

On the Nature and Forms of Directors' Liability to Third Parties: Centered around Article 191 of the New Company Law

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Abstract: The newly revised Article 191 of the Company Law establishes a liability system for directors towards third parties, but there is still controversy over the nature and form of liability. From the perspective of regulatory purposes, this system is designed to prevent directors from abusing their power and acting recklessly, which could harm the interests of the company and its creditors. In legal terms, the liability of directors to third parties is a moderate expansion of the fiduciary duty theory and the legal entity theory based on the concept of equity in specific contexts. Therefore, in terms of liability composition, the liability of directors to third parties should be stricter in subjective fault, causality, and other aspects compared to general tort liability. Given this, it should be classified as special tort liability rather than general tort liability. In the process of institutional construction, in order to achieve the value choice of mainly compensating for the losses of third parties and supplemented by reasonable punishment, the form of liability should be designed with a gradient of joint liability and supplementary liability according to the different circumstances of the damage, and the scope of liability should be reasonably limited according to the situation.

Keywords: Directors' Liability to Third Parties; Special Tort Liability; Joint Responsibility; Supplementary Liability

1. Introduction

Since the revision of the new Company Law, the issue of directors' liability to third parties has always been a hot topic of concern in the field of company law. Many scholars believe that it is necessary for China's company law to make special provisions on the liability of directors to third parties, in order to prevent directors from abusing their power and harming the interests of third parties. [1]The above opinions have also

been adopted by the legislative body, and Article 191 of the new Company Law has made specific provisions on the civil liability of directors towards third parties. It can be said that this measure is an innovation in the director responsibility system.

This article intends to explore the nature of director's liability to third parties from the legal basis and normative purpose of the director's liability system to third parties, and clarify the form and scope of director's liability to third parties, providing corresponding references for judicial practice.

2. The Regulatory Purpose and Legal Basis of the Director's Third-party Liability System

To clarify the nature and form of director's liability to third parties, we need to start by exploring the normative purpose and legal basis of the director's liability system to third parties.

2.1 The Regulatory Purpose of the Director's Third-party Liability System

In traditional corporate law theory, directors only have fiduciary and diligent obligations to the company when performing their duties. As a legal entity, a company has an independent status and legal capacity. The act of directors performing their duties is absorbed by the company's actions in private law, so third parties can only claim rights against the company and not against the directors. Directors do not need to bear responsibility for third parties.[2]However, with the development of judicial practice, people have gradually realized the following drawbacks of directors not being held responsible for the harm caused to others by the performance of their duties: firstly, this may lead to excessive negligence and irresponsibility of directors in exercising their powers, thereby increasing the possibility of causing harm to third parties. In other words, denying the responsibility of directors to third parties at the normative level means reducing supervision and

constraints on directors, which can easily lead to the risk of directors being negligent in performing their duties or even engaging in illegal activities for the sake of profit. For third parties, the risk of their interests being damaged will increase. Secondly, denying the director's responsibility to third parties would have a negative impact on the company's interests. For a company, directors are its trustees and have a fiduciary duty towards them. According to the requirements of fiduciary duty, directors shall diligently perform their duties and shall not prioritize personal interests over the interests of the company. If directors are allowed to act recklessly without assuming responsibility to third parties, they may use the company as a protective umbrella to evade responsibility in pursuit of their own interests or short-term goals, thereby harming the interests of the company and failing to fulfill the institutional purpose of directors' fiduciary duties. In addition, due to the inability to reasonably protect the interests of third parties, transaction order and social public interests may also be affected.

Therefore, in order to achieve a balance of interests among directors, the company, and third parties, and to safeguard the normative purpose of directors' fiduciary obligations, some scholars have begun to believe that it is necessary to hold directors accountable to the outside world.

Article 191 of China's Company Law stipulates the liability system of directors to third parties precisely for the above considerations. It includes both the responsibility at the level of behavioral law and the responsibility at the level of organizational law. From the perspective of behavioral law, directors, as decision-makers and managers of a company, should bear legal responsibility for all actions of the company. When the behavior of a director causes losses to a third party, they should bear corresponding civil liability. This responsibility includes both direct compensation for damages caused to third parties and indirect compensation for damages caused by the illegal behavior of company directors. From the perspective of organizational law, the board of directors has legal responsibility for the management and operation of the company. In the decision-making process of the board of directors, if a director fails to fulfill their duty of care and causes damage to the rights and interests of a third party, they shall bear legal responsibility for it.

