ISSN: 1813-4890

Research on the Procedural Application of the Shareholder Forfeiture Mechanism

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Abstract

The shareholder forfeiture mechanism established under the 2023 Company Law of the People's Republic of China represents a pivotal reform in China's capital regime, yet its procedural application remains in urgent need of further refinement. Regarding the call-up procedure, the board of directors should serve as the sole competent body, a principle grounded in the corporate personality's intrinsic requirement to distinguish between institutional acts and individual liability. Calls for payment should be categorized into forfeiture calls and non-forfeiture calls; no statutory upper limit on grace periods is necessary. The law should supplement the mandatory contents of call-up notices and improve the rules for determining their legal validity. Regarding the procedure for exercising the right of forfeiture, the designation of the board of directors as the sole decision-making body reflects both governance rationality and legal necessity. The current rule under which call-up notices and forfeiture notices take effect upon dispatch (the "dispatch-effect" rule) suffers from theoretical defects and should revert to the "receipt-effect" rule, so as to safeguard shareholders' rights and maintain coherence within the legal system.

Keywords

Shareholder forfeiture, call-up procedure, procedure for exercising forfeiture rights.

1. Introduction

The shareholder forfeiture mechanism is a newly established legal institution under the 2023 Company Law of the People's Republic of China (hereinafter "Company Law"), marking a critical step forward in the reform of China's corporate capital regime. Its introduction responds effectively to longstanding practical challenges such as insufficient paid-in capital and difficulties in enforcing capital contribution obligations, while also underscoring the Company Law's emphasis on the capital maintenance principle at the institutional level. As an innovative mechanism aimed at strengthening capital contribution discipline and ensuring shareholders fulfill their obligations, the forfeiture mechanism reflects a legislative shift from a relaxed subscribed-capital regime toward stricter performance requirements, embodying a return from "formal capital" to "substantive capital." However, precisely because it is newly created, numerous procedural issues remain to be explored in the context of legal application. For example: in the call-up procedure, which entity should serve as the competent authority, and what essential elements must a call-up notice contain? In the forfeiture procedure, what is the normative justification for the board of directors to decide on forfeiture, and what requirements should a forfeiture notice meet? It is evident that while the forfeiture mechanism has made preliminary arrangements in terms of substantive rules, the concrete procedural framework for its operation requires further elaboration and refinement.

ISSN: 1813-4890

2. Clarifying the Call-Up Procedure

The call-up procedure is not only a necessary precondition for initiating the forfeiture procedure but also the starting point for the operation of the shareholder forfeiture mechanism. Whether this procedure is carried out in accordance with the law and in a standardized manner directly affects the coordination and effectiveness of subsequent forfeiture measures. However, both current legislation and practice reveal two prominent issues: (1) the legal status of the call-up authority remains unclear; and (2) the form and content requirements for an effective call-up notice need further specification.

2.1. Determining the Call-Up Authority: The Board of Directors

Article 51(1) of the Company Law explicitly provides that the board of directors is the body responsible for verifying shareholders' capital contributions. However, with respect to the authority to call for payment, the provision refers only generally to the "company." As a legal person, the company must rely on its internal bodies or members to execute its functions. Therefore, which specific internal body should bear the responsibility for making calls requires clarification through judicial interpretation. In academic discourse, there are multiple views, including the "shareholder view," the "chairperson view," the "general manager view," the "capital management committee view," the "shareholders' meeting view," and the "board of directors view."

First, shareholders, the chairperson of the board, and the general manager are not competent authorities to issue calls for payment. The "shareholder view" is primarily based on Article 13(1) of the 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) (hereinafter "Company Law Interpretation III"). The "chairperson view" and the "general manager view" proceed from an efficiency perspective, arguing that convening the board of directors and passing resolutions is procedurally cumbersome, and that, to meet urgent funding needs, it would be most appropriate for the general manager or the chairperson—particularly when also serving as the company's legal representative—to be the authority to issue calls for payment [1]. As to the shareholder view, leaving aside for the moment the question of whether the relevant provisions of Company Law Interpretation III remain directly applicable after the promulgation of the 2023 Company Law—given the pressing need to revise existing judicial interpretations—designating shareholders as the competent call-up authority would seriously impair the company's separate legal personality. The call for payment of capital contributions is an important financing act belonging exclusively to the company as an independent legal person. A call-up notice, issued in the name of the company, expresses the will of the company; under the inherent requirements of corporate personality and governance structure, a strict distinction must be maintained between the company's will and the acts of individual members. If the shareholder is designated as the call-up authority, it would, in effect, acknowledge that the shareholder may, as a matter of course, represent the company's will to call for payment. This would fundamentally negate the company's capacity to express its will as an independent legal person and thus constitute a doctrinal paradox. As has been aptly noted, "Any shareholder could demand that other shareholders perform their contribution obligations or even initiate litigation, entirely disregarding the autonomous will of the company; in essence, this would amount to regressing from a company to a partnership."[2] As to the chairperson and general manager views, "the chairperson or general manager, existing solely as an external representative of the company, is not an organ that forms the company's will, and therefore has no authority to decide whether to issue a call for payment to a shareholder who has not made the required capital contribution."[3] While the chairperson or general manager often expresses the company's will externally, such expression is premised upon an effective internal decision by a will-forming body, such as the shareholders' meeting or the board of directors. In the absence of such a decision, a unilateral call for payment by the chairperson or general manager lacks a legal basis.

