Law and Humanities
ISSN Print: 3079-5117
ISSN Online: 3079-5125
https://doi.org/10.63313/LH.9035

Interpretation of the System of Acceleration of Shareholders' Capital Contribution

Yuting Chen
Anhui University of Finance and Economics, Bengbu 233030, China
Email: 2274719256@qq.com

How to cite this paper: Chen, Y. T. (2025). Interpretation of the System of Acceleration of Shareholders' Capital Contribution. Law and Humanities, 1(3), 140-150. ISSN Print: 3079-5117; ISSN Online: 3079-5125.
https://doi.org/10.63313/LH.9035
Published: 2025-07-18

Abstract

Article 54 of the 2023 Company Law adds the acceleration of shareholders' capital contribution in non-bankruptcy and non-dissolution situations, which changes the scope of application and legal effects of the acceleration of shareholders' capital contribution to solve the problems caused by the comprehensive subscription system. However, the provisions of Article 54 are highly concise and generalized, and their meanings need to be further interpreted and clarified. Under the current system of limited liability company registered capital with a time limit for subscription, shareholders enjoy term interests, but their term interests have certain boundaries, that is, the company can pay off due debts; otherwise, the company or the creditor with due claims has the right to request the acceleration of shareholders' capital contribution. The applicable condition for the acceleration of shareholders' capital contribution, "unable to pay due debts", should adopt the non-payment theory, i.e., the standard of cessation of payment. The legal consequence of the acceleration of shareholders' capital contribution shall be that the shareholder directly repays the creditor within the scope of his unpaid capital contribution.

Keywords

Acceleration of capital contribution; term interest; inability to pay; warehousing rule; direct compensation rule

1. Introduction

The acceleration of shareholders' capital contribution can be traced back to Article 35 of the Enterprise Bankruptcy Law of the People's Republic of China (hereinafter referred to as the Enterprise Bankruptcy Law) implemented in 2007, which stipulates the situation of acceleration of capital contribution after the court accepts the bankruptcy application; Article 22, Paragraph 1 of the Supreme People's Court's Provisions on Several Issues Concerning the Application of the Company Law of the People's Republic of China (II) adopted and implemented in 2008 stipulates the situation of acceleration of shareholders' capital contribution when the company is dissolved. These two situations can be accelerated because when the company is bankrupt or dissolved, it needs to settle its claims and debts, and the company may even cease to exist, so the original capital contribution period is no longer meaningful.[1] The 2013 Company Law of the People's Republic of China (hereinafter referred to as the Company Law) revised the registered capital to a comprehensive subscription system, with no restrictions on the payment period. The comprehensive subscription system has achieved remarkable results in encouraging investment and employment, but it cannot be ignored that there are certain practical difficulties and institutional drawbacks. The comprehensive subscription system focuses more on the freedom of shareholders' investment and hopes to reduce the company's capital occupation, but it does not set up a bottom-line rule to protect the company's operating capital adequacy or solvency.[2] Many companies only subscribe but do not pay, which has caused many disputes in practice.

Article 6 of the Minutes of the Ninth National Court Civil and Commercial Trial Work Conference (hereinafter referred to as the Ninth Civil and Commercial Minutes) in 2019 made a provision that in principle denies the acceleration of shareholders' capital contribution, but allows exceptions, and also stipulated two exceptional situations: (1) in cases where the company is the person subject to execution, the people's court has exhausted enforcement measures and there is no property available for execution, and the company has the cause of bankruptcy but does not apply for bankruptcy; (2) after the company's debt arises, the shareholders' (general) meeting of the company resolves or by other means extends the shareholders' capital contribution period. In the first case, the company has the cause of bankruptcy, and the company's assets are insufficient to pay off all debts or it obviously lacks solvency, so it can refer to the provisions of Article 35 of the Enterprise Bankruptcy Law; the second case is based on the theory of the creditor's right of revocation. The act of the company's shareholders' meeting to extend the shareholders' capital contribution period endangers the creditor's rights of the company's creditors, so as to avoid the shareholders being required to make up their capital contribution when the company cannot perform its debts, so the company's creditors have the right to request revocation.[3] At that time, the academic circle had a lot of discussions on the system of acceleration of shareholders' capital contribution, and there were no clear provisions in the law and judicial interpretations, so the Ninth Civil and Commercial Minutes also reflected the cautious attitude of the judicial organs. Looking at the evolution of relevant legal documents, the Ninth Civil and Commercial Minutes and previous norms related to the acceleration of shareholders' capital contribution mainly apply to bankruptcy and dissolution situations, and the situation where the company's shareholders' meeting extends the shareholders' capital contribution period is essentially equivalent to giving up the exercise of due claims, which seriously endangers the interests of the company's creditors, and there is no dispute about this situation.

