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The Institutional Structure and Logical Analysis of the Shareholder Disqualification System: Centered on Article 52 of the New Company Law

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Abstract. With the establishment of the subscribed capital system under China's Company Law in 2013, problems such as the blurring of capital contribution obligations and the weakening of capital credit pose challenges to the corporate capital system and governance order. This article takes Article 52 of the new Company Law as the core to analyzes the internal logic that the system evolved from the shareholder expulsion system, clarifies the original intention of creating the system to make up for the deficiencies of the subscribed capital system; analyzes its applicable requirements and procedural structure, and clarifies the applicable standards and operational boundaries in practice; then discusses the path of equity disposal and liability assumption after loss of rights to resolve practical disputes; and puts forward suggestions for improving the system in light of practical disputes. The findings suggest that the system is of great value in strengthening capital authenticity and improving governance efficiency, and can effectively regulate the chaos of capital contributions under the subscribed capital system. However, there are still deficiencies in procedural justice, rights relief and anti-abuse mechanisms, and the rule design needs to be further improved to take into account regulatory effect and rights balance and maximize the value of the system. This paper introduces the "procedural sanctions mechanism" and the "three-tier governance model", revealing the functional positioning of the shareholder disrepresentation system in the corporate governance system.

Keywords: New Company Law, Shareholder disqualification system, Shareholder expulsion system, Capital contribution obligation, Corporate governance

1. Introduction

Since China's corporate capital system shifted from the paid-in system to the subscribed system in 2013, the threshold for company establishment has significantly decreased and the number of company entities has grown rapidly. The reform has greatly invigorated the market. At the same time, it has largely loosened the system, which has brought about many negative effects, such as the inflated amount of shareholders' subscribed capital, the extremely prolonged contribution period and even the evasion of obligations, leading to the "hollowing out" of corporate capital and seriously damaging the interests of creditors and transaction security. As Professor Liu Junhai pointed out, the

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core of the subscription system is to create the benefit of shareholders' deferred actual capital contributions [1]. In practice, "sky-high subscription" and "hundred-year capital contribution" are common occurrences. Some shareholders take advantage of the loopholes in the subscription system to evade their capital contribution responsibilities when the company operates poorly and shift the operational risks to creditors.

In response to these issues, *the Company Law*, revised in 2023, maintains the basic framework of the subscription system while introducing a number of reform measures such as time-limited subscription, accelerated maturity of capital contributions, and shareholder disqualification.

Professor Shen Zhaohui noted that the new law, while retaining the subscription system for the registered capital of limited companies, stipulates that the maximum contribution period for shareholders is five years, achieving a change from full subscription to limited subscription [2].

Among them, the shareholder disqualification system, as a new provision, establishes a system path for achieving capital contribution through procedural deprivation of shareholders' rights. Professor Zou Hailin believes that the shareholder disqualification system is a system specifically stipulated in Article 52 of the Company Law, which stops shareholders who fail to fully contribute their capital from exercising their shareholder rights, with the aim of ensuring or maintaining the adequacy or authenticity of the company's capital [3].

However, as the system is still in its initial stage of establishment, there are still many disputes regarding its application conditions, procedural design and legal consequences. Professor Zeng Xiangsheng pointed out that the construction and improvement of the shareholder disqualification system should be based on the relative separation of shareholder qualifications and equity, follow the collective law attribute of the company law, and embody the concept of balanced interests [4].

Professor Zhao Xudong and Dr. Zou Xuegeng, however, argue that in terms of application scope, the system of collection of forfeitures should be extended to all cases where shareholders fail to pay their monetary or non-monetary contributions on time and in full, as well as withdraw their contributions [5]. If these issues are not clarified, they will directly affect the actual implementation and effectiveness of the system. Therefore, it is necessary to conduct a systematic analysis of it from the perspective of institutional structure and operational logic to clarify its functional positioning within the company law system.

2. Institutional evolution and mechanism construction of the shareholder disqualification system

2.1. From "expulsion" to "disqualification": the internal logic of institutional evolution

Before the implementation of the new Company Law, China's practice mainly relied on the shareholder expulsion system to deal with capital contribution default issues. 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 "Interpretation III of the Company Law") established the rule of shareholder expulsion for the first time in 2011. This system is centered on depriving shareholders of their qualifications and is essentially an extreme organizational sanction measure.

However, the shareholder expulsion system has been rarely applied in judicial practice, mainly due to its overly strict conditions of application. The more common cases of partial and defective capital contributions in practice have been excluded from the scope of application.

