SYSTEM INNOVATION AND RULE INTERPRETATION OF REGISTERED CAPITAL UNDER CHINA'S NEWLY REVISED COMPANY LAW

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I. INTRODUCTION

The *Company Law of the People's Republic of China* was adopted at the 5th Session of the Standing Committee of the 8th National People's Congress on December 29, 1993, as the first company law of China. It was subsequently amended in 1999 (the first amendment) and in 2004 (the second amendment), revised in 2005 (the first revision), amended in 2013 (the third amendment), and amended in 2018 (the fourth amendment).[1] On December 29, 2023, the 7th Session of the Standing Committee of the 14th National People's Congress approved the second revision of the *Company Law* (hereinafter referred to as the newly revised Company Law), effective on July 1, 2024. This revision systematically restructures the registered capital system, with particular attention to the subscription-based capital contribution. Article 47 of the newly revised Company Law provides that the registered capital of a limited liability company is the total amount of capital contributions subscribed for by all shareholders as registered with the company registration authority, and all shareholders shall fully pay up their subscribed contributions within five years from the company's establishment as stipulated in the articles of association. This signals the end of the comprehensive subscription system established by the *Company Law of 2013*, ushering in a new phase of the corporate capital system.

Tracing the evolution, China's corporate capital system has undergone a process from strict to relaxed, and then to moderately constrained. The *Company Law of 1993* adopted a paid-in capital system, requiring all shareholders to fully pay up their contributions in one lump sum, setting high minimum registered capital requirements, and limiting the amount of

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1 Amendment and revision are two forms of legal modification in China. 'Amendment' means the Standing Committee of the National People's Congress passes a separate decision to modify certain provisions of a law. In terms of specific content, the decision on legal modification sets out the modifications article by article, generally involving fewer modifications. 'Revision' means the Standing Committee of the National People's Congress re-promulgates the text of a law after modification, replacing the original text. Revision is generally applicable to major modifications that require changing important content or structural chapters.

capital contributed in the form of industrial property rights and non-patented technology to no more than 20% of the registered capital of a limited liability company.[2] The *Company Law of 2005* introduced a conditional subscription system, requiring initial contributions of at least 20% of registered capital (and not less than the statutory minimum), with the remainder to be paid within two years.[3] The *Company Law of 2013* adopted a comprehensive subscription system, removing restrictions on initial contribution ratios, minimum capital, and contribution periods, allowing shareholders to freely agree on contribution amounts and schedules through the articles of association.[4] This liberal system indeed encouraged entrepreneurship, improved capital efficiency, and stimulated market vitality.

However, due to the lack of detailed rules and effective liability mechanisms, the comprehensive subscription system gave rise to problems such as arbitrary subscription, inflated registered capital, and excessively long contribution periods, with some contribution periods exceeding 50 years, or some contributions reaching billions of yuan. These practices artificially inflated market credibility, fostered moral hazard, and undermined transaction security. When a company is unable to satisfy its debts as they fall due, the shareholders' temporal benefit of their outstanding capital contributions comes into conflict with the interests of the company's creditors.[5] Shareholders abused the benefit of term to evade contribution obligations, generating numerous disputes, increasing judicial difficulties, and raising creditor enforcement costs.[6]

Against this backdrop, the newly revised Company Law adjusts and innovates the original comprehensive subscription system while retaining its basic framework, introducing complementary subsystems: (1) replacing unlimited-term subscription with limited-term subscription; (2) creating a shareholder forfeiture system for failure to make timely contributions; (3) establishing the accelerated contribution maturity system; and (4) clarifying post-transfer contribution liability. These four subsystems together constitute a complete system for registered capital subscription under the newly revised Company Law.

2 *See* articles 23 and 24 of the *Company Law of the People's Republic of China of 1993*.

3 *See* article 26 of the *Company Law of the People's Republic of China of 2005*.

4 *See* articles 26 and 27 of the *Company Law of the People's Republic of China of 2013*.

5 *See* WANG JUN, CORPORATE CAPITAL SYSTEM, at 90 (Peking University Press, 2022).

6 *See* Zhu Ciyun, *Where Should the Comprehensive Subscription System for Limited Liability Companies Go? — Also Commenting on Article 47 of the Company Law (Revised Draft Third Deliberation)*, 45(6) Modern Law Science 135 (2023).

This article examines the refinement and optimization of the subscription-based capital contribution system under the newly revised Company Law, analyzing those four subsystems from normative structure, legal application, and interpretive issues to reveal the systematic logic, innovations, and outstanding issues, thereby providing theoretical support and practical guidance for proper understanding and application.

II. IMPROVEMENT OF THE SUBSCRIPTION SYSTEM

A. Historical Evolution from Strict to Comprehensive

1. The Company Law of 1993: Establishing a Strict Statutory Capital System. — The *Company Law of 1993*, as China's first company law, established a strict statutory capital system requiring shareholders to fully pay up all contributions at incorporation, with high minimum capital thresholds and limits on non-monetary contributions. The legislative logic was to maximize certainty, authenticity, and stability of capital, providing full transaction security for creditors. However, this system gradually revealed its limitations. High capital thresholds raised entry barriers, suppressing market vitality. The one-time lump-sum payment caused idle funds and inefficient capital utilization. As the socialist market economy matured and entrepreneurial activity increased, the systemic costs of the strict capital system became increasingly apparent, making reform inevitable.

2. The Company Law of 2005: Introducing Conditional Installment. — The *Company Law of 2005* made important adjustments by allowing installment of capital within two years and lowering minimum capital requirements, while still requiring initial contributions of at least 20% of the total registered capital and not less than the statutory minimum. This shift from 'one-time payment' to 'phased payment' reduced incorporation barriers and improved capital efficiency, but retained minimum capital and initial contribution ratio requirements, remaining an adjustment within the statutory capital framework.

