https://doi.org/10.37420/j.mlr.2024.007

The System of Shareholders' Capital Calls: Creation, Structure and Orientation

Zhuoran Zhang
Law School, Beijing Normal University, Beijing, China
***Corresponding author,E-mail:1915893210@qq.com**

Abstract

Article 17 of "Interpretation III of the Company Law" delineates the legal liabilities of shareholders with defective capital contribution. While it falls short of establishing a comprehensive disqualification mechanism for shareholders, it does offer a judicial guideline regarding the validity of corporate resolutions pertaining to shareholder removal. However, this article conflates shareholders' disqualification with the loss of shareholders' rights, leading to qualitative disputes and enforcement challenges. Article 51 and Article 52 of the revised Chinese "Company Law" added the shareholders' capital calls system, marking a significant legislative advancement in the system of shareholders' loss of rights. This move by lawmakers addresses the rampant issue of shareholders subscribing to registered capital without fulfilling payment obligations, thereby regulating commercial practices. By employing comparative legal analysis, the distinction between the shareholders' loss of rights and disqualification systems can be elucidated, aiding in a deeper understanding of legislative deliberations surrounding the disqualification system's role and function.

Keywords

shareholders' loss of rights; shareholders' disqualification; full subscription system; capital calls; directors' call up obligations

1.Introduction

The timely and full fulfillment of shareholders' capital contribution obligations to the company is not only the basis for obtaining and maintaining full shareholder qualifications, but also a prerequisite for ensuring that the company's capital is sufficient. After the 2013 "Company Law" abolished the minimum capital contribution limit, the maximum capital contribution period and the statutory capital verification requirement, the penalty mechanism for shareholders with defective capital contribution did not reach a matching system with the full subscription system, resulting in a series of commercial chaos of shareholders "subscribing but not paying", and it is difficult to ensure that the company's capital is full. Article 17 of "Interpretation III of the Company Law" provides for the legal liability of shareholders with defective capital contribution, which does not fully establish the system of shareholders' disqualification, but provides judicial guidelines for the legitimacy of the resolution of shareholders' disqualification. The new "Company Law" has initially constructed the system of shareholders' default on contribution on its basis, strengthened the relevant institutional supply of shareholders' responsibility for capital contribution, and embodied the value orientation that the legislation fully respects the internal autonomy of the company in dealing with shareholders' defective capital contribu-

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

tion within the framework of the contribution system, and safeguarded the lawful rights and interests of the observant investors. As an emerging system, the legal structure of the shareholders' capital calls system and its legal effects are inextricably linked to its functional orientation.

2.Shareholders' Disqualification System in the Judicial Interpretation of the Company Law

2.1 Legal provisions on the Shareholders' Disqualification System

The highly personal nature of the limited liability company makes it a widely used form of organization in society and improves the efficiency of the company's operation, but it also makes the limited liability company more susceptible to disputes or dissolution due to disagreements in practice. When the relationship between shareholders tends to rupture or when shareholders are found to be detrimentally affecting the interests of the company, the expulsion of shareholders through legal means is deemed more reasonable than resorting to company dissolution. This underscores the unique advantage of the shareholders' disqualification system as an internal dispute resolution mechanism. The current "Company Law" does not provide specific provisions regarding the shareholders' disqualification system, leading to a prolonged absence of a legal basis for determining the grounds and procedures for shareholders' disqualification. Consequently, the extensive discretion granted to judges in this regard greatly expands the scope of judicial discretion.

