

Responsibility of Supplementary Liquidation Responsibility after the Transfer of Defective Capital Equity

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Abstract: In the capital subscription system, a large number of defective capital contributions have begun to appear. This paper will discuss the defective capital contributions after the transfer. Therefore, the issue of the liability for supplementary liquidation responsibility is formed. The problem of the liability for supplementary liquidation responsibility after the transfer of defective equity is mainly concentrated on the determination of the scope of the liability for liquidation responsibility and the corresponding responsibility allocation method. Personality denial theory, third-party debt infringement theory, subrogation right theory; in terms of responsibility distribution, the mainstream view of academia should be to judge the distribution of responsibility according to the consideration of the equity transfer contract. The innovation of this article is based on the mainstream view of the academic community. Procedures for realization of liquidation liability after defective share transfer.

1. Introduction

The amendment of the 2013 Company Law is a huge improvement of China's capital system, which has made the reform of the company's registered capital system a subscription system, which facilitates the establishment and early operation of the company. Such changes are improving investment efficiency and improving At the same time as the market economy is dynamic, many problems have also arisen in the actual operation of the company, and the defective funding of shareholders is one of the major problems.

2. Overview of Defective Investment and Supplementary Liquidation Liabilities

2.1 Identification of Defective Capital Contribution

Defective funding is not a new concept in China's legal practice or even in legal theory. Scholars in the theoretical field have long studied this. However, in the views of many scholars, the concept not the same or similar. Some scholars believe that laws, capital investment agreements and the company's articles of association will necessarily have corresponding regulations or agreements on the amount and duration of capital contributions by shareholders, and defective capital contributions are just violations of such regulations or agreements.^[1]Some scholars also explained the flawed capital contribution from the opposite side, arguing that the equity of the flawless capital contribution indicates that the investor has appropriately and timely performed the agreed capital contribution obligations or passed by the shareholders' meeting in accordance with the provisions of the current Company Law of our country and relevant agreements. The shareholders' rights obtained through the capital increase obligation and the necessary registration have been obtained. On the contrary, a defective capitalization is a shareholder's right acquired or enjoyed without meeting the conditions for a flawless capital contribution.^[2]Some scholars have pointed out

that defective capital contribution refers to a capital contribution that violates the provisions of the Company Law and the Articles of Association and deviates from the basic principles and requirements of legality, authenticity, and timeliness of the company's capital contribution.^[3]

2.2 The Manifestation of Defective Funding

According to different classification criteria and basis, we can make different classifications for the manifestations of shareholders' defective capital contributions. According to the amount of capital contributions, defective capital contributions can be classified as unfulfilled capital contributions and uncompleted capital contributions. Performing capital contribution and evading capital contribution; divided according to the illegal consequences of defective capital contribution, which can be divided into low-level defective capital contribution and high-level defective capital contribution; divided according to the investment time, it can be divided into defective capital contribution during the establishment process and defective capital contribution during the capital increase process.

2.3 Supplementary Liquidation Responsibilities

Supplementary liability belongs to the civil liability method of multiple responsible parties, and most of the responsible persons are the commonality of this type of liability. The premise of supplementary liquidation liability is that the previous civil act is flawed, and it is due to other subsequent civil acts. The allocation of responsibility with the followers.

The obligation to contribute capital is first and foremost an agreed obligation, and its violation harms the interests of the company and shareholders; it is also a statutory obligation, because the violation of the obligation to contribute capital also causes great damage to the interests of the company's creditors. In this sense, the regulation of shareholders' non-compliance of capital contributions in accordance with regulations or conventions, that is, the regulation of defective performance of capital contributions, is an important part of China's corporate capital system.

3. Subject of Liquidation Liability after Defective Share Transfer

Regarding the liability of the equity transferor in the liability for liquidation after the defective equity transfer, the mainstream views in the academic world include the theory of denial of legal personality, the theory of infringement of third party creditors' rights, and the theory of subrogation.

3.1 The Theory of Denial of Corporate Personality

The theory of denial of legal personality refers to the purpose of protecting the rights and interests of creditors, and to prevent company shareholders from abusing the independent status of the company's legal person. In specific legal relationships, it denies the independent personality of the legal person, does not recognize the limited liability of the company shareholder, and makes the company's relevant responsible persons A legal system that is directly responsible for corporate debt and the public interest.^[4]This theory is a legal supplement to the company system and can promote the development of the company and the overall economic benefits of society.