2.2 The Legal Basis of the Director's Liability System to Third Parties

When exploring the issue of directors' liability to third parties, relying solely on the theory of fiduciary duty and the theory of legal entities to demonstrate the rationality or legitimacy of the system of directors' liability to third parties may face many difficulties. Therefore, these two theories should be expanded and interpreted to determine the legal basis of the director's liability system to third parties.

2.2.1 The explanatory path of the theory of expanded fiduciary duty

In modern corporate law theory, the concept of fiduciary duty of directors has been further deepened and expanded. In English, American, and French countries, some precedents have recognized the view that directors have a fiduciary duty to third parties, and believe that the responsibility borne by directors needs to be defined based on the specific factual circumstances of the director's breach of fiduciary duty.[3] For example, in specific situations where a director abuses their power and causes harm to the company's stakeholders, the fiduciary duty of the director can be extended to the company's stakeholders, and the director should bear corresponding compensation liability to third parties. [4]

The expansion of the theory of fiduciary duty of directors can provide a legal basis for directors' liability to third parties. Specifically, the fiduciary duty of directors towards third parties mainly includes three aspects: the duty of care to avoid harming the rights and interests of third parties when directors perform their functions; Directors have a duty of care to maintain the company's solvency and protect the realization of creditors' rights; If a director causes serious damage to a third party during the operation of the company due to personal negligence, and the negligence should have been foreseen and could have been avoided but failed to fulfill the duty of care, or for some reasons, even though the risk was considered, it could not have been avoided in reality, in this case, the director is personally liable for compensation to the third party.[5]

2.2.2 The theoretical explanation path of expanding legal entities

Either the legal entity shall bear sole responsibility, or the members of the legal entity shall bear sole responsibility, and neither shall bear responsibility to a third party at the same

time. This "two choice" approach to liability is actually an absolutization of the theoretical understanding of the legal entity, ignoring the objective fact that directors have dual identities when committing infringement acts in the name of the company, covering up the mistakes of the perpetrator, and allowing the responsible person to escape due legal sanctions. Expanding the theory of legal entities may be a suitable explanatory path. Under the theoretical framework of shared responsibility by legal entities, the decisions and actions of a company are considered as expressions of intent by the legal entity, which is a technical assumption in legal terms. However, according to general laws, everyone has a duty of care not to infringe upon the legitimate rights and interests of others, and directors and senior management are no exception. This means that in the process of performing company duties, directors are not only representatives of the company, but also independent individuals. Therefore, under specific conditions, they should bear corresponding personal responsibility to third parties.

The evolution of the theory of corporate legal entities and foreign practical experience have shown that the original intention of this theory is to explain the legal capacity and corresponding civil liability of legal entities as organizational entities, rather than to completely exclude the possibility of directors and other members of corporate legal entities bearing civil liability to third parties. Therefore, the two can coexist and be compatible. [6] In extraterritorial practice, some civil law countries or regions that adopt the legal person authority theory have made special provisions on the liability of directors: if a director's behavior causes harm to a third party, the director should independently bear the corresponding responsibility. For example, in Japan, some scholars believe that considering that company activities largely depend on the management of commercial affairs by directors, the company law stipulates that directors bear direct personal responsibility in special circumstances, in order to protect the interests of third parties and increase the liability of actors. In South Korea, some scholars believe that the regulation of directors' liability to third parties is to urge directors to perform their duties carefully and protect the interests of third parties. Therefore, determining whether directors should be held responsible for the losses of third parties

should be based on practical needs, rather than being limited by the legal person theory.

3. The Natural Characterization of Directors' Liability to Third Parties

There is no consensus among countries regarding the nature of directors' liability to third parties. In common law countries, the nature of a director's liability to a third party is considered as negligence tort liability, while in civil law countries, due to unclear legislation, there are different opinions in academia. The applicable conditions and forms of civil liability are usually determined by their nature, so it is crucial for directors to define the nature of third-party liability. This definition not only directly relates to the clarification of the elements of responsibility, but also plays a leading role in judicial practice. Furthermore, it will have a profound impact on the scope of application and value of the system. In view of this, it is necessary for us to conduct in-depth discussions on the nature of directors' liability to third parties.

