An Empirical Study on Shareholders' Claims Against Companies as Paid-in Capital: A Defense Against Recovery Claims

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Abstract: In disputes involving liability for damage to company creditors[1], recovery of unpaid capital contributions, and shareholder contribution disputes, shareholders often contend that they have already remitted funds to the company in some form or paid expenses on the company's behalf, thereby acquiring claims against the company and using such claims as a defense that they have fulfilled their paid-in capital contribution obligations. In judicial practice, although corresponding legal bases and adjudicative rules exist, courts still differ in their standards for determining whether a shareholder's claim against the company may be treated as paid-in capital. Article 48 of the Company Law expressly includes claims within the scope of non-monetary property that may be valued and contributed as capital, thereby providing a direct statutory basis for debt-for-equity contributions. However, in disputes involving liability for damage to company creditors and recovery of unpaid capital contributions, when shareholders rely on loan claims, current-account claims, reimbursement claims arising from payments made on behalf of the company, or similar claims against the company to offset their contribution obligations, courts should still examine multiple issues, including the authenticity of the claim, valuation, financial treatment, registration and disclosure, and protection of creditors' interests. This article proceeds from the legislation and judicial practice concerning the use of shareholders' claims against the company as paid-in capital to resist recovery claims, summarizes the relevant standards of determination, and attempts to provide practical suggestions for shareholders seeking recognition of completed capital contributions and avoidance of duplicate liability.

Keywords: shareholder's claim against the company; liability for damage to company creditors; recovery of unpaid capital contributions; shareholder contribution dispute; paid-in capital

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[1] According to the Decision of the Supreme People's Court on Amending the Provisions on Causes of Action for Civil Cases, the third-level cause of action "dispute over liability for damage to company creditors" no longer separately includes "dispute over shareholder liability for damage to company creditors." To maintain consistency with the cases cited in this article and existing terminology, the term "disputes involving liability for damage to company creditors is retained throughout this article.

Introduction

When a company fails to repay its debts and seriously impairs the interests of its creditors, creditors or bankruptcy administrators may, depending on whether the company has entered bankruptcy proceedings, bring actions against shareholders through disputes over liability for harm to company creditors' interests, recovery of unpaid capital contributions, or shareholder contribution disputes. Because a company's liable assets include registered capital whose contribution period has not yet expired,[2] company creditors may request that shareholders bear supplementary liability for the company's unsatisfied debts within the scope of unpaid capital contributions. After a company enters bankruptcy, the bankruptcy administrator may also seek recovery of unpaid capital contributions from shareholders.

In litigation, courts examine whether shareholders have fully performed their capital contribution obligations. Shareholders must provide corresponding evidence showing that they have in fact fulfilled their contribution obligations to the company in some form. Although Article 48 of the Company Law[3] provides for shareholders' capital contribution by means of property including claims, in the actual operation of companies shareholders may inject funds into the company under descriptions such as "investment funds," "loans," "current-account funds," or with no payment notes at all, or may pay expenses or discharge debts on the company's behalf, thereby believing that they hold specific claims against the company. This article collectively refers to these complex situations as "shareholder-held claims against the company" for purposes of analysis. Courts differ to some extent in their characterization of such claims, and Part III of this article addresses those differences.

Accordingly, this article takes cases involving disputes over liability for harm to company creditors' interests, disputes over recovery of unpaid capital contributions, and shareholder contribution disputes as the empirical research objects. It seeks to clarify under what circumstances shareholder-held claims against the company may be treated as paid-in capital and thereby used as a defense against recovery claims by company creditors, so as to provide practical reference for shareholders' reasonable protection of their legitimate rights and interests in such disputes.

1. Legislative Development and Judicial Practice in China

1.1 Legislative development and current rules

Before March 1, 2014, the establishment of companies in China was subject to a registered-capital paid-in registration system, and corresponding capital verification reports were required for government registration review.[4] Under the current legal regime, registered capital generally follows a subscription system. Yet the subscription system does not weaken shareholders' contribution obligations. In particular, after the company is unable to pay due debts, the interests of creditors are affected, or the company enters bankruptcy proceedings, whether shareholders have truly performed their capital contribution obligations remains an important issue for

[2] Zhu Jiaying and Jiang Lili, "Does the Contribution Liability of a Shareholder Whose Contribution Period Has Not Expired Disappear After Equity Transfer?," People's Court Daily, December 12, 2019, p. 7.
[3] Company Law of the People's Republic of China (2023), art. 48.
[4] Company Law of the People's Republic of China (2005), art. 23.

judicial review.[5]

From a legislative perspective, the legal basis for shareholders who harm the interests of the company's creditors and consequently have their subscribed capital called in stems primarily from the former Company Law, Article 20.[6] This provision states that where a shareholder abuses the independent status of the company as a legal person and the shareholder's limited liability, evades debts, and seriously damages the interests of company creditors, the shareholder shall bear joint and several liability for the company's debts. The provision continues the basic rule of corporate veil piercing and provides a normative basis for company creditors, in specific circumstances, to break through shareholder limited liability and request shareholders to bear liability. Correspondingly, in cases involving shareholders' failure to perform or fully perform their capital contribution obligations, creditors generally do not merely deny the company's independent personality, but request that shareholders who have not fulfilled their contribution obligations bear corresponding liability for the company's unsatisfied debts within the scope of unpaid contribution and interest.

