Front. Law China 2025, 20 (1): 28–61
DOI 10.3868/s050-020-025-0002-4

RESEARCH ARTICLE

Systematic Reflection on Deepening Reform of the Business Registration System Based on Subscribed Registered Capital*

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Abstract

The Third Plenary Session of the 20th Central Committee of the Communist Party of China has proposed "deepening reform of the business registration system based on subscribed registered capital" as a crucial strategic initiative. This reform aims to strengthen corporate credit foundations, enhance transaction security, stimulate business investment, promote high-quality corporate development, and implement the core value system established by the Company Law (2023 Revision). Corporate credit, comprising capital credit, assets credit, and personality credit, serves as the material foundation for high-quality corporate development. However, the current system faces significant challenges due to vulnerabilities in three key areas: capital credit, asset credit, and personality credit. This study proposes a comprehensive framework with several crucial dimensions for reform implementation. First, it is necessary to rationalize shareholders' capital subscription commitments by enhancing the presumptive validity of public disclosure thereof, facilitating a smooth transition to the new five-year maximum subscription period, implementing flexible administrative guidance, and strengthening judicial remedies. Second, it is essential to reinforce the justiciability of shareholders' paid-in capital obligations through multiple mechanisms: improving the rule for accelerated maturity of capital contribution obligations, strengthening civil liability of shareholders for defective capital contributions, enhancing the supervisory function of joint and several liabilities among founding shareholders, establishing presumptive rules for full-chain joint and several liability in multi-tier transfers of defectively contributed equity, and enhancing the shareholders' obligations on paid-in capital guarantee for transfer of equities corresponding to subscribed capital but not paid-in capital. Third, it is crucial to enhance transparency in capital subscription and contribution information through four major disclosure channels: business license documentation, articles of association filing, registration authority records, and the National Enterprise Credit Information Publicity System. The nature of corporate registration is a public information service that provides corporate registration information to the public. The disclosure of registered capital information has the effect of presumptive validity of public disclosure. It is recommended to convert all filing information into registration information to achieve a comprehensive integration of corporate registration matters and filing matters and to classify registration information into three categories: absolutely necessary, relatively necessary, and optional registration items.

Keywords registered capital; subscribed capital system; paid-in capital system; shareholder's responsibility; corporate registration

* This paper is translated from 山东大学学报(哲学社会科学版)(*Journal of Shandong University [Philosophy and Social Sciences]*), 2025, (1), 180–196.

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Companies function as pivotal entities in fostering new productive quality forces, promoting high-quality development, and deepening supply-side structural reforms. It is a community with a shared future for stakeholders, such as shareholders, consumers, employees, and the communities. Each company is a microcosmic cell of the market economy and a core commercial entity. As of the end of 2023, the number of registered operating entities across China reached 184 million, including 58.268 million enterprises.[1] And as of January 19, 2024, there were 5,113 listed companies in China, with a total market capitalization of RMB 72.56 trillion yuan.[2] Many of these companies have already entered the ranks of the Fortune Global 500. However, compared with world-class enterprises, the equity capital strength, compliance governance capabilities, innovation capabilities, profitability, and risk control capabilities of Chinese companies still need improvement, and worst of all, their capital credit remains generally fragile, posing direct threats to systemic financial security. For example, the systemic financial risks hidden in the "high debt, high leverage, and high turnover" model prevalent in industries such as real estate are essentially rooted in capital credit risks. To prevent capital credit risks, the Company Law of the People's Republic of China (2023 Revision) (hereinafter referred to as the Company Law [2023 Revision]) has boldly reformed the business registration system based on subscribed registered capital (hereinafter referred to as the registered capital system).

The Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization passed at the Third Plenary Session of the 20th Central Committee of the Communist Party of China (CPC) emphasizes that "We will refine the modern corporate system with distinctive Chinese features and promote entrepreneurial spirit. We will support and guide enterprises of all types as they work to use resources and production factors more efficiently, improve their operation and management, and fulfill their social responsibilities. Efforts will be accelerated to foster a greater number of world-class enterprises ... We will deepen reform of the business registration system based on subscribed registered capital and ensure that subscriptions are paid in on time as stipulated by law."[3] In this context, comprehensively deepening the registered capital system and enhancing the justiciability, arbitrability, and enforceability of the registered capital system are of strategic significance and academic value for consolidating corporate credit, safeguarding transaction security, ensuring the "lawful incorporation and growth" of companies, promoting their steady and long-term development, and strengthening their core competitiveness.

I History and Status Quo of the Reform of the Registered Capital System

Reviewing the old is a means of realizing the new. Over the 30 years from the enactment of the Company Law in 1993 to its revision in 2023, the registered capital system in China

[1] State Administration for Market Regulation, 分型分类精准帮扶,提升个体工商户发展质量新闻发布会实录 (*Press Conference on Precise Assistance by Classification to Improve the Development Quality of Individual Businesses*).

[2] China Securities Regulatory Commission, 2024 年 1 月 19 日证券市场快报 (*Securities Market Bulletin, January 19, 2024*).

[3] 中共中央关于进一步全面深化改革 推进中国式现代化的决定 (Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization), *People's Daily*, July 22, 2024.

underwent four historical transitions with abating rigidity and intensifying flexibility.

A Absolute and Thorough Model of Paid-In Capital System (1993–2005)

In the mid-1980s and early 1990s, waves of nationwide business enthusiasm surged, leading to the frequent emergence of "three-no companies" (no assets, no personnel, no premises) or "shell companies." To address this issue, the Notice of the State Council on Further Clean-Up and Rectification of Companies emphasized that establishing a company necessitates capital commensurate with the scale of production and operations (with a certain proportion of self-owned capital, though bank loans could not be considered self-owned capital). Subsequently, to improve the quality of newly established companies, the 1993 Company Law reiterated the importance of capital credit, transaction security, and market order, adopted the statutory minimum registered capital system prevalent in the civil law system at the time and established a business registration system based on paid-in registered capital applicable to both limited liability companies (LLCs) and joint-stock companies (JSCs). Article 23 of the Law stipulates that the registered capital of a LLC is "the actual paid-in capital of all shareholders registered with the corporate registration authority" and must not be less than the statutory minimum (RMB 100,000 yuan, RMB 300,000 yuan, and RMB 500,000 yuan). And Article 78 stipulates that the registered capital of a JSC is "the total amount of paid-up share capital registered with the corporate registration authority" and shall not be less than RMB 10 million yuan; where any provision of any other governing laws or regulations provide for a higher amount, the said provision shall prevail.

Since both the promoters and subscribers are required to pay in their subscribed share capital in full prior to the establishment of the company, the paid-in capital system can be regarded as a creditor-friendly approach that prioritizes transaction security. It has two advantages: First, it ensures that the company has a minimum capital credit foundation at the time of its establishment; second, it protects creditors from the unforeseen risks of the company in debt lacking the ability to perform contracts and repay debts due to insufficient registered capital. On the other hand, it has three disadvantages: First, the minimum registered capital system is too rigid to precisely match the diversified and differentiated capital needs of different industries; second, the excessively high registered capital thresholds may easily foster opportunistic behaviors such as exaggerating of registered capital and fraudulent contributions of capital, leading to adverse selection effects where "bad money drives out good money" and "good people suffer while bad people thrive"; third, the excessively high registered capital thresholds suppress the enthusiasm for honest investment, resulting in severe waste of financial capital and economic resources.

B Relatively Moderate Model of the Subscribed Capital System (2005–2013)

After China's accession to the World Trade Organization (WTO), in order to adapt to the trend of economic globalization, encourage investment and entrepreneurship, strengthen the private economy, deepen state-owned enterprise reform, and attract foreign investment, the Company Law (2005 Revision) launched a reform to introduce flexibility and autonomy

into the paid-in capital system. First, it infused a shareholder-friendly concept into the institutional design which gives absolute priority to creditors. Of course, it did not push the value orientation of prioritizing investment and entrepreneurship to the extreme. Second, it placed greater emphasis on the autonomy of will, thanks to which, shareholders were allowed to autonomously determine the amount and schedule of installments payable within the statutory period. Third, it introduced more pragmaticism and flexibility. Although the minimum registered capital threshold was not abolished, it was significantly lowered. Fourth, it established tailored rules for LLCs, JSCs established by promotion, and JSCs established by share offering. It is evident that the reform of the subscribed capital system actually began in 2005, not 2013.

Paragraph 1 of Article 26 of the Law reformed the LLC capital system. First, it revised the concept of LLC registered capital into "total amount of capital contributions subscribed by all the shareholders registered with the corporate registration authority." Second, it allowed shareholders to pay their contributions in installments. A company could be established as long as the initial paid-up capital (initial actual contribution) of all shareholders reached 20% of the registered capital and the remaining contributions were paid in by the shareholders within two years of the company's establishment. The initial paid-up capital referred to the total amount of contributions by all shareholders. Regardless of the proportion of actual contributions by any of individual shareholders, as long as the total initial contributions by all shareholders were not less than 20% of the total registered capital, the company could be established. And third, it lowered the minimum registered capital thresholds for LLCs across the board to RMB 30,000 yuan.

Article 81 of the Law reformed the JSC capital system. First, it adjusted the concept of JSC registered capital to be as follows: For JSCs established by promotion, the registered capital was "the total amount of share capital subscribed by all the promoters with the corporate registration authority"; for JSCs established by share offering, the registered capital was "the total amount of actually paid share capital as is registered with the corporate registration authority." Second, it allowed all the promoters of a company to make initial contributions of not less than 20% of the registered capital, with the remaining portion to be paid by the promoters within two years since the company's establishment. And third, it lowered the minimum registered capital thresholds for JSCs from RMB 10 million yuan to RMB 5 million yuan.

To encourage the incubation of more high-quality enterprises, Articles 26 and 81 of the Company Law (2005 Revision) exceptionally allowed shareholders of an investment company to pay up the unpaid registered capital within five years since the company's establishment, regardless of whether it was an LLC or a JSC.

C Absolute and Thorough Model of the Subscribed Capital System (2013–2023)

To encourage mass entrepreneurship and innovation, Article 26 of the Company Law (2013 Amendment) launched the registered capital system, by essentially abolishing the minimum registered capital system, removing the restrictions on the initial contribution proportion and subsequent contribution periods, deleting the minimum threshold of 30% for monetary

contributions, reshuffling the corporate registration process from "license before certificate" into "certificate before license," and replacing the statutory capital verification and annual inspection procedures with an annual reporting system. This revision unleashed reform vitality, promoted grassroots entrepreneurship, and led to the mushrooming of thousands of new companies.

