

A Study on Directors' Liability for Damages to Creditors Under China's Company Law: From Dual Perspectives of Theoretical Analysis and Judicial Practice

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Within the context of Chinese civil and commercial law, the theoretical justification and the nature of directors' compensation liability to creditors have long been contentious. On theoretical legitimacy, in academic circles, distinct doctrinal divisions have formed, encompassing both affirmative and negative positions, within three key analytical perspectives: the nature of legal personhood, the employer-employee relationship, and statutory duties. Concerning the nature of liability, it remains disputed whether it should be regarded as an extension of general civil tort liability under the context of company law or as an independent statutory tort liability under company law. This paper first categorizes existing theories, clarifies their main viewpoints and justificatory processes, and offers a critical assessment. Next, an empirical analysis of judicial cases is conducted to evaluate the practical influence of these doctrines on judicial decisions. Finally, recommendations for current judicial practice are put forward, specifically advocating for the introduction of the Business Judgment Rule into Chinese Company Law, employing the company's operational status as the criterion to determine whether directors should bear liability. Regarding the extent of such liability, focus should be placed on the directors' degree of fault, their status, and the resultant harm, thereby enabling differentiated attribution of liability. Furthermore, emphasis should be placed on coordinating the directors' liability insurance system to effectively balance legal liability with commercial interests.

Keywords: directors' duties, directors' liability, creditor remedies, tortious damage compensation liability

Introduction

The 2023 revision of the Company Law of the People's Republic of China (hereinafter referred to as the "Company Law") responds to the emerging trend of directors becoming central figures in corporate governance and exercising de facto control, while simultaneously reflecting a value orientation toward protecting creditors'

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interests. Article 191 of the Company Law¹ provides that directors bear external liability to third parties, departing from traditional civil law system legislative approaches. The academic community has engaged in extensive discussion regarding the legitimacy of this legal regime design, its theoretical foundation, and the proper application of the law. Nevertheless, certain controversies persist in the discussion. Consequently, this paper seeks to clarify the origins, contents, and points of divergence among various theoretical doctrines on directors' liability to third parties, concurrently examining judicial perspectives and trends, and integrating the text of China's Company Law to provide recommendations for future reform. Prior to a systematic discussion, it is necessary to clarify the following two concepts. On the one hand, the concept "director" in this paper refers to the company's management, that is, individuals or bodies responsible for overseeing the formulation of the company's development direction and bearing full responsibility to the company. The concept of "creditor" should conform to the logical framework of the Company Law, referring to entities entitled to assert claims against the company based on foundational legal relationships, excluding those who benefit indirectly from the company. Additionally, the legal liability between shareholders and the company is governed by specialized regulations; shareholders are not within the scope of creditors discussed in this paper. Conversely, the conditions and scope of compensation liability must be analyzed in the text of the Company Law—Article 191 of the Chinese Company Law narrows the conditions under which directors' compensation liability may arise, requiring subjective intent or gross negligence, and that the acts occur during the performance of duties. The scope of liability for damages discussed in this paper is broad, encompassing both direct liability and indirect liability. This refers to situations where directors' actions directly cause harm to creditors, as well as situations where directors' actions cause harm to the company, thereby indirectly infringing upon the interests of creditors.

Theoretical Review of Directors' Compensation Liability to Creditors

Theoretical Foundations for the Legitimacy of Liability for Damages

The Chinese Company Law has long adhered to civil law logic, whereby the legal person, as an independent entity, assumes external liability independently, separated from internal recourse under restrictive conditions, meaning that company members are not required to bear compensation liability directly towards external third parties. In judicial practice, directors' misconduct often significantly impacts the interests of external creditors; hence, is it necessary to break through this traditional framework to formally regulate and clarify directors' compensation liability to creditors? The earliest attention to this issue appeared in two articles published in 1995 in the Political and Legal Forum: One proposed legislative recommendations by referencing the corporate law systems of Taiwan and Japan (Xie, 1995), and the other discussed the feasibility of joint liability theory (Ouyang, 1995). Over the following two decades, doctrinal divisions gradually formed. Recent comprehensive studies typically classify these doctrines into supportive and opposing camps, subsequently summarizing the respective lines of argumentation within each. However, when investigating theoretical legitimacy, greater attention should be paid to how doctrines sharing the same premise ultimately arrive at divergent conclusions, and how doctrines

¹ Article 191: Where any director or senior executive causes any damage to any other person in the performance of duties, the company shall be liable for compensation. If any director or senior executive is intentional or has gross negligence, he/she shall also be liable for compensation.

of common origin critically develop through mutual engagement. In essence, elucidating doctrines involves not only distinguishing dissimilar categories but also comparing analogous ones.

Doctrines with a common theoretical starting point generally fall into three groups, each containing sub-doctrines with varying developments and conclusions. The initial focus of the first group is: what constitutes a company, and in what sense it is regarded as independent; the starting point of the second group is the employment relationship, namely treating directors as employees of the Company, with the Company as their employer; the starting point of the third group is that directors bear statutory fiduciary duties, as elaborated below.

Perspective of the nature of legal personhood: The doctrine of the organ of the legal person, the real entity theory of legal person, and the theory of liability allocation for organs of the legal person. The agency theory of the legal person and the realist theory of legal person concern two aspects of legal personality: The former addresses how the legal person externally performs legal acts and establishes civil legal relations; the latter addresses whether the legal person is qualified to bear independent responsibility for its legal acts (Wang, Guo, & Fang, 1988, p. 217). Article 57 of the Civil Code of the People's Republic of China (hereinafter the "Civil Code")² affirms the independent legal status of the legal person. On this basis, the agency theory of the legal person clarifies that the legal person acts through its internal organs and members, for example, shareholders entering into sales contracts on behalf of the Company, the legal representative participating in litigation on behalf of the Company, and directors issuing legally binding statements on behalf of the Company. The legal consequences and liabilities arising from the performance of duties by members of the agency within their authorized scope shall be borne by the legal person.

