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公司实务

## 速查清单：现行公司法下，董事将在哪些情形中承担个人责任

### Quick Checklist: Under the Current Company Law, in Which Circumstance Will Directors Take Personal Liability

自 2024 年 7 月《中华人民共和国公司法》（下称“公司法”）修订以来，董监高的义务与责任配置体系得到进一步完善。就公司董事而言，在履职不当的情况下，将对公司、股东或债权人的损失承担个人责任。

Since the revision of *Company Law of the People's Republic of China* (hereafter referred to as the Company Law) in July 2024, the framework governing the obligations and liabilities of directors, supervisors and senior management persons (the DSMs) has been further refined. Where directors fail to properly perform their duties, they may take personal liability for losses caused to the company, its shareholders, or creditors.

作为公司董事，如何速查和了解自己在公司法项下应承担的各项义务和责任？本文中，我们将针对公司法修订后董事应承担的主要义务和责任以表格的形式进行简要梳理，并给出风险防范的建议。此外，本文将就董事聘任协议和董事责任保险进行介绍，以提供保护董事个人利益的新思路。

As a director of a company, how can you quickly check and understand the various obligations and liabilities under the Company Law? In this article, we will briefly outline the main obligations and liabilities of the directors after the revision of Company Law in a tabular form, along with practical suggestions for legal risk prevention. In addition, the article will introduce the director appointment agreements and director liability insurances, offering new perspectives on safeguarding directors' personal interests.

#### I. 董事义务与责任清单

##### Checklist of Obligations and liabilities to directors

出处 Source	义务内容 Obligation	责任内容 Liability
公司法第 51 条 【核查、催缴出资义务】 Company Law Art.51 [obligation to verify and remind capital contribution]	董事会应当对股东的出资情况进行核查，发现股东未按期足额缴纳公司章程规定的出资的，应当由公司向该股东发出书面催缴书，催缴出资。 The board of Directors shall verify the capital contributions of shareholders. If it is found that the shareholders have failed to	未及时履行前款规定的义务，给公司造成损失的，负有责任的董事应当承担赔偿责任。 Failing to perform the above obligations promptly and causing losses of company, the responsible directors shall bear the

	pay the capital contributions provided in the articles of association in full and on time, the company shall issue a written reminder to the shareholder to call for the capital contribution.	liability for compensation.
公司法第 53 条 【抽逃出资】 Company Law Art.53 [withdrawal of capital contributions]	<p>公司成立后，股东不得抽逃出资。抽逃出资的行为包括：</p> <p>（一）制作虚假财务会计报表虚增利润进行分配；</p> <p>（二）通过虚构债权债务关系将其出资转出；</p> <p>（三）利用关联交易将出资转出；</p> <p>（四）其他未经法定程序将出资抽回的行为。</p> <p>After the establishment of the company, shareholder shall not withdraw their capital contributions. The acts of withdrawal include:</p> <p>a. making the false financial and accounting statements to inflate profits for distribution;</p> <p>b. Transferring capital contributions by fabricating the creditor-debtor relationships;</p> <p>c. Transferring the capital contributions by related transactions.</p> <p>d. Other acts of withdrawal without legal procedures.</p>	<p>股东应当返还抽逃的出资；给公司造成损失的，负有责任的董监高与该股东承担连带赔偿责任。</p> <p>Shareholders shall return the withdrawn capital contributions. If losses are caused to the company, the responsible DSMs and those shareholders shall bear joint and several liability for compensation.</p>
公司法第 226 条 【违法减资】 Company Law Art.226 [illegal capital reduction]	<p>公司存在减资需求时，应安排合法的减资流程。</p> <p>其中，董事会负责制定公司减资方案。方案中应明确原注册资本数额、减资的注册资本数额、所采用的减资方式、减资对象、减资后股权结构、债权人利益安排等内容。</p> <p>When a company needs to reduce the capital, it shall arrange a legal capital reduction procedures.</p> <p>In that case, the board of directors is responsible for formulating the capital reduction plan. The plan shall clarify the original registered capital amount, reduced capital amount, reduction measure, reduction</p>	<p>违法减资的，股东应当退还其收到的资金，减免股东出资的应当恢复原状；给公司造成损失的，股东及负有责任的董监高应当承担赔偿责任。</p> <p>In case of illegal capital reduction, shareholders shall return the funds received and any reduction in capital contributions shall be reversed. If losses are caused to the company, the shareholders and the responsible DSMs shall bear the liability for compensation.</p>