The Company Law and Judicial Interpretation (III) further provide practical guidance for such disputes. Under that interpretation, where shareholders withdraw capital contributions or fail to perform, or fail to fully perform, their contribution obligations at the time of company establishment, after establishment, or upon capital increase, they may fall within the circumstances that impair company creditors' interests. The interpretation also provides rules on the burden of proof in such disputes: where there is controversy over whether a party has fulfilled capital contribution obligations and the plaintiff provides evidence giving rise to reasonable doubt as to the shareholder's performance, the defendant shareholder bears the burden of proving that the contribution obligations have been fulfilled. If the shareholder cannot provide corresponding proof, or the proof does not reach the standard for a court to recognize paid-in capital, the shareholder must bear the adverse consequence of failure of proof.[7]

The new Company Law further systematizes the rules on shareholder contributions. Under Article 48, shareholders may contribute in cash, or may contribute by valuing non-monetary property that can be valued in monetary terms and lawfully transferred, including physical property, intellectual property rights, land-use rights, equity interests, and claims. Non-monetary property contributed as capital must be appraised and verified, and may not be overvalued or undervalued. This provision expressly includes "claims" within the scope of property that may be valued and contributed as capital at the level of company legislation, thereby providing a more direct legal basis for debt-for-equity contributions.

For creditors in disputes over liability for harm to company creditors' interests, how to overcome shareholders' benefit of deferred contribution under the registered-capital subscription system is a key issue. Before the new Company Law came into force, the Minutes of the National Courts' Civil and Commercial Trial Work Conference[8]

[5] Chen Zhaoli and Zhou Wei, "2019 Annual Big Data Report on Corporate Dispute Cases of the Supreme People's Court," PKU Law Digest, vol. 1, 2019–2020, p. 85.
[6] Company Law of the People's Republic of China (2018), art. 20.
[7] 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) (2020 Amendment), arts. 18 and 20.
[8] Minutes of the National Courts' Civil and Commercial Trial Work Conference, art. 6.

provided a clear answer. It stated that where, in an enforcement case against the company as judgment debtor, the court has exhausted enforcement measures and found no property available for enforcement, the company has met bankruptcy conditions but has not applied for bankruptcy, or where, after the company debt arose, the shareholders' meeting resolves or otherwise extends the shareholders' contribution period, the creditor may request shareholders whose contribution period has not yet expired to bear supplementary liability for the company's unsatisfied debts within the scope of unpaid contributions. This rule provided necessary assistance in breaking through protection of benefit of the contribution period.

Article 54 of the new Company Law further establishes, at the statutory level, the acceleration of shareholders' capital contribution obligations outside bankruptcy. It provides that where a company is unable to pay its due debts, the company or a creditor holding a matured claim may require shareholders who have subscribed for capital but whose contribution period has not yet expired to pay their contributions in advance.[9] Compared with the higher threshold established by the Ninth Civil and Commercial Trial Work Conference Minutes, Article 54 takes "the company's inability to pay due debts" as the trigger, making the normative basis for creditors to request early payment of capital contributions clearer.

For disputes over recovery of unpaid capital contributions, Article 35 of the Enterprise Bankruptcy Law remains an important legal basis. It provides that after a court accepts a bankruptcy application, if the debtor's investors have not fully fulfilled their capital contribution obligations, the administrator shall require such investors to pay the subscribed contributions, without being restricted by contribution deadlines.[10] This rule makes clear that after a company enters bankruptcy proceedings, shareholders lose the benefit of the contribution period regardless of whether the original contribution period has expired.

1.2 Judicial practice

On the basis of the Company Law, the Enterprise Bankruptcy Law, and relevant judicial interpretations, the rights and defenses of shareholders, company creditors, and bankruptcy administrators all have corresponding legal foundations. In judicial practice, the review of such cases mainly focuses on two levels: first, whether the creditor or administrator may request shareholders to bear capital contribution liability; and second, whether the shareholder can prove that the contribution obligation has already been performed through actual payment, conversion of a claim into capital, or other means.

In disputes over liability for harm to company creditors' interests, creditors usually need to prove that they hold a lawful and matured claim against the company and that the company is unable to pay due debts. After Article 54 of the new Company Law came into force, the normative basis for creditors to overcome shareholders' benefit of the contribution period became clearer. The focus of judicial review will gradually shift from the old-law inquiries of whether enforcement measures have been exhausted and whether the company has met bankruptcy conditions to whether the company is unable to pay due debts and whether early payment of shareholders' capital contributions is necessary.

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[9] Company Law of the People's Republic of China (2023), art. 54.
[10] Enterprise Bankruptcy Law of the People's Republic of China, art. 35.

In disputes over recovery of unpaid capital contributions, because the company has already entered bankruptcy proceedings, shareholders lose the benefit of the contribution period by operation of law, and the administrator need not separately prove whether acceleration conditions are met. The principal issue becomes whether shareholders have truly and fully performed their contribution obligations. Accordingly, when shareholders assert that they have completed their contributions through "investment funds," "loans," "current-account funds," unmarked payments, or payments made on the company's behalf, they must provide evidence proving the nature of the funds and the existence of an intent to contribute capital.

