SPC Judicial Interpretation (III) on Capital Contribution and Shareholder Liability

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Chapter I — Capital Contribution Obligations

Article 1 — Where a promoter or subscriber makes a capital contribution by means of property such as currency, in-kind assets, intellectual property rights, or land use rights, and fails to perform the capital contribution obligation as required by law or as agreed in the articles of association, the company or other shareholders may file a lawsuit with the people's court demanding that the promoter or subscriber perform the capital contribution obligation. Where such a claim is filed, the people's court shall support it in accordance with the law.

Article 2 — Where a subscriber makes a capital contribution in the form of property rights that require registration of transfer of ownership, such as real property or intellectual property rights, the subscriber shall go through the ownership transfer formalities. Where the subscriber has delivered the property to the company for use but has not completed the ownership transfer formalities, and the company, other shareholders, or creditors claim that the subscriber has not fulfilled the capital contribution obligation, the people's court shall order the subscriber to complete the ownership transfer formalities within a specified reasonable period. Where the subscriber completes the ownership transfer formalities within the specified period and has already delivered the property to the company for use, the people's court shall determine that the subscriber has fulfilled the capital contribution obligation, and the subscriber may claim the corresponding shareholder rights from the date of actual delivery of the property to the company for use.

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Article 3 — Where a subscriber makes a capital contribution in the form of property rights requiring ownership transfer registration and has completed the ownership transfer formalities but has not delivered the property to the company for use, and the company or other shareholders claim that the subscriber shall deliver the property to the company for use and shall not enjoy the corresponding shareholder rights before actual delivery, the people's court shall support such claim.

Article 4 — Where a shareholder makes a capital contribution with property for which a capital verification report is required by law, and a certified public accountant issues a false capital verification report, the company, other shareholders, or creditors may claim that the certified public accountant and the accounting firm shall bear corresponding liability. Where such claim is made, the people's court shall handle the matter in accordance with the law.

Article 5 — Where a subscriber makes a capital contribution with property that requires a capital verification report but fails to have the capital verified, and the company, other shareholders, or creditors claim that the subscriber's capital contribution is not in compliance, the people's court shall order the subscriber to obtain the capital verification report within a reasonable period, provided that the subscriber has actually contributed the property. Where the subscriber obtains the capital verification report within the specified period, the people's court may determine that the capital contribution obligation has been duly performed.

Chapter II — Defective Capital Contributions

Article 6 — Where a shareholder fails to perform or fully perform the capital contribution obligation and the company or other shareholders require the shareholder to perform the capital contribution obligation in full, the people's court shall support such claim. Where the company's creditors claim that a shareholder who has not performed or fully performed the capital contribution obligation shall bear supplementary compensation liability for the company's debts, to the extent of the unpaid capital contribution and corresponding interest, the people's court shall support such claim. However, this shall not apply where the shareholder's capital contribution obligation has not yet fallen due.

Article 7 — Where a shareholder makes a capital contribution with property that does not have the required value and the company, other shareholders, or creditors claim that the shareholder has not fully performed the capital contribution obligation, the people's court shall entrust a qualified appraisal institution to appraise the property. Where the assessed value of the property is significantly lower than the capital contribution amount prescribed in the articles of association, the people's court shall determine that the shareholder has not fully performed the capital contribution obligation.

Article 8 — Where a shareholder makes a capital contribution by means of disposal rights of property that the shareholder does not have the right to dispose of, and the company meets the conditions for bona fide acquisition of the property, the company acquires ownership of the property. Where the company does not meet the conditions for bona fide acquisition of the property, the original obligee may claim that the shareholder has not fulfilled the capital contribution obligation. Where such claim is made, the people's court shall handle the matter in accordance with Article 6 of these Provisions.

Article 9 — Where a shareholder engages in any of the following acts, which constitute a withdrawal of contributed capital, the company, other shareholders, or creditors may file a lawsuit with the people's court demanding that the shareholder return the withdrawn contributed capital:

1. Preparing false financial and accounting statements to inflate profits for distribution;

2. Withdrawing contributed capital through a fictitious creditor-debtor relationship;

3. Withdrawing contributed capital through related-party transactions;

4. Other acts of withdrawing contributed capital without going through statutory capital reduction procedures.

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Article 10 — Where a shareholder withdraws contributed capital, and the company or other shareholders require the shareholder to return the withdrawn capital, the people's court shall support such claim. Where the company's creditors claim that a shareholder who has withdrawn contributed capital shall bear supplementary compensation liability for the company's debts, to the extent of the withdrawn capital and corresponding interest, the people's court shall support such claim.

Article 11 — Where a shareholder transfers equity before the expiration of the capital contribution period and the transferee knows or should have known of the situation, if the company requires the shareholder to perform the capital contribution obligation or the transferee bears joint and several liability, the people's court shall support such claim. Where the company's creditors claim liability against the shareholder or the transferee in accordance with Article 6 of these Provisions, and the transferee bears joint and several liability, the people's court shall support such claim.

Article 12 — Where a company's promoters or shareholders commit any of the following acts, and the people's court determines that such acts constitute a withdrawal of contributed capital, the promoters or shareholders shall bear corresponding civil liability for the company's debts:

1. Transferring company property to another person without consideration;

2. Transferring company property to another person at a manifestly unreasonable price;

3. Providing security for debts of the company with company property in the absence of a reasonable consideration;

4. Repaying the shareholders' personal debts with company property;

5. Other acts that damage the company's property rights and interests.

Article 13 — Where a people's court orders a shareholder to perform the capital contribution obligation or return the withdrawn capital, and the shareholder fails to perform the effective judgment, the people's court may, upon application by the company or other shareholders, or ex officio, restrict the shareholder's rights, including profit distribution rights, preemptive rights to new shares, and voting rights, until the shareholder performs the capital contribution obligation or returns the withdrawn capital.