	target, the post-reduction equity structure and arrangements of creditors' interest.	
<p>公司法第 211 条 【违规分红】 Company Law Art.211 [illegal distribution]</p>	<p>合法分配利润的法定顺序： 缴纳税费；弥补以前年度亏损；提取法定公积金（直至注册资本的 50%）；提取任意公积金（如章程有规定）；利润分配。 其中，董事会负责制订公司的利润分配方案和弥补亏损方案。 Statutory order for legal distribution of profits: Payment of tax; offsetting losses in previous years; allocation for statutory common reserve funds(until the 50% of the registered capital). Allocation to discretionary common reserve funds(if provided in Article of Association) ; distribution of profits. In that case, the board of directors is responsible for formulating the plan of distribution of profits and plan of offsetting of losses.</p>	<p>股东应当将违反规定分配的利润退还公司；给公司造成损失的，股东及负有责任的董监高应当承担赔偿责任。 Shareholders shall return the profits distributed in violation of regulations to the company. If losses are caused to the company, the shareholders and the responsible DSMs shall bear the liability for compensation.</p>
<p>公司法第 232 条 【清算义务】 Company Law Art.232 [the obligation to liquidate]</p>	<p>董事为公司清算义务人，应当在解散事由出现之日起十五日内组成清算组进行清算。 Directors, as the liquidation obligors of the company, shall form a liquidation committee to commence liquidation within 15 days from the date of occurrence of the reasons for dissolution.</p>	<p>清算义务人未及时履行清算义务，给公司或者债权人造成损失的，应当承担赔偿责任。 If the liquidation obligor fails to perform liquidation obligations in a timely manner and causes losses to the company or creditors, he shall be liable for compensation.</p>
<p>公司法第 163 条 【财务资助】 Company Law Art.163 [financial assistance]</p>	<p>公司不得为他人取得本公司或者其母公司的股份提供赠与、借款、担保以及其他财务资助，公司实施员工持股计划的除外。 为公司利益，经股东会决议，或者董事会按照公司章程或者股东会的授权作出决议，公司可以为他人取得本公司或者其母公司的股份提供财务资助，但财务资助的累计总额不得超过已发行股本总额的百分之十。董事会作出决议应当经全体董事的三分之二以上通过。 The company shall not provide</p>	<p>违反前述规定，给公司造成损失的，负有责任的董事、监事、高级管理人员应当承担赔偿责任。 If any violation of the above provisions causes losses to the company, the responsible DSMs shall bear liability for compensation.</p>

	<p>gifts, loans, guarantees or other financial assistance for others to obtain shares of the company or its parent company, except when the company implements an employee stock ownership plan. For the benefit of the company, upon resolution of the shareholders' meeting, or the board of directors making a resolution in accordance with the company's articles of association or the authorization of the shareholders' meeting, the company may provide financial assistance to others to acquire shares of the company or its parent company, but the cumulative total of financial assistance shall not exceed 10% of the total issued share capital. Resolutions made by the board of directors must be approved by more than two-thirds of all directors.</p>	
<p>公司法第 182 条 【关联交易报告义务】 Company Law Art.182 [obligation to report related transactions]</p>	<p>董监高及其关联方直接或者间接与本公司订立合同或者进行交易,应当就与订立合同或者进行交易有关的事项向董事会或者股东会报告,并按照公司章程的规定经董事会或者股东会决议通过。 The DSMs and their related parties, who enter into contract or transaction with company directly or indirectly, shall report relevant matters to the board of directors or shareholders' meeting and obtain approval in the form of resolution of the board or shareholders' meeting in accordance with articles of association.</p>	<p>民事责任: 公司行使归入权: 违反前述忠实义务的, 获得的相关收入归公司所有。 Civil liability: The company may claim disgorgement of the income: All relevant income obtained by violating the fiduciary duties shall belong to the company. 刑事责任: 背信类犯罪: 违反忠实义务在《刑法修正案(十二)》的背景下可能构成触发刑事责任</p>
<p>公司法第 183 条 【不得谋取公司商业机会】 Company Law Art.183 [prohibition of misappropriating business opportunities of the company]</p>	<p>董事、监事、高级管理人员, 不得利用职务便利为自己或者他人谋取属于公司的商业机会。 The DSMs shall not misappropriate business opportunities of company for themselves or others by taking advantage of position.</p>	<p>- 非法经营同类营业罪 - 为亲友非法牟利罪 - 徇私舞弊, 低价折股或者低价出售 Criminal liability: Crimes of breach of trust: violating the fiduciary duties may constitute crimes under the Criminal Law Amendment (XII)</p>

