

The Nature and Application of Directors' Liability to Third Parties under a Regime of Limited Enhanced Director Liability

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ABSTRACT

Japan's Commercial Code first introduced a provision on directors' liability to third parties in 1899. In 1969, the Grand Bench of the Supreme Court of Japan adopted the statutory liability theory, encompassing both direct and indirect loss, and thereby established what later became the prevailing view. After more than a century of case-law development, the expansion of directors' duties owed to the company has also expanded directors' liability to third parties, producing uncertainty concerning the boundaries of liability and the legal basis for attribution. In recent years, Japanese scholars have re-examined the statutory liability theory and criticized its tendency to substitute appeals to social justice for a coherent theoretical foundation. By examining Japanese legislative history and recent case law, this article argues that the scope of liability under Article 191 of China's Company Law should be clearly delimited. Article 191 is not a general rule governing every breach of directors' duties owed to the company; rather, it is a special supplement to Article 1191 of the Civil Code, designed to strengthen remedies available to third parties. The liability contemplated by Article 191 should be confined to compensatory liability that can be characterized as tort liability. Liabilities serving special policy purposes, such as liability for securities misrepresentation, delayed bankruptcy filing, or breach of capital maintenance obligations, should be separately provided by the Company Law, the Enterprise Bankruptcy Law, the Securities Law, or other special statutes, and should not be generally expanded through Article 191.

KEYWORDS

Directors' Liability to Third Parties; Tort Liability Theory; Statutory Liability Theory; Gross Negligence.

1. THE PROBLEM AND THE MEANING OF THE TORT LIABILITY THEORY

Whether a director who causes loss to a third party while performing corporate duties should personally bear compensation liability to that third party has long been a difficult question in company law and a focal issue in the interface between civil and commercial norms. Traditionally, company law theory has proceeded from the independent legal personality of the corporation and the organ theory of the juridical person, and has therefore maintained that liability for damage caused by directors in the performance of their duties should be borne by the corporation. Directors, on this view, are not directly liable to third parties, while the corporation may subsequently seek recourse against directors at fault.[1] This position is reflected in the Civil Code. Articles 62 and 1191 provide that, where a legal representative or staff member causes damage to another person in the performance of duties, the juridical person bears compensation liability. Yet as the scope of corporate managerial power has expanded and the importance of protecting third parties has increased, exclusive corporate liability has come to be regarded as insufficient to deter directors' dereliction of duty. To strengthen protection for external corporate stakeholders, Article 191 of the 2023 Company Law for the first time established a general rule under which directors may bear liability for damage suffered by third

parties. Japan, by contrast, introduced a provision on directors' liability to third parties as early as 1899, and through the development of case law and doctrine has formed a distinctive theoretical structure.

In constructing the interpretation of directors' liability to third parties, existing comparative-law studies of the Japanese experience often focus almost exclusively on the prevailing Japanese doctrine, namely the statutory liability theory. That theory holds that both direct and indirect loss may give rise to liability under the relevant provision. It treats the liability as a special statutory liability designed to protect third parties, whose elements differ from general tort liability: intent or gross negligence need only exist in relation to the director's neglect of duties, rather than in relation to an infringement of the third party's rights, and the liability may therefore coexist with general tort liability.[2, 373~374] Japanese scholarship, however, also contains another view, the tort liability theory. That theory begins from the special position of directors, who must efficiently process a large volume of corporate affairs, and holds that directors should be exempted from liability for ordinary negligence. It characterizes directors' liability to third parties as a special form of tort liability: a director bears liability only where he or she commits a tort against a third party and does so intentionally or with gross negligence. Under this view, the provision applies only to direct loss, and the director's intent or gross negligence must be directed toward the third party.[2] Japanese scholarship has also developed two further positions: the indirect-loss-limited theory and the no-special-provision-necessary theory. The former regards the provision as a special rule of the creditor's subrogation right, applicable only to indirect loss, with intent or gross negligence located in the director's neglect of duties;[2] the latter contends that directors' liability to third parties can be resolved through general tort liability and creditor subrogation, and that a special provision is unnecessary.[3]