However, this round of reform also had its shortcomings of hypercorrection. First, it pursued the liberalization of the capital system while disregarding the security of the capital system; second, it encouraged investment and entrepreneurship at the expense of the legitimate demands of creditors; third, its fragmented value orientation of decoupling investment and entrepreneurship from transaction security resulted in blind spots in institutional design. Since the registration authorities no longer record the actual paid-up amount of registered capital, the abuse of the subscribed capital system became commonplace, reducing the capital credit of companies to nominal existence. Some shareholders who "puffed themselves up to look bigger" deliberately subscribed huge amounts of registered capital with paid-in capital periods spanning decades, leading to the proliferation of "phantom giants" and "zombie companies" that directly threatened transaction security.

D New Dual-Track Model of Registered Capital System Integrating Rigidity and Flexibility (2023–Present)

Based on a profound reflection on the evolution of the above three stages, the Company Law (2023 Revision) has designed, for typically small LLCs and typically large JSCs, differentiated registered capital rules that integrate both features of leniency and strictness: The subscribed capital system stays implemented for LLCs all the same while the paid-in capital system is to be implemented for all JSCs without exception. According to the authorized capital system under Article 152 of the Law, the articles of association or the shareholders' meeting could authorize the board of directors to decide on the issuance of shares not exceeding another 50% of the issued shares within three years, while the companies are still subject to the paid-in capital system. The dual-track system, which accommodates the coexistence of the subscribed capital system and the paid-in capital system, represents a moderate and inclusive approach. It achieves a balance among three key objects: promoting corporate high-quality development, incentivizing investment and entrepreneurship, and safeguarding transaction security. Statutory capital-intensive or high-risk LLCs (such as financial institutions) must also follow the paid-in capital system.

For LLCs, the Company Law (2023 Revision) adopts a pragmatic and flexible strategy to solidify capital credit. First, Article 47 introduces a five-year ceiling for the actual payment of capital contributions, and authorizes laws, regulations, and decisions of the State Council to further shorten the payment period in special industries. Second, Article 54 establishes the rule for accelerated maturity of capital contribution obligations. Third, Article 88 clarifies the allocation of capital contribution responsibilities between transfer parties in the chain of equity transfers. Fourth, Article 51 imposes on directors the obligation to call for capital contributions and the liability for compensation to the company if they fail to fulfill this obligation. Fifth, Article 52 stipulates the procedure for the forfeiture of rights

of shareholders who fail to make their contributions. Sixth, Article 251 provides for fines against companies that fail to publicly disclose or truthfully disclose information on actual capital contributions in accordance with the law. And seventh, Article 252 provides for fines against shareholders who make false capital contributions or fail to deliver capital contributions at all or on time.

With regard to JSCs, the Company Law (2023 Revision) strictly enforces the paid-in capital system. A company cannot be established if shareholders fail to pay their contributions. Articles 96, 98 through 101, 103, and 104 constitute a tight-knit set of regulations on the paid-in capital system. Promoters and subscribers of all types of JSCs (including one-person JSCs) are obligated to fully and promptly pay the capital contributions corresponding to their subscribed shares before the establishment of companies. This creates a stark institutional contrast with the subscribed capital system implemented for LLCs.

In summary, the Company Law (2023 Revision) urges shareholders to rationally subscribe and promptly pay their capital contributions, warns companies to timely, accurately, and fully fulfill their disclosure obligations regarding capital contributions, respects and protects the rights of transaction partners to information, choice, and fair dealing, and is of great significance for building an honest, open, transparent, mutually beneficial, inclusive, and reliable corporate credit ecosystem. Of course, its justiciability, arbitrability, and enforceability still need further improvement. Therefore, the comprehensive deepening of the reform of the registered capital system must continue unabated.

II Goal of Deepening the Reform of the Registered Capital System

A Ballast of Corporate Capital Credit

The primary goal of deepening the reform of the registered capital system is to safeguard corporate capital credit. Companies are capital enterprises;[4] in the corporate world, capital credit reigns supreme. As the core of corporate credit, capital credit emphasizes the authenticity, legality, and sufficiency of the registered capital of companies. Shareholders enjoy shareholder rights as residual claimants and ultimately bear the investment risks of corporate failure. By virtue of their status as residual claimants, the equity capital duly and fully paid in by all shareholders automatically constitutes a general property guarantee for the company's creditors.

"Corporate capital" could be understood in the broad sense or the narrow sense. In the broad sense, capital refers to all types of contributions made by shareholders to establish or expand a company, including equity capital and debt capital (loans or credit enhancement measures). And in the narrow sense, capital specifically refers to registered capital or equity capital, i.e., the property consideration paid to companies by shareholders to obtain and maintain shareholder status. The total equity contributions of all shareholders constitute the registered capital of a company. Corporate registered capital is a static, abstract, and definite

[4] JIANG Ping, 现代企业的核心是资本企业 (The Core of the Modern Enterprise Is the Capital Enterprise), 6 中国法学 (*China Legal Science*), 26–33 (1997).

numerical concept, distinct from the dynamic, tangible, or intangible corporate assets. Companies must follow statutory procedures when increasing or decreasing their registered capital. The "capital" as in capital credit is limited to registered capital.

A person cannot stand without trust, and an enterprise cannot thrive without credit. All time-honored companies without exception emphasize capital credit, while those that experience short existence or big ups and downs are usually keen on high-debt models. The capital credit that is strong in appearance but weak in reality would create a bottleneck to preclude companies from excelling and becoming stronger, as the registered capital of many companies fails to meet solvency requirements. Capital credit has been, is, and will continue to be the highest value pursuit of the reform of the registered capital system, and the registered capital system should serve as the ballast of capital credit.

B Measurement of Corporate Asset Credit

Assets credit emphasizes the authenticity and completeness of the commercial value of corporate properties. Ample and excellent corporate assets function as the liability property that secures all creditors and the engine for a company's sustainable progress. Thus, some have questioned the utility of capital credit and have advocated for its substitution with corporate assets credit, positing that "corporate credit is not exclusively determined by corporate capital; corporate assets exert a more substantial influence. The core logic and trajectory of China's corporate capital system reform involve a shift from capital credit to assets credit, and from the statutory capital system to an authorized or a tempered authorized capital system."[5]

In fact, there exist both a connection and a distinction between registered capital and corporate assets. First, corporate assets encompass a wider range of contents than registered capital. Internationally accepted balance sheets directly reflect a company's static financial standing and the ownership of property values on a specific date, with the core content being the accounting equation "Assets = Liabilities + Shareholders' Equity," where assets refer to the company's legal person property, liabilities refer to creditors' claims against the company, and shareholders' equity refers to shareholders' equity in the company. Article 27 of the Accounting Standards for Enterprises No. 30—Presentation of Financial Statements issued by the Ministry of Finance of the People's Republic of China stipulates that the shareholders' equity section of the balance sheet is mandated to separately disclose items such as paid-in capital (or share capital), capital reserve, surplus reserve, and undistributed profits. Capital reserve and the registered capital increased from its conversion into share capital are likewise part of this category. Registered capital, particularly paid-in registered capital, is merely a subset of the total assets of a company. Second, companies with substantial registered capital may still become insolvent or even go bankrupt due to poor management. Third, a company's registered capital remains relatively stable, while its assets and liabilities are in constant flux. Fourth, under the framework of the registered capital system, even if substantial registered capital has been determined and subscribed by shareholders, assets credit remains precarious

[5] ZHAO Xudong, 从资本信用到资产信用 (From the Capital Credit to the Assets Credit), 5 法学研究 (*Chinese Journal of Law*), 109–123 (2003).

if the capital has not been paid in. The longer the time gap between the subscription and payment of registered capital, the greater the probability of shareholders defaulting on their obligations. In cases where shareholders have not paid in their subscribed capital, sensible, wise, and pragmatic creditors should concentrate on the structure and quality of corporate assets. Highly illusory registered capital is less reliable than corporate assets available for security. It is owing to the severe mismatch risk between registered capital and corporate assets that creditors should strengthen due diligence on the assets credit of debtor companies before signing contracts and accurately demand security interests.

The corporate assets credit cannot be evaluated without being subject to the constraints and measurements of both the registered capital system and the company's debt-to-asset ratio for the following reasons. First, the higher the debt-to-asset ratio is, the fewer eligible assets a company would have for establishing security interests. Even if individual corporate assets can be separately valued and traded, the overall asset quality of a company still hinges on the truthfulness and completeness of its registered capital. Second, the lower the debt-to-asset ratio is, the higher the premium, based on the underlying assets of a company (such as equity), for transactions or security interests would be; and conversely, the opposite holds. Therefore, the registered capital system helps solidify corporate assets credit.

C Incubator of Corporate Personality Credit

Personality credit emphasizes the truthfulness and reliability of a subject's credit, evolving from and transcending capital credit and assets credit. Personality credit is not entirely contingent upon the quantity of capital or the caliber of assets. When creditors focus on corporate personality credit and have confidence in its ability to protect themselves, they need not concern themselves with capital credit or assets credit. Even if a company's capital has not been paid in and its assets are mediocre, creditors may all the same provide timely assistance and decisively extend credit based on its future solvency if its personality credit is impeccable and trustworthy. From a cost-benefit perspective, trustworthy parties enjoy more transaction opportunities and pay less transaction costs.

Nonetheless, it is not easy to discern corporate personality credit. Due to the imperfection of the credit system, corporate personality credit is often in a hodgepodge of good and bad and cannot yet hold a candle to capital credit and assets credit. The accurate discernment of personality credit must be based on secure and reliable big data analysis, and backed by integrity incentives and sanctions for dishonesty. Rights protection and accountability are two sides of the same coin, and it is imperative to equally and effectively protect personality credit. With the surging waves of capital digitization, rule of law, globalization, and creditization, the advent of a personality credit-friendly society would make personality credit evaluation increasingly precise, and personality credit discernment will become as simple and convenient as facial recognition is inevitable. Of course, the accurate discernment of corporate personality credit will nonetheless count on the registered capital system.

D Unified Protection of Capital Credit, Assets Credit, and Personality Credit

The capital credit, assets credit, and personality credit displayed by a company in its external relations are not isolated or fragmented but are instead intertwined and synergistic as detailed below. First, both assets credit and personality credit derive from capital credit. Without capital credit, there can be no sustainable corporate development. Second, capital credit underpins assets credit and personality credit. The more solid its capital is, the more capable a company is of optimizing its assets structure and enhancing personality credit in free competition and fair transactions. Third, none of the three credit dimensions can escape the scrutiny of the registered capital system and the accounting equation. And fourth, the robust growth of assets credit and personality credit will bolster capital credit in return. Only by maintaining the truthfulness, completeness, and security of the three kinds of credit can the sustainable and healthy development of a company be promoted.

To fully harness the registered capital system's role in safeguarding corporate credit, it is essential to address the core issue of corporate credit marginalization. First, the gains from dishonesty exceed the penalties for dishonesty; second, the expenses associated with maintaining honesty surpass the rewards of honesty; and third, the costs of protecting rights outweigh the benefits of protecting rights. To compel companies to proactively pursue credit enhancement, targeted measures should be implemented to ensure that the costs of dishonesty exceed its gains, the rewards of honesty surpass the expenses of maintaining it, and the benefits of protecting rights outweigh the associated costs (the "three inversions"). Since dishonesty is not worth the costs, companies and their controllers will recalibrate their core values, shift from profit-driven behavior patterns, and consciously discard dishonesty practices.