3.1 The Liability of Directors to Third Parties is Essentially Tort Liability

The liability of directors towards third parties is essentially a tort liability. Firstly, from the perspective of the basis of the right to request, there is no contractual relationship, property rights relationship, or no cause management or unjust enrichment relationship between the director and the third party. Its nature can only be infringement. But the question remains, what kind of rights is infringed upon by infringement? In my opinion, it essentially constitutes an act of infringing on creditor's rights. From the perspective of constituent elements, the infringement of creditor's rights requires the following conditions to be met: 1. The creditor's rights are legally and effectively existing; 2. The perpetrator was aware of the existence of the creditor's rights; 3. The perpetrator has committed corresponding acts that infringe upon the creditor's rights; 4. The behavior has resulted in the partial or complete inability to realize the creditor's rights. In practice, the types of facts where directors abuse their power and cause harm to third parties can basically meet the constituent elements of third-party infringement of creditor's rights. Secondly, based on the analysis of the normative purpose and legal basis mentioned above, it can be clarified that the system of directors' liability to third parties is a

special responsibility mechanism established to prevent abuse of power, and its legal basis is that directors have violated their fiduciary obligations to third parties. This fiduciary duty includes a duty of care that is consistent with one's profession. It should be pointed out that this obligation does not arise from agreements between directors and third parties, but is a statutory obligation arising from mandatory provisions of relevant laws such as the Civil Code and the Company Law. It actually originates from the basic spirit and principles of modern rule of law, that is, everyone should respect the legitimate rights and interests of others and not illegally infringe upon them. Therefore, under this absolute legal relationship framework, when a director infringes on the creditor's rights of a third party, the third party's right to claim damages from the director is not based on contractual rights, but on the general legal obligation of the actor not to infringe on the property and personal rights of others. This is an infringement issue.[7]

Furthermore, it should be noted that the liability of directors to third parties should not be confined to traditional civil law theories such as "relativity of creditor's rights". Unlike traditional civil legal relationships, although there is no contract between directors and third parties, that is, there is no relative legal relationship between directors and third parties, this does not mean that directors and third parties have no relationship. In fact, there is an interest relationship between the two. When directors abuse the company's personal independence, it can cause damage to the interests of creditors. Therefore, as a "balancer" for conflicts of interest, the law should appropriately break through the constraints of traditional "creditor's rights relativity" when necessary, hold directors accountable to third parties, prevent director abuse of power, and compensate for the losses of third parties' interests.

3.2 Directors' Liability to Third Parties is a Special Tort Liability

Although the liability of directors to third parties is essentially similar to tort liability, it should not be subject to the provisions on general tort liability and should be classified as a special tort liability. According to the basic principles of the Tort Liability Law, general tort liability must meet four major constituent elements: harmful behavior, harmful consequences, causal

relationship, and subjective fault. From the perspective of relevant legislative provisions in our country, special liability for infringement has the following characteristics: the responsible subject and the actor are sometimes separated, mainly adopting the principles of fault presumption and fair liability attribution, the burden of proof is often reversed, and there are strict restrictions on the exemption of liability.[8]The director's liability to third parties as a responsibility under the company's organizational law has special characteristics compared to the general tort liability stipulated in the Code of Conduct.

Firstly, the establishment of personal responsibility of directors is based on the establishment of corporate responsibility. Article 191 of the new Company Law stipulates a dual liability protection framework for third parties. The basis for the first level of responsibility is that as the executive body of the company, the director's official actions in the name of the company are considered company actions, and the company, as an independent legal entity, should be held responsible for any damages caused to others; The second liability is based on the fact that as an independent natural person, if a director causes losses to others due to intentional or gross negligence, they should also bear the liability for compensation. However, the plaintiff should bear the burden of proof for the intentional and gross negligence of the director's official behavior. Unlike general tort liability, it presents a progressive pattern in terms of liability, where the establishment of a director's personal liability requires the establishment of a company's liability. If the company's liability for damages is not established, then the director's liability to third parties is also not established.[5] Secondly, Article 191 of the new Company Law limits the scope of subjective fault elements in its wording, that is, only when a director has intentional or gross negligence in causing harm to a third party, can liability be established, and the director's liability to a third party is excluded from the general scope of civil law compensation for infringement damages, and special infringement rules are applied. Based on the aforementioned legal basis analysis, directors should bear the duty of care under tort law towards third parties, therefore there is a causal relationship between the direct damage suffered by the victim and the behavior of the director; The director has assumed an expanded fiduciary

duty, therefore the indirect damage suffered by the victim and the director's behavior should be recognized as having a broad causal relationship, and the director's indirect infringement behavior towards third parties is also attributable. According to this standard, the infringement behavior of directors towards creditors is clearly a special infringement behavior. Directors only bear responsibility in cases of intentional and gross negligence, and do not bear responsibility in cases of general and minor negligence. In the principle of attribution, fault presumption is applied, and the burden of proof is reversed.