Precisely because shareholders may hold various forms of claims against the company and seek to have them recognized as paid-in capital, courts have differed considerably in their characterization and determination. The following Part therefore provides a type-based analysis of the existing adjudicative rules.

2. Judicial Difficulties in Recognizing Shareholder-Held Claims as Paid-in Capital

In practice, in disputes over recovery of unpaid capital contributions, disputes over liability for harm to company creditors' interests, and shareholder contribution disputes, courts have reached different conclusions regarding claims that shareholders formed against the company before litigation. After searching relevant cases on China Judgments Online, PKULaw, and other platforms, this article selects the core views of intermediate courts in second-instance cases and certain effective first-instance judgments for analysis as follows.

2.1 Recognition of "investment funds" as paid-in capital

In the actual operation of companies, shareholders sometimes transfer funds to the company's account and mark the transfer as "investment funds." For example, in Civil Judgment No.(2019) Wan 10 Min Zhong 566,[11] a case involving recovery of unpaid capital contributions, the court held that funds transferred by the shareholder into the company's bank account and marked as investment funds were indeed capital contributions. Although the company asserted that the funds were payment for goods, it failed to provide rebuttal evidence, and therefore bore the consequence of failure of proof. The court accordingly recognized that the shareholder had performed the corresponding paid-in contribution obligation. In Civil Judgment No.(2021) Zhe 04 Min Zhong 2487,[12] another recovery of unpaid capital contributions case, two transfers made by shareholder A to the company were both marked as "investment funds," and the company also issued a capital contribution certificate. The court therefore recognized the transfers as paid-in capital. Moreover, because the law does not prohibit payment of contribution on another's behalf, the court accepted shareholder A's statement that A had contributed on behalf of shareholder B. The same standard also appeared in Civil Judgment No.(2020) Zhe 02 Min Zhong 4172.[13]

In addition, in Civil Judgment No.(2021) Hu 0117 Min Chu 4908, a dispute over

[11] Huangshan Intermediate People's Court of Anhui Province, Civil Judgment No.(2019) Wan 10 Min Zhong 566, dispute over recovery of unpaid capital contributions.
[12] Jiaxing Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2021) Zhe 04 Min Zhong 2487, dispute over recovery of unpaid capital contributions.
[13] Ningbo Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 02 Min Zhong 4172, dispute over recovery of unpaid capital contributions.

liability for harm to company creditors' interests,[14] the "investment funds" asserted by the shareholder were confirmed by a professional audit institution, thereby adding important support to the shareholder's claim. In that case, the shareholder had, through audit, adjusted other payables marked as "investment funds" into paid-in capital. The court held that the special audit report submitted by the shareholder was issued by a professional audit institution and therefore recognized that the shareholder had completed the paid-in contribution obligation.

However, Civil Judgment No.(2020) Zhe 03 Min Zhong 2688,[15] also a dispute over liability for harm to company creditors' interests, reflected a different standard. In that case, although the shareholder claimed to have fully performed its capital contribution obligations and submitted accounting vouchers showing that the funds were respectively recorded as "investment funds" and "income," with the accounting item recorded as "paid-in capital," the court held that registered capital should be stipulated in the company's articles of association and registered with the market regulatory authority. Investment funds obtained in the course of company operations could not be equated with registered capital, and paid-in capital could not be automatically identified as equity investment by the shareholder. The company had not registered any change in paid-in contribution or contribution time. Therefore, the evidence was insufficient to prove that the shareholder had truly contributed capital, and the court ultimately held that the shareholder had not fulfilled the contribution obligation.

In the author's view, the court in that case imposed an excessively strict burden of proof on the shareholder. Although Article 24 of the Regulation on the Administration of Market Entity Registration sets time requirements for changes in registration matters,[16] that provision only concerns administrative registration requirements. Failure to register, or failure to register in a timely manner, does not change the intrinsic nature of a company resolution or the original nature of the funds. Therefore, after a shareholder has contributed capital, the company's failure to update registration information in a timely manner should not be treated as adverse evidence proving that the shareholder failed to perform the paid-in contribution obligation.

From the above cases, it can be seen that, under ordinary circumstances, funds injected by shareholders into a company under the name of "investment funds" may be recognized as paid-in capital where creditors raise objections but fail to provide contrary evidence.