The newly revised Company Law adopted on December 29, 2023 formally established the system of acceleration of shareholders' capital contribution and the dual-track system of registered capital. Different from the "principle of prohibition with exceptions allowed" model adopted by the Ninth Civil and Commercial Minutes[4], Article 54 of the Company Law stipulates that if a company is unable to pay its due debts, the company or the creditor with due claims has the right to require the shareholder who has subscribed for capital contribution but whose contribution period has not yet expired to pay the contribution in advance. This system, as a link, organically connects the freedom of shareholders' capital contribution, the adequacy of company capital and the protection of the interests of company creditors, and balances the interests among the three. Academic circles generally believe that this provision adds the situation of acceleration of shareholders' capital contribution in non-bankruptcy and non-dissolution situations, and this system applies to enterprises that are facing debt crises but have not yet fallen into bankruptcy, aiming to prevent enterprise bankruptcy and ensure continuous operation.[5] This provision is highly concise and generalized, and there are many doubts in application that need to be clarified: What is the legal basis for the acceleration of shareholders' capital contribution? What is the connotation and boundary of shareholders' term interests? How to determine "unable to pay due debts"? Does the shareholder's advance payment of capital contribution apply the warehousing rule or the direct compensation rule? This paper intends to analyze and explain the above problems, in order to clarify the interpretation of the system of acceleration of shareholders' capital contribution and provide reference for judicial practice.

2. Legal Basis for the Acceleration of Shareholders' Capital Contribution

2.1. Shareholders' Term Interests and Their Boundaries

Term interest refers to the interest enjoyed by a party due to the existence of a term. According to Article 47 of the Company Law, shareholders of a company may pay their capital contributions in accordance with the provisions of the company's articles of association on the time limit for capital contribution, enjoy term interests, and the company or its creditors cannot require shareholders to perform their capital contribution obligations in advance without special circumstances. At the same time, the company has a claim against shareholders in accordance with the provisions of the articles of association. Although the current Company Law limits the subscription period of limited liability companies, shareholders still enjoy a certain degree of freedom in capital contribution.

First, the five-year period is the statutory maximum capital contribution period, and shareholders can agree on the specific length of the capital contribution period and the amount and date of capital contribution for different shareholders in the company's articles of association, which will be presented in the form of a consensus. Since a consensus has been reached, based on the principle of autonomy of private law, both the company and the shareholders must perform their obligations in accordance with the agreement. When the period has not expired and the company has the ability to pay off debts, the company cannot require shareholders to perform their capital contribution obligations in advance. Similarly, other shareholders cannot require shareholders whose capital contribution period has not expired to pay their capital contributions in advance without special circumstances. In the above two cases, shareholders whose capital contribution period has not expired have the right of defense based on the provisions of the articles of association or laws, and have the right to oppose the company and other shareholders' claims for performance of capital contribution obligations on the grounds that the capital contribution period has not expired.[6] Secondly, the information such as the amount of subscribed and actually paid capital contributions and the date of capital contribution of shareholders of limited liability companies needs to be publicized in the national enterprise credit information publicity system. The term interests of shareholders have the effect of publicity and credibility, and do not necessarily damage the interests of the company's creditors.[7] Before conducting transactions with the company, the counterparty can fully understand the basic information of the company by consulting the publicity system, so as to consider whether to conduct transactions with the company, and needs to respect the term interests of shareholders.[8]