Finally, as mentioned in the second part of this article, the liability of directors to third parties is an exceptional way of assuming responsibility to prevent the abuse of power by directors and to uncover the veil of protection provided by the company to directors from an institutional perspective, thereby protecting the interests of the company's creditors. Its special significance lies not in compensating for the direct infringement of the director on a third party, but in the fact that the director's fault in their official behavior violates the general obligation of the director not to infringe on the property and personal rights of a third party. Although a director to third party system has been established to prevent abuse of power, blind accountability cannot be imposed, and responsibility needs to be limited. Directors' own business judgment should be respected and cannot be equated with general tort liability.

In addition, based on the consideration of the rule system, Article 1191 of the Civil Code should be regarded as the basic norm of Article 191 of the new Company Law. Article 1191 of the Civil Code explicitly adopts the complete substitution model of substitute liability, however, Article 191 of the new Company Law does not continue to adopt the same approach as Article 1191 of the Civil Code, but instead adopts a limited substitution model. The emergence of Article 191 of the new Company Law has brought the limited substitution model back into people's sight, breaking the monopoly of the complete substitution model in Article 1191 of the Civil Code and enriching the types of substitution liability, which is of great significance.

In summary, defining the liability of directors to third parties as special tort liability strengthens the principle of independent personality of the company, protects the rights and interests of the

company, and reduces the possibility of director liability being abused in practice; On the other hand, it also echoes the obligations of loyalty, diligence, and good faith in the Company Law, prompting directors to actively fulfill their duties, act cautiously, balance the interests of directors, the company, and third parties, thereby reducing the company's operational risks and the cost of maintaining the interests of the company and third parties.

4. The Form and Scope of Compensation of Directors' Liability to Third Parties

Combining the theory of expanded legal entities and the theory of fiduciary duty, it seems more reasonable to classify the liability of directors to third parties as a special tort liability. Although strengthening the responsibility of directors to third parties through legislative means can significantly promote their diligence and responsibility, if they bear too much burden, it will have a certain driving effect on them. Therefore, while strengthening the responsibilities of directors, it is necessary to carefully balance the intensity of director responsibilities in practical application, ensure fair and reasonable assumption of responsibilities, and thus reduce the potential negative effects of the system. After confirming the nature of responsibility, we still need to address the question of whether the value choice of the director's liability system is to compensate for losses or to impose reasonable punishment? How should directors explain the form of liability to third parties? How is the scope of responsibility of directors towards third parties defined?

4.1 Value Selection: Primarily Focused on Compensating for Losses

The value selection of the third-party liability system by directors should mainly focus on compensating for the losses of the third party, supplemented by reasonable punishment. In the process of constructing a system of directors' liability to third parties, it is necessary to comprehensively consider the personal compensation of directors and the average market compensation level, and reasonably set the maximum compensation limit for directors' liability to ensure that their responsibilities are within a controllable range, and to prevent excessive liability burden from having a negative impact on directors' autonomy and

initiative in business decision-making. The reasons are as follows.

Firstly, compensating for losses is a consistent value choice in tort liability law. The basic purpose of tort liability is to protect the infringed party and reduce infringement behavior. The former corresponds to compensating for losses, while the latter corresponds to punishing the perpetrator. But overall, compensating for losses is more important because the tort liability system is essentially a law of rights relief, with the ultimate goal of safeguarding the rights of civil subjects. Punishment is not the primary purpose of tort liability, but only in special circumstances where the infringer should bear punitive damages.