2.2 Recognition of "current accounts" as paid-in capital

The results in cases where shareholders transfer funds to the company and mark them as "current-account funds" differ greatly from cases involving "investment funds." In Civil Judgment No.(2020) Zhe 02 Min Zhong 4172, a recovery of unpaid capital contributions case,[17] multiple bank receipts submitted by the shareholder stated that the nature of the funds was "current-account funds." The amount far exceeded the shareholder's required investment amount, and the receipts themselves did not state that the funds were investment funds. Therefore, the court did not accept the

[14] Shanghai Songjiang District People's Court, Civil Judgment No.(2021) Hu 0117 Min Chu 4908, dispute over liability for harm to company creditors' interests.
[15] Wenzhou Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 03 Min Zhong 2688, dispute over liability for harm to company creditors' interests.
[16] Regulation on the Administration of Market Entity Registration, art. 24.
[17] Ningbo Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 02 Min Zhong 4172, dispute over recovery of unpaid capital contributions.

shareholder's claim that the funds were investment contributions. Similarly, in Civil Judgment No.(2020) Gui 0108 Min Chu 5110,[18] the court held that where a shareholder makes a cash contribution, the funds should generally be marked as contribution funds and deposited into the company account, and the company should conduct capital verification and issue a capital contribution certificate. Where the shareholder had declared the current-account funds as a claim in the bankruptcy proceedings, and the company had reviewed and confirmed that claim, the shareholder's simultaneous assertion that the funds were both a claim and capital contribution was internally inconsistent. The court therefore rejected the shareholder's claim.

Post-new-Company-Law cases continue this review approach. In Civil Judgment No.(2025) Zhe 01 Min Zhong 6616, a shareholder contribution dispute,[19] the shareholders argued that funds had been remitted to the target company through affiliated companies, had remained unrecovered for a long period, and had been used in the company's business operations, and therefore should be treated as paid-in capital. They also relied on Article 48 of the new Company Law, contending that shareholders may contribute by claims and may convert loans or current-account items under "other payables" into "paid-in capital." The court did not accept this defense. It found that the industrial and commercial registration, the articles of association, and the audit report all showed that the relevant shareholders had not completed their paid-in contributions. The funds were not marked as "contribution funds" or "investment funds," nor were they recorded in the financial books as contribution funds or investment funds. Accordingly, the mere fact that funds entered the company and were used for operations was insufficient to establish that the shareholders had fulfilled their capital contribution obligations.

These cases indicate that courts are more inclined to recognize funds directly paid by shareholders under the names of "investment funds" or "contribution funds" as paid-in capital, while funds paid under the name of "current-account funds" are generally treated as other claims or debts between the shareholder and the company.

In the author's view, if, before creditors assert claims against the shareholder, the shareholder and the company have reached an agreement to convert previously paid current-account funds into capital contributions, and there is no contrary evidence showing that the funds are of another nature, such funds may be recognized as capital contributions. Current-account funds that have not been converted by agreement before creditors assert claims should generally be treated as other claims and debts between the shareholder and the company.

2.3 Recognition of "loans" as paid-in capital

Courts have differed considerably in characterizing funds transferred by shareholders to the company and marked as "loans." In Civil Judgment No.(2019) Zhe 0182 Min Chu 2059, a recovery of unpaid capital contributions case,[20] the shareholder argued that because the shareholder had previously lent money to the company, the shareholder had the right to convert that claim against the company into subscribed

[18] Nanning Liangqing District People's Court of Guangxi Zhuang Autonomous Region, Civil Judgment No.(2020) Gui 0108 Min Chu 5110, dispute over recovery of unpaid capital contributions.

[19] Hangzhou Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2025) Zhe 01 Min Zhong 6616, shareholder contribution dispute.

[20] Jiande People's Court of Zhejiang Province, Civil Judgment No.(2019) Zhe 0182 Min Chu 2059, dispute over recovery of unpaid capital contributions.

newly increased capital. The court held, however, that this was inconsistent with the method and amount of contribution stipulated in the shareholders' resolution and the company's articles of association, and the shareholder did not provide contrary evidence proving debt-for-equity conversion. The court therefore did not recognize the loan as paid-in capital. Similarly, in Civil Judgment No.(2021) Su 02 Min Zhong 16, a dispute over liability for harm to company creditors' interests,[21] the shareholder did not indicate that the funds remitted to the company were contribution funds, and the company recorded the funds under other receivables and marked them as loans. This matched another shareholder's statement that the four shareholders had unanimously agreed to lend funds to the company, and it was also consistent with the public disclosure report. Therefore, the court held that the evidence was insufficient to prove that the funds were contribution funds.

By contrast, Civil Judgment No.(2021) Yue 01 Min Zhong 6540, a recovery of unpaid capital contributions case,[22] reached the opposite conclusion. Before the court accepted the company's bankruptcy liquidation, the shareholders convened a shareholders' meeting, amended the articles of association, and filed the amendments with the administration for industry and commerce, converting shareholder-held claims against the company into paid-in capital. The court held that the shareholder's obligation to make up unpaid capital was a monetary debt, and the shareholder's loan claim against the company was also a monetary debt. The two were both money-payment claims and debts, were of the same quality, and did not fall within any statutory or contractual category that could not be set off. Therefore, setoff was permissible, and the court ultimately recognized the loan as paid-in capital.

In addition, in Civil Judgment No.(2025) Yu 02 Min Zhong 3090,[23] a dispute over liability for harm to company creditors' interests, shareholder Kaifeng Construction Company argued that it held a construction project payment claim against the target company and had converted a RMB 18.31 million construction project claim into equity contribution funds of the target company through a shareholders' resolution dated February 25, 2022. The court held that the Commodity Concrete Station Project Cooperation Agreement, the Project Settlement Review Report, shareholders' meeting resolution, audit report, and National Enterprise Credit Information Publicity System report submitted by Kaifeng Construction Company corroborated one another and were sufficient to prove actual contribution. Although the industrial and commercial change registration had not been completed in time, the shareholder had provided a reasonable explanation. Accordingly, the court did not support the creditor's request that the shareholder bear supplementary liability within the scope of RMB 15.30 million in alleged unpaid capital.