The tort liability theory of directors' liability to third parties has followed different trajectories and carries different meanings in China and Japan. In Japanese scholarship, the tort liability theory is regarded as a doctrine that mitigates directors' liability. By requiring intent or gross negligence, it exempts directors from liability for ordinary negligence that would otherwise arise under general tort law, thereby preserving managerial discretion in business judgment. Whether directors' liability is enhanced or mitigated therefore becomes a decisive factor in selecting the legal nature of directors' liability to third parties. Chinese scholars commonly understand the introduction of the tort liability theory as a means to establish and strengthen accountability for improper conduct by directors.[4] Yet directors' liability to third parties breaks through the traditional pattern in which the company bears external liability and then pursues internal recourse. It may invite excessive third-party intervention and opportunistic conduct, thereby impairing the cultivation of entrepreneurship.[5] Such a design is not conducive to positive incentives for entrepreneurs and is inconsistent with the values of encouraging innovation and tolerating failure.[6] This article therefore examines the legislative evolution and case-law development of directors' liability to third parties in Japan from the perspectives of constitutive elements, normative meaning, and legal consequences. It compares the similarities and differences between the Chinese and Japanese tort liability theories, and then offers a theoretical framework for interpreting and applying Article 191 of the Company Law under a regime of limited enhancement of directors' liability.

2. THE INSTITUTIONAL EVOLUTION OF DIRECTORS' LIABILITY TO THIRD PARTIES IN JAPAN

2.1. The Initial Creation of Directors' Liability to Third Parties in the 1899 Commercial Code

The Japanese rule on directors' liability to third parties first appeared in Article 177(1) of the Commercial Code enacted in 1899. It provided that, where a director violated the law or the company's articles of incorporation, the director should be liable to compensate damage thereby

caused to a third party. In discussing the draft provision, the Legislative Committee observed that directors must not engage in acts violating laws or the articles of incorporation and that, if they did so, they should bear liability not only to the company but also liability in damages to third parties; this was, in the Committee's words, self-evident.[7] Nevertheless, even where a director acted pursuant to a resolution of the shareholders' meeting, doubt remained as to whether the director should still bear compensation liability to third parties, and an express provision on liability to external third parties was therefore necessary. This shows that the legislature at the time considered that, if directors strictly complied with laws and the articles of incorporation, they should not readily incur external liability. When their acts exceeded those limits, however, external liability for resulting loss had to be expressly recognized as a matter of transactional security. Because the provision was regarded as reasonable, it attracted almost no opposition during legislative deliberation.

2.2. Expansion after the 1950 Amendment to the Commercial Code

When the Japanese Commercial Code was amended in 1950, the legislature deleted and revised Article 266(2) and newly established Article 266-3(1). The amendment removed the limiting requirement that the director must have violated law or the articles of incorporation, and instead provided that a director who acted with intent or gross negligence in performing his or her duties would bear liability for damage suffered by third parties. This change was highly significant. It expanded the condition for directors' liability to third parties from unlawful conduct to neglect in the performance of duties, including acts such as erroneous business judgments. At the same time, to prevent directors from being sued frequently for ordinary negligence, the provision required subjective intent or gross negligence as an element of liability.

2.3. The 1969 Supreme Court of Japan Judgment and the Establishment of the Statutory Liability Theory as the Prevailing View

2.3.1. The Majority Opinion in the 1969 Case: The Statutory Liability Theory

On 26 November 1969, the Grand Bench of the Supreme Court of Japan rendered a judgment in a dispute concerning directors' liability to third parties.[8] The judgment is widely recognized as having established the basic doctrine of directors' liability to third parties in Japanese company law, and it has had a profound influence on subsequent legislation and practice.

In that case, the Grand Bench issued a majority opinion interpreting the legislative purpose and application of Article 266-3(1) of the Commercial Code. The majority reasoned that, because stock companies occupy an important position in economic society and their business activities depend on the performance of duties by directors as corporate organs, the law had specially provided for directors' liability to compensate third parties from the standpoint of protecting parties to transactions. On that basis, the Supreme Court adopted the statutory liability theory. The majority further articulated the specific standard for liability: if a director, in performing corporate duties, intentionally or with gross negligence breaches duties owed to the company, and thereby causes damage to a third party, the director must directly compensate the third party so long as there is an adequate causal relationship between the neglect of duty and the third party's loss. This is true whether the loss suffered by the third party is indirectly transmitted from damage sustained by the company itself, or is directly caused by the director's conduct. The judgment also construed the requirement of intent or gross negligence in a manner oriented toward third-party protection. It held that the required mental state refers to the director's intent or gross negligence with respect to neglect of duties in handling corporate affairs. Consequently, the third party need not prove that the director had subjective fault directed toward harming the third party; it is sufficient to prove serious neglect of the director's duties owed to the company. Finally, the majority discussed the relationship between this liability and general tort liability. It expressly stated that Article 266-3(1) of the Commercial Code does not prevent a third party from pursuing the director under Article 709 of the Civil Code where the

elements of general tort liability are satisfied. For a third party damaged by a director's neglect of duties, however, the special provision of the Commercial Code allows a direct claim against the director upon proof that the director acted intentionally or with gross negligence in performing corporate duties, without the further need to prove tortious fault directed toward the claimant as required under general tort law. Application of the provision also does not presuppose that the company itself bears tort liability to the third party.

