

## On Directors' liability to Call for Capital Contributions

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**Abstract:** The newly amended Company Law of China in 2023 has increased the obligation of directors to call for contributions from shareholders and stipulated the responsibility of directors to call for contributions, but there are still ambiguities about the nature of the responsibility, its determination, and the way of assuming it. Therefore, it is of great significance to clarify the issues related to the legal responsibility of directors' failure to call for capital contribution obligation for the improvement of company law and optimization of corporate governance. This study uses case empirical research method, literature analysis method and other methods, combined with relevant theoretical argumentation support, to explore the nature of the director's responsibility in the call for capital contribution, the assumption of the way, the scope and the determination of the standard issues. The director's duty for capital call should be characterized as a tort liability rather than a breach of contract liability. In the determination of liability, the director's duties, subjective fault, and business judgment rules should be taken into account to determine the "liable director". In the determination of causality, the principle of equivalent causality should be adopted, and the distinction between the ability of shareholders to make contributions and the directors' fulfillment of the obligation to call for contributions. Liability should be assumed in the form of supplementary liability, and the scope of liability should be determined proportionally according to the degree of causality of the director's behavior to the loss. The above findings can provide a realistic reference for improving the capital call system.

**Keywords:** Capital Call System; Directors' Liability; Liability Determination; Duty of Diligence; Scope of Liability.

### 1. Posing Questions

In 2013, Company Law of China was amended to abolish the proportionate initial capital contribution by shareholders at the time of the establishment of a company and the deadline for the full payment of capital contributions, and to realize the reform of the contribution system. While the contribution system has increased market vitality and lowered the threshold for market entry, it has also given rise to problems such as the establishment of excessively long payment deadlines and shareholders' failure to pay contributions by the due date. Therefore, it is necessary to build a supporting system, such as the company's call for contributions, to ensure that the company's capital is full.

In 2018, Company Law of China did not establish a system for companies to demand payment from shareholders. However, Article 13, Paragraph 4 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the Company Law of the People's Republic of China (III) (hereinafter referred to as the 'Company Law Judicial Interpretation (III)') stipulated that directors should demand payment from shareholders who are obligated to increase their capital contributions.

In 2019, the Supreme People's Court of the People's Republic of China ("SPC") clarified in the case of "Smarter Microdisplay Technology (Shenzhen) Company and Hu Qiusheng Liability Dispute for Damage to the Company's Interests" ("the Smarter case") that a director's duty to call for capital contributions from promoter shareholders in the non-incremental stage is subject to joint and several liability for the unpaid portion of

the contributions if such duty is breached. In the case, it was clarified that the director's obligation to call for contributions from the promoter shareholders during the non-capital increase stage, and the director's breach of such obligation was subject to joint and several liability for the unfunded portion of the contributions. As the first case in China to formally apply the director's duty of diligence to a company's capital call and hold the director jointly and severally liable, it has significant social impact and judicial practice significance. Afterwards, the legislature also responded to this issue, and Article 51 of the new Chinese Company Law of 2023 stipulates: "After the establishment of a limited liability company, the board of directors shall verify the capital contributions of the shareholders, and if it is found that the shareholders have failed to pay the capital contributions stipulated in the articles of association of the company in full and on time, the company shall issue a written reminder to the shareholders to call for the capital contributions. If the failure to fulfill the obligations set forth in the preceding paragraph in a timely manner causes losses to the company, the responsible director shall be liable for compensation."

