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RESEARCH ARTICLE

The Methodology of the Integration of Civil and Commercial Law in the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Provisions of Book Three Contracts of the Civil Code of the People's Republic of China*

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Abstract

The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Provisions of Book Three Contracts of the Civil Code of the People's Republic of China (hereinafter the Interpretation on the General Provisions of Book Three Contracts of the Civil Code) contains a substantial number of commercial legal norms. These norms constitute an important component of the rule-of-law framework for the equal protection of market participants and reflect the technique for drafting judicial interpretations under the integration of civil and commercial law. The integration of civil and commercial law is a critical legal application methodology when resolving contract disputes pursuant to the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. One may critically examine, under the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the integration of civil and commercial law in the contexts of company-shareholder relationships, company-creditor relationships, and company-director/supervisor/senior executive relationships, as well as the integration of civil and commercial law among the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the Securities Law of the People's Republic of China (hereinafter the Securities Law), the Insurance Law of the People's Republic of China (hereinafter the Insurance Law) and the Enterprise Bankruptcy Law of the People's Republic of China (hereinafter the Enterprise Bankruptcy Law). Drawing on these civil-commercial intersectional examples, the methods of legal application under the integration of civil and commercial law can be specified as the referential application, analogical application, supplementary application, and reverse referential application of civil law norms in commercial relationships. Commercial law is not self-sufficient when it regulates commercial relationships, nor can civil law norms be applied to commercial relationships in an undifferentiated and all-encompassing manner.

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I Introduction of the Issues

The Civil Code of the People's Republic of China (hereinafter the Civil Code) adheres to a codification model based on the integration of civil and commercial law. "The development of China's civil legal system has consistently upheld the tradition of 'integration of civil and commercial law' by incorporating many commercial legal norms into civil law."[1] The Civil Code is the basic law of private law. It establishes the basic legal systems and rules of conduct in China's civil and commercial fields and provides the basic guidance for various civil and commercial activities.

The Interpretation on the General Provisions of Book Three Contracts of the Civil Code takes as its highest standard the accurate understanding and implementation of the legislative intent of the Civil Code. Guided by a systemic perspective and structural reasoning, it provides supporting, supplementary, and detailed rules for the provisions of the Civil Code in light of the practical needs of civil and commercial adjudication and enforcement. The Interpretation on the General Provisions of Book Three Contracts of the Civil Code respects the original legislative intent and contains extensive coordination between civil law norms and special commercial laws. It reflects both the technique for drafting judicial interpretations under the integration of civil and commercial law and the broad concept of contract law, which is closely interconnected and overlapping with commercial law.

China's civil and commercial laws do not establish special normative arrangements merely because one or both parties to a contract are commercial entities. They have not adopted the legislative technique of separating civil and commercial law; rather, the status of a party as a commercial entity is only one factor to be considered in the application of law to commercial conduct. Section 348 of the German Commercial Code provides, "Liquidated damages promised by a merchant in the operation of the merchant's commercial business may not be reduced by reason of the provisions of the [German] Civil Code." Some scholars have argued that "clauses in commercial contracts that exclude the adjustment of liquidated damages should not be categorically deemed invalid ... Where commercial entities agree, under foreseeable circumstances, to a relatively high amount of liquidated damages, such agreement should be respected and applied."[2] "Allowing enterprises or business operators

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[1] WANG Chen, 关于《中华人民共和国民法典（草案）》的说明——2020年5月22日在第十三届全国人民代表大会第三次会议上 (Explanation on the Civil Code of the People's Republic of China [Draft]: Delivered at the Third Session of the 13th National People's Congress on May 22, 2020), 12 中国人大 (*The People's Congress of China*), 13–20 (2020).

[2] LI Jianwei & LIN Shurong, 民法典合同编通则司法解释中的商事规范研究 (Study on Commercial Norms in the Judicial Interpretation on the General Provisions of Book Three Contracts of the Civil Code), 16 人民司法 (*People's Judicature*), 72–79 (2023).

acting as merchants to enjoy a so-called right to request adjustment on the ground that liquidated damages are excessive runs counter to established commercial norms."[3] "Where enterprises and professional business operators agree with their transaction counterparties on liquidated damages in the course of business operations, they may not, pursuant to Article 585(2) of the Civil Code, request a people's court or arbitral institution to adjust such liquidated damages on the ground that they are excessively high or excessively low, unless the amount of liquidated damages conflicts with mandatory provisions of laws or administrative regulations."[4] On the questions whether liquidated damages may be adjusted and whether legal adjustment may be excluded by agreement of the parties, Chinese law and judicial interpretations do not adopt a blanket approach that turns solely on merchant status. Instead, they set aside the formal identity of the merchant and focus on whether refusing to adjust liquidated damages would be manifestly unfair. Read together, Articles 64 and 65 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code reflect a result-oriented rather than formalist approach: Where the contracting parties agree that liquidated damages may not be adjusted, that agreement is not automatically recognized by law; if one party subsequently requests a people's court to adjust the liquidated damages and the constitutive elements for such adjustment are satisfied, the people's court should make the adjustment. Among the factors relevant to the discretionary reduction of liquidated damages, account must be taken of the contracting parties, the type of transaction, the performance status of the contract, the degree of fault of the parties, and the background against which performance occurred; the status of a party as a commercial entity is only one factor to be considered, not a determinative one. By contrast, when a party that has committed a malicious breach of contract seeks a reduction of liquidated damages, the people's court will generally not support the request. This, too, is not a formalist standard based on commercial entity status, but a conduct-based standard. Similarly, Article 32 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code does not uphold the validity of an agreement excluding in advance the application of the change-of-circumstances doctrine merely because the contracting parties are commercial entities; instead, it places greater weight on the nature and purpose of the conduct. Even where commercial entities agree in advance to exclude the application of the change-of-circumstances doctrine, such an agreement remains invalid. The proviso in Article 32(1) adopts a conduct-based standard similar to that in Article 65(3), under which the change-of-circumstances rule does not apply to transactions involving bulk commodities or risk-investment financial products.

Article 448 of the Civil Code establishes a special rule on lien for enterprises as commercial entities when they engage in bilateral commercial acts: Where a lien is exercised between

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[3] XU Qiangsheng, 我国合同法中民商合一的规范技术研究 (*Research on Normative Technology of Integration of Civil and Commercial Affairs in China's Contract Law*), 北京大学出版社 (Peking University Press), at 148 (2024).

[4] WANG Jianwen, 商法总论研究 (*Studies on Basic Theories of Commercial Law*), 中国人民大学出版社 (China Renmin University Press), at 129 (2021).

enterprises, the movable property retained under a lien and the claim need not arise from the same legal relationship. It is an exception to Article 447(1). Article 62(2) of the Interpretation of the Supreme People's Court on the Application of the Relevant Guarantee Regimes of the Civil Code of the People's Republic of China (hereinafter the Interpretation on the Guarantee Regimes of the Civil Code) further adopts a teleological restrictive interpretation on Article 448 of the Civil Code, limiting its scope of application to claims arising from bilateral commercial acts in the course of an enterprise's continuing operations. As a result, the grounds on which a claim protected by the lien under Article 448 of the Civil Code arises are subject to the dual limitations of bilateral commercial acts and the enterprise's continuing operations. Without this dual restriction, if only the special rule on liens between enterprises were established, Article 448 could contain a loophole—for example, it would be unable to exclude situations in which an enterprise's claim is created through the assignment of a claim. Article 62(2) of the Interpretation on the Guarantee Regimes of the Civil Code closes this loophole in a timely manner, thereby "preventing a creditor from maliciously transferring a claim to a person already in possession of the subject matter involved in the lien," or preventing "a creditor ... from acquiring a claim from a third party before obtaining possession, without the debtor's knowledge."[5]

Anglo-American contract law theory frequently employs the concept of a commercial contract or agreement. "The contracting parties to a commercial contract may be presumed to have intended to be legally bound."[6] The presumption that the contracting parties to a commercial contract intended to be legally bound is difficult to rebut. Any contracting party to a commercial contract who alleges the absence of an intention to create legal relations bears the burden of proving that allegation. One common mechanism by which commercial entities may avoid being legally bound is to include explicit language to that effect, such as stating that the contract is "binding in honour only."[7] In light of Chinese contract law theory, the legal binding force of commercial conduct should, in principle, be recognized. Letters of intent or memoranda as provided in Article 6(2) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code constitute an exception. However, on the question whether a particular expression of intent manifests an intention to be legally bound, legislation and judicial interpretations have not adopted a formalistic criterion based on the status of the commercial entity, but have instead attached greater weight to the content of the expression of intent. "The key to determining whether the agreement between the parties constitutes a preliminary contract or a non-legally binding expression of transactional intent lies in whether the terms of the parties' agreement are sufficiently

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[5] Claus-Wilhelm Canaris, *Die Feststellung von Lücken im Gesetz: Eine Methodologische Studie über Voraussetzungen und Grenzen der Richterlichen Rechtsfortbildung Praeter Legem* (*The Determination of Legal Loopholes: A Methodological Study of the Preconditions and Limits of Judicial Lawmaking beyond the Statute*), 2nd ed., translated by YANG Xu, 北京大学出版社 (Peking University Press), at 76 (2023).

[6] Richard Stone & James Devenney, *Text, Cases and Materials on Contract Law*, 5th ed., Routledge, at 149 (2022).

[7] Stone & Devenney, fn. 6 at 151.

specific and definite. This is because a preliminary contract must satisfy the elements for the formation of a contract."[8] In the progression from an expression of transactional intent, to a preliminary contract, and ultimately to the definitive contract, the parties gradually relinquish their initiative as the transaction advances. The extent to which such initiative has been relinquished depends on the content of the expression of intent; it should not be assumed that a party is automatically deprived of the opportunity for further consideration merely because the transacting party is a commercial entity.