Accordingly, neither shareholders nor individual officers such as the chairperson or general manager qualify as competent call-up authorities. Only will-forming bodies of the company, such as the shareholders' meeting or the board of directors, may assume this role. This raises a further question: Corporate organs such as the shareholders' meeting or the board of directors exist in the form of meetings, and in practice, the actual act of making a call for payment will inevitably be carried out by individual members of the company. If the law designates the shareholders' meeting or the board of directors as the call-up authority, does this create a discrepancy between the legally prescribed call-up body and the actual party executing the call-up? The answer is no. Individual members may act only as executors or agents of the will-forming body, and the legal effect of their actions is ultimately attributed to the company itself. This logic is clearly reflected in the capital verification mechanism under Article 51 of the Company Law. Paragraph 1 designates the board of directors as the capital verification authority, recognizing its institutional status as a will-forming organ. Paragraph 2 provides that "directors responsible" for failing to perform the duties set forth in the preceding paragraph shall bear liability for damages. This shows that the legislature is well aware that the actual work of verification is necessarily carried out by individual directors, yet the legal text establishing the verification authority still draws a distinction between the institutional subject (the board) and the responsible individual (the director). This legislative technique embodies the layered structure in corporate law between institutional acts, which carry the company's will, and individual liability for breaches of duty. By analogy, the call-up mechanism follows the same doctrinal logic as the capital verification mechanism: the law designates the company organ—the board of directors—as the call-up authority, thereby respecting the company's separate legal personality. To provide otherwise and directly designate an individual as the call-up authority would blur the legal boundaries between acts of the company and acts of individuals, undermining the foundational principle of corporate personality.

Second, the so-called "capital management committee" approach should not be adopted. Proponents of this view argue that designating the board of directors as the call-up authority is a product of the board-centrism found in Anglo-American jurisdictions, which is incompatible with China's shareholder-centric tradition. They further contend that, in non-listed companies, controlling shareholders often dominate the board, creating a risk that the call-up mechanism could be used to lawfully infringe the rights of minority shareholders. To prevent such abuse, they propose the creation of a "capital management committee" composed of shareholder representatives and independent directors to call for payment. [4]. This reasoning is unconvincing for several reasons. First, although debate persists in academic circles over whether China should maintain shareholder-centrism or transition toward board-centrism, the 2023 Company Law has significantly strengthened the powers and responsibilities of the board, reflecting a legislative trend toward board-centrism — a development endorsed by the majority of scholars [5, 6, 7]. Second, the call-up mechanism itself does not lend itself to transformation into a tool for harming minority shareholders. Its original purpose and core function lie in maintaining capital adequacy, and it operates with statutory mandatory force: whenever a shareholder fails to pay in full on time, the board is under a legal duty to issue a call-up. This process leaves no substantive room for discretion. If a minority shareholder has already fulfilled their capital contribution obligation, the call-up procedure will never be triggered against them; conversely, if they are in default, the call-up is merely a lawful means of enforcing a statutory duty, not an improper encroachment. The only scenario in which shareholder rights might be implicated is if the board selectively exempts a controlling shareholder from its contribution obligation, thereby failing to issue a call-up. Yet this conduct constitutes a direct harm to the company's interests rather than an infringement on minority shareholder rights. Even if one interprets such conduct as indirectly harming minority shareholders, they may still bring a derivative action to hold the responsible directors liable, thus simultaneously achieving the protection of their rights and the company's interests. Third, the creation of a new "capital management committee" would generate unnecessary institutional costs [3]. Establishing a body dedicated solely to call-up matters would incur additional expenses for its formation, personnel selection, and ongoing operations, and would risk making the corporate governance structure more complex — even chaotic — thereby contravening the principle of organizational simplicity.