However, there is a doubt that Article 51 of the new Company Law stipulates that the director who fails to fulfill the obligation to call for capital contribution shall be liable for compensation, but it does not specify the nature of the liability, the scope of the liability, and the criteria for determining the liability. Specifically, in terms of the nature of liability, there are several views on the liability for breach of contract<sup>[1]</sup>, tort liability<sup>[2]</sup>, and the competition between tort liability and liability for breach of contract<sup>[3]</sup>; in terms of the scope of liability, it is controversial whether the director is jointly and severally liable or supplementally liable; and in terms of the liability determination, the courts at all levels in the Smarter Case are in dispute. In the Smarter Case, there are different paths for courts at different levels: one view holds that there is no necessary connection between the negative non-performance of directors and the non-payment of capital contributions by shareholders, and it is difficult to prove that shareholders will definitely make capital

contributions on time if the directors call for the payment in time, and thus there is no legal causality and it is determined that the directors do not bear responsibility; the other view starts from the establishment of the four elements of the tort liability, and holds that the directors, in Another viewpoint, starting from the four elements of the establishment of tort liability, holds that the director, knowing the state of the company's assets and enjoying the convenience, still fails to fulfill the obligation to call for contributions and lets the company's damages continue to occur, thus establishing the legal causality and determining that the director should be held liable.

Therefore, it is necessary to clarify the legal liability of directors' failure to call for contributions related issues in order to improve the capital call system.

## **2. Nature of Directors' Liability for Capital Calls**

What is the nature of directors' liability for capital calls? In order to analyze this question, it is necessary to clarify the legal basis of directors' liability for capital calls.

### **2.1 Jurisprudential Basis of Directors' Liability for Capital Calls**

The capital of a company is formed by the contributions of shareholders and is the basis for the company's independent personality and operation; in 2013, Chinese corporate capital regime was changed from "limited contribution" to "full contribution". Although the fully contributory system has increased market vitality and lowered the threshold for market entry, it has also led to problems such as shareholders making contributions but not paying them, and difficulties in maintaining the company's capital. As a result, the capital call system came into being, which makes it clear that when a shareholder's non-payment of capital affects the interests of the company, the company shall exercise its right to call for payment in a timely manner, in order to ensure the normal operation of the company and protect the interests of creditors and other shareholders.

Why does the law provide for the board of directors to be specifically responsible for capital calls? The reason is that, firstly, the function of directors is closely related to the

company's capital, and as the executive body of the company, the directors need to ensure the health of the company's capital operation, so they should play a key role in the formation and maintenance of the company's capital. Secondly, the core of the contribution system is to give the company the flexibility of capital utilization, so that the company can respond to the needs of business development in a timely manner, and thus the determination of the main body of the implementation of the call also needs to facilitate the operation of the needs of the judgment criteria, especially the main body can accurately and timely grasp of the company's operating conditions and the demand for funds.<sup>[4]</sup> Directors are in charge of management and familiar with the company's operation and financial situation, and it is their duty to fulfill the obligation to call for contributions in a timely manner.

Thirdly, having directors assume the responsibility of capital calls is consistent with the legislative trend of shifting from shareholder-centered to board-centered corporate governance. The essence of board-centered corporate governance is to emphasize the board of directors as the center of corporate operations and management, to emphasize the delegation of decision-making authority, and to emphasize the motivation of management to achieve the long-term development of the company.<sup>[5]</sup> New Company Law of China strengthens the independence of the board of directors, deletes the provision that "the board of directors shall be responsible to the shareholders' meeting", and stipulates that the operational power of "making resolutions on the issuance of corporate bonds" can be authorized to the board of directors. The manager's authority is no longer in the form of enumeration, but clearly in accordance with the articles of association and the board of directors authorized to exercise their powers.<sup>[6]</sup> Based on the principle of consistency of rights and obligations, the duties and responsibilities of directors also increase with the expansion of directors' powers. It can be seen that it is in line with the legislative trend for directors to assume the duty to call for contributions and to bear the legal consequences of non-performance. Finally, from the perspective of fiduciary

duty, directors should also bear the corresponding duty to call for contributions. Although the concept of fiduciary duty has not been legalized in the Chinese Company Law, it has been increasingly widely used by corporate law scholars and practices, and the duty of loyalty and the duty of diligence are regarded as a pair of concepts that are part of the fiduciary duty.<sup>[7]</sup> The duties of diligence and fidelity have been refined in Article 180 of the new Company Law by focusing the examination of the duty of fidelity on the comparison between the interests of the individual and the interests of the company, and the examination of the duty of diligence on the director's management of the company's affairs with due diligence and care. This provision has the effect of both determining the meaning of directors' obligations and enhancing the spatial flexibility in interpreting and applying directors' obligations.<sup>[1]</sup> And the director to fulfill the obligation to call for capital contributions, verification of shareholders' capital contributions and other acts, in fact, is the embodiment of fiduciary duty, in line with the trend of expansion of fiduciary duty. As can be seen from the above, the functions of directors, the tendency of the board of directors to be centralized, and the expansion of the directors' fiduciary duty together determine that directors should have the duty to call for contributions and that they should be held liable for breach of this duty.