Some scholars liken the agencies established by the legal person to the limbs and tongue of a natural person; each agency externally implements the will of the legal person, and the agency's conduct constitutes the conduct of the legal person, who, as a unified organic whole, bears the liability. Therefore, directors and other members of the agency are not required to bear liability externally, a viewpoint that has long been mainstream in China. Influenced by this, scholars who affirm that directors bear compensation liability to creditors also maintain that such liability arises on a personal basis rather than by virtue of acting as an agency of the legal person (Li, 2010). In summary, regarding directors' compensation liability to creditors, the agency theory of the legal person and the realist theory of legal person jointly establish an "either-or" accountability model, under which liability falls either on the company or personally on the directors, precluding any form of joint and several liability. This "either-or" model has had a profound influence on Chinese civil and commercial legislation. Article 34 of the 2009 Tort Liability Law of the People's Republic of China³ explicitly provides that "the employer shall bear tort liability", thereby excluding tort liability of individual employees.

According to fundamental legal principles, those who possess rights and obligations should bear corresponding liabilities. Scholars represented by Wang Changhua trace the original functions of the organ theory of the corporate entity and the realist theory of the corporate entity, proposing that the separate legal personality of the corporation does not exclude directors' compensation liability to the injured parties, and that the two are

² Article 57: A legal person is an organization possessing civil rights capacity and civil conduct capacity that independently enjoys civil rights and assumes civil obligations in accordance with the law.

³ Article 34 of the Tort Liability Law of the People's Republic of China (abolished): Where a staff member of an employer causes damage to others in the course of performing work duties, the employer shall bear tort liability.

not contradictory (Wang, 2020). Firstly, the function of theories concerning the corporation's separate legal personality is to address the corporation's capacity for acts and liability, and should not be excessively construed as limiting the liability of the organs of the corporate entity (Li, 2025). Secondly, the identity of a director embodies both the organizational nature of the corporation and the individual will of the director (Cai, 2017). Equating the organs established by the corporation with the tongue and limbs of a natural person clearly deviates from reality. This doctrine, known as the "Theory of Shared Responsibility Among Corporate Organs", is based on the dual status of directors; accordingly, some literature refers to it as the "Theory of Directors' Dual Status", advocating that when the company assumes liability toward creditors, directors should also bear compensation liability based on fault. This viewpoint also reflects an appropriation of the Japanese scholar Eichi Wagatsuma's ideas, who, in his earlier lectures on Japanese Civil Law, proposed that the acts of members of corporate organs have a dual nature, giving rise to both corporate liability and individual personal liability. Article 23, Paragraph 2 of the Company Law in Taiwan⁴ stipulates that directors "shall bear joint and several compensation liability with the company toward others", which also represents the legislative embodiment of the Theory of Shared Responsibility Among Corporate Organs.

As previously summarized, this set of theories is based on exploring "what a company is and in what sense a company is independent". The organ theory of the corporate entity and the realist theory of the corporate entity, from two complementary perspectives, directly conclude that a company is an independent subject of liability. Building on this, the Theory of Shared Responsibility Among Corporate Organs focuses on the dual characteristics of the director's identity, further clarifying that, regarding company actions embodying the director's will, the company is not absolutely independent so as to exclude directors' liability.

Employment relationship perspective: Employer liability theory and employer theory of directors.

The transplantation of civil law theories is a common approach in the interpretation of Company Law. Employer liability theory is a significant doctrine in Tort Law, originating from Roman slave society (Zhang, 2017). Justinian first articulated this legal principle, whereby, as slaves lacked independent legal personality, their actions and interests belonged to their owners; In the 17th century, the Anglo-American legal system applied the concept of "vicarious liability" to production, whereby employers in positions of management and control bear liability for subordinate employees; such employees' actions are deemed general authorizations of the employer, also known as the doctrine of implied command (Laski, 1916). Civil law system countries adopted this doctrine through the principle of agency, providing that the employing entity is liable for acts carried out by employees within the scope of their authorized duties under specific circumstances, including damages caused to third parties (Jiang, 2025). Generally, the employer occupies an economically advantageous position and has stronger solvency; employer liability thus better protects the interests of third parties and simultaneously encourages the employer to exercise prudence in internal management and strengthen training. Article 1191 of the Civil Code⁵ likewise provides for employer liability.

⁴ Article 23(2): Where a company principal, in the execution of company affairs, violates laws causing damage to others, the principal and the company shall be jointly and severally liable to compensate the injured party.

⁵ Article 1191: Where a staff member of an employer causes damage to a third party in the course of performing work duties, the employer shall bear tort liability. After the employer assumes tort liability, it may seek recourse against staff members who acted with intent or gross negligence.

This theory is applied to Company Law by treating the corporate legal person as the employer and directors as company staff members. When directors' conduct causes damage to external creditors, the company shall bear derivative liability. To balance corporate interests, this theory is typically combined with internal recourse under the Articles of Association, whereby after the company compensates the third party, the at-fault director reimburses the company pursuant to the provisions of the Articles of Association (Ban, 2012). In brief, the employer liability theory delineates the pattern of a company's external indemnification and internal accountability, isolating directors' liability from creditor damage. The rights and obligations of the company and the directors are mutually independent; directors are accountable to the company and lack legitimacy to compensate creditors. The logic of the employer theory of directors is identical but positions directors as employers, thereby reaching an opposite conclusion (Guo, 2024). Directors formulate the company's development strategies and organize and supervise the employees of various departments; when the interests of external creditors are harmed, given the directors' position, it can be presumed that they authorized or approved the company's tortious acts, thus bearing personal employer liability.

However, directly addressing directors' compensation liability to creditors under Company Law through employer liability in Tort Law inevitably causes systemic and conceptual inconsistencies; both the employer liability theory and the employer theory of directors have faced multiple criticisms. First, traditional civil law is founded on the principle of fairness, whereas Company Law balances this with considerations of efficiency. Presuming legal liability based on the fundamental legal relationship between employer and employee overlooks the risks inherent in business decision-making and the complexity of transactions. Over time, this causes directors to adopt conservative choices in corporate governance, resulting in poor productivity and commercial stagnation, which is likewise detrimental to creditor's interests (Zhou, 2016). Second, the relationship between directors and the company is questionable. The employment relationship is founded on a labor contract. As members of the company's corporate governance body, directors enjoy a certain degree of independence, allowing them to make decisions and exercise discretion without being subject to shareholder directives. The relationship between directors and the company is more akin to an agency relationship; thus, directors cannot be presumed to be the employer of other company staff members (Xie, 2016). Thirdly, the employer liability theory and the employer theory of directors rely on the deep pocket theory to justify the protection of creditors' interests, which presumes that the economically superior employer has greater capacity to provide compensation. However, with the lowering of the threshold for establishing companies and the maturation of the professional manager model, directors may possess greater financial resources than the company, or have substantial bargaining power vis-à-vis the company, and are not necessarily in a disadvantaged position. Therefore, the deep pocket assumption does not hold (Sun, 2023).

