Bürgerliches Recht und Bürgerliches Gesetzbuch in der Volksrepublik China* [Civil Law and Civil Law Code in the People's Republic of China], 28 JAHRBUCH FÜR OSTRECHT 11, 16 (1987).

²⁴ Kirby, *supra* note 23, at 56.

²⁵ It is debatable whether the mainland Chinese legal system belongs to the civil law family or to the common law family or if it has an entirely unique character. However, mainland Chinese law is not based on case law but on statutory law. See Lutz-Christian Wolff & Bing Ling, *The Risk of Mixed Laws: The Example of Indirect Agency under Chinese Contract Law*, 15 COLUM. J. ASIAN L. 174, 176 (2002).

²⁶ This was done on the basis of a historical decision regarding the liberalization of the mainland Chinese economy. See Manthe, *supra* note 23, at 17 n.26 (referring to the text of the decision in Feiqing yuebao [Chinese Communist Affairs Monthly, Taipei]). See also Williams & Zhong, *supra* note 19, at 99.

Since then, the P.R.C. company law has “developed backwards.”²⁷ The lawmaking process did not start with a general company law on the basis of which rules regarding particular questions could have been drafted. On the contrary, special laws governing enterprises with foreign investment (“FIEs”²⁸) were enacted first in order to attract foreign direct investment and the “import” of urgently needed modern technology from the industrialized western countries. Later, the establishment and operation of domestic forms of private enterprise was gradually allowed, and specific laws governing these new business vehicles were enacted.²⁹ The FIE-legislation and the laws covering privately-owned domestic enterprises supplement an incomprehensive set of rules governing so-called state-owned enterprises³⁰ and collectively-owned enterprises,³¹ which had mainly been set up during the above-mentioned reform activities in the 1950s.

On July 1, 1994 the *Company Law of the People's Republic of China*³² (“P.R.C. Company Law”) was enacted.³³ The P.R.C. Company Law is supposed to provide basic rules for all enterprises (including FIEs), which have

²⁷ Lutz-Christian Wolff, *P.R.C. Company Law: 'One Country, Many Systems'?*, HONG KONG LAWYER, Mar. 2001, at 37, 39. See also R.H. FOLSOM & J.H. MINAN, LAW IN THE PEOPLE'S REPUBLIC OF CHINA 449-461 (1989).

²⁸ Namely equity joint ventures, contractual joint ventures, and wholly foreign owned enterprises.

²⁹ See *Interim Provisions on Privately Owned Enterprises*, effective as of July 1, 1998, CHINA LAWS FOR FOREIGN BUSINESS § 12-546 (CCH 1988). For enterprises without legal person status, see *Law on the People's Republic of China on Individual Sole Investment Enterprises*, effective as of Jan. 1, 2000, CHINA LAWS FOR FOREIGN BUSINESS § 13-502 (CCH 1988); compare with Mao Baigen, *Wholly Individually-owned Enterprises Leap Forward*, CHINA L. & PRACTICE, Apr. 1997, at 19 [hereinafter CHINA L. & PRACTICE]; see also Andrew Halper et al., *Partnership Enterprises Law Breaks Limited New Ground*, CHINA L. & PRACTICE, Apr. 1997, at 19-21; Williams & Zhong, *supra* note 19, at 198.

³⁰ See *Provisional Regulations of State-Owned Industrial Enterprises*, effective as of Apr. 1, 1983, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29 § 13-500; *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People*, effective as of Apr. 13, 1988, CHINA LAWS FOR FOREIGN BUSINESS, *id.* § 13-534; Howson, *supra* note 9, at 129; Deborah K. Johns, *Reforming the State Enterprise Property Relationship in the P.R.C.: The Corporatization of State-owned Enterprises*, 16 MICH. J. INT'L L. 911, 914-28 (1995).

³¹ See P.R.C. Urban Collective-owned Enterprise Provisions, effective as of Jan. 1, 1992 (P.R.C.); P.R.C. Rural Collective-owned Enterprises Provisions, effective as of July 1, 1990 (P.R.C.); see also FOLSOM & MINAN, *supra* note 27, at 457-461; Chuan R. Peng, *Limited Liability in China: A Partial Reading of China's Company Law of 1994*, 10 COLUM. J. ASIAN L. 263, 264-65 (1996).

³² See Roman Tomasic & Jian Fu, *Company Law in China*, COMPANY LAW IN EAST ASIA 135, 143-52 (Roman Tomasic ed., 1999); Kirby, *supra* note 23, at 56-57.

³³ The P.R.C. Company Law was last amended Dec. 25, 1999. See Wang Bai, *National People's Congress Reviews, Adopts Amendments to Corporation Law*, CHINA LAW, Feb. 2000, at 63-65; *Company Law of the People's Republic of China*, CHINA LAW FOR FOREIGN BUSINESS, *supra* note 29, § 13-518.

been established as, or converted into, limited liability companies or joint stock companies.³⁴

2. *Ultra Vires Rules in Mainland China*

For a long time, the legal fate of companies that engaged in *ultra vires* acts was somewhat unclear in mainland China. Many laws and regulations governing the establishment and operation of entities with legal person status required that the foundation documents, *i.e.*, the agreement on the establishment of the company and/or the articles of association, defined the scope of business³⁵ of the respective entity.³⁶ This is particularly true for FIEs.³⁷ The *P.R.C. Company Law*³⁸ summarizes the situation in Article 11, paragraph 2 as follows:

³⁴ See Peng, *supra* note 31, at 267-70; Tomasic & Fu, *supra* note 32, at 155-56. Until today, however, in addition to the basic rules of the P.R.C. Company Law, many special laws and regulations exist providing for diversified rules for different company-types based on the nature of the shareholders, thus creating a complicated corporate system which is rather unclear and inefficient. See Wolff, *supra* note 27, at 37; Coleen Lau, *New Company Law Paves the Way for M&A*, CHINA L. & PRACTICE, Apr. 1996, at 16 (calling it "confusing and fast-changing company law"). C. Y. Leung, *New FIE Registration Rules Add Little Clarity*, CHINA L. & PRACTICE, Apr. 1996, at 28; see generally, Xian Chu Zhang, *Practical Demands to Update the Company Law*, 28 H. K. L. J. 248 (1998).

³⁵ The scope of business clauses under P.R.C. company law are similar to what would be called objects clauses in common law jurisdictions. BING LING, *CONTRACT LAW IN CHINA* 136 (2002); GUIGUO WANG & ROMAN TOMASIC, *CHINA'S COMPANY LAW: AN ANNOTATION* 18 (1994).

³⁶ See, e.g., *Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations*, promulgated on June 3, 1994, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29 § 13-542, arts. 9, 13; *Administrative Rules of the People's Republic of China Regarding the Registration of Companies*, promulgated on June 24, 1994, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29 § 13-568, arts. 9, 19; Howson, *supra* note 9, at 150 ("Chinese legal and organizational culture is fixated on the precise limitations described in a given entity's 'business scope,' such that no enterprise is authorized to undertake an activity not specifically delineated and authorized in an approved scope.").