The market is observant, and the law is powerful. Honesty creates value, while dishonesty incurs costs. "Honesty has value" and "Honesty is priceless" are essentially synonyms. Legal liability serves as the pricing mechanism for dishonesty. To promote honesty, deter dishonesty, and cultivate a robust corporate credit environment, credit liability should be integrated into the legal liability framework and established as a fourth category of legal liability, alongside civil, administrative, and criminal liabilities. Credit liability is characterized by several key properties: It detracts from personality credit, deprives the bearer of credit liability of behavioral capacity, reinforces the three liabilities, prevents dishonesty practices, integrates disciplinary means, links disciplinary actions, serves as a warning of dishonesty practices, educates people in the culture of honesty, and provides the public with psychological consolation.[6] To reduce transaction costs and promote investment and entrepreneurship, the concept of corporate credit-friendliness should be embedded throughout the design, interpretation, and application of the registered capital system, while fully leveraging its functions such as sanctions, incentives, education, warnings, deterrence, and consolation.

[6] In regarding credit liability, detailed discourse can be found in: LIU Junhai, 信用责任：正在生长中的第四大法律责任 (Credit Liability as the Fourth Growing Legal Liability), 6 法学论坛 (*Legal Forum*), 5–17 (2019).

E Comprehensive Implementation of the Core Values of the Company Law (2023 Revision)

To advance the reform of the registered capital system, efforts should concentrate on reinforcing the foundation of corporate credit and ensuring transaction security, while comprehensively implementing the nine core values of the Company Law (2023 Revision). First, respecting and protecting the rights to survival and development of companies to promote sustainable growth; second, promoting equity culture and encouraging investment and entrepreneurship; third, enhancing transaction security and mitigating financial risks; fourth, protecting employees' rights and interests and fostering harmonious labor relations; fifth, imposing social responsibilities upon companies an and promoting high-quality economic development; sixth, improving the modern corporate system with distinctive Chinese features and enhancing the global competitiveness of Chinese Company Law; seventh, fostering the spirit of entrepreneurship and encouraging innovation, creativity, and excellence; eighth, encouraging rational corporate autonomy and improving good governance; and ninth, implementing the "two unswervingly" policy (unswervingly consolidating and developing the public sector and unswervingly encouraging, supporting, and guiding the development of the non-public sector) to optimize the development environment for the private sector. These nine core values are mutually reinforcing and indispensable, all aimed at fostering the sustainable and sound development of companies.

Irrational investment and financing models and profit models are inconsistent with the core values of the Company Law (2023 Revision). Some founding shareholders, motivated by vanity, are obsessed with subscribing rather than paying in substantial registered capital, leading to the proliferation of shell companies; some companies are obsessed with rapid external expansion and high-leverage business models, resulting in persistently high debt-to-asset ratios. Irrational development strategies risk triggering disorderly capital expansion, inflating corporate prosperity bubbles, undermining endogenous growth momentum and risk resilience, jeopardizing transactional and financial security, and impeding high-quality development. Therefore, deepening the reform of the registered capital system must focus on cultivating honest and prudent shareholder communities, drastically reducing persistently high debt-to-asset ratios, guiding business model transformation and upgrading, fostering corporate sustainability, safeguarding transactional security, implementing shareholder-centric values, advancing employee stock ownership plans, incentivizing corporate social responsibility, and expanding corporate interest communities.

In summary, the core objectives of deepening the reform of the registered capital system are to solidify corporate credit foundations, refine modern enterprise frameworks, encourage investment and entrepreneurship, protect core corporate interests, promote healthy corporate development, generate shareholder value, safeguard transactional security, mitigate financial risks, benefit creditors broadly, distill the greatest common divisor of the company law's core values, and enlarge the concentric circles of stakeholder interests. Attaining these objectives requires three pivotal actions: (1) instilling rationality into shareholders' subscription commitments; (2) enhancing justiciability of capital contribution duties; and (3) boosting disclosure standards for subscribed and paid-in capital data.

III Rationalizing Shareholder Commitments to Subscribed Capital

A Validity of Shareholder Commitments to Subscribed Capital

First, shareholders' subscription of capital contribution constitutes valid commitments under contract law. A shareholder's expression of its intent to subscribe capital contributions upon incorporation or capital increase and its commitment to fulfill such contributions within a specified timeframe constitutes a binding pledge to stakeholders, including the company, fellow shareholders, and creditors. This commitment, codified in constitutive instruments (e.g., incorporation agreements, shareholder pacts, articles of association, or capital increase contracts), becomes effective upon execution and legally binds both the subscribing shareholder and subsequent transferees of equity. The commitment aims to seek shareholdership, limited liability privileges, and investment returns, thereby establishing a contractual relationship with reciprocal consideration and creating multilateral obligations among the subscribing shareholder, the company, and other shareholders. Creditors, leveraging the company-shareholder contractual bond, may assert subrogation claims against defaulting subscribers.

Second, shareholder commitments to subscribe capital contributions carry presumptive validity of public disclosure. These commitments establish not only internal contractual relationships between founding shareholders and the company but also external rights and interests for *bona fide* third parties relying on such commitments, thereby forming external contractual (or even fiduciary) relationships with such *bona fide* third-party beneficiaries. Once publicized, the shareholder commitments would generate presumptive validity of public disclosure for *bona fide* parties, including unspecific potential creditors.

Third, shareholder commitments to subscribe capital contributions follow the principle of autonomy of will. In a market economy with rational persons as the players, "will" as in autonomy of will refers to deliberate, reasoned intent—not emotional spontaneity. Rational choices for subscribed capital encompass the amount, type, period, and contribution mechanism of registered capital. To align self-interest with communal good, shareholders must exercise disciplined self-governance, rationally subscribe and timely pay in capital, commit within their means, honor obligations, and shun untenable overcommitments.

Forth, the principle of restricting reductions in registered capital is a reasonable constraint on shareholders' unilateral alteration of their commitments to subscribed capital. A word spoken is past recalling. The law needs not intervene when shareholders voluntarily augment capital contributions to benefit the company and creditors. However, when shareholders reduce registered capital—thereby altering contractual terms, easing their debt burdens, and heightening risks for *bona fide* counterparties and transactional partners—mandatory legal intervention is warranted. Without such intervention, the registered capital system and beneficiaries of subscription commitments (especially unsecured and unspecific creditors) would face unpredictable harm from arbitrary capital reductions. Given that shareholder commitments to subscribed capital implicate vital interests of the company, fellow shareholders, creditors, and other stakeholders, any shareholder wishing to withdraw or reduce such commitments must comply with internal corporate procedures, fulfill targeted creditor notification and public announcement duties, and respect creditors' rights to information, consent, objection, and redress regarding capital reductions.

B Rigid Legislative Guidance

Under market economy conditions, shareholder rationality depends both on self-discipline and legislative instruction. However, legislative wisdom has its limitations compared to market wisdom after all. Service-oriented legislators lack the authority to intervene in the amount of a company's registered capital or shareholders' subscribed capital contributions unless it is necessary for them to do so in order to uphold boni mores. In continental Europe, the effectiveness of the minimum registered capital system was also questioned in the early 21st century. In 2002, in *A Modern Regulatory Framework for Company Law in Europe* submitted to the European Commission, the High Level Group of EU Company Law Experts led by Jaap Winter noted that the minimum registered capital system could not guarantee a company's financial capacity for large-scale operations, they even stated jocularly that the sole function of the system was to curb investors' enthusiasm for starting companies. Since the minimum registered capital system is congenitally deficient in the protection of creditor, legislators must either abolish it or raise its threshold. Recognizing the principles of capital formation and maintenance as key tools for creditor protection, Winter's group recommended alternative measures to better protect creditors. Seeing the report was well received by the European Commission and member states, EU countries abandoned the minimum registered capital system in quick succession.

Article 26 of the Company Law (2013 Amendment), aligning with global tide of capital system reforms, abolished the minimum registered capital system in principle, retaining it only for 27 specific industries or company types. To demonstrate the creditor-friendly philosophy of the Company Law, it is necessary to specify the five-year maximum term for LLC shareholders to make their subscribed capital contributions as a mandatory provision. Adopting this view, the Company Law (2023 Revision) defines in Article 47 the registered capital of a LLC as "the amount of capital contributions subscribed by all its shareholders as registered with the corporate registration authority," requiring that the total amount of capital contributions subscribed by all shareholders shall be fully paid up by them within five years from the date of establishment of the company in accordance with the articles of association, unless otherwise provided by laws, administrative regulations, and decisions of the State Council regarding the paid-in registered capital and the minimum amount of registered capital of a LLC.

Subject to the mandatory provision on the five-year maximum contribution period, a company and its shareholders have the right to prudently choose the specific period not longer than five years. This flexible legislative policy achieves triple effects. First, in terms of the contribution period, rational shareholders may commit to a contribution period of their own choice. The shorter the period is, the more trustworthy it is for trading partners; otherwise, trading partners will falter. Second, with regard to the amount of contribution, shareholders will rationally commit the amount of contribution after considering the exigency of the contribution period. The smaller the benefit of period is, the higher the requirement for the shareholder's ability to make capital contributions should be; and vice versa. Finally, in terms of operational stability, it is possible that shareholders will pay special attention to the development strategy and compliance governance of the company, and promote its sustainable development. How safe a shareholder's benefit of its subscribed capital period is

and how its obligation to accelerate the maturity of contribution is triggered depend on the company's debt-to-asset ratio and solvency, while the company's solvency is subject to its development strategy and compliance governance level. Therefore, the shareholder's benefit of such period is not invariable or categorically reliable.

In terms of effectiveness on persons, the rule for the benefit of the five-year maximum period applies to all LLCs, but not to newly established JSCs. Considering that public companies and the vast majority of large-scale companies are JSCs, in order to maintain capital credit, the Company Law (2023 Revision) enforces a business registration system based on paid-in registered capital for all JSCs without exception, regardless of whether they are publicly offered JSCs, privately offered JSCs, or sole-shareholder JSCs. In short, the Paid-in Capital System, rather than the subscribed capital system, is adopted for JSCs without exception.

C Flexible Administrative Guidance

Even well-crafted legislation cannot self-execute without institutional enablers. The subscribed capital system cannot be reformed without the respect, guidance, supervision and service of the registration authority. This is especially true during the transition period of the new and old versions of the Company Law. The rule for the benefit of the five-year maximum period may be binding on newly established companies, but it is a matter of opinion that whether it should be and how it is binding on the existing companies established prior to July 1, 2024. To ensure equal and free competition between existing and newly established companies and to prevent the moral hazard of shell companies, the Company Law (2023 Revision) does not adopt a simple model involving a cutoff line between the old and the new practices or a model of retroactive application of the Company Law (2023 Revision). Instead, it adopts a moderate transitional period (buffer period) model to ensure the smooth application of the new rules to existing companies.

