

Study on the Influence of Fully Subscribed Capital System on Shareholders' Capital Contribution

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Abstract: The fully subscribed capital system of the Company Law of 2013 canceled the minimum registered capital and the limit of the initial capital contribution. The subscription period is completely stipulated by the company's articles of association. With regard to the legal nature of the fully subscribed capital system, the academic views present a completely different situation. The author believes that the legal nature of the full subscription of the capital system is still the legal capital system. At the same time, it is considered that in addition to the positive impact on investment and entrepreneurship, the fully-contributed capital system also has a certain impact on shareholders' capital contribution obligations.

1. Analysis of the legal nature of the fully subscribed capital system

The author believes that it is a legal capital system. First, from the perspective of the company's ability to assume civil liability, the strict legal capital system requires minimum registered capital. This is the government's supervision of the company's financial management and the care of creditors. As far as the practice of the commercial economy is concerned, the minimum requirements for registered capital are arbitrary and are not directly related to the capital needs of the company's business activities. The minimum registered capital system is only one of the subordinate systems of the capital system, and does not fulfill the functions of the original legislative design. The cancellation of the minimum registered capital system does not mean a radical change in the legal capital system. The system of payment and subscription is only the way to achieve the legal capital system. The payment system requires shareholders to immediately fulfill their capital contribution obligations when the company is established, and transfer the ownership of the property to the company; the fully subscribed capital system does not require the shareholders to pay the capital contribution immediately, but the shareholders decide their own capital contribution period. . The shareholders' capital contribution obligations can be fulfilled immediately, or they can be performed in stages, or they can be performed indefinitely. The obligations and scope of shareholders' contributions have not changed due to the change of the actual payment system to the subscription system. The total amount of capital contributions subscribed by each shareholder is still completely coincident with the registered capital for registration and public announcement. Second, although the system design of fully subscribed capital system absorbs some positive factors of the authorized capital system and facilitates the promoters to rationally arrange their own investment plans, this does not mean that the company law of our country has begun to implement authorized capital system or compromise capital. system. The subscribed capital under the authorized capital system can be issued in installments, but the authorized capital will not be issued in full when the company is established. The shareholder's obligation to contribute is determined by the amount of capital received, not the amount of registered capital. When the promoter establishes the company, it does not limit the number of shares to be issued and the number of shares to be subscribed. The future subscription arrangements are not clearly stated in the articles of association. Instead, the board of directors is authorized to issue or raise additional capital after the establishment of the company according to the special needs of capital operation. However, when China fully subscribes to the capital system, it requires

the company to be registered, and the registered capital and subscription period are clearly recorded in the company's articles of association. The company is required to indicate the total amount of registered capital and the time limit for subscription when registering. The company's issued capital is the same as the registered capital. When the company is established, it will issue all the registered capital at one time. The shareholders themselves are also the one-time subscription of the capital contribution and the subscription period. The board of directors has no right to issue capital in accordance with the company's business activities. It can be seen from this that whether the registered capital is subscribed in one lump sum and whether the shareholders' meeting can authorize the board of directors to issue capital freely. These two characteristics are the essential difference between the legal capital system and the authorized capital system. The payment of shareholder contributions from actual payment to subscription does not change the nature of the one-time issuance and full recognition of the statutory capital system. The only change is the way of capital payment under the legal capital system, that is, the payment period and the amount of capital paid are freely set by the company. The purpose is to make the company's capital system more compatible with the liquidity of the joint venture, which is conducive to the rapid development of the economy and society, rather than the subversion of the statutory capital system.