Of course, the term interests of shareholders are not absolute and unrestricted, but have certain boundaries, that is, the company can pay off due debts.[9] The term interests of shareholders are based on the company's ability to survive and operate normally; if the company no longer exists, then the term interests of shareholders lose their value. In this regard, some scholars believe that when there is a conflict of interests between the company, shareholders and creditors, the company, as the primary protected subject of the Company Law, should maintain the unity of value judgment under the same normative system, and take the company's interests as the dominant factor in interest measurement.[10] As the consideration for enjoying term interests, shareholders should perform corresponding obligations: first, pay the capital contribution in full and on time in accordance with the capital contribution period recorded in the articles of association; second, ensure that the company always has the ability to pay debts and is in a state of sustainable operation before the shareholders actually pay the capital contribution. The company's solvency is the foundation, and the shareholders' term interests are secondary.[11] Specifically, when the company can operate normally and has the ability to pay debts, the company or the creditor with due claims has no right to require shareholders to pay capital contributions in advance, and the term interests of shareholders should be respected; when the company is unable to pay due debts and is facing a debt crisis but not yet on the road to bankruptcy, the company or the creditor has the right to require the acceleration of shareholders' capital contribution obligations. At this time, maintaining the sustainable operation of the company should be the first priority, and the shareholders' term interests should give way to it. Enabling the company to pay off due debts through the acceleration of shareholders' capital contribution is a way to help the company get through the debt crisis at a lower cost and with less impact than the creditor filing a lawsuit or applying for bankruptcy, and can also save judicial resources.[12]

2.2. The Theory of Creditor's Subrogation in Civil Law

The legal basis for the company's creditors to require the acceleration of shareholders' capital contribution comes from the theory of creditor's subrogation. Article 535 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) stipulates that "if the debtor is lazy in exercising its claims or accessory rights thereto, thereby affecting the realization of the creditor's due claims, the creditor may request the people's court to exercise the debtor's rights against the counterpart in its own name, except for the rights exclusive to the debtor itself." When the company fails to pay off due debts, the creditor with due claims can claim the right of claim against the company, and the creditor's claim is against the company. However, at this time, the company has no ability to pay off due debts, and there are shareholders in the company who have subscribed for capital contributions but whose contribution period has not expired and have not paid. This problem can be easily solved if the creditor can exercise the right of the debtor (company) against the counterpart (company shareholder) in its own name by subrogation. According to Article 537 of the Civil Code, if the right of subrogation is established, the counterpart of the debtor shall perform the obligation to the creditor. The theory of creditor's subrogation breaks through the relativity of the contract, enabling the creditor to require the debtor's counterpart to perform the obligation to itself based on its own creditor's right with the debtor. Of course, the creditor can exercise the right of subrogation only under specific circumstances, not arbitrarily. For the acceleration of shareholders' capital contribution, the situation where the company's creditor exercises the right of subrogation against the shareholder is that the company is unable to pay due debts. Although at this time, the company does not seem to be lazy in exercising its claims because the shareholder's subscribed capital contribution has not yet expired, but considering maintaining the sustainable operation of the company, accelerating the shareholder's capital contribution has the lowest cost and the least impact on the company. Moreover, compared with the creditor, the company has a better understanding of its own ability to pay debts. In the case that Article 54 of the Company Law has stipulated that the company can request acceleration, if the company still cannot pay off the due claims at this time, it means that the company has defaulted on the debt[13], which can be regarded as the company's laziness in exercising its claims.