2.3.2. The Minority Opinion in the 1969 Case: The Tort Liability Theory

The 1969 judgment was not unanimous. The core position of the minority opinion was diametrically opposed to that of the majority. It argued that directors' liability to third parties should be interpreted narrowly, for several reasons. First, the legislative history showed that the 1950 amendment was intended to reduce directors' liability. If directors of large companies were frequently held liable for third-party loss caused by ordinary negligence, corporate development would be impeded. The requirement of intent or gross negligence therefore reflected a policy of protecting directors, and the provision should not be regarded as one solely directed to third-party protection. Secondly, in legal nature, the liability should be understood as a special tort liability, supplementing the general rules of tort rather than creating an entirely independent category of liability. Thirdly, intent or gross negligence should be confined to the director's mental state in relation to the act causing harm to the third party. If the director merely neglected duties owed to the company but lacked intent or gross negligence toward the third party, the third party should not be allowed to sue the director directly. Fourthly, the scope of recoverable loss should be limited to direct loss and should not include indirect loss resulting from damage to the company, because in the latter situation the company should seek compensation from the director and the company's assets should then indirectly benefit the third party; otherwise, double recovery may result. Fifthly, because the provision is a special rule of tort law, within its sphere of application it should exclude the general rule in Article 709 of the Civil Code. A third party should not be allowed to claim against the director under Article 709 on the same facts, as that would create conflict in legal application.

2.4. The Enactment of the 2005 Companies Act and Institutional Succession

Article 429(1) of the Companies Act enacted in 2005 succeeded to the substance of Article 266-3(1) of the Commercial Code and became the central provision governing the liability of officers and similar persons for damage suffered by third parties. Article 429(1) provides that, where a director, accounting advisor, company auditor, executive officer, or accounting auditor is in bad faith or grossly negligent in performing his or her duties, the relevant officer or similar person is liable to compensate the damage thereby caused to third parties.

3. TYPES OF APPLICATION AND RISKS OF EXPANSION

3.1. Cases Involving Direct Loss Suffered by Third Parties

Typical cases involving direct loss to third parties arise where a director's conduct in the performance of duties directly infringes specific legal interests of a third party. Examples include inadequate disclosure of information or risk warnings that cause a specific person to assume guarantee risk, failures of internal control that cause customer trading losses, failure to perform labor-law and employee-safety obligations leading to death from overwork, and failure to prevent or active participation in patent or defamation infringements. The source of duty in such cases is generally grounded in a duty of care or duty to comply with law, and is often expressed as an obligation to establish internal-control and compliance systems. Directors who do not execute the relevant decision may also incur liability on the basis of their supervisory duties. Courts also frequently rely on industry-specific risks—such as the risk of defamation in publishing, the dual-liability risk in patent

infringement, or repeated administrative sanctions-to intensify the content and degree of directors' duty of care.

3.2. Cases Involving Indirect Loss Suffered by Third Parties

Where a third party suffers indirect loss, the source of funds that should be used for compensation is, in principle, the company's property. Whether there is an affirmative reason to go beyond this principle and treat directors' personal property as a pool for satisfying third-party claims remains doubtful. Even views that recognize compensation for indirect loss suffered by third parties do not necessarily advocate active relief in all cases. They more often locate such relief within a limited remedial framework.[9] It is also necessary to ask whether the possibility of relieving corporate creditors' indirect loss can be achieved through legal constructions that do not depend on the special provision on third-party liability, such as disregard of corporate personality. The extent to which corporate creditors' indirect loss requires protection is itself open to debate. Directors' liability to third parties for indirect loss treats the third party's inability to collect a claim as the core damage. The doctrinal difficulty lies in constructing a chain of attribution from deterioration of the company's solvency or changes in its liability assets to the director's responsibility toward the third party.