## **2.2 Clarification of the Nature of Directors' Liability for Capital Calls: Liability in Tort**

Chinese civil liability is divided into tort liability and breach of contract liability, which are far apart in terms of the scope of liability and principles of attribution. Clarifying the nature of a director's liability for capital calls has a significant impact on the determination of liability.

Fundamentally, directors' obligations and liabilities arise from their relationship with the company, and the underlying legal relationship between the director and the company affects the attribution of the legal effects of the director's behavior and the assumption of liability.<sup>[8]</sup> Therefore, to clarify the nature of liability, it is necessary to consider it from the legal relationship

between the director and the company. Regarding the legal relationship between the director and the company, the common law system defines it as a contractual relationship, and considers that the director should be liable to the company for breach of contract if the director fails to fulfill his obligations. The civil law system is similar, that the company is the appointor, the director is the appointee, in the director's liability characterization should ultimately return to the liability for breach of contract. However, some Chinese scholars believe that the directors and senior management fiduciary duty is a legal obligation, the director violates the fiduciary duty to the company suffered losses should be liable for breach of contract, in essence, is the special embodiment of tort liability in the company law and the specific application.<sup>[2]</sup> There are also scholars advocate tort liability and breach of contract liability competition, diligence obligation that is the duty of care, in the existence of a contractual relationship of the situation, the contract law can be regulated, there is no contractual relationship of the situation, the tort law can be applied.<sup>[3]</sup> Given that directors in China are usually elected and appointed through the company's articles of association or by resolution of the shareholders' meeting, and perform their duties in accordance with the law, the articles of association and authorization, the relationship between directors and the company is more appropriately viewed as one of appointment. However, the directors of a company are not fiduciaries in the strict sense of the word, as they are not automatically liable for the consequences of acts beyond the scope of their authority.<sup>[2]</sup> It does not allow the parties to limit and exclude the scope of liability beforehand, and is therefore distinguished from a fiduciary duty. Therefore, liability for breach of duty is more appropriately recognized as tortious liability.

In addition, from the perspective of Chinese judicial practice, most of the courts also to the tort liability to characterize, such as the aforementioned "the Smarter case", the retrial court from the four elements of tort liability to determine that the director should be held liable, such as the Inner Mongolia Autonomous Region Xing'anmeng

Intermediate People's Court that the director due to the implementation of the company's duties caused by the company's loss of the dispute is a dispute of tort liability. The dispute belongs to the dispute of tort liability, when the director fails to fulfill the duty of diligence, the principle of fault liability should be applied. From the legislative point of view, the new "company law" article 51 stipulates that "liable director" shall bear the liability, can be seen on the liability of the director has restrictions, not simply failed to fulfill the obligation to call for contributions. The liability for breach of contract belongs to strict liability, as long as the party violates the agreement, causing damage to the other party, should be liable, even if the individual special contract based on the principle of fault-based liability, but also need to be clearly stipulated in the law.

Therefore, from the doctrinal, judicial and legislative perspectives, it is more appropriate to characterize the liability of directors for failing to fulfill their obligation to call for contributions as tort liability.

### **3. Criteria for Determining Directors' Liability Under the Capital Call System**

#### **3.1 Understanding of "Liable Director"**

According to the provisions of Article 51 of the new Company Law, the premise of the director's liability is the violation of the obligation to call for contributions, and the result is that the company suffers losses, and the subject of liability is the "liable director". What criteria should be followed in determining the "liable director"? Does it require subjective "fault" on the part of the director in the performance of his/her duties? Does the scope of "director" include controlling shareholders and de facto controllers who are not directors of the company but actually execute the affairs of the company? These questions still leave room for interpretation.