Finally, compared with the shareholders' meeting, the board of directors should clearly be designated as the competent call-up authority. First, the Company Law already assigns both the duty of capital verification and the right of forfeiture to the board. Designating the board as the call-up authority ensures an integrated process linking verification, call-up, and forfeiture, thereby maintaining continuity of rights and responsibilities, and ensuring orderly implementation. Moreover, from the literal meaning of Article 51(2) — "Where a director responsible fails to perform the duties prescribed in the preceding paragraph in a timely manner … the responsible director shall bear liability for damages" — the "duties prescribed in the preceding paragraph" should be understood to include not only the verification duty but also the call-up duty. Thus, identifying the board as the call-up authority is more consistent with the legislative intent. Second, a board-led call-up procedure reduces costs and increases efficiency. The board oversees the company's daily operations, and it can take timely measures on call-up matters. In contrast, convening the shareholders' meeting is procedurally more complex, with a longer decision-making chain, making it difficult to respond quickly to capital shortfalls. Third, issuing a call for payment also falls squarely within the scope of directors' performance of their duties. Directors owe the company a duty of diligence, which requires them to safeguard the company's interests actively and promptly. Managing the company's capital resources through call-ups is a natural part of that responsibility; failure to call or delay in doing so should trigger corresponding legal liability. Fourth, designating the board as the call-up authority helps refine the corporate governance structure. Currently, in many Chinese companies, the responsibilities of the board, the shareholders' meeting, the chairperson, and the general manager still overlap and remain ambiguous. Centralizing the call-up function within the board not only clarifies the allocation of rights and duties among these bodies, but also supports the development of a board-centered governance system, which has particular significance in China's domestic context [8]. Fifth, designating the board as the call-up authority is also consistent with general practice in comparative law [9]. For example, in the United Kingdom, a company must make specific provisions in its articles of association regarding the payment for shares subscribed by shareholders, or at the very least, delegate the matter to the board of directors through the articles [10]. Under the Delaware General Corporation Law in the United States, the process for enforcing capital contributions from shareholders who have subscribed for shares — which includes a mechanism similar to that found in UK company law — treats the call-up as a duty of the board [11, 12].

2.2. Effectiveness of the Call-Up Notice: Form, Content, and Adjustment

The call-up procedure is, in essence, the concretization within the shareholder forfeiture mechanism of the notice procedure found in the contract termination mechanism. Acting as the call-up authority, the board of directors, pursuant to Article 51(1) of the Company Law, must issue a written call-up notice in the company's name to any shareholder who has failed to pay in full and on time. First, with respect to form, it is clear that a call-up notice is subject to a formal requirement and must be in writing. In light of Article 469 of the Civil Code of the People's Republic of China (hereinafter "Civil Code"), the board may issue the call-up either in paper form or by means of a data message. Second, with respect to content, Article 52(1) of the

Company Law allows the board to specify a grace period in the call-up notice, and provides that if such a period is specified, it shall not be less than 60 days from the date the notice is issued. This raises further questions: If the board fails to specify a grace period, or specifies one less than 60 days, how should the validity of the notice be determined? Does providing only for a minimum grace period create a legislative gap? Apart from the grace period, are there other elements that should be mandatorily included in the notice?

First, the presence or absence of a grace period of not less than 60 days should serve as the criterion for distinguishing between a "forfeiture call-up" and a "non-forfeiture call-up." The setting of a grace period is a matter within the company's discretion, and the board may decide, based on operational needs, whether to specify such a period in the notice. Article 52(1) essentially governs the exercise of the forfeiture right, rather than the performance of the call-up duty. Thus, its provision that the grace period "shall not be less than 60 days" should be understood solely as a prerequisite for the subsequent forfeiture process: if the company intends to proceed with forfeiture against a defaulting shareholder, it must specify a grace period of not less than 60 days — this constitutes a forfeiture call-up. If the period specified is shorter than 60 days or no period is specified, the call-up is a non-forfeiture call-up, which merely results in the legal consequence that the company cannot subsequently exercise the forfeiture right against the shareholder; the validity of the notice itself remains unaffected [13, 14]. Some argue that where the notice fails to specify a grace period or specifies one shorter than 60 days, the period should be deemed to be 60 days, and if the shareholder still fails to pay after that period expires, the company may exercise the forfeiture right [15]. This reasoning is debatable. First, Article 52(1) provides that the company "may" specify a grace period, indicating that the legislature intended to grant the company discretion in this respect. Under the opposing view, however, a grace period of at least 60 days would exist regardless of whether the company specifies one, effectively nullifying the term "may" and rendering the company's discretion meaningless. Second, under that view, every defaulting shareholder would enjoy a minimum grace period of 60 days, forcing a company that prefers to recover the unpaid capital swiftly through litigation rather than forfeiture into a passive position. Under the distinction between forfeiture and non-forfeiture call-ups, further clarification is warranted. If a company issues a non-forfeiture call-up but later decides to proceed with forfeiture against a defaulting shareholder, it must issue a new forfeiture call-up to satisfy the statutory procedural requirements for exercising the forfeiture right. Likewise, if the company initiates a forfeiture call-up and, after the grace period expires, the board resolves not to exercise the forfeiture right, the company must issue a new forfeiture call-up if it subsequently wishes to commence forfeiture proceedings. A board resolution to refrain from forfeiture reflects the company's autonomous decision, based on its business judgment at the time, to waive the right to initiate forfeiture in connection with that particular call-up. Such a waiver concludes the initial forfeiture process; without restarting the procedure, the company may not rely on the original call-up to assert forfeiture again. From the perspectives of procedural propriety and corporate governance, the exercise of the forfeiture right should have a clear and identifiable initiation and execution process. Allowing a company to reassert forfeiture on the basis of an earlier notice, without reissuing a new one, would create procedural uncertainty, undermine shareholders' ability to predict and rely upon the company's actions, and invite legal disputes.