The integration of civil and commercial law is an important legislative technique and a method for drafting judicial interpretations. It is a shared method of legal application and mode of reasoning when we resolve contractual disputes under the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. From the perspective of application of law, it is possible to critically examine the integration of civil and commercial law under the Interpretation on the General Provisions of Book Three Contracts of the Civil Code in the relationship between the company and shareholders, the relationship between the company and creditors, and the relationship between the company and directors, supervisors, and senior management officers, as well as the integration of civil and commercial law among the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the Securities Law, the Insurance Law, and the Enterprise Bankruptcy Law. On the basis of these civil-commercial intersectional examples, the methods of legal application under the integration of civil and commercial law can be specified as the referential application, analogical application, supplementary application, and reverse referential application of civil law norms in commercial relationships.

II The Integration of Civil and Commercial Law in the Relationship between the Company and Shareholders: The Regulation of Non-Contractual Obligations by the Interpretation on the General Provisions of Book Three Contracts of the Civil Code

The introductory notes to the Interpretation on the General Provisions of Book Three Contracts of the Civil Code expressly state that this Interpretation governs "cases involving disputes over creditor-debtor relationships not arising from contracts." The Company Law of the People's Republic of China (hereinafter the Company Law) contains numerous non-contractual obligations, and their methods of legal application require the integration of civil and commercial law. In the relationship between a company and its shareholders, shareholders owe the company an obligation to make capital contributions, while the company owes shareholders an obligation to distribute profits. Regardless of whether these

[8] Second Civil Division of the Supreme People's Court & Research Office of the Supreme People's Court (eds.), 最高人民法院民法典合同编通则司法解释理解与适用 (*Understanding and Application of the Supreme People's Court Judicial Interpretation on the General Provisions of Book Three Contracts of the Civil Code*), 人民法院出版社 (People's Court Press), at 99 (2023).

obligations are characterized as contractual or non-contractual in nature, under the method of integrating civil and commercial law, it is possible to apply both Book Three Contracts of the Civil Code and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code.

A Application of Law to Shareholders' Obligation to Make Capital Contributions

Shareholders owe the company a capital contribution obligation, thereby giving rise to an obligation to make capital contributions between the shareholders and the company. This corresponds to "disputes over capital contribution by shareholders" among the causes of action concerning companies. Article 49(1) and (3) of the Company Law provide, respectively: "Shareholders shall make their respective capital contributions subscribed for in the articles of association on time and in full amount." "If a shareholder fails to make its capital contributions on time and in full amount, it shall, apart from making the capital contributions in full to the company, be liable for compensation for the losses it causes to the company." The company's claim for payment of capital contribution arising from the investment relationship is not subject to any limitation period. In principle, a limited liability company shall make the distribution of profits in proportion to the capital contributions actually paid by its shareholders, unless all shareholders have agreed that profits will not be distributed in proportion to their capital contributions.

The shareholders' obligation to make capital contributions may arise either from a promoters' agreement or from the company's articles of association. Whether the shareholders' obligation to make capital contributions arises from a promoters' agreement or from the company's articles of association, the beneficiary is the company. A promoters' agreement is a contract entered into among the promoters. It constitutes a genuine third-party beneficiary contract under Article 522(2) of the Civil Code, and the company may, on the basis of the promoters' agreement, request that the shareholders perform their capital contribution obligation. Similarly, where the obligation to make capital contributions is triggered by the company's articles of association, the company is entitled to request, on the basis of the articles of association, that the shareholders perform their capital contribution obligation. Shareholders do not, as against one another, enjoy a defense of simultaneous performance based on the making of capital contributions.

The shareholders' obligation to make capital contributions arising from a promoters' agreement is a contractual obligation. Under Article 646 of the Civil Code, the relevant provisions on sales contracts may be applied by referential application, and the relevant provisions of the General Provisions of Book Three Contracts of the Civil Code may be applied by supplementary application. The shareholders' obligation to make capital contributions arising from the company's articles of association is a non-contractual obligation. Under Article 468 of the Civil Code, the relevant provisions of the General Provisions of Book Three Contracts may be applied by referential application.

With respect to the shareholders' obligation to make capital contributions arising from a promoters' agreement, shareholders do not enjoy, as against one another, the defense of simultaneous performance or the right of set-off; the legal nature of shareholders' liability for compensation for harm caused by defective capital contribution is default liability. The third sentence of Article 49(3) of the Company Law provides that, where a shareholder violates the capital contribution obligation, the shareholder shall bear liability for compensation to the company for harm caused by the capital contribution violation. "Where a shareholder fails to make capital contributions in full and on time, the shareholder violates the statutory capital contribution obligation and must bear default liability to the company."[9] With respect to Article 49(3) of the Company Law, "after the company has been established, the counterparty to whom a shareholder performs the capital contribution obligation is the company; Article 49(3) provides for the liability that a shareholder who fails to make capital contributions on time and thereby violates the capital contribution obligation shall bear to the company."[10] The former Company Law designated "shareholders who have made capital contributions in full and on time" as the holders of the right to claim liability for breach of capital contribution obligations by shareholders, whereas the third sentence of Article 49(3) of the revised Company Law changes the claimant to the company and deletes the provision regarding a shareholder's liability to other shareholders for breach of contract. LIU Bin contends that although Article 49(3) of the Company Law deletes the default liability that a shareholder in violation of the capital contribution obligation owes to shareholders who have made capital contributions in full and on time, "this does not mean that such liability need not be borne; rather, liability for breach of capital contribution obligations is contractual liability, not liability under organizational law, and the relevant rules of Book Three Contracts of the Civil Code may simply be applied."[11] "Liability for breach of capital contribution obligations is liability arising from a breach of the capital contribution agreement among shareholders. The Civil Code has already provided comprehensive rules on default liability, and the Company Law, as organizational law, should not and need not make further special provisions."[12] It is submitted that, in a genuine third-party beneficiary contract, the debtor's default liability must be owed either to the creditor or to the third party, but not to both; otherwise, the debtor would be made to bear duplicative liability. A comparison between Article 49 of the Company Law and Article 28 of the former Company Law, applying the method of historical interpretation, shows that

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[9] WANG Xiang (ed.), 公司法释义 (*Commentary on the Company Law*), 中国法制出版社 (China Legal Publishing House), at 75 (2024).

[10] Second Civil Division of the Supreme People's Court (ed.), 中华人民共和国公司法理解与适用 (*Understanding and Application of the Company Law of the People's Republic of China*), Vol. 1, 人民法院出版社 (People's Court Press), at 217 (2024).

[11] LIU Bin (ed.), 新公司法注释全书 (*The Annotation of Company Law of the People's Republic of China*), 中国法制出版社 (China Legal Publishing House), at 235 (2024).

[12] ZHAO Xudong (ed.), 新公司法条文释解 (*Interpretation on the Provisions of the Company Law of the People's Republic of China*), 法律出版社 (Law Press · China), at 124 (2024).

the company has the right to require the shareholder to bear liability for breach of capital contribution obligations, while the other shareholders have no right to claim such default liability. Of course, where the shareholders have made a special agreement on liability for breach of capital contribution obligations, claims may be asserted in accordance with that agreement. A shareholder who has failed to make capital contributions in full and on time and then makes full payment to the company is a specific manifestation of continued performance as a form of default liability.

With respect to the shareholders' obligation to make capital contributions arising from a promoters' agreement, a breaching shareholder must assume liability to the company for damages resulting from breach of contract. In such circumstances, the standards for calculating expected benefits, including production profits and operating profits, as set forth in Articles 60 through 63 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, may be applied. With respect to a shareholder's liability for damages for breach of contract owed to the company in connection with the capital contribution obligation, WANG Xiang argues, "The losses include not only the interest losses caused to the company by the failure to make capital contributions in full and on time, but also the losses arising from the company's demands for payment and forfeiture of rights with respect to the equity for which capital contributions were not made in full and on time."[13] The obligation to make capital contributions by shareholders is, in essence, a non-gratuitous contract. Through the referential application of Article 18(3) of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Disputes over Sales Contracts (hereinafter the Interpretation on Sales Contracts), where a shareholder fails to make capital contributions in full and on time, the shareholder must compensate the company for the interest losses thereby caused. This view takes account of compensation for actual losses in the damages regime for breach of the capital contribution obligation. However, it is not appropriate to confine compensation for expected benefits to interest losses, because doing so fails to address the coordination of application with the rules on compensation for expected benefits in cases of breach of contract under Articles 60 to 63 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code.

Where a shareholder breaches its capital contribution obligation, the interested persons include not only the company and other shareholders but also the company's creditors. A creditor of the company may, pursuant to Article 13(2) of 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 Provisions III of the Company Law), request that a shareholder who has failed to make its capital contribution "bear supplementary liability for compensation, within the scope of the principal and interest of the unpaid capital contribution,

[13] WANG, fn. 9 at 75–76.

for the portion of the company debts that cannot be satisfied,"[14] which constitutes a statutory exception to the company's independent liability. Under Article 17 of the Provisions of the Supreme People's Court on Several Issues Concerning the Modification and Addition of Parties in Civil Enforcement, a company's creditor, as the applicant for enforcement, may directly apply to add a shareholder who made a defective capital contribution as a person subject to enforcement.

Where a shareholder breaches its obligation to pay its capital contribution, the company has no right to claim revocation or rescission of the promoters' agreement or the articles of association. Instead, the company may resort to the demand-for-payment and forfeiture-of-rights regime under Article 52 of the Company Law, an arrangement that aligns with the rights allocation in a genuine third-party beneficiary contract. Under Article 29 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the third party under a genuine third-party beneficiary contract has no right to request the exercise of the right to revocation or the right to rescission.