3. The Company Law of 2013: Adopting Comprehensive Subscription. — The *Company Law of 2013* fundamentally reformed the capital system by establishing a comprehensive subscription system, abolishing minimum capital requirements, mandatory capital verification, and contribution deadlines, allowing shareholders to freely agree on contribution amounts and periods.[7] The core of this system was that shareholders could stipulate

7 *Supra* note 4, articles 26, 27, and 28.

any contribution amount and period without restrictions on initial ratios, monetary contribution proportions, or payment deadlines. The comprehensive subscription system produced significant positive effects: lowering entrepreneurial barriers, stimulating investment, and improving capital efficiency. However, due to the absence of detailed rules and effective liability mechanisms, it also brought consequences such as excessively long contribution periods and inflated registered capital.[8] Shareholders abused the benefit of the term to evade contribution obligations, giving rise to disputes and increasing judicial difficulties.[9] While the comprehensive subscription system played a positive role in encouraging investment, it also led shareholders to abuse the benefit of term, and the blurred line between the statutory and contractual nature of contribution obligations called for clearer boundaries.[10]

B. Examination of Problems Under the Comprehensive Subscription

1. Shareholders' Abuse of the Benefit of Term. — Under the comprehensive subscription system, shareholders dominated contribution arrangements. They could freely determine contribution amounts and periods, granting great freedom but also opportunities for abuse. In practice, some shareholders incorporated companies with minimal paid-in capital but subscribed huge amounts with contribution periods extending decades or even centuries, using inflated registered capital to exaggerate corporate strength, misleading trading partners while the company lacked necessary funds for actual operations. The substance was 'subscribing without paying', nominally committing huge amounts but never injecting corresponding funds. Reasonable contribution periods are essential for the subscription system because only when capital is actually paid can the company lawfully operate, distribute dividends based on paid-in capital, and bear losses in proportion to subscribed capital. Under the comprehensive subscription system, the benefit of term was protected absolutely. Shareholders could invoke unexpired contribution periods to evade obligations even when the company was in distress, effectively shifting business risks to creditors, violating basic fairness.

2. Alienation and Hollowing of the Publicity Function of Registered Capital. — Registered capital serves an important publicity function,

8 *See* Liu Yingshuang, *Capital Subscription System: Shareholder Contribution Freedom and Corporate Capital Autonomy*, 8 Political Science and Law 164 (2023).

9 *See* Zhu Ciyun, *supra* note 6, 138.

10 *Id*., 141.

signaling corporate financial strength and creditworthiness to trading counterparties.[11] However, under the comprehensive subscription system, this function was distorted. On the one hand, the gap between subscribed and paid-in capital meant registered capital no longer reflected actual financial strength. On the other hand, huge subscriptions rendered the capital figure itself worthless for publicity, increasing transaction cost assessment burdens. From the perspective of corporate capital functions, the principles of capital determination, maintenance, and constancy form the core of capital regulation.[12] The capital system must promote entrepreneurship, mobilize social funds, and stimulate economic vitality, thus focusing on shareholder interests. At the same time, to ensure transaction security and creditor protection, corporate capital must be determined, maintained, and unchanged.[13] However, the core of capital maintenance is ensuring a fixed and theoretically increasing number.[14] The comprehensive subscription system overemphasized shareholder term benefits at the expense of transaction security and creditor interests, leading to systemic imbalance.

3. Structural Deficiencies in Creditor Protection and Judicial Difficulties. — Under the comprehensive subscription system, structural deficiencies in creditor protection became prominent. Where contribution periods had not matured, creditors could not require shareholders to advance contributions even when the company was in distress, unless extremely stringent conditions were met, such as showing that bankruptcy grounds were met. This resulted in many creditors obtaining judgments but being unable to enforce them, undermining the creditor protection function of company law.[15] In judicial practice, the number of disputes arising from shareholder contributions continued to rise. Meanwhile, due to the lack of clear adjudicative rules, courts across different regions adopted inconsistent approaches on issues such as accelerated maturity and post-transfer liability, contrary to the principle of uniform legal application.

11 *See* Zhu Ciyun, *Reflections on the Systematic Reconstruction of China's Corporate Capital System*, 39(3) Science of Law (Journal of Northwest University of Political Science and Law) 50 (2021).

12 *See* Zhu Ciyun, *The Nature of Shareholders' Contribution Obligations and the Improvement of Corporate Capital System*, 16(2) Tsinghua Law Journal 78 (2022).

13 *See* Jia Binggui & Gao Wenhan, *Reflections on the Reform of the Subscription System Under the Company Law Within the Legal Capital System*, 24(6) Journal of Weifang University 74 (2024).

14 *See* Deng Feng, *The Evolution and Mechanism Design of Capital Constraint Systems — Centered on the Comparison of Chinese and US Company Law*, 1 China Legal Science 103 (2009).

15 *See* Huang Hui, *The Legitimacy of Corporate Capital System Reform: A Law and Economics Analysis Based on Creditor Protection Function*, 6 China Legal Science 164 (2015).

C. Introduction and Development of Limited-Term Subscription

1. Normative Structure of Article 47 of the Newly Revised Company Law. — Responding to the problems exposed by the comprehensive subscription system, article 47 of the newly revised Company Law provides: 'The registered capital of a limited liability company shall be the amount of capital contributions subscribed for by all the shareholders as registered with the company registration authority. The amount of capital contributions subscribed for by all the shareholders shall, according to the articles of association, be fully paid up by the shareholders within 5 years as of the date of establishment. Where it is otherwise provided for in any law, administrative regulation or decision of the State Council on the actual payment of registered capital, the minimum amount of registered capital and the time limit for capital contributions by shareholders of a limited liability company, such provisions shall prevail.' Normatively, article 47 achieves several innovations. First, it adopts a 'principle plus exception' structure. The 'five-year payment' is the general principle, while exceptions reserved for laws, administrative regulations, and decisions of the State Council ensure flexibility for special industries and company types. Second, it clarifies that the starting point for the contribution period is 'the date of the company's establishment', unifying the calculation standard. Third, it retains the basic framework of the subscription system without reverting to the strict statutory capital system. This reflects the legislative effort to balance efficiency and security.

