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Regulation of Capital Withdrawal from the Perspective of the New Company Law

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Abstract

Although the capital withdrawal rule plays an important role in maintaining the company's capital, its substantive connotation and constituent elements are ambiguous when determining whether the company's distribution behavior constitutes capital withdrawal. In particular, the standard of harm to rights and interests adopted in judicial practice. Damage to the rights and interests of a company is a relatively subjective concept that is difficult to make objective and quantitative assessments. At a time when the Company Law has been fully updated, it is not wise to abolish the rule prohibiting capital withdrawal, which is essentially the withdrawal of company property. The stage distinction rule is used to determine the withdrawal of capital contributions, that is, to compare whether the distribution behavior has damaged capital in advance, and to predict the solvency after the fact — whether it can pay off the debts that have reached the repayment deadline and should be repaid due according to the normal business process after the distribution. When applying this prohibitive rule, the legal responsibilities of relevant entities should be clarified, and a new framework should be built to effectively detect and maintain the actual solvency of the company.

Keywords: capital withdrawal, capital maintenance, loss of capital, actual solvency, stage differentiation rules

1. Introduction

The subscription system extends the capital contribution period to five years, broadens the form of capital contribution, reduces the pressure on shareholders to contribute capital, but also makes the withdrawal of capital contribution more hidden and complicated. The traditional direct withdrawal of capital contributions has decreased, and it has turned into more hidden forms such as the company's guarantee for shareholders and payment of equity repurchase payments. The blurring of the boundaries between these new types of illegal acts and acts of infringing on company property increases the difficulty of judicial determination and becomes a difficult problem in trial practice. In this regard, there is a controversy in the academic circles over the improvement of rules and the abolition of the rules, and the views such as "embezzlement of company property" instead of "withdrawal of capital contributions" or the introduction of actual solvency tests have attracted much attention. In the context of the new Company Law, it is of great theoretical and practical significance to re-examine the identification standards and legal responsibilities of capital withdrawal.

2. The Dilemma of the Rules for Determining the Withdrawal of Capital Contributions and the Controversy in the Academic Community

At present, from the perspective of the Company Law of the People's Republic of China (hereinafter referred to as the "New Company Law"), the rules for determining capital withdrawal are facing many difficulties, which have caused widespread controversy in the academic community, mainly manifested in legislative ambiguity and confusion in judicial practice, and the underlying reasons are inseparable from the structural defects of our country's company distribution system.

2.1 The Gaps in Rules and Judicial Practice Discrepancies in Identifying Capital Flight Under the New Company Law

In recent years, our country's commercial legislation has achieved remarkable results, and a set of commercial law norms with diverse content and rich sources has been gradually built. However, when directly applied to commercial trial practice, this system still faces many challenges. Professor Fan Jian pointed out that the lag, complexity, instability, lack of systematicness, and conflict between different norms of commercial law norms are the main reasons for this dilemma.[1] Especially in the practice of the Company Law, these problems are particularly prominent. Professor Zhang Xi holds a similar view that after our country's corporate capital system has changed from "legal capital system" to "subscription system", the relevant laws and regulations have not achieved real synchronization and update in terms of connection and change.[2]

2.1.1 The Legislation Does Not Clarify the Nature, Connotation and Other Boundaries of Capital Withdrawal and Other Behaviors

After important revisions in 2005, 2013, 2018, and 2023, our country's Company Law has been significantly improved in many aspects, greatly improving its suitability. Nevertheless, in the process of legal interpretation and judicial discretion, the Company Law revised in 2018 still shows broad room for discussion. To this end, the Supreme People's Court has formulated a series of judicial interpretations in response to the difficulties encountered in the application of the Company Law in trial practice, which provide clear guidance for courts at all levels, which is of great guiding significance for the correct understanding and application of the Company Law. However, with the reform of the company's capital system, especially after the reform of the subscription system in 2013, the capital violations in commercial practice have become increasingly complex and hidden, which has weakened the explanatory power of the concept of capital withdrawal in the original sense.