Article 14 — Where a shareholder fails to perform the capital contribution obligation or withdraws contributed capital, and the company fails to claim such amounts within a reasonable period, other shareholders who have fully performed their capital contribution obligations may file a lawsuit with the people's court in their own names demanding that the shareholder perform the capital contribution obligation or return the withdrawn capital.

Article 15 — Where a shareholder fails to perform the capital contribution obligation or withdraws contributed capital, and the company fails to claim such amounts, resulting in losses to the company, shareholders who have fully performed their capital contribution obligations may file a lawsuit with the people's court demanding that the shareholder who failed to perform the capital contribution obligation or withdrew contributed capital bear the liability for compensation.

Chapter III — Supplementary Provisions

Article 16 — Where shareholders make capital contributions by means of property that requires registration and have completed the ownership transfer registration, and where the company, other shareholders, or other creditors claim that the capital contribution has been effectively made, the people's court shall support such claim.

Article 17 — Where a company increases its registered capital and the subscribers fail to perform their capital contribution obligations, or where the capital contribution is withdrawn after the company's establishment, the relevant provisions of these Provisions on the performance of capital contribution

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obligations and withdrawal of capital contribution shall apply.

Article 18 — Where a shareholder makes a capital contribution with property that requires a capital verification report and the shareholder has actually contributed the property but the capital verification institution issues a false capital verification report, and the company's creditors claim that the capital verification institution shall bear compensation liability to the extent of the false capital verification amount, the people's court shall support such claim.

Article 19 — Where a shareholder makes a capital contribution with property and the capital verification institution issues a false capital verification report, and other shareholders, directors, senior managers, or actual controllers of the company assist in such false capital verification, the creditors may claim that the aforesaid persons shall bear joint and several liability with the capital verification institution.

Article 20 — Where a shareholder makes a capital contribution with property and the capital verification institution issues a false capital verification report, and the capital verification institution claims exemption on the ground that the shareholder has gone through property registration formalities with the relevant authorities, the people's court shall not support such claim.

Article 21 — Where a people's court handles a case involving a dispute over capital contribution obligations, and the company or other shareholders claim that the capital contribution obligation shall be performed in accordance with the articles of association, the people's court shall support such claim.

Article 22 — Where a shareholder fails to perform the capital contribution obligation or withdraws contributed capital, the company may, in accordance with the articles of association or the resolution of the shareholders' meeting, restrict the shareholder's profit distribution rights, preemptive rights to new shares, and rights to distribution of residual property, and the company may take corresponding measures. Where the shareholder claims that such restrictions are invalid, the people's court shall not support such claim.

Article 23 — Where a shareholder fails to perform the capital contribution obligation, the company may, in accordance with the articles of association or the resolution of the shareholders' meeting, cancel the shareholder's qualification. Before canceling the shareholder's qualification, the company shall urge the shareholder to pay the capital contribution or return the withdrawn capital within a reasonable period. Where the shareholder fails to pay the capital contribution or return the withdrawn capital within the reasonable period, the company may cancel the shareholder's qualification by a resolution of the shareholders' meeting. Where the shareholder claims that the cancellation is invalid, the people's court shall not support such claim. In the circumstances described in the preceding paragraph, the people's court shall clearly explain to the company that the company shall promptly handle statutory capital reduction procedures or have other shareholders or third parties pay the corresponding capital contribution. Before the company handles the statutory capital reduction procedures or other shareholders or third parties pay the corresponding capital contribution, the company's creditors may still claim that the shareholder whose qualification has been canceled shall bear supplementary liability in accordance with Articles 6 and 10 of these Provisions.

Article 24 — Where a company is unable to pay off its debts when due, and the creditors claim that shareholders whose capital contribution period has been extended shall bear supplementary compensation liability for the company's debts to the extent of the unpaid capital contribution and corresponding interest, the people's court shall support such claim. However, this shall not apply where the extension of the capital contribution period occurred before the company's debts became due.

Article 25 — Where a people's court accepts a company's bankruptcy case, and the bankruptcy administrator claims that shareholders whose capital contribution period has not yet expired should pay the capital contribution in advance, the people's court shall support such claim.

Article 26 — Where a shareholder fails to perform the capital contribution obligation and transfers the equity, and the company or creditors claim that the transferor shall bear the capital contribution obligation or

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supplementary compensation liability, the people's court shall support such claim. Where the transferee knew or should have known of the situation and the company or creditors claim that the transferee shall bear joint and several liability, the people's court shall support such claim.

Article 27 — Where a company increases its registered capital and the subscribers fail to perform their capital contribution obligations, and the directors or senior managers fail to perform their duties as required by law, resulting in the company's failure to promptly pursue the subscribers' capital contribution obligations, the directors or senior managers shall bear corresponding liability. Where the company's creditors claim that the directors or senior managers shall bear corresponding liability, the people's court shall support such claim. Where directors or senior managers bear liability, they may seek recovery from the subscribers who failed to perform their capital contribution obligations.

Article 28 — These Provisions shall take effect as of February 16, 2011. Cases that have been finally concluded before the implementation of these Provisions and where a party applies for retrial or cases decided for retrial in accordance with trial supervision procedures shall not be governed by these Provisions.

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