3. Judgment on the Applicable Conditions for the Acceleration of Shareholders' Capital Contribution

The applicable condition for the acceleration of shareholders' capital contribution stipulated in Article 54 of the Company Law is "unable to pay due debts", which is the acceleration of shareholders' capital contribution in non-bankruptcy situations, expanding the scope of application of the acceleration of shareholders' capital contribution. Article 35 of the Enterprise Bankruptcy Law stipulates the acceleration of shareholders' capital contribution in bankruptcy situations, and its applicable condition is that the company meets the bankruptcy standard, which, according to Article 2 of the Enterprise Bankruptcy Law, is "unable to pay due debts + assets insufficient to pay off all debts / obviously lacking the ability to pay". These two situations of acceleration of shareholders' capital contribution have different applicable scenarios and thus different judgment standards. When a company is unable to pay due debts and has met the bankruptcy cause but has not applied for bankruptcy, the creditor shall apply to the court for the company's bankruptcy and then apply the acceleration of shareholders' capital contribution in bankruptcy situations stipulated in Article 35 of the Enterprise Bankruptcy Law. When the company is facing a debt crisis but not yet falling into bankruptcy, although it is unable to pay due debts, the shareholders have unpaid subscribed capital contributions whose contribution period has not expired, and the company can get through the debt crisis and avoid adverse consequences as long as the shareholders pay a certain amount of capital contribution in advance. Creditors who want to be compensated when the company is unable to pay due debts have two ways: either apply to the court for the company's bankruptcy, or sue the company to request execution of the company's property. Both ways will have a certain impact on the company's operation, and both need to go through judicial procedures. The application of the acceleration of shareholders' capital contribution in non-bankruptcy situations stipulated in Article 54 of the Company Law not only reduces the litigation burden of the parties but also has lower costs and less impact.

3.1. Subjective Standard and Objective Standard

The bankruptcy standard for the acceleration of shareholders' capital contribution in bankruptcy situations is "unable to pay due debts + assets insufficient to pay off all debts / obviously lacking the ability to pay", while the standard for the acceleration of shareholders' capital contribution in non-bankruptcy situations is "unable to pay due debts". Literally, the standard for the acceleration of shareholders' capital contribution in non-bankruptcy situations is lower than the bankruptcy standard. Some scholars believe that there are two different judgment standards in the theoretical circle: "subjective standard" and "objective standard". The former refers to the company having the ability to pay but subjectively unwilling to pay, while the latter refers to the company objectively unable to pay due debts.[14] According to

Article 2 of the Supreme People's Court's Provisions on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (I), to determine that a company is unable to pay due debts, three situations must exist simultaneously: the creditor-debtor relationship is legally established, the performance period of the debt has expired, and the debtor has not fully paid off the debt. The most important of these is that the debtor has not fully paid off the debt. It focuses on the objective performance of cessation of payment, i.e., the debtor has not paid off due debts in a timely manner.[15] Some scholars believe that this provision includes both subjective and objective standards, and the standard for shareholders with unexpired capital contribution periods to bear the liability for acceleration of capital contribution is cessation of payment rather than inability to pay.[16] Neither the subjective nor the objective standard alone can fully evaluate the debtor's failure to fully pay off the debt, so neither the subjective nor the objective standard alone is acceptable.

3.2. Final Execution Theory and Non-Payment Theory

Some scholars have proposed that there are two main views in the academic circle: "final execution theory" and "non-payment theory". The "final execution theory" holds that a company can be deemed unable to pay due debts only when all court enforcement measures have been exhausted and no property available for easy execution has been found, resulting in the forced termination of the execution procedure.[17] The "non-payment theory" holds that the company's creditor only needs to prove that the company has not paid off its due debts to itself.[18] The "final execution theory" requires the court to take enforcement measures against the company, and the company still cannot pay off the debts after enforcement, i.e., inability to pay. In other words, the "final execution theory" requires the court to terminate the execution procedure, and court enforcement must be based on effective legal documents. Then, first, the creditor needs to sue the company and obtain a successful judgment, then apply to the court for enforcement against the company, and wait until the court finds that the company has no property available for execution and terminates the execution procedure to form a closed loop. Such a procedure is complicated and cumbersome, which deviates from the original intention of accelerating shareholders' capital contribution in non-bankruptcy situations, so it is not advisable. The "non-payment theory" is mainly manifested as cessation of payment, i.e., the debtor has not fully paid off the debt. It does not matter whether the company is subjectively unwilling to pay or objectively unable to pay; as long as there is a fact that the company has not paid off the due debt, the creditor can initiate the acceleration of shareholders' capital contribution.[19] Because when the company is unable to pay due debts, according to Article 54 of the Company Law, the company has the right to require shareholders to pay capital contributions in advance to repay the due debts, but if the company is lazy in exercising this right, then from the creditor's perspective, the company has not fully paid off the debt (cessation of payment). Therefore, "unable to pay due debts" in Article 54 of the Company Law should adopt the "non-payment theory", i.e., the standard of cessation of payment.