Second, regarding the duration of the grace period, the Company Law only sets a minimum of 60 days and does not provide for an upper limit. Some scholars have expressed concern that this legislative gap might allow the call-up authority to set excessively long grace periods—lasting several years—thereby turning the grace period system into a means for shareholders to evade their capital contribution obligations, ultimately reducing the capital adequacy principle to a mere formality [16, 17]. Such concerns are unnecessary. First, the legislative purpose of setting a lower limit on the grace period is to provide shareholders with necessary procedural protection. The system is intended to offer shareholders who have failed to pay in full and on time a final opportunity to perform. Without a statutory minimum, the company could issue a call-up with an extremely short deadline, thereby quickly initiating forfeiture proceedings and stripping a shareholder of their equity, potentially infringing upon shareholder rights. Second, the absence of an upper limit is primarily due to feasibility and necessity considerations. From a functional perspective, setting a uniform minimum grace period is both feasible and reasonable, as it ensures that all shareholders enjoy a basic procedural safeguard in performing their capital contribution obligations, thereby preventing arbitrary deprivation of equity. By contrast, setting a uniform maximum grace period would be difficult to reconcile with the diverse circumstances of different companies, the varying financial capacities of shareholders, and the complexity of contribution arrangements. Such a “one-size-fits-all” approach would ignore the dynamic and varied business environments in which companies operate, thereby reducing the flexibility and effectiveness of the system. Moreover, imposing an upper limit is unnecessary because the Company Law already contains a relatively complete system of director duties. If the board were to set an unreasonably long grace period to improperly shield a shareholder who is in default, this would constitute a breach of the duty of diligence under Article 180(2) of the Company Law, making the responsible directors liable. This liability framework provides an effective safeguard against abuse, eliminating the need for a legislative upper limit. The determination of whether a grace period is “reasonable” should not be reduced to a rigid formal standard but should instead be subject to substantive judicial review, taking into account factors such as company size and the nature of the capital contribution arrangement. In doing so, the courts should play an active role in assessing the motives and consequences of directors’ actions, thereby ensuring both the seriousness and fairness of the corporate capital regime.

Third, the mandatory contents of a call-up notice should be further clarified. The current provisions of the Company Law merely state that the notice “may” specify a grace period, a discretionary norm that does not impose clear, enforceable requirements. To ensure the procedural integrity and effectiveness of the call-up process, judicial interpretation should supplement the statutory provisions by requiring the following: (1) Specific Call-Up Amount — In practice, a shareholder may be in full default or only partially in default. The exact amount of unpaid capital should be verified by the board and expressly stated in the notice. Clearly specifying the amount helps define the shareholder’s performance obligations, provides clear guidance for compliance, and prevents unnecessary disputes. A notice that fails to specify the amount should be considered defective and ineffective. (2) Legal Consequences for Forfeiture Call-Ups — In the case of a forfeiture call-up, the notice must clearly state the legal consequence of failing to perform within the grace period, namely, the exact number of equity or shares the shareholder stands to lose. If a forfeiture call-up fails to specify this, it should be treated as a non-forfeiture call-up. In such cases, even if the shareholder remains in default after the grace period, the company may not exercise the forfeiture right without first reissuing a compliant forfeiture call-up. This requirement serves to protect the shareholder’s right to be fully informed, enabling them to assess the cost of default and take timely remedial action, while also enhancing transparency and legitimacy in corporate governance. (3) Channels for Objection — Since the determination of whether a shareholder is in default may involve both subjective and objective uncertainties, and given that the board’s verification may be flawed, shareholders should be provided with an institutional means of raising objections. Including this in the notice promotes procedural fairness and allows for a mechanism of appeal within corporate decision-making. A call-up notice that fails to specify a channel for objections should be considered defective and ineffective.