³⁷ *Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures*, latest version effective as of March 15, 2001, CHINA LAWS ON FOREIGN BUSINESS, *supra* note 29, § 6-500, art. 10; *Regulations for the Implementation of the Law of the People's Republic of China on Sino-Foreign Cooperative Enterprises*, latest version effective as of Oct. 31, 2001, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29 § 6-550, art. 11(2), 13(2), 55; *Detailed Rules for the Implementation of the Law of the People's Republic of China on Sino-Foreign Cooperative Enterprises*, effective as of Sept. 4, 2001, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29, § 6-105, art. 12(2), 13(2), 36; *Detailed Rules for the Implementation of the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises*, latest version effective as of Dec. 4, 2001, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29, § 13-507, art. 11, 14(3), 15(2), 45; *Ministry of Foreign Economic Relations and Trade, Contracts and Articles of Association of Foreign Investment Enterprises Examination and Approval Principles and Items of Examination*, promulgated on Oct. 5, 1993, CHINA L. & PRACTICE, Feb. 1995, at art. 2(5). It is understood among foreign investors and their legal advisors that special attention should be paid to the drafting of related scope of business clauses in order to

The scope of business operations of a company shall be stipulated in the company's articles of association, and shall be registered in accordance with the law. Projects within the scope of business operations of a company, that are restricted by the laws or regulations, shall be subject to approval in accordance with the law.³⁹

Moreover, several laws and regulations provide that legal entities are only allowed to act within their registered scope of business.⁴⁰ All these regulations, however, fail to explicitly address legal acts which are not covered by the scope of the business of a company, in particular if *ultra vires* contracts concluded in the name of a company are valid or not.⁴¹

avoid unnecessary restrictions on one hand and to be as specific as required in order to obtain the necessary state approval. See Judith Crosbie, *Editor's Note*, CHINA L. & PRACTICE, Feb. 1995, at 43-44. All FIE projects are subject to approval by designated state authorities. For new developments regarding the approval practice, see Li Xiaoyang, *Decentralized Approval of Encouraged FIE Projects*, CHINA L. & PRACTICE, Mar. 2000, at 44-45; Andrew McGinty & Fang Jian, *MOFTEC Changes FIE Approvals: Headway or a Headache?*, CHINA L. & PRACTICE, Mar. 2000, at 49-60; Jun Wei & Stephen Curley, *Provincial Approvals of Foreign Investment Clarified*, CHINA L. & PRACTICE, July-Aug. 2001, at 71; Tarrant M. Mahony, *New Investment Catalogue Expected to Liberalize Infrastructure Investment*, CHINA L. & PRACTICE, Jan. 2002, at 107.

³⁸ See Bai, *supra* note 33.

³⁹ See Tomasic & Fu, *supra* note 32, at 156 ("Presumably, this is to be interpreted as introducing an *ultra vires* doctrine into Chinese Company Law."). For the requirement of a definition of the scope of business of limited liability companies and joint stock companies in their articles of association, see *Company Law of the People's Republic of China*, *supra* note 33, at arts. 22(2), 79(2) (respectively). FIEs in particular are not allowed or are restricted to certain industries. See Mahony, *supra* note 37, at 107; see generally, Mitch Dudek & Alex Wang, *China's Accession to the WTO: Ready and Willing . . . But Able?*, CHINA L. & PRACTICE, Dec.-Jan. 2002, at 18-21; Xinchao Tong et al., *Investing in a Distribution Channel: Current Legal Framework and Implications after WTO*, CHINA L. & PRACTICE, Jan. 2002, at 31-35.

⁴⁰ See e.g., *General Principles of Civil Law of the People's Republic of China*, effective as of Jan. 1, 1987, CHINA LAWS FOR FOREIGN BUSINESS, *supra* note 29, § 19-150, art. 42 ("A corporation shall operate within its approved and registered scope of business."), 49(1) (providing administrative and criminal liability for enterprise representatives who are responsible for any *ultra vires* acts in the name of the company); *Company Law of the People's Republic of China*, *supra* note 33, at art. 11, ¶ 3 ("A company shall conduct operational activities within the registered scope of its business activities. If a company revises its articles of association pursuant to legal procedures and an amendment to its registration is carried out with the company registration authority, the scope of a company's business operation may be amended."). See also *Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations*, *supra* note 36, at art. 13; *Administrative Regulations of the People's Republic of China Regarding the Registration of Companies*, *supra* note 36, at art. 19.

⁴¹ See *General Principles of Civil Law of the People's Republic of China*, *supra* note 40, at art. 49(1) (stipulating that the legal representatives of an enterprise that is a legal entity are subject to administrative and criminal liability "in addition to the liability borne by the legal person." The extent to which the enterprise entity is subject to contractual or pre-contractual

Until 1997, it was widely assumed that *ultra vires* acts of companies were void.⁴² Published decisions of mainland courts⁴³ as well as several judicial interpretations issued by the Supreme People's Court pointed in this direction.⁴⁴ Furthermore, this position seemed to be supported by some statutory stipulations under which civil acts that violated the law or public interest were void.⁴⁵ In the early 1990s, however, the Chinese judiciary started to take a more liberal approach to *ultra vires* acts of companies.⁴⁶ Several courts held that *ultra vires* contracts of corporations were not necessarily invalid.⁴⁷ Also, in 1993, the Supreme People's Court stated that contracts violating administrative regulations (such as contracts which are outside the respective scope of business) should not be regarded as void unless they violate special sales, operational rights, or statutory prohibitions, or if the contract concerned "unsellable goods."⁴⁸ However, especially in the field of foreign trade and investment law, this new trend in P.R.C. court practice was widely ignored.

The remaining uncertainty was partly abolished by the *Interpretation to Questions Concerning the Application of the P.R.C. Contract Law*⁴⁹

liability, however, was not clear.); see Howson, *supra* note 9, at 150 ("Thus, it is somewhat surprising that the Company Law does not provide for any protection of third-parties acting in good faith, where a company or its directors or officers are acting *ultra vires* or beyond their scope of authority.")

⁴² GUIGUO WANG, WANG'S BUSINESS LAW OF CHINA 105-10 (3rd ed., 1999); Stefanie Tetz, *Neues Vertragsgesetz in China: Was ändert sich für ausländische Vertragspartner?* [New Contract Law in China: What is Being Changed with Respect to Foreign Contract Parties?] RIW at 647-649 (1999) ("Contracts with Chinese parties, who do not have foreign trade rights or whose scope of business does not cover the contract are without doubt void."). See also, WANG & TOMASIC, *supra* note 35, at 18.

⁴³ See *Case Digest*, CHINA L. & PRACTICE, Jan. 1992 at 17; WANG, *supra* note 42, at 110 (In the past, decisions of mainland courts were not published on a regular basis; however, that practice is changing).

⁴⁴ See LING, *supra* note 35, at 137 n.138.

⁴⁵ *People's Republic of China Foreign Economic Contract Law*, art. 9, available at www.isinolaw.com/jsp/law/LAW_Statutes.jsp, repealed by *People's Republic of China Contract Law*, [hereinafter *P.R.C. Contract Law*] (Oct. 1, 1999) ("Contracts which violate national laws or interests of the P.R.C. are void."); see also *General Principles of Civil Law of the People's Republic of China*, *supra* note 40, art. 58(5).

⁴⁶ LING, *supra* note 35, at 137.

⁴⁷ See *id.* at 137-38.

⁴⁸ Supreme People's Court, *Summary of the Minutes of the National Symposium on Economic Adjudication Work (May 6, 1993)*, reprinted in ZHONGHUA RENMIN GONGHEGUO FALU QUANSHU: ZENGBIANBEN [COLLECTION OF LAWS OF THE P.R.C.: SUPPLEMENT] 137, 139 (Huai et al. eds., 1994).

