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Constructing the Adjudication Standard for Interest Attribution under the Accelerated Maturity System for Subscribed Capital Contributions: An Interest-Balancing Analysis of the "Storage Rule" and the "Direct Settlement Rule"

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Abstract. Article 54 of China's Company Law as revised in 2023 establishes a system of accelerated maturity for subscribed capital contributions, yet it does not specify how the resulting interests are to be attributed once shareholders have paid their contributions ahead of schedule, which has given rise to major controversy in both theory and judicial practice. Judicial interpretations and judicial practice have not yet produced uniform adjudication standards on this point, instead, the matter is largely left to the judge's discretion in the light of the circumstances of each case. In the absence of a unified adjudicative framework, divergent judgments readily emerge. This paper therefore undertakes an in-depth balancing and comparison of the interests involved in the "storage rule" and the "direct settlement rule." Proceeding from the principles of the independence of legal-person property, the equal protection of creditors, and the prohibition of the abuse of rights, it constructs an adjudication standard whose principal factors are the company's bankruptcy status, the exercise of rights by other creditors, and the recovery rate. It ultimately advocates clarifying, through systematic adjudication criteria, the attribution of the relevant interests in contributed capital once shareholders have paid their contributions in advance.

Keywords: Accelerated maturity of subscribed capital contributions, attribution of interests, storage rule, direct settlement, adjudication standard

1. Introduction

Article 54 of China's revised Company Law state, "where a company is unable to repay its due debts, the company or its creditors may require shareholders with unexpired contribution periods to fulfill their capital contributions ahead of schedule" [1]. However, the law does not clarify whether such accelerated contributions should be paid into the company's assets for collective debt settlement or directly to the suing creditor. Legal theory remains divided, and courts currently apply two conflicting approaches [2]. Without uniform, authoritative adjudicative standards, judicial

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discretion risks inconsistency: judges may reach divergent rulings on identical facts, eroding predictability, stability, and fairness in outcomes. The attribution issue affects three core interests: timely recovery for the suing creditor, equal treatment of all creditors, and integrity of the company's assets. If accelerated contributions go solely to the initiating creditor, de facto priority arises, harming other creditors. If all contributions must flow exclusively into the company, enforcement costs rise, weakening the practical effectiveness of the acceleration mechanism in creditor protection. This paper argues for a tiered, context-sensitive adjudication standard for interest attribution, grounded in factors such as the company's operating status, the structure and nature of claims, and the impact on recovery. Such a standard would offer academic support for building a more complete and unified system of accelerated maturity for subscribed capital contributions, protect creditors, and at the same time provide a reference model for judicial practice.

2. Theoretical divergence and existing dilemmas

2.1. Divergence among theoretical rules

2.1.1. The storage rule

Scholars who support the storage rule argue chiefly at three levels: the interpretation of the statutory text, the independence of legal-person property, and the equal protection of creditors. They contend that Article 54 of the new Company Law expressly describes the legal consequence as the "payment of contributions in advance," that the party to whom shareholders owe their contribution obligation is in principle the company, and that creditors cannot be brought within the provision by way of expansive interpretation [3]. Secondly, these scholars maintain that a company, as an independent legal person, enjoys an independent personality, and that a direct settlement rule in favor of creditors would breach the principle of the independence of legal-person property and undermine the independent proprietary relationship between the company and its shareholders [4, 5]. Thirdly, the direct settlement rule is liable to impair the equal receipt of satisfaction by all creditors. Where a company cannot pay its due debts because of a debt crisis, contributions subject to acceleration should be returned to the company, which effectively prevents individual creditors from racing to be paid first and thereby infringing the interests of other creditors [3]. Finally, for enterprises suffering only a short-term liquidity crisis, paying contributions into the company helps to restore the company's operations and is more conducive to raising the recovery rate of all creditors. Many scholars therefore advocate that, under the accelerated maturity system for subscribed capital contributions, funds should be attributed in accordance with the "storage rule."