B Application of Law to the Company's Obligation to Distribute Profits

A company's obligation to distribute profits may arise between the company and its shareholders on the basis of a shareholders' meeting resolution on the distribution of profits. Article 212 of the Company Law provides, "If the shareholders' meeting resolves to distribute profits, the board of directors shall do so within six months after the resolution is made." A company's obligation to distribute profits is not a contractual obligation. Rather, it arises from a resolution on the distribution of profits and constitutes another form of consensual obligation outside contractual obligations; it therefore falls within non-contractual obligations.

On the basis of a shareholders' meeting resolution on the distribution of profits, the shareholder acquires a claim to the distribution of profits. That claim is independent of, and distinct from, the equity; it does not stand in an accessory-principal relationship with the equity and is not transferred together with the transfer of equity. When an equity is transferred, the abstract right to request the distribution of profits is transferred along with it.[15]

As a non-contractual obligation, a company's obligation to distribute profits is governed by Book Three Contracts of the Civil Code and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. After the shareholders' meeting adopts a resolution

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[14] 中国长城资产管理公司乌鲁木齐办事处与新疆华电工贸有限责任公司、新疆华电红雁池发电有限责任公司、新疆华电苇湖梁发电有限责任公司等借款合同纠纷案 (Urumqi Office of China Great Wall Asset Management Co., Ltd. v. Xinjiang Huadian Industry and Trade Co., Ltd., Xinjiang Huadian Hongyanchi Power Generation Co., Ltd., Xinjiang Huadian Weihuliang Power Generation Co., Ltd., and Others, Loan Contract Dispute), 2 最高人民法院公报 (*Gazette of the Supreme People's Court of the People's Republic of China*), 30–37 (2009).

[15] 甘肃乾金达矿业开发集团有限公司与万城商务东升庙有限责任公司盈余分配纠纷案 (Gansu Qianjinda Mining Development Group Co., Ltd. v. Wancheng Business Dongshengmiao Co., Ltd., Surplus Distribution Dispute), 1 最高人民法院公报 (*Gazette of the Supreme People's Court of the People's Republic of China*), 27–35 (2023).

on the distribution of profits, the abstract right to claim profit distribution is converted into a concrete right to claim profit distribution. If the board of directors fails to make the distribution within six months from the date on which the shareholders' meeting resolution is adopted, the dispute falls under the "dispute over distribution of corporate surplus" cause of action among company-related disputes, and the company shall bear default liability to the shareholder. "If the company subsequently refuses to distribute dividends, the shareholder may, under the guidance of Article 468 of the Civil Code, make referential application of the chapter on default liability in Book Three Contracts, thereby using the contractual liability regime of Book Three Contracts to supply the baseline rules for the application of law to obligations arising from resolution-based acts and to fill the loophole in the Company Law."[16]

Default liability in relation to a company's obligation to distribute profits includes continuing to distribute profits to the shareholder, together with compensation to the shareholder for losses arising from delayed payment of the monetary obligation. Article 66 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code (Draft for Comments) once provided for the calculation of losses arising from breach of contract in monetary obligations. That provision was not retained in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, thereby impeding the referential application of Book Three Contracts and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code to the losses arising from delayed payment suffered by shareholders as a result of delayed performance of a company's obligation to distribute profits.

With respect to the losses arising from delayed payment suffered by shareholders as a result of delayed performance of a company's obligation to distribute profits, Article 646 of the Civil Code permits application by reference of the relevant provisions on sales contracts—namely, Article 18(4) of the Interpretation on Sales Contracts, which sets out the standard for calculating losses arising from delayed payment in sales contracts.

Both the shareholders' capital contribution obligation and the company's profit distribution obligation are monetary, but the standards for calculating losses arising from delayed payment in the two contexts cannot simply be equated. A company may use the corporate capital formed by capital contribution by shareholders for production and business operations. Accordingly, the losses caused to the company by a shareholder's breach of the obligation to make a capital contribution are not equivalent to interest losses. Instead, Article 60(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code should be applied by reference, and the losses should be calculated on the basis of the production profits, operating profits, and similar gains that the company would have been able to obtain. Where the company is unable to discharge its burden of proof with respect to losses of production profits or operating profits, Article 18(4) of the Interpretation on Sales Contracts

[16] WANG Lei, 非合同之债对合同之债有关规定的参照适用 (Referential Application of Contractual Obligation Provisions to Non-Contractual Obligations), 4 当代法学 (*Contemporary Law Review*), 57–69 (2023).

should be applied by reference as a fallback, using the one-year Loan Prime Rate (LPR) plus 30 to 50 percent as the standard for calculating losses arising from delayed payment.

III The Integration of Civil and Commercial Law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code in the Relationship between the Company and Creditors

Article 1 of the Company Law identifies "protecting the legitimate rights and interests of companies, shareholders, employees, and creditors" as one of the legislative purposes of this law. The Company Law takes the protection of corporate interests as its point of departure while addressing the protection of creditors. The Company Law is both organizational law and law of conduct, whereas the Contract Law is law of conduct. Accordingly, there is substantial interconnection and overlap between the Company Law and the Contract Law with respect to the protection of creditors of the company.

When a company is a debtor, although its shareholders are protected by the limited liability regime, shareholders and capital contributors remain interested persons with respect to the company's external repayment of its obligations. Under Article 30 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, where the debtor is a legal person or an unincorporated organization, its capital contributors or incorporators qualify as third parties with a lawful interest in the performance of the obligation; accordingly, under Article 524 of the Civil Code, such capital contributors or incorporators are entitled to perform on the debtor's behalf vis-à-vis the creditor. Shareholders entitled to perform on the debtor's behalf are not limited to those who have subscribed for capital contributions whose contribution deadline has not yet arrived; shareholders who have already fulfilled their capital contribution obligations enjoy such a right of performance on the debtor's behalf.

A Protection of Creditors of the Company Under the System for Acceleration of Shareholder Capital Contributions

Outside bankruptcy or dissolution, the system for acceleration of shareholder capital contributions indirectly protects the claims of creditors of the company by increasing the company's assets available to satisfy liabilities, thereby addressing the deficiencies of the subscribed registered capital system. Article 54 of the Company Law provides for the system for acceleration of shareholders' capital contribution obligations outside bankruptcy or dissolution: "Where a company is unable to pay off the due debts, the company or the creditors of the due credits may request the shareholders who have subscribed for the capital contributions but whose time limit for capital contributions has not expired to make capital contributions in advance." For the element under Article 54 that "a company is unable to pay off the due debts," it is preferable to adopt the view that the company has, in fact, ceased payment to its creditors, rather than the view that the company is insolvent or the view that the

company's assets remain insufficient to satisfy the obligation after compulsory enforcement. "If Article 54 of the Company Law were applicable only where the company is insolvent or where satisfaction remains impossible after compulsory enforcement, the resulting overlap of legal mechanisms would be likely to deprive the non-bankruptcy acceleration system of its institutional advantages in reducing creditors' enforcement costs and facilitating remedies … Article 54 of the New Company Law and Article 35 of the Enterprise Bankruptcy Law should apply, respectively, in non-bankruptcy and bankruptcy contexts, thereby avoiding duplication and redundancy between the two regimes."[17]

The parties entitled to seek acceleration of shareholders' capital contribution obligations include the company or a creditor whose claim has become due. "Where a creditor of the company seeks acceleration of shareholders' capital contribution obligations, the nature of that act is the exercise of the creditor's subrogation right. The effect of exercising the subrogation right is, however, a central issue of the subrogation regime."[18] With respect to the system for acceleration of shareholder capital contributions, Article 54 of the Company Law does not adopt the approach reflected in Article 6 of the Minutes of the National Courts' Civil and Commercial Trial Work Conference, which is based on the creditor's subrogation right and the shareholder's supplementary liability for compensation. Instead, it adheres to the rule requiring payment into the company. WANG Xiang argues that "a creditor whose claim has become due is entitled, by subrogation, to request that the shareholder make a capital contribution to the company; this does not mean that the shareholder is to make payment directly to the creditor."[19] As to the system for acceleration of shareholder capital contributions, "the consequence of its application is that the shareholder makes early payment of capital contribution, and the capital contribution so paid in advance is subject to the rule requiring payment into the company."[20] It bears emphasis that the legislation adheres to the principle of privity of obligations. The system for acceleration of shareholder capital contributions adopts the rule requiring payment into the company, rather than a rule of direct satisfaction through the subrogation right. Accordingly, whether it is the company or a creditor whose claim has become due that brings a claim against a shareholder who has subscribed for capital contribution but whose contribution period has not yet expired, seeking early payment of capital contribution, the entity entitled to receive the shareholder's early payment of capital contribution is in all cases the company.

After the acceleration of shareholders' capital contribution obligations, the shareholder must immediately perform the obligation to make capital contributions; if the shareholder fails to do so, the company may request that the shareholder assume default liability arising from the obligation to make capital contributions. It is inappropriate to expand the

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[17] ZHAO Xudong (ed.), 新公司法适用与最高人民法院公布案例解读 (*Application of the New Company Law and Commentary on Cases Released by the Supreme People's Court*), 法律出版社 (Law Press・China), at 186 (2024).

[18] Second Civil Division of the Supreme People's Court, fn. 10 at 257.

[19] WANG, fn. 9 at 82.

[20] ZHAO, fn. 12 at 137.

interpretation of "shareholders who have failed to perform or have not fully performed their capital contribution obligation" in Article 13(2) of Provisions III of the Company Law to include shareholders whose capital contribution obligations have been accelerated under Article 54 of the Company Law where the company is unable to pay its due obligations.[21] Otherwise, a contradiction would arise in the assessment of legal consequences: Under the former provision, a creditor of the company is entitled to require the relevant shareholder to assume "supplementary liability for compensation"; under the latter provision, a shareholder whose obligation has been accelerated is required only to make an "early payment of capital contribution" to the company.