In response, the Chinese Supreme People's Court issued 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)" in 2014 (hereinafter referred to as "Interpretation III of the Company Law"), in which Article 17 for the first time clarifies the legal grounds for and procedures for the disqualification of shareholders of a limited liability company, i.e.: "Where a shareholder of a limited liability company has failed to fulfill the obligation of capital contribution or withdraws all the capital he has contributed, and still fails to pay or refund the capital contributions within a reasonable period after being notified by the company, and the company disqualifies him as a shareholder through a resolution of the shareholders' meeting, if the shareholder claims the disqualification as invalid, the people's court shall not support such claim. Under the circumstance as set forth in the preceding paragraph, the people's court shall clearly explain at the time of judgment that the company shall timely handle the statutory procedures for capital decrease, otherwise the corresponding capital contributions shall be paid by other shareholders or a third party. If, before the statutory procedures for capital decrease is handled or before the payment of the corresponding capital contributions by other shareholders or a third party, the creditor of the company claims, according to Article 13 or 14 of these Provisions, that the relevant party shall assume the corresponding liabilities, the people's court shall support such claim." Many scholars believe that this provision fills the blank of the shareholders' disqualification system in "Company Law", and provides judicial guidelines for the legitimacy of the disqualification resolution under specific circumstances.From the literal point of view, the specific applicable conditions and procedures of the disqualification rules can be disassembled as follows: in terms of applicable conditions, it is only applicable to the shareholders' failure to fulfill the obligation of capital contribution or the absconding of all the capital contribution; in terms of the antecedent procedure, the company shall perform the procedure of calling for

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

the contribution; in terms of the disqualification procedure, the company shall convene the shareholders' meeting, and terminate the qualification of the shareholders in the form of shareholders' meeting resolution; in terms of the remedies, the shareholders who have been disqualified shall be able to sue for confirmation of invalidity of shareholders' meeting resolution; and in terms of legal liabilities, before the company completes the capital reduction procedure or the shareholders or third parties pay the corresponding capital contributions, the creditors of the company have the right to request the shareholder to bear the supplemental liability.

The provision in "Interpretation III of the Company Law" holds significant positive implications in terms of legal renewal. On one hand, it furnishes a regulatory framework for companies to expel detrimental shareholders who evade capital contributions, thereby safeguarding the company's interests. On the other hand, it serves as a mechanism to compel shareholders to fulfill their capital obligations, addressing deficiencies in the regulatory framework governing company capital. However, the positioning of Article 17 within the framework of "Interpretation III of the Company Law" suggests that its regulatory intent leans more towards upholding the integrity of the company's capital structure and protecting the legitimate interests of creditors, rather than solely serving as a mechanism to maintain corporate cohesion through shareholders' disqualification. This has sparked debates regarding the nature and positioning of this provision within the disqualification system.

2.2 Controversies and Dilemmas of the Shareholders' Disqualification System

Regarding the nature of this provision, scholars are divided: some consider it part of the shareholders' disqualification system, while others argue that it blurs the distinction between shareholders' disqualification and the loss of shareholders' rights, lacking clarity on the applicable conditions, procedures, and legal consequences of each. The dispute arises from differing interpretations of the relationship between shareholders' disqualification and the loss of shareholders' rights. Some argue that the loss of shareholders' rights is subordinate to shareholders' disqualification, while others propose that they should be considered parallel concepts with distinct functional roles and institutional designs. In fact, this provision does conflate shareholders' disqualification and the loss of shareholders' rights, as it should have been classified under the shareholders' loss of rights system for legislative purposes but instead adopts procedures typical of the shareholders' disqualification system, with narrow conditions for application. To distinguish it from the shareholders' capital calls system established in subsequent provisions, it is tentatively referred to as the shareholders' disqualification system.

This provision of judicial interpretation has not only sparked extensive debate within academic circles due to its ambiguous nature, but has also faced criticism for numerous issues in its application. Firstly, concerning its application conditions, the stringent limitations of its scope make it relatively easy for shareholders to circumvent applicability by partially fulfilling their obligations. The most criticized aspect of the shareholders' disqualification system lies in its narrow applicability criteria, which only address extreme cases where shareholders "fail to fulfill capital contribution obligations or withdraw all contributions," rather than common scenarios where they "partially fulfill capital contribution obligations or withdraw part of their contributions." According to the legislators' explanation, this limitation is mainly due to the exces-

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

sively harsh and fundamental nature of revoking shareholder qualifications, thus justifying its restricted application.This greatly diminishes the applicability of the shareholders' disqualification system, allowing shareholders to effectively bypass it by fulfilling minimal obligations or withdrawing the majority of their contributions, rendering it ineffective as a punitive legal measure and failing to provide a regulatory framework for situations where partial contributions remain outstanding.