2.1.2. The direct settlement rule

Other scholars argue at the three levels of the subrogation system, litigation efficiency, and legal remedies, and lean toward the direct settlement rule. Their principal reason is that the accelerated maturity of a shareholder's contribution obligation is in essence a claim held by the company against the shareholder: a subscribed but unpaid contribution partakes of the nature of the company's liability property and can serve as the basis on which a creditor realizes its claim once the statutory conditions are satisfied [6]. Article 535 of the Civil Code provides that "where the debtor neglects to exercise its claim or auxiliary rights relating to that claim, thereby affecting the realization of the creditor's due claim, the creditor may request the people's court to exercise the debtor's rights against the third party in its own name" [7]. Some scholars therefore argue that the accelerated maturity

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system should be understood as a special instance of the creditor's right of subrogation and that the direct settlement rule should apply [8]. In addition, since creditors must bear their own litigation costs, such as court fees and preservation fees, a requirement that funds first enter the company and then be distributed equally would seriously dampen creditors' enthusiasm for enforcing their rights and would hardly be truly fair, lastly, it is argued that, so long as the company has not entered bankruptcy proceedings, individual settlement does not preclude subsequent bankruptcy applications by other creditors or by the company itself, and direct settlement is by no means impossible [9]. Many scholars recently have advocated that contributions paid in advance by shareholders be distributed on the basic principle of the "direct settlement rule."

2.2. The existing adjudicative approach and its dilemma

Owing to the marked divergence of academic views, the highest judicial organ did not lay down a uniform rule on the attribution of capital interests when drafting the supporting interpretation, but left the matter to the trial judge to consider and determine in light of the specific circumstances [10]. In judicial practice today, consequently, the two adjudicative approaches of "storage" and "direct settlement" coexist. The former attaches greater weight to the integrity of the company's property and to fair satisfaction for the majority of creditors, the latter attaches greater weight to the efficient realization of individual claims and to fairness toward the suing creditor. Yet the existing rules do not further delimit the respective spheres of application of the two approaches. At the same time, there is a lack of uniform criteria for weighing factors such as the company's operating status, its debt structure, and the interests of other creditors, so that the judge's discretion in individual cases becomes excessive [11]. Where judges calibrate their judgments differently, divergent outcomes in like cases readily ensue. The crux of interest attribution under the accelerated maturity system for subscribed capital contributions is therefore not a simple choice between the "storage rule" and the "direct settlement rule," but rather how to establish clear and stable adjudication standards through an interest-balancing analysis so as to strike an appropriate balance between the efficient realization of claims and fair settlement.

3. Adjudication standards for the attribution of interests in contributed capital

3.1. Theoretical foundations of the adjudication standards

3.1.1. The principle of the independence of corporate legal-person property

The independent personality of a company and the independence of its property are the institutional cornerstones of company law [4, 5]. In principle, contributions paid in advance should first enter the property of the company as a legal person. If all contributions were required to be paid into the company, however, the institutional significance of the independent right of claim conferred on creditors by Article 54 would be substantially weakened. Proceeding from this principle, this paper argues that the storage rule should be the default standard under ordinary circumstances and that the direct settlement rule should be applied only in specific exceptional cases.

3.1.2. The principle of equal protection of creditors

Where a company's property is insufficient to cover its liabilities, the question of individual claim satisfaction becomes a question of distributing limited liability property. On the principle of equal protection of creditors, the individual advantage enjoyed by creditors who sue first should therefore

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be restricted so as to safeguard every creditor's equal right to obtain satisfaction. In such circumstances, adopting the "storage rule" can effectively prevent individual creditors from racing ahead and thereby infringing the lawful rights and interests of other creditors.

3.1.3. The principle of efficiency in debt recovery

The principle of efficiency in debt recovery requires that, in deciding whether the attribution of interests following the shareholders' advance payment of contributions should follow the storage rule or the direct settlement rule, consideration be given to which rule can settle the dispute more efficiently in the case at hand. Where the interests of other creditors are not obviously harmed, permitting the creditor who sought acceleration to obtain direct satisfaction reduces the cost and delay inherent in the circuitous flow of funds "from shareholders to the company, and from the company to creditors," and can effectively encourage creditors to enforce their rights proactively, thereby avoiding the dilemma in which "the suing creditor bears the litigation costs while the other creditors free-ride."