⁴⁹ See *P.R.C. Contract Law*, *supra* note 45. The P.R.C. Contract Law itself failed to address the issue explicitly. However, Article 52 stipulates that a contract is void if it violates mandatory provisions of laws or administrative regulations. *Id.* at art. 52. Whether or not the rules, which require companies to act only within the scope of their business, are to be regarded as "mandatory" in the sense of Article 52 was not clear. For a general discussion of the P.R.C. Contract Law, see Wang Liming & Xu Chuanxi, *Fundamental Principles of*

("Contract Law Interpretation")⁵⁰ which was promulgated by the P.R.C. Supreme People's Court on December 19, 1999 and entered into force on December 29, 1999. Article 10 of Chapter 3 of the *Contract Law Interpretation* reads as follows:

A People's Court shall not declare a contract void for the reason that it is entered into by the parties beyond their business scope, except for those contracts involving business the operation of which is restricted by the State, subject to license by the State or prohibited by laws and administrative regulations.⁵¹

This stipulation is commonly understood as having abolished the *ultra vires doctrine*, i.e., that *ultra vires* acts of companies are now in principle valid as far as third party dealings of companies are concerned.⁵² Some Chinese legal writers have suggested that the legislative change was caused by the transformation of the Chinese economic system into a "market oriented economy," that the costs for rigidly adhering to the registered scope of business were too high, and that "too many contracts would be voided and that creditors would face great uncertainty."⁵³

It must be emphasized at this point, however, that especially in the area of foreign direct investment, many restrictions still exist. This is particularly true with regard to specific industries.⁵⁴ It must be assumed that *ultra*

China's Contract Law, 13 COLUM. J. ASIAN L. 1 (1999); Wolff & Ling, *supra* note 25; Lam Ling Wo, *China Unveils Unified Contract Law*, INT'L FIN. L. R., June 1999, at 17-22; Lam Ling Wo, *Scrutinizing the Contract Law*, CHINA L. & PRACTICE, May 1999, at 59-62; Randall Peerenboom, *A Missed Opportunity?*, CHINA L. & PRACTICE, May 1999, at 83-87; Hugh T. Scogin & Brett D. Braude, *New Contract Basics*, CHINA BUS. REV., Jan. 1999, at 36-41; WANG SHENGMING ET AL., AN INSIDER'S GUIDE TO THE P.R.C. CONTRACT LAW, (1999); Tetz, *supra* note 42; WANG, *supra* note 42, at 56-168; Nan Wang, *The New P.R.C. Contract Law*, CHINA L. & PRACTICE, Oct. 1998, at 42-46; GUANGHUA YU & MINKANG GU, LAWS AFFECTING BUSINESS TRANSACTIONS IN THE P.R.C. 10-38 (2001); E. Anthony Zaloom & Hongchuan Liu, *China's Contract Law Marks a New Stage in Commercial Law Drafting*, CHINA L. & PRACTICE, May 1999, at 15-18.

⁵⁰ Yunfei Chen, *Interpreting the P.R.C. Contract Law*, CHINA L. & PRACTICE, Mar. 2000, at 40-42.

⁵¹ Interpretation to Questions Concerning the Application of the P.R.C. Contract Law, entered into force on Dec. 29, 1999 (P.R.C.) [hereinafter *Contract Law Interpretation*], ch. 3, art. 10 (referring only to the validity of contracts; it can only be assumed that non-contractual *ultra vires* acts are treated in the same way).

⁵² See LING, *supra* note 35 at 138; YU & GU, *supra* note 49, at 19 (without reference to the *Contract Law Interpretation*).

⁵³ See YU & GU, *supra* note 49. For the fact that information on the legislative history of P.R.C. law is normally not publicly available, see LING, *supra* note 35.

⁵⁴ The main legal basis for these restrictions are the Directing of Foreign Investment Tentative Provisions, entered into force June 12, 1995 (P.R.C.) [hereinafter *Directing Provisions*]. According to the *Directing Provisions*, industries are grouped into encouraged, restricted, permitted and prohibited foreign investment categories. The *Directing Provisions* are supplemented by *Foreign Investment Industrial Guidance Catalogue 2110/02.03.11*

vires acts of companies that reach into those restricted areas are still void despite the clarification provided by the *Contract Law Interpretation*. The situation is, however, not totally clear. Moreover, it is doubtful whether the legislative clarification by the *Contract Law Interpretation* regarding the fate of *ultra vires* acts of companies can already be seen as a safe indicator for a complete liberalization of the private business sector,⁵⁵ since state control over the scope of business of companies is for the time being maintained.⁵⁶ However, it can be expected that any future steps in direction of the liberalization of the mainland Chinese economy will give impetus to further reduction of the existing restrictions.

B. Hong Kong

1. General

On December 19, 1984, the governments of the United Kingdom of Great Britain and Northern Ireland and of the P.R.C. signed the *Joint Declaration on the Question of Hong Kong*⁵⁷ ("Joint Declaration"). In accordance with the Joint Declaration, Hong Kong became part of the P.R.C. on July 1, 1997, after having been a British colony for more than 150 years.⁵⁸ The economic and legal system of Hong Kong, however, will remain unchanged for a period of at least fifty years after the handover⁵⁹ under the

[hereinafter *Catalogue*], the first version of which became effective with the *Directing Provisions*, the latest version on Apr. 1, 2002. CHINA L. & PRACTICE, Apr. 2002, at 37-69. The *Catalogue* specifies in more detail the business types that fall into the different categories. Lucile Barale, *Is MOFTEC Imposing Stricter Controls on the Approval of Foreign Investments?*, CHINA L. & PRACTICE, May 1997, at 32-35; Hongchuan Liu, *The Revised Foreign Investment Catalogue: Ground for Optimism?*, CHINA L. & PRACTICE, Apr. 2002, at 23-25; Kenneth Lu, *The New Catalogue and MOFTEC Approval of Encouraged Enterprises*, CHINA L. & PRACTICE, Apr. 2002, at 115; Randall Peerenboom, *The New Foreign Investment Guidelines and Market Reform in China*, CHINA L. & PRACTICE, Apr. 2002, at 19-22.

⁵⁵ As suggested by YU & GU, *supra* note 49, at 19.

⁵⁶ For the phasing out of industry-related restrictions for FIEs after China's WTO-accession, see Dudek & Wang, *supra* note 39, at 18-21; Dennis Hie Hok Fung, *Setting Up Joint Ventures in China: Will the Problems Disappear After China's Accession to the WTO?*, in CHINA AND THE WTO 111-27 (David Smith & Guobin Zhu eds., 2002); Mahony, *supra* note 37, at 107; Tong et al., *supra* note 39, at 31-35.

⁵⁷ *Joint Declaration on the Question of Hong Kong*, Dec. 19, 1984, available at <http://www.info.gov.hk/trans/jd/> (last visited on Sept. 13, 2003).

⁵⁸ ANNE CARVER, HONG KONG BUSINESS LAW 10 (5th ed. 2001).

⁵⁹ See *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, art. 5, [hereinafter *HK Basic Law*] available at http://www.info.gov.hk/basic_law/fulltext (last visited Sept. 13, 2003) (the "socialist system and policies shall not be practiced in the Hong Kong Special Administrative Region and the previous capitalist system and way of life shall remain unchanged for 50 years"). See also CARVER, *supra* note 58, at 9. The situation is commonly referred to as the "one country, two systems" concept. *Id.* at 6-7.

concept of “one country, two systems”⁶⁰ according to which, Hong Kong became a Special Administrative Region of the P.R.C.⁶¹

Hong Kong’s legal system is based on English law.⁶² The major source of Hong Kong’s company law is common law,⁶³ and the principles of equity are supplemented by a rather developed statutory framework. The most important piece of legislation in this area is the Companies Ordinance (“HKCO”),⁶⁴ which was first enacted in 1865.⁶⁵

2. Ultra Vires Rules in Hong Kong

Before 1997, the HKCO required companies to specify their objectives in a memorandum of association.⁶⁶ Acts of a company⁶⁷ not covered by the objects clause were regarded as *ultra vires* and void without any possibility

⁶⁰ See Judith H. Krebs, *One Country, Three Systems? Judicial Review in Macau After Ng Ka Ling*, 10 PAC. RIM L. & POL’Y J. 111, n.1 (explaining legal aspects of the “one country, two systems” concept with regard to the economic integration of mainland China and Hong Kong), see also Zhang, *supra* note 3, *passim* (an excellent study of the topic).