3.3. Summary of the Cases

First, there is uncertainty in the procedural route and litigation objective. Courts sometimes fail to examine rigorously whether the claim was already uncollectible at the time it arose, and they do not always adequately distinguish direct infringement from indirect loss. More importantly, some judgments calculate damages almost by equating them directly with the full amount of the underlying claim, thereby instrumentalizing directors' liability to third parties.[10] Even where the company remains solvent, or where there exists a more direct primary wrongdoer, plaintiffs may still choose to name directors as defendants to increase the probability of debt recovery. Directors are thus exposed to continuing litigation and enforcement risk, and the resulting legal uncertainty in turn suppresses their willingness to engage actively in risk-taking decisions and business operations.[11] Doubts also remain as to how to avoid converting all corporate obligations into directors' personal obligations, particularly where the director did not directly direct or supervise the relevant conduct.[12]

Secondly, the scope of liability has expanded structurally. In the Supreme Court of Japan case of July 2000,[13] the majority held that, so long as a director's act caused the company to violate business regulations it was required to observe, the director's act constituted an act violating laws and regulations under Article 266(1)(v) of the Commercial Code, even if the director's conduct did not violate the general fiduciary-duty provision. This means that directors' duties were expanded to an extreme degree. Directors' duties came to include obligations that the company must comply with in its business activities under non-company-law regimes, such as labor law and the law against unfair competition, and the key to liability became whether the director acted intentionally or with gross negligence in relation to those obligations.[14] When the company acts unlawfully, directors' duties to comply with law and their duties of care functionally strengthen the inferability of external liability from duties owed to the company: once corporate conduct is evaluated as unlawful, courts tend to extend the company's unlawful liability to the individual director by way of the director's compliance and care obligations. Even if the company itself does not act unlawfully, directors may still be held liable to third parties on the basis of the duty of care. Directors who do not directly participate may also be assessed under supervisory duties, and nominal directors are thereby naturally exposed to findings of breach of supervision.

Thirdly, the subjective element remains uncertain, and the shielding effect of the business judgment rule is weakened. In institutional design, the subjective element should limit the spillover of liability and filter ordinary business risk, especially in cases involving indirect loss and supervisory duties.

Case law, however, shows that the subjective element has not consistently operated as an exemption device; in several categories of cases it has instead been obscured by factual presumptions.

Fourthly, causation and the calculation of damages lack refinement, creating the risk that directors will be turned into additional enforcement debtors. In practice, where the company's liability assets have decreased, a common simplification is to treat the total amount of debts the company cannot pay as creditor loss caused by the director's breach of duties owed to the company. The unpaid amount of the claim then becomes the measure of damages, creating substantive enforcement against the director's personal property.

4. QUESTIONS CONCERNING INDIRECT LOSS AND RECONSIDERATION OF THE TORT LIABILITY THEORY

Japan has long expressly provided for directors' liability to third parties in company law, and it has accumulated substantial judicial practice that may serve as a reference for research.[15] As concerns have grown in Japan over the decline of corporate vitality, scholars have reopened discussion on the nature and boundaries of directors' liability to third parties.[3] The core controversy is that, although the statutory liability theory was accepted as a policy device under the idea of third-party protection, its unclear basis of attribution and uncertain limits allowed courts subsequently to apply it too simply, generating indeterminate and excessive liability.[11]

4.1. The Institutional Purpose Should Preserve Corporate Governance Stability

Article 191 of the Company Law provides a new remedial route for third parties, but its legitimacy does not mean that the pursuit of directors' personal liability should be understood as the optimal path to social justice. The starting point of institutional design should instead be that corporate liability remains the primary channel, while personal liability functions only as a second-best option where the corporate liability mechanism fails or is abused. This avoids systematically externalizing corporate risk into directors' personal risk and thereby compressing the space for business judgment and governance efficiency. Although creditor protection has influenced the path of company law innovation, it should not weaken or pierce the independence of corporate liability or the internal balance of interests within the organization.[16] In light of the value orientation of "promoting entrepreneurship" stated in Article 1 of the new Company Law, limitations on liability and tolerance mechanisms must be provided in parallel; otherwise, directors will restrain themselves in the face of risk, and the institutional effect will shift from strengthening third-party remedies to suppressing business activity.[17] Accordingly, Article 191 should be positioned as an exceptional mechanism that pierces the corporate liability shield only to a limited extent. Such piercing must be strictly confined, otherwise it will undermine the foundations of the corporate system itself.[9]

4.2. The Scope of Liability Should Be Limited to Tortious Damage

Where a third party's loss arises from a director's breach of duties owed to the company, resulting in a diminution of corporate assets, the third party's loss is often indirect loss transmitted through the company's injury. If an individual creditor is directly granted a claim against the director in such circumstances, both the doctrinal foundation and systemic consequences are highly uncertain. First, indirect loss should not automatically fall within Article 191, because doing so would affect the independence of corporate liability and the equality of creditors. Secondly, the distinction between direct and indirect loss is unstable. The real standard should be whether the loss can be incorporated within the elements of tort liability.