As authorized by Paragraph 2 of Article 266 of the Company Law (2023 Revision), the State Council would formulate specific implementation measures to urge existing companies whose contribution deadlines exceed the statutory limit to gradually adapt to the statutory limit, and instruct the registration authority to require that companies manifesting conspicuous anomalies in contribution deadlines or amounts to make timely adjustments. Pursuant to this authorization, the Provisions of the State Council on Implementing the Registration Management System for Registered Capital under the Company Law of the People's Republic of China came into effect on July 1, 2024, requiring LLCs registered and established before June 30, 2024, with a remaining period for subscribed capital contributions of more than 5 years from July 1, 2027, to shorten, by June 30, 2027, their remaining period of subscribed capital contribution to within 5 years, and record this in the articles of association. Shareholders shall pay in their subscribed capital contributions in full within the adjusted period for subscribed contributions; the JSC promoters shall pay the full amount of their subscriptions for shares by June 30, 2027. Those companies whose production and operation involve national interests or significant public interests may exceptionally apply for a period exemption and contribute capital according to the original contribution period all the

same. The exemption decisions by the State Administration for Market Regulation are based on the input from relevant departments of the State Council or provincial governments.

The direct victims and primary adversaries of excessively long period for capital contributions are the company and its creditors, not the regulators. It is an act of administrative guidance, rather than coercion, that the registration authorities advise existing companies to promptly adjust their period for capital contributions or amounts. The essence of a government under the rule of law is that the government carries out all statutory functions and duties, shall not do anything not authorized by law, shall not take actions without clear authorization, and must hold anyone committing illegal actions accountable. The registration authority is enjoined to exercise prudence in the application of administrative penalties, to perform its service-oriented registration responsibilities, to invigorate incentive mechanisms, market-based approaches, and civil liabilities, and to steer existing companies and shareholders towards judicious decision-making. Relevant private law toolboxes such as accelerated maturity, unveiling of companies, capital increase and decrease, bankruptcy reorganization, information disclosure, publicity of articles of association, assumption by directors of responsibilities, disqualification of shareholder, addition of judgment debtors, subrogation rights, and rescission rights are all rich mines in urgent need of exploration. In terms of practical effectiveness, the rule for five-year maximum period for paid-in capital is itself an enhanced version of the statutory accelerated maturity system for existing companies.

The buffer period system aims to bring the existing companies in line with the governing compliance requirements in a gradual and orderly manner, and allocate the cost of institutional change between shareholders and company stakeholders. To reduce institutional transaction costs, the principles of “stability, flexibility, leniency, and speed” should guide the process. Steady progress is essential, ensuring new rules are established before old ones are abolished to avoid regulatory gaps. Actions should reflect civility and goodwill, avoiding oversimplification or crude approaches. Governance should emphasize benevolence rather than harsh demands or unnecessary obstacles. Swift and timely implementation is crucial to enable companies to transition smoothly from the old system to the new one.

D Flexible-Rigid-Tempered Judicial Remedies

No remedy, no right. Recent years witnessed a surge of commercial disputes involving capital credit and shareholder contribution liability. The courts should be ready to hear litigations over such disputes and handle all cases filed therefor, fully illustrating the tenet of balancing rights and interests across the spectrum of case filing, trial, judgment, and execution proceedings, while prioritizing the resolution of impediments to case filing and execution. Judges should engage in careful deliberation, explore rules, analyze cases rationally, clarify the merits of success and failure, respect autonomy, encourage innovation, ensure equitable protection, extend care to vulnerable parties, prioritize service as a fundamental tenet, render judgments that resonate with the populace, cherish harmony, promote mediation, integrate action and contemplation, and adhere to neutrality. The Company Law is not devoid of human considerations. The courts should, with unwavering enthusiasm, protect and safeguard the rights and interests of companies, shareholders, and creditors, and effectively realize

the "three inversions" (i.e., the costs of dishonesty exceed its gains, the rewards of honesty surpass the expenses of maintaining it, and the benefits of protecting rights outweigh the associated costs).

According to Article 104 of the Legislation Law, for civil disputes arising from legal facts occurring before July 1, 2024, it is a basic principle that the Company Law (2023 Revision) does not have a retroactive effect, but favorable retroactivity is an exception rule. In order to prevent legal vacuums during the transition period between the old and new versions of the Company Law, the Several Provisions of the Supreme People's Court on the Retroactivity of the Company Law of the People's Republic of China (hereinafter referred to as the Provisions), promulgated on June 30, 2024, has clarified the limited retroactivity of the Company Law (2023 Revision), which is conducive to unifying judicial reasoning, building judicial credibility, and preventing different judgments on analogous cases. However, the rule of favorable retroactivity has ambiguity and uncertainty, thus necessitating further jurisprudential elucidation. As the Provisions lacks clarity on prioritization of legislative objectives, the retroactive application of the new law necessitates a comprehensive and balanced implementation of the nine core values of the Company Law (2023 Revision). The five retroactivity rules—legislative purpose friendliness, validity of legal acts, containment of performance risk spillover, gap-filling for old law, and refinement of old-law provisions—urgently require precise, further-development-focused interpretation.[7]

The former versions of the Company Law failed to accommodate differentiated institutional needs for targeted capital reduction while implementing shareholder equality in capital reduction procedures. To diversify investment channels and meet the capital recovery needs of multi-category shareholders in successive financing rounds, Paragraph 3 of Article 224 of the Company Law (2023 Revision) establishes proportionate capital reduction as the default rule and targeted capital reduction as an exception: Reductions shall correspond to shareholders' capital contributions or shareholding ratios unless otherwise stipulated by law, unanimously agreed to by all LLC shareholders, or specified in a JSC's articles of association. The proviso clause reserves an institutional pathway for future special legislation and sets the cornerstone for democratic governance of shareholders based on their categories. Consequently, PE/VC firms acting as Series A, B, C, D, and E investors may freely craft with counterparties (e.g., founding controlling shareholders) valuation adjustment mechanisms (VAMs) based on targeted capital reductions. Targeted capital reductions demonstrate deference to external creditors and preserve essential flexibility in shareholder self-governance regarding capital reductions. Recognizing the legitimacy of such VAM innovations, Paragraph 2(7) of Article 1 of these Provisions permits retroactive application of Paragraph 3 of Article 224 of the Company Law (2023 Revision) to litigations arising prior to July 1, 2024, concerning corresponding reductions in capital contributions or in shares. To prevent controversies, we should expansively construe such litigations as encompassing all targeted capital reduction-related controversies among companies, shareholders, and creditors, not merely inter-shareholder disputes.

[7] For further-development-focused interpretation of these five retroactivity rules, see LIU Junhai, 论新《公司法》的溯及力：对最高人民法院司法解释的诠释 (On the Retroactivity of the New Company Law: Interpretation of the Judicial Interpretations of Supreme People's Court), 5 地方立法研究 (*Local Legislation Journal*), 1–22 (2024).

IV Justiciability of Shareholders' Paid-In Capital Obligations

A Refinement of the Rule for Accelerated Maturity of LLC Shareholders' Paid-In Capital Obligations

The subscribed capital system creates the benefit of period allowing subscribing shareholders to defer paid-in capital contributions as per the schedule in the articles of association after incorporation. For shareholders to have the benefit of period prior to the expiration of paid-in capital period, Articles 47 and 49 of the Company Law (2023 Revision) affirm four jurisprudential bases: The first is the principle of private law autonomy. Every shareholder possesses unfettered discretion, immune from legislative interference or restriction, to select the company's business model, financing mechanisms, scale of equity contribution, size of debt financing, amount of subscribed capital, and schedule of paid-in capital. Article 47 of the Company Law (2023 Revision) preserves the benefit of period, *albeit* truncates it to a half-decade span. The second is the public credibility of disclosed information regarding subscribed and paid-in capital. Transparent disclosure of shareholders' benefit of period does not necessarily generate risk spillover detrimental to corporate creditors. The third is the rational contractual freedom between transacting parties and the companies. Counterparty selection stems from prudent due diligence. A counterparty having concerns about the shareholders' benefit of period may choose to waive the transaction opportunity, require the company or the subscribing shareholders to provide guarantees or other credit enhancement measures, or insists on a shortened contribution period for the shareholders. The fourth is the consensus on judicial practice. Article 6 of the 2019 Minutes of the National Courts' Civil and Commercial Trial Work Conference of the Supreme People's Court (hereinafter referred to as the Ninth Conference Minutes) prohibits in principle creditors from requesting shareholders whose capital contribution period has not yet expired to bear supplementary compensation liability for the debts of the company beyond its solvency, on the ground that the company is unable to pay off its due debts.

Respecting and protecting LLC shareholders' benefit of period under the subscribed capital system constitutes the normative rule, *albeit* not absolute. The benefit of period comes with built-in off-ramps. As consideration for the benefit of period, shareholders must covenant two indispensable obligations for corporate stakeholders (including unspecific creditors and prospective counterparties): (1) timely contributing paid-in capital in full upon expiration of the contribution period set forth in the articles of association; and (2) maintaining the company solvent, prosperous and sustainable before the shareholders pay in the subscribed capital. Corporate solvency holds paramount importance, while the benefit of period for shareholders occupies a secondary position. Creditors do not need to pierce the shareholders' benefit of period or activate the mechanism for accelerated maturity of shareholders' obligation to contribute if the company is solvent before shareholders pay in the subscribed capital; otherwise, the shareholders will forfeit the basis for the existence of their benefit of period and see the maturity of their contribution obligation automatically accelerate. A shareholder's breach of commitment marks the termination of its benefit of period and the automatic premature triggering of its obligation to pay in subscribed capital in full.

Article 6 of the Ninth Conference Minutes enumerates two situations of accelerated maturity of the obligation to contribute: One is that based on the expansive interpretation of

Article 35 of the Enterprise Bankruptcy Law of the People's Republic of China, a company under enforcement that, despite the court's exhaustive enforcement efforts, possesses no enforceable assets and is in a state of insolvency yet refrains from filing for bankruptcy; the other is that, based on the principles of good faith and boni mores, a company, subsequent to the incurrence of debts, extends the shareholder's contribution period by a resolution of the shareholders' meeting or other means. Article 54 of the Company Law (2023 Revision) takes a different approach and establishes a solvency standard: If a company is unable to clear off its debts as they fall due, the company or the creditors of the matured claims shall have the right to request the shareholders who have already subscribed to the capital contribution but have not yet reached the expiration of the period for the capital contribution to make the capital contribution in advance. The expression "a company is unable to clear off its debts as they fall due" is connotatively prone to ambiguity. Some advocate for the "unsuccessful demand" theory, arguing that as long as a company fails to pay its due debts in full and on time after receiving a demand for payment from the creditor, the creditor can sue to initiate the procedure for accelerated maturity of contribution obligation. However, in the event that there is no effective legal instrument confirming the validity of such debts, it is easy to breed abuse of rights if it is solely based on the unilateral demand of the plaintiff that the shareholders shall be deprived of the benefit of period. To prevent such abuse, we should advocate the "enforcement failure" theory where if a company refuses or neglects to perform an effective legal instrument and the enforcement court, having exhausted enforcement measures without finding any company properties available for enforcement and therefor been left with no choice, rules to terminate this execution procedure, it should hold that the company is unable to pay off its debts as they fall due. This theory is conducive to respecting and maintaining the public credibility of the benefit of period, and urging creditors to strengthen self-protection. Since the jurisprudential bases for a shareholder to forfeit its benefit of period stem from its breach of implied commitments, the triggering condition for accelerated maturity of shareholder obligation to contribute does not presuppose any fault on the part of the shareholder or the company.