The introduction of the shareholder disqualification system marks a major shift in institutional logic: Firstly, in terms of institutional goals, the focus has shifted from "resolving internal conflicts

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within the company" to "maintaining the authenticity of capital". The delisting system focuses on adjusting internal relations within the company, aiming to resolve serious conflicts among shareholders; the disqualification system, on the other hand, is centered on ensuring the company's capital replenishment and focuses on maintaining the company's capital base and the interests of creditors.

Secondly, in terms of regulatory approach, it shifts from "deprivation of status" to "restriction of rights". The disqualification system does not necessarily eliminate shareholder status, but rather restricts shareholder rights corresponding to the uncontributed portion, achieving a relative separation of shareholder status and equity. Professor Wang Yixuan believes that shareholder disqualification is a disciplinary measure imposed on shareholders who fail to pay their capital contributions, but it is not a legal cause for the termination of shareholders' capital contribution obligations [6].

Finally, the scope of application was extended from limited liability companies to joint stock companies. Shareholder disqualification should be understood as a "procedural sanction mechanism," with the core being the continuous pressure through procedural design rather than a one-off final punishment. This mechanism is more in line with the trend of "flexible regulation" in modern corporate governance, maintaining capital adequacy while reserving a room for shareholders to remedy the situation. Professor He Xiaotong's research also confirms this view, arguing that the shareholder disqualification system places more emphasis on maintaining the company's capital adequacy compared to the shareholder expulsion system [7].

2.2. Requirements and procedures for the application of the shareholder disqualification system

The operation structure of the shareholder disqualification system can be divided into three stages.

2.2.1. Requirements for application

According to Article 52 of the new Company Law, the applicable subjects are shareholders who "fail to make capital contributions on the date stipulated in the articles of association". Compared with the system of expulsion, the scope of application has been greatly expanded, and the harsh condition of "total non-contribution" is no longer required.

There is controversy in the academic circle over whether it applies to capital withdrawal. There is a view that, based on the literal interpretation, withdrawal of capital contribution does not fall under "unpaid capital contribution" and should not be subject to the disqualification system. But more scholars argue that withdrawal of capital contribution is equivalent to non-contribution, and the subjective malignancy is more serious. According to the principle of "highlighting the lesser", the system of disqualification should be allowed. Professor Peng Bing also believes that the new Company Law, oriented towards strengthening shareholders' capital contribution obligations, has added board verification and collection, a shareholder disqualification system and an accelerated maturity system [8].

There are also disputes over the application of non-monetary capital contributions that are significantly lower than the subscribed amount. From the institutional purpose of maintaining capital adequacy, such cases should also be included in the scope of application. Siyang Lin's research points out that it is necessary to clarify the applicable scenarios and functional differences of each system, and puts forward three major suggestions for improving the system of disqualification [9].

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2.2.2. Pre-procedures: verification and collection

Article 51 of the new Company Law explicitly imposes an obligation on the board of directors to verify shareholders' capital contributions. If the board discovers that a shareholder has failed to make the capital contribution on time, it shall issue a written notice of demand to the shareholder. This regulation specifies the directors' duty of diligence and reflects the governance trend of "board centrism". Professor Zou Hailin, in his systematic study of directors' obligations, pointed out that based on the reconstruction of the directors' obligations system, by distinguishing directors' obligations to abide by the law (compliance), loyalty and diligence, the foundation for the systematization of directors' obligations was laid [10].

2.2.3. Resolution and notification procedures

Two key points should be noted here: First, the disqualification resolution is made by the board of directors, not the shareholders' meeting, which reflects the legislative orientation of efficiency first; Second, the notice of disqualification takes effect "from the date of issuance", also adopting the principle of issuance, which is convenient for the company to operate.

The new Company Law does not make clear provisions regarding the recusal of the board of directors in the resolution of disqualification. But directors who have an associated relationship with a shareholder whose rights have been lost should abstain from voting in accordance with the requirements of procedural justice. Professor Ye Lin and Dr. Zhuo Hua, in their research on the regulation of related-party transactions, pointed out that related-party transactions are essentially transactions of conflict of interest or potential conflict of interest, and the transfer of benefits caused by unfair related-party transactions must be prevented through the review and voting mechanism of the board of directors or shareholders' meeting [11].

2.2.4. Disqualification takes effect and subsequent procedures

After the disqualification takes effect, the company must deal with the disqualified equity within six months, which can be disposed of by transfer or reduction of capital; if not disposed of within six months, the other shareholders shall pay the corresponding capital contribution in proportion to their capital contribution.

