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# *From Full Subscription to Time-Limited Paid-in: A New Study on Civil and Criminal Liabilities of Shareholders' Capital Flight under the Five-Year Subscription Period*

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***Abstract.*** Article 47 of the Company Law of the People's Republic of China, revised in 2023, has established the rule of "full payment of subscribed capital contributions within five years", which has fundamentally reshaped the temporal structure of shareholders' capital contribution obligations. For example, under the previous full subscription system, shareholders could enjoy an indefinite grace period for capital contributions, which has now been replaced by a time-limited subscription mechanism subject to the statutory maximum. This paper re-examines the legal definition of shareholders' capital flight behavior within a new dynamic framework with clear time limits. From the perspective of the intersection of civil and criminal law, taking the five-year subscription period as the core time node, this paper first divides the shareholders' capital contribution status into three stages—the period be fore the capital contribution deadline, the period after the deadline with unpaid capital contributions, and the period with fully paid capital contributions, then sorts out the evolutionary logic of the legal interests infringed by the capital flight behavior in different stages, as well as the differences and concurrence relations in the identification standards of civil and commercial liabilities and criminal liabilities. This study clearly shows that the civil and commercial liability system, with its institutional flexibility and loss compensation function, should serve as a dynamic regulatory mechanism covering the entire process. In contrast, criminal liability should use the "registered capital actually paid in" as its core anchor to play the ultimate deterrent role.

***Keywords:*** Time-limited subscription system, Five-year subscription period, Capital flight, Intersection of civil and criminal law

## 1. Introduction

On December 29, 2023, the 7th Session of the Standing Committee of the 14th National People's Congress voted to adopt the revised *Company Law of the People's Republic of China (hereinafter referred to as the Company Law)*, which officially came into force on July 1, 2024. Among the many adjustments involved in this revision, the rule of "full payment of subscribed capital contributions within five years" for shareholders of limited liability companies established by Article 47 has attracted particular attention. It clearly stipulates that "the shareholders shall fully pay up the total

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amount of capital contributions subscribed by all shareholders in accordance with the agreement of the company's articles of association within five years from the date of the company's establishment." This rule means that China's corporate capital system has taken an important step from the full subscription system implemented in 2013 to a subscription system with a clear time limit, providing an institutional solution to the problems of "sky-high subscription" and "indefinite deferred payment" that have caused the hollowing out of corporate capital in practice.

Under the full subscription system implemented in 2013, shareholders could enjoy performance-based interest on capital contributions without a clear time limit. The identification standard for capital flight behavior was relatively clear—a shareholder could be identified as having committed capital flight as long as he withdrew the capital contribution he had actually paid after the company's establishment. However, the introduction of the five-year subscription period in the *Company Law* has made the concept of "capital contribution" no longer a static single state, but a phased dynamic characteristic advancing with time: from the date of the company's establishment to the end of the five-year subscription period, shareholders legally enjoy the interest of capital contribution period; when the five-year period expires, shareholders need to immediately perform the obligation of actually paying the capital contribution; once shareholders complete the actual payment, this part of the capital contribution officially becomes the legal person property of the company. Based on this dynamic time logic, the legal research and judgment of "capital flight" has become very difficult. The main difficulty lies in the fact that the five-year time node will affect the identification of civil and criminal liabilities, and, given the requirements of a free economy and the inherent modesty of criminal law, the crime of capital flight should also raise the threshold for conviction [1].

Therefore, taking the five-year subscription period as a central point, this paper then identifies and sorts through all the possible forms of civil and criminal liability associated with capital flight behaviors. Deep discussions are held regarding the various functional boundaries and the logic between civil relief measures under the new institutional framework of the limited time subscription system, along with the relationship to the criminal sanctions imposed on those who commit capital flight. The findings of this paper will be a valuable resource for courts to resolve different types of disputes between shareholders for liability for capital contributions after the effective date of *The revised 2023 Company Law*.

## 2. The re-definition and influence of the five-year subscription period on the concept of "capital contribution."

### 2.1. Structural impact of the new regulations on the identification of capital flight behavior

Capital flight refers to a fraudulent, illegal act in which a shareholder secretly withdraws the paid capital contribution after the company's establishment, while still retaining the original shareholder status and the amount of subscribed capital contribution. Before the promulgation of the *Company Law*, the core of identifying capital flight behavior has always been the illegal withdrawal of capital contributions actually paid; the introduction of the rule of "full subscription of capital contribution within five years" has fundamentally changed the identification logic of capital flight behavior and brought far-reaching structural impacts.