ISSN: 1813-4890

3. Regulating the Procedure for Exercising the Forfeiture Right

The procedure for exercising the forfeiture right is closely linked to the call-up procedure, forming the second critical stage in the operation of the shareholder forfeiture mechanism. The degree to which this procedure is standardized directly affects the effectiveness of the mechanism as a whole. To further improve the forfeiture procedure, two areas merit attention. First, from an interpretive perspective, it is necessary to provide a thorough normative justification for designating the board of directors as the sole body authorized to adopt forfeiture resolutions — explaining this choice in terms of professional decision-making capacity, efficiency within the governance structure, and procedural integration with the preceding call-up stage, so as to respond to possible theoretical challenges. Second, at the rule-design level, the form and content requirements of a valid forfeiture notice should be clarified and unified, specifying the factual basis and legal consequences that must be stated, so as to reduce the risk of procedural defects. Furthermore, within the framework of the Civil Code's rules on contract termination, the effective time of the forfeiture notice should be adjusted to ensure that the mechanism operates both in line with legal principles and in a manner that is practically workable.

3.1. The Justification for the Board of Directors' Forfeiture Resolution

Academic views on which corporate body should adopt a forfeiture resolution fall into three main categories: (1) The shareholders' meeting should decide [18]; (2) The board of directors should decide [19]; (3) Either the shareholders' meeting or the board of directors may decide, at the company's discretion [20]. Although Article 52 of the Company Law expressly provides that the board of directors shall be the decision-making body for shareholder forfeiture, it remains necessary to articulate the normative justifications underlying this legislative choice. Entrusting the forfeiture right to the board reflects the internal logic of the corporate governance structure, and its legitimacy can be demonstrated from the following perspectives.

First, the requirement of professional business judgment. Forfeiture decisions involve a comprehensive assessment of factors such as the company's capital structure, the shareholder's ability to perform, and the company's business strategy. Such decisions are inherently dependent on professional commercial evaluation. As the company's standing management body, composed of directors with relevant professional backgrounds and business experience, the board is naturally equipped to conduct such complex assessments. Moreover, directors are bound by statutory duties of loyalty and diligence, increasing the likelihood that their decisions will transcend short-term or partial interests and reflect professional neutrality. In contrast, the shareholders' meeting is institutionally designed to address strategic and policy-level matters — such as amending the articles of association or distributing profits — and is not structurally suited to detailed evaluations of operational matters such as capital contribution defaults. In addition, because shareholders' voting rights inherently involve self-interest [21], shareholders' meeting decisions are more susceptible to influence by the personal or majority interests of particular shareholders, making it harder to ensure that the company's overall interests are maximized.

Second, efficiency in decision-making. Forfeiture directly impacts the timely adequacy of company capital and the stability of corporate governance. Decisions in this area must be made swiftly; delays can lead to capital depletion, harm creditor interests and transactional security, and ultimately disrupt governance equilibrium. As a standing body, the board enjoys procedural flexibility and a faster convening and decision-making process. This enables it to initiate forfeiture proceedings promptly once the grace period following a call-up has expired, thereby removing "zombie equity" and avoiding prolonged capital uncertainty. By contrast, the shareholders' meeting meets less frequently, requires more elaborate procedural steps to convene, and, in the case of extraordinary meetings, often requires a high threshold of initiation — making rapid response difficult. Binding the forfeiture decision to the shareholders' meeting risks procedural delay and could cause the company to miss the optimal window for remedying capital deficiencies. Such delays also give defaulting shareholders more time to transfer assets or create obstacles, increasing both the time cost and the governance risks for the company.