Specifically, Article 53 of the new Company Law clearly stipulates that shareholders shall not withdraw their capital contributions, but lacks an in-depth explanation of the legal attributes of the withdrawal. Although the new Company Law mentions the return of capital contribution and liability for damages, the legal nature of these two liabilities (such as whether the return is unjust enrichment or generalized tort liability, whether the damages are tort liability or special statutory liability) is not clear, making it difficult to determine the constituent elements.[3] Article 253 of the Company Law stipulates the consequences of capital withdrawal. This legal responsibility is administrative responsibility, including ordering corrections and fines, but the object of fines is expanded from the perpetrator to the perpetrator, the directly responsible supervisor and other directly responsible persons. In addition, the new Company Law does not follow the provisions of the Interpretation III of the Company Law on the application of capital deficit norms and the three typical forms of capital withdrawal contributions, making it unclear whether the prohibition of capital withdrawal rules should be used as declaratory provisions or have actual adjudication functions in the future. This legislative ambiguity and incoherence undoubtedly exacerbate the uncertainty of the application of the rules.

2.1.2 The Criteria for Determination in the Judgment Are Different

The withdrawal of shareholders from capital

[1] See Chen Jie. (2013). Research on the Application of Commercial Law Norms and Interpretation. *Social Science Literature Publication*, p. 32.

[2] See Zhang Xi. (2022). An Empirical Study on the Application of Article 18 of the Company Law Interpretation III to Equity Transfer after Withdrawal of Capital Contributions. *Application of Law*, (2), p. 149.

[3] See Wang Xiangchun. (2025). The Legal System of Companies Withdrawing Capital Contributions under the Theory of Special Infringement. *Political and Legal Forum*, (3), p. 102.

contributions has always been a major problem in the field of company law. The diversity, secrecy and uncertainty of his behavior have led to many disputes over the determination of capital withdrawal. Although the Company Law explicitly prohibits capital withdrawal, there are significant differences in practice on how to specifically identify capital withdrawal and how to determine the corresponding legal liability. In order to fill this legal loophole, the Supreme People's Court formulated the Judicial Interpretation of the Company Law (III). Among them, Article 12 lists five specific behavior modes of capital withdrawal based on the measurement scale of "harming the company's rights and interests". In related cases, the standard of equity damage is also adopted for whether the company can provide guarantees for the transfer of equity between shareholders, and one judgment holds that although the company provides such a guarantee, although it is not a direct withdrawal of capital contributions, it actually causes an improper reduction in the company's capital and will damage the legitimate rights and interests of the company and creditors, and should be negatively evaluated. For example, in the "Civil Judgment of the First Instance of the Equity Transfer Dispute between Huang Liping and Xie Xiaoming", the Zhongshan Municipal Court ruled on the case, holding that the guarantee agreement involved in the case was negative, and that it was contrary to the legal principle of withdrawing capital contributions. The basis for this is that Article 35 of the Company Law clearly stipulates that once a company is established, shareholders shall not withdraw their capital contributions. If the company intervenes in the equity transfer between shareholders and provides guarantees for it, then when the equity transferee fails to pay the equity transfer money as scheduled, the company may be forced to advance the payment to the company and creditors, which will undoubtedly harm the rights and interests of the company and creditors. In other words, this situation is essentially the act of shareholders indirectly withdrawing their capital contributions in the name of equity transfer, which obviously violates the aforementioned prohibitions.[1] However, another judicial view holds a different view, holding that the obligation to pay the equity transfer money is borne by the transferee, and it is still unknown whether the company bears the guarantee liability, and this guarantee liability should be regarded as a contingent debt, and the possibility of occurrence is uncertain. Even if the company eventually assumes the guarantee liability, it still has the right to recover from the equity transferee, and the company's assets may not necessarily be reduced as a result. For example, the second-instance judgment of the typical case "Chen Gangguan vs. Hu Shengyong, Guangxi Wanchen Investment Co., Ltd., etc. equity transfer dispute".[2] It can be seen that whether the shareholders' actions harm the company's rights and interests is a relatively subjective concept, and it is difficult to make an objective and quantitative assessment.