These cases show that, for funds paid by shareholders to the company under the name of "loans," or funds agreed by the shareholder and the company to be loans, some courts refuse to recognize them as capital contributions because they conflict with the contribution method stipulated in the shareholders' resolution and the articles of association and are not contribution funds in nature. Other courts hold that the

[21] Wuxi Intermediate People's Court of Jiangsu Province, Civil Judgment No.(2021) Su 02 Min Zhong 16, dispute over liability for harm to company creditors' interests.
[22] Guangzhou Intermediate People's Court of Guangdong Province, Civil Judgment No.(2021) Yue 01 Min Zhong 6540, dispute over recovery of unpaid capital contributions.
[23] Kaifeng Intermediate People's Court of Henan Province, Civil Judgment No.(2025) Yu 02 Min Zhong 3090, dispute over liability for harm to company creditors' interests.

shareholder's debt to make up capital and the shareholder's loan claim against the company are both monetary payment obligations, and where the claim has been converted into paid-in capital before bankruptcy through shareholders' meeting resolutions and amendments to the articles of association, and where the setoff is not prohibited by law or contract, the shareholder may use the claim against the company to offset the contribution obligation.

2.4 Recognition of transfers with no remarks as paid-in capital

It is very common in practice for shareholders to transfer funds to the company's account without adding any payment notes. This ambiguity regarding the nature of the funds has led to divergent judgments. In Civil Judgment No.(2018) Su 11 Min Zhong 2220, a recovery of unpaid capital contributions case,[24] the court held that whether a shareholder had fully performed the contribution obligation should not depend on whether contribution formalities were complete. The shareholder had remitted funds to the company before the second contribution deadline expired. Although the company issued a receipt stating that the funds were used for daily operating expenses, it still should have provided proof that the funds were not contribution funds. Because the company failed to do so, the court treated the shareholder's unmarked remittance as paid-in capital.

However, in Civil Judgment No.(2020) Zhe 02 Min Zhong 2828, another recovery of unpaid capital contributions case,[25] the court refused to recognize the transfer as paid-in capital because the shareholder had not clarified the nature of the funds at the time of transfer, and the company's account books did not reflect the funds as contribution. The court therefore found that the shareholder had not expressed an intent to contribute capital when making the payment.

These cases show that where shareholders make unmarked payments to the company and the company does not clearly indicate the nature of the funds, courts may either recognize or refuse to recognize the payments as capital contributions. Civil Judgment No.(2018) Su 11 Min Zhong 2220 even shifted the burden to the company to prove that the shareholder's payments were not contribution funds. Although the former Article 28 of the Company Law required only that shareholders making monetary contributions deposit the funds in full into the company's account, shareholders' performance of contribution obligations should still involve an intent to make capital contributions. In the operation and management of limited liability companies, financial dealings between shareholders and companies are generally frequent.[26] Regardless of whether the company later uses the funds for production and operation, if there is no expression by the company accepting the funds as capital contribution and no proof that the funds were contribution funds, such remittances should not be recognized as capital contributions.

2.5 Recognition of payments made on behalf of the company or discharge of company debts as paid-in capital

Due to actual operating needs, shareholders often pay expenses to third parties or discharge debts on the company's behalf.[27] In Civil Judgment No.(2020) Su 05 Min

[24] Zhenjiang Intermediate People's Court of Jiangsu Province, Civil Judgment No.(2018) Su 11 Min Zhong 2220, dispute over recovery of unpaid capital contributions.
[25] Ningbo Intermediate People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 02 Min Zhong 2828, dispute over recovery of unpaid capital contributions.
[26] Zeng Si, "Economic Functions and Legal Limitations of Enterprise Property Independence Under the Theory of Asset Partitioning," Peking University Law Journal, 2019, p. 1357.
[27] Zheng Shuguang, "A Study on the Illegal Forms and Civil Liability of Shareholders' Violations of Contribution

Zhong 10797, a recovery of unpaid capital contributions case,[28] the court held that because the company had no complete accounting books and the shareholder had no other evidence proving that rents, wages, and equipment payments paid on behalf of the company had been recorded in the company's accounts as monetary contributions or non-monetary property contributions, they could not be recognized as contributions. Similarly, in Civil Judgment No.(2020) Yue 19 Min Zhong 10401,[29] the court held that the shareholder's alleged payment of relevant expenses on the company's behalf did not conform to the Company Law and the articles of association regarding monetary capital contributions, and the company had not recognized such payments as contributions. The transfer vouchers for payments made through the shareholder's personal account or another person's account also did not state that the funds were capital contributions. Therefore, the court did not recognize that the shareholder had completed the contribution obligation. Civil Judgment No.(2019) Hu 03 Min Zhong 180[30] adopted the same view.