3.1.4. The principle of preserving the enterprise and its sustainable operation

Compared with allowing the company's claims to be settled directly to creditors, this paper is more inclined to preserve the survival of enterprises that retain going-concern value. For a company that still has operating value and can generate profit, paying the funds contributed by shareholders in advance into the company can alleviate a temporary capital shortage and restore normal operating capacity, which is more conducive to raising the recovery rate of all creditors and better accords with the overall purpose of the Company Law.

3.1.5. The principle that rights shall not be abused

To prevent the acceleration system from becoming a tool by which shareholders, related parties, or particular creditors transfer company assets, relevant actors should be barred from using the system to effect benefit transfers or to harm the interests of other creditors. This paper argues that where there is a high risk of malicious collusion between shareholders and creditors, direct settlement should be blocked and the storage rule adopted instead, even if the company has become substantively insolvent.

3.2. Construction of the system of adjudication standards

3.2.1. The company's bankruptcy status

This paper argues that the company's solvency, and whether the substantive grounds for bankruptcy exist, are the primary considerations in deciding whether to apply the storage rule or the direct settlement rule. Whether a company is "unable to pay off its due debts," and whether it is close to or has reached bankruptcy should be assessed objectively in the light of its actual solvency [12], that is, by examining whether the company's assets can cover all its debts, whether a large number of due debts already remain unpaid, whether the company is subject to enforcement in multiple cases, whether there are substantial arrears of wages, taxes, or social insurance contributions, and whether the debt-to-asset ratio and cash flow have deteriorated.

This paper argues that once the company becomes bankrupt, the issue is no longer the individual debt relationship between one creditor and the company but how the company's property is to be

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distributed among multiple creditors. Adopting the direct settlement rule would create a de facto priority in satisfaction, in conflict with the principle of fair distribution under bankruptcy law. Accordingly, where the company already satisfies the substantive grounds for bankruptcy, the storage rule should in principle apply.

3.2.2. The company's going-concern value

Because the single criterion of whether assets exceed liabilities cannot fully capture the condition of an enterprise, this paper argues that whether the company retains going-concern value should be considered at the same time. Some enterprises lack liquidity only temporarily yet possess stable customers, orders, core technologies, and other intangible assets, as well as clear financing opportunities, if the contributions paid in advance by shareholders are paid into the company, it is likely to return to a normal operating state. If, by contrast, shareholders pay their contributions directly to a particular creditor, the enterprise may be forced to shut down or suffer a marked decline in operating value so that the interests of all creditors cannot be effectively protected. The company bears the burden of proof in this regard: it must submit objective materials such as financial statements, business contracts, order books, and cash-flow forecasts and may not invoke the direct settlement rule on the basis of an abstract "need to maintain operations" alone.

3.2.3. Risk of malicious collusion between shareholders and creditors

With respect to the risk of malicious collusion between shareholders and creditors, this paper advocates that the court focus on whether the creditor and the shareholder are related parties, whether the claim came into existence abnormally close in time to the litigation, whether the claim lacks a genuine transactional background, whether the amount of the claim is manifestly inconsistent with normal trading practice, whether the shareholder controls the creditor or whether the ultimate controller of both is the same person, and whether the company suddenly generated large related-party debts, fabricated litigation, circular transfers, or other abnormalities after the business crisis. Where malicious collusion is established, or where there is a high risk of it, the storage rule shall be adopted and no direct settlement shall be effected so as to protect the lawful rights and interests of the company and other creditors.

3.2.4. The status of other creditors' rights

The attribution of funds following the accelerated maturity of subscribed capital contributions may be discussed in the following two situations. Where the company has not become substantively insolvent, the interests of the creditor who acts actively should be moderately protected, the impact of individual settlement on other creditors is relatively slight, and direct settlement should be given priority. Where, however, a large number of creditors have in reality already asserted claims, and multiple creditors whose claims have fallen due have actively enforced their rights, the impact of individual settlement on other creditors is markedly greater, and the matter should tend toward the storage rule or toward entry into a unified distribution process.

