# Liquidation liability of minority shareholders in a limited company

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## Abstract

In order to prevent and defuse corporate debt risks, standardize the exit mechanism of market entities, and maintain market order, it is necessary to establish a sound corporate liquidation obligor system and properly balance the interests of various parties such as the company, minority shareholders, and creditors. However, Article 70 of the General Provisions of the Civil Code sets forth relatively general provisions regarding the liquidation obligations of minority shareholders, which differ from the relevant provisions of the Judicial Interpretation II of the Company Law, resulting in divergent approaches in judicial practice concerning the coordination of these two provisions. The academic community exhibits significant divergence on whether minority shareholders should be listed as liquidation obligors, with positions roughly divided into "affirmative" and "negative" views. Minority shareholders should be listed as liquidation obligors, but a more compromise-oriented approach may be adopted, namely, by endowing them with grounds for defense and exempting them from liquidation liability under certain conditions.

## Full Text

# Liquidation liability of minority shareholders in a limited company

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**Abstract:** In order to prevent and defuse corporate debt risks, standardize the withdrawal mechanism of market subjects, and maintain the market operation order, it is necessary to establish a good company liquidation obligor system, and properly balance the interests of different subjects such as companies, minority shareholders and creditors.However, Article 70 of the General Provisions of the Civil Code has relatively general provisions on the liquidation obligations of minority shareholders, which are different from the relevant provisions of the Judicial Interpretation of the Company Law II, resulting in differences in how to coordinate the judgments of the two in practice.The theoretical circle has great differences on whether to list minority shareholders as liquidation agents, which are roughly divided into "affirmative" and "negative".Minority shareholders shall be listed as liquidation agents, but a more palliative path may be adopted, that is, to endow them with defense reasons and exempt the minority shareholders from liquidation liability under certain conditions.

**Key words:** liquidation obligor; liquidation liability; minority shareholders

## Introduction

In order to solve the disadvantages of the market exit mechanism in the initiation, liquidation and accountability procedures, the Supreme People' s Court issued the Judicial Interpretation of the Company Law, in which Article 18 still does not use the concept of "liquidation obligor", but clearly stipulates the main body of the liquidation group and its responsibility to neglect in performing the liquidation obligations.This has caused a great controversy in the theoretical and practical field, and the focus is on whether all the shareholders of the limited company can act as the liquidation obligor.The Civil Code was adopted in May 2020. Article 70 of the General Provisions is the term "liquidation obligor" used for the first time in China' s legislation.Although the concept of liquidation obligor is not clear, the obligations, scope, legal liability and the relief channels of interested parties are stipulated in principle.Thus, China has formally formed a double-track clearing system of clearing obligor and clearing person.China implements the legislative style of the integration of people and commerce, so the relevant provisions of legal person liquidation also have the corresponding legal binding force in the field of legal law.This involves the connection and application of the General Civil Administration and the current corporate legislation, as well as the legal status of judicial interpretation.At the same time, Article 70 of the General Provisions of the Civil Code has relatively general provisions for minority shareholders as liquidation agents, which is different from the relevant provisions of the Judicial Interpretation of the Company Law II, resulting in different how to coordinate the judgments of the two in practice.The root cause of the problem lies in how should article 70 of the General Provisions of the Civil Code conflict with the Company Law and relevant interpretations coordinated?Throughout the world law, most countries

adopt "single-track" legislation, and few adopt a system such as China' s, which combines liquidation obligors and liquidators in a "dual-track system of liquidating agents." The French Civil Code provides: "In principle, the company shall take the director as the liquidator; the company may also determine the liquidator separately by means of the articles of association, a shareholders' resolution, or a court ruling." The Japanese Companies Act provides: "The managing shareholder shall be the liquidator; the articles of association or a resolution of the general meeting of shareholders may also provide otherwise." In the United States, the selection and appointment of corporate liquidators is prescribed by state legislation: generally, on the legal basis of fiduciary duty, only the company' s directors serve as the company' s statutory liquidators. Through a comparative analysis of current foreign liquidator systems and their provisions, it can be seen that the scope of foreign liquidators is based primarily on statutory provisions, supplemented by the principle of respecting corporate autonomy (that is, it may be determined by the articles of association or by the shareholders). Countries generally confirm liquidators in the order of "elected liquidator," "statutory liquidator," and "designated liquidator," thereby fully respecting the will of the company' s shareholders at the liquidation stage. China, however, establishes only the system of statutory liquidation obligors, and provides for the selection of liquidation obligors and designated liquidators. In addition, with respect to the provisions on rights and obligations, foreign legislation on liquidators is basically consistent with China's provisions on liquidation groups, namely, to settle the company' s creditor' s-rights and debt relationships so that the company may exit the market smoothly. In cases of false deregistration or malicious liquidation, the liquidator shall bear the corresponding tort liability.