##### **3.1.1 Stages in the fulfillment of the Directors' capital calls and division of responsibilities**

Explanation of the connotation of "liable directors" is necessary to clarify the specific stages of performance of the directors to call for contributions and the division of duties. Because in practice, the obligation to call for

contributions is not limited to a single stage of claiming rights from shareholders, it is a coherent, overall performance of the obligation<sup>[9]</sup>, can be broadly divided into call for contributions decision-making and call for contributions to the implementation of the two phases of the different stages of performance of the duties assumed by the different stages of performance, thus affecting the responsibility of the determination.

First, there are differences in the duties of directors at different stages of fulfillment. At the decision-making stage, the directors need to verify the capital contribution of the shareholders and assess the impact of the unpaid capital on the company's finances before deciding whether to make a capital call; at the execution stage, the directors need to issue a written reminder and a grace period after making a decision to make a capital call.

Secondly, the identity of a director also affects the division of duties among directors, which in turn affects the determination of a director's duty to call. The Chinese Company Law does not define the concept of a director, but rather outlines the connotation and extension of a director in terms of the director's identity and qualifications, election and dismissal, and rights and obligations.

<sup>[10]</sup>The new Company Law does not reflect differentiation in the regulation of directors' liability to call, but the individual differences among directors are various, which can be classified into differences in positional status, differences in status and interests, differences in knowledge and ability, and differences in personal character, etc., and these differences are often reflected in the whole process of participation in which the directors carry out the collective decision-making of the board of directors.<sup>[10]</sup>If the same standard is used to measure the performance behavior of all directors with the same degree of responsibility, it will actually violate the principle of consistency of power and responsibility. Therefore, it is possible, in the internal liability division of the director's responsibility based on the status, position, salary level and other important degrees of different director subjects, the classification of the director, different categories of director subjects bear the responsibility in

accordance with the director's relevant degree of importance in decreasing order.<sup>[11]</sup>

In addition, according to paragraph 3 of Article 180 of the New Company Law, controlling shareholders and de facto controllers of a company who actually execute the affairs of the company still have the duty of loyalty and diligence to the company even if they do not serve as directors of the company. In the case of concentrated shareholding, the board of directors has also become, to a large extent, a tool for the realization of the controlling shareholders' personal will and interests.<sup>[12]</sup>Therefore, in accordance with the foregoing call obligation belongs to the category of fiduciary duty, controlling shareholders, actual controllers should also be responsible for the obligation to call for capital contributions, and bear the responsibility for failing to fulfill the obligation to call for capital contributions.

### 3.1.2 Understanding of "liable"

As mentioned above, the stage of fulfillment of obligations and the specific identity and status of a director will affect the division of duties among directors, which in turn will affect the determination of a "liable director". Taking into account the above factors, what criteria should be used to determine whether a director is a "responsible director"?

A director's breach of the duty to call for contributions should be in the form of a passive omission. In the *Smarter* case, the supreme court held that the company director failed to prove that he had fulfilled the obligation to call for contributions, that is, constitutes a negative omission. The reasonableness of the allocation of the burden of proof for the time being, alone on the company director how to prove the violation of the duty of diligence on the lack of specific applicable standards, the presumption of fault coupled with the lack of proof of the standard, the director is very easy to fall into the failure to fulfill the duty of diligence to bear the legal responsibility of the trap.<sup>[13]</sup>

In the author's view, it is not possible to determine that a director is liable solely on the basis of the company's failure to call for payment, but rather should take into account the performance of duties at all stages of the process to determine whether or not he or

she is a "liable director". If the director in the decision-making stage of the verification of the shareholders' capital, after careful assessment of the shareholders did not pay the capital of the company's impact on the company should not be liable for failure to call for payment. This is because the basis of the director's liability is the duty of diligence, which focuses on the process of the director's performance rather than the result. In addition, the board of directors whether to call for contributions, belong to the commercial judgment of the directors, should be respected. From the perspective of judicial practice of China, many judicial decisions also contain commercial rules and concepts, to a certain extent, to protect the directors to make normal business decisions and improve the directors' liability system. Therefore, commercial rules can be introduced to assist in the judgment.