Legal obligation perspective: Traditional fiduciary duty theory and fiduciary duty expansion theory.

Company laws in various jurisdictions generally provide that directors owe fiduciary duties. Some perspectives contend that when directors breach their fiduciary duties causing damage to third parties, they should bear compensation liability. Firstly, the scope and addressees of fiduciary duty must be clarified; secondly, it should be analyzed whether such duty can establish compensation liability of directors toward creditors.

Diverse views on the origin and meaning of the fiduciary duty addressees. The concept of fiduciary duty originates from the Anglo-American legal system's relationship between directors and the company, founded on

agency and delegation, whereby directors are responsible for the company's long-term development and interests, undertaking business management. In the 1902 case of *Percival v. Wright*⁶, the judge explicitly held that the object of the directors' fiduciary duty was solely the company, excluding shareholders and other individual members (Rider, 1977). By analogy, fiduciary duty does not extend to external creditors of the company. Subsequently, in the 20th century, with economic development, conflicts between companies and the public began to intensify, and the obligations of directors expanded accordingly. On the one hand, when a company enters bankruptcy liquidation, the creditor's interests should be accorded priority; creditors have the right to rescind the shareholders' and directors' distribution of company assets, which, in nature, constitutes a passive liability. On the other hand, the context of realizing corporate interest necessitates consideration of the company's operational impact on third parties and its social responsibilities. Directors' performance of their duties directly affects company operations, and the realization of corporate interest is closely linked to the fiduciary duties of directors (Chen, 2017). UK Company Law explicitly stipulates that directors, in performing their duties, should consider the interests of the company, shareholders, creditors, and the general public. Article 180, Paragraphs 1 and 2, of the Chinese Company Law⁷ generally interprets the objects of the obligations imposed on directors, supervisors, and senior management as follows: Under normal business operations, directors owe fiduciary duties to the company; when the company faces abnormal conditions, directors are required to be responsible to parties outside the company, thereby assuming fiduciary duties (Huang, 2025). Overall, the scope of fiduciary duties gradually extends to stakeholders.

Regarding the meaning of directors' fiduciary duties to creditors, some views hold that these specifically include the duty of care, duty of loyalty, and duty of honesty (Cao & Yao, 2022); others, based on this, replace the duty of honesty with the duty of compliance (Zou, 2024), with the former emphasizing the proactivity and morality of the obligation and the latter stressing legal conformity. Within the civil law system, German Company Law emphasizes that directors bear compensation liability to creditors when they fail to fulfill the duty of reasonable care. South Korean Company Law provides that directors are liable for compensation to creditors only when acting with malice; Japanese Company Law limits such liability to cases of malice or gross negligence (Chen, 2013). Given the current serious issues of directors' ultra vires acts and abuse of office in corporate governance, the expansion of shareholders' fiduciary duties is necessary; however, the extent to which "fiduciary" obligations should be imposed on third parties remains ambiguous, thereby leaving interpretative space for compensation liability, as elaborated below.

The creation of compensation liability through fiduciary duty. Beginning with the director's fiduciary duty to the company, directors bear responsibility for the maximization of corporate interest. The realization of maximum corporate interest should include safeguarding the interests of external parties such as creditors and the general public, enhancing public trust, and securing sustainable development. A typical example is the public issuance of shares based on the company's reputation.

⁶ *Percival v. Wright* [1902] 2 Ch 401.

⁷ Article 180, Paragraphs 1 and 2: Directors, supervisors, and senior management personnel owe a duty of loyalty to the company, shall take measures to avoid conflicts between their own interests and the corporate interest, and shall not exploit their powers to obtain improper benefits. Directors, supervisors, and senior management personnel owe a duty of diligence to the company and, when performing their duties, shall exercise the reasonable care ordinarily expected of managers in the best interests of the company.

The view that fiduciary duty pertains solely to the company typically holds that corporate interest and social interest are in conflict (Zhou & Zhang, 2009); therefore, directors must choose between them when fulfilling their duties. A more preferable perspective reconciles and unifies the two, recognizing that creditors' interests and corporate interest are not mutually exclusive (Guo, 2024).

In summary, the fiduciary duty expansion theory interprets the second paragraph of Article 180 of the Company Law as follows: The duty of reasonable care owed by directors, supervisors, and senior management includes consideration of the interests of the company's creditors. The superior norm governing compensation liability set forth in Article 191 is implicitly embedded in this paragraph; thus, the corresponding liability norm has systemic legitimacy.

Subjectification of legal status and directness in liability determination. Classified according to differences in logical starting points, the three groups of theories exhibit an evolutionary trajectory from a corporate entity orientation to a legal relations orientation and subsequently to an obligation orientation. From the perspective of the essential nature of the corporate entity, directors' responsibilities and obligations are derived from the company's legal status. To establish the legitimacy of civil law theory, the evidentiary path for compensation liability is indirect and passive, failing to fully account for the significant role of directors in relation to the company. In the analysis from the perspective of legal relationships, this situation is rectified by emphasizing the interactive relationship among directors, the company, and the company's employees. The functions and roles of directors are incorporated into the argumentative process; although this group of theories faces considerable criticism, its progressive significance remains evident. The third group, taking fiduciary duty as its logical starting point, is the most direct, focusing on the identity of the director and the performance of duties, while the company occupies a passive position, being subject to the director's conduct. The three groups of theories reflect a gradual progression from the director's status as object to subject, and from indirect to direct directors' liability.