In September 2012, the Supreme People' s Court issued Guiding Case No. 9, "Shanghai Cunliang Trading Co., Ltd." The pioneering point of the case is as follows: where a company should be liquidated, the shareholders shall bear joint and several liability for the company' s debts. The Supreme People' s Court held that, if the shareholders failed to organize liquidation and the whereabouts of the account books and property were unknown, minority shareholders should not be exempted from the liquidation obligation on the grounds that they were not actual controllers or did not actually participate in the company' s operation and management. The Supreme People's Court can effectively curb shareholders'bad-faith conduct in evading creditors' rights, and this has achieved certain results in practice. But it has also led, in judicial practice, to frequent situations in which courts impose liability on minority shareholders who did not "neglect"their duties, or in which there is no causal relationship between the company's missing main property or important documents and the minority shareholders' "neglect in liquidation," resulting in minority shareholders bearing liability far exceeding the amount of the company' s debts and in an obvious imbalance of interests. In addition, because of the unreasonable provisions of Judicial Interpretation II of the Company Law, some courts incorporate the exemption analysis for a company' s minority shareholders into the explanation of the constitutive elements of tort liability. The author believes that this is in fact a question concerning the scope of subjects that the case should address before entering into the substantive elements of tort infringement.

## Literature Review

The premise for discussing the liquidation liability of minority shareholders is whether minority shareholders should be included within the scope of liquidation obligors. There remain substantial differences in academic circles on this issue. Scholars believe that the shareholders of a limited liability company should enjoy many shareholder rights and, at the same time, assume appropriate obligations to the company, including the liquidation obligation for the company' s orderly exit; this obligation is not exempted because the

shareholders are in a non-controlling position. However, most scholars believe that minority shareholders should not be listed as liquidation obligors. Some scholars hold that capital contribution is the full extent of shareholders' legal obligations to the company, and that shareholders have no other obligations, including liquidation obligations. Others argue that limited liability companies also have shareholders who are vulnerable: minority shareholders are unable to participate in the company’ s operation and management, and may themselves be subject to control by controlling shareholders. It is unfair to require shareholders who lack the ability to organize liquidation to assume liquidation obligations and responsibilities. Still other scholars, proceeding from fiduciary duty, argue that liquidation obligations arise from the fact of controlling the company; shareholders do not necessarily have control over the company’ s affairs, and the view that all shareholders are liquidation obligors is contrary to the basic legal principle of fiduciary duty.

The author believes that both of these theories appear to be somewhat one-sided. The “affirmative theory” neglects the rights and interests of minority shareholders, leading to an imbalance between their obligations and rights: from the perspective of balancing the protection of creditors’ interests and shareholders’ interests, even if the purpose of designing rules on liquidation liability is to protect the damaged interests of creditors, one still cannot excessively ignore the fact that some minority shareholders did not participate in the company’ s operation, and that the heavier liquidation liability imposed on them means that, in substance, they too are “victims.” The author’ s position on the “negative theory” is as follows: first, minority shareholders have fiduciary duties, and liquidation obligations derive from fiduciary duties, which provide the legal basis for treating them as liquidation obligors; second, while controlling shareholders may improperly infringe upon the company and minority shareholders, minority shareholders may also abuse their veto power to block resolutions, resulting in corporate deadlock and damage to the company’ s interests.

In November 2019, the Supreme People’ s Court issued the *Minutes of the National Conference on the Civil and Commercial Trial Work of Courts*. Through three provisions, it summarized prior judicial practice and further clarified issues such as the requirements for “liquidation obligations,” causation requirements, limitation periods, and other related matters. The provisions of the Ninth Conference Minutes have played a positive role in promoting the interests of minority shareholders. Their deeper significance is that, while recognizing minority shareholders’ status as liquidation obligors, they endow minority shareholders with the defense of “being negligent in liquidation.”