<p>公司法第 184 条 【经营同类业务报告义务】 Company law Art.184 [obligation to report similar businesses]</p>	<p>董事自营或为他人经营同业业务，需向董事会或者股东会报告，并按照公司章程的规定经董事会或者股东会决议通过 The directors, who operate or co-operate in similar businesses, shall report to the board of directors or shareholders' meeting and obtain approval in the form of resolution of the board or shareholders' meeting in accordance with articles of association.</p>	<p>- Crime of illegal operation of similar businesses. - Crime of illegal profit-seeking for relatives and friends. - Crime of malpractice in selling shares at a low price or selling assets at a low price.</p>
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## II. 董事如何事先防范可能出现的风险？

### How Can Directors Proactively Prevent Risks?

义务 Obligation	风险防范要点 Key Points to Prevent Risks
<p>核查、催缴出资义务 obligation to verify and remind capital contributions</p>	<p>a. 查阅公司章程，了解股东出资额、出资方式和出资期限 Review the articles of association and understand shareholders' capital contribution amounts, method and deadlines. b. 向公司财务部门了解股东出资到位情况 ascertain the status of shareholders' capital contributions from the finance department. c. 出资期限届满前及时通知 Promptly remind shareholders before the contribution deadlines. d. 出资期限届满后及时催缴 Promptly demand payment after contribution deadlines.</p>
<p>抽逃出资 withdrawal of capital contributions</p>	<p>明知或应知的董事应当及时向公司和其他股东通知抽逃出资行为，要求采取相应措施。 The directors who know or should know capital withdrawal shall promptly notify the company or other shareholders, and demand corresponding measures.</p>
<p>违法减资 illegal capital reduction</p>	<p>董事会应制定合法的减资方案，关注减资流程是否合法，尤其是是否按照法律规定通知债权人； 在明知或应知存在违规减资事项时，及时向公司和其他股东通知，要求采取相应措施。 The board of directors shall formulate a legal plan for capital reduction and ensure that the procedures comply with all legal requirements, particularly with notifying creditors in accordance with the law. The board who knows or should know irregularities shall notify the company or other shareholders and demand corresponding measures.</p>
<p>违规分红 illegal profit distribution</p>	<p>a. 严格遵守利润分配的法定前提，即缴纳税费并弥补亏损、提取公积金后的利润方可进行分配 Strictly comply with statutory prerequisites for profit</p>



	<p>distribution, i.e., only distribute profits after paying taxes, covering losses, and allocating statutory reserves.</p> <p>b. 聘请审计机构对公司财务状况进行审计, 并以审计结论为基础进行分红和代扣代缴 Engage auditors to review financial circumstance and base distributions or allocations on audit results.</p> <p>c. 利润分配方案应最终经股东会决议批准 Ensure profit distribution plans are approved by the shareholders' meeting by resolution.</p>
<p>财务资助 financial assistance</p>	<p>董事应严格按照法律和章程的规定对公司拟提供财务资助事项进行审核, 核查该资助是否符合公司利益、资助金额是否合规等; 如果对董事会决议存在异议, 应明确记载在董事会的会议记录中。 Directors shall strictly review proposed financial assistance in accordance with the law and the articles of association, and ensure compliance with corporate interests and amount limits. If any dissent exists regarding a Board resolution, it shall be clearly recorded in the minutes of the Board meeting.</p>
<p>清算义务 The obligation to liquidate</p>	<p>a. 出现法定清算事由后十五日内依法组成清算组进行清算; Form a liquidation committee within 15 days from the occurrence of statutory grounds for liquidation.</p> <p>b. 由股东会委托其他管理人员或专业人士担任清算组成员, 以规避清算组可能承担的责任。 The shareholders' meeting may appoint other management personnel or professionals to serve as members of the liquidation committee so that the director may avoid potential liabilities that the liquidation committee may incur.</p>
<p>关联交易报告义务 The obligation to report related transactions</p>	<p>只要与公司发生的交易可能涉及与董监高个人相关的利益转移行为, 无论金额大小, 相关人员均应向公司如实披露。 Disclose all transactions with the company involving potential interests transfer related to the DSMs personally, regardless of amount.</p>
<p>不得谋取公司商业机会 Prohibition of misappropriating business opportunities of company</p>	<p>董事在进行相关业务前, 应向董事会或者股东会报告, 并按照公司章程的规定经董事会或者股东会决议通过。 Before engaging in relevant business, directors must report to the board of directors or shareholders' meeting and obtain approval in the form of resolution of the board or shareholders' meeting in accordance with articles of association.</p>