Although the standard of damage to rights and interests provides a certain basis for the determination of capital withdrawal, in practice, there are still many shortcomings in this standard. The criterion of harming rights and interests itself has a certain degree of ambiguity. There is no clear and specific standard for how to judge whether the actions of shareholders have harmed the rights and interests of the company. This leads to the fact that in judicial practice, different adjudicating organs may reach different conclusions for the same or similar acts. Damage to the rights and interests of a company is a relatively subjective concept that is difficult to make objective and quantitative assessments. Especially when the boundary between the company's assets and shareholders' capital contributions is blurred, how to accurately assess whether the actions of shareholders have harmed the company's rights and interests is even more difficult. Due to the relatively vague standards for damages, adjudication organs may unconsciously expand their scope of application when applicable. This may not only lead to some innocent shareholders being mistakenly identified as capital withdrawal, but may also make the determination of capital withdrawal a "pocket" clause, further exacerbating the uncertainty of the application of the law. Judging from the cases tried by the Supreme People's Court itself, there are conflicting standards among local adjudication organs as to what constitutes

[1] See the Civil Judgment of the First People's Court of Zhongshan City, Guangdong Province (2023) Yue 2071 Min Chu No. 1835.

[2] See Fujian Provincial High People's Court (2015) Min Min Zhong Zi No. 1292 Civil Judgment.

"harm to the rights and interests of the company". This lack of unified identification standards not only makes it more difficult to identify capital withdrawal, but also undermines the authority and fairness of the law.

2.2 Achievements and Shortcomings in the Improvement of the Rules on Prohibiting Capital Withdrawal in the Academic Circles

For a long time, capital withdrawal has been a stumbling block to the healthy development of our country's companies, and scholars are committed to exploring how to get out of this dilemma through institutional changes to promote the steady growth of companies. At present, there are two paths: one is to abolish the withdrawn capital contribution and replace it with other systems or models. The second is to improve the rules prohibiting capital withdrawal within the company law system.

2.2.1 Detect the Theory of Actual Solvency

Drawing on US law, Professor Wang Jun proposed to deeply integrate the capital maintenance norm with the actual solvency detection method, under which the rules of capital withdrawal will gradually withdraw from the stage of history. [1]Although this view is innovative, it still has limitations. Directly abandoning the concept of "withdrawing funds", which has a stable legal tradition and judicial practice foundation, may lead to instability and uncertainty in the legal system.

2.2.2 Erosion of Share Capital Standards

Professor Liu Yan proposed that based on financial data, "whether the share capital has been eroded" is the requirement for determining the withdrawal of capital contributions, that is, the company's free distribution of assets to shareholders exceeds the sum of the provident fund and undistributed profits, or causes the net assets to be lower than the share capital.[2]

This standard has certain operability, but it cannot effectively identify transactions that do not directly erode the share capital but damage the solvency of the company, and are not sensitive to changes in asset liquidity.

2.2.3 Capital Maintenance Standards

Professor Zhang Fang advocated reconstructing the rules for capital withdrawal in the Company Law, clarifying the effective conditions for capital contributions, and supplementing the provisions on share repurchase to improve our country's capital maintenance system. He stressed that the logic of capital maintenance should be fully implemented in the judiciary, and "damage to capital" should be regarded as the core element of capital withdrawal.[3]

If the principle of capital maintenance is used as the sole or core basis for determining capital withdrawal, and "loss of capital" is the key element, it will face a practical dilemma similar to that of the "equity erosion standard". In complex situations (such as the company providing guarantees for shareholders' personal debts), it is difficult to quantify the amount of asset outflows, resulting in a lack of operability, resulting in difficulties in determining capital withdrawal.

3. Substantive Identification Criteria for Capital Withdrawal

The problem of capital withdrawal has existed for a long time in the theory and practice of company law, which poses a continuous challenge to the stability of the company's capital system and the protection of creditors' interests. Although many countries have amended traditional capital control rules to accommodate modern business models, most have not repealed the rules prohibiting shareholders from withdrawing their capital contributions. This is mainly rooted in the basic fact that the working capital of modern companies comes from shareholders' contributions, which not only establishes the status of shareholders in the company, but also shapes a unique corporate governance model. At the same time, as an independent legal person, the company must have property independent of shareholders, which is the cornerstone of the legal person system.[4] The withdrawal of capital contributions by shareholders is an act of

[1] See Wang Jun. (2021). Systematic Reform of Capital Withdrawal Rules and Company Distribution System. *Legal Research*, (5), pp. 83.