Theoretical Presentation of Compensation Liability

After examining the legislative legitimacy of Article 191 of the Company Law itself, significant divergence remains within the Chinese corporate law academic community regarding the nature of directors' existing compensation liability to creditors, making a systematic review necessary. Some theories explain the legal nature of compensation liability through comparative law, essentially due to the prior absence of specific provisions on this issue in Chinese Company Law, rendering the reference to and development of foreign scholars' theoretical research a convenient approach. A typical example is the unlawful trading liability theory (Liu, 2024) borrowed from English law, which posits that directors' liability is a statutory special liability incurred when a company is nearing insolvency, due to directors' failure to minimize creditors' losses to the greatest extent; its constitutive elements derive entirely from the UK's Companies Act 2006 and subsequent judicial decisions, and are difficult to trace in Chinese Company Law, commercial regulations, or industry practices. The review and evaluation of doctrines serve the systematic interpretation of and judicial practice under the Company Law. To narrow the scope and enhance relevance, this paper selects mainstream indigenous doctrines for review, specifically the general tort liability theory and the statutory tort liability theory.

General tort liability theory. The core proposition of the general tort liability theory is that a director's compensation liability to creditors constitutes a special provision under the general tort liability clause stipulated

in Article 1165 of the Civil Code⁸, sharing the same nature; the same rules regarding constituent elements, liability assumption, and remedies apply (Wang, 2007). Currently, scholars justify the general tort liability primarily through the following three approaches.

Firstly, the analysis of illegality. A director's assumption of compensation liability is based on the violation of a statutory duty of care. The illegality directly stems from the director's omission towards a specific object, namely the creditor, rather than from an omission related to duties authorized by the company; therefore, it is unnecessary to rely on the Company Law as a basis for attributing liability (Tang & Li, 2024).

Secondly, the general tort liability theory. Dr. Liu Yuandao, through a historical interpretative analysis of the legislature's attitude, notes that the first and second drafts of the Company Law amendment both converge and diverge in their phrasing regarding directors' compensatory liability. The first draft directly stipulates that where a director causes damage to a third party intentionally or through gross negligence, the company bears joint and several liability; the second draft, phrased in separate clauses⁹, provides that the company generally bears compensatory liability, and directors who act with intent or gross negligence shall also bear compensatory liability. It is evident that there is a divergence as to whether the form of liability constitutes joint and several liability or subsidiary liability; concerning the directors' subjective state, both drafts restrict it to intent or gross negligence. The legislature excludes directors' liability arising from ordinary negligence and eliminates joint liability with the company, emphasizing the targeted and independent constitutive elements of directors' tortious conduct. This is intended to limit general tort liability. In other words, directors' compensatory liability is a special provision established by the legislature on the basis of general tort liability in civil law, rather than statutory liability.

Third, it acknowledges the general tort nature of compensation liability, while also referring to the possibility of its concurrence with statutory liability. This approach is grounded in the realist theory of the corporate entity, as set forth in the first group of theories mentioned above (L. Ye & D. Y. Ye, 2022). Fundamentally, the parties to a tort liability relationship are the tortfeasor and the victim. Secondly, the company, as an independent legal person, is the tortfeasor and thereby incurs tort liability to creditors pursuant to Article 1165 of the Civil Code; consequently, it is not possible to establish a tort relationship with the director as the obligor. In certain specific circumstances where directors indirectly damage creditors' interests, the causation element of general tort liability may be difficult to establish, thus requiring concurrence with statutory liability (Zhang, 2009).

By comparison, the first interpretative approach is both independent and direct; it avoids contentious historical interpretations and circumvents the shortcomings of the realist theory of the corporate entity, rendering it the clearest among the three approaches. Meanwhile, the first two interpretative approaches emphasize the advantages of the general tort liability theory. As Professor Tang Xin noted, the recognition of tort liability allows directors' liability to be subject to other tort rules that mitigate responsibility, including but not limited to Article

⁸ Article 1165: Where a person, through fault, infringes upon the civil rights and interests of another causing damage, they shall bear tort liability. Where the law presumes that a person is at fault, if the person fails to prove the absence of fault, they shall bear tort liability.

⁹ Article 190 of the Company Law (Second Draft Revision): Where directors or senior management personnel cause damage to others in the performance of their duties, the company shall bear compensation liability. Where directors or senior management personnel act with intent or gross negligence, they shall also bear compensation liability.

1173 of the Civil Code¹⁰ on fault-based mitigation and Article 1174¹¹ concerning the victim's intent, which also regulates judges' application of the law in specific cases. Professor Ye Lin's third interpretative approach, however, considers the limitations of general tort liability and introduces other natures of liability in a competing manner, thereby adopting a dialectical perspective. However, the same issue is implicitly present. First, the advantage of general tort liability is not exclusive to it. According to China's integrated civil and commercial legislative approach, statutory liability may still be supplemented by the provisions of the Civil Code when recognized as statutory liability; second, if the concurrence of general tort liability and statutory liability is acknowledged, this seems only terminologically more comprehensive, while the determination of the legal nature becomes more ambiguous, with fault shareholders bearing only civil tort liability.

Statutory tort liability theory. The core viewpoint of the statutory tort liability theory is that, since creditor losses typically do not directly result from directors' fault but indirectly arise from directors damaging the corporate interest, this does not conform to the general tort rules under the Civil Code. Therefore, Article 191 of the Company Law necessitates the establishment of an independent special rule specifically applicable to corporate operational contexts (Li, 2024). Distinguished from the various evidentiary approaches under general tort liability, scholars supporting this view share relatively unified reasons. In summary, there are primarily two:

First, the conflict with the principles of general tort liability. Whether the failure to perform an obligation constitutes "fault" under general tort liability requires particular consideration of factors such as the actor's social role, economic status, and professional responsibilities; illegality is established only when the actor ought to and is capable of performing the obligation but fails to do so. In contrast, regarding directors' compensatory liability to third parties, this perspective holds that directors' managerial and decision-making duties serve the company; their role exists solely within the company's operations, their economic status is conferred by the company, and the obligations owed to creditors are limited, thus failing to meet the standard of general tort liability. Furthermore, general tort liability requires the actor to foresee the damage caused, that is, to be aware of the harmfulness of the conduct yet fail to take effective measures to avoid the risk. However, directors who harm the corporate interest, such as by engaging in self-dealing through informational advantages or appropriating corporate business opportunities, often cannot foresee the object, scope, or extent of the damage; therefore, attributing liability under the requirements of general tort liability is difficult (Zeng, 2008). These two points demonstrate the existence of a systemic conflict.