3.2.5. The nature of the claim

Although claims of different natures enjoy no inherent substantive priority, this paper maintains that in borderline cases the nature of a claim may serve as an auxiliary factor in the interest-balancing analysis. Different creditors differ significantly in their capacity to adjust risk and in their need for

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protection. Involuntary creditors and professional creditors able to allocate risk through contracts in advance do not stand in the same position [13]. Where a claim is an involuntary claim with a strong need for protection, such as a claim for labor remuneration or personal injury compensation, the direct settlement rule should be applied and the claim settled individually, it should be applied only afterwards, if at all, to ordinary commercial contract claims, to the claims of financial institutions and other professional creditors with strong risk-identification capacity, and to the internal claims of shareholders, actual controllers and affiliated enterprises.

3.2.6. The degree of impact on the recovery rate

This paper argues that the court may determine whether to adopt the direct settlement rule by assessing the expected recovery rate of other creditors in the case if direct settlement were applied. That is, if direct settlement of a particular claim would cause a significant decline in the recovery rate of other known creditors, individual settlement produces clear externalities, and the storage rule should be adopted. Conversely, if direct settlement has no substantial impact on the realization of other claims, the cost of the proceedings should not be increased in the name of an abstract "fairness to creditors," to the detriment of creditors' enthusiasm for protecting their rights.

On the basis of the six adjudication factors above, this paper ultimately formulates an order of application: (i) whether the company satisfies the substantive grounds for bankruptcy, (ii) whether direct settlement seriously affects the satisfaction of other creditors, (iii) whether the company retains clear going-concern value, (iv) the relationship between the shareholders and the creditors, or the risk of malicious collusion, (v) the state of other creditors' enforcement of their rights, and (vi) the nature of the claim. The first three are objective "hard" standards, while the last three are modulating "soft" standards, together they form a hierarchical and complementary mode of adjudication in which "hard standards take precedence and soft standards modulate," thereby further preventing courts from undertaking an unstructured balancing of all factors.

4. Coordination with related legal systems

4.1. Coordination with the fair distribution system of bankruptcy law

Article 35 of the Enterprise Bankruptcy Law establishes the rule of accelerated maturity of capital contributions in bankruptcy proceedings. Once a company enters bankruptcy proceedings, the individual settlement of the debtor's property is superseded by the collective settlement system of the Bankruptcy Law: the administrator recovers the debtor's property rights and interests as a whole and distributes them fairly to all creditors in accordance with the distribution plan. Where the company's corresponding right to demand payment of contributions that have not yet been made belongs to the debtor's property, it shall be included in the unified distribution of the bankruptcy estate after the administrator has recovered it in accordance with law [14]. Article 54 of the Company Law, however, extends the application of the accelerated maturity of subscribed capital contributions from the existence of a ground for bankruptcy to the mere inability to pay off due debts, enabling the system to operate independently outside bankruptcy proceedings. A structural problem of coordination therefore arises at the normative level. Because the legislative purpose of Article 54 is to provide the company with a debt-repayment channel outside bankruptcy, rather than to release individual creditors from the principle of fair debt repayment, this paper takes the company's actual debt-repayment status as the point of coordination. Where the company has not reached the threshold of substantive bankruptcy, the accelerated maturity system shall operate

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independently, and the logic of fair distribution in bankruptcy shall not apply. Where, however, the company already satisfies the substantive grounds for bankruptcy, the storage rule shall be adopted and, where necessary, the matter shall be transferred to bankruptcy proceedings so that the administrator may recover and distribute the contributions uniformly in accordance with Article 35 of the Enterprise Bankruptcy Law.

4.2. Coordination with the rules on creditors' subrogation

This paper argues that the creditor's right of subrogation supplies an important and direct substantive legal basis for the direct settlement rule and that it stands in a systematically coordinated relationship with the accelerated maturity system for subscribed contributions. Under the relevant provisions of the Civil Code on subrogation, where the debtor neglects to exercise its claim and thereby affects the realization of the creditor's due claim, the creditor may request the court to exercise the debtor's claim in its own name [6]. The creditor's claim to direct settlement by shareholders under the accelerated maturity system is highly similar to the subrogation system. Article 21 of the Judicial Interpretation of the Bankruptcy Law (II) further provides expressly, however, that a subrogation action brought before the acceptance of a bankruptcy application shall be suspended, and that the claim in that action shall be rejected once bankruptcy has been declared. The application of the subrogation system should therefore be premised on the debtor's not having entered bankruptcy proceedings [15].