[2] See Liu Yan. (2015). Reconstructing the Corporate Law Basis of the 'Prohibition of Capital Withdrawal' Rule. *China Law Review*, (4), p. 194.

[3] See Zhang Fang. (2022). Problems in Judicial Judgments on Capital Withdrawal and the Improvement of our country's capital system. *Rule of Law Research*, (5), pp. 75-76.

[4] See Qu Tianming, Xie Lu. (2018). Adjudication Rules for the Determination of Shareholders' Substantive Withdrawal of Capital Contributions: A Case Study of Qingdao Morita Metal Company v. Japan SAN-R Shareholders' Capital Contribution Dispute. *Application of Law*, (4), p. 26.

withdrawing the capital contribution property without the consent of the company, which essentially constitutes an infringement of the company's property rights.[1]

3.1 The Substantive Meaning of Capital Withdrawal

With the development of economic activities, in practice, there are not only shareholders directly transferring the capital contributions they have just paid, but also the company providing guarantees for shareholders, the company paying equity acquisition money on behalf of shareholders, and the company's repurchase of equity, which may harm the interests of the company and creditors. The act of withdrawing capital contributions is essentially an illegal appropriation of the company's property, which is particularly obvious under the capital subscription system. In the traditional legal capital system, the registered capital of a company is the limit of shareholders' limited liability to the company, and it is also an important basis for creditors to evaluate the company's solvency. However, with the implementation of the capital subscription system, the symbolic meaning of registered capital has gradually weakened, and creditors and other counterparties have paid more attention to the company's actual assets and net assets.

Under the capital subscription system, shareholders can subscribe to capital contributions when the company is established without immediate paid-in. This results in the registered capital of some companies being very low or even not paid-in, making the traditional definition of capital withdrawal ambiguous. This leads to the view that since the registered capital has not been paid-in, the object of withdrawal does not seem to exist. This view ignores the essence of capital withdrawal, that is, shareholders withdraw from the company's property. The core of capital withdrawal is that shareholders illegally obtain benefits from the company's property and reduce the company's assets, resulting in damage to the company's interests. This behavior not only violates the company's legal provisions and articles of association, but also violates the shareholders' loyalty to the company. Therefore, whether under the authorized capital system or the capital subscription system, the act of withdrawing from the company's property should be prohibited.[2]

Under the capital subscription system, adjusting the concept of capital withdrawal to withdrawing company property is in line with the needs of the times. Unlike illegal appropriation of company property, withdrawal of company property includes the types of withdrawal that cause an increase in the company's liabilities. At the same time, because shareholders can cover up their withdrawal of capital contributions through various complex means, the identification process becomes complex and difficult, and from the perspective of withdrawing company property, shareholders' illegal appropriation of company property can be examined more comprehensively, and it is not limited to the specific link of capital contribution, so as to more accurately reveal its illegality.

3.2 The Premise of Determining the Withdrawal of Capital Contributions Under the Stage Distinction Rules: Damage to the Company's Capital

As a serious infringement on the company's capital system, the determination must be rigorous and clear to balance the interests of the company, shareholders and creditors. From the perspective of the nature of the company's distribution behavior, whether it is a legal distribution or an illegal distribution, its essence is that the company's assets are transferred to shareholders free of charge.[3] Such a transfer may constitute illegal distribution if it is not carried out in accordance with legal procedures or foundations. There is an essential difference between the withdrawn capital contribution and the illegal distribution of ordinary procedures (such as the distribution of profits without resolution): the latter can be corrected through ex post facto ratification, while the withdrawn capital contribution directly erodes the company's capital base and cannot be legalized by procedural correction. Therefore, the key to determining the withdrawal of capital contribution lies in how to determine the legal basis for the company's distribution.

In the daily operation of a company, its owner's equity mainly includes four core parts: share

[1] See Liu Junhai. (2008). *Company Law*. China Legal Publishing House, p. 67.

[2] See Wang Yuying. (2023). On the Normative Positioning of the Rules for Prohibiting Capital Withdrawal. *Comparative Law Research*, (5), p. 145.