The system has a distinct feature of "quasi-administrative procedure": the board of directors, as a "quasi-administrative organ", exercises the rights of verification, collection and resolution of loss of power, and shareholders, as "counterparties", enjoy the rights of statement, defense and relief. This feature requires that the system follow the principle of due process. Otherwise, procedural flaws may lead to the invalidation of rights. Professor Wang Hongxia, in her review of the shareholder disqualification system, keenly pointed out that there are specific risks, such as rules blocking rules, rules nullifying rules, rules suspended and vacant, and rules failing to achieve their purposes after the implementation of the prediction system [12].

3. The handling path after the loss of rights

3.1. Disposal of shares that have lost their rights

The disposal of divested shares is directly related to the company's capital structure and distribution of benefits. Article 52 of the new Company Law stipulates three disposal paths:

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3.1.1. Transfer of equity

Priority shall be given to other shareholders or a third party to take over the forfeited equity. This helps to keep the company running normally and avoid capital reduction due to capital cuts. Xianzhuang Liu noted in his study of the shareholder expulsion system, which aims to resolve internal disputes within the company, prevent the escalation of shareholder conflicts, and ensure the normal operation of the company [13].

3.1.2. Capital reduction and cancellation

In cases where equity cannot be transferred, the company may handle it by reducing the registered capital and canceling the corresponding equity. However, capital reduction involves the protection of creditors' interests and announcement procedures, so it should be regarded as a last resort. Judge Liu Guixiang, in his research on the application of the new Company Law, emphasized that the new Company Law has made significant adjustments to the liquidation system, and the provisions regarding the scope of liquidation obligors and interested parties, as well as the responsibilities of liquidation obligors and members of liquidation groups, should be accurately understood and applied [14].

3.1.3. Additional capital contributions by other shareholders

Article 52 of the new Company Law adds a catch-all provision: If a lost equity interest is not transferred or cancelled within six months, the other shareholders of the company shall pay the corresponding capital contribution in full proportion to their capital contribution. This provision aims to prevent the long-term suspension of equity rights and ensure the company's full capital. Professor Lin pointed out that the core of shareholder rights is the right to benefit from assets, the right to make major decisions and the right to choose managers, and the rule of proportional capital reduction ensures equal benefits for shareholders [15].

However, the current system lacks clear regulations on equity pricing. Therefore, it is suggested that a dual mechanism of "independent assessment + mandatory disclosure" be introduced. For the transfer of lost equity, an independent third-party assessment agency should be engaged to provide valuation opinions, and the assessment results should be disclosed to all shareholders. In cases involving related-party transactions, the related-party transaction review process should also be carried out to enhance transaction transparency and prevent controlling shareholders from taking advantage of the disqualification system to embezzle the company's interests.

3.2. Legal status and remedies for shareholders who have lost their rights

Disqualification does not mean the end of liability. The legal status of shareholders who have lost their rights can be understood in the following dimensions.

3.2.1. The liability for capital contribution remains

After a shareholder loses his right, is he still liable for the uncontributed portion? There is controversy in the academic circle. There is a view that shareholders no longer bear the obligation to contribute capital. But more opinions hold that the loss of rights does not relieve shareholders of liability for damages.

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3.2.2. Relief through objection litigation

Article 52 of the new Company Law clearly stipulates that if a shareholder has objections to the loss of rights, he or she shall file a lawsuit with the people's court within 30 days from the date of receiving the notice of loss of rights. This provision provides a judicial relief channel for shareholders who have lost their rights. But the "30-day" period for filing a lawsuit is short and does not specify the cause of action, which may cause controversy in practice.

3.2.3. Connection with the relevant system

The system of disqualification of shareholders also needs to be linked with the systems of directors' liability, equity transfer liability, etc. For example, if the lost equity is acquired through a transfer, according to Article 88 of the new Company Law, the transferring shareholder may be required to bear supplementary liability for the non-contribution of the transferee shareholder. Shuyi Li's research focuses on Section 191 of the new Company Law, exploring the nature and form of directors' liability to third parties, arguing that the regime aims to prevent directors from abusing their power to harm the interests of the company and creditors [16].

4. Real disputes and suggestions for institutional improvement

4.1. Major issues in practice

The current system faces the following controversies in practice: insufficient fairness of board resolutions, unclear applicable boundaries for capital withdrawal, inconsistent procedural standards, unclear pricing mechanisms, obstacles in the industrial and commercial registration process, and risks of system abuse.

4.1.1. The applicable boundaries of capital withdrawal are unclear

The new Company Law does not specify whether the system of disqualification applies to capital withdrawal, leading to continuous disputes in practice. Some market supervision departments have refused to accept applications for the registration of the loss of rights involving capital withdrawal based merely on the literal interpretation. Professor Zhao Xudong and several scholars pointed out in a written discussion that the new Company Law has added shareholder disqualification and other aspects in improving the shareholder capital contribution system [17].