⁶¹ The legal basis for the establishment of Special Administrative Regions was created in 1982 through an amendment of the P.R.C. Constitution. Article 32 now reflects the idea of “one country, two Systems” and reads as follows:

The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in light of special conditions.

See also Krebs, *supra* note 60, at 112.

⁶² *HK Basic Law*, *supra* note 59, at art. 8 (“The laws previously in force in Hong Kong, that is the Common Law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for those which are inconsistent with this law or have been amended by the legislature of the Hong Kong Special Administrative Region.”). For a summary of the development of Hong Kong’s legal system, see CARVER, *supra* note 58, at 10-15; for legal aspects of the economic integration of mainland China and Hong Kong, see Zhang, *supra* note 3, at 106-110 and *passim*. English law is applied as far as suitable to the local circumstances of Hong Kong. CARVER, *supra* note 58, at 12.

⁶³ *I.e.*, the body of law that develops and derives through judicial decisions. For the different meanings of the term “common law,” see *supra* note 10.

⁶⁴ *Companies Ordinance*, at <http://www.justice.gov.hk/Home.htm> (last visited Sept. 28, 2003) (hereinafter referred to as “HKCO”).

⁶⁵ There are also non-statutory regulations such as the *Codes on Takeover and Mergers and Share Purchases*, available at http://www.hksfc.org.hk/eng/bills/html/codes_guide/jan02takeovers/ (last visited Oct. 12, 2003).

⁶⁶ The memorandum of association is one of the founding documents of a company. See HKCO, *supra* note 64 §§ 4 (1), 15. The others are the articles of association (non-essential for companies limited by shares) and a statutory declaration of compliance with all the requirements of the Companies Ordinance. HKCO, *supra* note 64 §§ 9, 11, 15, 18(2).

⁶⁷ Pursuant to the HKCO “[a]ny 2 or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association . . . and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability.” HKCO, *supra* note 64 § 4 (1).

of the company ratifying and thereby validating such an act.⁶⁸ In line with common law tradition,⁶⁹ this limitation on companies' ability to operate⁷⁰ was supposed to serve two major goals: (1) it was meant to protect the creditors of the company by allowing the company to use its assets only for the purposes covered by the objects clause or reasonably incidental to those objects, and (2) it was intended to protect the company's shareholders who had invested in a business of a specific nature, which should not be changed without their consent.⁷¹

Again, like in other common law countries, the strict application of the *ultra vires* doctrine in Hong Kong had caused much criticism.⁷² However, it was only in 1997⁷³ that the *Companies (Amendment) Ordinance 1997*⁷⁴ changed the *ultra vires* rule.⁷⁵ The HKCO now provides that the use of an objects clause is optional.⁷⁶ Even if a company chooses to define its objectives, corporate acts which are not covered by the objects clause are not necessarily void, as stipulated by section 5B of the HKCO, which reads as follows:

⁶⁸ *Pearl Island Hotel Ltd. v. Li Ka-yu*, 2 H.K.L.R. 87 (1988); STOTT, *supra* note 9, at 45. Actual notice of the objects of a company was of no relevance, since a company's memorandum was open to inspection by any person. Everyone was, therefore, deemed to have constructive notice of the objects. *Id.* at 50.

⁶⁹ Here, "common law" means the English law applied in the Commonwealth countries. For the different meanings of the term "common law," see *supra* note 10.

⁷⁰ STOTT, *supra* note 9, at 45.

⁷¹ *Dirs. of the Ashbury Ry. Carriage & Iron Co. v. Riche*, 7 L.R. 653, 667 (H.L. 1875); STOTT, *supra* note 9, at 46.

⁷² In particular, it was argued that it was easy to circumvent the rule by "listing the objects at great length," STOTT, *supra* note 9, at 47-49; GRIFFIN, *supra* note 9. By way of a liberal construction, to interpret an *ultra vires* contract as an exercise of express or implied powers, see *Attorney Gen. v. Dirs. of the Great E. Ry. Co.*, 5 L.R. 473, 478 (H.L. 1880), or to authorize the company to extend the objects, see *Bell Houses Ltd. v. City Wall Props. Ltd.*, 2 L.R. 656 (Q.B. 1966).

⁷³ In England, the *ultra vires* doctrine in relation to third party dealings was abolished by the Companies Act 1989. See *supra* note 19; GRIFFIN, *supra* note 9.

⁷⁴ In force since Feb. 10, 1997. STOTT, *supra* note 9, at 46.

⁷⁵ *Id.* The Second Report of the Hong Kong Companies Law Revision Committee (paragraph 2) had suggested following section 35(1) of the English Companies Act and section 117(2) of the Australian Corporations Act, where the objects clause is optional. The 1992 Ninth Report of the Hong Kong Standing Committee on Company Law Reform recommended taking an approach towards *ultra vires* actions of companies similar to that taken by the Canadian Business Corporation Act 1982 as amended. See ROMAN TOMASIC ET AL., BUTTERWORTHS HONG KONG COMPANY LAW HANDBOOK 42-43 (3d ed. 2001).

⁷⁶ HKCO § 5(1A)(a)(i) states: "The memorandum of any company may state the objects of the company," available at <http://www.justice.gov.hk/Home.htm> (last visited Sept. 13, 2003). However, the memorandum of an association that intends to be registered under HKCO § 21(1) without the word "limited" or related characters in its name, must have an objects clause. HKCO § 5(1A)(a) available at <http://www.justice.gov.hk/Home.htm> (last visited Sept. 13, 2003); TOMASIC, *supra* note 75, at 42-43.

(1) A company-

(a) whose objects are stated in its memorandum⁷⁷ shall not carry out any business or do anything that is not authorized by its memorandum to carry on or do;⁷⁸ or

(b) shall not exercise any power which is expressly excluded or modified by its memorandum or articles, contrary to such exclusion or modification.

(2) A member of a company may bring proceedings to restrain the doing of an act in contravention of subsection (1); but no such proceedings shall lie in respect of an act to be done in fulfillment of any legal obligation arising under a previous act of the company.

(3) An act of a company (including a transfer of property to or by the company) is not invalid by reason only that it contravenes subsection (1).⁷⁹

With the introduction of subsection (3) of section 5B HKCO, the *ultra vires* doctrine was finally abolished in Hong Kong. The main reason for such abolition was the need to protect innocent third parties who might otherwise suffer in their dealings with a company that had acted beyond its listed powers.⁸⁰

C. Taiwan

1. General

After having been under Japanese control prior to⁸¹ and during World War II, Taiwan came under Chinese rule again in 1945.⁸² The communist victory on the Chinese mainland in 1949 forced the government of the Republic of China ("ROC"), which had been in power on the mainland until then,⁸³ and 2 million of its followers, to "relocate" to Taiwan.⁸⁴ In principle, the laws of the ROC remain in force in Taiwan today.⁸⁵

⁷⁷ Where a company does not state the objects in its memorandum of association, "[a] company has the capacity and the rights, powers and privileges of a natural person." HKCO § 5A (1), available at <http://www.justice.gov.hk/Home.htm> (last visited Sept. 13, 2003). It "may do anything which it is permitted or required to do by its memorandum or by any enactment or rule of law." HKCO, *supra* note 64, § 5A (2); see also TOMASIC, *supra* note 75, at 43.