Secondly, concerning the preceding procedures, the implementation of notifications and demands lacks detailed specifications. Before a company makes a disqualification resolution, it is required to issue notifications and demands. However, this provision does not further specify whether this step is mandatory, who the notifying party should be, whether the notifying party should bear corresponding responsibilities for failing to fulfill notification obligations, or the form and reasonable timeframe for notifications. The lack of clarity regarding procedural aspects may lead to a loss of motivation for notification and demand enforcement due to the absence of procedural legitimacy and unclear responsibilities.

Thirdly, regarding the disqualification procedure and remedial measures, incomplete procedural provisions may result in the consequence of being unable to proceed with disqualification due to the non-cooperation of the shareholder slated for disqualification. Disqualification through a shareholders' meeting resolution raises uncertainties regarding whether the shareholder slated for disqualification can exercise voting rights on the disqualification resolution. Some courts believe that the voting rights of shareholders with defective capital contributions should not be restricted in the absence of clear legal provisions, resulting in theoretical situations where disqualification resolutions cannot be passed when the subscribed capital of the shareholder slated for disqualification is relatively high. Even if the shareholders' meeting successfully passes the disqualification resolution, if the disqualified shareholder refuses to cooperate and does not file a lawsuit challenging the validity of the resolution, the provision only grants the disqualified shareholder unilateral remedial rights. As a result, the registration authority faces difficulties in directly processing registration changes based solely on the disqualification resolution, rendering the disqualification resolution ineffective and putting the company in a highly passive position. When the company is compelled to initiate legal proceedings to confirm the validity of the disqualification resolution, existing rules do not explicitly grant the company this right. Some courts, based on judicial restraint, believe it inappropriate to accept lawsuits requesting confirmation of the validity of company resolutions not specified by law, making it difficult for the company to obtain relief, and the execution of shareholders' disqualification becomes challenging in practice. The various shortcomings of the current shareholders' disqualification system in China call for the establishment and construction of a shareholders' capital calls system.

3.Legal Construction of the Shareholders' Capital Calls System

Based on the qualitative disputes and enforcement challenges inherent in the existing shareholders' disqualification system, and in order to further enhance its functionality to address the commercial chaos of shareholders subscribing but not fulfilling payment obligations under the registered capital system, the new "Company Law" has made adjustments to the original disqualification system and established the "Shareholders' Capital Calls System". The most significant adjustment is the shift in legal logic from disqualifica-

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

tion due to non-contribution to partial loss of rights due to partial non-contribution, wherein shareholders who have only partially fulfilled their obligations face "loss of rights without disqualification". This expansion of regulatory scope significantly enhances the practicality and deterrent effect of the system, further facilitating the implementation of the principle of capital adequacy in companies. In contrast to "Interpretation III of the Company Law"'s disqualification system, the newly added loss of rights rules in the new "Company Law" mainly entail the following adjustments and changes:

The new "Company Law" adjusts the regulation from "disqualification" to "loss of rights". The existing disqualification system's application scenarios are too narrow and easily circumvented by shareholders. This revision expands the applicability conditions from non-contribution to insufficient contribution, and correspondingly changes the legal consequences from "disqualification" to "loss of rights". In other words, it separates the deprivation of shareholder rights from the deprivation of shareholder qualifications, allowing for "loss of rights" without the necessity of "disqualification". Additionally, while the existing disqualification system includes both non-contribution and withdrawal of contributions, adopting a broad concept for shareholders' failure to fulfill contribution obligations, the new "Company Law", as initially proposed in the "Company Law (Draft One)", removed "withdrawal of contributions" and added "false contribution". However, the final version of the new "Company Law" slightly tightened this provision, employing a textual interpretation, suggesting that the loss of rights system does not seem to include cases of contribution withdrawal.