In contrast, if a director fails to obtain sufficient information and then hastily makes a resolution to call or not to call, he or she has violated his or her duty of diligence, and the business judgment rule does not apply, so he or she should be considered a "responsible director". In the stage of call execution, whether the director executes the resolution to call for contributions and earnestly urges the relevant shareholders to pay the contributions belongs to the internal management behavior of the company, and the determination adopts the standard of reasonable duty of care of the general rational person.<sup>[13]</sup> If a director passively fails to comply with the resolution and fails to take the necessary measures to fulfill the call, he or she is considered a "liable director".

Another issue to be explored is whether the "fault" of a director includes ordinary negligence. The author believes that it should be excluded. The reason is that, from the viewpoint of the legislative system, Article 191 of the new Company Law stipulates that directors shall be liable to third parties in case of willfulness or gross negligence, which may be due to the following considerations: Firstly, balancing the responsibility of rights and obligations. Directors need to deal with a large number of affairs quickly to ensure the efficiency of governance, it is inevitable to be negligent, if they are required to be liable for general

negligence, it may cause them to repeatedly confirm the decision, conservative decision, reduce the efficiency of decision-making and missed business opportunities, which is not conducive to the development of the company; Second, exempting the directors from the liability under the minor negligence in line with the rules of business judgment. Judges are often not the best business decision makers compared to directors, and it is difficult to judge the appropriateness of the results of directors' decisions.<sup>[14]</sup> Therefore, as long as directors make decisions in good faith and in good faith on an informed basis based on the best interests of the company, there is no need to review the reasonableness of their decisions. Under the same legal system, the legal concepts should be the same, so for the "fault" of the director's failure to fulfill the obligation to call for contributions, according to the above considerations, it is more appropriate to include only intent and gross negligence, and general negligence is regulated by the business judgment rule.

It should be pointed out that intentionally, gross negligence are very abstract standards, especially the director of the value of the present contribution must be combined with the market conditions at the time, which all need to be based on the director's own professional skills as well as the mastery of the relevant information to make specific judgments, for this reason, it is necessary to establish a combination of objective and subjective judgment standards.<sup>[15]</sup> Therefore, based on the appropriate introduction of the business judgment rule, it is also possible to use the degree of attention, knowledge and experience that an ordinary prudent director should have in the same kind of company, in the same kind of position, and in the same kind of relevant situation as the standard of measurement in terms of behavior, but if there is proof that a director's experiential knowledge and qualification are significantly higher than such standard, it should be measured by whether the director honestly contributes the actual possessed full competence as the standard of measurement.<sup>[16]</sup>

In summary, the determination of "liable" should be based on the director's conduct and fault, combined with the rules of business

judgment in a multi-dimensional and comprehensive manner, to ensure the reasonableness of the determination standard.

### 3.2 Determination of Causality

The question of whether directors are liable for the company's losses for breaching their duty to call in contributions involves the question of causation. The loss of the company may be caused by a variety of reasons, such as the shareholders' inability to make contributions or the directors' negligence in calling for contributions, and therefore the criteria for determining this need to be further discussed.

In the determination of causation, factual causation mainly examines whether an act in objective fact directly caused the damage to the rights and interests of the "if not, then not" rule is typical; and legal causation mainly examines the rights and interests of the damage and damage to the result of the question of whether there is a connection between the standards of judgment have quite Causation, reasonable foresight and so on.

In terms of factual causation, it is generally accepted that if the directors had fulfilled their duty to call for contributions, the company may not have suffered as a result of the shareholders' failure to pay. Therefore, if the director's failure to call for contributions and the company's loss meet the "if not, then not" criterion, then there is a factual causal relationship. However, the "if not, then not" rule is likely to lead to the proliferation of tort liability, destroying the balance between freedom of action and protection of rights, so there is a need for legal causation to limit.