[3] See Wang Jun. (2021). Rules for Withdrawing Capital and Systematic Reform of the Company's Distribution System. *Legal Research*, (5), p. 88.

capital, capital reserve, surplus reserve and undistributed profit.[1] If the company's assets are transferred to shareholders without equivalent value, and this amount exceeds the limit of "the sum of surplus reserve and undistributed profit", that is, the sum of the share capital and undistributable capital reserve is higher than the owner's equity, then this flow may constitute a capital withdrawal. On the contrary, if it does not exceed this limit, it does not constitute a capital withdrawal. The company's capital is the cornerstone of the company's credibility and the protection of the rights and interests of creditors. Any reduction in capital without legal procedures may damage the company's credit base and the interests of creditors. In addition, there are differences in the company laws of various countries on whether a company can pay capital reserve funds to shareholders without consideration. The premium portion of equity investment is a source of capital reserve funds, which are often considered part of shareholder capital contributions. Therefore, the company's act of paying capital reserve to shareholders without consideration usually constitutes capital withdrawal. However, the capital reserve also includes some unrealized gains, such as fair value change gains. The illegal distribution of such proceeds is usually not classified as a capital withdrawal. This is because this part of the proceeds has not yet been converted into the actual assets of the company, so there will be no direct damage to the company's capital base.

In judicial practice, judges should strictly follow the logic of capital maintenance for the determination of capital withdrawal. First, it is necessary to confirm whether the company has paid shareholders. Subsequently, an in-depth investigation of the company's property status at the time of payment is conducted and an assessment of whether such payments weaken the company's capital. Finally, based on the results of the investigation, it was decided whether the payment was illegal. In short, if the value of the company's property cannot maintain or exceed the value of the company's capital (including capital reserve) after paying shareholders, the payment should be considered illegal. constitutes a withdrawal of capital contributions.[2]

The determination of capital withdrawal must be based on the premise of damage to the company's capital. This is because the company's capital is the basis of the company's credit and the protection of the interests of creditors. Any reduction in capital without legal procedures may harm the company's credit base and the interests of creditors. Therefore, in judicial practice, judges should strictly follow the logic of capital maintenance to ensure that the determination of capital withdrawal is accurate and fair. At the same time, shareholders and companies should also consciously abide by the principle of capital maintenance and avoid damaging the company's capital base through capital withdrawal and other behaviors.

3.3 Determination of Capital Withdrawal Under the Stage Differentiation Rules: Actual Solvency Prediction

Although the standard of loss of capital can reflect the company's ability to continue operating, it is weakly related to asset liquidity and debt structure, making it difficult to fully protect the interests of creditors. Therefore, it is necessary to introduce the actual solvency test as the bottom standard to enhance the flexibility and comprehensiveness of the application of the rules.

The actual solvency test is no longer based on equity capital, but on "distribution" as the core concept, covering profit distribution, share repurchase, capital return and other behaviors. It requires companies to assess their ability to pay off their debts when due before implementing distributions.[3] This method not only frees itself from the shackles of equity standards, but also makes the source of funds for distribution more flexible, which can be equity or profit. Section 6.40(c) of the Model Commercial Company Act establishes a dual testing mechanism: one is the equitable solvency test, that is, whether the company can pay off its debts when it is due; the other is the balance sheet test, that is, whether the total assets are higher than the total liabilities. This mechanism not only expands the scope of legal sources of funds, but also enhances the decision-making

[1] See Liu Yan. (2015). Reconstructing the Basis of Company Law for Reconstructing the Rule of Prohibition of Capital Withdrawal. *China Law Journal*, (4), p. 194.

[2] See Zhang Fang. (2022). Problems in Judicial Judgments on Capital Withdrawal and the Improvement of our country's Capital System. *Rule of Law Research*, (5), p. 76.

[3] See Wang Jun. (2021). Capital Withdrawal Rules and Systematic Transformation of the Company's Distribution System. *Law Research*, (5), p. 90.

flexibility of the board of directors in capital allocation. Of course, this also means that the board needs to take on greater responsibility. They should be good faith, prudent, and do their best to assess the solvency of the company, otherwise they will be personally liable for illegal distribution. [1] From international experience, the company laws of more than 30 states in the United States have accepted the distribution guidelines stipulated in the Model Commercial Company Act. At the same time, the company laws of Canada, Australia, South Africa, New Zealand and other countries have adopted similar distribution models to varying degrees, reflecting the wide acceptance of this method.