The new "Company Law" designs the board of directors as the main entity responsible for capital contribution calls. To address the issue of ineffective institutional operation due to unclear rights and responsibilities, the new "Company Law" explicitly designates the board of directors as the executing body for capital contribution calls, and holds it accountable for inadequate execution. Article 13, Paragraph 4 of "Interpretation III of the Company Law" already stipulates that directors have the obligation to call for capital contributions from shareholders during capital increases and is considered part of their diligence obligation. By assigning the board of directors the responsibility for capital contribution calls, it empowers them with the right to call for contributions from shareholders, prompting the board to act in the best interests of the company and ensure that shareholders fulfill their subscription commitments.Building upon this foundation, it further clarifies that the duty of directors to call for capital contributions is not limited to scenarios of capital increases but should uniformly extend to capital contributions pledged by shareholders at the establishment of the company. From another perspective, this expansion of the directors' diligence obligation aligns with the overall trend of strengthening the decision-making authority and managerial responsibilities of the board of directors in corporate governance.

The new "Company Law" shifts the decision-making authority for loss of rights from the shareholders' meeting to the board of directors. While the existing disqualification system assigns the power to revoke shareholder qualifications to the shareholders' meeting, ostensibly aligning with the characteristic of the corporate personality of limited liability companies, it falls short in practice in terms of efficiency principles. For companies with large scales, especially those with overseas shareholders, convening a shareholders' meeting is not always feasible. Moreover, China has yet to establish a systematic mechanism for

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

restricting the voting rights of shareholders with defective capital contributions, inevitably leading to voting disputes. In contrast, after a company's establishment, management and operation are primarily handled by the board of directors, who are more knowledgeable about the company's operations and genuine financial needs. Therefore, the new "Company Law" expressly empowers the board of directors to decide whether to notify shareholders of their loss of rights.

In cases where company reduction of capital is not feasible, other shareholders bear the obligation to replenish the capital. The existing disqualification rules only generically stipulate that the company should promptly undertake reduction of capital or make up for the shortfall in contributions after a shareholder is disqualified. However, in practice, if the company has high liabilities and capital reduction is not feasible, it indicates that the company may lack continued investment value, and it would be difficult for third-party transfers or other shareholders to make up the shortfall, thus making it challenging to implement the principle of capital adequacy. In response, the new "Company Law" clearly assigns the obligation to replenish the lost portion of contributions to the remaining shareholders, with a specified deadline for compliance, providing more comprehensive protection for the interests of creditors.

The dissenting period for disqualified shareholders is expressly set at thirty days from the date of receiving the disqualification notification. The original disqualification system stipulated that dissenting shareholders could file a lawsuit to request the invalidation of the resolution, but this provision may have two shortcomings: firstly, it did not specify that shareholders could petition for the revocation of the shareholders' meeting resolution within sixty days due to procedural defects; secondly, there was no time limit for filing a lawsuit for confirmation of the invalidity of the resolution, which could undermine the stability of legal order. In response, the new "Company Law" removes restrictions on the content and direction of objections, and adopts the thirty-day period for disqualified shareholders' objections, as outlined in Article 49, Paragraph 3 of the "Partnership Enterprise Law".

The new "Company Law" expands the disqualification system to apply to joint stock limited companies. The original disqualification rules only provided for limited liability companies to disqualified shareholders who had not fulfilled their capital contributions through a shareholders' meeting resolution, excluding the application to joint stock limited companies. However, it should be noted that in terms of capital adequacy and regulating shareholder contribution behavior, there should be no significant differences between limited liability companies and joint stock limited companies. In light of this, Article 107 of the new "Company Law" stipulates that the disqualification system also applies to joint stock limited companies.

4. Institutional Positioning of the Shareholders' Capital Calls System

From the above comparison, it is evident that the newly introduced loss of rights rules in the new "Company Law", as opposed to the original disqualification rules, are far more than just an expansion of the scope of application. There are significant changes in implementation procedures, implementing bodies, and legal consequences. The reason for this may be that legislators intentionally seek to clarify the position of the system as a loss of rights mechanism rather than a disqualification mechanism. In this regard, it is necessary to refer to foreign legislative experiences to introduce and compare the content, functions, procedures, and institutional designs of the two systems.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

4.1 International Experience With Disqualification and Loss of Rights Regimes

In German law, there are two ways for shareholders to lose their shareholder status and exit the company: shareholder loss of rights and shareholders' disqualification. The disqualification system originated in Germany's partnership companies, whereby when a shareholder's actions cause significant reasons for dissolution of the company, the company can, through a shareholder meeting resolution, disqualify the shareholder, thereby depriving them of their shareholder status. Due to its aim to address fractures in the company's collective structure and safeguard the interests of the company and majority shareholders, the disqualification system places a greater emphasis on procedural fairness.