Third, the logic of checks and balances in corporate governance. Assigning the forfeiture power to the board accords with the fundamental principle of separation between ownership and management in modern corporate governance, reinforces the board's decision-making authority over major operational matters, and exemplifies the institutional advantages of board-centrism. It should be emphasized that board-centrism and shareholder-centrism are not absolutely opposed to each other; instead, rights and responsibilities should be allocated based on the nature of the matter at hand. While the forfeiture of a shareholder's equity involves changes in the ownership structure and even the deprivation of membership rights, in essence it functions as an internal compliance mechanism for capital contribution obligations — a matter more closely aligned with the operational and managerial responsibilities of the board. In contrast, shareholder expulsion — which also removes a member from the company — is rooted in resolving interpersonal trust crises or conflicts of interest among shareholders, and is therefore rightly decided by the shareholders' meeting to reflect the principle of member autonomy. From a comparative perspective, the Company Law's approach of vesting the forfeiture right in the board aligns with a broader international trend toward strengthening the board's central role in governance; in Germany, Italy, the United States, and Switzerland, forfeiture resolutions are likewise adopted by the board [19].

Fourth, continuity between the call-up and forfeiture procedures. Articles 51 and 52 of the Company Law together establish a progressive chain of capital oversight: verification, call-up, and forfeiture. This design reflects the staged and internally coherent nature of capital supervision. Since the duties of verification and call-up already lie with the board, entrusting the forfeiture decision to the same body ensures unified control over all three stages, reducing information gaps, procedural friction, and coordination costs between different corporate organs. It also helps maintain consistency in timing, information handling, and application of standards, thereby enhancing both procedural coherence and governance efficiency. In contrast, if the forfeiture right were assigned to the shareholders' meeting, this oversight chain would be broken, increasing the risk of delays and inconsistent decision-making, and undermining the effectiveness of capital oversight.

Proponents of the view that the shareholders' meeting should adopt the forfeiture resolution argue that such a decision simultaneously terminates the contractual relationship between the company and the defaulting shareholder, as well as the contractual relationships between the defaulting shareholder and the other shareholders. Without a resolution of the shareholders' meeting, they contend, the forfeiture decision cannot reflect the will of the other shareholders, and thus would only terminate the company–shareholder relationship while leaving intact the contractual ties between the defaulting shareholder and the remaining shareholders [18]. However, this reasoning does not provide a substantive basis for vesting the forfeiture right in the shareholders' meeting. Admittedly, forfeiture is, in essence, a unilateral act by the company to terminate its contractual relationship with the defaulting shareholder based on the latter's breach. But the contractual arrangements among shareholders — typically arising from the articles of association, shareholder agreements, or other negotiated documents — need not be terminated through a shareholders' meeting resolution in order to reflect the will of the other shareholders. In the Civil Code era, the Civil Code provides the foundational concepts and principles for all of private law [22]. As such, "civil and commercial law issues should be approached with the systematic thinking of the Code." [23] Under the Civil Code's contract provisions, the other shareholders may, in the event of default, independently terminate their agreements with the defaulting shareholder on statutory grounds such as "frustration of the purpose of the contract," and may claim corresponding liability for breach. This process does not depend on a unified resolution of the shareholders' meeting. Thus, the board's forfeiture resolution does not preclude the termination of contractual relationships among shareholders. Nevertheless, this viewpoint offers an important insight: during the company's formation or the negotiation of shareholder agreements, the parties may stipulate in advance how contractual relationships among shareholders will be handled in the event of forfeiture. Such arrangements can reduce potential legal uncertainty, mitigate related legal risks, and enhance the predictability and standardization of corporate governance.

As for the view that companies should be free to choose — through their articles of association — whether the shareholders' meeting or the board decides on forfeiture, it should be noted that, even apart from the board's comparative advantages in expertise, procedural efficiency, and integration with the call-up process, the realities of corporate governance in China counsel against leaving this matter entirely to company autonomy. The majority of Chinese companies are small- and medium-sized enterprises whose governance structures remain underdeveloped. Their articles of association, often based on generic templates, rarely reflect tailored institutional design. In this context, leaving the matter to be determined by the articles would, in practice, likely result in the issue being pushed back to the legislature for resolution. Therefore, rather than relying on such discretionary arrangements, it is preferable for the law to directly and uniformly designate the board as the sole decision-making body for forfeiture, thereby strengthening the enforceability of the system and promoting its effective implementation.

3.2. Effectiveness of the Forfeiture Notice: Form, Content, and Correction under Contract Termination Theory

Regarding the form and content of the forfeiture notice, these may generally be aligned with those of the aforementioned call-up notice. In terms of form, the forfeiture notice may be issued either in paper form or as a data message. In terms of content, in addition to clearly stating the specific number of equity that the shareholder will lose, failure to specify such information renders the forfeiture notice defective, with no effect of depriving the shareholder of equity. In such cases, the company must reissue a proper forfeiture notice. Since Article 53(3) of the Company Law already clearly provides the remedy channels available to a forfeited shareholder, unlike the call-up notice, the forfeiture notice need not specify the means by which the shareholder may seek relief.