Second, enhanced protection of the creditor's interests. Special statutory tort liability, as an independent institutional design, can independently define the scope of the "damage" it addresses. This view holds that the direct damage warranting compensation to creditors includes harm caused to creditors by directors' malice or negligence in the performance of their duties, which adversely affects the corporate interest. Indirect damage encompasses situations where directors' performance of duties results in a reduction of the company's external solvency, thereby impeding the realization of the creditor's interests. Under the general tort liability framework,

¹⁰ Article 1173: If the injured party is at fault for the occurrence or aggravation of the same damage, the tortfeasor's liability may be reduced.

¹¹ Article 1174 of the Civil Code of the People's Republic of China: If the damage is intentionally caused by the injured party, the actor shall bear no liability.

indirect damage refers to other lost gains caused by direct damage, typically limited to opportunity interests, and, to protect the legal interest in freedom of conduct, its recognition standard is generally very stringent. By comparison, adherence to the special statutory tort liability may enable creditors to obtain greater compensation for damage.

It is evident that the statutory tort liability theory bases its legitimacy on utility. Firstly, citing the theory's superior effects in certain respects to justify its validity constitutes a logical confusion between utility and legitimacy; the advantage in effectiveness addresses whether the doctrine is practical, not whether it is valid. Secondly, concerning whether the statutory liability theory is more practical and effective, scholars supporting the general tort liability theory raise doubts; in judicial practice, if judges disregard the constitutive elements of general tort liability under this theory and exercise discretion solely on a case-by-case basis, the application of law will become ambiguous and uncertain, which cannot be regarded as effective.

In summary, this doctrine is constructed with greater flexibility and pursues substantive effects; however, existing literature lacks a direct explanation of its theoretical legitimacy and remains in an immature stage. Furthermore, the potential judicial drawbacks and obstacles to its application require further restrictive interpretation or the development of other mutually balancing norms.

Summary. Regarding the core theoretical controversies of Article 191 of the Company Law, the first concerns whether the legislation is legitimate and the basis for such legitimacy; the second pertains to how the provisions of the article should be applied, specifically the nature of the compensation liability. Concerning the first controversy, three groups of doctrines with distinct logical starting points have been identified above. This paper contends that the fiduciary duty expansion theory, which originates from directors' liability, reflects the legal subject status of directors under the Company Law and their proactive role in modern corporate governance. It more directly explicates the necessity for directors to bear liability to creditors and is more persuasive than the other two doctrines. Regarding Dispute 2, this paper discusses the divergences between the general tort liability theory and the statutory tort liability theory and their respective justificatory processes. Among them, the analysis of illegality under the general tort liability theory is relatively more developed; however, both theories exhibit evident shortcomings that require further theoretical supplementation.

Empirical Observation of Chinese Judicial Cases on Directors' Compensation Liability to Creditors

The purpose of legal theoretical research is to resolve judicial disputes. The development and refinement of theory make judicial decisions more reasonable; theories capable of guiding judicial decisions generally possess greater practical significance. Following the preceding theoretical analysis, this section conducts an empirical study on the current judicial status of directors' compensation liability to creditors in China. First, it seeks to explore which theory is more widely adopted by Chinese courts, thereby enriching the evaluative dimensions of the doctrines discussed earlier; second, it aims to identify the judicial trends of this system in order to address the practical needs of rights protection and balance.

Judicial Decisions

Selection and explanation of case samples. The selection of cases determines whether the operational reality of this rule or system in China can be comprehensively reflected. The China Judgments Online Platform

continuously collects publicly accessible judicial decisions issued by courts. As of October 29, 2025, the author obtained a total of 31 judgments, encompassing 23 cases, by searching the keywords “directors’ liability” and “creditor” in the civil case search section of the Judgment Documents Website. Upon examination, 14 of these cases pertained to directors’ compensatory liability. A special note regarding the search results: First, prior to the revision of the Company Law, there was no explicit statutory provision imposing compensation liability on directors toward creditors. Creditors harmed by the company customarily did not name directors as defendants; hence, the judicial data is limited. Second, company-related disputes often involve multiple parties, and the bases upon which creditors assert directors’ compensation liability vary significantly. This substantial divergence in the classification of causes of action has influenced the search results to some extent.

Summary of cases. Among 14 directly relevant cases, judges supported directors’ compensation liability in six cases, supported individual directors’ compensation liability in one case, and did not support directors’ compensation liability in six cases; among these, one case was procedurally dismissed by the court without substantive examination. This paper compiles 13 valid judgments involving substantive examination according to court rulings, as presented in the following table:

Table 1

Judicial Cases on Directors’ Compensation Liability by Chinese Courts

Case number	Grounds for judgment	Legal basis
(2020) Zhe Min Zhong No. 290	The company’s external guarantee was made without a board resolution, and Director Gao Zhiyin acted beyond his authority in representation. The creditor, as a professional financial institution, also failed to fulfill its duty of prudent verification. Where both parties are at fault, the director shall bear half of the liability for the portion of the company’s insolvency.	Article 16 of the Company Law (former)
(2025) Hu 03 Min Zhong No. 59	When the company was nearing bankruptcy, Director Chang Mouliang was under an obligation to properly manage the company’s assets. His unauthorized release of the mortgage and share transfer violated the duties of loyalty and diligence, resulting in the company’s loss of core assets and restructuring possibilities, thereby seriously damaging the creditor’s interests; consequently, he shall bear compensation liability under the law.	Articles 180 and 191 (new) of the Company Law
(2021) Hu 02 Min Zhong No. 5724	Directors and senior executives owe a duty of diligence to supervise shareholders’ capital contributions. In this case, the directors’ failure to prevent or recover the shareholders’ withdrawal of capital contribution constitutes assistance and acquiescence in such conduct; thus they shall bear compensation liability for the creditors’ losses.	Articles 28, 35, and 147 (old) of the Company Law
(2017) Chuan 11 Min Zhong No. 1410	Directors of joint stock limited companies are statutory liquidators. If they neglect their obligations, resulting in the loss of the company’s assets, accounts, and other records, thereby making liquidation impossible, they shall bear compensation liability for the creditors’ losses.	Article 18, Paragraph 2 (former) of the Interpretation (II) of the Company Law
(2016) Yue 03 Min Zhong No. 2719	He Xiaofang, as the sole director and shareholder of the company, unlawfully received the company’s payment for goods, causing commingling of assets and abuse of the legal person’s independent status, and shall bear joint and several liability for the company’s debts.	Article 84 of the General Principles of Civil Law
(2023) Hu 0115 Min Chu No. 45582	As the de facto controller and director of the company, the director failed to perform the duty of diligence when the company was on the verge of bankruptcy and instead dismantled the core VIE structure, resulting in loss of the company’s core assets, and shall bear compensation liability for the creditors’ losses.	Article 21 of the Company Law