2. Transitional Arrangements for Existing Companies. — The newly revised Company Law makes innovative transitional arrangements for existing companies. Article 266 provides: 'Companies registered before the effective date of this Law with contribution periods exceeding the periods provided in this Law shall, unless otherwise provided by laws, administrative regulations, or decisions of the State Council, gradually adjust their contribution periods to within the periods provided in this Law. For companies with obviously abnormal contribution periods or contribution amounts, the company registration authority may require timely adjustment in accordance with law. Specific implementation measures shall be formulated by the State Council.' Departing from the usual practice, this provision retroactively extends contribution periods in the newly revised Company Law to pre-existing companies, which is an innovative mechanism that harmonizes the old with the new. To implement article 266, the *Regulation of the State Council on the Implementation of the Registered Capital Registration Management System Under the Company Law of the People's Republic of China* (hereinafter

referred to as the Regulation) adopts a phased approach. For limited liability companies registered before June 30, 2024, where the remaining subscription period exceeds five years from July 1, 2027, they must adjust their remaining subscription period to within five years and record it in the articles of association by June 30, 2027, and shareholders must fully pay up their contributions within the adjusted period.[16] For joint-stock companies, promoters must fully pay up their shares by June 30, 2027. Exceptions apply where the company's business involves national or major public interests, upon recommendation by the relevant competent department of the State Council or provincial government.[17] For companies with obviously abnormal contribution periods or contribution amounts, the registration authority may, after comprehensive assessment of business scope, operating conditions, shareholder payment capabilities, and asset size, require timely adjustment if it finds a violation of the principles of truthfulness and reasonableness.[18]

3. Value Basis of Limited-Term Subscription. — The introduction of limited-term subscription reflects an important shift in the legislature's value orientation regarding corporate capital. The comprehensive subscription system in the *Company Law of 2013* embodied an 'efficiency first' philosophy, aiming to stimulate market vitality by minimizing institutional transaction costs. However, a decade of practice demonstrated the limitations of a single-value orientation. Under the high-quality development context, the newly revised Company Law establishes a balanced approach between efficiency and security.[19] The five-year contribution period accommodates both values, reserving reasonable space for shareholders while effectively preventing overly long contribution periods used to evade obligations. This adjustment reinforces the capital adequacy principle and helps restore registered capital's role in signaling corporate creditworthiness. Regarding creditor protection in corporate capital systems, some scholars argue that creditor protection functions have waned,[20] while others insist that creditor protection remains a central theme of corporate capital systems.[21] It has

16 *See* article 2(1) of the *Regulation of the State Council on the Implementation of the Registered Capital Registration Management System Under the Company Law of the People's Republic of China*.

17 *Id.*, article 2(2).

18 *Id.*, article 3.

19 *See* Rao Shiquan & Huang Hejie, *Subscription Capital System for Limited Liability Companies Under the Balance of Efficiency Value and Security Value — Also on the Understanding and Application of the Capital System of Limited Liability Companies Under the 2023 Company Law*, 1 Administration and Law 97 (2025).

20 *See* HUANG HUI, COMPARATIVE STUDY OF MODERN COMPANY LAW: INTERNATIONAL EXPERIENCE AND IMPLICATIONS FOR CHINA (2ND EDITION), at 83 (Tsinghua University Press, 2020).

21 *See* ZHU CIYUN, THE EVOLUTION OF CORPORATE SYSTEMS IN THE INTERACTION BETWEEN GLOBALIZATION AND LOCALIZATION, at 354 (Law Press · China, 2015).

also been observed that the focus of corporate capital systems has shifted from shareholder interests to creditor interests, but this unidirectional correction may underemphasize shareholder protection.[22] This calls for a dialectical approach and continued refinement of the system.

4. Interpretive Issues Concerning Limited-Term Subscription. — First, the starting point of the contribution period. Article 47 of the newly revised Company Law provides 'from the date of the company's establishment'. Is this exactly equivalent to the date of business license issuance? In practice, these dates generally coincide, but when license issuance is delayed, how should the starting point be determined? This awaits judicial clarification. Second, the scope of exceptions under 'laws, administrative regulations, or decisions of the State Council'. Which industries fall within these exceptions? Whether existing paid-in capital requirements for banking, insurance, securities, and other financial companies are considered exceptions, together with conditions and scope, requires further regulatory clarification. Third, the specific implementation of transitional arrangements for existing companies. The Regulation provides general principles, but if companies fail to complete adjustments, the registration authority may order correction and, upon non-compliance, mark them in the National Enterprise Credit Information Publicity System.[23] Non-compliance by a company's shareholders or promoters with the payment of their subscribed capital contributions or share consideration, or failure by the company to publicly disclose information in accordance with statutory requirements, shall render such parties liable to penalties in accordance with the relevant provisions of the *Company Law* and the *Interim Regulation on Enterprise Information Public Disclosure*.[24] Whether other compulsory measures may be taken, and whether failure to adjust after the transition period could lead to revocation of business licenses, await further clarification. Fourth, the applicable boundaries of limited-term subscription. Whether the five-year period may unduly restrict capital-intensive industries or impose excessive pressure on technology-innovation enterprises requiring long-term R&D investment, and how to preserve necessary flexibility for specific company types, are ongoing concerns.

22 Jia Binggui & Gao Wenhan, *supra* note 13, 73.

23 *Supra* note 16, article 7.

24 *Id.*, article 9.