<p>经营同类业务报告义务 The obligation to report similar business</p>	<p>a. 事先判断自己经营的业务是否属于“同业”业务：核查公司登记的营业范围，以及公司实际的经营业务和准备进行的业务； Assess in advance whether their business activities constitute a 'competing business' by reviewing: the company's registered business scope, its actual business operations, and any proposed business activities;</p> <p>b. 及时向董事会和股东会报告，并保留书面证据。 Report promptly such matters to the Board of Directors and the shareholders' meeting, and retain written evidence of such disclosures.</p>
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### III. 董事聘任协议 Director Appointment Agreements

#### 1. 董事签署聘任协议的必要性？ Why sign a director appointment agreement?

董事聘任协议中除约定合同主体、合同期限、薪酬福利、职责义务等基础事项外，亦可就公司与董事之间有关保密责任、不予竞争、委任终止、违约责任、争议解决等重要条款进行约定。

In addition to basic terms such as [contract parties, term, compensation, duties], director appointment agreements may include clauses on [confidentiality obligations, non-compete clauses, termination, breach remedies, dispute resolution]

例如：

For examples:

- 协议中可明确约定公司在必要时应当配合提供财务资料，以使董事及时、积极履行核查、催缴股东出资的法定义务，以及监督股东是否存在抽逃出资等违法行为；  
Specify the company's obligation to provide financial records as necessary to enable directors to promptly and proactively fulfill their statutory duties, including verifying and urging capital contributions from shareholders and supervising whether any unlawful withdrawal of capital has occurred
- 协议中可对董事辞职后公司未及时改选的董事报酬和违约责任进行明确约定，以督促公司及时改选；  
Clarify the director's entitlement to remuneration and the company's liability for breach if it fails to promptly re-elect a director after resignation, in order to encourage timely re-election
- 针对公司法中规定的董事应当向公司承担的责任，在董事辞职后，明确董事不得被要求承担责任。  
Clarify that directors shall not be required to bear such liabilities after resignation with respect to the liabilities they are required to assume towards the company as stipulated under the Company Law.

#### 2. 董事被不当解任时，应当如何维权？ How can directors seek remedies for wrongful removal?

按照公司法规定，股东会享有对董事的无因解除权，即股东会可以决议解任董事，决议作出之日解任生效。如果无正当理由在任期届满前解任董事的，该董事可以要求公司予以赔偿。

In accordance with the Company Law, the shareholders' meeting has the right to remove directors without cause, that is, the shareholders' meeting may resolve to remove a director, and the removal shall take effect on the date of the resolution. If a director is removed without just cause before the expiration of their term, the director may demand compensation from the company

董事职务被解除后，因补偿与公司发生纠纷提起诉讼的，人民法院将依据法律、行政法规、公司章程的规定或者合同的约定，综合考虑解除的原因、剩余任期、董事薪酬等因素，确定是否补偿以及补偿的合理数额。因此，在董事聘任协议中，双方可就不当解任情况下董事可获得的补偿金额进行明确约定，以争取在事发时获得最大力度的保护。

Where a director, after removal from office, initiates a lawsuit due to a dispute over compensation with the company, the people's court shall determine whether compensation should be granted and the reasonable amount of compensation based on laws, administrative regulations, the company's articles of association, or contractual agreements, taking into account factors such as the reason for removal, the remaining term of office, and the director's compensation. Therefore, in the director appointment agreement, both parties may clearly stipulate the compensation amount to which the director is entitled in the event of improper removal, so as to ensure the greatest possible protection in case of such an event.

### 3. 董事是否享有“想辞就辞”的权利？

Do directors have the right to "resign at will"?

公司与董事之间系委托关系，各方享有任意解除权。董事希望辞职的，可向合法的受理机构或人员，通常为董事会和股东（大）会，提交辞职报告，并保存证据。

The relationship between the company and the director is a principal-agent relationship, and each party has the right to terminate the relationship at will. If a director wishes to resign, they may submit a resignation report to the legitimate accepting authority or person, usually the board of directors and the shareholders' meeting, and preserve evidence.