Article 52(1) of the Company Law adopts the dispatch rule for the effectiveness of a shareholder forfeiture notice, providing that "from the date the notice is issued, the shareholder shall lose the equity corresponding to the unpaid capital contribution." In other words, regardless of whether the shareholder has actually received the forfeiture notice, the forfeiture result will take effect. This provision is highly controversial and leaves room for further discussion.

3.2.1. The Adoption of the Dispatch Rule for the Effectiveness of the Forfeiture Notice Presents Interpretive Difficulties

Shareholder forfeiture is an application of the contract termination mechanism in the field of commercial law. However, the provision that a forfeiture notice becomes effective upon dispatch conflicts with Article 565 of the Civil Code, which adopts the receipt rule for the effectiveness of a termination notice. This naturally prompts the question: why does the Company Law adopt a legislative approach to the effectiveness of a shareholder forfeiture notice that differs from that of the Civil Code?

One explanation is that, in practice, it is often difficult to determine whether a notice has actually been received and, if so, the exact time of its receipt. To avoid the problem of "difficulty in service," the Company Law adopts the date of dispatch of the notice as the time it takes effect

[18]. This explanation is unconvincing. First, in today's highly digitalized environment, giving notice through data messages such as email or text messages has become the norm. Such methods not only ensure high delivery efficiency but also allow for traceable and verifiable records through technical means. In most cases, the "difficulty in service" problem is no longer a practical obstacle. For example, where notice is given by email, Article 137(2) of the Civil Code provides that once the forfeiture notice enters the mail server of the address designated by the shareholder, it is deemed to have "reached" the addressee and becomes effective, leaving no delivery obstacle. Second, even in rare cases where delivery is genuinely difficult, this problem is not unique to the Company Law. Numerous mechanisms under the Civil Code, including contract termination, face similar circumstances, yet the legislature has consistently adhered to the receipt rule, without uniformly replacing it with the dispatch rule merely because of delivery difficulties. To treat the shareholder forfeiture mechanism as an exception solely on this basis would lack systemic coherence.

Another explanation is that the dispatch rule is adopted because the obligation to contribute capital in accordance with the time stipulated in the articles of association is a fundamental duty of the shareholder toward the company; shareholders are themselves aware of the time point at which this obligation must be performed. Furthermore, the forfeiture procedure already requires the issuance of a call-up notice and provides a grace period, giving shareholders ample time to prepare [24]. This explanation is also open to further question. The assertions that, under the shareholder forfeiture mechanism, "shareholders are themselves aware of the time point at which the obligation must be performed" and "giving shareholders ample time to prepare" are not unique when compared with the ordinary contract termination mechanism. In ordinary contractual relationships, the obligor likewise has clear knowledge of the obligations to be performed and their deadlines; otherwise, the basic predictability and stability of contractual performance could not be maintained. As to preparation time for performance, Article 563(1)(3) of the Civil Code also grants the breaching party sufficient time. Therefore, to change the effectiveness rule for shareholder forfeiture notices — a special type of contract termination notice — from the receipt rule to the dispatch rule on the basis of "shareholders are themselves aware of the time point at which the obligation must be performed" and "giving shareholders ample time to prepare" is plainly difficult to reconcile with internal logic.

Another explanation holds that, because a shareholder's prolonged failure to fulfill the capital contribution obligation leaves the company's capital in a state of persistent deficiency—detrimental to both the company and its creditors—the receipt rule, by making forfeiture contingent on the shareholder's actual receipt of the notice, is unfavorable to ending such a state as early as possible; hence, the dispatch rule is considered more reasonable [25]. The problem with this reasoning is, first, as noted earlier, in today's highly digitalized environment, "difficulty in service" is no longer a widespread issue, and the time lag between the dispatch and the receipt of a notice is extremely short—virtually negligible—when using electronic means such as email. Relying on such a minuscule time difference to address capital insufficiency lacks substantive significance. Second, even in rare extreme cases where delivery is genuinely difficult, this is not a sufficient reason to reject the advantages of the receipt rule. The reason is that, under the dispatch rule, a company might proceed to transfer, cancel, or otherwise dispose of the relevant equity based on a forfeiture notice that has not yet actually been received by the shareholder. The shareholder might only receive the notice after the equity has already been disposed of. If, at that point, the shareholder brings an action challenging the forfeiture, the court might invalidate the company's disposal of the equity, thereby harming the company's reliance interests and undermining transactional security. The legal risks created in such circumstances far outweigh the time costs associated with awaiting the arrival of the notice under the receipt rule.