III. CREATION OF THE SHAREHOLDER FORFEITURE SYSTEM

A. Historical Evolution from Removal to Forfeiture

1. The Removal System Under Judicial Interpretation III. — After the *Company Law of 2013* established the comprehensive subscription system, the Supreme People's Court explored remedies for unpaid contributions through judicial interpretation. Article 17 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (III)* (hereinafter referred to as the Judicial Interpretation III) created a shareholder removal system, providing that where a shareholder fails to perform contribution obligations or withdraws all contributed capital, and after the company's demand, fails to pay or restore within a reasonable period, the company may remove the shareholder's status by shareholders' resolution, and the shareholder's challenge to such removal will not be upheld by the people's court.[25] The introduction of the shareholder removal system provides, to a certain extent, a remedy for the shortcomings of the disciplinary measures under the *Company Law* in respect of shareholders who have failed to fulfill their capital subscription obligations.[26] The shareholder removal system, while pioneering, had clear limitations. First, its scope was narrow. It was applied only to cases of 'total failure to contribute or total withdrawal of contribution', not to partial contribution defaults, resulting in an all-or-nothing consequence. Second, the initiating body was problematic. According to the Judicial Interpretation III, the shareholders' meeting is the initiating body. In the case of removing a major shareholder, the paradox of 'removing a major shareholder by that major shareholder's own vote' often prevented adoption of the resolution. Third, the system lacked clear grace periods and procedural safeguards for those interested shareholders.[27]

2. Institutional Reconstruction Under the Newly Revised Company Law. — The newly revised Company Law systematically transforms the removal system into a forfeiture system. According to articles 51 and 52 of the newly revised Company Law, the board of directors shall verify shareholders' contributions, and if a shareholder fails to make timely and full

25 *See* article 17 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (III)*.

26 *See* Li Jianwei, *Research on the Shareholder Removal System of Limited Liability Companies*, 33(2) Law Review 75 (2015).

27 *See* Li Jianhong & Zhao Dong, *The Institutional Value of Shareholder Forfeiture and Its Reference Significance for China*, 12 Political Science and Law 59 (2011).

contributions, the company shall send a written notice call of contributions. If the shareholder still fails to pay within the grace period, the board may, by resolution, issue a notice of forfeiture, and the shareholder forfeits the equity corresponding to the unpaid contribution. Compared to the removal system, the forfeiture system achieves important advancements. First, the scope expands from 'total non-performance' to 'failure to pay on time and in full', covering a wider range of contribution defaults regardless of the proportion already paid, realizing refined 'tailored' consequences rather than all-or-nothing. Second, the decision-making body shifts from the shareholders' meeting to the board of directors. This change has practical significance. The board, as the standing executive organ, has ongoing supervisory duties over the company's operations and finances, making it more appropriate to handle forfeiture matters.[28] Additionally, major shareholders typically have less control over the board than over the shareholders' meeting, reducing the paradox of self-removal and facilitating adoption of resolutions. Third, the system establishes a complete procedural chain, which includes verification of contributions, demand for contributions, forfeiture of shares, disposition of forfeited equity, and objection of the shareholder involved. Articles 51 and 52 sequentially prescribe the board's verification obligation, the company's call obligation, the board's forfeiture resolution, the company's notice, disposition of forfeited equity, and the interested shareholder's objection suit, which form a complete normative system from initiation to remedy.

3. Relationship Between Forfeiture and Removal Systems. — It should be noted that the forfeiture system does not simply replace the removal system, but rather further develops and improves upon its reasonable core.[29] From the perspective of historical evolution, the forfeiture system originates from the removal system established by the Judicial Interpretation III, but there are significant differences between them. In terms of scope, forfeiture is broader. Removal applies only to 'total failure to contribute or total withdrawal', while forfeiture applies to all cases of 'failure to pay on time and in full'. In terms of procedure, forfeiture shifts the decision-making body from the shareholders' meeting to the board of directors, reflecting a fundamental difference in the institutional logic: removal emphasizes the sanction function of the shareholders' meeting, while forfeiture emphasizes the management function of the board. In terms of legal effect, forfeiture involves only the forfeiture of equity corresponding to unpaid contributions,

28 *See* Yuan Bihua, *Research on the Company's Contribution Demand System from the Perspective of the Dichotomy Between 'Subscription' and 'Payment'*, 2 China Legal Science 212 (2019).

29 *See* Feng Jianjun, *Shareholder's 'Removal' and 'Forfeiture': From Concept to Norm*, 31(2) Science of Law (Journal of Northwest University of Political Science and Law) 155 (2013).

not complete loss of shareholder status, which better aligns with the principle of proportionality.

B. The Board's Obligations of Verification and Demand

1. The Board's Duty to Verify and Demand Contributions. — Article 51 has two levels. First, after the establishment of a limited liability company, the board of directors shall verify the shareholders' contribution status, and if it finds that a shareholder has failed to make timely and full contributions as required by the articles of association, the company shall send the shareholder a written capital call notice. Second, where any loss is caused to the company due to failure to fulfill the obligations in a timely manner, the responsible director shall make compensation. Article 51 makes several innovations. (1) It makes the board's verification obligation a mandatory statutory duty. The verification is the starting point of the forfeiture procedure, and the newly revised Company Law is the first to explicitly require the board to verify contribution status, reflecting the board's duty of care and diligence. The board, as the decision-maker and executor of daily operations, is the core body maintaining the company's operations and stable development, and should know the status of shareholder contributions and capital adequacy, and timely verify and demand contributions, which falls within the scope of directors' obligations of fiduciary and diligence.[30] Under the newly revised Company Law, the board of directors is charged with the duty of scrutinizing capital contributions. This arrangement is not only emblematic of the directors' fiduciary and diligence obligations within the framework of modern corporate governance, but also reflects the prevailing approach in company legislation and corporate practice across major jurisdictions.[31] (2) It clarifies the subject of the demand obligation. Although the demand notice is issued in the company's name, the board bears the duty to demand, and the board's decision is required. This reflects the reform direction of strengthening the board's duty to maintain capital adequacy.[32] The board, as the core body of corporate management and internal supervision, bears the obligation to maintain capital adequacy throughout the company's lifecycle, so clarifying

30 *See* CIVIL DIVISION II OF THE SUPREME PEOPLE'S COURT, UNDERSTANDING AND APPLICATION OF THE SUPREME PEOPLE'S COURT'S INTERPRETATION OF COMPANY LAW (III) AND LIQUIDATION MINUTES, at 214 (People's Court Press, 2016).

31 *See* Lin Yiying, *Improvement of the Company's Registered Capital Subscription Registration System*, 31(6) Journal of National Prosecutors College 32 (2023).