3.2 Theory of Third Party Creditor Infringement

The theory of infringement of the third party's creditor's rights is based on the theory of tort, and scholars holding this view believe that the defective capital contribution causes the company's assets to be unprofitable, which will harm the interests of its counterparties. Therefore, based on the relevant provisions of the tort law, the defective capital contribution The shareholders need to bear the corresponding tort liability for the victims because they have violated the interests of the company and its creditors.^[5] However, some scholars have pointed out that this theory violates the spirit of civil law and does not have a legal basis. Therefore, the theory of third-party debt infringement has not been recognized by our legislation, and this theory cannot be used to explain domestic civil behavior.^[6] The author also quite agrees with this view.

3.3 Subrogation Theory

Scholars with a subrogation theory point out that “the theory of subrogation based on the General Principles of Civil Law and the Contract Law can effectively explain the theoretical basis for shareholders to make up their responsibilities.”³ The liability for liquidation can be regarded as a shareholder Debt, that is, a company's own claim, if the company is not exercising, the company's creditors can directly request. Although the theory of subrogation has been sought after by many scholars, some scholars have pointed out that there is a logical flaw in the scope of application of the theory of subrogation.

4. Procedures for Realizing Liquidation Responsibility after the Defective Equity Transfer

The theoretical analysis of the liability to pay off the defective investment equity has been made in the foregoing, and the issue of responsibility distribution is relatively clear. Just as how much salary each employee of the company should allocate, the next question is what should be In accordance with what accounting procedures are paid to employees, by the same token, we have discussed this step, and the next question is to determine the procedures for the realization of the liquidation responsibility after the defective equity transfer. Regarding this issue, the author believes that the following procedures can be used to The liquidation liability is finally realized after the defective equity transfer.

First, before judging the liability for supplementary liquidation of defective capital, we need to clarify the effectiveness of the defective capital contribution equity contract. If the equity transfer contract itself is invalid, there is no need to discuss the issue of liability distribution. In addition, we should distinguish between the validity of the contract and the actual changes. Meaning, if the equity change is not realized in actual operation due to some other reasons, the equity transfer contract is still valid, and at this time we still need to explore the allocation of the defective capital contribution supplementary liquidation responsibility.

Secondly, we need to make clear that although the defective shareholders have violated their capital contribution obligations, their defective investments will not affect the effectiveness of the investment agreement. Therefore, the defective shareholders still have shareholder qualifications. At this time, the problem of the entity's eligibility is also resolved. From another perspective, the equity that violates the capital contribution obligation itself is not a prohibition or restriction of the tradables, so its transfer is legal, that is, the defective capital does not affect the effectiveness of the equity transfer.

Third, if the assignee knows or should know that the original shareholder did not make a capital contribution or did not fully make a capital contribution when accepting the defective equity, it shall be deemed to have voluntarily assumed the corresponding supplementary liquidation liability.

Fourth, the transferee of the defective equity does not know when it accepts the defective equity and it is impossible to know the existence of the defect of the equity according to objective circumstances. At this time, the assignee itself is the victim of the transfer and enjoys the cancellation of the equity transfer contract. Rights, but because other stakeholders may be involved, these stakeholders may be informed or unaware of the defective equity, so the above right of revocation cannot be generalized, if it involves external third party interests, Even a well-intentioned assignee should bear joint and several liability with the defective equity transferor for the purpose of maintaining an unsuspecting third party.

Fifth, in the absence of consideration, the assignee is naturally held jointly and severally liable, based on the assumption of a rational agent, as a person with flawed knowledge. Since it is determined to be malicious, the right to recover will naturally disappear.

5. Conclusion

The issue of supplementing the liability for liquidation after the defective equity transfer is mainly concentrated on the determination of the scope of the liability of the liability for liquidation

and the corresponding method of allocating responsibility. On the issue of responsibility distribution, the mainstream view of the academic community believes that it should be based on the equity transfer contract. The consideration is to judge the distribution of responsibility. The author believes that no matter whether the assignee of the equity is in good faith when accepting the defective equity, the external relationship should bear the supplementary responsibility with the assignor, and the internal relationship needs to be treated differently. In good faith, you can exercise the right of recovery from the assignor in internal relations; if it is malicious, you do not have the right to recover from the assignor in internal relations. In the specific practice of identifying “good faith”, we can mainly rely on equity Judgment is made on the consideration of the transfer contract, whether it meets the legal procedures, etc., and the system of inversion of burden of proof is implemented in terms of proof, that is, the transferor of the defective equity bears the responsibility of proving that the transferee of the equity is malicious. The interests of the company, the company, and the company's creditors can be better balanced, which is conducive to the use of the company Institutional role in developing production and promoting national economic development.

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