4. Legal Effects of the Acceleration of Shareholders' Capital Contribution

The legal effect of the acceleration of shareholders' capital contribution is the flow direction of the property from the shareholder's advance payment of capital contribution. Whether the property from the shareholder's advance payment of capital contribution applies the warehousing rule, i.e., it is classified as the company's property for the company to repay debts to creditors, or the direct compensation rule, i.e., the shareholder repays the company's creditors within the scope of his unpaid capital contribution? This is directly related to the interests of relevant stakeholders, so there is a big dispute. Generally speaking, the warehousing rule emphasizes the fairness and integrity of compensation, focusing on ensuring that all creditors can share the compensation results in proportion; the direct compensation rule emphasizes the special protection of creditors who take the initiative to exercise their rights, reflecting the law's support and encouragement for active rights protection.[20]

Literally, the shareholder's advance payment of capital contribution seems to mean that the shareholder should pay the capital contribution to the company in advance. Scholars who advocate the warehousing rule mostly explain from this perspective and believe that only warehousing can ensure that all creditors are compensated fairly; if compensation is made directly to creditors, it will affect the realization of other creditors' rights. Some scholars believe that Article 54 of the Company Law is inconsistent with the theory of creditor's subrogation in the Civil Code, and the system of acceleration of shareholders' capital contribution does not meet the premise of "the debtor is lazy in exercising its claims", so it is difficult to copy the rules of creditor's subrogation.[21] However, from a practical perspective, if the company is unable to pay due debts, Article 54 of the Company Law grants the company the right to require shareholders to pay capital contributions in advance, but if the company is lazy in exercising this right, then from the creditor's perspective, the company has not fully paid off the debt (cessation of payment). Therefore, according to the theory of creditor's subrogation, the counterpart of the debtor (shareholder) shall perform the obligation to the creditor, i.e., the shareholder shall repay the company's creditor within the scope of his unpaid capital contribution.

Furthermore, the issue of fair compensation for creditors mainly arises when the debtor is unable to repay all debts, and each creditor shall be compensated equally in proportion, and individual creditors cannot be paid preferentially. Fair compensation for creditors is to protect the legitimate rights and interests of all creditors and prevent individual creditors from being paid preferentially to the detriment of other creditors. A company's inability to repay all debts means that the company is insolvent and is going bankrupt, which is different from the non-bankruptcy situation stipulated in Article 54. Only when the company is facing bankruptcy, paying off individual creditors may affect the realization of other creditors' rights, while in the situation stipulated in Article 54, the company is facing a temporary debt crisis and is far from reaching the state of bankruptcy. At this time, the creditor whose claim has expired but not been paid off actively promotes the realization of his claim by requesting the acceleration of shareholders' capital contribution, which reflects the creditor's active exercise of his rights, and the law should protect and encourage such behavior. Otherwise, it will greatly dampen the enthusiasm of creditors to request the acceleration of shareholders' capital contribution. Imagine that after the creditor requests the acceleration of capital contribution, the capital contribution is transferred to the company's property, and the company then repays all creditors in proportion according to its property. The creditor originally wanted to realize his own claim but let other creditors who did not take any measures achieve the same effect as himself, and even the amount of compensation may be more than his own. In the long run, which creditor would be willing to initiate this system?

The direct compensation rule is also simpler in procedure than the warehousing rule. The former only requires the shareholder to repay the debt directly to the creditor; if the shareholder's subscribed capital contribution is more than the debt to be repaid, the shareholder still enjoys term interests in the excess capital contribution after repaying the debt; the latter requires the shareholder to pay the capital contribution to the company first. How much to pay is a problem: should the amount paid be limited to the debt (the debt amount is less than the capital contribution) or the full amount of the capital contribution? How should the company dispose of the paid-in capital contribution? Can it be used for the company's business activities? If the company uses the paid-in capital contribution to repay debts, there is no need to go through such a complicated process, which is far less convenient than the direct compensation rule. To sum up, the direct compensation rule is the optimal solution for the property flow in Article 54 of the Company Law.