⁷⁸ TOMASIC, *supra* note 75, at 43.

⁷⁹ *Id.*

⁸⁰ TOMASIC, *supra* note 75, at 44.

⁸¹ China had ceded control of Taiwan to Japan after its defeat during the Sino-Japanese War (1894-95). Gregory Klatt, *Taiwan*, in COMMERCIAL LAWS OF EAST ASIA 505 (Alan S. Gutterman & Robert Brown, eds., 1997); Neil Andrews & Angus Francis, *Company Law in Taiwan*, in COMPANY LAW IN EAST ASIA 219 (Roman Tomasic, ed., 1999).

⁸² Klatt, *supra* note 81, at 505; Jane Kaufman Winn, *Banking and Finance in Taiwan: The Prospects for Internationalization in the 1990s*, 25 INT'L LAW. 907, 910 (1991).

⁸³ See discussion *supra* Part III(A)(1).

The Taiwanese legal system is a statutory system,⁸⁶ which is modeled after the laws of other countries, most importantly Germany and Japan. More recently, the Taiwanese system has been influenced by Anglo-U.S. common law and commercial practice.⁸⁷ It also contains elements of traditional Chinese law⁸⁸ and thus “reflects a complex heritage.”⁸⁹ The *ROC Company Law* is the major source⁹⁰ of the formation, organization, operation and dissolution of incorporated business entities in Taiwan.⁹¹

⁸⁴ Klatt, *supra* note 81, at 505; Andrews & Francis, *supra* note 81, at 219; Chiu, *LEGAL ASPECTS OF INVESTMENT AND TRADE WITH THE REPUBLIC OF CHINA* 44, 47 (John T. McDermott, ed., 1991). Taiwan then had about six million inhabitants. *Id.* at 219. The whole population has grown to an estimated number of 22,603,001 as of July, 2003. See CIA, *The World Factbook 2003*, available at <http://www.cia.gov/cia/publications/factbook/geos/tw.html> (Aug. 1, 2003).

⁸⁵ Klatt, *supra* note 81, at 505; Andrews & Francis, *supra* note 81, at 220; Chiu, *supra* note 84, at 47; Manthe, *supra* note 23, at 16; see also CIA, *supra*, note 84. The Taiwanese government claims to represent the whole of China. However, most countries in the world recognize the government of the P.R.C. as the only legitimate representative of China, including Taiwan.

⁸⁶ Andrews & Francis, *supra* note 81, at 220-21 (“overlaid on imperial Chinese law”).

⁸⁷ *Id.* at 221-23; Chiu, *supra* note 84, at 48.

⁸⁸ Klatt, *supra* note 81, at 510-11; BAKER & MCKENZIE et al., *INVESTITIONSFÜHRER TAIWAN [INVESTMENT GUIDE TAIWAN]* 32 (2000); Andrews & Francis, *supra* note 81, at 221 (“Despite the introduction of Western codes and courts, the 3000-year-old Chinese legal system has remained significant”).

⁸⁹ Andrews & Francis, *supra* note 81, at 219 (“intricate interplay of these disparate legal traditions”).

⁹⁰ Klatt, *supra* note 81, at 521; see Andrews & Francis, *supra* note 81, at 222.

⁹¹ The *ROC Company Law* was first promulgated on Dec. 26, 1929 and entered into effect on Feb. 21, 1931. Andrews & Francis, *supra* note 81, at 227. The *ROC Company Law* was largely based on the *Ordinance Concerning Commercial Associations* [Gongsi tiaoli] which had been put in force in 1914 on the basis of the *Commercial Law* of 1904. See Kirby, *supra* note 23, at 43, 51. A substantial revision of the *ROC Company Law* was carried out in 1946, in order to “assist in the accumulation of capital for the expansion of the industry, to take over Japanese-owned industry and to attract foreign investment following the relinquishment of extraterritoriality by China’s war-time allies.” See Andrews & Francis, *supra* note 81, at 228; for background, in particular for United States involvement. See also Kirby, *supra* note 23, at 53-56. The *ROC Company Law* was often revised (nine times between 1966 and 2001), but retained the “essential features of the 1929 and 1946 laws, which placed an emphasis on regulatory controls.” *Id.* at 57. According to Article 2, the *ROC Company Law* allows for four different company forms as follows: (1) unlimited companies, Articles 40-97, (2) unlimited companies with limited liability shareholders, Articles 114-127, (3) limited liability companies, Articles 98-113 and (4) companies limited by shares, Articles 128-356; see also Andrews & Francis, *supra* note 81, at 235-36; Klatt, *supra* note 81, at 521; JAMES CHENG, *DOING BUSINESS IN TAIWAN* 65-67 (1989); KIM S. JAP, *TAXES AND INVESTMENT IN TAIWAN* 9 (1990). Due to tax reasons, the first two forms are rarely used in practice. Klatt, *supra* note 81, at 521.

2. *Ultra Vires Rules in Taiwan*

As a statutory requirement, the articles of incorporation of Taiwanese companies have to define the respective company's scope of business.⁹² The articles require governmental approval as a precondition for the incorporation of the company.⁹³ In the past, approval was often only granted for a limited number of activities.⁹⁴ It has been suggested that one of the main reasons for these restrictions was the historical fact that the ROC-government, which was dominated by those who had come to Taiwan from the mainland after 1949,⁹⁵ mistrusted the local population and tried to limit commercial freedom by granting "entry rights to a lucrative oligopoly" only to those who proved to be cooperative and loyal.⁹⁶ In response to the tight government control, Taiwanese businessmen often refrained from registering their businesses as companies.⁹⁷ In the 1980s, however, a process of liberalization started. Today, it is assumed that in practice, except for businesses that require special approval,⁹⁸ everyone is free to set up a company for most types of business activities without being hindered by government authorities, in particular during the process of registering the company.⁹⁹

Until November 12, 2001, Taiwanese companies were expressly forbidden from conducting business that was not covered by their approved scope of business.¹⁰⁰ The related sentence 1 of Article 15 of the *ROC Company Law* reads as follows: "A company shall not engage in any business outside the scope of its registered business."¹⁰¹ The Ministry of Economic

⁹² *ROC Company Law*, *supra* note 91, at arts. 41, 101, 129.

⁹³ *Id.* at arts. 6, 387; see Klatt, *supra* note 81, at 536; JAP, *supra* note 91, at 9; see generally R.O.C. CIV. CODE, arts. 30, 32, 47, 48. For special requirements in cases of foreign investment, see Andrews & Francis, *supra* note 81, at 236.

⁹⁴ Andrews & Francis, *supra* note 81, at 229. In order to engage in different business sectors, different companies had to be set up with different business scopes. *Id.*; Kirby, *supra* note 23, at 57.

⁹⁵ Chiu, *supra* note 84, at 115; Winckler, *supra* note 82, at 8; see *supra* Part III(C)(1).

⁹⁶ Andrews & Francis, *supra* note 81, at 230; Chiu, *supra* note 84, at 115-31; Kirby, *supra* note 23, at 51, 57; Kaufman Winn, *supra* note 82, at 908, 944.

⁹⁷ Andrews & Francis, *supra* note 81, at 230; Kirby, *supra* note 23, at 58; Kaufman Winn, *supra* note 82, at 916. In 1998, it was reported that up to forty percent of the Taiwanese economy was carried out underground. Andrews & Francis, *supra* note 81, at 230.

⁹⁸ For example, banks.