2. Analysis of the impact of fully subscribed capital system on capital contribution obligations

2.1 Cancellation of statutory capital verification procedures does not affect the funding obligation

The second paragraph of Article 26 of the new "Company Law" and the first paragraph of Article 80 indicate that the amount of capital contribution promised by all shareholders must be consistent with the registered capital. The main forms of shareholder commitments include the initiation of agreements, funding agreements, and company charters. It can be seen that the target of the shareholders' performance of the capital contribution obligation is the company. The amount of capital actually paid by the shareholders shall be the same as the amount of capital disclosed, and shall be consistent with the amount of capital subscribed by the shareholders. The actual payment of the registered capital is to show that the company's shareholders have fully fulfilled their capital contribution obligations based on the amount of the subscription capital. Under the fully subscribed capital system of the Company Law of 2013, shareholders are still prohibited from making false contributions and withdrawing capital. The shareholders' contributions constitute fraud or breach of contract, and they still have to bear corresponding legal responsibilities. Although the law no longer requires mandatory capital verification, it does not prohibit shareholders from using voluntary capital verification to prove that they have fully fulfilled their capital contribution obligations. Although this action aggravated the burden of proof of shareholders, shareholders believe that the capital verification report can avoid their own unfavorable legal consequences, or are willing to verify capital in advance. The use of the annual reporting system to replace the annual inspection system, although the increase of corporate information disclosure obligations, but the company's counterparts through the company's capital disclosure information, to understand the shareholders' funding situation, will naturally take the initiative to consider the obvious irrational factors in the shareholders' contribution And take a more cautious approach to trading activities. If the company has false information, competitors and social welfare organizations may prompt the regulatory authorities to investigate and deal with the company through reporting, etc., and it must play a deterrent role in keeping the information true when the company publicizes the information. Therefore, the author believes that the cancellation of the statutory capital verification procedure has changed the actual way of achieving the registered capital, but this does not affect the performance of the shareholders' capital contribution obligations. The strict supervision of the government beforehand has ceased to exist. Instead, the government checks and checks the company's asset changes afterwards and dynamically monitors the entire company's operation process.

2.2 The cancellation of the minimum registered capital does not affect the capital contribution obligation

According to the design of the minimum registered capital limit system, the minimum legal capital is the final bottom line of shareholders' capital contribution obligations. According to the system design of the full payment system, the cancellation of the minimum registered capital limit is equivalent to the minimum capital limit for canceling the shareholder's capital contribution obligation. However, the shareholder's capital contribution obligation has not been waived. An effective subscription funding agreement is one of the sources for setting shareholders' funding obligations. In the shareholder subscription and capital contribution agreement, the company's registered capital is fully subscribed, and the capital contribution ratio and the capital contribution period are stipulated. The scope of the shareholder's capital contribution obligation should also be the registered capital set for the company in the capital contribution agreement, not the minimum capital amount prescribed by law. The "Company Law" requires that the registered capital in the capital contribution agreement must be written into the company's articles of association and registered in the industrial and commercial administration department. Through publicity, shareholders are allowed to make capital contributions to potential creditors of the company. The Judicial Interpretation of the Company Law (3) also gives creditors the right to request. When the company's debts cannot be settled, the company can request the investors to make false claims and withdraw the capital shareholders to assume supplementary compensation. The Enterprise Bankruptcy Law also stipulates the shareholders' capital contribution obligations under bankruptcy. It can speed up the expiration and help the creditor's claims to be realized. This shows that the cancellation of the minimum registered capital does not affect the shareholder's commitment to capital contribution.

2.3 The modification of the amount of capital contribution affects the capital contribution obligation

Many companies believe that higher registered capital will bring more trading opportunities to enterprises, which is the performance of capital credit concept in commercial activities. Since the amount of registered capital required by the full subscription system is completely stipulated by the shareholders themselves, many companies have become "high-priced companies" through capital increase, in order to use the excessively high registered capital to attract bidding projects, which is not a rapid improvement of the company's own operating capacity. Some companies believe that the use of ultra-low amounts of registered capital can achieve the purpose of evading corporate responsibility. For example: in March 2014 the company registered capital of Sichuan Province 7000 to zero, accounting for 53% of the total number of newly established enterprises. There are fifteen companies that are one dollar companies. Then, is there a legal basis for the existence of "high price company", one yuan company and zero yuan company?