In the legal causation, currently there are mainly the following doctrines: equivalent causation theory, the doctrine borrowed from the general experience and common sense, as well as the probability of occurrence of damage in similar circumstances to determine causation; proximate cause theory, mainly focusing on the relationship between the act and the damage in time and space; reasonable foreseeability theory, claiming that the scope of damages to the extent that the damage obligor foreseen the scope of the main. And to judge whether the director's failure to call for payment leads to the company's loss, the following path can be

followed: if the director's failure to call for payment will lead to the company's damages in general circumstances with a high probability, then the liability should be borne. However, if the shareholders themselves lack solvency in terms of funds and are unable to fulfill the obligation of capital contribution, then the director's failure to call for contributions usually does not cause the company's loss, which does not meet the requirement of comparable causality, and the liability of the director is not established; if the shareholders have the ability to make capital contributions and the director fails to actively call for contributions and cause the company to suffer losses, then the failure to fulfill the obligation of calling for capital contributions is the cause of the damages, which is in line with the comparability of the causality, and the liability of the director is established.

In summary, to determine whether a director is liable, it is necessary to consider not only whether the director has violated the obligation to call for contributions, but also to consider the causal relationship between the act and the loss, and to determine the director's liability by combining factual causation and legal causation.

## 4. Manner and Extent of Directors' Liability Under the Capital Call System

### 4.1 Mode of Assumption of Responsibility: Supplementary Responsibility

Some scholars believe that in the case of the director did not cause serious losses to the company, can refer to the provisions of Article 146 of the Company Law, "dismissal" and other non-property liability form of accountability.<sup>[17]</sup> However, this kind of liability is not favorable to the company, can not make up for the losses suffered by the company, and the supervisory effect of the director's diligence is weak.

For the property liability, some scholars believe that the directors' diligence obligation in the company's capital call and the promoters' mutual obligation to supervise the capital call are similar in function, and should be referred to the application of the promoter's joint and several liability for making up the capital call.<sup>[13]</sup> There are also views from the subjective attitude of the

directors, for the positive obstacles to call for contributions should be taken strictly joint and several liability, for the negative performance of the directors to call for contributions, the need to judge the degree of fault of its negative performance, can be flexible treatment of the expression "corresponding liability".<sup>[18]</sup>

However, the view that directors should be jointly and severally liable for making good ignores the special nature of directors' liability for capital calls. Firstly, the legal basis for the directors' liability lies in the breach of the obligation to call for contributions, which is fundamentally different from the promoters' obligation to make contributions. Secondly, joint and several liability must be stipulated by law or agreed by the parties. Company Law Interpretation (3) of Article 14, the directors to assist the shareholders to abscond with the capital and other positive joint and several liability, and the directors did not call the capital of the negative inaction does not belong to the joint and several liability. Again, directors and shareholders bear joint and several liability against the principle of fair proportion. Although the company's loss is the two acts together, but the two for the loss of the cause of the force on the primary and secondary. Itself has the obligation to contribute to the shareholders in the failure to fulfill or not fully fulfill the obligation to contribute to the company within the scope of the unpaid contributions to the responsibility to make up for the contributions, if the director only has the obligation to call for joint and several liability, contrary to the principle of fairness, and may let the shareholders negative contribution. Finally, from the perspective of social effect, if the director is jointly and severally liable, it will increase the risk burden, inhibit the director's enthusiasm and the development of the company, and may also increase the departure rate of the director of the high-risk industry, which is contrary to the goal of the company law to stimulate the vitality of the market. Therefore, the liability of directors to call for contributions should not be extended to joint and several liability.