However, in Civil Judgment No.(2016) Yue 03 Min Zhong 21326,[31] a dispute over liability for harm to company creditors' interests, the court held that although the funds paid by shareholders A and B on behalf of the company had not been subject to capital verification and had not been used to pay registered capital, the two shareholders had in fact invested in the company, and the investment funds could be used to offset their subscribed second-stage contributions to the company. In addition, shareholder C had made payments on behalf of the company in addition to the first-stage paid-in contribution, and those payments could be recognized as supplementary contributions by shareholder C. The appellate court affirmed the original judgment and recognized that the shareholders had fully performed their contribution obligations.

These cases indicate that funds paid by shareholders on behalf of the company or used to discharge the company's debts generally involve third-party creditor-debtor relationships and usually do not conform to the Company Law and the articles of association concerning monetary contributions. They are therefore generally not recognized as contribution funds. In such circumstances, the shareholder's reimbursement claim against the company may be asserted separately. Whether that claim may offset the shareholder's contribution obligation depends on the specific circumstances. Accordingly, under ordinary circumstances, payments made by shareholders on behalf of the company or debts discharged by shareholders are not recognized as performance of contribution obligations if there is no accounting entry, no expression by the company recording them as contribution funds, or if they are inconsistent with the Company Law and the articles of association regarding monetary contributions.

It should be noted that after shareholders pay expenses or discharge debts on behalf of the company, they acquire reimbursement claims against the company. Such claims

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Obligations," Law Science, no. 6, 2003, p. 62.

[28] Suzhou Intermediate People's Court of Jiangsu Province, Civil Judgment No.(2020) Su 05 Min Zhong 10797, dispute over recovery of unpaid capital contributions.

[29] Dongguan Intermediate People's Court of Guangdong Province, Civil Judgment No.(2020) Yue 19 Min Zhong 10401, dispute over recovery of unpaid capital contributions.

[30] Shanghai No. 3 Intermediate People's Court, Civil Judgment No.(2019) Hu 03 Min Zhong 180, dispute over recovery of unpaid capital contributions.

[31] Shenzhen Intermediate People's Court of Guangdong Province, Civil Judgment No.(2016) Yue 03 Min Zhong 21326, dispute over liability for harm to company creditors' interests.

differ from claims formed when shareholders lend funds directly to the company. In the two situations, the company's control and management of funds are materially different.[32] In addition, payments made on the company's behalf or debts discharged for the company also involve issues such as whether the company authorized the payment and whether the debt has been confirmed through legal procedures. Therefore, the risk is very high when shareholders attempt to perform contribution obligations by paying expenses or debts on the company's behalf.

2.6 Other circumstances

2.6.1 Third-party payment on behalf of a shareholder

In Civil Judgment No.(2019) Wan 10 Min Zhong 566, a recovery of unpaid capital contributions case, the shareholder argued that the contribution funds included funds remitted to the company through a third party's personal account as well as certain equipment. Because the shareholder's assertion did not conform to the capital contribution rules under the former Article 28 of the Company Law, the company did not recognize the payments as contributions, and the shareholder did not provide a company-issued capital contribution certificate. The court therefore rejected the claim.

2.6.2 Setoff of contribution obligations against company compensation liability or other claims against the company

In Civil Judgment No.(2019) Yu 05 Min Zhong 3178, a recovery of unpaid capital contributions case,[33] the shareholder sought to offset the shareholder's unpaid contribution debt against a debt allegedly owed by the company as compensation for its fault. The bankruptcy administrator did not recognize this. Under Article 46 of Judicial Interpretation (II) of the Enterprise Bankruptcy Law, regardless of whether the company owes a debt to the shareholder, the shareholder may not set off its contribution obligation against the company's debt to it. In addition, the compensation liability asserted by the shareholder had not been confirmed through legal procedures. The court therefore did not recognize the shareholder's setoff defense. In Civil Judgment No.(2020) Gui 0108 Min Chu 5110,[34] the court similarly held that a shareholder, as a creditor of the company, enjoys equal rights with other creditors, and that the shareholder's bankruptcy claim against the company cannot be set off against the shareholder's unpaid registered capital.

2.6.3 Conversion of claims, capital reserve, or equity transfer into paid-in capital

In Civil Judgment No.(2020) Zhe 0106 Min Chu 7632,[35] a dispute over liability for harm to company creditors' interests, the court held that the adjustment of payables and capital reserve into share capital was essentially an internal conversion of company funds, and that adjustment of paid-in capital did not require a shareholders' meeting resolution. Although the audit report was formed after the litigation arose, the corresponding accounting vouchers had been formed over the years. Where the creditor did not submit evidence proving that the accounting vouchers were forged, the court could not determine that the shareholder maliciously evaded debt merely because the audit report was issued after the case was filed. Although the company's debt to shareholders cannot take priority over external debts, the debt assignment

[32] Zhu Ciyun, "Reflections on the Systematic Reconstruction of China's Company Capital System," Science of Law, no. 3, 2021, p. 48.

[33] Chongqing No. 5 Intermediate People's Court, Civil Judgment No.(2019) Yu 05 Min Zhong 3178, dispute over recovery of unpaid capital contributions.