32 *Id*., 43.

the board's contribution demand obligation and liability is reasonable.[33] (3) It establishes a clear link between the demand obligation and compensation liability. 'Responsible directors' bear compensation liability for losses caused by failure to timely demand, enhancing accountability.[34]

2. Criteria for Determining 'Responsible Directors'. — The determination of 'responsible directors' under article 51(2) is key to the scope of compensation liability. From an interpretive perspective, 'responsibility' should be assessed comprehensively. First, the relevance of function. Directors who have actual management duties concerning contribution matters should be considered responsible. Second, the relevance of behaviors. Directors who can show that they proposed verification and pushed for a board demand but failed to secure a board resolution should not be held responsible; conversely, a director who was indifferent to verification or knew of defaults but took no action should be considered responsible.

3. Content of the Written Notice of Call. — While article 51 requires a written notice of call, it does not specify its content. From procedural fairness, the notice should at least include the amount of subscribed contributions, the amount already paid, the unpaid amount, contribution deadline, legal basis, grace period, and legal consequences of non-payment. The demand notice has dual significance. It is a mandatory step to initiate forfeiture, and it serves as a procedural safeguard, allowing the shareholder to cure the default or prepare evidence for an objection suit.

C. Forfeiture Resolution, Notice, and Equity Disposition

1. Forfeiture Resolution and Notice. — Article 52 provides that the grace period shall be not less than sixty days from the date the company sends the notice of call. This setting ensures shareholders have reasonable time to raise funds while preventing overly long grace periods from delaying capital adequacy. Article 52 further provides that upon the expiry of the grace period, if the shareholder still fails to perform the contribution obligation, the company may, upon board resolution, send a notice of forfeiture to the shareholder in writing, and from the date the notice is sent, the shareholder forfeits its equities for which the capital contribution has not been paid. Procedurally, the steps include: (1) confirming expiry of the grace period and verifying whether the shareholder made payment; (2) convening a board meeting to discuss and vote on forfeiture; (3) addressing conflicts of interest,

33 *See* Ma Yide, *The Connection Mechanism Between Corporate Governance and Directors' Duty of Diligence*, 31(6) Law Review 83 (2013).

34 Lin Yiying, *supra* note 31, 33.

including whether an interested director should recuse himself or herself from voting. The newly revised Company Law does not explicitly address this, but by analogy with article 185 on related-party transactions, recusal should apply. However, if recusal leaves insufficient directors for a quorum, the validity of the resolution may be challenged, which awaits judicial clarification; (4) issuing the written notice of forfeiture, effective from the date of sending.

2. Three Paths for Equity Disposition. — After the forfeiture notice is sent, disposition of the forfeited equity becomes central.[35] Article 52 provides three paths: (1) transfer to a third party, subject to general rules on equity transfer and preemptive rights of other shareholders; (2) reduce registered capital and cancel the forfeited equity; and (3) if not transferred or cancelled within six months, the other shareholders shall proportionally fully pay up the corresponding contributions. This last path, though ensuring forfeited equity does not remain in limbo, expands the contribution obligations of non-defaulting shareholders beyond their original subscription. This raises theoretical and practical concerns that the defaulting shareholder's liability is effectively shifted to others, which may be unfair. The application of the last resort should be strictly limited,[36] and other shareholders who bear this burden should have a right of recourse against the defaulting shareholder.

3. Legal Remedies for Forfeited Shareholders. — Article 52 also provides that a shareholder who objects to the forfeiture shall, within thirty days from receipt of the notice of forfeiture, file a lawsuit with the people's court. Requirements include: (1) statute of limitations — 30 days from receipt of notice; (2) standing — only the forfeited shareholder may sue; (3) subject matter — procedural defects (e.g., insufficient grace period, improper board resolution) or substantive conditions (whether the shareholder actually failed to pay). Notably, the classification of this action, as a derivative action, resolution avoidance action, or a new type, is not yet settled and awaits further clarification.[37]

D. Outstanding Issues in the Application of the Forfeiture System

1. Lack of Rules on Recusal of Interested Directors. — As discussed above, whether an interested director should recuse themselves from voting on forfeiture is not explicitly regulated. Applying the principle of article 185

35 *See* Zou Hailin, *Institutional Innovation of the Company Law Revision: Review and Prospect — Based on the Company Law Revised Draft Second Deliberation*, 8 Journal of Law Application 16 (2023).

36 *Id*., 11.

37 *See* Liu Shengjun, *On the Subject Matter and Procedural Reconstruction of Shareholder Removal*, 3 Law Science 111 (2023).

(related-party transactions), recusal should be required, but if recusal leaves insufficient directors for a quorum, the validity of the resolution is at risk.

2. Effective Time of the Notice of Forfeiture. — Article 52 adopts the sending standard rather than the receipt standard or the understanding standard, meaning that the notice takes effect upon dispatch. This promotes efficiency but risks the shareholder losing equity without having actually received the notice.[38] However, since a written notice of call was previously sent, it should have warned of the consequences and the effective standard.

3. Conflicts with Equity Pledges and Judicial Attachments. — Forfeited equity may have been pledged to a third party or attached by a court. In such cases, can forfeiture still directly take effect? How should the rights of pledgees and the effect of judicial attachments be protected? These issues require further regulatory or judicial guidance.

IV. ESTABLISHMENT OF THE ACCELERATED CONTRIBUTION MATURITY SYSTEM

A. Legal Basis and Historical Evolution

1. Dual Nature of the Shareholder's Benefit of Term Under the Subscription System. — The benefit of term is an essential element of the subscription system. Under the subscription system, shareholders have the right to make contributions according to the schedule agreed in the articles of association, and the company cannot require payment in advance before maturity. This benefit derives from both the contractual agreement with the company and statutory recognition of subscription periods, thus having both contractual and statutory attributes. However, the benefit is not absolute. When the company falls into distress and cannot pay due debts, tension arises between the shareholder's term benefit and creditor protection. If the term is strictly observed, the company may lack funds to continue operations, and creditors may be unable to collect what is owed to them. In such cases, whether to override the term and require early contributions has become a significant theoretical and practical issue.