Regarding the grounds for disqualification, shareholders must be involved in "significant reasons" that may lead to the dissolution of the company. According to the "German Commercial Code", the conditions for disqualification require, first and foremost, the occurrence of significant reasons on the part of the shareholder that may lead to the dissolution of the company. The "Japanese Companies Act" summarizes "significant reasons" as (1) material events occurring in the shareholder himself or herself, and (2) material events occurring in the shareholder's conduct. When shareholders are involved in such "significant reasons," it can be determined that the collective structure of the company is affected, necessitating the removal of the shareholder as a solution to internal disputes. From the grounds for disqualification, it can be seen that the disqualification system is a special alternative for addressing the dissolution of the company due to the absence of collective structure, serving as a collective defense right for shareholders. In terms of the disqualification procedure, disqualification must be carried out in the form of a shareholder meeting resolution, and the disqualified shareholder does not have voting rights. After the company forms a disqualification resolution, it must also file a disqualification lawsuit with the court, where the court conducts a substantive review of the "significant reasons" and forms a disqualification judgment to prevent other shareholders from abusing the disqualification system to exclude dissenting shareholders. It is worth noting that in German judicial practice, the disqualification system has been extended to capital companies. In terms of legal consequences, since there is no necessary connection between a disqualified shareholder and whether they have fulfilled their capital obligations, for disqualified shareholders who have fully or partially paid their capital, according to the "German Limited Liability Company Act", they still enjoy economic rights to the contributed capital. As for shareholders who have not fully paid their capital, they still have the right to receive the market value corresponding to their shares, with fulfilling the capital contribution being a prerequisite.

In contrast, the shareholder loss of rights system aims to maintain the company's capital and therefore places greater emphasis on efficiency in procedural design. This system refers to the situation where shareholders fail to fully pay their subscribed capital within a grace period, leading the company to declare the loss of the shareholder's subscribed shares and paid-in capital, thereby forfeiting their shareholder status. In terms of the loss of rights procedure, according to the "German Limited Liability Company Act", the company can issue a notification to shareholders who have not fully paid their capital on time, urging them to make the full payment within a specified period. If the shareholder fails to make the payment after the deadline, the board of directors can directly declare that the shareholder has lost all subscribed shares, and the paid-in capital belongs to the company. In terms of legal consequences, upon being declared as having lost

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

their rights, the shareholder loses their shareholder status but remains liable to compensate the company for its losses. If the rights of the shareholder who has lost their rights are disposed of by a former shareholder, then the former shareholder is responsible for the unpaid capital and acquires the shares upon payment of the capital. Otherwise, the company may publicly auction the shares or realize them in other ways approved by the shareholder who has lost their rights. Additionally, the portion of the capital already paid by the shareholder who has lost their rights is confiscated by the company, and the shareholder forfeits the right to request the market value of this portion of the shares as under the disqualification system.Therefore, the loss of rights system serves as a punitive deterrent to encourage shareholders to fulfill their capital obligations on time, with the aim of achieving capital adequacy and authenticity in the short term.

4.2 Comparison of the Distinction Between Loss of Rights Regimes and Disqualification Regimes

Both the disqualification system and the loss of rights system are mechanisms used by companies to deprive shareholders of their qualifications, and there are certain similarities in their legal consequences. However, they exhibit significant differences in terms of their institutional purposes, applicability conditions, and procedural requirements. Drawing from the comparative legal experience mentioned earlier, the two systems can be compared.

In terms of institutional purposes and applicability conditions, the disqualification system is rooted in the cohesion of the company's members, while the loss of rights system focuses on the enhancement of the company's capital integrity. The purpose of the disqualification system is to address fractures in the company's membership and promptly remove problematic shareholders. Therefore, the grounds for disqualification are relatively broad, as any factor severely affecting the cooperative relations among shareholders may constitute grounds for disqualification. In contrast, the loss of rights system aims to ensure the adequacy and integrity of the company's capital by urging individual shareholders to timely and fully pay their contributions, with its sole applicable scenario being when shareholders fail to fulfill their capital obligations entirely.However, some argue that declaring loss of rights for shareholders who have not fully paid their contributions also achieves the effect of maintaining the cohesion of the company's membership under the disqualification system. Nonetheless, this is not the primary objective of the loss of rights system.