This indicates that the exercise of the right of subrogation is only a remedy available to a creditor while the debtor still has the capacity to repay its debts independently. Once the debtor enters bankruptcy proceedings, the right of subrogation must give way to the collective settlement mechanism of the Bankruptcy Law. Accordingly, where the company does not meet the substantive bankruptcy standard proposed in this paper, a creditor's claim to direct settlement under the subrogation rule has a legitimate legal basis, where the company has reached that standard, the matter shifts to the application of the storage rule and to uniform recovery by the administrator in bankruptcy proceedings, in full conformity with the systems described above, thereby filling a regulatory gap.

4.3. Coordination with the enforcement distribution system

Where multiple creditors have obtained enforcement instruments and each has entered enforcement proceedings, the distribution of contributions accelerated by shareholders bears directly on whether the direct settlement rule will in fact evolve into an individual settlement channel conferring priority. Article 24 of the Judicial Interpretation of the Company Law (Draft for Comments) establishes the rule that a shareholder whose contribution period has not yet expired shall not be added as a person subject to enforcement in enforcement proceedings and requires creditors to bring an action to accelerate the maturity of contributions. At the same time, where multiple creditors sue separately, coordination shall be achieved through the enforcement distribution procedure by reference to Article 21, paragraph 3, and Articles 22 and 23 [10].

Accordingly, while retaining the substantive legal model of direct settlement, procedural mechanisms should be used to prevent individual creditors from obtaining de facto priority. Enforcement distribution, however, is premised on individual enforcement and is triggered only when the property available for enforcement proves insufficient to satisfy all debts, its protection of fairness falls far short of the comprehensiveness and thoroughness of bankruptcy proceedings. The coordination of the enforcement distribution system with the adjudication standards proposed in this

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paper should therefore follow the same logic as that of bankruptcy law: the direct settlement rule should be adopted where there is no substantive bankruptcy, while conversely the accelerated contributions of shareholders should be brought within the scope of distributable property and distributed fairly in proportion to the claims.

5. Conclusion

The attribution of interests following the accelerated maturity of subscribed capital is ultimately a matter of balancing the efficiency of claim realization, the equal protection of creditors, and the independence of corporate property. Proceeding from the aspects set out above, this paper establishes a typified adjudication system formed by six criteria: the company's bankruptcy status, the company's going-concern value, the risk of malicious collusion between shareholders and creditors, the state of other creditors' enforcement of their rights, the nature of the claim, and the degree of impact on the recovery rate, so as to constrain judicial discretion and, so far as possible, prevent divergent judgments in like cases.

As to specific application, this paper maintains that the "storage rule" and the "direct settlement rule" are not mutually exclusive, in practice a sound and appropriate choice should be made according to the facts of the case. Where the company satisfies the substantive grounds for bankruptcy, or where direct settlement would cause a significant reduction in fair satisfaction for the majority of creditors, the storage rule should be applied first so as to better protect the integrity of the company's property and the interests of the majority of creditors. Conversely, where the company has not become substantively insolvent, or where direct settlement causes no obvious or substantial harm to other creditors, the direct settlement rule should be applied to improve the efficiency of claim realization and to give full play to the substantive role of the accelerated maturity system for subscribed contributions in protecting the rights of the suing creditor.

In addition, the analysis should be further adjusted in the light of the company's going-concern value, the enforcement of rights by other creditors, whether there is a relationship between the shareholders and the creditors or a risk of malicious collusion, and the nature of the claim, so as to form an adjudicative path in which priority is given to objective factors such as the impact of the company's bankruptcy status and the recovery rate, while the relationship between the parties, the nature of the claim and similar factors serve as supplementary and modulating considerations. By unifying the factors to be weighed in adjudication and their order of application, the judge's discretion in individual cases acquires relatively clear boundaries, thus accommodating both the justice of the individual case and the predictability of the outcome. Because the relevant judicial samples remain relatively limited, however, the weight of each adjudicative factor requires further verification. Future research should expand empirical case studies and strengthen connections with the bankruptcy, subrogation and enforcement distribution systems, so as further to develop unified, stable and workable adjudication standards.

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