[34] Nanning Liangqing District People's Court of Guangxi Zhuang Autonomous Region, Civil Judgment No.(2020) Gui 0108 Min Chu 5110, dispute over recovery of unpaid capital contributions.

[35] Hangzhou Xihu District People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 0106 Min Chu 7632, dispute over liability for harm to company creditors' interests.

agreement and contribution notice were formed before the case was filed, and therefore the payment merely followed chronological order rather than giving shareholder debts priority over external debts. The shareholder completed the unpaid portion of subscribed capital through claim assignment, transfer from capital reserve, and equity transfer. Because this method of contribution did not violate mandatory provisions of law or administrative regulations,[36] the court held it valid and recognized that the shareholder had completed the contribution obligation by adjusting other payables into paid-in capital through audit during the litigation.

These cases show that where a third party pays money to the company on behalf of a shareholder without clearly identifying the nature of the payment, it should generally not be recognized as a contribution. After a company enters bankruptcy proceedings, courts also do not support shareholders' attempts to offset contribution obligations with current-account funds or other claims against the company. However, in disputes over liability for harm to company creditors' interests where the company has not entered bankruptcy proceedings, if a shareholder adjusts, through an audit report, amounts corresponding to pre-litigation legal acts into paid-in capital during the litigation, courts may recognize that the shareholder has completed the contribution.

Synthesizing the foregoing cases, the ordinary judicial treatment of different categories of shareholder-held claims against the company when used as a defense against recovery claims may be summarized as follows:

Category of "claim"	**Ordinarily recognized as paid-in capital?**	**Exceptional factors**
Investment funds	Yes	Failure to complete registration changes in time may increase the evidentiary burden
Current accounts	No	/
Loans	No	Loan claims may offset contribution obligations in specific circumstances
Unmarked payments	No	Possible burden shift requiring the company to prove the payment was not a contribution
Payments or debts paid on behalf of the company	No	Occasionally allowed to offset contribution obligations
Third-party payment to the company	No	/

[36] Fan Rongxi and Cao Yan, "Distinction and Determination Between Corporate Division and Outward Investment," People's Judicature (Cases), no. 6, 2008, p. 89.

3. Practical Suggestions

Based on the foregoing case analysis, shareholders must consider how to perform contribution obligations in a standardized manner, how to convert claims against the company into capital contributions, and how, in litigation, to persuade courts to recognize shareholder-held claims against the company as paid-in capital so as to avoid duplicate liability. This part offers practical suggestions from these three perspectives.

3.1 Perform contribution obligations in a standardized manner

3.1.1 Clarify the nature of payments and require the company to issue contribution certificates and complete registration or disclosure

Where a shareholder makes a monetary contribution, the shareholder should first transfer the funds into the company's account and avoid payment through third parties or transfer into accounts other than the company's account. Second, the nature of the funds should be clear. As the court held in Civil Judgment No.(2020) Gui 0108 Min Chu 5110,[37] where a shareholder makes a monetary contribution, the funds should generally be marked as contribution funds and deposited into the company account, and the company should conduct capital verification and issue contribution certificates. Shareholders may actively mark transfers as "contribution funds" or "investment funds," and require the company to record the amount as paid-in capital and issue capital contribution certificates under Articles 55 and 56 of the Company Law.[38] Third, shareholders should timely convene a shareholders' meeting to amend the articles of association and complete registration or disclosure in accordance with Article 24 of the Regulation on the Administration of Market Entity Registration.

3.1.2 For non-monetary contributions, timely complete appraisal and transfer of property rights

Articles 48 and 49 of the Company Law[39] expressly regulate the forms of shareholder contribution. Where shareholders contribute immovable property, machines, equipment, raw materials, or other movable property, the contribution may be deemed completed after appraisal and transfer of property rights. Immovable property requires registration of transfer, while movable property requires delivery. It should be noted, however, that if movable property is delivered to the company without appraisal, even if the company has actually possessed and used the property and regardless of whether the company recognizes the act as a contribution, current practice does not generally treat the shareholder as having completed the corresponding contribution because the market value of the property has not been determined through appraisal and the contribution form does not comply with legal requirements.

3.2 Convert shareholders' claims against the company into capital contributions

Funds already paid may be converted into capital contributions through a subsequent agreement. For funds actually paid by shareholders into the company account as "loans," "current-account funds," or without payment notes, the funds have in fact entered the company account. The shareholder and company may subsequently agree to convert their nature. Specifically, the company may record the amounts as paid-in capital, issue contribution certificates to the shareholder, convene a shareholders'

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[37] Nanning Liangqing District People's Court of Guangxi Zhuang Autonomous Region, Civil Judgment No.(2020) Gui 0108 Min Chu 5110, dispute over recovery of unpaid capital contributions.
[38] Company Law of the People's Republic of China (2023), arts. 55 and 56.
[39] Company Law of the People's Republic of China (2023), arts. 48 and 49.

meeting to amend the articles of association, and submit change procedures to the market regulatory authority to complete public disclosure. If such acts occur before a dispute over liability for harm to company creditors' interests is filed and before the court accepts a bankruptcy application against the company, they generally do not constitute preferential repayment of shareholder debts over company creditors' claims, nor do they fall within the non-setoff circumstances under Articles 44 and 46 of Judicial Interpretation (II) of the Enterprise Bankruptcy Law. Such acts should be legally valid and may be regarded as performance of contribution obligations. It is also advisable for shareholders to arrange an audit in the name of the company, using an audit report to confirm adjusted paid-in capital, thereby further supporting the recognition of the funds as contribution funds in response to later creditor recovery claims.