## Research Focus

By analyzing the problems arising from relevant legislation, judicial practice, and theoretical views in China, and on the basis of the relevant provisions of the Ninth Conference Minutes, the author believes that minority shareholders should be included among liquidation obligors, but that a more moderate path should be adopted by granting them certain grounds for defense. This paper attempts to sort out, analyze, and verify this from the standpoint of “defense,” and offers suggestions for improving relevant legislation and judicial practice in China.

## Minority Shareholders Shall Act as Liquidation Obligors

### Analysis of the Relevant Concepts of the Liquidation Obligor

Other concepts that often appear together with the liquidation obligor are the liquidator and the person responsible for liquidation. First, with respect to the connotation of the liquidation obligor, the academic community has basically reached a consensus: namely, it is the subject that conducts the liquidation procedure in accordance with the law. Some

scholars also define it more precisely as: “Based on the specific legal relationship between it and the company, the company shall initiate liquidation proceedings within the statutory time limit, establish a liquidation organization, and bear corresponding liability when losses are caused to relevant rights holders because the company fails to conduct liquidation in a timely manner.” The “liquidator” is the subject who, after the company’ s property is [[unclear: phrase]], is the liquidation group under the Company Law, and may also refer to members of the liquidation group. These include: statutory liquidators, elected liquidators, and designated liquidators. Therefore, the liquidation obligor and the liquidator exist at different stages of the liquidation procedure, and the liquidation obligor may enter the liquidation group and become one of its members after initiating liquidation proceedings. The two may overlap in terms of the specific individuals involved, but they are not the same concept, and the content of their obligations differs greatly. The concept of the person responsible for liquidation appears in Article 7 of the Enterprise Bankruptcy Law, which provides that the subject responsible for liquidation according to law has the obligation to apply to the court for bankruptcy when, after the company’ s dissolution, it is insolvent. In explaining the background and purpose of Judicial Interpretation I, the person in charge of the Second Civil Division of the Supreme People’ s Court held that the person responsible for liquidation includes “the liquidation group established where liquidation has not yet been completed” and “the liquidation obligor who initiates liquidation proceedings according to law.”It can be seen that the person responsible for liquidation is a subject concept used in bankruptcy law to refer to those bearing the obligation to file for bankruptcy for a dissolved insolvent company, and it points to different obligors at different stages of corporate liquidation.

The status of minority shareholders is relative

As soon as the “Minutes of the Ninth National Court Work Conference for Civil and Commercial Trials” were issued, many members of the legal community published articles discussing how to determine the status of “minority shareholders.” The number of shareholders and the proportion of shares held may be used to determine who are minority shareholders. Before the status of minority shareholders can be clarified, the protection of minority shareholders through reference to the “Minutes of the Ninth National Court Work Conference for Civil and Commercial Trials” may become empty talk. Therefore, before discussing whether minority shareholders may serve as liquidation obligors, it is necessary first to determine what a "minority shareholder" is. The characteristics of minority shareholders are: first, their proportion of investment in the company is relatively small; second, they have fewer voting rights and less involvement in the company' s operation and management; third, their primary purpose in investing in the company is to obtain dividends. In my opinion, the shareholding ratio should not be used as the basis for determining minority shareholders. Shareholders holding 49% may play different roles in different structures. In a company with a large number of shareholders and dispersed shareholdings, a shareholder holding 49% of the shares may fully enjoy actual control over the company and its affairs; but in a limited liability company composed of two persons, the shareholder holding 49% of the shares may be squeezed out by the other shareholder (51%). It is therefore not necessary to determine minority-shareholder status solely according to shareholding ratio; the status of minority shareholders can only be relative. Although the shareholding ratio cannot be used as a complete basis in the process of determining shareholder status, it can be used as an analytical tool by judges in companies with complex membership and dispersed equity. If a shareholder holds only 1%-5% of the shares, its status as a minority shareholder is determined, and the judge may directly determine this by the shareholding proportion; but when a shareholder holds 20%-40% of the shares, the judge should analyze and compare, and carefully identify that shareholder' s status within the company. The author believes that the definition of "minority shareholders" should not be made through the proportion of investment; this may fall within the court' s discretion. The characteristics of minority shareholders should be considered comprehensively to determine whether they belong to minority share-

holders, such factors include (but are not limited to) attendance at shareholders' meetings, whether the shareholder serves on the board of directors or the board of supervisors, whether the shareholder selects directors, supervisors, or senior executives, the proportion of investment, participation in company management, and so on.