Secondly, overly strict director responsibilities will inevitably lead to an imbalance between director rights and obligations, seriously dampening the enthusiasm of the director professional group and even making them unwilling to hold the position of director again, which may hinder economic development. In fact, in order to limit the liability of directors, the UK and the US have also developed business judgment rules. It emphasizes respecting the management judgment of directors and preventing excessive director responsibilities from damaging their enthusiasm. Note: Even the most astute decision-makers cannot guarantee the accuracy of every decision. Especially when the company is in financial distress, directors need to make more risky business judgments about the company's operations. If directors are generally given direct obligations to the company's creditors, it can greatly protect the company's creditors, but it also excludes the opportunity for the company to revive. If the adjustment of the law keeps the professional management class, which is an important component of the market economy, away from the market, then this adjustment is undoubtedly a failure. The extent of power that business managers have requires them to bear corresponding responsibilities, while also enjoying corresponding benefits. The balance between power, responsibility, and benefit is the cornerstone that should be followed in establishing incentive and restraint mechanisms for business managers. Only under such a mechanism can business managers fully utilize their talents and abilities to bring sustainable development to the enterprise.

In addition, overemphasizing punishment lacks

operability and may exceed the actual ability of directors. In daily life, most directors are only beneficiaries of the company's compensation and do not have a stronger ability to pay than the company. It is unrealistic to expect that the protection of third parties can be significantly strengthened by holding directors liable for compensation. Under normal circumstances, we cannot determine whether the compensation liability of directors can significantly improve the level of protection for third parties, and whether directors' assumption of responsibility can effectively compensate for the losses of third parties. It is necessary to weigh and judge based on individual cases in practice.

Finally, in practical operation, the decisions of directors are often influenced and constrained by the controlling shareholders, so their decisions are not completely independent. If directors and general civil subjects with complete free will are placed in an equal position of responsibility and required to bear the same degree of losses, it is obviously unfair and unreasonable.

4.2 Form of Responsibility: Gradient Design of Joint and Supplementary Liability

The new Article 191 of the Company Law uses the wording "the company shall bear the liability for compensation, and the directors shall also bear the liability" in the expression of director's liability, which can be considered as adopting the principle of the company assuming liability to third parties and the exception of the director assuming liability to third parties. In other words, only when the director's performance of duties damages the interests of a third party with intentional or gross negligence, should the third party who has suffered losses be directly liable for compensation. One understanding of the repayment order between corporate responsibility and director responsibility is that director responsibility is subordinate to corporate responsibility, and director responsibility constitutes a supplement to corporate responsibility. Article 93 of the German Stock Code adopts this interpretation. Another understanding is that there is no order of priority between corporate responsibility and director responsibility, and the two constitute ordinary joint and several liability for compensation. A typical example of extraterritorial legislation is Article 401 (1) of the Korean Commercial Code. Although requiring directors and the company to assume ordinary joint and several liability can

ensure that third parties receive maximum compensation, the excessive liability of directors greatly increases the risk of liability in the process of performing their duties, which may lead to a re imbalance of interests. In addition, directors may become overly cautious due to excessive concern about liability risks, which may lead to a lack of innovation and pioneering spirit in company management.[9] This situation will make it impossible to achieve the purpose of formulating general rules for the civil liability of directors to third parties, which cannot effectively enhance the responsibilities and obligations of directors, improve the corporate governance structure, and expand the protection of the interests of third parties. So, what form of responsibility should directors have towards third parties? This article suggests that a combination of joint liability and supplementary liability can be adopted, allowing directors to bear different responsibilities towards third parties based on the infringement suffered by the third party and the subjective requirements of the directors.

As for the infringement suffered by third parties, as mentioned earlier, the scope of damage should not be limited to direct losses, but should also include indirect losses caused by the fault behavior of directors to the company and third parties. Regardless of whether the loss is direct or indirect, as long as it is related to the director's negligent behavior, the director should bear corresponding responsibility. However, the causal relationship between different damage outcomes and the fault behavior of directors is not the same, and the degree of liability and the form of responsibility borne by directors should naturally vary.

In cases of direct harm, the improper behavior of directors is often the direct factor causing harm to third parties, and in some cases may even be the sole cause, such as intentional damage to company property, misleading investors with false statements by directors in false statement cases, and decisions made by the company's board of directors to produce products that infringe on the intellectual property rights of other companies. Therefore, directors bear a great weight in the attribution of responsibility, and it goes without saying that they should bear the tort liability that they should bear for their own actions. It should also be noted that the damage caused by directors to third parties is often in the process of handling company affairs

and performing their duties, so the company is also an indispensable liability subject. Because in corporate relationships, directors are the organs or members of the company, and the board of directors forms resolutions based on the majority rule rather than the personal wishes of a single director. Therefore, when a director causes direct damage to creditors due to intentional or gross negligence, it will constitute joint infringement, and the director should jointly bear joint and several liability with the company.