2. Evolution of Standards: From Bankruptcy Acceleration to 'Inability to Pay' Acceleration. — The development of accelerated contribution maturity has gone through some stages: (1) Initially limited to bankruptcy. Article 35 of the *Enterprise Bankruptcy Law of the People's Republic of China* allowed administrators to require unpaid contributions regardless of term upon

38 *See* Wang Qi, *The Construction Path of the Forfeiture Procedure for Shareholders of Limited Liability Companies*, 7 Journal of Law Application 151 (2022).

acceptance of bankruptcy. (2) Extended to dissolution.[39] Article 22 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (II)* extended acceleration to dissolution, providing that unpaid contributions, even if unexpired, should form part of the liquidation estate. (3) Judicial policy with limited exceptions. The *2019 Minutes of the National Courts' Civil and Commercial Trial Work Conference* reaffirmed the shareholders' benefit of term but carved out two exceptions: where enforcement measures have been exhausted and the company has bankruptcy grounds but does not apply, and where shareholders extend contribution periods after debt arises.[40] These exceptions are not predicated on a finding of insolvency, and are deliberately disassociated from bankruptcy criteria so as not to undermine the fundamental organizational principle of the insolvency proceedings, namely the *pro rata* satisfaction of creditors.[41] (4) Legislative establishment of 'inability to pay' as the standard. Article 54 of the newly revised Company Law generally establishes 'inability to pay due debts' as the trigger for acceleration, providing that if the company is unable to repay due debts, the company or creditors with due claims may request the shareholders who have subscribed for the capital contributions but whose time limit for capital contributions has not expired to make capital contributions in advance. The evolution of standards shows a clear trend from strict to lenient triggers, from bankruptcy acceptance to dissolution commencement, then to having bankruptcy grounds without applying, and finally to inability to pay due debts. Article 54 simplifies the condition to 'inability to pay due debts', dropping the requirements of enforcement exhaustion and bankruptcy grounds, significantly easing the threshold.

3. Essential Elements and Institutional Innovations of Article 54. — First, significantly broadened scope of application. Article 54 adopts 'inability to repay due debts' as the sole condition, without requiring bankruptcy, dissolution, or liquidation grounds. This markedly weakens protection of the shareholder's benefit of term and strengthens creditor protection, reflecting the capital system's shift toward balancing shareholders' benefit of term and creditor interests. Second, dual internal and external authorization. Both the company and creditors with due claims may exercise the right to require payment in advance. This combines internal governance with external

39 *See* Chen Ni, *Empirical Study on the Protection Limit of Shareholder Contribution Period Interests in Non-Bankruptcy Situations*, 38(6) Law Review 186 (2020).

40 *See* article 6 of the *2019 Minutes of the National Courts' Civil and Commercial Trial Work Conference*.

41 *See* Ding Yong, *Correction and Regulation of Shareholder Contribution Period Defenses*, 60(6) Journal of Peking University (Philosophy and Social Sciences) 156 (2023).

oversight, ensuring both capital adequacy and timely debt repayment. Third, relatively clear legal effect. Article 54 requires shareholders to 'make capital contributions in advance', meaning the funds remain shareholder contributions and should be paid into the company, namely the so-called 'warehousing rule', rather than directly to the creditor. This aligns with the basic principle of capital adequacy.[42]

B. Points of Controversy in Judicial Practice

1. Retroactivity: Does the Newly Revised Company Law Apply to Prior Conduct? — Whether article 54 of the newly revised Company Law applies retroactively to contribution behaviors occurring before July 1, 2024, is a contested issue. The *Provisions of the Supreme People's Court on the Temporal Effect of the Application of the Company Law* do not expressly address this. However, based on its general principles, such as 'apply new law if it better serves legislative purpose',[43] 'apply new law if prior law had no provision but new law does',[44] 'apply new law if the conduct continues after the new law takes effect',[45] 'apply new law if prior law had no provision but new law does',[46] and 'apply new law if prior law had general principles but new law has specific provisions',[47] it is concluded that article 54 should apply retroactively when the creditor's claim arises after the new law's effective date and the state of 'inability to pay' persists into the new law period.

2. Determination of 'Inability to Repay Due Debts'. — The determination of 'inability to repay due debts' is contentious. We advocate an objective factual standard; the mere existence of an unpaid due debt suffices without requiring enforcement proceedings or proof of insolvency. This aligns with the legislative intent of weakening shareholders' benefit of term and strengthening creditor protection. However, some scholars advocate a more cautious approach, suggesting that the standard should be interpreted strictly to avoid premature acceleration.[48] The absence of clear criteria calls for case-by-case judicial development.

3. Legal Effect: Warehousing Rule vs. Direct Payment. — While article 54

42 *See* Liu Mingqing, *Research on the Acceleration of Shareholder Contribution Obligations*, 4 Political Science and Law 157 (2019).

43 *See* article 1 of the *Provisions of the Supreme People's Court on the Temporal Effect of the Application of the Company Law*.

44 *Id.*, article 2.

45 *Id.*, article 3.

46 *Id.*, article 4.

47 *Id.*, article 5.

48 *See* Zhang Lei, *Research on the Liability for Accelerated Contribution of Shareholders in Existing Companies Under the Subscription System*, 5 Political Science and Law 128 (2018).

provides for ‘payment in advance’, it does not specify whether the payment goes into the company’s general assets (warehousing) or directly to the claiming creditor. From textual interpretation, the payment is a contribution to the company, and thus it should follow the warehousing rule that the funds become part of the company’s capital and should be distributed ratably among all creditors with due claims. This interpretation aligns with the basic principle that shareholders owe contributions to the company, but may create a ‘free rider’ where active creditors benefit others. The direct-payment logic would allow the claiming creditor to receive direct satisfaction, incentivizing creditor action but potentially conflicting with the principle that contributions are owed to the company. Judicial practice has not yet formed a unified rule, and further guidance from the Supreme People’s Court is needed.