Given that the solvency test differs from the cause of bankruptcy, it is inappropriate to mechanically apply the doctrine of centralized distribution in the enterprise bankruptcy law to the assets contributed by shareholders. Yet there are some repayment rules that cut both ways. The advantage is that they respect the limited liability of shareholders and urge creditors to exercise their rights in a timely manner; and the disadvantage is that if there are false records, misleading statements or major omissions in the defective contribution information, innocent creditors who are late for liquidation will get nothing. It is obviously unfair to only protect the creditors who sue first while disregarding the creditors who sue later. In order to properly balance the multilateral interests between creditors and shareholders, a system for disclosing information on the accelerated contributions made by shareholders and a demand disclosure procedure for creditors to assert their claims in a timely manner can be established to ensure that creditors are equally compensated according to the categories and proportions of their claims, but it is not necessary to include the claims in the company's general estate.

The rule for accelerated maturity of capital contribution obligation applies to all LLC shareholders (including founding shareholders and those shareholders who gain their

shareholder-ship because of capital increase and share expansion). Since the Company Law (2023 Revision) launches the paid-in system for all JSCs without exception, the rule for accelerated maturity does not apply to shareholders of new JSCs established after July 1, 2024. For existing JSCs, founding shareholders enjoying the benefit of period shall remain subject to the rule for accelerated maturity.

B Civil Liabilities of Shareholders with Defective Capital Contributions to the Company, Other Shareholders, and Creditors

First, shareholders with defective contributions bear civil liabilities to both the company and compliant shareholders. Paragraph 3 of Article 49 of the Company Law (2023 Revision) prescribes two civil liabilities of shareholders with defective contributions to the company: the obligation of capital adequacy (full contribution of subscribed capital to the company) and the liability for damages. This provision evolves from Paragraph 2 of Article 28 of the Company Law (2018 Amendment), omitting the liability of shareholders with defective contributions for breach of contract towards those shareholders who contribute capital in full and on time. Then, will shareholders with defective contributions no longer assume such liability for breach of contract? The Company Law (2023 Revision) is so formulated to establish the statutory liability for defective contributions, neither creating any contractual obligations nor overriding the liability for breach of contract under Book Three "Contracts" of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code). Consequently, shareholders who have contributed capital in full and on time may all the same pursue claims for breach of contract against shareholders with defective contributions in accordance with applicable agreements or articles of association.

Second, shareholders with defective contributions are liable for supplementary repayment towards creditors when the company refuses or neglects to pay off its debts. The Company Law (2023 Revision) does not mention the creditor's right of subrogation against shareholders. Firstly, it omits the creditor's right of subrogation against shareholders with defective contributions; secondly, it omits the creditor's right of subrogation against other founding shareholders besides the founding shareholder with defective contributions; thirdly, it omits the creditor's right of subrogation against shareholders with defective contributions during capital increase and share expansion and against directors, supervisors, and senior management who neglect to issue calls; fourthly, it omits the creditor's right of subrogation against the joint and several liability of all founding shareholders who made defective monetary contributions during the company's establishment stage. The creditor's assertion of the right of subrogation against shareholders with defective contributions, requesting them to bear liability for supplementary repayment, is a natural extension of the creditor's right of subrogation in the field of company law. To ensure the rational and efficient exercise of the right of subrogation, we have to comprehensively establish a creditor-friendly regulatory framework for subrogation rights. Shareholder contribution defects are manifested as delays, insufficient amounts, or improper methods, which requires balancing the principle of limited liability for defective capital contributions by shareholders with the principle of equal protection of all creditors, and transforming the "first-sue, first-repaid" model into a model

of equal demands. To uphold procedural justice, it may be advisable to abolish the practice of directly changing shareholders with defective contributions into or additionally naming them as persons subject to execution in the execution procedure, so as to return the creditor's right of subrogation against shareholders with defective contributions to the adjudication procedure.

Third, based on the principle of *rechtsschein theorie*, shareholders who bear the liability for defective contribution include registered shareholders who are consistent in name and status, dummy shareholders who are nominal but not actual, and creditors in equity transfer guarantee. Article 26 of the Provisions of the Supreme People's Court on Some Issues about the Application of the Company Law of the People's Republic of China (III) (hereinafter referred to as the Judicial Interpretation of the Company Law [III]) protects creditors who, on the ground that dummy shareholders have not fulfilled their contribution obligations, request the dummy shareholders to assume, to the extent of the unpaid capital and interest, supplementary compensation liability for the portion of the company's debts that cannot be repaid, and it prohibits shareholders from arguing that they are only nominal shareholders, but dummy shareholders, after assuming such liability, may seek recovery from dormant shareholders. However, Article 69 of the Interpretation of the Supreme People's Court of the Application of the Relevant Guarantee System of the Civil Code abandons the principle of *rechtsschein theorie* and does not support a company or its creditors in requesting, on the ground that a shareholder has not performed at all or has not thoroughly performed its capital contribution obligation or has withdrawn its capital contribution, the creditor who is a dummy shareholder under the equity transfer guarantee to bear joint and several liability with the shareholder. The aforesaid Article 26 is intended to protect creditors who provided guarantee for equity transfer, but it has four shortcomings: Firstly, it neglects other creditors who in good faith rely on the public credibility of the disclosure of equity registration information; secondly, it violates the legal principles of the separation between equity and debt and the primacy of debt over equity; thirdly, if a creditor, when faced with the options of equity pledge and transfer guarantee, deliberately chooses the latter and voluntarily pretends to be a shareholder appearing to be true to a good-faith counterparty, the creditor must be forethoughtful about cost-effectiveness, but the adjudicator does not need to accommodate the creditor's autonomous choice at the cost of the reasonable reliance of other *bona fide* creditors thereon; and fourthly, the precedence assigned to creditors who provided equity transfer guarantees over other *bona fide* creditors will encourage dummy shareholders and even registered shareholders whose names and status are consistent to argue that they are creditors who provided equity transfer guarantees when the company's creditors get to exercise the right of subrogation. To remedy the above defects, we may amend this article to be as follows: In the event that a shareholder, by transferring its equity to a creditor's name, provides a guarantee for debt performance, and the company or its creditor requests, on the ground that the shareholder has not performed at all or not thoroughly performed its capital contribution obligation or has withdrawn its capital contribution, the creditor as a dummy shareholder to bear, together with other shareholders, joint and several liability, against which the creditor as a dummy shareholder enters a defense that it is only a dummy shareholder and not the actual contributor, the court shall not support it. And if the creditor as a dummy

shareholder, having assumed the compensation liability in accordance with the preceding paragraph, seeks recovery from the actual contributor, the court shall support it.

Fourth, the liability of shareholders for defective capital contributions applies universally to both LLCs and JSCs. Article 99 of the Company Law (2023 Revision) is similar in substance to Article 50. Pursuant to Article 107, Paragraph 3 of Article 49 also applies to JSCs. Interpretatively, a promoter who made defective capital contributions is also liable for breach of contract to compliant promoters.

C Role of Promoters' Joint Liability in Monitoring Capital Contributions

The snipe and the clam fight, the fisherman benefits. None of the previous versions of China's Company Law have defined the term "promoter," and while Chapter 5 mentions JSC promoters, Chapter 3 does not mention LLC promoters. Joint and several liability inherently includes the right of a debtor who first repays the debt to seek reimbursement from and monitor other fellow debtors. For promoters, the optimal strategy is to ensure all debtors repay their debts promptly and in full in statutory or contractual proportions, while the less desirable option is to make repayment first and seek reimbursement later. Enforcing a founding shareholder's liability for defective capital contributions necessitates strengthening the joint and several liability among founding shareholders for defective capital contributions.

Paragraph 3 of Article 13 of the Judicial Interpretation of the Company Law (III) imposes civil liability on promoters toward companies and their creditors, but the legal basis for this remains unclear. When referring to LLC promoters, Article 50 of the Company Law (2023 Revision) intentionally uses the term "shareholders at the time of establishment" to distinguish them from JSC promoters. Legally identical in status and both being pivotal figures responsible for company establishment, LLC founding shareholders and JSC promoters differ only numerically: In LLCs and in JSCs established by promotion, all founding shareholders are promoters, while in JSCs established by share offering, only some of the founding shareholders are promoters, excluding subscribers.

Article 1 of the Judicial Interpretation of the Company Law (III) defines promoters as "whoever concludes the articles of association for the purpose of establishing a company, subscribes capital contributions or for shares and performs the duties of establishing the company." In practice, promoters are the party responsible for planning and implementing the establishment of a company, fulfilling capital contribution obligations, and bearing corresponding liabilities for the consequences of the establishment of the company (such as debts from failed establishment or losses caused to the company and/or others after successful establishment) in accordance with laws and agreements. Denotatively, promoters include all shareholders of the establishment of LLCs and all promoters of JSCs, serving triple legal roles: First, they serve as corporate founders and architects. Second, they function as the governing bodies of an entity under incorporation. An entity during its incorporation, lacking corporate capacity, rely entirely on promoters as the governing body to undertake establishment acts (such as executing promoter agreements/articles of association, subscribing and paying in capital contributions, urging capital contributions, applying for administrative license), as the shareholders' meeting and board of directors have not been

installed for corporate governance. Third, they act as quasi-partners and joint debtors of an entity under incorporation. By expressing their intention to establish a company, promoters provide the potential creditors of the entity under incorporation with implicit guarantee for debt repayment, making themselves guarantors for the debts of the entity under incorporation. Their quasi-partnership spawns both joint and several liability and agency authority among them. Therefore, important decisions during the establishment of a company are typically made unanimously, and promoters have the right and obligation to urge capital contributions among themselves.