Directors and shareholders should share liability, and it is more appropriate for

directors to assume supplementary liability for the following reasons: First, supplementary liability is limited to intervene only when shareholders are unable to fulfill their liability, so it will not make directors bear excessive liability, and it is practicable; Second, supplementary liability can spread the risk, which not only prompts directors to perform their duties diligently, but also avoids their decision-making being influenced by excessive professional risks, which helps to protect the long-term interests of the company. . Third, the director's obligation to call for contributions can be analogous to the operator's duty of safety and security, both of which are statutory obligations aimed at preventing the occurrence of risks, the operator of the damage caused by third parties to bear the supplemental liability, is due to the risk of its premises did not reasonably meet and control the damage occurs, and the director of the company's capital of the risk of the company should have a reasonable ability to meet and control, and for the occurrence of damages are the secondary causes, so can be carried out to a certain extent analogous to.

#### 4.2 Scope of Responsibility: Pro Rata

Before discussing the scope of liability, what needs to be clear is that from the legal basis of the director's liability for capital call, the concept of loss filling of tort liability, the director's liability to the company should be limited to the losses suffered by the company, and can not be extended to shareholders in default of capital contribution under the scope.

Proportional liability, as a mechanism for the allocation of responsibility, is a form of liability in which the share of responsibility to be borne by each party is determined proportionally according to the degree of causality or fault of their respective acts in relation to the occurrence of the result of the damage when more than one responsible body is held liable for the same result of the damage. First of all, from the point of view of the applicable context of proportional liability, proportional liability will be the possibility between the tortious act and the damage result as the standard of determining causality and compensation, which can solve the dilemma of determining causality in the



tort case of unknown factual causality, so that the damage can be reasonably distributed among the parties.<sup>[19]</sup> When the shareholders' behavior and the directors' behavior cause the company's loss together, the size of the causal force of the directors' behavior on the company's damage is relatively vague, so the proportionality liability can be applied to avoid its responsibility that does not match with the fault. Secondly, the principle of proportionality embodies the principle of fairness and ensures that the liability matches the fault, which will not make the director bear excessive liability, but also can urge the director to fulfill his obligations in time. Once again, proportional liability is also conducive to the implementation of the compensation amount, avoiding the concentration of liability on a single director leading to compensation difficulties, and improving the possibility of fulfilling the compensation obligation. Finally, from the judicial practice, Heze city, Shandong province intermediate people's court in Li Nanjun, Jiangsu Runyuan single county real estate limited company and other shareholders in the case of disputes over capital contribution that the director has not fulfilled the duty of diligence to the company, in the consideration of the director of the call for capital contribution is just the shareholders to pay the capital of the external conditions of the situation, the director of the discretionary shareholders to assume the total amount of capital contribution of 5% within the supplemental liability.

Specifically, in the event that the shareholders are unable to assume full responsibility for the company's losses, a certain percentage of the directors' faults and the extent to which their actions contributed to the company's losses shall be allocated, within which the directors shall assume supplemental responsibility, and the directors shall assume responsibility for each other on a proportional basis according to their duties, faults, etc., as described in the preceding paragraphs.

## 5. Conclusion

Since the reform of contribution system of China, the debate around "shareholders'

capital contribution" and "directors' call" has intensified. The introduction of the new Company Law at the end of 2023 introduced the authorized capital system, which simplifies the process of company establishment, reduces initial costs and improves the efficiency of capital use. And there is a substantial modification of the director's responsibility, which requires us to study the director's obligations and responsibilities in maintaining the company's capital and ensuring the capital enrichment, to provide a solid theoretical foundation for the mechanism of the director's responsibility in the capital call.

As a typical case, the "Smarter Case" is of great significance in guiding the director's obligation to call for contributions and civil liability. This paper takes this as the starting point, analyzes the current situation of directors' liability under the system of capital call, points out the dilemma faced by the directors in the process of assuming responsibility in the light of the "Smarter Case", and clarifies the directors' liability in the light of the trend of board-centrism and the expansion of fiduciary duty. Through the discussion of the three dimensions of doctrine, justice and legislation, this paper clarifies the tort liability nature of directors' liability, and puts forward the idea of determining the liability by combining the director's behavior, fault and the rules of business judgment for the difficulties of the implementation of Article 51 of the new Company Law. In addition, this paper also combines the theories in the field of civil law to further clarify the jurisprudential basis for directors to assume supplementary liability and proportional liability, with a view to better balancing the interests of shareholders, directors and the company.