Article 12 of the *Judicial Interpretation (III) of the Company Law* clearly stipulates which acts constitute capital flight: (1) Direct withdrawal, that is, shareholders or promoters of a company under the paid-in capital system contribute capital to the company for the establishment of the company, and the company withdraws the capital contribution after the capital verification by the relevant institutions; (2) Indirect withdrawal refers to the act in which a shareholder colludes with

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other shareholders of the company or persons or entities outside the company to withdraw his capital contribution by fabricating creditor-debtor relations, or making false financial statements for false profit distribution, or through related transactions. Capital flight includes not only the flight of the original capital at the time of the company's establishment, but also the flight of additional capital approved by shareholders with more than two-thirds of the voting rights at the shareholders' meeting for the company's operations and development needs [2].

It should be noted that neither the full subscription system nor the limited subscription system negates the three capital principles (capital determination, capital maintenance, and capital unchangeability), and capital flight still violates the capital maintenance principle [3].

The time node has become the precondition core element for identifying capital flight behavior. To judge whether a certain act constitutes capital flight, it is first necessary to clarify which stage of the performance of the capital contribution obligation the act occurs in. The core value of this judgment is that the legal nature of shareholders' transfer of company assets differs at different stages. For example, in the first stage, the act of shareholders transferring company assets generally does not constitute capital flight, because the shareholders have not actually paid the capital contribution at this time, and the assets they transfer are not the "company property formed by their own capital contribution". In addition, in the second stage, the act of shareholders transferring company assets may simultaneously involve two illegal circumstances: failure to perform the due capital contribution obligation, and the flight of the already paid capital contribution. In the third stage, the act of shareholders transferring the company's property resulting from actual paid capital contributions constitutes a typical form of capital flight.

### 2.2. Three-stage division of the "capital contribution" status

The five-year subscription period established by Article 47 of the *Company Law* divides the shareholders' capital contribution obligations into three stages in the time dimension that are both independent and coherent.

The first stage is the period before the capital contribution deadline, i.e., from the date of the company's establishment to the expiration of the five-year subscription period. At this stage, shareholders legally enjoy interest on the capital contribution period and have the right to defer payment of the subscribed capital contribution temporarily. The company cannot require shareholders to perform the capital contribution obligation in advance. The legal basis for this stage is that the subscription system does not exempt shareholders from the capital contribution obligation. Still, it only postpones the performance period of the obligation, thereby forming a time-bound creditor-debtor relationship between shareholders and the company. The comprehensive accelerated maturity system established by the *Company Law* is a special case of this stage.

The second stage is the period after the deadline with unpaid or insufficiently paid capital contributions, that is, when the shareholder has not fully paid the subscribed capital contribution after the expiration of the five-year subscription period. At this time, the original time limit interest enjoyed by the shareholder is eliminated, and the capital contribution obligation becomes a real debt that must be performed immediately. The act of a shareholder failing to pay the capital contribution in full on time constitutes a breach of the capital contribution commitment, which is a typical case of "failure to perform or incomplete performance of the capital contribution obligation".

The third stage is the period during which fully paid capital contributions are made; that is, the shareholder has fully paid the subscribed capital contribution within the five-year subscription period or within a reasonable time after its expiration. At this time, the shareholder's capital contribution obligation has been fully performed, and this portion of the capital contribution

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property officially becomes the company's legal person property, protected by the exclusive rights of the company's legal person property.

## 3. Unfolding along the timeline: differentiated analysis of civil and criminal liabilities for capital flight in different stages

### 3.1. Asset transfer within the five-year subscription period (before the capital contribution deadline)

In the first stage, shareholders legally enjoy the interest of the capital contribution period and have not actually paid the subscribed capital contribution. At this time, the act of shareholders transferring assets from the company does not conform to the constitutive requirements of traditional capital flight in form, because the core premise of capital flight is that "the shareholder has actually paid the capital contribution". However, this does not mean that such acts are free from legal constraints and regulations.