The system for acceleration of shareholder capital contributions under Article 54 of the Company Law provides insufficient institutional incentives for creditors of the company; under the existing legal framework, creditors may rationally choose to free ride. Similarly, an action to exercise the right to revocation under contract preservation does not have the legal effect of enabling the holder of the right to revocation to obtain direct satisfaction; nor is a subrogation right superimposed on an action based on the creditor's right to revocation. Some commentary observes that, where the acceleration of shareholder capital contribution adopts the rule requiring payment into the company applicable to the subrogation right, "the creditor may apply for preservation of that property and thereafter assert against the company a claim for repayment of debts, thereby protecting its own interests."[22] I submit that the approach whereby a company's creditor first applies for preservation measures against the company's assets and subsequently demands satisfaction of the debt from the company is insufficient to secure the creditor's individual realization of its own claim. To provide creditors of the company with stronger institutional incentives, it is possible, as a matter of doctrinal interpretation and in accordance with the methodology of the integration of civil and commercial law, to apply by analogy the compulsory enforcement mechanism under Article 46 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. Under Article 46 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, in litigation involving the creditor's right to revocation, the path by which the creditor's claim is realized is not the combined exercise of the subrogation right and the right to revocation, but rather litigation for revocation followed by enforcement

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[21] Some courts have construed shareholders whose capital contribution obligations are subject to acceleration under Article 54 of the Company Law as falling within the purview of "shareholders who have failed to perform or have not fully performed their capital contribution obligation" as provided under Article 13(2) of Judicial Provisions III of the Company Law, and have accordingly required them to bear supplementary liability for the company's debts. This approach departs from the rule requiring payment into the company as the legal consequence prescribed by Article 54 of the Company Law and, in substance, grants the creditor of the company a subrogation right. See CAO Qiaoqiao, 西城法院审结首例适用新公司法加速到期规则案件 (*Xicheng District Primary People's Court Concluded First Case Involving the Application of the Rule on the Accelerated Maturity of Shareholders' Capital Contribution Obligations Under the Revised Company Law*), available from the WeChat official account of the Primary People's Court of Xicheng District of Beijing Municipality.

[22] Second Civil Division of the Supreme People's Court, fn. 10 at 258.

proceedings; it indicates that, in such litigation, the creditor may take preservation measures against the counterparty's property, so as to align with the concept of strengthening source-oriented governance of enforcement.[23] Once the proper method is adopted, the more diligent creditor is placed in a more favorable position. A creditor of the company may first obtain an effective legal instrument in an action for performance against the company, and then bring an action for performance seeking acceleration of shareholder capital contribution and obtain an effective legal instrument in that action. The creditor may, in the same action for performance concerning acceleration of the due date of capital contribution obligations, assert its claim against the company; where the matter falls within the jurisdiction of the people's court seized, the people's court may consolidate the proceedings. The creditor may then apply for compulsory enforcement on the basis of the two effective legal instruments, and the people's court may take compulsory enforcement measures against the rights held by the company against the shareholder, thereby realizing the creditor's claim. In an action for acceleration of shareholders' capital contribution obligations, the creditor may apply for preservation measures against the shareholder's property up to the amount of its own claim, and may secure priority in satisfaction by being the first to obtain a preservation attachment.

B Creditor Protection in Corporate Capital Reduction

Where a shareholder acts in a manner that departs from the corporate capital regime, such conduct constitutes a "breach of contract" against the creditor, and the creditor may then pursue the shareholder directly for liability. The principle of truthful capital contribution and the principle of capital maintenance constitute the "consideration" for shareholders' entitlement to limited liability.[24] A company's reduction of its registered capital affects the company's liability property and hinders the realization of creditors' claims. Under the methodology of integration of civil and commercial law, when a company undertakes a corporate capital reduction, its creditors are entitled to exercise the right to revocation under contract preservation regime in Article 538 of the Civil Code. A corporate capital reduction must comply with statutory procedures: preparing a balance sheet and an inventory of assets, adopting a capital reduction resolution at the shareholders' meeting, notifying creditors and making a public announcement, and completing registration of the capital reduction. Article 224(2) of the Company Law provides for a creditor protection mechanism in the context of corporate capital reduction.

A resolution on capital reduction adopted by a company's shareholders' meeting affects the realization of creditors' claims. In light of the principle of preserving commercial transactions and due respect for the company's managerial autonomy, Article 224 of the Company Law

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[23] Second Civil Division of the Supreme People's Court & Research Office of the Supreme People's Court, fn. 8 at 508–510.

[24] XU Defeng, 论公司债权人的体系保护 (Protection of Corporate Creditors: A Systematic Approach), 2 中国人民大学学报 (*Journal of Renmin University of China*), 24–33 (2017).

does not confer on creditors a right of action for revocation in the context of corporate capital reduction, nor does it resort to the protective method of supplementary application of Contract Law. Instead, it accords preferential application to the protective method of corporate organizational law, pursuant to which creditors "have the right to require the company to make repayment of debts or provide corresponding security." This arrangement for balancing interests can adequately protect creditors' claims and better aligns with the principle of proportionality. A creditor's "right to require the company to make repayment of debts" in substance entails acceleration of the due date of company debts. In the context of corporate capital reduction, the acceleration of the due date of company debts, or the requirement that the company provide corresponding security for the obligations it has assumed, constitutes a protective method under organizational law that can secure repayment of an individual creditor's claim or strengthen its protection. Its effect is superior to an action based on the right to revocation under the protective method of Contract Law, because the consequence of exercising that right is, as provided in Article 46 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, merely to return the liability property to the pool of assets available for satisfaction, which cannot efficiently achieve individual repayment in a single proceeding.

Where, in a corporate capital reduction, a creditor requires the company to make repayment of debts or provide corresponding security, but the company neither notifies the creditor nor makes repayment or provides security and instead proceeds directly with an unlawful capital reduction, what legal consequences follow? This situation falls under the cause of action for "disputes over shareholder liability for impairing the interests of creditors of the company" among disputes relating to companies. Is the unlawful capital reduction invalid, or is the resolution on capital reduction invalid? Article 226 of the Company Law does not expressly address this question. "A defective capital reduction impairs the rights and interests of creditors who reasonably relied on the registered capital existing before the corporate capital reduction; it does not impair the lawful rights and interests of all creditors, and therefore does not necessarily render the capital reduction invalid."[25] Where an unlawful capital reduction produces the consequence of a shareholder's withdrawal of capital contribution, the creditor may request the company to bear default liability and, by analogical application of Article 14 of Provisions III of the Company Law, may request the shareholder to bear supplementary liability for compensation, within the scope of the benefit obtained from the unlawful capital reduction, for the portion of the company debts that cannot be satisfied.

Similarly, in the case of a company merger, the creditor may require the company to make repayment of debts or provide corresponding security. The phrase "requiring the company to make repayment of debts" in Article 220 of the Company Law should be interpreted in

[25] LI Zhigang (ed.), 民商审判前沿：争议、法理与实务——"民商法沙龙"微信群讨论实录 (*Frontiers of Civil and Commercial Adjudication: Controversies, Jurisprudential Principles, and Practice—Transcript of WeChat Group Discussions of the "Civil and Commercial Law Salon"*), Vol. 4, 人民法院出版社 (People's Court Press), at 188 (2023).

the same way as Article 224(2): In substance, both provisions bring about acceleration of the due date of company debts. Article 67(1) of the Civil Code provides for the succession to the rights and obligations of a legal person after merger. With respect to the assumption of obligations, it is framed largely from the perspective of the debtor and lacks a perspective focused on the protection of the creditor's claim. By contrast, Article 220 of the Company Law, applying the methodological approach of integration of civil and commercial law, adopts a rule favorable to creditors.

C The Counterparty's Duty of Reasonable Review in *Ultra Vires* Guarantee Contracts Executed by the Legal Representative of the Company

An *ultra vires* guarantee contract executed by the legal representative of the company is a typical commercial contract within the meaning of Article 15 of the Company Law, and such guarantee contracts have marked collective and organizational characteristics. The core value judgment in the application of law to an *ultra vires* guarantee contract is whether the contract can have effect against the company. The Supreme People's Court previously took the view that Article 16 of the former Company Law, which corresponds to Article 15 of the revised Company Law, was a mandatory rule of an administrative nature, and that a violation of that provision should not lead to a finding that the guarantee contract is invalid.[26]

Under the logic of the integration of civil and commercial law, the premise for determining to whom the validity of the contract should be attributed in an *ultra vires* guarantee contract concluded by the legal representative of the company is to analyze, pursuant to Article 15 of the Company Law, the allocation of authority and the mechanism for exercising the company's power to provide security. This inquiry bears the collective and organizational features of internal corporate governance and therefore involves a value judgment under commercial law. Whether the effects of an *ultra vires* guarantee contract concluded by the legal representative of the company can be attributed to the company bears directly on the interests of the counterparty (the creditor under the guarantee contract) and must ultimately be resolved under the regime governing the validity of contracts concluded by representatives acting beyond their authority in Article 504 of the Civil Code; it therefore involves a value judgment under civil law. The validity of an *ultra vires* guarantee contract concluded by the legal representative of the company must be analyzed through the method of integration of civil and commercial law. Only when Article 15 of the Company Law and Article 504 of the Civil Code are read together can they provide a complete adjudicative norm for such cases.

In determining the validity of an *ultra vires* guarantee contract concluded by a company's legal representative, the interpretive force of a method of legal application that accords

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[26] 招商银行股份有限公司大连东港支行与大连振邦氟涂料股份有限公司、大连振邦集团有限公司借款合同纠纷案 (China Merchants Bank Co., Ltd. Dalian Donggang Sub-Branch v. Dalian Zebon Fluorocoating Co., Ltd. and Dalian Zebon Group Co., Ltd., Loan Contract Dispute), 2 最高人民法院公报 (*Gazette of the Supreme People's Court of the People's Republic of China*), 30–38 (2015).

preferential application to special commercial law and supplementary application to general civil law is inadequate. Article 15 of the Company Law and Article 504 of the Civil Code do not stand in a sequential relationship of preferential application and supplementary application; rather, they must operate in coordination. Before Article 15 of the Company Law and Article 504 of the Civil Code are applied, there is even less room for the supplementary application of the general provisions in Article 61 of the Civil Code.