Table 2

Judicial Cases in Which Courts Ruled That Directors Do Not Bear Compensation Liability

Case number	Grounds for judgment	Legal basis
(2022) Gui 0329 Min Chu No. 434	Pursuing directors' liability falls within the scope of judicial adjudication and exceeds the statutory authority of the shareholders' meeting. The resolution in this case directly establishes directors' liability, violating the mandatory provisions of the Company Law, and should be deemed invalid.	Articles 36 and 37 (former) of the Company Law
(2022) Lu 0211 Min Chu No. 2379	The plaintiff's claim for directors' liability does not pertain to the same civil legal relationship as the sales contract dispute in this case, and is therefore unsupported.	Articles 509 and 595 of the Civil Code
(2020) Yue 0310 Min Chu No. 6875	There is no legal basis for individual creditors to directly hold directors liable while bankruptcy proceedings remain ongoing. This right is exclusive to the administrator and is conditioned upon the administrator's inability to perform duties resulting in loss.	Articles 15 and 113 of the Enterprise Bankruptcy Law
(2020) Yue 0309 Min Chu No. 1280	The plaintiff failed to prove that Zhao Muping is a de facto controller, nor to establish his fault regarding shareholders' failure to pay subscribed capital; therefore, the claim cannot be sustained.	Article 13 (former) of Interpretation (III) of the Company Law
(2019) Yue 0309 Min Chu No. 625	The director's duty of diligence does not extend to decisions regarding capital reduction, and the capital has been fully paid-up following the reduction. The plaintiff failed to establish the director's fault warranting external liability.	Articles 147 and 177 of the Company Law
(2016) Yue 0606 Minchu No. 417	Pursuant to the Hong Kong Companies Ordinance, directors and shareholders of a limited company generally bear limited liability. The plaintiff failed to provide a legal basis under Hong Kong law to impose personal joint and several liability on the sole director. The debt at issue arises from tort committed by an organizational crime; there is no evidence that it was incurred for joint spousal living expenses or that there was a mutual agreement for joint borrowing; thus, it does not constitute joint spousal debt.	Hong Kong Companies Ordinance (Cap. 622)

Table 3

Judicial Cases in Which the Court Supports Some Directors Bearing Compensation Liability

Case number	Grounds for judgment	Legal basis
(2019) Lu Min Zhong No. 2484	Members of the liquidation team, despite knowing of outstanding debts, deregistered the company through false reports, exhibiting gross negligence, thereby damaging the creditor's interests and should bear compensation liability. Other directors have no obligation to assume liability in this regard. There is no evidence demonstrating joint tortious intent; mere signature on the liquidation report is insufficient to impose personal liability.	Article 185 of the Company Law; Article 11 (former version) of the Judicial Interpretation (II) of the Company Law

Analysis of Judicial Practice and Prospects

First, in cases where directors' intentional or faulty conduct causes damage to creditors' interests, doctrines from the perspective of the corporate entity, such as the organ of the corporate entity theory, restrict judges' recognition of directors' compensation liability. In the reasoning sections of judgments in the aforementioned cases, judges generally exercise extreme caution in identifying directors' fault, essentially limiting it to serious violations of the fundamental spirit of the Company Law, such as assisting shareholders in withdrawing capital contributions or failing to perform the obligations of bankruptcy liquidators of the legal person, with these circumstances explicitly prescribed separately in the Company Law. With regard to directors' gross negligence, judges tend to rule that only the company bears external liability. It is evident that judicial practice has not transcended the traditional concept of the organ of the corporate entity. In cases where directors exploit the company to engage in improper official acts, thereby harming creditors' interests, courts have failed to pierce the

corporate veil to impose liability. The amendment to Article 191 of the Company Law has not fundamentally overcome the limitations of the legal person perspective doctrine.

Secondly, the two doctrines under the employment relationship perspective are seldom applied in adjudications. The identification of directors' official acts directly stems from the provisions of the Company Law and is not construed as a general contractual relationship. In existing judgments, judges have not emphasized the status or role of directors in corporate governance, neither treating them as employees of the company nor as employers of other personnel; essentially, they have not applied contract law interpretative methods in assessing directors' official acts.

Third, following the revision of the Company Law, fiduciary duty doctrines have been widely adopted as the theoretical foundation for assessing directors' duty of diligence. A typical example is the Case (2025) Hu 03 Min Zhong No. 59, where the judge held that Director Chang Mouliang's failure to properly manage company assets breached the duty of diligence and responsibility; the unauthorized release of pledges and transfer of shares were considered disloyal acts by the director towards the company. Given that such conduct impairs the company's debt repayment ability and causes substantial harm to creditors' interests, the director should bear compensation liability. This reasoning essentially embodies the fiduciary duty expansion theory and has been adopted in numerous rulings.

Fourth, judicial practice demonstrates ambiguity in the identification of the nature of compensation liability, with overall features leaning more towards a special statutory compensation liability. In existing judgments, judges generally have not analyzed the constitutive elements of general tort liability, particularly lacking effective proof of causation between the damage to third-party interests and the director's improper official conduct, while placing greater emphasis on the director's degree of fault and the severity of the damage. It can be inferred that courts commonly treat the compensation liability under Article 191 as an independent institutional arrangement within the Company Law.