## The minority shareholder shall be the liquidation obligor

Article 70 of the Civil Code expresses the subject scope of the liquidation obligor as "the members of the directors, directors and other executive organs or decision-making bodies of a legal person." Some people believe that there is a contradiction between this article and the relevant provisions of the Judicial Interpretation of the Company Law on the subject scope of the liquidation obligor. The liquidation obligor clearly stipulated in Article 70 of the Civil Code is limited to the directors of the company, and does not list the shareholders as the liquidation obligor. This point of view is a misreading of the law. Although China' s Company Law calls shareholders "authorities," it cannot deny the decision-making function of the company' s business policy and investment plan, director election, merger and division, and other major matters, so it is not impossible to express the shareholders' meeting as "decision-making body."

In addition, referring to the interpretation book prepared by the legislature, the legislators had considered the connection between Article 70 of the Civil Code and the II Judicial Interpretation of the Company Law when stipulating the liquidation obligor system, and did not deny the status of shareholders as the liquidation obligor. If only Article 70 of the Civil Code is explained, the liquidation obligor is a director or shareholder of the company, which is a non-qualified subject scope. This means that legislators leave a lot of room for interpretation for the identification of the subject of liquidation obligations, which can choose or combine between the two types of subjects when the interpretation of the article is applied. As for Article 18 of the Judicial Interpretation of the Company Law II, although it defines the subject of liquidation obligations of a limited liability company and a joint stock limited company respectively, it does not exceed the scope of Article 70 of the Civil Code. In essence, it is the result of limiting the scope of liquidation obligor according to the different characteristics of the two types of companies. At the same time, in judicial practice, the relevant provisions of the people' s court on the Company Law and its judicial interpretation are applicable in the trial of liquidation disputes of limited companies; generally, the relevant provisions of the People are applicable in the settlement cases of non-corporate entities (such as legal persons owned by the whole people). Therefore, the author believes that there is no conflict between Article 70 of the Civil Code and the relevant provisions of the Second Judicial Interpretation of the Company Law on the scope of the liquidation obligor. About Article 70 of the Civil Code and the Company Law Judicial Interpretation 2 related provisions between the applicable relationship, in principle, the Company Law Judicial Interpretation 2 as the content of the Company Law the deepening understanding and extension, should belong to the Civil Code "proviso" applicable scope, liquidation obligations subject to the Company Law Judicial Interpretation II Article 18 shall prevail. In short, according to the current law and judicial interpretation, all shareholders of a limited liability company, including minority shareholders, have the status of liquidation obligor.

At the same time, whether minority shareholders can become liquidation agents should also examine whether they have fiduciary obligations to the company. The liquidation obligation comes from a fiduciary duty. The fiduciary obligation of controlling shareholders is generally recognized by the academic community, but there is little discussion and great controversy about whether minority shareholders have fiduciary duty. Article 20 of the Company Law stipulates: "Shareholders shall not abuse the rights of shareholders and the independent

status of the corporate legal person to infringe upon the rights and interests of other parties." It can be seen that China' s Company Law recognizes that shareholders bear fiduciary duties. Some scholars hold that "the liquidation obligation derives from the fact of controlling the company; shareholders do not necessarily control the company' s affairs, and the view that all shareholders are liquidation obligors is contrary to the basic legal principle of fiduciary duties." Shareholders, as investors and owners of the company, have no right to intervene directly in the company' s affairs. Under the basic principle that rights and responsibilities should be consistent, it seems unreasonable to impose fiduciary duties on shareholders. However, some scholars believe that "the fiduciary obligation of shareholders is in fact an objective fiduciary relationship among shareholders arising from the actual dominance and influence that shareholders obtain within the company under the capital-majority system." Under the principle of capital majority, major shareholders with large shareholdings in a company can always control and dominate voting at the shareholders' meeting, while the voting rights of minority shareholders are in effect absorbed and lack substantive force. In this situation, major shareholders must take into account the overall interests, including those of minority shareholders; if, solely for their own personal interests, they harm the interests of the company and minority shareholders, they should bear liability.