Article 504 of the Civil Code is the foundational norm for determining the validity of an *ultra vires* guarantee contract concluded by the legal representative of the company. Where the counterparty (the creditor under the guarantee contract) neither knows nor ought to know that the legal representative has exceeded its authority, apparent representation is established, and the *ultra vires* guarantee contract becomes effective against the company. Where the counterparty neither knows nor ought to know that the legal representative has exceeded its authority, the counterparty is in good faith. The standard for determining whether the counterparty is in good faith may be further specified as whether the counterparty has fulfilled the duty of reasonable review.

Article 20 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code and Article 15 of the Company Law together constitute ancillary norms for determining the validity of an *ultra vires* guarantee contract concluded by the legal representative of the company. With respect to whether the counterparty has fulfilled the duty of reasonable review, Article 61(3) of the Civil Code provides that internal restrictions imposed by a legal person's articles of association or by its organ of authority on the authority of representation of its legal representative may not be asserted against a counterparty in good faith. It does not expressly provide whether restrictions imposed by laws or administrative regulations on the authority of representation of the legal representative may be asserted against the counterparty, or whether a conclusion on this issue may be drawn by negative implication from Article 61(3). The legislative authorities' commentary on the Civil Code offers no explanation on this point.[27] "Negative implication ordinarily excludes the existence of a loophole."[28] As to the attribution of effects where a legal representative engages in civil activities beyond the statutory restrictions on the authority of representation, does Article 61 of the Civil Code contain a legal loophole? Some scholars answer in the negative: "For acts that exceed statutory restrictions, the legal person, as a matter of principle, does not bear the effects of the act, unless the third party can prove that it acted in good faith. This conclusion may be reached through natural interpretation and is self-evident."[29] In practice, whether the legal consequences of civil activities conducted by a legal representative in

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[27] HUANG Wei (ed.), 中华人民共和国民法典总则编释义 (*Commentary on Book One General Part of the Civil Code of the People's Republic of China*), 法律出版社 (Law Press · China), at 152–154 (2020).

[28] Canaris, fn. 5 at 32.

[29] Supreme People's Court Leading Group for Implementation of the Civil Code (ed.), 中华人民共和国民法典总则编理解与适用 (*Understanding and Application of the Book One General Part of the Civil Code of the People's Republic of China*), Vol. 1, 人民法院出版社 (People's Court Press), at 325 (2020).

the name of a legal person are to be borne by the legal person depends, on the one hand, on whether the legal representative's authority of representation is subject to statutory restrictions, and, on the other hand, on whether the counterparty acted in good faith; both conditions are indispensable. Where a legal representative, in excess of statutory restrictions on the authority of representation, conducts civil activities in the name of a legal person, the legal consequences likewise cannot be precluded from being borne by the legal person if the counterparty has fulfilled its duty of reasonable review. A negative implication should not be drawn from Article 61(3) of the Civil Code; such an inference is permissible only where the constitutive elements are necessary conditions for a specific legal effect to arise.[30]

Article 61(2) of the Civil Code should be subject to a teleological restrictive interpretation, as it admits of exceptional circumstances. Restrictions imposed by laws or administrative regulations on the authority of representation of a legal representative may be asserted against the counterparty. Unless the counterparty can prove that it has discharged its duty of reasonable review, the act should be characterized as *ultra vires* representation. The teleological restrictive interpretation should be applied to Article 504 of the Civil Code. In exceptional circumstances, a contract concluded through *ultra vires* representation cannot qualify as an apparent representation contract. The exceptional circumstance contemplated by that Article is that the represented party bears the burden of proof to establish that the counterparty acted maliciously, and this applies only to matters involving consensual restrictions on the authority of representation under Article 20(2) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. Where the content of the contract involves matters subject to statutory restriction on the authority of representation under Article 20(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the counterparty must bear the burden of proof to establish that it has discharged its duty of reasonable review before the contract may qualify as an apparent representation contract. "In circumstances involving a breach of statutory duties, the counterparty should bear the burden of proof to establish that it has discharged its duty of reasonable review." [31]

A company's provision of security for another person is not a matter that its legal representative may decide independently. A company's provision of security to external parties under Article 15 of the Company Law falls within the matters subject to statutory restrictions on the authority of representation under Article 20(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. The counterparty must discharge its duty of reasonable review with respect to the allocation of authority over security required by Article 15 of the Company Law, as well as the resolution on security

[30] Canaris, fn. 5 at 33.

[31] WANG Liming, 论越权代表中相对人的合理审查义务——以《合同编解释》第20条为中心 (On the Counterparty's Duty of Reasonable Review in *Ultra Vires* Representation: Centered on Article 20 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code), 1 中外法学 (*Peking University Law Journal*), 84–105 (2024).

that complies with the decision-making procedures and mechanisms prescribed by that Article. Only then may an *ultra vires* guarantee contract constitute apparent representation. The counterparty's duty of reasonable review differs from a duty of formal review. When the legal representative provides security to external parties in the company's name, the counterparty must, pursuant to Article 15(1) of the Company Law, review how the company's articles of association allocate the authority to provide security; examine whether the articles of association impose limits on the aggregate amount of security or on the amount of any individual security; and determine whether the corporate organ vested with decision-making authority over the security has adopted a resolution approving the provision of security. Article 15(1) of the Company Law does not require the counterparty to review the legality or validity of the company's resolution on security. Under Article 28(2) of that Law, where a company's resolution on security is declared void, rescinded, or determined not to have been formed by a people's court, the legal relationship under the guarantee contract formed between the company and a counterparty in good faith on the basis of that resolution shall not be affected.

IV The Integration of Civil and Commercial Law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code in the Relationship between the Company and Directors, Supervisors, and Senior Management Officers

From the perspective of the Company Law, where a company appoints a director, pursuant to its articles of association and a shareholders' meeting resolution, to exercise statutory powers, and the director accepts the appointment and carries out the mandated matters in accordance with law, a mandate relationship is formed between the company and the director; viewed as a bilateral juridical act, this relationship is, in substance, an entrustment contract relationship. Employment contracts exist in commercial law. The mandate relationship between a company and a director does not preclude the existence of an employment contract relationship; accordingly, where specific conditions are satisfied, the relationship between them may simultaneously constitute an employment contract relationship under labor law.[32] The integration of civil and commercial law in the relationship between the company and directors, supervisors, and senior management officers is specifically reflected in the coordination of application among Book Three Contracts of the Civil Code, the Labor Law of the People's Republic of China, the Labor Contract Law of the People's Republic of China (hereinafter the Labor Contract Law), and the Company Law.

[32] Civil Retrial Judgment (ZGFMZ [2020] No. 50) of the Supreme People's Court in the Labor Dispute Case between SUN Qixiang and Jilin Midas Light Alloy Co., Ltd.

A Director's Removal

The law imposes no limitation on the specific grounds for removing a director from office by shareholders' meeting resolution. In substance, the no-cause removal of a director constitutes an analogical application of the regime of the right to rescission at will in entrustment contracts. The relationship between a director and the company is one of agency or mandate, and is founded on mutual trust and confidence. Where a directorship is terminated without cause, as long as the company's resolution removing the director is valid, there is no need to examine the specific grounds for the termination; nor does the matter depend on whether an employment contract or an appointment contract exists between the director and the company. This, in effect, is an analogical application of the rule on the right to rescission at will in entrustment contracts under Article 933 of the Civil Code. Article 3 of Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China (V) (hereinafter Provisions V of the Company Law) expressly provides for the resolution-based removal of a directorship without cause and the corresponding departure compensation.

Article 71 of the Company Law provides for the resolution-based removal of a directorship without cause and the corresponding compensation for removal: "The shareholders' meeting may adopt a resolution to remove a director, and the removal shall become effective on the day when the resolution is made." "Where a director is removed prior to the expiration of the term of office without just cause, the director may require the company to make compensation." A resolution removing a director from office without cause gives rise, between the company and the director, to the "creditor-debtor relationships not arising from contracts" referred to in the introductory notes to the Interpretation on the General Provisions of Book Three Contracts of the Civil Code.

When a company removes a director from office before the expiration of the term of office without just cause, it must assume liability for damages for breach of contract. How should the scope of compensation be determined? Article 71 of the Company Law does not specify this issue. The Supreme People's Court's commentary takes the view that "this liability for compensation differs from default liability; its scope is limited to direct losses and does not include expected benefits."[33] I argue that, in this context, Article 933 of the Civil Code may be given supplementary application, thereby recognizing the compensability of the expected benefits.

Where a company, without just cause, removes a director before the expiration of the director's term and thereby incurs liability for breach-of-contract damages, how should the specific standard for determining the expected benefits be established? Article 933 of the Civil Code does not set out detailed rules on the scope of the expected benefits. In such circumstances, Article 3(2) of Provisions V of the Company Law may be applied: "Where, after a director is removed from directorship, the director brings an action against the

[33] Second Civil Division of the Supreme People's Court, fn. 10 at 330.

company over a dispute concerning compensation, the people's court shall, in accordance with laws, administrative regulations, the articles of association, or contractual agreements, and taking into account such factors as the reason for the removal, the remaining term of office, and the director's remuneration, determine whether compensation should be granted and the reasonable amount of such compensation." Article 3(2) of Provisions V of the Company Law employs a dynamic-system method to determine the amount of loss suffered by the director; in substance, it concerns the remuneration corresponding to the reasonable period for seeking a substitute transaction under Article 61 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. Both the no-cause removal of directors and the director's claim for damages for breach of contract following such no-cause removal necessarily depend on the methodology of integration of civil and commercial law.