However, in view of the fact that Chinese capital call system is still in the development stage, the specific regulation of directors' liability still needs to be improved on the basis of theoretical discussions and practical experience, so as to build a reasonable mechanism for assuming responsibility and provide a solid legal guarantee for the optimization of Chinese corporate governance structure and the healthy development of the capital market.

## References

- [1] Zou Hailin. Directors' obligations and their liability allocation in company law. *Law Application*, 2024, (02):43-56.
- [2] Shi, Tiantao. *A Treatise on Corporate Law*. 4th edition. Beijing: Law Press, 2018.
- [3] Xing, Haibao, Li, Dongyang. Directors' duty of care: a return from fiduciary law. *Hebei Law*, 2024, 42(01):37-58.
- [4] Yuan Bihua. Study on the Company's Called Contribution System under the Perspective of Dichotomy of "Subscription" and "Payment". *China Law*, 2019(02):202-220.
- [5] Wang Jin. Research on the Improvement of the Board of Directors' Authority System under Corporate Governance. *Journal of Law*, 2022, 43(02): 109-119.
- [6] Fu Qiong, Chen Honglei. The Growth and return of the power center of the board of directors. *Journal of Beijing Institute of Technology (Social Science Edition)*, 2022, 24(05):148-160.
- [7] Wang Jianwen. Extended Application of the fiduciary Duty System for Directors in China: Establishment of General Provisions. *Contemporary Law Studies*, 2023, 37(01):108-119.
- [8] Zheng Jianing. The Status and Functional Structure of Company Directors from the perspective of Fiduciary Relationship. *Hubei Social Sciences*, 2022(09):119-130.
- [9] Wang Yixuan. Company Law Interpretation of Directors' Obligation to Collect Capital Contributions. *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 1-13.
- [10] Ge Weijun. The Reform of British Company Law and Its Implications for China. *Finance and Economics Law*, 2022(02):35-53.
- [11] Zeng Xiangsheng. The Dilemma and Response of Director Liability Regulation: From the Perspective of Individual Differences among Directors. *Journal of Law*, 2022, 43(06):102-116.
- [12] Ding Wei, Wang Yanming. Legal regulation of Abuse of Control by Controlling Shareholders of Companies. *People's Forum*, 2017(25):100-101.
- [13] Wang Yu. The application of directors' Duty of Diligence in the Company's Capital Contribution collection - A supplementary review of "The Case of Smarter Microelectronics Display Technology (Shenzhen) v. Hu Qiusheng for Liability for Damaging the Company's Interests". *Social Scientist*, 2020, (09):111-116.
- [14] Li Dongyang. On Directors' Liability to Third Parties - Centered on Article 190 of the Company Law (Amendment Draft). *Journal of Beijing Institute of Technology (Social Sciences Edition)*, 2024, 26(01):111-119.
- [15] Zhao Shuwen. The director system at the establishment of Japanese companies and its references. *Law and Business Studies*, 2013, 30(04):145-152.
- [16] Zhao Shuwen. Legislation and Amendment of Directors' Fiduciary Duty. *Theoretical Exploration*, 2012(01):141-144.
- [17] Dong Chun'e. Research on the Legal Guarantee Mechanism of Shareholders' Honest Capital Contribution: Against the backdrop of Corporate Capital System Reform. *Journal of Sun Yat-sen University (Social Science Edition)*, 2015, 55(03):170-180.
- [18] Wang Qingsong, Zhang Hancheng. A systematic approach to solving the capital contribution problem under the subscribed capital registration system. *Social Science Research*, 2022, (05):89-97.
- [19] Wu Guozhe, Wang Zuohui. The basis for the application of proportionate liability in Chinese law. *Journal of Northwest Normal University (Social Science Edition)*, 2024, 61(03):90-98.