It is worth mentioning that the solvency standard does not completely get rid of the dependence on financial indicators. It allows directors to adjust financial indicators based on other reasonable information when making decisions, [2] in order to better adapt to the complex and changeable business environment. Our country can learn from international experience and introduce solvency testing in profit distribution and other links to make up for the static and manipulative space of traditional financial resource restriction standards[3]. The Supreme People's Court also pointed out in the "Dispute over the Validity of Contracts between Shiyan Dongming Property Development Co., Ltd. and Jixiang Community Residents' Committee of Eryan Sub-district Office in Maojian District, Shiyan City" that the act of not damaging the company's assets or solvency does not constitute a withdrawal of capital contributions.[4]

In summary, using the actual solvency test as the bottom line for determining capital withdrawal is both theoretically reasonable and practical. It can not only make up for the shortcomings of traditional share capital standards, but also expand the mobility and autonomy of the board of directors in capital matters, thereby reducing the risk of liquidation of the company's liquidity liabilities,[5] in order to better protect the interests of creditors and maintain market order.

4. The Legal Liability System for Capital Withdrawal Under the New Company Law

From the perspective of the new Company Law, the regulation of capital withdrawal is no longer limited to the level of behavior determination, and the construction and improvement of its legal liability system also plays a pivotal role. Through diversified accountability mechanisms, it curbs shareholders' withdrawal behavior, protects the independence of the company's property, and safeguards the legitimate rights and interests of the company's creditors.

4.1 Dual Liability in the Field of Private Law: Tort Liability and Organic Law Liability

The act of withdrawing capital contributions triggers the company's dual liability for the withdrawn shareholders in the field of private law: first, the tort law liability based on the infringement of the company's property rights, which is mainly reflected in the return of capital contributions and damages; The second is based on the liability for the violation of the obligations of the company's organic law, which is often closely linked to the principle of capital maintenance and the norm of capital deficit in judicial practice.

4.1.1 Development of Tort Liability: Return of Capital Contribution and Compensation for Damages

Paragraph 2 of Article 53 of the new Company Law clearly stipulates: "If a shareholder withdraws his capital contribution, he shall return the interest on the capital contribution to the company and be liable for compensation for the losses caused by the company." This provides a direct legal basis for pursuing the tort law liability of the withdrawn shareholder. There is controversy in the academic community about the legal nature of "returning capital interest". One view is that the withdrawal of capital contributions by shareholders is an illegal possession of the company's property, and its return obligation is of the nature of unjust enrichment.[6] Another view is that the withdrawal of capital contribution directly leads

1 See Model Business Corporation ACT & 8.30, 8.32(a)(2016).

2 See Yao Yaling and Liu Xuebin. (2023). On the Improvement of the Bottom Line Regulation of Company Distribution. *Hebei Law Journal*, (4), p. 140.

3 See Wang Jun. (2022). *Corporate Capital System*. Peking University Press, 2022 edition, pp. 327-328.

4 See Supreme People's Court (2021) Supreme Court Min Shen No. 3344 Civil Ruling.

5 See Wu Feifei. (2023). The Current Implications of the Principle of Capital Maintenance and Its Reference to the Solvency Test. *Political and Legal Forum*, (4), p. 156.

6 See Huang Wei. (2020). *Interpretation of the General Provisions of the Civil Code of the People's Republic of China*. Law Press, 2020 edition, p. 318.

to the damage to the company's property, which constitutes a tort in a broad sense, and the return of capital contribution interest is a special form of tort damages.[1] Regardless of the doctrine, the direct purpose of returning principal and interest is to restore the integrity of the company's property and return the company's property that has been illegally flowed out due to the withdrawal to the company.