Article 50 of the Company Law (2023 Revision), recognizing the quasi-partnership of founding shareholders, stipulates that "Where, at the time of formation of a limited liability company, a shareholder fails to make paid-in capital contributions according to the articles of association, or the value of its non-monetary property as capital contribution is apparently lower than the capital contribution subscribed by it, the shareholder shall be jointly and severally liable, together with other shareholders at the time of formation, to the extent of the shortfall in the capital contribution." One point of uncertainty is whether other promoters bear joint and several liability if a promoter enjoys the benefit of period under the subscribed capital system during the establishment of a company but commits defective capital contributions after the establishment thereof. In fact, the joint and several liability created by this provision applies only to defective capital contributions by promoters who are obligated to make paid-in capital contributions during the establishment of a company, and not to defective contributions after the establishment thereof. Counterparties contracting with companies whose founding shareholders are entitled to the benefit of period must stay aware of this distinction. Another point of uncertainty is whether the joint and several liability of the shareholding promoters applies to the monetary defective contributions. By the logic of *argumentum a minori ad maius*, it is more difficult for shareholders to monitor the authenticity and sufficiency of non-monetary assets than that of monetary ones. Since joint and several liability is applicable among founding shareholders for non-monetary assets whose monitoring is highly demanding, such liability is more mandatorily applicable among them for contributions of monetary assets whose monitoring is not so difficult.

D Allocation of Liabilities among the Parties to the Transfer of Defectively Contributed Equities

All is permissible unless prohibited. Equities defectively contributed can also be transferred. However, transactions of such equity transfer provide an opportunity for shareholders having made defective capital contributions to get away with their liabilities for such contributions. Shareholders having made defective capital contributions seek to escape, while transferees will take advantage by driving a hard bargain to acquire equities cheaply. The transfer parties collude, each achieving their goals, while outsiders, especially the company and its creditors, become victims. The new shareholders lack the ability to contribute, while the old ones flee. To address this issue, liabilities should be fairly allocated and rigorously enforced for both parties involved in the transfer of defectively

contributed equities. The design of joint and several liability can establish a monitoring mechanism between the parties, effectively mitigating the opportunistic risks associated with reckless profiteering.

Paragraph 3 of Article 178 of the Civil Code opposes the generalization of joint and several liability but allows the Company Law to exceptionally design joint and several liability based on *boni* mores. Based on Article 28 of the Company Law (2018 Amendment) regarding the liability of shareholders having made defective capital contributions for such contributions and Article 18 of the Judicial Interpretation of the Company Law (III) regarding the joint and several liability of transferors and transferees towards the company and its creditors, Paragraph 2 of Article 88 of the Company Law (2023 Revision) requires shareholders having made defective capital contributions and non-*bona fide* purchasers to jointly and severally bear capital adequacy obligation towards the company and supplementary repayment liability towards creditors. If a shareholder who fails to contribute capital by the date stipulated by the articles of association or whose non-monetary assets contributed are significantly lower than the subscribed amount transfers equities, the seller and purchaser shall bear joint and several liability to the extent of contribution deficiency; if the purchaser neither knew nor should have known of such circumstances, the seller shall bear the liability alone. The presumption of joint and several liability helps defend capital credit, reduce the burden on the company or creditors to prove the transferee's malice or gross negligence, and allow *bona fide* transferees to prove their lack of malice or gross negligence and claim exemption.

Paragraph 2 of Article 88 of the Company Law (2023 Revision) lacks clarity on the liabilities of transfer parties between shareholders having made defective capital contributions and existing shareholders. To ensure transaction security, it is essential to reasonably restrict the liquidity of defectively contributed equities while appropriately strengthening the transferees' duty of care. Regardless of how defectively contributed equities circulate through multiple transfers, all the transfer parties between a shareholder having made defective capital contributions and existing shareholder shall bear joint and several liability for the defective contribution, unless the purchaser adduces evidence that it acted without malice or gross negligence regarding the defective contribution.

E Shareholders' Guarantee Obligation for Paid-In Capital When Transferring Equities Subscribed for but without Capital Contribution

In practice, there exists an unwritten rule where shareholders maliciously transfer equities in a substantial amount subscribed for but without capital contribution by them, exposing creditors to unforeseen risks. Some equity transfer contracts are signed during the period when the indebted company is involved in litigation, especially during the sensitive period before the court initiates enforcement measures. Some purchasers are elderly individuals lacking income sources or contribution capacity. Some transfer parties have familial or beneficial relationships. Some transfer considerations are blatantly unreasonable. Some sellers set contribution deadlines spanning decades.

To force shareholders into prudent subscription of capital contributions and preclude

collusive schemes between transfer parties, Paragraph 1 of Article 88 of the Company Law (2023 Revision) permits the free transfer of equities which are subscribed for but the period for whose capital contribution has not expired, but requires purchasers to assume the obligation to fulfill the capital contribution. If a purchaser fails to contribute the capital in full on schedule, the seller shall assume supplementary liability for the purchaser's default. The rationale for prioritizing the purchasers' liability is that the purchasers, when voluntarily purchasing at a low price the equities for which capital contributions have not been made in full, knew or should have known the dual risks of accelerated maturity and defective capital contributions. And the rationale for specifying the sellers' liability as a fall-back plan lies in the fact that it is the sellers who incurred the abnormal risks associated with the amount and period of subscribed contributions. This provision "kills five birds with one stone": First, It respects shareholders' benefit of period under the subscribed capital system, safeguards the freedom of shareholders who have made subscriptions but not yet contributed capital to transfer their equities; second, it warns sellers to carefully single out buyers with both genuine intent and capacity to fulfill paid-in capital obligations; third, it compels shareholders to act within their means and make reasonable commitments when subscribing for capital contributions, avoiding self-inflicted troubles; fourth, it prompts buyers to prudently assess transaction risks; and fifth, it attaches importance to the dynamic transactional security between transfer parties and emphasizes the principle of differentiated creditor protection based on inside-outside dichotomy.

However, this provision does not address liability allocation between subscribing shareholders and existing shareholders in the transfer chain. Interpretively, regardless of how long the chain of equity transfer is, all sequential transferors and transferees except for those at both ends of the chain shall bear joint and several liability for the obligation to accelerated maturity of capital contributions. The jurisprudential basis rests on three pillars. First, the debt assumption regime under Article 552 of the Civil Code; second, the rational awareness of the risks of accelerated maturity of contribution obligation that transfer parties have prior to equity acquisition; and third, the role of the joint and several liability of the transfer parties in a chain of serial equity transfers in bolstering the creditability of the subscribed capital system and enhancing the creditor's sense of security. Thus, serial equity transfers cease to be a "ticking time bomb" endangering creditors, instead, they evolve into an increasingly robust safety net.

To curb risk spillover from equity transfers involving unpaid capital, Paragraph 1 of Article 88 of the Company Law (2023 Revision) applies retroactively to any disputes over contribution liability between a seller and buyer arising from a transaction of equity transfer before July 1, 2024 due to the failure of the seller, whose period for contribution has not yet expired, to pay in the capital in full and on time. Given that the right of subrogation of the creditors of a company against the transfer parties is derived from the statutory claim of the company for the capital contributions from shareholders, the dispute over the claim of such creditors, filed based on this clause, on whether the transfer parties should bear supplementary compensation liability for the company's debts, also falls within the retroactive scope of the Company Law (2023 Revision).

F Directors' Obligation to Verify and Demand Capital Contributions from Shareholders

Article 51 of the Company Law (2023 Revision) imposes on directors the obligation to verify and demand capital contributions from shareholders. This provision originated from HU [Redacted][Redacted] et al. v. [Redacted] Tech Co., Ltd., the counterappeal on a case concerning the dispute over corporate interest damage lodged by the Supreme People's Procuratorate to the Supreme People's Court. On March 29, 2021, the Supreme People's Procuratorate held a hearing concerning the application for supervisory review of the case.[8] In this case, certain promoters defectively contributed capital during incorporation. Subsequently, a petition for bankruptcy liquidation of the company was lodged due to its insolvency. The administrator then initiated legal proceedings against all directors, seeking to hold them jointly and severally liable for the corporate losses incurred as a result of the promoters' underpayment of their subscribed capital. The first-instance court dismissed the claim, reasoning that the underpayment of capital was a corporate matter under directors' duty of care, but directors' passive nonfeasance did not causally link to such underpayment; the actual cause of nonpayment of debts was the underpayment of capital by the shareholder and the losses were not imputable to the directors who failed to call up capital contributions. The appellate court dismissed the appeal and upheld the first-instance judgement, adding on the basis of the reasons given in the first instance that "the articles of association also did not stipulate such obligation." The retrial court revoked the judgments of both instances and ordered all directors to jointly and severally compensate the company for the unpaid capital contributions, on the ground that the directors, by failing to perform their obligation of calling up capital contributions from shareholders, violated their duty of diligence by inaction.

The bone of contention in the case was whether non-promoter directors are obligated to urge capital contributions from promoters who underpaid capital contributions during incorporation. And if so, how to assess their performance? To resolve this, Article 51 of the Company Law (2023 Revision) demands the board of a LLC to verify shareholder contributions after the establishment of the LLC and, upon detecting any failure to pay capital contributions in full and on time in accordance with the articles of association, issue a written notice to contribute thereto on the company's behalf. Responsible directors failing to fulfill this duty timely and causing losses to the company shall bear the liability for compensation. But the question is: What does "responsible" mean? Given that the ill-considered wording of "responsible" easily constitutes a tautological definition with the phrase "bear the liability for compensation" at the end of the sentence, "responsible" should be interpreted as "having malice or gross negligence." The duty of directors to call up capital contributions derives from their obligations of loyalty and care towards the company. The liability for compensation towards the company borne by those who refuse or neglect to call up capital contributions is a fault liability, not a strict liability. And if a director is not at fault, he or she can be exempted therefrom.

[8] YU Xiao, 最高检就一起民事诉讼监督案件举行公开听证 (*SPP Holds Public Hearing for a Case of Civil Litigation Supervision*). The website of the Supreme People's Procuratorate of the People's Republic of China.

V Transparency of Information on Subscribed and Paid-In Registered Capital

A Function of Registered Capital Information Disclosure

"Openness and transparency can be described as a panacea for societal and industrial maladies. Sunlight is said to be the best of disinfectants, and electric light the most effective policeman."[9] Similarly, improving the system of disclosure of registered capital information is of great significance.

First, it is conducive to maintaining transaction security. The amount of subscribed capital is not the only touchstone for measuring a company's creditworthiness. The best way to protect creditors is not to enforce a mothballed and abstract system of high registered capital, but to disclose registered capital information truthfully, accurately, and completely, so that *bona fide* counterparties can freely and rationally choose trading partners. The Company Law has neither the ability nor the obligation to ensure that a company's high registered capital is securely kept in a safe free from danger and used to pay off company debts. Because once the registered capital is invested into the company, it will be integrated into the endless flow of operating assets and will be in a state of constant use, development, and turnover. However, the Company Law has the obligation and ability to ensure the transparency of registered capital information and respect and protect creditors' right to know, right to choose, and right to fair trade. This is the primary prerequisite for maintaining trading order and optimizing the business environment. Since the articles of association that record the subscribed capital contributions of shareholders are transparent, the statutory benefit of the period is public. The amounts of capital subscribed and paid-in by shareholders and the periods for payment thereof, after being announced on the National Enterprise Credit Information Publicity System (hereinafter referred to as NECIPS), can be directly accessed by the public. Rational and prudent creditors should stay alert to risks associated with the benefit of the period and seek preventive measures. It limits the creditors' right to know and right to choose that, unfortunately at present the registration authority only registers the capital contributions subscribed by shareholders, but not the capital contributions paid in. Therefore, the disclosure of registered capital information helps to keep a sharp eye out for the market, reduce transaction costs, and accelerate commercial circulation.