#### 3.1.1. Analysis of behavioral characteristics

When the capital system was still the paid-in system, a typical case of capital flight involved transferring the capital contribution into the company's account for capital verification and then transferring it out. After the reform of the corporate capital system to the full subscription system and then to the limited subscription system, this typical behavior mode is no longer regarded as capital flight [4]. Therefore, the acts of shareholders transferring company assets in the first stage usually take two typical forms: one is to transfer the company's existing assets to the shareholder's personal name or other enterprises and organizations actually controlled by him by means of fabricating creditor-debtor relations, unfair related transactions, etc.; the other is to reduce the company's registered capital and retrieve the corresponding property therefrom through capital reduction operations in violation of legal procedures. All these acts have one thing in common: The assets being transferred from the shareholders will generally not have been contributed to the corporation by those shareholders directly, but rather will derive from the assets of the corporation itself. Also, since the statutory period for a capital contribution has not yet elapsed, shareholders would not yet have made a capital contribution to the corporation nor would they have paid fair and reasonable consideration for the transferred asset (this all leads to the reduction of the amount of taxable property the corporation can hold that it must be able to pay its debts to outside parties).

#### 3.1.2. Civil liability level

Although such acts do not constitute capital flight, they can be classified into the legal regulation category of abuse of shareholder rights and violation of fiduciary duties. Article 21 of the *Company Law* clearly stipulates that shareholders who abuse their shareholder rights and cause losses to the company or other shareholders shall bear corresponding compensation liabilities. Article 180 further expands the scope of the duty of loyalty and diligence to include not only the company's directors, supervisors, and senior managers, but also controlling shareholders and actual controllers [5]. In addition, if the act of shareholders transferring assets reaches the level of "abusing the company's legal person independent status and the limited liability of shareholders to evade due debts and seriously damage the legitimate interests of the company's creditors", the disregard of corporate

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personality system can be applied in accordance with the provisions of Article 23 of the *Company Law*, requiring the shareholder to bear joint and several liability for all the company's debts.

If a company shareholder has only a single or a few acts of transferring company funds, although this situation has not yet reached the point of denying the company's independent personality, the court may order him to bear supplementary compensation liability within the limit of the transferred funds with reference to the relevant provisions on capital flight.

#### 3.1.3. Criminal liability level

In principle, the act of shareholders transferring company assets in the first stage does not constitute the crime of capital flight. Because the *Interpretation of the Standing Committee of the National People's Congress on Articles 158 and 159 of the Criminal Law* issued in 2014 and the notice jointly issued by the Supreme People's Procuratorate and the Ministry of Public Security both stipulate that the crime of capital flight "only applies to companies that implement the registered capital paid-in registration system in accordance with the law". Under the subscription system, shareholders have not actually paid the capital contribution, and their transfer of company assets does not conform to the core constitutive requirement of the crime of capital flight, namely "flight of paid capital contribution". Therefore, from the perspective of the current Company Law, the period before the capital contribution deadline can also be regarded as a situation similar to the subscription system, which has been referred to in judicial practice. For example, if the act involves fabricating transactions and forging accounting books, it may constitute the crime of misappropriation of funds, the crime of occupying a position, or the crime of issuing special VAT invoices falsely. Still, at this time, criminal law no longer protects the corporate capital system, but the company's ownership of its own property.

### 3.2. Asset transfer after the expiration of the five years (after the capital contribution deadline with unpaid capital contributions)

The second stage corresponds to the state in which the five-year subscription period has expired, but the shareholder has not yet fully paid the capital contribution. At this stage, the original time limit interest enjoyed by the shareholder has been eliminated, and their capital contribution obligation has changed from a promise waiting to be performed to a real debt that must be repaid immediately.

#### 3.2.1. Analysis of behavioral characteristics

Shareholders in this stage usually fall into a "double illegal situation": on the one hand, they fail to perform the due capital contribution obligation, which is a fundamental breach of their own capital contribution commitment; on the other hand, their act of transferring company assets further erodes the company's core property used to bear responsibilities to the outside world. The combination of these two acts has greatly increased the harm to the stability of the company's capital and to the legitimate rights and interests of creditors.

#### 3.2.2. Civil liability level

Shareholders in this stage will face the concurrence of multiple liability pursuit paths. First of all, the company itself or its creditors may require shareholders to perform their capital contribution obligations in accordance with Article 54 of the revised Company Law. Secondly, it is illegal for a shareholder to withdraw all or part of the invested funds after the investment, which can still be

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considered a capital flight act. In accordance with the provisions of Article 14 of the *Judicial Interpretation (III) of the Company Law*, the shareholder shall bear supplementary compensation liability for the company's debts within the scope of the principal and interest of the flighted capital contribution. The company's directors and senior managers who assist in the capital flight act shall also be jointly and severally liable. In addition, if the act of shareholders transferring assets is intertwined with the act of failing to perform capital contribution obligations, resulting in the company being in a state of "obviously insufficient capital", this situation can be used as an important consideration factor for the court to apply the disregard of corporate personality system.