On the other hand, in so-called indirect damage events, the impact of the director's negligent behavior on third parties exhibits a certain degree of contingency and unpredictability. In other words, the realization of third-party rights, although to some extent related to the increase or decrease of company property due to the fault behavior of directors, is not absolute, and market factors may also have a significant impact on this. The duty of care that directors have towards the company's assets is not entirely equivalent to the duty of care towards the interests of third parties. In this context, although the actions of directors have a certain degree of accountability, the specific degree of accountability still needs to be further explored and determined.

Specifically, in cases of indirect damages, the liability that directors need to bear should be differentiated based on their subjective requirements. If a director holds an intentional attitude towards a third party, there is a definite causal relationship between the director's intentional behavior and the increase or decrease of the company's assets. If the company's assets are in an exact state of damage, the probability of the third party's debt being unable to be realized will increase. The determination of the director's behavior will have a negative impact on the rights of the third party. In this situation, if the interests of a third party are indeed harmed by the actions of the director, the director should naturally be held responsible for the third party. For example, if a director decides to continue trading with a trading partner whose business condition has deteriorated, because their debt cannot be recovered, and the trading partner goes bankrupt at the same time as the company goes bankrupt; The director seriously violated their duty of diligence, made hasty investments without due diligence, and incurred huge losses; Directors seize business opportunities from the company through affiliated companies; The

company has been subjected to high fines and other administrative penalties for operating illegally.

If the director is only at fault, then it is necessary to pay attention to the uncertainty of business decisions. It is obviously impossible for the director to always make foolproof decisions in the midst of daily affairs, and it is also unclear what impact the decision will have in the future when the director makes it. For example, when the company is about to go bankrupt, the director chooses to engage the company in high-yield and high-risk activities. If it fails, it will be more difficult to realize the creditor's rights of third parties, but if it succeeds, the company's profits will increase and the creditor's rights of third parties will be better protected. Therefore, it is difficult to say that the director should be directly responsible for the indirect damage caused to third parties due to the company's debt repayment ability reduction caused by the director's gross negligence. This completely puts the commercial risk on the director, which is unfair. Given that the director's involvement is not a minor fault, but falls within the category of gross negligence, completely exempting them from liability would be difficult to achieve the appropriate punitive effect on the director's third-party liability system. Therefore, in the case of indirect damages caused by the director's gross negligence, it should be stipulated that they bear supplementary liability. Specifically, when the rights of a third party are infringed, their primary recourse is the company, and as long as the company can fully meet their compensation requirements, there is no need to seek compensation from the directors; If the company is unable to fully compensate, a third party has the right to demand that the director bear responsibility for the shortfall.

In addition, a special situation needs to be considered, that is, under the control of shareholders, if the behavior of directors is completely influenced by the will of shareholders, then requiring directors and shareholders to bear the same responsibility goes against the basic principle of consistent rights and responsibilities. Therefore, in cases of personality denial, shareholders and the company should jointly assume joint and several liability towards third parties, while directors who are controlled by shareholders and provide assistance should bear corresponding supplementary liability.

In summary, the liability of directors towards third parties should not be directly defined as joint and several liability, but should be distinguished based on actual circumstances. Specifically, in cases of direct harm, regardless of whether the director's subjective intention or gross negligence, they should bear joint and several liability with the company towards the third party; In the case of indirect damage, if the director intentionally causes it, they should also bear joint and several liability with the company towards the third party. If the director has gross negligence, they should bear supplementary liability towards the third party; In special circumstances where directors are completely subject to shareholders and personality denial applies, shareholders and the company should jointly assume joint and several liability towards third parties, and directors should assume supplementary liability.

4.3 Scope of Liability: Full Liability or Limited Liability

The new Company Law has made general provisions on the liability of directors to third parties through Article 191, which has improved the efficiency of judicial practice but also caused many controversies over the scope of their liability. The director's liability to third parties, as a special tort liability, must be scientifically and reasonably limited in order to reduce the impact on the company's legal person system.