Second, it is conducive to promoting the sustainable development of a company. Registered capital is the corporate property baseline that harmonizes a company's internal governance and external compliance. The more transparent the registered capital information is, the more compliant the company's internal governance, financial accounting, and business management will be, and the more outsiders and stakeholders will trust the company. If a company discloses false registered capital information, it will inevitably hurt itself as well as others. In situations of information asymmetry, trading partners usually presume that the company's capital credibility as unreliable. Consequently, they may either withdraw from the transaction, request additional credit guarantees, or leverage this perceived risk as a negotiating tool.

Third, it is conducive to fixing shareholders' exposure to capital contribution defaults. The doctrine of limited shareholder liability constitutes the bedrock mechanism underlying the

[9] Brandeis L. D., What Publicity Can Do, *Harper's Weekly*, Dec. 20, 1913.

perpetual vitality of modern corporate entities. N. M. Butler, former president of Columbia University, made the pronouncement at the 143rd annual dinner of the New York State Chamber of Commerce in 1911: "I weigh my words when I say that in my judgment the limited liability corporation is the greatest single discovery of modern times, whether you judge it by its social, by its ethical, by its industrial or, in the long run—after we understand it and know how to use it—by its political, effects. Even steam and electricity are far less important than the limited liability corporation, and they would be reduced to comparative impotence without it."[10] Therefore, disclosure of registered capital information operates to circumscribe shareholders' investment exposure to their liability for corporate debts, thereby cultivating investor-friendly enterprises.

Fourth, it is conducive to practicing the value concept of shareholder-centrism. Registered capital and its composition are the yardsticks to precisely quantify shareholders' rights and interests. Since the composition of registered capital and its actual payment directly affect the distribution of shareholders' rights and interests (including self-benefit rights and common benefit rights), shareholders maintain the keenest scrutiny of and exhibit acute sensitivity towards the information on each other's subscribed and paid-in registered capital. The shareholders' right to know is even more valuable when the shareholders' dividend ratio and voting power weighting stipulated in the articles of association or shareholder agreement are incommensurate with each other. Under the subscribed capital system, cunning shareholders subscribe a high proportion of capital but only pay part thereof, while honest shareholders subscribe a low proportion of capital but pay all of it. In this regard, Paragraph 4 of Article 120 of the Company Law (2023 Revision) requires LLCs to distribute dividends in proportion to the shareholders' actual paid-in capital, unless all shareholders agree otherwise. Therefore, the disclosure of registered capital information helps to foster equity awareness.

Fifth, it is conducive to encouraging free competition. Competition is the source of vitality of the market economy. Only competition can stimulate corporate vitality, promote industrial iteration and transformation, and benefit users and consumers. At present, the evaluation criteria for the government procurement market and the bidding market generally only focus on the subscribed capital, rather than the paid-in capital, of the shareholders. Many bidding companies "puffed themselves up to look bigger" and jostled to subscribe hundreds of millions of registered capital. Only by eliminating the bidding rules that "emphasize subscribed capital and downplay paid-in capital" can we reverse the chaotic situation of abnormally high subscribed capital and abnormally low paid-in capital.

B Four Statutory System Platforms for the Disclosure of Registered Capital Information

First, registered capital is a statutory item to be recorded in the articles of association of a company. Paragraph 1 of Article 46 of the Company Law (2023 Revision) requires that the articles of association should specify eight statutory matters, including registered capital,

[10] Fletcher W. M., *Cyclopedia of the Law of Private Corporations*, Volume 1, Callaghan and Company, at 43 (1917).

names of shareholders, amounts of shareholders' capital contributions, methods of capital contribution, and dates of capital contribution. Pursuant to Paragraph 2 of Article 35, a company changing its registered capital must first amend its articles of association and then go through the registration formalities for changes in corporate items.

Second, registered capital is a statutory item to be recorded in the business license of a company. The business license is the "identity card" of a company. To ensure the availability of business license information to the public, Article 36 of the Regulation of the People's Republic of China on the Administration of the Registration of Market Entities requires every market entity to place its business license in a conspicuous position at its domicile or principal place of business, and every e-commerce operator to continuously display business license information or a related link icon in a prominent position on the homepage. Paragraph 2 of Article 33 of the Company Law (2023 Revision) requires that the business license of a company must state the registered capital, and Paragraph 3 of Article 33 clarifies the equivalence of the electronic and paper versions of a business license. Pursuant to Article 36 of the law, after a company completes registration of any change in registered capital, the registration authority shall reissue its business license.

Third, registered capital is a statutory registration item. According to Paragraph 2 of Article 32 of the Company Law (2023 Revision), the registration authority must not only register the registered capital information, but also make it public through the NECIPS.

Fourth, registered capital is the information made public on the NECIPS. For one thing, among the statutory public information stipulated in Paragraph 1 of Article 40 of the Company Law (2023 Revision), there are the amount subscribed and paid in, method and date of capital contribution by LLC shareholders, and the number of shares subscribed for by JSC promoters; and for another, there is the information on shareholding and share changes of LLC shareholders and SJC promoters. Paragraph 2 of this Article requires the company to ensure that the disclosed information is true, accurate, and complete. According to the literal interpretation, the party obligated to make public disclosure is the company, not the shareholders. In the digital age, the information disclosure by the NECIPS is far more effective than the registration of the registration authorities in terms of the jurisdictional reach, normative force, and transactional efficacy.

In summary, registered capital is the key information for filing articles of association, disclosure by business license, registration with the registration authority, and filing on the NECIPS. Although the information disclosure toolbox is relatively complete, it still needs to be supplemented and improved.

C Legal Nature of Registration

Chapter 2 of the Company Law (2023 Revision) specifically adds registration rules, but does not clarify the nature of the registration. In terms of their legal nature, corporate registration is a public information service that provides corporate registration information to the public, rather than administrative licensing or confirmation. Based on the nature of public services, registration authorities should provide interactive inquiry, clarification, and explanation services to the public. In order to maximize the public

value of registration information resources, registration authorities should regularly publish big-data analysis reports on registration to provide a decision-making basis for macro-control, industry self-discipline, market supervision, litigation adjudication, legislative reform, and business planning. Furthermore, independent third parties and private investors should be encouraged to provide individualized value-added services for corporate registration information (such as family trees of company groups charted based on equity and contractual relationships, digital due diligence on company credit risks, as well as logistics, information flow, and cash flow of companies as dishonest debtors subject to enforcement).

D Public Credibility of Information Disclosure

The disclosure of registered capital information has the presumptive validity of public disclosure. Disclosure is the means, publicness is the goal, and credibility is the result. Since the source of registered information is the registration applicant, such as companies, the public credibility of information disclosure does not depend on the prudent formal review and authoritative credit endorsement of registration authorities, but on the quality of information disclosure by the person obligated to disclose information. Therefore, it is necessary to clarify the standards for truthfulness, accuracy, completeness, timeliness, fairness, availability, and comprehensibility of information disclosure, and establish the obligation of the information disclosure obligor to guarantee against information defect.

The presumptive validity of public disclosure has two connotations: One is to protect the reasonable reliance of the *bona fide* counterparties (third parties) on the public information, and the other is the moral risk of challenging the non-*bona fide* counterparties (who know or should have known information defects). The two-way binding force of the presumptive validity of public disclosure is backed by the obligations of companies and other information disclosure obligors to guarantee against information defects.

The presumptive validity of public disclosure embodies the creditor-friendly principle of *rechtsschein theorie*. The *rechtsschein theorie* is not an exception to the rule but a general principle. In order to accurately identify *bona fide* counterparties, we may adopt a hybrid between the rational person standard as the main and the subjective standard as the auxiliary, where the rational person can be defined as an ordinary person with a normal intelligence quotient, emotional quotient, law quotient, and moral intelligence quotient. Since disclosed information is more trustworthy than concealed information, protecting the presumptive validity of public disclosure will help identify internal and external legal relations, eliminate transaction barriers, reduce transaction costs, safeguard transaction security, and accelerate commercial circulation.

E Necessity of Integrating Registration and Filing

Before the introduction of the Company Law (2023 Revision), the corporate registration policies had always been uncoordinated between registration and filing. In fact, there are obvious differences between registration and filing. First, the information content is different.

The 2014 Regulation of the People's Republic of China on the Administration of Company Registration listed eight types of corporate registration items, and Article 36 thereof required that any revision of or amendment to articles of association involving no registration items be filed (rather than registered). The Regulation of the People's Republic of China on the Administration of the Registration of Market Entities, which follows the dual-track system, contains an Article 8 that lists the corporate registration items (including registered capital or contribution amount, legal representative, LLC shareholders, and JSC promoters) and an Article 9 that lists the filing matters (including articles of association, operating period, and subscribed capital amount). The registered capital or contribution amount *per se* are registration items, while the articles of association and the subscribed capital amount are merely filing items rather than registration items, resulting in fragmented disclosure of registered capital information.

Second, the transparency is different. The transparency of registration items is higher than that of filing items. The former is open to public inquiries, while the latter is only for internal use by the registration authority, commonly known as items contained in "internal files." Internal file information is far more informative than registration information, including articles of association, shareholder agreements, shareholders' meeting resolutions, board resolutions, special rules and regulations, and equity transfer agreements. However, filing information is not available for public queries because it has not yet been made public online. Although lawyers may inquire about internal files of a registration authority by the right to conduct independent investigations and collect evidence granted by Paragraph 2 of Article 35 of the Lawyers Law of the People's Republic of China, this professional privilege cannot be extended to the general public. In the era of digitalization, rule of law, and globalization, the difference in the transparency of registration items and filing items can no longer meet the growing needs for the right to know of trading partners and the public.

Third, the legal boundaries are blurred. In order to enhance the rule of law and transparency of corporate registration and filing, Article 55 of the 2014 Regulation of the People's Republic of China on the Administration of Company Registration requires registration authorities to disclose both corporate registration and filing information on the NECIPS. Article 6 of the 2014 Interim Regulation on Enterprise Information Disclosure also urges registration authorities to disclose registration information, filing information, and equity pledge registration information generated in the course of performing their duties. However, there are still some shortcomings: Firstly, registration and filing have not yet been integrated; secondly, the description of "equity pledge registration information" as a third type of information borders on GONGSUN Long's white horse paradox (a categorical fallacy in legal taxonomy); thirdly, the equity trust registration information is omitted; and fourthly, the integrated disclosure requirement has been well practiced, and the filing information, such as the articles of association, has not yet been disclosed on the NECIPS.