Article 191 of the new Company Law establishes the legal foundation for directors' compensation liability to creditors. On one hand, it enables company creditors and their agents to list tortious directors as defendants in litigation and to present evidence of the directors' subjective intent and gross negligence in performing their duties, thereby increasing the likelihood and amount of recovery; on the other hand, it can guide judges in directly attributing liability and allocating the proportion of compensation for directors' malicious performance of duties and abuse of the company's independent status that cause damage to creditors. Based on these dual guiding effects, the number of judicial cases in which creditors sue directors for compensation liability under this article is expected to increase substantially in the future, with a higher likelihood of successful claims.

Prior to the introduction of Article 191, judicial reasoning in rulings was generally concise, particularly in cases where directors were not held liable for compensation; courts often relied on vague justifications such as "insufficient evidence" or "lack of legal basis" as grounds for their decisions. Following the addition of this provision, judges are able to deconstruct the constitutive elements of the legal provisions, resulting in a clearer reasoning path. At present, due to the short operational period of the system, the limited number of relevant cases, and the underdeveloped supporting mechanisms, judges have yet to reach a consensus on academic perspectives; nonetheless, the reasoning in judgments is evidently more thorough, and a unified adjudicative standard may be established in the future.

From Substantive Rules to Procedural Rules: The Systematic Enhancement of Directors' Liability to Creditors Under Chinese Company Law

From Nonexistence to Emergence: The Introduction of the Business Judgment Rule

Current judicial practice lacks clear standards and limitations regarding the imposition of compensation liability on directors, potentially resulting in excessive liability. It is necessary to introduce the business judgment rule through guiding cases to restrict the application of Article 191.

The business judgment rule originates from the Anglo-American legal system. Initially articulated by courts as a principle, it can be summarized as follows: If a director's business judgment does not violate fiduciary duties and is aimed at the maximization of corporate interest, courts should refrain from imposing liability on the director. The core of this rule lies in its commercial purpose; directors should be afforded a certain margin of tolerance when making decisions for the company's interest within a complex commercial environment. Provided there is no subjective fault or gross negligence and the decision is objectively based on a reasonable understanding of market conditions, directors shall not bear compensation liability for losses to the property of the company and its creditors.

The business judgment rule possesses flexibility and is influenced by various transactional relationships, company structures, and business types. In Anglo-American legal systems, it is primarily applied through judges adhering to precedent and their own judgments concerning business decisions. Therefore, compared to its introduction at the legislative level, a more appropriate method is to elucidate the meaning and application of the business judgment rule to lower courts via guiding cases issued by the Supreme Court.

According to the American Law Institute's definition, the application of the business judgment rule must satisfy the following conditions: First, the director's decision must be independent and free from conflicts of interest; second, the matters decided must fall within the exclusive decision-making authority conferred upon directors by the Company Law and the Articles of Association; third, the directors' decision-making does not involve negligence in judgment or omission; it specifically requires directors to reasonably gather information related to the decision and to conduct prudent deliberation; fourth, the directors' decisions are made honestly to promote the maximal realization of corporate interest.

While Chinese courts apply Article 191 to constrain directors' abuse of rights, they may refer to the above criteria to mitigate fiduciary directors' liability, thereby encouraging directors to make decisions conducive to the company's development in the long term.

Procedural Judgment: Considering the Company Operation Status as the Determining Factor

Article 191 adopts the directors' subjective state as the standard for assuming compensation liability; however, from the practical needs of creditors' rights protection, the primary demand is not to hold directors liable for fault but to ensure full compensation. Therefore, judicial adjudication must necessarily consider the compensation capacity of the subject as a determining factor; that is, when the company's operation status is sound and it holds independent and sufficient assets, the company shall be regarded as the primary liable subject for compensation. From a practical perspective, the asset scale, financing capacity, and asset liquidity of the corporate entity all exceed those of the individual director. At this stage, holding the director liable in tort based on fault may fail to secure full compensation, thereby imposing excessive litigation costs and risks on the creditor

and rendering judicial adjudication unenforceable, which contravenes the fundamental objectives of civil litigation. The mechanical application of the fault liability rule in judicial practice has precipitated numerous problems. On one hand, it causes creditors to rely on litigation targeting directors' accountability; due to evidentiary difficulties and the extended enforcement period associated with directors' assets, the realization of creditors' claims is delayed. Conversely, an excessive emphasis on directors' liability may provoke performance anxiety, as well as a passive and conservative decision-making approach among directors, thereby adversely affecting the company's operational vitality and long-term development interests. The company, as the primary bearer of compensation liability, aligns with the core interests of creditors and can prevent procedural issues such as directors' appeals and enforcement objections. Accordingly, in judicial decisions, where the company possesses independent and sufficient assets, even if the directors have acted with intent or gross negligence, the company should initially bear the compensation liability, subsequently pursuing recourse against the at-fault directors in accordance with its internal articles. This model achieves the dual objectives of safeguarding creditors' compensation and sanctioning directors at fault, while also improving judicial efficiency. When a company enters bankruptcy proceedings or has grounds for bankruptcy but has not been liquidated, and the company's assets are insufficient to satisfy creditors, creditors may, pursuant to Article 191, request that the directors at fault bear compensation liability. In judicial practice, where a company has no assets available for enforcement, if it is still held as the primary liable party, the creditors' interests remain difficult to realize. Article 191, in such circumstances, grants creditors the right to pursue tort liability against the directors at fault individually, effectively remedying the enforcement gap. The inclusion of the company operation status as a factor in assessment accords with the legislative purpose of Article 191 to protect creditors, preventing differences and uncertainties within market entities from prejudicing creditor's interests, thus constituting a more comprehensive and flexible judicial approach.

Typified Reasoning: Emphasizing Differentiated Attribution Based on Degree of Fault, Legal Subject Status, and Damage Outcome

In judicial practice under Article 191 of Chinese Company Law, due to differences in directors' identity, duties, and conduct, the actual damage results and the causal impact of their fault on such damage vary, making it necessary to refine directors' liability.