Beyond the inherent limitations of the three aforementioned explanations, the most significant drawback of replacing the receipt rule with the dispatch rule lies in the weakening of protections for the rights of the forfeited shareholder. Although a shareholder is clearly aware of the time point marking the end of the grace period, the expiry of that period does not, by itself, result in forfeiture; whether forfeiture occurs still depends on the board of directors adopting a further resolution. In other words, after the grace period expires, the shareholder's legal status remains uncertain, and whether they will lose their equity is not yet predictable. In this context, adopting the dispatch rule means that the shareholder will bear the legal consequences of forfeiture without having genuinely become aware of the change in their rights, thereby effectively lowering the threshold for informed consent to changes in rights and impairing the shareholder's procedural due process interests.

3.2.2. The Forfeiture Notice Should Adopt the Receipt Rule for Effectiveness

The foregoing explanations for adopting the dispatch rule for the effectiveness of a forfeiture notice are unconvincing. In fact, adopting the receipt rule is more consistent with rationality and systemic logic. From the perspective of both domestic and foreign legislative and judicial practice, the receipt rule occupies the dominant position. Under current Chinese law, Article 49(2) of the Partnership Enterprise Law of the People's Republic of China expressly provides that an expulsion decision takes effect from the date on which the expelled partner receives the expulsion notice. Although Article 17 of the Company Law Interpretation (III) does not expressly impose on companies a duty to notify shareholders of their expulsion, judicial practice generally applies the partner expulsion rule by analogy, requiring the company to issue an explicit notice to the shareholder and treating the time of receipt as the time when the expulsion takes effect [18]. Therefore, from the perspective of systemic coherence, the effectiveness rule for forfeiture notices should be aligned with these provisions, and the receipt rule should be adopted. In comparative law, the receipt rule likewise has a solid foundation and broad applicability. For example, German law expressly provides that a forfeiture notice takes legal effect from the time it reaches the shareholder who has failed to make the required capital contribution [26].

In sum, whether viewed from the theoretical difficulties and practical drawbacks arising from the dispatch rule, or from the perspective of coherence with existing legal frameworks, the forfeiture notice should adopt the receipt rule. On the one hand, receipt of the notice helps safeguard the shareholder's right to be informed and ensures procedural justice. On the other hand, the receipt rule aligns with the prevailing approach in most legal systems when dealing with significant changes to the rights of civil law subjects, and it helps ensure the stability and predictability of legal application. In addition, two further implications merit elaboration. First, under the receipt rule, if the shareholder pays the overdue capital contribution before the forfeiture notice has formally reached them, the notice will not produce legal effect [26]. Second, since the call-up notice and the forfeiture notice share similar legal nature and functional positioning, the drawbacks of adopting the dispatch rule for the forfeiture notice are essentially the same as those for the call-up notice. Accordingly, the effectiveness rule for the call-up notice should likewise be aligned with that for the forfeiture notice, adopting the receipt rule.

4. Conclusion

As a key innovation of the 2023 Company Law, the shareholder forfeiture mechanism's procedural design directly affects the effectiveness of the capital adequacy principle. By deconstructing the two procedural chains of calling for payment and exercising the forfeiture right, four layers of institutional logic can be discerned. First, the necessary exclusivity of the call-up authority. The designation of the board of directors as the sole qualified call-up body stems both from the natural extension of its duty to verify capital contributions and from the inherent requirement of the company's separate legal personality to distinguish between institutional acts and individual responsibilities. Second, the differentiation between forfeiture-related and non-forfeiture-related call-ups, together with the formal requirements of the call-up notice—such as its prescribed form and the specification of the exact amount to be called—collectively contribute to further standardizing the call-up notice. Third, the justification for the board of directors as the sole body responsible for adopting forfeiture resolutions. The forfeiture resolution mechanism of the board meets the requirements of professionalism and efficiency in decision-making, aligns with the checks-and-balances logic of corporate governance, ensures the procedural continuity between the call-up and forfeiture processes, achieves a balance between efficiency and fairness, and reflects both governance rationality and jurisprudential necessity. Fourth, the systematic adjustment of notice effectiveness rules. Both the call-up notice and the forfeiture notice should abandon the legislative oversight of adopting the dispatch rule and return to the receipt rule, thereby safeguarding shareholders' rights and bridging the gap between the special rules of commercial law and the general provisions of civil law. In short, only through the meticulous weaving of procedural justice can the shareholder forfeiture mechanism truly serve as a cornerstone of capital credit, ultimately achieving a tripartite balance among corporate interests, shareholder rights, and creditor protection.

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