Where a director is removed from office during the term of office, Article 71(2) of the Company Law addresses compensation under an entrustment contract. If an employment contract exists between the director and the company, and both the director and the company are unable to reach an agreement on modifying the terms of that employment contract, the director may receive economic compensation under Article 40(3) of the Labor Contract Law. These two remedies may operate in parallel and do not conflict with each other.

B Director's Resignation

In the case of no-cause removal of a director, a shareholders' meeting resolution removing a director from office takes effect on the date the resolution is adopted. In the case of voluntary resignation, the resignation takes effect on the date the company receives the director's written notice of resignation. Article 70 of the Company Law provides detailed rules on governing a director's resignation.

A director's resignation differs from a director's removal in the following respects. First, the decision-making actor is different: A director's removal is effected by a shareholders' meeting resolution, whereas a director's resignation is decided autonomously by the director. Second, the time at which the legal effect arises is different: In the case of a director's removal, the removal takes effect on the date on which the removal resolution is adopted; in the case of a director's resignation, the resignation takes effect on the date on which the company receives the director's written notice of resignation. Third, the possibility that a director may be required to continue to perform duties is different. In the case of a director's removal, there is no possibility of the director's continued performance of duties, and no post-contractual obligation arises. By contrast, in the case of a director's resignation, if a director resigns during the term of office and thereby causes the number of board members to fall below the statutory minimum, the former director shall, before the newly elected director assumes office, continue to perform the duties of the directorship

in accordance with laws, administrative regulations, and the company's articles of association; this constitutes a post-contractual obligation. Fourth, the existence of liability for compensation for breach of contract differs. Where a director is removed from office without just cause before the expiration of the term of office, the company must bear liability to the director for damages arising from breach of contract. By contrast, where a director's resignation during the term of office causes the number of board members to fall below the statutory minimum, the former director need only continue to perform the duties of the directorship in accordance with the law, administrative regulations, and the company's articles of association before the newly elected director assumes office; no issue arises as to liability for damages owed to the company for breach of contract.

Where a director, after the expiration of the term of office or resignation, must continue the performance of duties before a new director is elected, this is, in essence, a post-contractual obligation of the director. The element under Article 70(2) of the Company Law that a director continues to perform duties constitutes the concretization of the post-contractual obligation under Article 558 of the Civil Code within the director system, ensuring that the director's performance of duties is properly carried through to completion. Because a director's continued performance of duties is a statutory post-contractual obligation, how should remuneration for such continued performance of duties be calculated? The provision on property management fees for a property management service provider's post-contractual obligation in the latter part of Article 950 of the Civil Code may be applied by analogy: "... the original property management service provider shall continue to provide property management services, and may request the owners to pay the property management fee during this period." The remuneration for a director's continued performance of duties should be determined by reference to the remuneration standard applicable during the director's term of office.

On the basis of the entrustment contract between the director and the company, the director has a right of rescission at will. The jurisprudential principle underlying the director's resignation right is the director's right of rescission at will, which helps address the difficulty directors may face in resigning. Where a director's resignation during the term of office causes the number of board members to fall below the statutory minimum, this should not preclude the director from exercising the resignation right. The proper method of balancing the relevant interests is that, after the former director's resignation and before the newly elected director assumes office, the former director must still continue to perform duties. At this point, a "creditor-debtor relationship not arising from contract," as referred to in the official comments to the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, arises between the company and the former director. Article 70(2) of the Company Law, which addresses a "director's resignation during the term of office," concerns a unilateral juridical act, whereas Article 70(3), under which "the director shall continue to perform duties," concerns a "creditor-debtor relationship not arising from contract."

V Integration of Civil and Commercial Law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code and the Securities Law, Insurance Law, and Enterprise Bankruptcy Law

The Interpretation on the General Provisions of Book Three Contracts of the Civil Code intersects and overlaps with the Securities Law, the Insurance Law, the Enterprise Bankruptcy Law, and their corresponding judicial interpretations, giving rise to issues concerning the coordination of application. These issues should be analyzed through the methodology of integration of civil and commercial law.

A Civil Compensation Liability for Securities Misrepresentation

Third-party liability in contract formation and civil compensation liability for securities misrepresentation stand in a general-to-special relationship in terms of application.

Under Article 5 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, fraud or duress committed by a third party during contract formation is distinct from that committed by a third party at the stage of contract performance: The latter may amount to a breach of contract, whereas the former falls within the scope of *culpa in contrahendo*. Where a third party commits fraud or duress during contract formation and thereby causes losses to the contracting parties, liability is governed by the fault-based principle of attribution and gives rise to third-party liability for *culpa in contrahendo*. Where both the third party and the contractual counterparty are at fault, but their conduct does not amount to joint fault, they must bear several liability in proportion to their respective share of fault and causal contribution attributable to each. Where both the third party and the contractual counterparty are at fault, and their conduct amounts to joint fault, they must bear joint and several liability for compensation.

A third party's fraudulent conduct gives rise to liability for *culpa in contrahendo* only where that third party is subject to a statutory or contractual duty. The contracting parties' reliance on that third party derives from such statutory or contractual duty. Unless the advice or recommendation given by a third party is based on contractual conduct, tortious conduct, or other legal provisions, the third party bears no liability for compensation for damage arising from the acceptance of that advice or recommendation. Absent a statutory or contractual duty, advice or recommendations given by a third party constitute only acts of social courtesy.

Under Article 18 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Civil Compensation Cases Arising from Misrepresentation Torts in the Securities Market, where documents prepared or issued by securities service providers, such as accounting firms, law firms, credit rating agencies, asset appraisal institutions, and financial advisers, contain misrepresentations, and the securities service provider is at fault, the securities service provider shall bear liability within the scope of its work and professional field. The liability of securities service providers and independent directors is

governed by the principle that liability should correspond to the duty of care, the capacity for diligence, and the degree of fault, so that rights, obligations and liabilities are properly aligned. Proportional joint and several liability departs from the blanket approach to determining the liability of securities service providers under Articles 85 and 163 of the Securities Law, better accords with the jurisprudential principle that "fault and liability should correspond," and, in terms of its outcome, constitutes an adjudicative approach consistent with "substantive fairness." Proportional joint and several liability differs from joint and several liability, under which liability is owed in full to external claimants but is divisible internally; it differs from non-genuine joint and several liability, under which liability is owed in full externally, with internal recourse available thereafter. Proportional joint and several liability originated from Article 3(3) of FS [2015] No. 12, Interpretation of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Disputes over Liability for Environmental Torts (corresponding to Article 7(1) of FS [2023] No. 5, Interpretation of the Supreme People's Court of Several Issues concerning the Application of Law in the Trial of Cases Involving Disputes over Liability for Ecological and Environmental Torts); it represents an analogical application of that provision, and the external "proportion" in proportional joint and several liability is not a direct allocation of internal fault.

Drawing on the logic of proportional joint and several liability, the Interpretation (I) of the Supreme People's Court on the Application of Book Seven Tort Liability of the Civil Code of the People's Republic of China further specifies the "corresponding liability" under Articles 1189, 1169, 1191(2), and 1193 of the Civil Code, as well as Article 16(2) of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents, as proportional joint and several liability under Article 10(1), Article 12(1), Article 16(1), Article 18(2), and Article 21(1), respectively, thereby creating a new form of tort liability involving multiple actors.

B The Insurer's Duty to Call Attention and Duty to Explain

Standard clauses constitute a special method of contract formation. Whether a contract may be formed using standard clauses depends on whether the party supplying those standard clauses has fulfilled its duty to call attention and its duty to explain; these duties are directed at the unusual clauses contained in the standard clauses. Where an insurance contract is concluded by using standard clauses supplied by the insurer, issues arise regarding the coordinated application of the Civil Code and the Insurance Law with respect to the duty to call attention and the duty to explain.

Where the Insurance Law is inconsistent with the Civil Code and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code regarding the scope of clauses subject to the duty to call attention and the duty to explain, the method of

integration of civil and commercial law requires that the Civil Code and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code prevail. Article 17 of the Insurance Law adopts an enumerative approach, requiring the insurer to perform the duty to call attention and the duty to explain with respect to standard clauses that exempt the insurer from liability. Article 496(2) of the Civil Code adopts an illustrative approach, requiring the party supplying standard clauses to perform the duty to call attention and the duty to explain with respect to exemption clauses, liability-reduction clauses, and other clauses concerning the other party's major interests and concerns. Article 10(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code further extends the object of the duty to call attention and the duty to explain to "unusual clauses that exempt or reduce the liability of the party furnishing the standard clauses, exclude or limit the rights of the other party, or otherwise bear major interests and concerns for the other party."

Whether the party supplying standard clauses has fulfilled its duty to call attention and the duty to explain is to be determined by substantive, rather than formal, criteria. Yet Article 12 of Interpretation II of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law of the People's Republic of China adopts formal criteria for this determination.[34] Article 10(3) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code places greater emphasis on the effect of calling attention and providing explanations, rather than on the specific form in which such attention is called or such explanations are provided.[35] Even where the party supplying standard clauses calls attention to and explains unusual clauses that have a material bearing on the other party's interests through means such as webpages, this does not necessarily mean that it has fulfilled its duty to call attention and duty to explain. Nor may it assert that those duties have been fulfilled merely because it adopted mechanisms such as checkboxes or pop-up windows. What matters more is whether the method used to call attention satisfies the element in Article 10(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code that it be "ordinarily sufficient to call the other party's attention," and whether the method of explanation satisfies the element in Article 10(2) that the explanation be one that the other party "can ordinarily understand."