In fact, both majority shareholders and minority shareholders need to bear fiduciary duties. The former may improperly infringe upon the company and minority shareholders, while the latter may abuse veto rights to block the adoption of resolutions, causing corporate deadlock and thereby harming the company' s interests. In addition, because a limited liability company is highly personal in nature, it cannot be ruled out that minority shareholders in the company—such as reputation-based shareholders and shareholders with relatively small shareholding ratios but reputational influence—may participate in the management of the company' s decision-making; such shareholders should also be subject to fiduciary duties. In fact, in the history of fiduciary duties in the United States, the Massachusetts courts did not confine fiduciary duties to controlling shareholders, but emphasized fiduciary duties among shareholders. In *Smith v. Atlantic Properties Co.*, 1981, the U.S. court expressly stated that minority shareholders have the same fiduciary duty, and must be responsible where their exercise of veto rights harms the interests of the company.

There is a similar case in the German courts. In 1995, a minority shareholder voted against a refinancing resolution of the company, causing the company' s self-rescue measures to fail and the company to enter bankruptcy proceedings. The court held that, because the minority shareholder opposed the company' s refinancing rescue plan, the company—which could have saved itself—was regrettably forced to withdraw from the market. The minority shareholder' s improper exercise of voting rights infringed upon the interests of the company and other shareholders, constituting a violation of fiduciary duties owed to the other shareholders. Through the analysis of the above cases, it can be seen that if minority shareholders have considerable control in a limited liability company, they should owe fiduciary duties to the company and the controlling shareholders, and should not disregard the company' s interests for their own selfish interests.

In the company' s liquidation procedure, minority shareholders who have considerable control over the company may feasibly become the company' s liquidation obligors. At this time, the performance of liquidation obligations is not only part of fiduciary duties, but also a means of addressing the phenomenon of controlling shareholders bullying minority shareholders. The main reason why academic circles advocate that minority shareholders should bear fiduciary duties is the concern that imposing fiduciary duties on minority shareholders will lead controlling shareholders to oppress minority shareholders. However, at the company' s liquidation stage, all shareholders who hold control of the company are liquidation obligors and jointly bear liquidation liability, etc. There will be no oppression by the controlling shareholder, because if the controlling shareholder has the ability to oppress, it is also one of the subjects bearing obligations and responsibilities.

When stipulating that minority shareholders should actively perform their obligations, its internal context also follows this logic. Therefore, the author believes that minority shareholders, as liquidation obligors, have a legal basis; they also owe fiduciary obligations to other shareholders, and such obligations have a source. However, it is necessary to follow the principle of consistency between rights and obligations, and strictly limit the circumstances in which minority shareholders assume liquidation obligations.

## Minority shareholders shall be exempted from liquidation liability under specific conditions

Under what "specific conditions"should minority shareholders be exempted from liquidation liability? The author does not fundamentally argue that minority shareholders are not liquidation obligors, but instead adopts a mitigating path: that is, to reduce the liability of minority shareholders from the perspective of responsibility. If one holds that "except for minority shareholders, all others should become liquidation obligors," then, under this reconstructive approach, it is easy to encounter difficulties in defining minority shareholders. From the perspective of legal technique, quantitative indicators such as equity ratio and number of shareholders can be used to clarify the scope of minority shareholders, but this readily leads to a mechanized and dogmatic treatment of minority shareholders. There may also be malicious avoidance: within a certain investment scope, shareholders who should bear lesser liquidation obligations may be excluded, which does not conform to the principle of creditor protection. Therefore, the author draws on the provisions of Article 14 of the *Minutes of the Ninth National Court Work Conference for Civil and Commercial Trials* and adopts the following reconstructive path: to provide minority shareholders with defenses against liability. Where specific conditions are satisfied, minority shareholders enjoy a defense against "neglect in performing liquidation obligations."