⁹⁹ Information obtained from Taiwanese scholars. A search did not yield any recent empirical data supporting this assumption or a continuing restrictive exercise of approval powers by Taiwanese authorities.

¹⁰⁰ KE FANGZHI, GONGSIFA YAOYI [ESSENTIALS OF COMPANY LAW] 13 (1995) ("For this reason, a company's legal capacity is restricted by its objects."). But see WANG TAIQUAN, XIN XIUXHENG GONGSIFAJIEYI [ANALYSIS OF THE NEW REVISION OF THE COMPANY LAW] 26 (Lai Yuanhe et al. eds., 2002); Kirby, *supra* note 23, at 57.

¹⁰¹ This version has been in force since Nov. 15, 2000 and is available at http://www.trade.gov.tw/english/wto/wtolaw_07.htm (last visited on Sept. 28, 2003).

Affairs ("MOEA") has the power to order a company to cease any *ultra vires* activity, fine the directors and even dissolve the company.¹⁰²

Despite the fact that sentence 1 of Article 15 of the *ROC Company Law*¹⁰³ is widely regarded as a reflection of the *ultra vires* doctrine in Taiwan,¹⁰⁴ no express stipulation exists which declares *ultra vires* acts of companies void.¹⁰⁵ Consequently, it is commonly understood that in general,¹⁰⁶ *ultra vires* acts of companies are valid.¹⁰⁷

On November 12, 2001, the *ROC Company Law* was again revised. The above-quoted sentence 1 of Article 15¹⁰⁸ was deleted. The official reason for this change was that in order to be in line with the concurrent

¹⁰² *ROC Company Law*, *supra* note 91, at art. 10, ¶ 3, which reads as follows:

Where a company has committed any act in violation of the laws and regulations or its Articles of Incorporation to the extent affecting its normal operation, the authority may order the company to take corrective measure(s) within a given time limit. In case the company fails to take corrective measure(s) within that time limit, its responsible person shall be liable to a fine of not less than NT\$ 6000 but not more than NT\$ 30,000, and the authority may set another time limit and order the company to take corrective measure(s) upon expiry of the said time limit, the central authority may, ex officio or upon report by the local authority, order the dissolution of the company. Notwithstanding the foregoing provisions, the central authority may, ex officio or upon report by the local authority concerned or application by an interested party, give a direct to dissolve the company if the violation of the laws and regulations or Articles of Incorporation is serious in nature.

See also Andrews & Francis, *supra* note 81, at 229, 232 ("... makes the company a hostage to the relevant authority and the MOEA").

¹⁰³ This is true for the current version of the *ROC Company Law*, *supra* note 91, as well as for the previous version, *supra* note 102.

¹⁰⁴ WANG TAIQUAN, *supra* note 100, at 20.

¹⁰⁵ KE FANGZHI, *supra* note 100, at 16.

¹⁰⁶ On the basis of *ROC Company Law*, *supra* note 91, at art. 15, sentence 2, it is assumed, however, that lending of a company's capital shall not be legally effective. See KE FANGZHI, *supra* note 100, at 15. The wording of Article 15, sentence 2, is, however, not totally clear: "Unless inter-company activities call for capital loan, the capital of a company shall not be lent to any of the shareholders of the company nor to any other person." See also *ROC Company Law*, at art. 16:

A company, unless otherwise authorized by other laws or provided in its articles of incorporation to provide guaranty for others, shall not act as a guarantor in any way whatsoever. The responsible persons of a company acting in violation of the aforesaid provisions shall personally bear the responsibility of such guaranty and shall be severally subject to a fine not exceeding NT\$60,000 and shall be liable to the company for loss which may have been sustained by the company therefrom.

¹⁰⁷ KE FANGZHI, *supra* note 100, at 15; WANG TAIQUAN, *supra* note 100, at 20-21 (The person acting on behalf of the company must reimburse the company for any damages). See also ROC CIVIL CODE, *supra*, note 91, at art. 107 ("The limitation and withdrawal of the delegated authority shall not be a valid defense against a *bona fide* third party unless the ignorance of the third party is due to its own fault." This provision is, however, not dealing with the legal capacity of a company, but with the scope of authority of agents).

¹⁰⁸ *ROC Company Law*, *supra*, note 91.

amendment of Article 18 *ROC Company Law*,¹⁰⁹ the business activities of a company should not be restricted, except that the scope of business should be clearly formulated in its articles.¹¹⁰ It appears that the abolition of sentence 1 of Article 15 *ROC Company Law* also underlined the previously accepted understanding according to which corporate *ultra vires* acts of Taiwanese companies are not void.¹¹¹ Consequently, like in many other civil law jurisdictions,¹¹² the *ultra vires* rule has never gained any significance in Taiwan.¹¹³

D. Macau

1. General

On the basis of the *Sino-Portuguese Joint Declaration on the Question of Macau*¹¹⁴ signed by the Portuguese government and the government of the P.R.C. in 1987, Macau was “returned” to the P.R.C. on December 20, 1999 and became a Special Administrative Region on the basis of Article 32 of the P.R.C. Constitution.¹¹⁵ Macau had been a Portuguese colony for

¹⁰⁹ See *id.* at art. 18:

Companies engaged in the same category of business, no matter whether they are of the same class of company [or] whether they are located in the same province (municipality) or locality, shall not use the same or a similar corporate name. Where two companies engaged in different business are using the same corporate name, the company with later registration shall include in its corporate name distinctive word or words. Where the corporate names of two companies are separately distinguished by different categories of business, their corporate names shall be deemed not identical or similar.

Where the name of a company indicates the category of business, unless there is any other law or regulation, then its registered scope of business shall not be restricted by such indication.

See also ¶¶ 1-3 of the amended version of art. 18:

Companies shall not use the same or similar corporate name. Where the corporate names of two companies are separately distinguished by different categories of business or where the characters of the name allow for such differentiation, they shall be deemed to be not identical or similar.

Apart from the fact that the business should be clearly formulated in the articles of the company the operation of a company should not be otherwise restricted.

¹¹⁰ WANG TAIQUAN, *supra* note 100, at 21.

¹¹¹ See the text accompanying note 91.

¹¹² For the impact different foreign jurisdictions have had on the development of Taiwan’s legal system see *supra* Part III(C)(1).

¹¹³ See *supra* Part III(C)(2).

¹¹⁴ *Sino-Portuguese Joint Declaration on the Question of Macau*, at http://www.cri.com.cn/english/ncrj_special/macau/jointd/index.html (last visited Jun. 11, 2002); see also Krebs, *supra* note 60, at 114-15.

¹¹⁵ For attempts of the Portuguese government to pass control of Macau to the P.R.C. at a much earlier stage, see Krebs, *supra* note 60, at 115, 112-24; Zhang, *supra* note 3, at 119-120.

the previous 442 years.¹¹⁶ Similar to the related provisions of the *Hong Kong Basic Law*,¹¹⁷ the *Macau Basic Law*¹¹⁸ provides that laws in force prior to the handover shall be maintained for a period of fifty years.¹¹⁹

Due to its colonial past, Macau follows the civil law tradition.¹²⁰ For a very long time, Macau's company law simply followed Portuguese legislation. Originally, Macau's business law was based on the *Portuguese Commercial Code*, which was first enacted in 1888.¹²¹ Prior to the handover in 1999, however, it was felt that Macau should have its own codification of corporate rules.¹²² In 1989, the Macau government entrusted a Portuguese expert with the preparation of the draft of a *Macau Company Code*.¹²³ The draft, which was completed in 1990, never became law, but was used by the Macau lawmakers as a basis for company-law-related stipulations contained in the *Macau Commercial Code*,¹²⁴ which became law on November 1, 1999.¹²⁵

¹¹⁶ Krebs, *supra* note 60, at 111.