Firstly, it should be clarified that the director's liability to third parties includes both direct and indirect losses. It is more in line with the legislative purpose of Article 191 to establish a causal relationship between the indirect damages suffered by a third party and the negligent behavior of the director, and to require the director to bear responsibility for the indirect damages suffered by the third party. Generally speaking, even if a director's wrongful behavior causes losses to the company, the interests of third parties may not necessarily be harmed as a result. Some people believe that including indirect damages in the scope of directors' liability is an expansion of the causal relationship, but this article believes otherwise. When we judge the causal relationship in law, we not only need to consider whether it conforms to objective facts, but also comprehensively consider various factors such as experience, common sense, legislative purposes, etc. This is not only a matter of factual

judgment, but also a matter of value selection. If only the direct damage caused by the director's behavior to a third party is pursued, it can be resolved through the general principle of tort liability in civil law, and there is no need to specifically stipulate it in Article 191 of the Company Law. Strictly adhering to the traditional theory of causality is obviously unable to meet the needs of protecting the interests of third parties under the rapid expansion of director power. Therefore, a generalized theory of causality should be adopted.

Holding directors responsible for indirect damages to third parties can not only better protect the rights and interests of creditors, but also more effectively constrain their abuse of power. In practice, whether a company initiates a lawsuit is often decided by the board of directors. It is difficult for the company to proactively demand compensation from directors when they themselves are the infringer. Only by holding directors responsible for indirect damages to third parties can the interests of third parties be protected more promptly and effectively in the event of indirect damages. Granting third parties who have suffered indirect damages the right to directly request directors to assume responsibility further safeguards the legitimate rights and interests of third parties, while also enhancing directors' sense of responsibility, forcing them to operate in accordance with the law, regulate operations, and promote the healthy and orderly development of the company. Secondly, an upper limit should be set for direct damages compensation liability, and proportional liability should be considered based on the principle of fairness. Firstly, in the case of direct damage, according to the general principles of tort liability law, when the actions of directors result in direct losses to creditors, they should be held liable for compensation. However, requiring directors to fully bear the compensation costs may be too strict. The main purpose of Article 191 is to balance the punishment and compensation mechanisms for directors, rather than to impose punitive damages on directors. When determining the compensation liability of directors, the scope of their liability should be appropriately controlled. If the compensation amount is too high and exceeds the personal capacity of the director, it may result in the director being unable to bear the compensation responsibility, affecting the

protection of creditors' rights and interests, and ultimately failing the legislative purpose. Secondly, Article 1172 of the Civil Code stipulates that two or more individuals shall bear proportionate liability for each tortious act committed. However, in the field of company law, when directors directly infringe upon the rights and interests of creditors, they usually use the name of the company to carry out personal infringement acts. There are certain difficulties in determining whether there is a problem of "two or more people separately carrying out infringement acts". The Civil Code does not make clear provisions on the use of another person's name by the perpetrator to commit infringement. Thirdly, considering that directors receive relatively low salaries while performing their duties, not setting an upper limit on their responsibilities may excessively increase their liability. Therefore, in judicial practice, corresponding judgment rules can be formulated based on the scope of directors' responsibilities and salary levels to limit their liability. Such rules can not only reflect the punitive effect on directors, but also to some extent compensate for the losses of creditors

5. Conclusion

Article 191 of the new Company Law clarifies for the first time the direct responsibility of directors to third parties, changing the legislative model of external compensation and internal accountability of companies in the past, and fully responding to the practical needs of regulating director abuse of power and protecting the interests of the company and third parties. This measure strengthens the responsibility of directors towards third parties, encouraging them to be more cautious and impartial in their decision-making and actions, greatly protecting the legitimate rights and interests of third parties, and also helping to improve judicial efficiency, realizing the corporate legal values of fairness, justice, and transaction security.

In terms of understanding the nature of directors' liability towards third parties, the theory of special tort liability further embodies the basic principles of protecting transaction security and protecting the interests of third parties in China's commercial law. At the same time, it also deepens the fiduciary relationship between directors and the company, requiring both parties to truly pay attention to each other's importance

in business and jointly maintain good faith operations. At this point, the director's responsibility to the third party not only represents the deepening of their own responsibility, but also represents the company's image and reputation to the outside world, forcing the director to act cautiously and fulfill their duties seriously.

In summary, the establishment of general rules on directors' liability to third parties is crucial for optimizing the company's legal system, safeguarding the legitimate rights and interests of third parties, enhancing directors' sense of responsibility, and realizing the value of company law. In the future construction of corporate legal system, we should further study and explore how to better implement this rule, in order to ultimately build a director to third party liability system that is in line with Chinese characteristics.

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