As to how to accurately identify "neglect in performing liquidation obligations," Article 14 of the *Minutes* provides: it "refers to shareholders of a limited liability company who, after the statutory grounds for liquidation arise, deliberately delay, fail to perform liquidation obligations, or are unable to carry out liquidation due to negligence." The essence of the subjective element of tort liability is fault, and fault means subjective culpability. Only when there is an objectively attributable situation is there the possibility of subjective culpability. Where a liquidation obligor is not treated as committing an infringement, fault should be limited to the liquidation obligations themselves. Thus, the content, manner, and degree of performance of the liquidation obligations are issues that must be clarified in order to determine the requirements of fault, so as to clearly judge whether the conduct of the obligated subject in failing or neglecting to perform is attributable. The specific content of liquidation obligations includes initiating liquidation procedures, selecting the liquidation group, supervising the liquidation, assisting with follow-up liquidation, and the duties of safekeeping property, account books, and important documents.

Article 14 of the *Minutes of the Ninth Conference* also provides minority shareholders with defenses: "Where a shareholder proves that it has taken positive measures to fulfill liquidation obligations, or where a minority shareholder proves that it is neither a member of the board of directors nor the board of supervisors, has not appointed personnel to serve as members of such organs, and has never participated in the company' s operation and management, this does not constitute 'neglect' ; if it claims that it should not bear joint and several liability for the company' s debts, the people' s court shall support the claim in accordance with the law." In order to standardize the relevant contents of the *Minutes of the Ninth Conference* and better balance the rights and obligations of minority shareholders, the author believes that the following issues should be regulated: whether members of the board of supervisors are not part of the company' s management personnel, and whether it is appropriate to include them in the category of liquidation obligors; how to define the "appointed personnel" of minority shareholders; and where the boundary lies for minority shareholders who have never participated in the operation and management of the company.

### A Member of the Board of Supervisors Shall Not Be a Liquidation Obligor

The *Minutes of the Ninth National Conference on Civil and Commercial Trial Work by Courts* recognize that minority shareholders have weak control over a company. If minority shareholders are required to bear liquidation obligations and liquidation liability, this will be unfair to them and will dampen their enthusiasm for market investment. Therefore, the prerequisite for imposing liquidation obligations and liability on minority shareholders is that they must have enhanced their control over the company in some way.

When minority shareholders serve as members of the company' s board of supervisors, however, they do not thereby strengthen their managerial authority over the company' s business affairs. As supervisors of the company, they only have the authority to inquire into the company' s affairs and review its finances from a supervisory standpoint. The main duty of the board of supervisors is to supervise the company' s directors responsible for business operations. The board of supervisors is parallel to the board of directors and is a standing body specialized in exercising supervisory authority. It supervises, in accordance with law, the conduct of directors and managers in operations and management, as well as the company' s finances. It does not directly intervene in the company' s business decisions or daily affairs, and when attending meetings of the board of directors it only has the right to raise questions and make suggestions.

Where directors fail to cooperate or deliberately conceal information, it is difficult for supervisors to exercise their functions and powers effectively. Moreover, in China' s limited liability companies, boards of supervisors or supervisors are often merely nominal, and are unable to supervise the company's operations and financial information. Shareholders who serve as supervisors therefore do not, on that basis, possess liquidation capacity. In joint-stock limited companies in China, which have a more complete internal governance structure, supervisors are not listed among liquidation obligors. If service as a supervisor were treated as a means of becoming a liquidation obligor in a limited liability company, there would be insufficient justification for doing so.

### The "Selected Personnel" Shall Be Related to the Minority Shareholders

It is difficult to determine whether minority shareholders have appointed personnel to serve as members of the board of directors or the board of supervisors. Such appointments concern internal company information and are difficult for outsiders to know. Moreover, because members of the board of directors or board of supervisors must be approved by a shareholders' resolution, and there is no documentary certificate proving that a director or supervisor was appointed by minority shareholders, directors and supervisors are unanimously approved by all shareholders. It is therefore generally difficult to determine the specific source from which directors and supervisors were appointed.