5. Conclusion

The current Company Law implements a time-limited subscription system, and shareholders enjoy term interests, but when the company is unable to pay due debts, the shareholders' term interests must give way to the company and the creditors with due claims. For the purpose of preventing enterprise bankruptcy and ensuring the normal operation of the company, the law grants the company the right to request shareholders to pay capital contributions in advance on the condition. At the same time, based on the theory of creditor's subrogation, the creditor with due claims of the company also has the right to request shareholders to pay capital contributions in advance. For the understanding of the applicable condition of "unable to pay due debts", the non-payment theory should be adopted; as long as the company stops paying due debts, the system of acceleration of shareholders' capital contribution can be initiated. The property from the acceleration of shareholders' capital contribution shall be directly repaid by the shareholder to the company's creditor within the scope of his unpaid capital contribution. Article 54 of the Company Law applies to the acceleration of shareholders' capital contribution in non-bankruptcy and non-dissolution situations; if the company has met the bankruptcy cause and is going bankrupt, Article 35 of the Enterprise Bankruptcy Law shall apply. Many issues in the system of acceleration of shareholders' capital contribution are still controversial, and how to balance the interests of the company, shareholders and creditors needs to be responded to by legislation and justice.

References

[1] Liu, B. (2024) Interpretation of the Rules on Acceleration of Obligation to Contribute Capital. Financial and Economic Law, No. 3, 114-128.

[2] Lou, Q.R. (2020) The Theoretical Basis and Judicial Application of the Rule of Significantly Inadequate Capital. Nanda Law Journal, No. 4, 83-84.

[3] Second Civil Division of the Supreme People's Court. (2019) Understanding and Application of the Minutes of the National Court Civil and Commercial Trial Work Conference. People's Court Press, Beijing, 125.

[4] Wang, C.H. (2025) Applicable Requirements and Legal Effects of the Acceleration of Shareholders' Capital Contribution Obligations. Research in Law and Business, No. 2, 171-186.

[5] Chen, X. (2025) The Development of the Interpretation Theory of the Acceleration of Shareholders' Capital Contribution Maturity. Journal of Henan University (Social Science Edition), No. 2, 54-58, 153.

[6] Liu, J.H. (2025) Systematic Thinking on Deepening the Reform of the Registered Capital Subscription Registration System. Journal of Shandong University (Philosophy and Social Sciences Edition), No. 1, 180-196.

[7] Liang, Z.Y. (2020) A Study on the Protection of Shareholders' Term Interests — An Analysis Based on Article 6 of the Minutes of the National Court Civil and Commercial Trial Work Conference. Journal of University of Science and Technology Beijing (Social Sciences Edition), No. 5, 67-73.

[8] Lin, Y.Y., Liu, B. and Shen, Z.H., et al. (2022) Legislative Choice of Company Law Revision: A Symposium. Tribune of Political Science and Law, No. 4, 97-124.

[9] Peng, B. (2024) Shareholders' Capital Contribution Obligations in the New Company Law. China Review of Administrative Law, No. 3, 39-48.

[10] Xi, W.M. (2022) Reflection on the "Theory of Normal Acceleration of Due Date" for Shareholders' Capital Contribution Obligations — Concurrent Discussion on Feasible Regulation of Dishonest Subscription Behaviors. Research in Law and Business, No. 3, 85-98.

[11] Chen, F.M. (2025) Research on Shareholders' Capital Contribution Liability under the New Company Law. Journal of Nanjing University (Philosophy, Humanities and Social Sciences), No. 1, 94-102.

[12] Liu, J.H. (2024) On the Advantages and Disadvantages of the Registered Capital Subscription System: Also on the Dynamic Balance between Term Interests and Transaction Security. Academic Forum, No. 1, 44-59.

[13] Li, J.W. (2024) Commentary on the Company Law. Law Press, Beijing, 233.

[14] Liu, G.X. (2024) Issues Concerning the Application of the New Company Law. Law Ap-

plication, No. 6, 3-34.