From the perspective of judicial practice, when shareholders transfer company assets after the expiration of the capital contribution period, the court generally treats it as capital flight and orders them to bear the corresponding supplementary compensation liability.

#### 3.2.3. Criminal liability level

The criminal liability of shareholders for the relevant acts in the second stage is significantly improved. Although the crime of capital flight still requires "actually paid capital" as a basis, shareholders transferring company assets without fully paying their capital contributions may face multiple criminal charges. For example, if a shareholder illegally occupies the company's assets for his own use and the amount exceeds a relatively high threshold, he may commit the crime of occupying a position. If a shareholder transfers company assets by fabricating creditor-debtor relations, forging various certificates, etc., he may commit the crime of misappropriation of funds or the crime of forging financial instruments.

It should be specially noted that although the scope of application of the crime of capital flight has been strictly limited, for companies in specific industries implementing the paid-in registration system, such as commercial banks and insurance companies, the act of shareholders transferring company assets at this stage may still constitute the crime of capital flight.

### 3.3. Capital flight after the completion of actual capital contribution

The third stage corresponds to the state after the shareholder has fully paid all the capital contributions, which is also the most representative applicable scenario of the traditional capital flight system.

#### 3.3.1. Analysis of behavioral characteristics

Capital flight behavior in the third stage is manifested specifically as shareholders withdrawing their paid capital contributions through various direct or indirect means after the company's establishment. In accordance with the provisions of Article 12 of the *Judicial Interpretation (III) of the Company Law*, typical capital flight acts mainly include the following: compiling false financial and accounting statements to inflate profits for distribution; transferring the paid capital contribution by fabricating creditor-debtor relations; transferring the capital contribution in the form of related transactions; and other acts of withdrawing the capital contribution without going through legal procedures.

#### 3.3.2. Civil liability level

At present, a mature and comprehensive rule system has been established for the identification and liability for capital flight behavior. Shareholders who have committed capital flight shall bear

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supplementary compensation liability for the company's debts within the scope of the principal and interest of the flighted capital contribution; other shareholders, company directors, senior managers, or actual controllers who assist in the capital flight act shall bear corresponding joint and several liabilities. From a judicial perspective, the identification standards for such liabilities are relatively clear and definite.

### 3.3.3. Criminal liability level

Although the connection between the capital flight behavior in the third stage and the provisions of the criminal law is the most direct and close, the scope of application of the crime of capital flight has been limited to companies implementing the paid-in registration system. For ordinary subscription system companies, even if the capital flight act does not constitute the crime of capital flight, if the act involves circumstances such as providing false documents and defrauding the registration authority, it may constitute the crime of false declaration of registered capital or the crime of providing false certification documents.

## 4. Conclusion

The introduction of the rule of "full subscription within five years" has not eliminated disputes at the intersection of civil and criminal law in the field of corporate capital, but has prompted the analysis framework for relevant issues to develop in the direction of refinement and dynamization. Combing with the five-year subscription period as the statutory time node, it can be found that the core of the legal characterization of whether the act of shareholders transferring assets constitutes capital flight lies in the specific stage of the shareholder's capital contribution obligation at the time of the act: in the stage where the capital contribution obligation has not yet expired, the transfer of assets by shareholders is generally not identified as capital flight, but can be classified into the regulatory category of abuse of shareholder rights; in the stage where the capital contribution obligation has expired but not fully paid, shareholders will face the dual liability pursuit of failure to perform the capital contribution obligation and capital flight at the same time; in the stage where the capital contribution has been fully paid, the capital flight act will trigger a typical concurrence of civil and criminal liabilities.

The allocation of legal liabilities must be carried out closely around this statutory timeline: the civil liability system, with its unique flexibility and compensation attributes, has become the core regulatory means covering the whole process and capable of dynamic response, and the systems such as accelerated maturity of capital contribution obligations, disregard of corporate personality, and return of flighted capital contribution have been allocated more reasonably and connected smoothly; while criminal liability must firmly anchor the "actually paid capital" as the most stable judgment benchmark, abide by the principle of modesty of criminal law, and only play the final legal deterrent role for companies implementing the paid-in registration system. According to the relevant research in the field of company law in 2023, the capital system established by the revised *Company Law* requires civil liability and criminal liability to maintain clear boundaries while complementing each other in function, so these systems must jointly create a modern legal ecosystem that takes into account investment freedom, transaction security, and market order.

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