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[34] Article 12 of Interpretation II of the Insurance Law provides, "Where an insurance contract is concluded through the Internet, telephone, or other means, and the insurer calls attention to and provides clear explanations of clauses exempting the insurer from liability by means of webpages, audio recordings, videos, or other forms, the people's court may determine that the insurer has performed its duty to call attention and duty to explain clearly."

[35] Article 10(3) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code provides, "The party furnishing the standard clauses shall have the burden of proving that it has performed its duty to call attention or its duty to explain. In the case of an electronic contract entered into on the Internet or any other information network, if the party furnishing the standard clauses claims to have performed its duty to call attention or its duty to explain only on the grounds of using a checkbox, a pop-up window, or any other means, the people's court shall not uphold the claim unless the party furnishing the standard clauses adduces evidence of compliance with the provisions of the preceding two paragraphs."

C The Right to Revocation under Contract Preservation and the Bankruptcy Avoidance Right

The purpose of the right to revocation under contract preservation is to correct the debtor's fraudulent act of improperly reducing liability property, thereby securing the realization of the creditor's claim; the purpose of the bankruptcy avoidance right is to rectify individual repayment (preferential repayment) or fraudulent acts committed by the insolvent debtor and ensure equitable repayment to all creditors. Once the proper method is adopted, the more diligent creditor is placed in a more favorable position. By linking the holder of the right to revocation under contract preservation to the compulsory enforcement procedure under Article 46(3) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, the objective of individual repayment can be achieved, thereby giving effect to the principle of encouraging competition on a first-come, first-served basis. In bankruptcy and participation-in-distribution proceedings, creditors receive repayment on an equal basis. "Unlike the bankruptcy avoidance right, which emphasizes the collective benefit of all creditors, the creditor's right to revocation should place greater emphasis on the private interest of a specific creditor; this coheres with the scope within which the creditor's right to revocation may be exercised."[36]

The right to revocation under contract preservation and the bankruptcy avoidance right involve interconnection and overlap as well as coordination of application, and therefore require analysis through the methodology of the integration of civil and commercial law. "Only a very small part of the legal institutions of commercial law differs from civil law. In the main, they address the same issues; it is merely that, under commercial law, those issues may receive different solutions."[37] Article 31 of the Enterprise Bankruptcy Law provides for the bankruptcy avoidance right, whose object is individual repayment in the substantive sense involving the debtor's property, and whose holder is the bankruptcy administrator. The bankruptcy avoidance right under Article 31 of the Enterprise Bankruptcy Law maintains systemic coherence with the rule on the invalidity of individual repayment under Article 16 of the Enterprise Bankruptcy Law.

The bankruptcy avoidance right does not preclude the right to revocation under contract preservation; the two remedial mechanisms under commercial law and civil law may operate in coordination. The bankruptcy avoidance right is exercised by the bankruptcy administrator, whereas the right to revocation under contract preservation is exercised by the creditor. After the commencement of bankruptcy proceedings, the exercise of the bankruptcy avoidance right takes priority. If the bankruptcy administrator exercises the right to revocation, there is no need for the creditors of the bankrupt enterprise to further

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[36] ZHU Hu, 债权人撤销权的法律效果 (The Legal Effects of the Creditor's Right to Revocation), 6 法学评论 (*Law Review*), 85–96 (2023).

[37] Philipp Heck, Weshalb Besteht ein von dem Bürgerlichen Rechte Gesondertes Handelsprivatrecht? (Why Is There a Commercial Private Law Separate from Civil Law?), translated by WU Xunxiang, in ZHU Xiaozhe (ed.), 中外法商评论 (*SUFE Law and Business Review*), Vol. 1, 上海财经大学出版社 (Shanghai University of Finance and Economics Press), at 283 (2021).

exercise the right to revocation under contract preservation; if the bankruptcy administrator does not exercise the right to revocation, the creditors of the bankrupt enterprise may make a supplementary application of Article 538 and Article 539 of the Civil Code, and the scope of the right to revocation so exercised is not limited to the creditors' claim. Article 13(1) of the Provisions (II) of the Supreme People's Court on Several Issues concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (hereinafter the Provisions II of the Enterprise Bankruptcy Law) provides for the coordination of application between the bankruptcy avoidance right and the right to revocation under contract preservation.[38] Article 13(1) of the Provisions II of the Enterprise Bankruptcy Law does not address whether, within one year before the court accepts the petition for bankruptcy, where the debtor provides property security for an obligation that was not secured by property or makes early repayment of an obligation not yet due, the creditor may make a supplementary application or an analogical application of the right to revocation under contract preservation. The answer should be negative, because the regulatory purpose of Items (3) and (4) of Article 31 of the Enterprise Bankruptcy Law is to prevent individual repayment. Where the debtor provides the creditor with property security for an obligation that was not secured by property, or makes early repayment of an obligation not yet due, such conduct is generally beneficial to the creditor; accordingly, the creditor has no need to exercise the right to revocation. Where the debtor provides other creditors with property security for obligations that were not secured by property, or makes early repayment of obligations not yet due, such conduct falls within the contractual freedom of the contracting parties. If the bankruptcy administrator has not exercised the bankruptcy avoidance right under Article 31 of the Enterprise Bankruptcy Law, the creditor has no right to intervene. The right to revocation under contract preservation and the bankruptcy avoidance right are both statutory rights; their circumstances of application, constitutive elements, and legal effects must therefore be strictly construed.

Where commercial law norms are insufficient, there is room for the supplementary application of civil law norms. Within one year before the people's court accepts a petition for bankruptcy, where an act involving the debtor's property consists of "early repayment of an obligation not yet due," the bankruptcy administrator has the right to request the people's court to rescind the act, so as to correct individual repayment. Where the debtor maliciously extends the time for performance of its matured claim, how should the matter be addressed? The legislation provides no express rule; accordingly, Article 538 of the Civil Code may be applied on a supplementary basis, and the creditor may exercise the right to revocation.

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[38] Article 13(1) of the Provisions II of the Enterprise Bankruptcy Law provides, "After a petition for bankruptcy has been accepted, where the administrator has not, pursuant to Article 31 of the Enterprise Bankruptcy Law, requested rescission of the debtor's acts of gratuitously transferring property, engaging in transactions at manifestly unreasonable prices, or waiving claims, and a creditor brings an action under Articles 538 and 539 of the Civil Code, among other provisions, requesting rescission of the debtor's foregoing acts and the inclusion of the property thereby recovered into the debtor's property, the people's court shall accept the action."

Within one year before the court accepts a bankruptcy petition, where an act involving the debtor's property consists of "providing property security for an obligation that was not secured by property," the bankruptcy administrator has the right to request the people's court to rescind the act, thereby avoiding individual repayment. Item (3) of Article 31 of the Enterprise Bankruptcy Law addresses the debtor's provision of security for its own obligation. However, where, within one year before the court accepts a bankruptcy petition, an act involving the debtor's property consists of providing property security for another person's obligation that was not secured by property, does the administrator have the right to request the people's court to rescind the act? Article 31 of the Enterprise Bankruptcy Law does not expressly address this situation. In this regard, Article 539 of the Civil Code may be applied on a supplementary basis, and the creditor may exercise the right to revocation. Of course, the issue may be resolved through an a fortiori interpretation of Item (3) of Article 31 of the Enterprise Bankruptcy Law: If the debtor is not permitted to provide security for its own obligation in such circumstances, as this constitutes a preferential act, then providing property security for another person's obligation that was not secured by property, which constitutes a fraudulent act, should all the more be prohibited by law. However, the right to revocation under Article 539 of the Civil Code belongs only to the creditor, not to the bankruptcy administrator.

Advanced commercial law norms may guide the improvement of civil law norms. "Commercial law evolves more rapidly than civil law ... Commercial law is a testing ground in which various new technologies may be examined before being extended more broadly."[39] "Commercial law is the vanguard of legal progress ... Any reform in civil law that keeps pace with the times will inevitably lead to the reunification of civil and commercial law ... Reforms that are generally to be expected are always first implemented in the field of commercial law ... The substantive separation of civil and commercial law is threatened by the developmental trend mentioned above, namely the generalization of specific commercial law rules and the expansion of their scope of application."[40] One category of conduct subject to the bankruptcy avoidance right—"conducting transactions at an obviously unreasonable price"—is more comprehensive: It constrains both distress sales, that is, transfers at an obviously unreasonable low price, and excessive purchases, that is, acquisitions by transfer at an obviously unreasonable high price. Drawing on the approach adopted in Item (2) of Article 31 of the Enterprise Bankruptcy Law, Article 539 of the Civil Code extends the objects against which the creditor's right to revocation may be exercised to circumstances "Where a debtor transfers his property at an obviously unreasonable low price, takes other persons' property or provides security for other persons' obligation at an obviously unreasonable high price, and the enforcement of the creditor's claim is thus adversely

[39] Yves Guyon, *Droit des Affaires* (*French Commercial Law*), translated by LUO Jiezhen & ZHAO Haifeng, 法律出版社 (Law Press · China), at 11 (2004).

[40] Heck, fn. 37 at 286–287, 293–294.

affected." Article 74 of the former Contract Law provided only for the debtor's transfer of property at an obviously unreasonable low price, without addressing the debtor's taking another's property at an obviously unreasonable high price; it was therefore not sufficiently comprehensive.