In terms of applicable procedures, the decision-making body for disqualification is the shareholders' meeting, while for loss of rights, it is the board of directors. As mentioned earlier, the disqualification system aims at the cohesion of the company's membership, thus repair of membership cohesion also requires an expression of intent from the company's decision-making body, with a legal emphasis on authenticity and fairness. However, the loss of rights system aims at the enhancement of the company's capital, seeking to promptly protect the interests of the company and its creditors, with a legal emphasis on efficiency. The responsibility of the board of directors for the decision-making and implementation of debt collection and loss of rights is due to the board's ability to promptly grasp the company's operational situation, understand the company's financial needs, making it more consistent with the pursuit of efficiency under the loss of rights system.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

In terms of legal consequences, shareholders still enjoy certain property rights after being disqualified, while they no longer have any property rights after being declared to have lost their rights. After a shareholder is disqualified by resolution, the property rights corresponding to their shares are still protected by law, meaning they have the right to request acquisition of shares or request residual value after the transfer or auction of shares. However, after a shareholder is declared to have lost their rights, they no longer have any property rights in relation to their subscribed shares in the company, and they are also not exempt from their compensation obligations to the company due to the loss of rights.

4.3 Institutional Positioning of the Former disqualification System and the New Loss of Rights System in China's "Company Law"

Combined with the previous analysis, Article 17 of China's "Interpretation III of the Company Law" establishes a disqualification system that leans towards the loss of rights system in terms of regulatory intent, but it also incorporates elements of the disqualification system. In terms of institutional purpose, it focuses on the capital cohesion of limited liability companies rather than the membership cohesion, which should be the main focus of the shareholder loss of rights system. Regarding the application conditions, this provision is limited to cases where shareholders have not paid their contributions, which is closer to the single cause of action in the loss of rights system under German law. However, unlike German law, the loss of rights system is not limited to cases where shareholders have completely failed to fulfill their contribution obligations; shareholders who have partially failed to fulfill their contribution obligations can also be declared to have lost their rights. The scope of this provision is too narrow and easily circumvented. In terms of application procedure, this provision borrows from the loss of rights system under German law, stipulating that the company must first go through the debt collection procedure, but disqualification is done through a resolution of the shareholders' meeting after debt collection, which also refers to the provisions of the disqualification system under German law. Regarding the effectiveness of disqualification, the effect of disqualification under this provision does not require judicial confirmation; it only gives disqualified shareholders the recourse of filing a lawsuit to invalidate the resolution. Compared to the disqualification system under German law, where the disqualification resolution must undergo substantive review in a disqualification lawsuit to take effect, this provision is more in line with the provisions of the loss of rights system under German law, based on changes in ownership resulting from company decisions. Although there are many responsibilities imposed on shareholders with defective contributions, the company is actually passive as a creditor, waiting for shareholders to fulfill their obligations. The lack of mandatory provisions is not conducive to achieving the goal of ensuring the capitalization of the company.

The mixing of the two regimes in Article 17 of China's "Interpretation III of the Company Law" has blurred the legal values emphasized by the existing disqualification rules, thereby affecting their implementation effectiveness. Additionally, the provision does not explicitly address whether disqualified shareholders still retain proprietary rights. Disqualified shareholders, having completely failed to fulfill their contribution obligations, naturally do not enjoy the right to request acquisition of company shares. However, it remains unclear whether they retain the residual share price after the transfer of shares. This ambiguity may

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

signify intentional legislative ambiguity to encourage judicial interpretation or may express a legislative stance of negation.Based on the principle of equality between rights and obligations, disqualified shareholders, having failed to fulfill any contribution obligations, should not retain any rights. Moreover, China's legal tradition has historically prioritized property relations over personal relations, implying that disqualified shareholders, having lost their shareholder status, should also forfeit their proprietary rights.