C. Institutional Appraisal and Future Prospects

In terms of institutional value, article 54 establishes a comprehensive accelerated maturity rule, shifting from preferential protection of the shareholders’ benefit of term toward protection of creditors’ interests, or at least balancing both. This reflects a profound adjustment in the capital system’s value orientation, significantly enhancing creditor protection and fair dealing.

However, over-application carries risks. Weakening the protection of shareholders’ benefit of term may dampen entrepreneurial incentives. Accelerating contributions during temporary business difficulties may trigger a chain of reactions that accelerates the company’s decline. Therefore, judicial practice should focus on reasonably limiting the application conditions, both fulfilling the positive functions of protecting transaction security and creditors’ interests, and avoiding excessive interference with shareholders’ rights, thereby balancing efficiency and security within the subscription framework.

V. ESTABLISHMENT OF POST-TRANSFER CONTRIBUTION LIABILITY

A. Allocation of Liability for Transfers of Unmatured Contributions

1. Normative Structure of Article 88(1). — Article 88(1) provides that when a shareholder transfers the equities for which capital contributions have been subscribed but the time limit for capital contribution has not expired, the transferee shall bear the obligation of making such capital contribution. If the transferee fails to make a capital contribution on time and in full amount,

the transferor shall bear the supplementary liability for the overdue capital contribution of the transferee. This establishes the allocation of contribution liability for transfers of unmatured contributions that the transferee is primarily liable and otherwise the transferor is liable supplementarily. The transferee bears the primary liability. From the perspective of liability attribution, the contribution obligation attaches to the equity itself as a statutory property obligation, not to a particular shareholder. Under the principle of universal succession, upon transfer, the transferee succeeds to the contribution obligation along with the equity.[49] Thus, the transferee as the current shareholder is the primary obligor. The transferor bears secondary liability. If the transferee fails to pay, the transferor is liable to the extent of the unpaid amount. Supplementary liability requires the creditor to first pursue the transferee; only upon the transferee's inability or refusal can the transferor be pursued. The principle of liability allocation as herein provided for reflects the legislature's cautious approach: the transferee, as the party directly affecting the capital relationship, is primarily liable for the unpaid contribution; the prior transferor may only be held liable supplementarily, and solely in the event that the transferee is unable or unwilling to satisfy such liability.[50] After paying, the transferor should have recourse against the transferee. Otherwise, the transferor's supplementary liability would effectively become final.

2. Chain of Liability and Tracing Logic in Multiple Transfers. — When equity with unmatured contributions undergoes multiple transfers, whether prior transferors remain liable for the contribution obligation is a disputed issue. Article 88(1) only provides for a single transfer. In multiple transfer scenarios, how to trace the contribution liability, define the scope of each prior transferor's liability, and whether there are cut-off conditions remain unresolved. From a doctrinal perspective, liability first rests with the current transferee. Upon the current transferee's default, the immediate prior transferor may be pursued.[51] If the immediate prior transferor cannot pay, can the next prior transferor be pursued? Some scholars argue that supplementary liability should be limited to the second-level transferor, unless the transfers were made with intent to evade debt or involved already-matured contributions. This represents a cautious balance between chain length and fairness.

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49 *See* Han Xu, *Some Thoughts on the Transfer of Equity with Unmatured Contribution Period Under the Subscription System*, People's Court Daily, November 23, 2023, at 7.

50 *See* Liang Shangshang, *Freedom and Restriction of External Transfer of Equity in Limited Companies — From the Perspective of Interest Hierarchy Theory*, 16(2) Tsinghua Law Journal 105 (2022).

51 *See* Wang Dongguang, *On the Supplementary Liability of Equity Transferors to Company Creditors*, 38(2) Science of Law (Journal of Northwest University of Political Science and Law) 186 (2020).

B. Liability for Transfers of Defective Contributions

1. Joint and Several Liability Rule Under Article 88(2). — Article 88(2) provides that if a shareholder, who fails to make a capital contribution on the date of capital contribution as prescribed in the articles of association, or whose actual value of the non-monetary property used as capital contribution is clearly lower than the amount of capital contribution subscribed for, transfers the equities, the transferor and transferee shall bear joint and several liability to the extent of the insufficient capital contribution. If the transferee is not aware and ought not to know about the existence of the aforesaid circumstances, the corresponding liability shall be assumed by the transferor. The liability configuration under article 88(2) differs markedly from article 88(1). Under article 88(1), the transferee bears primary liability and the transferor bears supplementary liability, whereas article 88(2) imposes joint and several liability. The institutional logic lies in the transferee's subjective state. In unmatured contribution transfers, the transferee knowingly assumes the future contribution obligation. In defective contribution transfers, where the contribution obligation has matured but remains unpaid and the transferee may be unaware of it, the defense of 'did not know and should not have known' may be available. However, this defense is subject to a high standard that the transferee should have a reasonable duty of care, including reviewing the articles of association and contribution certificates. Mere lack of knowledge is insufficient; the transferee must show that even after exercising due care, they could not have known. Article 88(2) applies to two scenarios: (1) transfers where contributions are due but unpaid in whole or in part; and (2) transfers where non-monetary contributions are materially overvalued, which essentially constitutes unpaid contributions.

2. Scope of the Transferee's Duty of Care. — The scope of the transferee's duty of care will determine their liability for defective contributions. In practice, transferees can take the following measures to mitigate risk: (1) conduct due diligence on the target company's contribution status, including reviewing the articles of association, comparing subscribed and paid contributions, examining financial statements, and verifying contribution certificates and appraisal reports for non-monetary contributions; (2) include express provisions in the transfer agreement regarding contribution obligations, indemnities, and default remedies; (3) require the transferor to cure defects or provide security before transfer.

3. Recourse Rights of the Transferor and Internal Allocation. — Under the joint liability model of article 88(2), the transferor and transferee are jointly and severally liable externally, but internal allocation rules are not specified.