In light of generally unified information disclosure standards in international legislation, the Company Law (2023 Revision) no longer distinguishes between registration and filing, nor does it mention "filing," aiming to integrate registration and filing. However, Article

32 thereof only stipulates six corporate registration items without setting forth any catch-all provisions; the quantity and quality of registration information need to be improved. In order to enhance the transparency of registered capital, reduce due diligence costs, improve transaction efficiency, and eliminate rule arbitrage and moral risks induced by double standards of registration and filing, we may simplify and straighten things out as well by using "record/recording/recordation" on all occasions instead of "file/filing" or "register/registry/registration" and converting all filing information into recordation information, thereby integrating corporate registration items and filing items and eliminating the dichotomy.

F Categorization and Systematization of Registered Capital Registration Information

Incompleteness, inaccuracy, out-of-datedness, and unauthoritativeness, which are the long-standing knotty problems of corporate registration information, need to be solved urgently. The Company Law (2023 Revision) also fails to systematically and rigorously categorize the registration information on registered capital. Based on necessity, registration information on registered capital can be divided into three categories.

The first category refers to items whose registration is absolutely necessary. This is information that must be registered based on considerations for public interests or against risk spillover; otherwise, certain civil rights will not be effectively obtained or maintained. This category, includes without limitation, the total amount of registered capital of a company, the amount of capital subscribed by shareholders, the amount, payment method, and date of the paid-in capital contributed by shareholders, the articles of association, the identity information of all shareholders (including promoters, controlling shareholders, and non-promoter shareholders), actual controllers, directors, supervisors, and senior managers, the legal representative (designated representative), equity pledge agreement, and the corporate annual report.

The second category refers to relatively necessary registration items. This is information that a rational company proactively registers; otherwise, it won't stand in confrontation with a *bona fide* counterparty. The information includes the company's operating period, nominee shareholding (trust), equity transfer guarantee, equity transfer agreement, shareholder agreement, autonomous rules other than the articles of association (such as the corporate governance outline), and corporate resolutions.

The third category refers to optional registration items. These are the items registered by model companies, who want to follow the better practice of other companies, and their shareholders, directors, supervisors, and senior managers, of their own accord. Such items include corporate social responsibility policies, ESG reports, and compliance governance reports. In order to maintain the openness and dynamism of corporate registration items, registration authorities should allow companies, shareholders, and other parties to voluntarily register or disclose non-essential registration items.

Of course, the registration items under the three categories will not remain unchanged. The increase or decrease of registered capital is like the ebb and flow of the tide. In order to respect and protect the right to know and the right to choose of prospective trading partners

and the public, the Company Law (2023 Revision) includes Paragraph 1 of Article 34 requiring companies to secure registration of changes when any change occurs in registration items. Any corporate registration item that is unregistered or changed cannot be used against a *bona fide* counterparty. Paragraph 2 of Article 160 of the law also stipulates administrative penalties (including orders that registration be performed within a prescribed time limit and fines). Purging malpractice and promoting integrity are equally vital. To incentivize companies to voluntarily disclose more information, a points-reward system for honest registration could be established to confer commendations for honest practices.

G Digitalization and Transparency of Registered Capital Information of Companies

Digitalization and transparency are indispensable as they represent the direction of reform of the corporate registration system. Disclosure of registered capital information is related to transaction security, transaction costs, and transaction efficiency, and has the attributes of public information. In the absence of transparency, the presumptive validity of public disclosure will be meaningless. The transparency of corporate registration information has continued to improve since the launch of NECIPS. Article 6 of the Regulation of the People's Republic of China on the Administration of the Registration of Market Entities also requires the State Administration for Market Regulation to formulate unified norms for the development of data and a system of commercial entity registration to enable online and remote accessibility of services. However, there are still system loopholes, as some information remains inaccessible for real-time online queries to date, and the quality of information disclosure varies with listed companies.

In practice, lawyers vested with special rights to collect evidence are unable to access all registration information from the China Securities Depository and Clearing Co., Ltd. (hereinafter referred to as CSDC). For example, in the administrative lawsuit between the lawyer YAN [Redacted] and a certain branch of CSDC, the first-instance court rejected the plaintiff's request that the defendant provide all stock pledge information and corresponding stock pledge contracts registered by a certain company as a pledgee with the defendant.[11] As for the social effect of the judgment, treating the stock pledge information and stock pledge contracts of listed companies as trade secrets would undermine the basic attributes (i.e., openness and transparency) of listed companies, the publicity and credibility effectiveness of registration information, and the role of registration authorities as the authoritative information center for listed companies.

Given that the transparency of registered capital information needs to be improved, all corporate registration information (including registered capital information) registered with all registration authorities, including business registration authorities, securities registration and clearing institutions, and trust registration authorities, should be included in the enterprise information publicity system. Except for statutory exceptions involving national security, personal privacy, or trade secrets, all information submitted for registration by a company and its shareholders and other stakeholders (such as equity pledgees) should be

[11] Judgment (2020) Y. 03 X. C. No. 146 of the Intermediate People's Court of Shenzhen Municipality, Guangdong Province.

made public.

The time difference between corporate registration and online disclosure poses potential moral risks to company insiders and security risks to company outsiders. Registration authorities are recommended to follow the principle of "Tripartite Simultaneity" of registration, disclosure and inquiry, i.e., the moment any information is registered, the registered information is disclosed online simultaneously and made available to the public for real-time inquiry, so as to achieve interconnection and seamless alignment between the company registry and the information disclosure system, thereby establishing a public-friendly corporate registration disclosure platform that operates 24 hours a day and 7 days a week, spans markets and industries, transcends geographical boundaries, and ensures real-time data sharing, free access, and timely updates.

VI Conclusion

Companies are the microscopic cells of the market economy. The high-quality development of the economy depends on the high-quality development of companies. A deep-rooted and thriving corporate credit system is the sustainable engine for the high-quality development of companies, and it includes three dimensions: Capital credit, assets credit, and personality credit, whereas the fragility of capital credit, assets credit, and personality credit is a fatal shortcoming that restricts the high-quality development of companies. Registered capital is not everything, but without it, nothing is possible.

Reform and institutional transformation are inextricably interwined. The registered capital system is a product of reform and opening up, and in return, it promotes the deepening of reform and opening up and releases tremendous vitality for investment and entrepreneurship. In view of the fact that the registered capital system itself is still imperfect, the Third Plenary Session of the 20th CPC Central Committee passed a Resolution, proposing to "deepen reform of the registered capital system," which task carries great practical significance. The reform of the registered capital system depends on the overall coordination and seamless interconnection among the statutory responsibilities of multiple departments, including corporate registration authorities, state-owned assets supervision departments, financial departments, and courts. To enhance the enforceability of the registered capital system, a systematic top-level institutional design should be developed to deepen the reform of the registered capital system. This approach would rationalize shareholders' capital subscription commitments, strengthen the justiciability of shareholders' paid-in capital obligations, and accelerate the transparency of information regarding subscribed and paid-in registered capital.

Markets may fail, but laws would not. In order to prevent systemic financial risks, Article 47 of the Company Law (2023 Revision) authorizes laws, regulations, and State Council resolutions to make special provisions on the paid-in period and minimum amount of registered capital of LLCs in special industries. Therefore, it is recommended that the State Council, based on a comprehensive review of "implosion-style" corporate default incidents in recent years, precisely raise the minimum registered capital threshold for high-risk industries with the most concentrated debt risks and excessive debt-to-asset ratios, and may concurrently

introduce new rules requiring capital contributions to be made within a period shorter than five years where warranted. In view of the fact that the minimum amount of registered capital stipulated in the Law of the People's Republic of China on Commercial Banks and other industry-specific laws has obviously lagged behind actual needs, it is recommended that the State Council take into account the specific circumstances of macro-control and financial stability and regularly increase the minimum amount of registered capital. To maintain a free and fair market competition order, the National Development and Reform Commission and the Ministry of Finance are recommended to a) promptly clean up those implicit bidding rules for the bidding activities of major projects and for government procurement that emphasize the subscribed registered capital and ignore the paid-in registered capital, and b) set core indicators such as the paid-in registered capital of bidders, corporate credit, and product cost-effectiveness as key bid assessment metrics.

No remedy, no right. In order to unify judicial reasoning, build judicial credibility, and prevent inconsistent rulings in similar cases, the Supreme People's Court is recommended to issue supporting judicial interpretations of the Company Law (2023 Revision) as soon as possible to replace the five existing judicial interpretations under the original Company Law. For the purpose of protecting corporate capital credit from unlawful erosion, it is advised to concurrently activate administrative liability, criminal liability, civil liability, and credit accountability. For the purpose of narrowing the scope of criminal punishment, the restrictive application of charges pertaining to "two falsifications and one capital flight" (falsification of registered capital, falsification of capital contributions, and capital flight) shall apply all the same to companies operating under the business registration system based on paid-in registered capital, but not to those lawfully governed by the registered capital system. The exemption of shareholders from criminal liability does not mean exemption from the other three types of liability. When the legal provisions concerning falsification of registered capital and those concerning falsification of capital contributions overlap, it is advisable to apply the legal norm that is more favorable to the party involved. In order to sanction and deter registration fraud, Article 250 of the Company Law (2023 Revision) introduces fixed-range fines, establishing a dual punishment system targeting both companies and directly responsible personnel. However, it neglects the liability of founding shareholders, which should be rectified. Article 52 of the Company Law (2023 Revision) establishes a share forfeiture mechanism for shareholders who fail to fulfill capital contribution obligations, yet it lacks explicit provisions governing the subsequent disposal procedures for forfeited shares. It is recommended that judicial interpretations clarify the priority order of the transfer of defectively contributed equities: The best option is to transfer them to other shareholders; the second-best option is to transfer them to an external third party, but the preemptive rights of the existing shareholders must be respected; the worst option is to transfer them to the company.

As a Chinese proverb says, "Let the person who tied the bell on the tiger take it off." In order to build a service-oriented registration authority, we advise the State Administration for Market Regulation to introduce corporate registration regulations as soon as possible. Corporate registration is a public information service provided by the registration authorities to the public to provide corporate registration information. In order to encourage

collaborative governance, we recommend that a market for value-added services for corporate registration information be cultivated. Also, it is recommended to clarify the public credibility of information disclosure. In order to eliminate the risk of rule arbitrage caused by the double standards of registration and filing, we suggest converting filing information into registration information. In order to enhance the disclosure accuracy of registered capital information, we suggest categorizing the registration information on registered capital into three kinds: absolutely necessary, relatively necessary, and optional. It is recommended to establish the principle of "tripartite simultaneity" of registration, disclosure, and inquiry, and disclose the corporate registration information of all registration authorities, so as to fully respect the public's right to know.

Acknowledgments This paper is supported by the Key Program of the All-China Federation of Industry and Commerce in 2024 "Research on the Rule of Law for Private Enterprises" (No. 2024K20310).