Firstly, liability should be classified based on the degree of directors' fault. This article clearly stipulates that directors exhibiting ordinary negligence generally do not bear compensation liability to creditors. On this basis, directors who are intentionally or maliciously insolvent, possessing clear awareness of the consequences of their actions and either pursuing or permitting the occurrence of damage, bear the highest degree of subjective culpability and should bear heavier compensation liability, which may be legally recognized as joint and several liability or a higher proportion of subsidiary liability; directors who fail to fulfill the duty of reasonable care and cause insolvency due to gross negligence bear lower culpability and should be distinguished from the former, assuming a moderate proportion of subsidiary liability. Moreover, in circumstances prescribed by the articles of association, directors who have committed ordinary negligence may be held liable for compensation through internal liability mechanisms.

Secondly, legal subject status should be regarded as an important auxiliary factor in determining directors' liability, with directors able to provide evidence based on their respective division of duties and control over the

company. Differences in legal subject status do not directly affect the determination of tort liability; however, within the organizational law framework, consideration should be given to employing presumptions to assist in assessing the scope and extent of the subject's liability based on their legal subject status. Referring to a detailed Chinese document, namely Article 28 of the "Minutes of the National Court Symposium on Adjudicating Bond Dispute Cases", it specifies that when determining the fault of internal personnel of the issuer, the people's court should examine and identify fault by considering the personnel's actual status within the company, their role in preparing the information disclosure documents, the channels through which they obtained and understood relevant information, and the efforts made to verify such information. In the dispute over liability for damage to the creditor's interests of the company between Tang Chunqiao et al. and Jiang Hui et al. as shareholders, the Beijing No. 1 Intermediate People's Court held that the directors bear no liability because they neither participated in the company's operations nor assumed the duty to urge payment. Drawing on relevant documents and judicial practice, the elements for determining directors' liability may be divided into four categories: first, the degree of control over the company. The conduct of directors within the core decision-making body plays a leading role, and the standard for liability should accordingly be more stringent; second, the degree of participation in corporate governance. Directors with a lower degree of involvement generally lack symmetrical information and reasonable motivation, and their liability may be appropriately reduced; third, the directors' professional competence and background. Specific financial and legal issues entail professional barriers; for directors without a professional background, overly stringent liability requirements should not be imposed; fourth, the level of directors' remuneration. Directors receiving relatively low remuneration generally lack conspiratorial motives, and their liability proportion may be appropriately reduced.

Finally, the scope of directors' compensation liability should be limited according to the damage outcome. When the company's assets are sufficient to satisfy its debts, the damage is manifested as a temporary diminution of company assets; this can be remedied through internal liability, and the directors' external liability may be appropriately mitigated; in cases of company insolvency, the damage directly manifests as the creditor's inability to recover; if the director's intentional or grossly negligent conduct is directly causally linked to this result, a higher proportion of liability should be ascertained in view of factors such as the amount of damage and the shortfall in recovery. Furthermore, the assessment of damages must be aligned with the degree of fault and legal subject status.

From Inside to Outside: Emphasizing the Coordination of the Directors' Liability Insurance System

Article 191 imposes greater responsibility on directors in corporate governance, which may diminish their incentive to perform their duties. Therefore, the insurance system introduced in Article 193 is particularly important, as it seeks to alleviate the burden of potential liability borne by directors. Directors' liability insurance refers to the civil compensation liability and legal defense costs that insurance companies are legally obligated to bear when company directors, supervisors, or senior executives, in the performance of their duties, cause loss to third parties due to negligent but non-intentional conduct. In judicial practice in China, the standards for defining both "unlawful acts" and "damage" are inconsistent, resulting in ambiguity regarding the scope of compensation, which necessitates clarification. First, the determination of unlawful acts should incorporate both objective and subjective elements. Objectively, the damage must be caused by the director in his capacity as a

director and occur during the performance of duties; subjectively, it should include acts and omissions in states lacking intent. Second, losses primarily comprise amounts that directors are legally required to pay, predicated on the company having suffered property loss. Expenses such as compensation, litigation costs, and attorney fees personally borne by the insured fall within the scope of losses under directors' liability insurance policies, while punitive damages are excluded. On one hand, based on the purpose of the insurance policy, the insured shall not profit from fault; on the other hand, the scope should not be unduly restricted, as otherwise the guarantee system under Article 191 would fail to provide risk protection for directors in the performance of their duties. Moreover, the clarification of the coverage scope cannot be separated from the practical realities of China's directors' liability insurance market. Currently, this market faces issues such as excessively high premiums and complex deductible clauses. If the scope of covered losses is overly restricted, it will further diminish the attractiveness of insurance products and exacerbate the problem of low subscription rates.

Conclusion

In disputes between companies and creditors, whether to impose liability on directors based on fault and the characterization of such liability represent difficulties in legal interpretation, resulting in considerable controversy surrounding the enactment of Article 191 of the new Company Law. This paper undertakes a theoretical review and empirical analysis of various doctrines from three perspectives—the essential nature of the corporate entity, employment relationship, and legal obligations—with the following findings: First, theoretical research tends to emphasize directors' legal subject status and their capacity for direct liability; current judicial practice aligns with this trend, with judges predominantly employing the fiduciary duty expansion theory as their rationale; second, the traditional doctrine grounded in the essential nature of the corporate entity continues to serve as the foundation and point of departure for other doctrines. Although judges rarely explicitly reference this doctrine in judicial opinions today, their conservative and cautious approach to recognizing directors' compensatory liability still reflects the underlying spirit and value orientation of the essential nature perspective.

The doctrine of directors' compensatory liability has evolved from its origins in the Anglo-American legal system to indigenous development. At present, the interpretation of this system within our country's civil and commercial law framework is particularly important. However, insufficient judicial reasoning and ambiguous treatment by judges in judicial cases undoubtedly hinder its development. Judges should thoroughly study and apply doctrinal theories, develop and extend principles through case-by-case analysis, and progressively establish unified adjudication standards. It is necessary for current judicial practice to incorporate the business judgment rule by including the company's operating conditions as an assessment criterion, and to establish differentiated liability pathways to refine the application of Article 191, while ensuring institutional coherence with directors' liability insurance under Article 193.

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