In the intended design, the transferor, as the original obligor, should bear primary responsibility. After paying, the transferee may seek recourse against the transferor unless the transferee knew or should have known of the defect and accepted the transfer without a price adjustment. If the consideration paid already reflected the unpaid contribution, the transferee should bear a greater internal share, reducing recourse against the transferor. The key standard is whether the price discount reasonably reflects the contribution defect.

C. Temporal Application Issues

1. Impact of the Reply of the Supreme People's Court on Non-Retroactivity of Article 88(1). — The application of article 88(1) has generated widespread concern, centering on its retroactive effect. On December 24, 2024, the Supreme People's Court issued the *Reply on the Non-Retroactive Application of Article 88(1) of the Company Law* (hereinafter referred to as the Reply), clarifying that 'Article 88(1) of the *Company Law*, effective from July 1, 2024, applies only to transfers of equity with unmatured contributions occurring after July 1, 2024. For disputes arising from transfers of equity with unmatured contributions before July 1, 2024, the people's courts shall adjudicate fairly in accordance with the spirit of the original *Company Law* and relevant legal provisions.' This Reply confirms that article 88(1) does not apply retroactively, stabilizing expectations for prior transferors.

2. Theoretical Basis for Non-Retroactivity. — First, the principle of non-retroactivity is fundamental. New laws generally should not apply to completed acts before their effective date, to maintain legal certainty and protect reasonable expectations. Article 88(1) reallocates contribution liability for pre-existing transfers, and therefore it is appropriate to respect the legal expectations at the time of transfer. Second, protection of shareholders' expectations. Under the comprehensive subscription framework of the *Company Law of 2013*, transferors reasonably expected that after transferring unmatured contributions, they would no longer bear contribution obligations (absent fraud or special circumstances). Retroactive application of article 88(1) would disrupt those expectations. Third, practical judicial considerations. Retroactive application of article 88(1) would overwhelm courts with claims against prior transferors, destabilizing business and investment confidence. The Reply timely served to stabilize market expectations. However, the Reply does not resolve all issues, such as how to determine the timing of the transfer (contract signing, registration, or internal change), or how to treat transfers agreed before but completed after the effective date of the newly revised Company Law. These issues await further judicial guidance.

3. Transitional Application Framework. — With the Reply clarifying non-retroactivity of article 88(1), how should pre-effective transfers be adjudicated? The Reply directs courts to adjudicate fairly according to the original law's spirit. First, under the prior law, prior transferors generally bore no liability for transfers of equity with unmatured contributions, absent fraud or misrepresentation. Second, courts should strictly apply the exception for 'intentional evasion of contribution obligations', applying principles of good faith and prohibition of abusing rights. Third, for continuous conduct spanning the effective date, courts should consider the overall nature of the conduct and its connection to the new or prior law case by case.

VI. CONCLUSION

The optimization of the registered capital subscription system under the newly revised Company Law marks an important milestone in the development of China's corporate capital system. The comprehensive subscription system established by the *Company Law of 2013*, which was a landmark shift from strict statutory capital to liberal subscription, played a positive role in stimulating entrepreneurship and improving capital efficiency. However, it also gave rise to problems including 'subscribing without paying', 'inflated registered capital', and 'excessively long contribution periods', undermining the principles of capital maintenance and creditor protection. The newly revised Company Law systematically responds to these issues by replacing unlimited-term subscription with a limited-term subscription, establishing constraints on contribution periods and providing for retroactive adjustment of existing companies' contribution arrangements. This change reflects a rebalancing between efficiency and security, marking the transition from 'efficiency first' to 'balancing efficiency and security'.[52]

The subscription system under the newly revised Company Law is not a patchwork of individual fixes but a systematic reconstruction through four interconnected subsystems. First, the limited-term subscription system tightens contribution periods at the source, curbing shareholders' abuse of unlimited terms to evade obligations, achieving a fundamental shift from 'subscribing without paying' to 'limited-term payment'. Second, the shareholder forfeiture system establishes a complete procedural chain from verification, demand, forfeiture, equity disposition, to objection litigation, filling gaps in contribution default remedies. Third, the accelerated contribution maturity system advances the timing of contributions to the

52 Rao Shiquan & Huang Hejie, *supra* note 19, 93.

point when 'the company is unable to repay due debts', achieving early defense of creditor claims and strengthening transaction security. Fourth, the post-transfer contribution liability system establishes allocation rules, forming a 'transferee-primary, transferor-supplementary' liability configuration, and imposes joint and several liability for defective contributions, fundamentally preventing contribution obligations from being 'hollowed out' through equity transfers. Together, these four subsystems form a complete closed loop covering contribution commitments, performance, default sanctions, risk prevention, and liability piercing.

However, since the newly revised Company Law took effect, various issues have emerged in practice. In terms of retroactivity, whether limited-term subscription, accelerated maturity, and post-transfer liability apply to pre-existing behaviors all face transitional challenges. In terms of interpretive standards, the determination of 'responsible directors' and 'inability to repay due debts' will directly affect the scope and severity of application, becoming focal points of controversy. In terms of procedural coordination, issues such as recusal of interested directors in forfeiture proceedings, classification of forfeiture objection suits, the relationship between accelerated maturity and bankruptcy applications, and the tracing logic in multiple transfers still lack adequate institutional supply. In terms of value balance, inherent tensions exist between strengthening contribution obligations and protecting shareholders' term benefits. How to effectively apply the capital maintenance and capital adequacy principles to protect transaction security and creditors' interests while adhering to the subscription system's foundational philosophy remains a fundamental challenge.

Overall, the registered capital subscription system established by the newly revised Company Law retains reasonable elements of the prior law while making major innovations in response to practical needs, yet also brings issues requiring clarification. The life of the law lies in its implementation. Whether the innovations of the subscription system in the newly revised Company Law can effectively function depends on the accumulation of judicial experience and the response of continuing academic research. With the newly revised Company Law as a new starting point, we have reason to expect that a more clearly defined, systematically complete, and effectively implemented registered capital subscription system will play a positive and far-reaching role in the high-quality economic development and the construction of a law-based business environment.

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