On this basis, the new Company Law further stipulates that shareholders should bear the liability for compensation for "losses caused by the company". This shows that in addition to returning principal and interest, the withdrawal of capital contributions may also cause other losses to the company beyond the scope of principal and interest, such as liquidated damages, fines, and opportunity losses caused by the company's capital chain break. At this time, the withdrawn shareholders are liable for these direct damages. This means that the elements of tort liability for capital withdrawal include: shareholders have carried out withdrawal behaviors (such as fictitious creditor's rights and debts transferred out of funds, false statements to distribute profits, etc.); damage to the company's property (decrease in assets or increase in liabilities); There is a causal relationship between the evasion and the company's damage; Shareholders are subjectively at fault (intentional or gross negligence). Its legal effect is the coexistence of returning capital interest and compensating for other losses. Professor Ye Lin also proposed that it is worth paying attention to whether the relationship between shareholders' return of capital contribution interest and compensation liability and joint and several liability is a coexisting relationship or a substitution relationship. Judging from the expression of the new Company Law, the return of principal and interest is a basic obligation, and the compensation for losses is a supplementary obligation, which are independent and complementary to each other, aiming to make up for the losses suffered by the company due to the withdrawal to the greatest extent. Liability is important when the company is unable to obtain a return or the return is not enough to cover the entire loss.

[1] See Fan Yunhui. (2014). From 'Withdrawal of Capital Contributions' to 'Empropriation of Company Property': A Clarification of a Concept. *Law and Business Research*, (1).

4.1.2 Responsibilities of the Organic Law: Application and Coordination of Capital Deficit Norms

The private law liability for capital withdrawal is not only related to tort, but also deeply touches on the principle of capital maintenance at the level of corporate law of companies. As the basis of the company's credit and the protection of the interests of creditors, the integrity of the company's capital is the key to the company's ability to continue operating.

The original Judicial Interpretation III of the Company Law listed various types of capital withdrawal, including the distribution of false statements and inflated profits, reflecting the regulation of illegal distribution in the state of capital deficit. Although the new Company Law does not directly absorb all the contents of Article 12 of the original Judicial Interpretation III of the Company Law, the prohibition on capital withdrawal in Article 53 and the expansion of the rule of "shareholders shall not withdraw capital contributions" to the equity repurchase situation in the VAM Agreement in Article 8 of the Minutes of the National Court Civil and Commercial Trial Work Conference (hereinafter referred to as the "Nine Civil Minutes") all show the continuation and strengthening of the principle of capital maintenance. In particular, Article 5 of the Minutes of the Nine People's Liberations clearly requires that the target company must complete the capital reduction procedure to repurchase equity, otherwise the litigation claim will be dismissed, which is a mandatory requirement for the legality of the company's distribution behavior from the perspective of capital maintenance, aiming to prevent the substantial reduction of the company's capital and harm the interests of creditors.

Under the subscription system, the new Company Law still stipulates that the capital contributions subscribed by shareholders of limited liability companies should be paid in full within five years (Article 47, paragraph 1), reflecting the position of "limited subscription system". This means that the promoter or shareholder still has the obligation to enrich the capital within the capital contribution period stipulated in the company's articles of association. Although withdrawing capital contributions is different from not fulfilling capital contribution obligations, its result may also lead to insufficient or deficit of the company's capital. Therefore, the provisions of the new Company Law on the accelerated expiration and loss of rights of shareholders who fail to pay their capital contributions in full and on time have a certain synergistic effect on protecting the company's capital and the responsibility for withdrawing capital contributions. Although the two behavior patterns are different, they may lead to insufficient capital of the company, which leads to the application of the organic law, that is, the application of capital deficit norms. When the company's net assets are lower than the registered capital due to the withdrawal of capital contributions, the company and its creditors can invoke the principle of capital maintenance and require the withdrawing shareholders to bear corresponding responsibilities to ensure the company's ability to continue operating and the interests of creditors.

As for the supplementary liability of the withdrawn shareholders to the company's creditors, Article 14, paragraph 2 of the original Judicial Interpretation III of the Company Law clearly stipulates that the company's creditors can require the shareholders who have withdrawn their capital contributions to bear supplementary liability. Although the new Company Law does not directly restate this provision, in judicial practice, according to the relevant provisions of the Company Law on the denial of legal personality and the abuse of the company's independent status as a legal person and the limited liability of shareholders to harm the interests of the company's creditors, when the withdrawal of capital contributions causes the company to become insolvent and unable to pay off the debts of creditors, the withdrawn shareholders may still be required to bear supplementary liability for the company's debts within the scope of the withdrawn capital interest. This reflects the ultimate protection of the interests of the company's creditors and prevents shareholders from avoiding their ultimate responsibility to the company through withdrawal.