¹¹⁷ See Hong Kong Basic Law, *supra* note 59.

¹¹⁸ *Macau Basic Law*, available at <http://www.umac.mo/basiclaw/english/main.html> (last visited May 5, 2003).

¹¹⁹ See *id.* at arts. 5, 8, 18; but *cf. id.* at arts. 13, 14 (stating that the central P.R.C. government is, however, in charge of foreign and defense affairs). For the differences between the *Basic Law of Macau* and *Basic Law of Hong Kong*, see Krebs, *supra* note 60, at 124-26.

¹²⁰ KONRAD ZWIEGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW 108-09 (3d ed. 1998) (stating that Portugal is a civil law country with a statutory legal system.). See Tetley, *supra* note 10, 683 ("[c]ivil law" shall be understood as the Roman Law-influenced continental-European legal systems). For the differences between civil law and common law, see ZWIEGERT & KÖTZ at 261-71; Tetley, *supra* note 10, 707-12; Basil Markesinis, *Reading Through a Foreign Judgment*, in THE LAW OF OBLIGATIONS: ESSAYS IN CELEBRATION OF JOHN FLEMING 260-283 (Peter Cane & Jane Stapleton eds., 1998); C. Gordon Post, *Stare Decisis: The Use of Precedent*, in READINGS IN THE PHILOSOPHY OF LAW 19-31 (John Arthur & William H. Shaw eds., 2d ed., 1993); POUND, *supra* note 10, at 57-62; Krebs, *supra* note 60, at 128.

¹²¹ LENG TIEUXUN, AOMEN GONGSI, DIREITO DAS SOCIEDADES COMERCIAIS DE MACAU [MACAU COMPANY LAW] 8-9 (1999).

¹²² *Id.* at 9-10; See also *Localisation of the Laws*, at http://www.macau99.org.mo/tdmrtp/varios/legacy_e.htm (last visited Sept. 28, 2003).

¹²³ TIEUXUN, *supra* note 121, at 9.

¹²⁴ *Código Comercial de Macau* [Macau Commercial Code], at <http://www.imprensa.macau.gov.mo/bo/i/pt/default.asp#dpri> (last visited Sept. 28, 2003).

¹²⁵ TIEUXUN, *supra* note 121, at 10; *Macau Commercial Code*, *supra* note 124, §§ 331-472. Under the rules of the *Macau Commercial Code*, the following company types are available: (1) unlimited company, §§ 331-347; (2) mixed liability company by quotes or by shares, §§ 348-355; (3) limited liability company by quotas or by sole owner, §§ 356-392; (4) limited liability company by shares, §§ 393-472. See also C&C-Advogados, *How to Setup a Company*, at <http://www.ccadvog.com/htsac.htm> (last visited May 5, 2003).

2. *Ultra Vires* Rules in Macau

As it is the rule in other parts of Greater China, Macau companies are required to specify the scope of business in their articles of association.¹²⁶ It is therefore assumed that the legal capacity of Macau companies is limited to activities covered by the scope of business so defined.¹²⁷ However, no express statutory rule exists which declares *ultra vires* acts of companies invalid. On the contrary, limitations of a company's legal capacity cannot be used against innocent third parties as indicated by paragraphs 1 and 2 of Article 236 of the *Macau Commercial Code*, which read as follows:

(1) Companies have to accept the validity of activities which have been carried out by the members of its administrative organs towards third parties in the name of the company and which are within the scope of the powers granted by the law, notwithstanding the fact that the powers of its representatives have been limited in the articles of association or if the representatives' powers have been limited by way of shareholders' resolution and it is irrelevant if such resolution has been published or not.

(2) But, if it can be proved that the third party knew or according to the situation ought to have known that the related activity is not in line with the stipulations of the articles of association, and there is no express or implied shareholder's resolution that the company will be responsible for this activity, the company may hold the limitations of the representative's powers as stipulated in the articles or as due to the nature of the business against a third party.¹²⁸

The above provisions do not directly address a company's legal capacity. Instead, they deal with the limitation of the legal power of a company's representatives. As a matter of principle, acts towards *bona fide* third parties are valid even if they are not covered by the respective companies' business scope.¹²⁹ The *ultra vires* doctrine as such was never applied in Macau.

IV. HARMONIZED ABOLITION OF THE *ULTRA VIRES* DOCTRINE IN GREATER CHINA?

A. Coordinated Legislative Action?

As demonstrated above, due to the legislative changes between 1997 and 2000 in mainland China, Hong Kong and Taiwan, the *ultra vires* doctrine has practically disappeared in all parts of Greater China.¹³⁰ It is inter-

¹²⁶ *Macau Commercial Code*, *supra* note 124, at § 179(5)(b).

¹²⁷ TIEXUN, *supra* note 123, at 32, 34-35.

¹²⁸ *Macau Commercial Code*, *supra* note 124, at § 236(1-2).

¹²⁹ See discussion *supra* Part III(D)(2).

¹³⁰ But see *supra* Part III.A.2, at 12 (discussing mainland China).

esting to note that within a rather short period, a legislative harmonization has taken place in the region despite the different political, economic and legal systems in the various areas. This could suggest that there has been some kind of joint legislative action. The idea of a (secret) coordination of legislative activities within Greater China, intriguing as it is, however, is not realistic due to the ongoing political tensions between mainland China and Taiwan.¹³¹ Furthermore, despite the discussion about Greater China's economic and legal integration,¹³² there is no evidence of any coordinated legislative action regarding the abolition of the *ultra vires*-doctrine. In contrast, the remaining statutory differences in the various parts of Greater China indicate that no joint legislative approach has been taken.¹³³

B. Transplanted Legislative Action?

Due to the trend of internationalization and globalization, lawmakers in any jurisdiction study (and copy) foreign legal systems when creating new laws and/or when taking legislative action to improve the existing legal framework.¹³⁴ But, again, there is no evidence that the disappearance of the *ultra vires* doctrine in Greater China was the result of any such "legislative chain reaction", i.e., no evidence exists that any of the lawmaking bodies of the various parts of Greater China copied one another in relation to the recent legislative changes.¹³⁵

¹³¹ Cf. Zhang, *supra* note 3, at 118-19. For recent developments, see Jason Blatt, *Chen Dismiss Direct-Links Overture*, S. CHINA MORNING POST, July 8, 2002, at 7; Jason Blatt, *Qian Offers Taiwan 'Concession'*, S. CHINA MORNING POST, July 6, 2002, at 1; Jason Dean, *Taipei's Change in China Stance Raises Tensions*, ASIAN WALL ST. J., Aug. 5, 2002, at 1; Mark O'Neill & Jason Blatt, *Chen on Path to Disaster, Warns Beijing*, S. CHINA MORNING POST, Aug. 6, 2002, at 1; John Tkacik, *Taiwan's Hornet Nests*, ASIAN WALL ST. J., Aug. 5, 2002, at A9.

¹³² Zhang, *supra* note 3, at 123. For example, Macau lawmakers, practitioners and academics mentioned in discussions with the author that it is being considered to bring Macau's company law in line with the company law of Hong Kong in order to facilitate investment opportunities. Also, there is much discussion about the establishment of a Free Trade Zone between southern parts of mainland China, Hong Kong and Macau, and possibly a future opening to Taiwan. Bill Savadove & Joe Tang, *A Day of Milestones for Integration*, S. CHINA MORNING POST, Jan. 27, 2003; Christian A. W. Schulz, *Free Trade Zones at the Beginning of the 21st Century*, 35 COMP. & INT'L J. S. AFR. 198, 198-215 (2002). For the recent establishment of a free trade zone between Hong Kong and mainland China under the *Closer Economic Partnership Arrangement*, at <http://www.tdctrade.com/cepa/> (last visited Nov. 17, 2003).