It is important to note that the line between direct and indirect loss is blurred. Although the Supreme Court of Japan has defined indirect loss as a situation in which the company suffers damage, and the

third party thereby suffers consequential loss, the distinction is difficult in judicial practice and remains contested in scholarship.[18] In Japanese scholarship, the tort liability theory is equivalent to a view that includes only direct loss. In practice, however, some circumstances conventionally described as indirect loss may still be capable of characterization as tort liability. The Chinese version of the tort liability theory also encompasses some instances of indirect loss; limiting Article 191 to tort liability therefore does not exclude all indirect-loss situations. The scope of directors' liability to third parties should accordingly be limited to tort liability, without requiring an inquiry into whether the damage is direct or indirect. The proper inquiry is whether the damage can be resolved within the framework of tort liability.

4.3. Coordination between the Company Law, the Civil Code, and Other Laws

The liability under Article 191 of the Company Law should be understood as a special instance of employer liability under Article 1191 of the Civil Code. The Civil Code already provides rules on liability for torts committed in the performance of duties by a company's legal representative and employees. Article 191 fills the gap concerning directors' liability to third parties. Confined to tort liability, Article 191 also achieves coherence within the legal system. Because directors possess greater decision-making and executive capacity than ordinary employees, they should bear greater responsibility. In cases of ordinary negligence, the third party can still obtain relief from the company through employer liability under Article 1191 of the Civil Code. That is, where a director is merely ordinarily negligent, the company bears tort liability under Article 1191. Where the director acts intentionally or with gross negligence, the third party may obtain direct compensation from the director under Article 191 of the Company Law. Tort-law rules such as comparative fault may apply directly, and limitation periods will also follow the rules applicable to tort liability, improving predictability. This systemic coordination also means that, where the legislature believes a certain type of third-party protection is necessary, the more appropriate method is often to realize it through a special statutory liability provision. Statutory liability is, in essence, a choice of legal policy. It requires predictable constitutive elements, liable parties, and limits on liability so that it can be adjusted in light of market and regulatory needs. Article 191 of the Company Law should not be used as a residual general clause.

4.4. Functional Substitutability

The law provides for directors' liability to third parties because, in some circumstances, holding only the company liable has lost practical significance and pursuing individual liability becomes a second-best means of realizing social justice. Excessive application of Article 191 would cause legal personality to lose its independent function and would impair the risk-segregation function of the corporate form.[19] Functionally, Article 191 must complement rather than replace creditor subrogation, shareholder derivative actions, and bankruptcy procedures. Once a company enters bankruptcy or reorganization, individual creditors who bypass the procedure and sue directors directly alter the order of distribution and undermine the structure of collective satisfaction. Even where accountability is necessary, it should be achieved through centralized causes of action and asset-collection mechanisms in bankruptcy proceedings, rather than through individual recovery outside the procedure. Judicial practice also shows a clear tendency in this direction: in bankruptcy proceedings, creditors generally cannot directly assert compensation claims against directors of the debtor, but should proceed through channels capable of representing the collective interests of creditors.[20] In *Gheewalla*,[21] the Supreme Court of Delaware held that creditors have no right to sue directors directly for breach of fiduciary duty, whether the corporation is in the zone of insolvency or already insolvent. Even when the company is nearing insolvency, directors' fiduciary duties remain owed to the company and its shareholders; directors must continue to exercise business judgment in the best interests of the company and its shareholders. Creditors may, however, sue derivatively on behalf of the company for breach of fiduciary duty.