4.1.2. Varied procedure standards

Although the collection period is clearly defined as "no less than 60 days", there is a lack of detailed regulations on the starting point, service method, etc. In practice, shareholders may delay the process by refusing to receive mail, changing addresses, etc. Although the effective time of the notice follows the "sending doctrine", there is still controversy over how to prove that it was "sent".

4.1.3. Obstacles in the business registration process

In many places, market supervision authorities require that a resolution to lose authority must be judicially confirmed before a change registration can be processed. Even if the company has completed all the legal procedures, it may still be unable to complete the equity change due to "extra

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requirements" in the registration process, greatly reducing the effectiveness of the loss of rights system. Haipeng Li, in his research on the public welfare liquidation of "zombie enterprises" in Hengyang City, explored the operational logic and key points of the government-court linkage mechanism in the liquidation practice [18].

4.1.4. Risk of institutional abuse

Controlling shareholders may use the disqualification system to squeeze out minority shareholders, especially in companies with a dispersed equity structure and easily manipulated boards. Although the shareholders who have lost their rights are entitled to relief through an objection lawsuit, the 30-day statute period is too short and the equity may have been disposed of during the statute period, leaving the relief unfulfilled. Yuanyuan Xu's research points out that the new Company Law emphasizes the establishment of a democratic management system centered on the workers' congress, aiming to enhance organizational decision-making and promote fair consideration of stakeholders' rights and interests [19].

4.2. Suggestions for system improvement

In response to the above issues, this article presents the following suggestions: (1) Clarify the applicable rules for capital withdrawal: Refer to the procedure for unpaid capital contribution: the company shall first urge shareholders to return the withdrawn capital contribution and grant a grace period of no less than 60 days. If the capital is not returned by the due date, the board of directors may make a resolution of disqualification. (2) Improve the equity pricing mechanism: Introduce a third-party assessment mechanism, and the transfer price of forfeited equity should be determined based on the assessed value. If other shareholders supplement the capital contribution, the contribution amount shall be calculated based on the subscribed capital corresponding to the deprived equity, but the portion actually paid by the deprived shareholders shall be deducted. (3) Optimize the connection between administrative registration and judicial proceedings: It is suggested that the State Administration for Market Regulation issue the *Operational Guidelines for Shareholder Disqualification Registration*, which clearly states that change registration can be processed with a valid disqualification resolution (with materials such as a notice of demand, meeting minutes, etc.) without the need for compulsory judicial confirmation. For resolutions in doubt by the registration authority, they can be verified through the "judicial assistance inquiry" mechanism. Peng Zhang et al. found in their research on the valuation adjustment mechanism that the implementation of the new Company Law has significantly improved corporate governance by systematically clarifying the validity and enforcement conditions of VAM [20]. (4) Three-tier governance model: The first tier is board procedural control, through procedural arrangements such as verification, collection, and resolution, to ensure procedural fairness and efficiency in decisions of loss of authority. The key lies in the proper operation of procedural elements such as the recusal of associated directors, grace period guarantees, and notice delivery. This layer draws on Professor Liu Daoyuan's analysis of the legal basis of directors' liability for compensation to third parties, emphasizing that directors should abide by laws and regulations [21]. The second layer is shareholder integrity constraints, through mutual supervision and checks and balances among shareholders to prevent the abuse of the system. Additional capital contribution obligations and preemption arrangements for other shareholders are both rights and responsibilities. Third layer: External judicial oversight—Review of the substantive impartiality of a decision to lose authority through judicial remedies such as objection lawsuits.

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The model helps to achieve a dynamic balance in the operation of the system, the three parties work together to form a governance loop.

5. Conclusion

The shareholder disqualification system, as an important innovation of the new Company Law, strengthens the fulfillment of shareholders' capital contribution obligations through procedural mechanisms and is of great significance in maintaining the authenticity of corporate capital and improving governance efficiency.

However, the system still has shortcomings in terms of procedural design and rights protection: the absence of recusal rules for associated directors may affect the fairness of resolutions; the unclear boundaries of the application of capital withdrawal have led to practical disputes. The absence of equity pricing mechanisms may lead to the transfer of benefits; obstacles in the business registration process undermine the effectiveness of the system. These issues need to be continuously improved through judicial interpretations and practical development.

Looking ahead, a more refined balance should be struck between efficiency and fairness. It is necessary to safeguard the company's capital adequacy and the interests of creditors, as well as the procedural rights and relief channels of shareholders who have lost their rights. Only in this way can the shareholder disqualification system become a core tool for preventing capital risks under the subscribed capital system and truly realize the institutional value of the "procedural sanctions mechanism".

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