In determining whether the "selected personnel" were selected by minority shareholders, one may first examine whether the "selected personnel" are associated with the minority shareholders. The association referred to here is not the relationship between a company and its actual controller in the sense of general company law, but rather the ordinary semantic association between a person and another person, or between a person and an entity. If a minority shareholder is a legal person, and a director or supervisor of that legal person has served in the company, this constitutes such an association. If the minority shareholder is a natural person, the directors and supervisors of the company may be relatives or friends of that shareholder. When the court determines whether particular personnel were selected by minority shareholders, evidence provided by creditors proving a correlation between the two may serve as a basis for finding that the personnel were selected by minority shareholders. In the process of specific determination, the court may also consider other evidence in the case comprehensively, and need not require proof of correlation as sufficient evidence in itself.

## "Never participating in the management of the company" should be limited in temporal and spatial scope

In the *Minutes of the Ninth Conference*, the requirements for minority shareholders to avoid bearing liquidation obligations and liability are overly stringent and should be restricted. The phrase "never participated in the operation and management of the company," because of its breadth in time and ambiguity in meaning, makes it difficult for minority shareholders to be exempted even where they are indeed in a disadvantaged position in the company' s dissolution and liquidation process. "Never" means that minority shareholders have not participated in the company' s operational and management affairs since the company' s establishment; however, the semantic scope of "operation and management" is too broad and difficult to distinguish. For example, whether a minority shareholder' s signature on a resolution of the shareholders' meeting constitutes participation in the company' s operation and management; what kinds of documents, when signed, amount to participation in the company' s operation and management; and how many documents must be signed before this is deemed participation in the company' s operation and management—these questions cannot yet be generalized from existing cases.

Due to the influence of Supreme People' s Court Guiding Case No. 9, although there are cases in which minority shareholders have never participated in the company' s management, courts, without careful review, have treated all shareholders as liquidation obligors. Information concerning operation and management should focus on matters such as the company' s liquidation resolution, the company' s annual financial report approved by the shareholders' meeting, the company' s overall business policy and investment plan, and the company' s profit distribution plan; such matters should not, by themselves, serve as the basis for determining participation in the scope of the company' s operation and management. In addition, it is recommended that the time of participation in the company' s operation and management be limited: the time range during which shareholders are deemed not to have participated in the company' s operation and management should be confined to the three years before the company' s dissolution and liquidation. It would be too harsh to require shareholders to have never participated in the company' s operation and management from the very beginning. In terms of spatial scope, the circumstances under which minority shareholders' participation in operation and management causes them to be identified as liquidation obligors should be limited to matters provided in the articles of association or agreements among shareholders, and to resolutions of the shareholders' meeting that must be passed unanimously or by a special majority. This is because, under such resolution mechanisms, minority shareholders have the possibility of substantially controlling the company.

## Conclusion

In order to prevent and defuse corporate debt risks, standardize the withdrawal mechanism of market entities, and maintain the order of market operations, it is necessary to establish a sound corporate liquidation system and properly balance the interests of different entities, including companies, minority shareholders, and creditors. The system of corporate liquidation obligors is an important part of this. However, Article 70 of the General Provisions of the Civil Code contains relatively general provisions on the liquidation obligations of minority shareholders, which differ from the relevant provisions of Judicial Interpretation II of the Company Law, resulting in differences in how the two should be coordinated in judicial practice. There are major differences in theory as to whether minority shareholders should be listed as liquidation obligors, and the "defense" is an inherent part of the issue. While listing minority shareholders as liquidation agents, the burden on them should also be appropriately reduced, so as to avoid shareholders bearing liability without fault and to give them certain grounds for defense. Although there are some legal rules on the liquidation liability of minority shareholders, they are far from

meeting the needs of trial practice. Legal liability is a necessary guarantee for the proper performance of legal obligations. The liquidation-liability system for minority shareholders of limited liability companies in China still needs to be further refined and improved in the formulation of legal rules in light of the "defense."

## Notes

Minutes of the National Court Civil and Commercial Trial Work Conference: To study how, under current circumstances, to further strengthen the civil and commercial trial work of the people' s courts, improve the capacity and level of civil and commercial trials, and provide stronger judicial services and guarantees for high-quality economic development, the Supreme People' s Court held a national conference on civil and commercial trial work in Harbin, Heilongjiang Province, from July 3 to 4, 2019; this document is hereinafter referred to as the Minutes of the Ninth Conference.

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*Note: Figure translations are in progress. See original paper for figures.*