3.3 Seek recognition of shareholders' claims as paid-in capital in litigation

3.3.1 In specific circumstances, an audit may still be conducted after responding to litigation to adjust paid-in capital

In disputes over liability for harm to company creditors' interests, when defending on the ground that contribution obligations have been performed, shareholders may arrange an audit in the company's name and adjust shareholder-held claims against the company, such as "loans," "current-account funds," or unmarked payments, into paid-in capital. As the court stated in Civil Judgment No.(2020) Zhe 0106 Min Chu 7632:[40] according to the audit report, the unpaid portion of subscribed capital was completed through claim assignment, transfer from capital reserve, equity transfer, and other methods, and this method of capital payment did not violate mandatory laws or administrative regulations and was therefore valid. Although an audit report formed during litigation is later in time, if the underlying payment facts and documents or agreements on which the audit is based were formed before the case was filed, it does not constitute preferential repayment of shareholder debts over company creditors' claims. In substance, it is an internal conversion of company funds and does not impair company creditors' interests. As for claims arising from shareholders' payments on behalf of the company or debts discharged for the company, the same model may be used by analogy. However, because such funds did not enter the company account in substance, and although they were used for the company's benefit, there is a difference in the company's control and free disposition of the funds. They also may not conform to the former Article 28 of the Company Law. Courts may therefore differ in their final determinations. Nevertheless, formation of a contribution agreement between shareholder and company and adjustment of paid-in capital through audit may increase the likelihood that the court will recognize the shareholder's contribution.

3.3.2 Under appropriate time requirements, claims against the company may offset contribution obligations

A shareholder's contribution obligation is, in essence, a debt owed by the shareholder to the company. This debt may be performed by monetary payment or by other non-monetary means. Articles 568 and 569 of the Civil Code[41] on setoff provide a legal basis for such performance. Where the company owes the shareholder obligations to repay "loans," "current-account funds," or other amounts, the shareholder and the company owe reciprocal monetary obligations. In recovery of unpaid capital

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[40] Hangzhou Xihu District People's Court of Zhejiang Province, Civil Judgment No.(2020) Zhe 0106 Min Chu 7632, dispute over liability for harm to company creditors' interests.
[41] Civil Code of the People's Republic of China, arts. 568 and 569.

contribution disputes, if the shareholder and the company have reached an agreement to convert claims into paid-in capital before the court accepts the company's bankruptcy case, the substance of the arrangement is setoff and does not violate mandatory laws or regulations.[42]

In addition, the proviso in Article 40(3) of the Enterprise Bankruptcy Law[43] provides guidance on the timing of setoff. Under this provision, even where a shareholder has not fully paid in capital when the bankruptcy case is accepted and simultaneously holds a claim against the company, if the shareholder obtained the claim more than one year before the bankruptcy application--that is, if the shareholder-held claim against the company arose more than one year before the bankruptcy application--the shareholder may exercise a right of setoff and offset the contribution obligation. To avoid revocation of individual repayment, shareholders should pay attention to the time limit in Article 32 of the Enterprise Bankruptcy Law and timely confirm and offset claims. Therefore, in recovery of unpaid capital contributions disputes, where the shareholder-held claim against the company arose more than one year before the bankruptcy application and the offset between the claim and the contribution obligation occurred more than six months before the court accepted the bankruptcy application, the shareholder-held claim against the company may be recognized as a corresponding contribution. It should also be noted that if the shareholder has already declared the claim against the company to the administrator and sought participation in distribution, this will have a significantly adverse impact on the shareholder's attempt to offset the claim against unpaid capital contribution obligations.

4. Conclusion

Since the promulgation of the Ninth Civil and Commercial Trial Work Conference Minutes, the number of disputes over liability for harm to company creditors' interests and recovery of unpaid capital contributions has increased significantly. The legal application and judicial standards for determining whether capital contributions have been paid in have also become issues of growing concern to company shareholders. This article, from the perspectives of standardizing performance of contribution obligations, converting shareholder-held claims against the company into capital contributions, and seeking judicial recognition of such claims as paid-in capital during litigation, provides practical reference suggestions for shareholders. The goal is to avoid duplicate liability where shareholders have actually paid funds and to protect their legitimate rights and interests to the greatest extent. With the continued development of judicial practice, the standards applied by courts at all levels to shareholder-held claims against the company are expected to become more unified, thereby providing a sound legal and institutional foundation for the further development of a socialist market economy with Chinese characteristics.

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[42] Guo Fuqing, "Paths for Company Creditors to Claim Against Shareholders Violating Contribution Obligations," Finance and Law, no. 3, 2016, p. 46.
[43] Enterprise Bankruptcy Law of the People's Republic of China, art. 40.