In sum, regarding the interconnection and overlap between the right to revocation under contract preservation and the bankruptcy avoidance right, the relationship between the Civil Code and the Enterprise Bankruptcy Law defies reduction to a simple general-law-special-law dichotomy. While the integration of civil and commercial law is an important legislative technique and method of legal application, the specific methods of legal application are not singular and are not confined to the preferential application of special law and the supplementary application of general law. Similarly, Article 43 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code gives a purposive and expansive interpretation to the phrase "transfer his property at an obviously unreasonable low price or take another's property at an obviously unreasonable high price" in Article 539 of the Civil Code. As a result, the objects to which the right to revocation may apply are not limited to sales contracts in which the debtor sells at a low price or buys at a high price, but also extend to other transactions at manifestly unreasonable prices that substantially reduce the assets available for satisfying liabilities, including the exchange of property, satisfaction of obligations with property, leasing or renting of property, and licensing of intellectual property. This approach substantively draws on Item (2) of Article 31 of the Enterprise Bankruptcy Law and again illustrates how advanced commercial law norms can guide the refinement of civil law norms. Article 539 of the Civil Code adopts a normative drafting technique based on enumerated provisions, whereas Article 43 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code adopts a normative drafting technique based on illustrative provisions. As a result, the application of the right to revocation focuses more on whether the act is carried out at an obviously unreasonable price than on the specific form of the act, leaving room for further interpretation under the ejusdem generis principle. Conversely, Article 42 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, which sets forth rules on "obviously unreasonable" prices, may serve as the criteria for determination under Item (2) of Article 31 of the Enterprise Bankruptcy Law, which refers to "conducting transactions at an obviously unreasonable price." Through the analogical application of Article 10 of the Interpretation I on the Book Two Real Rights of the Civil Code, conducting a transaction at an obviously unreasonable price may result in the transfer of benefits and, in substance, reduce the debtor's assets available to satisfy claims. Conducting a transaction with an obviously unreasonable method of price performance, or with an obviously unreasonable period for price performance, may likewise produce the same or similar consequences. It is therefore necessary to adopt a purposive expansive interpretation of "at an obviously unreasonable price" in Item (2) of Article 31 of the Enterprise Bankruptcy Law and Article 43 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, so as to

close the legal loopholes involving transactions carried out with an obviously unreasonable method of price performance, an obviously unreasonable period for price performance, and similar arrangements. "With respect to acts for value, both the creditor's right to revocation and the bankruptcy avoidance right should be extended to 'transactions on unreasonable terms.'" [41]

VI Conclusion

China's Civil Code adopts a legislative model based on the integration of civil and commercial law. Such integration functions as a legislative technique, a technique for drafting judicial interpretations, and an important method for the application of civil and commercial law. There is extensive interconnection and overlap between civil law norms and special commercial law in civil and commercial legislation, including the Civil Code, the Company Law, the Securities Law, the Insurance Law, the Enterprise Bankruptcy Law, and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. Whether in coordinating the relationship between the company and shareholders, the relationship between the company and creditors, and the relationship between the company and directors, supervisors, and senior management officers, or in coordinating the application of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code with the Securities Law, the Insurance Law, and the Enterprise Bankruptcy Law, the methods of legal application under the integration of civil and commercial law are not confined to the preferential application of special commercial law and the supplementary application of general civil law.

From the perspective of the application of law, the methodology of the integration of civil and commercial law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code can be specified as the referential application, analogical application, supplementary application, and reverse referential application of civil law norms in commercial relationships. For example, with respect to the obligation to make capital contributions by shareholders and the company's obligation to distribute profits, Book Three Contracts of the Civil Code and the Interpretation on the General Provisions of Book Three Contracts of the Civil Code may be applied by reference, in addition to the preferential application of the Company Law. Commercial law is not self-sufficient when it regulates commercial relationships, nor may civil law norms be applied to commercial relationships in an undifferentiated and all-encompassing manner. For a detailed categorized typological collation, see Table 1.

[41] ZHU Hu, 债权人撤销权和破产撤销权的同频共振 (Synergy between the Creditor's Right to Revocation and Bankruptcy Avoidance), 1 清华法学 (*Tsinghua University Law Journal*), 43–61 (2024).

Table 1 Specification and Typology of the Methodology of the Integration of Civil and Commercial Law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code

Specific Type of Examples of the Integration of Civil and Commercial Law	Method of Legal Application Under the Integration of Civil and Commercial Law
Shareholders' Obligation to Make Capital Contributions	Determining a shareholder's liability for compensation for breaching the obligation to make capital contributions through the referential application of Article 60(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, on the basis of Article 522(2), Article 468, and Article 646 of the Civil Code
Company's Obligation to Distribute Profits	Determining a company's liability for damages for breach of contract for violating its obligation to distribute profits through the referential application of Article 18(4) of the Interpretation on Sales Contracts, on the basis of Article 468 of the Civil Code
System for Acceleration of Shareholder Capital Contributions	Analogical application of the compulsory enforcement rules under Article 46 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code
Corporate Capital Reduction	Creditors may not rely on the supplementary application of protective mechanisms under the Contract Law, such as the rescission action for contract preservation; instead, creditors are subject to the preferential application of organizational law mechanisms, such as acceleration of the due date of claims under Articles 224 and 226 of the Company Law.
Ultra Vires Guarantee Contract Concluded by the Legal Representative of the Company	Article 15 of the Company Law and Article 20 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code together constitute ancillary rules for determining whether the counterparty has fulfilled its duty of reasonable review, while Article 504 of the Civil Code serves as the foundational rule for determining the validity of such contract in such cases.
Director's Removal	Determining Liability for Compensation for Director's Removal Pursuant to Article 71 of the Company Law and Article 933 of the Civil Code, with Supplementary Application of Article 3 of Provisions V of the Company Law and Article 61 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code
Director's Resignation	Determining the Remuneration for a Director's Continued Performance of Duties After Resignation Pursuant to Article 70 of the Company Law and Article 558 of the Civil Code, with Analogical Application of Article 950 of the Civil Code
Civil Compensation Liability for Securities Misrepresentation	Preferential Application of Article 18 of the Interpretation on Tort Liability for Misrepresentation, Supplementary Application of Article 5 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code, and Analogical Application of Article 7(1) of the Interpretation on Liability for Ecological and Environmental Torts

(*To be continued*)

(*Continued*)

Specific Type of Examples of the Integration of Civil and Commercial Law	Method of Legal Application Under the Integration of Civil and Commercial Law
The Insurer's Duty to Call Attention and Duty to Explain	Where the old and new provisions are inconsistent, the new provisions are subject to preferential application: Article 496(2) of the Civil Code and Article 10(1) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code prevail over Article 17 of the Insurance Law; Article 10(3) of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code prevails over Article 12 of the Interpretation II of the Insurance Law.
The Right to Revocation Under Contract Preservation and the Bankruptcy Avoidance Right	Under Article 13 of the Interpretation II of the Enterprise Bankruptcy Law, Articles 538–539 of the Civil Code are subject to supplementary application; Item (2) of Article 31 of the Enterprise Bankruptcy Law and Article 42 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code are applied concurrently; and Article 10 of the Interpretation I on the Book Two Real Rights is applied by analogy to determine what constitutes manifestly unreasonable transaction terms
The methods of legal application reflecting the integration of civil and commercial law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code are not confined to the preferential application of special commercial law and the supplementary application of general civil law.	

This paper primarily examines the methods of legal application that reflect the integration of civil and commercial law in the Interpretation on the General Provisions of Book Three Contracts of the Civil Code. This methodological framework may be extended to analyze the methods of legal application that reflect the integration of civil and commercial law in the Company Law. For example, Article 44(3) of the Company Law provides for a creditor's right of election where a company in formation incurs obligations to external parties, while Article 926(2) of the Civil Code provides for a creditor's right of election under an entrustment contract involving indirect agency. The two provisions stand in a relationship of coordination of application between special provisions and general provisions. Another example is Article 52 of the Company Law, under which the shareholder forfeiture of rights regime elaborates on Item (3) of Article 563(1) of the Civil Code, which refers to a party that "still fails to perform it within a reasonable period of time after being demanded." The "written demand for payment" specifies the form of demand and the grace period; the notice of forfeiture of rights and the mechanism for a shareholder's objection to forfeiture of rights specify the Civil Code's rules on notice of contract rescission and objections to contract rescission under Article 565. When a company issues a notice of forfeiture of rights to a shareholder, it is, in substance, exercising a contractual right of rescission. If the shareholder does not raise an objection to the forfeiture of rights, does this mean that the notice of forfeiture of rights issued

by the company definitively produces the legal effect of shareholder forfeiture of rights? Article 52 of the Company Law does not address this issue. In this respect, Article 53 of the Interpretation on the General Provisions of Book Three Contracts of the Civil Code may be applied on a supplementary basis. Further, under Article 32 of the Interpretation on Sales Contracts, a contract for the transfer of equity may be subject to the referential application of the relevant provisions on sales contracts. This reflects the special-general relationship between contracts for the transfer of equity and sales contracts. In view of the person-based character of a limited liability company, the other shareholders are entitled to a right of first refusal on equal terms whenever a shareholder enters into an equity transfer contract. A transferee's claim to have acquired the equity in good faith cannot be sustained, as the other shareholders' right of first refusal is a statutory right, and the transferee is subject to a duty of reasonable review in that regard. The unique nature of equity transfer contracts in limited liability companies is manifested in the capital contribution liability triggered by the transfer of equity under Article 88 of the Company Law. The rules on assumption of obligation under Contract Law cannot be applied mechanically so as to impose the capital contribution liability solely on the transferee.[42] In essence, this represents an adapted application of the rules on assumption of obligation under Article 551 of the Civil Code. In such circumstances, the transfer of equity need not be subject to the company's consent; instead, the legislation reconciles the freedom to transfer equity with the principle of capital certainty by providing for the transferor's supplementary liability and joint and several liability. The methods of legal application under the integration of civil and commercial law in the Company Law will be addressed in my another paper.

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[42] LIN Yiying,《公司法》第二次修订对公司法律制度的完善与未来展望 (The Second Revision to the Company Law: Improvement of the Company Law System and Future Prospects), 4 法学家 (*The Jurist*), 89–102, 193 (2024).