The author believes that "astronomical company" and a dollar company can exist, zero yuan company can not allow existence. First of all, the system design of fully subscribed capital system reflects the purpose of flexible arrangement of capital rules. According to the company's capital operation needs, a wide range of companies can freely and flexibly set the amount of registered capital. The content of the fully subscribed capital system does not have a registered capital of one yuan. According to the spirit of private law that "the law is not prohibited," the investor's choice should be respected. Second, the dollar company will not shake the company's limited liability system. If the capital set by the company is too low or even one yuan, the difference lies only in the scope of limited liability, not in the nature of the limited liability itself. Assume that due to the fact that the registered capital is one yuan, the company has a significant shortage of capital. The company's corporate personality denial system can achieve the purpose of protecting the interests of creditors. The author believes that the company's "significant capital shortage" judgment standard means that the company's capital must meet the company's business scale or business risk minimum requirements when the company is established or new business development. It is by no means solely based on the amount of registered capital. Sometimes the company's registered capital

amount needs to be combined with different industry conditions and specific company size. For example, network consulting and service companies and creative companies, some of the dollar companies have very small scale or operational risks, and it is reasonable to set up a lower registered capital arrangement at the beginning of the business. This kind of judgment can only be judged after the fact, and it is impossible to make prior judgment and prior supervision. Third, some scholars believe that the law does not clearly stipulate zero yuan companies and set the registered capital amount is the right of shareholder autonomy, then shareholders can of course choose any amount, including zero yuan. The author believes that the registered capital cannot be zero yuan. The zero-yuan registered capital representative gave up the principle of capital maintenance, and the one-yuan registered capital representative implemented the principle of capital maintenance. Since Articles 25 and 81 of the Company Law of 2013 indicate that the articles of association include registered capital, the registered capital may not be zero. If the registered capital is zero, it means that there is no capital contribution, and the company's shareholders cannot determine the equity ratio. This will make it difficult for the company to obtain basic operating expenses during the establishment phase, which will prevent the company from being successfully established. Finally, it is aimed at "high-priced companies" established to gain higher credibility and trading opportunities. If the company's subscription capital can be paid in full within the agreed time limit, there is no need to discuss liability issues. If the capital contribution of the subscription has not been fully fulfilled, under the premise of breaking through the limited liability of the shareholders, the setting of excessively high registered capital will result in the shareholders fulfilling the high capital contribution obligation and undertaking excessive capital contribution responsibility.

2.4 The modification of the capital contribution time affects the capital contribution obligation

After the implementation of the fully subscribed capital system in the company law in 2013, the capital contribution period is completely stipulated by the shareholders themselves. This will result in a long-term capital contribution period agreed by the shareholders, and the registered capital has not been paid in place. Under this circumstance, the company may be unable to pay off the debts, and the realization of the creditor's claims is extremely uncertain. Individual companies deliberately extend the time limit for payment so that the capital contribution obligation becomes meaningless or does not have to be performed personally during the survival of the shareholders. A Suzhou company will extend the capital contribution to October 2061. Some of the company's shareholders will be over one hundred years old by 2061, and another Jinan company will directly limit the investment period to one hundred years. Then, is there a legal basis for the existence of the "100-year company"? The author believes that "a hundred years company" can exist. First, the original intention of the system of fully subscribed capital system is to make flexible arrangements for capital rules. The shareholders of the company can freely agree on the time limit for funding. Since the 2013 Company Law does not explicitly prohibit the capitalization period from being "100 years", according to the spirit of private law that "the law does not prohibit freedom," the investor's choice needs to be respected. Second, the basis for shareholders' capital contribution obligations is an effective shareholder contribution agreement. The precondition for fulfilling the capital contribution obligation is that the capital contribution period specified in the capital contribution agreement has the possibility of shareholders' performance. If the "Hundred Years Company" has no possibility of shareholders' performance, the shareholders' capital contribution agreement can be revoked according to the principles of honesty and credit in the civil law, the principle of public order and goodness, the principle of contractual justice or the efficiency principle of company law. Third, whether the "one-hundred-year" shareholders subscribe for the capital contribution period has the possibility of fulfillment, and should be considered in combination with the nature, scale, development stage, paid-in capital, creditor's rights and debts of the company. For example, the "10,000-year" subscription period is obviously not likely to fulfill. Another example: the time limit for the capital contribution of the shareholder subscription capital has exceeded the duration of the company or the length of the individual's life, and it is obviously not possible to fulfill.

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