Creditor subrogation provides an intermediate solution better able to balance efficiency and order. Where the company fails to exercise its rights against directors, supervisors, or senior executives and thereby affects the realization of creditors' claims, the creditor may subrogate to the company's rights against the director. This point has general significance within the system for preserving corporate claims.[6] It is particularly important that Article 537 of the Civil Code provides that, where the debtor's counterparty performs the obligation to the creditor and the creditor accepts performance, the corresponding rights and obligations between creditor and debtor and between debtor and counterparty are terminated, while other creditors retain the institutional exit of applying for bankruptcy to restore the order of collective satisfaction.[22]

5. SUGGESTIONS FOR THE APPLICATION OF ARTICLE 191 OF THE COMPANY LAW AND SUPPORTING LEGAL IMPROVEMENTS

5.1. Strictly Limiting the Scope of Application and Emphasizing the Tortious Nature of the Liability

When applying Article 191 of the Company Law, courts should first determine whether the interest infringed upon belongs to the range of interests protected by tort law, rather than directly treating a director's breach of internal corporate duties as the basis for liability. A director's breach of duties of loyalty and diligence owed to the company does not automatically generate compensation liability to third parties. Article 191 should apply only where the director's conduct in performing duties simultaneously constitutes an infringement of the civil rights and interests of a third party, and the director acted intentionally or with gross negligence in relation to that infringement. The practical advantage of limiting directors' liability to third parties to tort liability is that it avoids the need to distinguish direct from indirect loss. Courts should first determine whether the interest corresponding to the third party's loss can be protected within the framework of tort liability, thereby preventing pure economic loss from being absorbed into the scope of directors' liability to third parties. Creditors' losses consisting of pure pecuniary loss should primarily be resolved through contractual remedies, security interests, bankruptcy procedures, and similar mechanisms.

5.2. Maintaining a High Fault Threshold and Implementing the Allocation of the Burden of Proof

"Intent or gross negligence" is the core element of Article 191 of the Company Law and should be strictly implemented in adjudication. First, in hearing such cases, courts should carefully examine the director's subjective attitude in the performance of duties and avoid bringing ordinary negligence, or even no-fault situations, within the scope of liability. It is advisable to use unlawfulness as an important factor in determining gross negligence: the inquiry should be whether the director knew or ought to have known that the conduct violated laws, administrative regulations, or provisions of the articles of incorporation that protect third parties, but nevertheless engaged in that conduct. Such review helps distinguish ordinary business-judgment errors from serious unlawful dereliction. Secondly, the third party as plaintiff should bear the burden of proving the director's intent or gross negligence. This differs from Article 429 of the Japanese Companies Act, which establishes presumed-fault rules in certain circumstances and thereby partly reduces the plaintiff's evidentiary burden. Chinese legislation has not introduced a similar presumption, partly out of moderate concern for directors' interests and partly because courts can apply evidentiary rules flexibly in practice. In litigation, therefore, it should be made clear that the plaintiff must produce evidence proving serious fault by the director in the performance of duties. Thirdly, where the company has acted unlawfully, courts should not directly presume that the director acted intentionally or with gross negligence toward the third party.

5.3. Clarifying the Form of Liability and Coordinating the Burden between the Company and Directors

Unlike Japanese law, Chinese law does not permit a third party to sue only the director while leaving the company outside the claim structure in the relevant sense. A third party may sue both the company and the relevant director, requesting each to bear full compensation liability for the same loss; but who ultimately bears the loss, and in what amount, can be handled according to the principle of fault liability. Where a third party sues both the company and the director, the court may order the defendants to bear joint and several liability within a reasonable scope of damage. At the enforcement level, if the company first pays compensation in full, the director at fault should bear recourse liability to the company within the scope of the company's external payment, and should ultimately bear the portion of the loss properly attributable to him or her. Conversely, if the director first pays compensation to the third party, the company should not, on grounds of internal fairness, seek recourse from that director. This approach ensures that the party with greater fault bears a greater share of compensation, while a company not at fault may avoid final loss through recourse. In particular, where multiple directors jointly cause loss to a third party, the principle of joint and several liability should apply, allowing the victim to claim full compensation from any one of the directors. Among the directors themselves, contribution may then be allocated according to the degree of fault and causal contribution.

6. CONCLUSION

In sum, the experience of the Japanese statutory liability theory shows that directly externalizing a director's breach of duties owed to the company into compensation liability toward third parties may strengthen relief in individual cases, but it readily leads to unclear liability boundaries and turns directors into additional enforcement debtors. Article 191 of China's Company Law should not be interpreted as a general external-liability provision for directors' breach of duties owed to the company. It should instead be understood within the system of liability for torts committed in the performance of duties under Article 1191 of the Civil Code. The focus of its application is not the formal classification of loss as direct or indirect, but whether the third party's infringed interest falls within the protective scope of tort law and whether the director acted intentionally or with gross negligence in relation to that infringement. Third-party protection serving policy goals that go beyond the framework of tort liability should be allocated through special statutory rules.

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