Comparing this with the provisions of Article 17 of "Interpretation III of the Company Law", it is evident that the newly added loss of rights system in the new "Company Law" is more precisely defined in terms of institutional positioning, while also incorporating domestic innovations. The loss of rights system entails shareholders losing shares for which they have not paid consideration, allowing the company to escape the constraints of capital agreements without liability, maintaining the capital cohesion of the company in terms of regulatory function, achieving timely capitalization and authenticity of the company in the short term, and implementing the information transmission function of subscribed capital. The new "Company Law" has also made localized improvements based on the absorption of foreign loss of rights systems: changing the legal consequences from "shareholders failing to pay the full contribution will lose their rights and shareholder status entirely" to "shareholders failing to pay the full contribution will lose shares for the unpaid portion," and not granting the company special rights to forfeit the contributions already paid by shareholders to prevent misuse and undue infringement of shareholder rights. The fact that disqualified shareholders still remain shareholders is also one of the biggest differences between the loss of rights system and the disqualification system, namely, that the loss of rights of shareholders does not involve the issue of shareholder status rights. It can be said that the loss of rights system in the new "Company Law", while pursuing efficiency and safeguarding shareholders' timely and full payment of contributions, protecting the interests of the company and its creditors, also appropriately considers legitimacy and fairness, embodying a distinctive institutional character from shareholder disqualification.

References

[1]Hao Lei. (2012). Research on Legal Issues in the Application of the Company Shareholders' disqualification System. Jurisprudence Application, (08), 40-44.

[2]Li Jianwei. (2015). A study on the shareholders' disqualification system of limited liability companies. Law Review, (02), 75-84. doi:10.13415/j.cnki.fxpl.2015.02.009.

[3]Ma Yanli. (2016). The Construction of the Rules for the Removal of Shareholders of Limited Liability Companies. Hebei Law, (11), 147-154. doi:10.16494/j.cnki.1002-3933.2016.11.015.

[4]Wang Dongguang. (2023). Research on the System of Shareholders' Loss of Rights. Rule of Law Research, (04), 33-45. doi:10.16224/j.cnki.cn33-1343/d.20230706.001.

[5]Ge Weijun. (2022). Transmutation from Shareholder Disqualification to Shareholder Disenfranchisement. Journal of Beijing Institute of Technology, (05), 71-83. doi:10.15918/j.jbitss1009-3370.2022.1406.

[6]Zeng Jia. (2023). The Functional Positioning and Systematic Application of the Shareholders' Disqualification System-Centering on Article 46 of the Company Law (Draft Revision). Journal of Beijing Institute of Technology, (02), 95-104. doi:10.15918/j.jbitss1009-3370.2022.0503.

[7]Yu Ying& Shen Wei. (2023). The legal structure of the shareholder disqualification system. Journal of

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

Social Sciences of Jilin University, (06), 32-44+230-231. doi:10.15939/j.jujsse.2023.06.fx2.
[8]Feng Jianjun. (2013). Removal and Disenfranchisement of Corporate Shareholders: From Concepts to Norms. Legal Science (Journal of Northwest University of Political Science and Law), (02), 151-161. doi:10.16290/j.cnki.1674-5205.2013.02.016.
[9]Li Jianhong & Zhao Dong. (2011). The institutional value of shareholders' loss of rights and its implications for China. Politics and Law, (12), 58-67. doi:10.15984/j.cnki.1005-9512.2011.12.013.
[10]Yuan Bihua. (2019). Study on the Company's Capital Calls System under the Dichotomy of "Subscription" and "Payment' Perspective". China Law Journal, (02), 202-220. doi:10.14111/j.cnki.zgfx.2019.02.011.
[11]Shen Changhui. (2020). Disqualification or Loss of Rights: A Study on the Reservation of Property Rights of Disqualified Shareholders in China. Civil and Commercial Law Series, (02), 179-197.
[12]Wang Qi. (2022). The constructive path of the shareholders' loss of rights procedure of limited liability companies. Law Application, (07),145-155.

© 2024 by the author(s); licensee Mason Publish Group, this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)