4.2 The Liability of Directors, Supervisors and Senior Executives for the Company's Losses

The withdrawal of capital contributions is often not unilaterally completed by shareholders, but usually involves the assistance of other entities within the company, such as directors, supervisors, senior management (directors, supervisors, senior executives) and even other shareholders or actual controllers. The new Company Law and its judicial interpretations also clearly stipulate the liability of these related parties.

Regarding the responsibility of directors, supervisors and senior executives in the act of withdrawing capital contributions, it is necessary to distinguish according to the nature of their actions. Article 53, paragraph 2 of the new Company Law stipulates: "Responsible directors, supervisors and senior management shall be jointly and severally liable for losses caused by the company in accordance with the provisions of the preceding paragraph." This clarifies the joint and several liability of directors, supervisors and senior executives in withdrawing capital contributions. Its legal basis lies in the duty of loyalty and diligence owed by directors, supervisors and senior executives to the company. On the one hand, if the withdrawal of capital contribution is caused by the directors, supervisors and senior executives paying the company's property to shareholders without effective authorization from the shareholders' meeting or the board of directors based on their personal actions or judgments, then the responsible directors, supervisors and senior executives should bear broader responsibilities for all the consequences arising therefrom. In this case, the behavior is closer to a personal infringement of the company's assets. On the other hand, if the directors, supervisors and senior executives are based on the company's legally formed resolutions, such as the resolution of the shareholders' meeting or the board of directors, rather than their personal decisions or actions, the determination of the responsibilities of directors, supervisors and senior executives needs to be more prudent and meticulous at this time. Analyze whether it violated its duty of loyalty and diligence,[1] when directors, supervisors and senior executives know or should know that shareholders have withdrawn their capital contributions, but fail to fulfill their obligations to stop them, or even actively assist in the implementation of the withdrawal, it constitutes a breach of the company's obligations and thus must bear joint and several liability.

The criteria for determining "responsible

[1] See Ding Yong. (2020). Research on the Exemption of Directors from Implementing Shareholders' Meeting Resolutions. *Law Review*, (5), p. 155.

directors, supervisors, and senior executives" need to consider whether they are aware of it, whether they are at fault (including intentional or gross negligence), and the relevance of their behavior to the act of withdrawal. For example, if the directors, supervisors and senior executives approve fictitious creditor-debt relationships, prepare false financial statements, or sign non-compliant equity repurchase agreements, even if they are not the shareholders themselves, they may be recognized as "facilitators" and jointly and severally liable. Professor Ye Lin pointed out that the instructions or assistance of shareholders and actual controllers are often the main incentives for directors, supervisors and senior executives to transfer out capital contributions, and raised the question of whether the responsibilities of shareholders and actual controllers should be removed. This indirectly illustrates the reality that directors, supervisors and senior executives are subject to major shareholders or actual controllers within the company. However, even if there are instructions, directors, supervisors and senior executives, as company managers, still have the obligation to make independent judgments and perform their duties in accordance with the law.

5. Conclusion

In the development of the company, the most important contradiction stems from the dispute between creditors, shareholders and the company over the interests of the company's property.[1] A new framework that combines ex-ante and post-event constraints is constructed, that is, whether the distribution behavior has damaged capital in advance and predicts the solvency after the event — honestly and prudently evaluate the actual solvency of the company within a certain period of time (such as 12 months) after the implementation of the distribution. The introduction of the verification responsibility of the board of directors, the expansion of the scope of responsibility to directors, supervisors and senior executives, and the strengthening of shareholders' liability for compensation and joint and several liabilities reflect the transformation of the modern corporate governance concept from "strict access" to "strict supervision". In the future, with the continuous deepening of judicial practice, the system will continue to improve in dynamic development, providing a solid guarantee for building an honest and trustworthy, fair and orderly market order.

[1] See Liu Yan and Wang Qiuhao. (2020). Corporate Capital Outflow and Protection of Creditors' Interests: Legal Paths and Choices. *Financial Law*, (6), p. 4.

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