但，董事任期届满未及时改选，或者董事在任期内辞任导致董事会成员低于法定人数的，在改选出的董事就任前，原董事仍应当依照法律、行政法规和公司章程的规定，履行董事职务。

However, if the term of office of a director expires and no timely re-election is held, or if the resignation of a director during their term causes the number of board members to fall below the statutory minimum, the original director shall, before the newly elected director assumes office, continue to perform their duties as a director in accordance with laws, administrative regulations, and the company's articles of association.

### 4. 董事辞职后，公司怠于履行变更义务的，董事应如何救济？

How can directors seek relief if the company fails to fulfill its change obligations after resignation?

作为董事，如果辞职符合法律规定，而公司怠于变更登记影响到自身利益，则可以起诉要求公司进行变更登记。

If a director's resignation complies with legal regulations and the company's failure to



change the registration affects their own interests, the director may file a lawsuit to demand that the company make the change registration.

若因公司无正当理由无视该辞职行为，或不履行变更登记手续，且该辞职董事为此承担了不应当承担的民事责任，则该董事可以就其已经承担的责任向公司追偿。

If the company ignores the resignation without just cause or fails to go through the change registration procedures, and the resigning director thereby incurs civil liabilities that should not have been borne, the director may seek indemnification from the company for the liabilities already incurred.

#### IV. 董事责任保险 Director Liability Insurance (D&O)

##### 1. 董责险是什么？ What is D&O

董监高责任险，是董监高在履行职责过程中，因工作疏忽、不当行为被追究责任时，由保险公司赔偿法律诉讼费用及承担其他相应民事赔偿责任的保险。投保人通常为公司，也可公司与董监高人员同时作为投保人；被保险人为投保公司及其子公司、董事、监事、高级管理人员。

Directors', Supervisors', and Officers' (D&O) liability insurance is the insurance under which the insurance company compensates for legal litigation costs and bears other corresponding civil compensation liabilities when directors, supervisors, or senior management are held liable for negligence or improper conduct in the performance of their duties. The policyholder is usually the company, or the company and the directors, supervisors, and senior management jointly. The insured parties include the policyholding company and its subsidiaries, as well as its directors, supervisors, and senior management personnel.

##### 2. 董责险能就董事的哪些责任进行赔付？ For which liabilities of directors can D&O liability insurance provide compensation?

通常来说，董责险可就董事因工作疏忽、行为不当而被追究其个人赔偿责任时进行赔付，即董事诚实的管理团队的“过失行为”，而不包括恶意、违背忠诚义务、信息披露中故意的虚假或误导性陈述、违反法律的行为。

Generally, D&O liability insurance can compensate directors for their personal compensation liabilities arising from negligence or improper conduct in their work, that is, the "negligent acts" of the director as an honest member of the management team, excluding malicious acts, breaches of fiduciary duties, intentional false or misleading statements in information disclosure, and illegal acts.

下述责任董责险一般不予赔付：

The following liabilities are generally not covered by D&O liability insurance:

- 个人利益、自利交易  
Personal interests, self-dealing transactions
- 欺诈、不诚实行为（须经最终判决确定）  
Fraud, dishonest acts (subject to final judgment)
- 未决或先前诉讼 已知索赔 污染除外  
Pending or prior litigation, known claims (pollution excepted)
- 由其他保险保障的责任(如产品责任、专业责任、知识产权责任等)引起的诉讼除外

Litigation arising from liabilities covered by other insurance (such as product liability, professional liability, intellectual property liability, etc.) is excluded.

作为一项鼓励性条款，本次公司法修订亦规定了公司可以在董事任职期间为董事因执行公司职务承担的赔偿责任投保责任保险。不论是对于投资人董事还是创始人董事而言，董事责任险都是一个合理且具有高度性价比的选项。因此，董事作为直接相关方，可以向公司建议或在聘任协议中约定投保责任保险，但该建议是否被采纳尚需根据法律法规、公司章程、运营状况以及保险公司的评估结果等实际情况决定。

As an encouraging provision, the revision of the Company Law also stipulates that a company may, during a director's term of office, purchase liability insurance for the compensation liability borne by the director for performing the company's duties. For both investor directors and founder directors, director liability insurance is a reasonable and highly cost-effective option. Therefore, as a directly interested party, a director may suggest to the company or stipulate in the appointment agreement to purchase liability insurance, but whether such a suggestion is adopted shall be determined based on actual circumstances such as laws and regulations, the company's articles of association, operational conditions, and the insurance company's assessment results.

如您对本文有任何问题，请联系：

**If you have any questions about this article, please contact us via:**



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