¹³³ See *supra* Parts III(A)(2), III(B)(2), III(C)(2), III(D)(2).

¹³⁴ Esin Örüçü, *A Theoretical Framework for Transfrontier Mobility of Law*, in TRANSFRONTIER MOBILITY OF LAW 5, 7 (Robert Jagtenberg et al. eds., 1995); Black, *supra* note 5; Gillespie, *supra* note 5, at 642-46; William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 AM. J. COMP. L. 489, 489-510 (1995); Hansmann & Krakman, *supra* note 5; Wolff & Ling, *supra* note 25, at 174.

¹³⁵ For the "borrowings" of Hong Kong legislators, see *supra* note 75.

C. Mono-Causational Legislative Action?

If, in the same region, legislative activities take the same direction without having been coordinated, it could be assumed that the same reasons have caused such synchronized lawmaking. A closer look at the recent developments regarding *ultra vires* legislation in the different parts of Greater China, however, reveal that the immediate legislative rationale was rather different.

First, just as in line with Macau and its civil law legacy, the *ultra vires* rule was never applied in Taiwan, despite that tight government control over Taiwanese corporate activities¹³⁶ was maintained for a long period of time over registration and approval requirements. The recent amendments of the *ROC Company Law* did not therefore abolish the *ultra vires* rule, but have (at most) clarified the existing situation.

Secondly, while the actual reasons for the abolition of the *ultra vires* rule in mainland China¹³⁷ are not completely clear,¹³⁸ it is necessary to keep in mind that the *ultra vires* rule never obtained any express “statutory blessing” on the Chinese mainland. Its prior application appears to have been a side-effect of governmental attempts to control corporate activities.¹³⁹ With the development of a more elaborate civil and business law in mainland China, the private-law¹⁴⁰ feature of these administrative¹⁴¹ restrictions of corporate activities became apparent. It had to be decided if *ultra vires* acts by companies should not only be punished with sanctions by government organs, but should also bear consequences at the private law level. In reaction, *ultra vires* acts of companies were viewed to be void. The recent abolishment of the *ultra vires* rule in principle demonstrates that the (indirect) state control of corporate business activities on a private law level is no longer regarded as essential. It also signifies that the private law-related function of the *ultra vires* rule, *i.e.*, the protection of stakeholders in companies,¹⁴² has been (or at least is in the process of being) taken over by a

¹³⁶ Andrews & Francis, *supra* note 81, at 226-227, 229; Chiu, *supra* note 84, at 113; Johns, *supra* note 30, at 924-26; Peng, *supra* note 31, at 274.

¹³⁷ See *supra* Part III(A)(2).

¹³⁸ Compare with Ling, *supra* note 35.

¹³⁹ For the traditionally tight control of business activities by Chinese governments, see *supra* Part III(C)(2); Andrews & Francis, *supra* note 81, at 219, 226-27, 229; Chiu, *supra* note 84, at 44; Peng, *supra* note 31, at 274; Johns, *supra* note 30, at 924 (“culture of state intervention”). Williams & Zhong, *supra* note 19, at 198, 222 (explaining a “deep-rooted belief that strict control equals good order”).

¹⁴⁰ “Private law” as the law governing the civil relationships among individuals, associations and corporations excluding criminal law, administrative law and constitutional law.

¹⁴¹ For the traditionally strong public-law character of mainland China, see LUTZ-Christian Wolff, DAS INTERNATIONALE WIRTSCHAFTSRECHT DER VR CHINA [INTERNATIONAL BUSINESS LAW OF PEOPLE’S REPUBLIC OF CHINA], 80 (1999).

¹⁴² See *supra* Part II.

more sophisticated set of rules for the protection of a company's shareholders and creditors.¹⁴³

Finally, the reasons for the abolition of the *ultra vires* rule in Hong Kong are completely different and follow the trend of other common law countries.¹⁴⁴ The *ultra vires* rule ceased long ago to be an effective instrument for the protection of shareholders and creditors of a company in Hong Kong as well.¹⁴⁵ The developments detailed above had made this goal unachievable.¹⁴⁶ The rule became a "theoretical nuisance value" and "an outdated Victorian legacy," which placed unnecessary burdens on the contractual capacity of corporations.¹⁴⁷ The abolishment of the *ultra vires* doctrine was therefore long overdue.¹⁴⁸

V. CONCLUSION

The *ultra vires* doctrine can be regarded as a simple and effective tool to exercise state control over business activities of companies on the one hand¹⁴⁹ and to protect the interests of (private) stakeholders in companies on the other hand.¹⁵⁰ However, with the development of liberalized markets, as well as a more refined response of legislators to the demand for protection of concerned parties, it loses its justification.¹⁵¹ Accordingly, in recent years, the *ultra vires* rule has ceased to play any major role in all of Greater China despite the fact that no synchronized lawmaking has taken place. However, in Greater China, the rise and downfall of the *ultra vires* doctrine

¹⁴³ For the development of mainland China's legal system in general see *supra* Part III(A)(1). The protection of creditors is in mainland China achieved by the *P.R.C. Contract Law*, *supra* note 45, and supplemented by other laws on more specific issues, e.g., the *P.R.C. Security Law*, promulgated on June 30, 1995 and effective as of Oct. 1, 1995, CHINA L. & PRACTICE, Aug. 1995, at 21-36 (English and Chinese) and CHINA BANKING & FIN., Sept. 18, 1995, at 9-16 (English). See also Robert Caldwell & Xu Xiangmin, *Editor's Note*, CHINA L. & PRACTICE, Aug. 1995, at 36-44; Robert Caldwell & Xu Xiangmin, *Taking and Enforcing Security in China Under the New Security Law*, CHINA BANKING AND FINANCE, Aug. 25, 1995, at 1-7; Edward Epstein, et al., 1995 BUTTERWORTH'S J. OF INT'L BANKING & FIN. 457, 457-59 (1995); Paul Vout, *Taking Security in China*, 4 ASIAN CLR 125, 125-32 (1998); Y.L. Elaine Lo, *Security Provision Rules Give Government Tighter Control Over Lending Issue*, CHINA L. & PRACTICE, Jan. 1997, at 34-39; Yan Lan, et al., *Several Issues Concerning the Application of the 'P.R.C. Security Law' Interpretations*, CHINA L. & PRACTICE, Feb. 2001, at 24-47 (English and Chinese; promulgated by the Supreme People's Court on Dec. 8, 2000 and effective as of Dec. 13, 2000); A. Godwin & Zhou Lili, *Judicial Interpretation on the P.R.C. Security Law*, CHINA L. & PRACTICE, Feb. 2002, at 20-23.

¹⁴⁴ *Supra* Part III(B)(2).

¹⁴⁵ See *supra* Part III(B)(2).

¹⁴⁶ See *id.*

¹⁴⁷ Griffin, *supra* note 9, at 11.

¹⁴⁸ *Supra* Part III(B)(2).

¹⁴⁹ See *supra* Part III(B)(2).

¹⁵⁰ See *supra* Part III(B)(2).

¹⁵¹ *Supra* Part II.

(and similar legislative instruments) was and is closely linked to the intended level of state control over the activities of companies and the degree of sophistication of the legislative protection of private stakeholders in companies.¹⁵² In this respect, the history of the *ultra vires* doctrine in the West has repeated itself in Greater China.

¹⁵² *Supra* Part IV(B).

