



Analysis and Prospect of the Protection Mechanism of Minority Shareholders

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Abstract: Minority shareholders are an important part of the company, and protecting their rights and interests is of great significance to maintaining the stability of the company and promoting the development of the market. Ensuring the protection of the rights and interests of minority shareholders is not only an important indicator to evaluate the business environment, but also an important aspect of building a law-based business environment. The root cause of the damage of minority shareholders' equity lies in the abuse of majority power and the inherent nature of the company. Fundamentally, this problem stems from differences in social status, leading to differences in interests. In practice, minority shareholders are usually vulnerable to infringement because they do not directly participate in the operation of the company or in their disadvantaged position in the organizational hierarchy. However, as an important participant and investor of the company, minority shareholders should enjoy equal operating rights and dividend distribution. This requires greater protection at the legal level, and minority shareholders also need to improve the internal level of self-reflection. Externally, society needs to actively promote legal measures that to minority shareholders. Internally, minority shareholders need to actively participate in the operation of the company, and make reasonable use of the company's articles of association to safeguard their own rights and interests. This paper analyzes the practical dilemma of the maintenance of the interests of minority shareholders, and then starts from the maintenance plan of minority shareholders in the third Review draft of the revised Company Law, and provides ideas for minority shareholders to explore the way to break through the dilemma.

Keywords: minority shareholders, company law to revise, the articles of association, rights and interests protection, reasonable path

1. Introduction

With the increasing development of China's capital market, the number and influence of minority shareholders gradually increase. However, due to information asymmetry, rights imbalance and other factors, the rights and interests of minority shareholders are often infringed. Therefore, it is particularly important to establish a sound protection mechanism for the rights and interests of minority shareholders. Based on the third Review of the revised draft of the Company Law, this paper discusses the practical dilemma of the loss of the interests of minority shareholders, and analyzes the breakthrough ideas of the new revised bill on the protection of the rights and interests of minority shareholders from the legal level. On this basis, this paper puts forward other paths such as strengthening the loyalty obligation of relevant personnel of the company, clarifying the informed scope of the right to know, and increasing the actual operation possibility of shareholders' profit distribution claims, so as to provide more ideas for the protection of the rights and interests of minority shareholders in the future.

2. The practical challenge of protecting the rights and interests of minority shareholders

Minority shareholders are important participants in the capital market, and the protection of their interests is of great significance for maintaining market fairness, safeguarding investor confidence and promoting the healthy development of the capital market. However, due to information asymmetry, rights imbalance and other problems, the rights and interests of minority shareholders are often infringed, which not only damages the interests of minority shareholders, but also affects the stability and development of the capital market. Therefore, the necessity of protecting the rights and interests of minority shareholders can not be ignored.

2.1 Inevitable conflict of interest between minority shareholders and major shareholders

The absolute control advantage of the major shareholders of the company over the company makes its interests highly

consistent with those of the managers. While major shareholders get dividends, more income can be realized through compensation, bonus and other ways, and become multi-income shareholders. Different from this, minority shareholders pay more attention to the company's dividend rights and interests, biased to pure income. This difference of interests directly leads to the conflict of interest between the two sides, especially in the process of the internal power of the company gradually shifting from conformity to conformity.

2.2 Difficulties facing judicial relief

In equity disputes, once the dominant shareholders gain the control right, the minority shareholders will often lose their direct communication and decision-making channels, and litigation becomes the last resort to protect their own rights and interests. However, even through judicial relief, this road is not easy to go. The current company law provides a variety of relief ways for shareholders' equity, but in practice, it is still difficult to achieve real relief. First of all, once judicial relief is involved, the actual status of minority shareholders in the company has been marginalized, and the evidence is usually held by the major shareholders, making it no easier for minority shareholders to obtain evidence. Secondly, if it is necessary to claim money, the specific loss of rights must be quantified to support the court. However, there are some difficulties in quantitative calculation itself, such as safeguarding the rights of "acquiring the remaining property rights of the company". For the minority shareholders who do not participate in the direct operation of the company, it is impossible to obtain the financial content of the company, and it is difficult to support specific litigation claims. In addition, the complex procedures and high economic costs of related litigation also make it difficult for minority shareholders to protect their rights.[1]

3. Analysis of the existing rights protection mechanism of minority shareholders

At present, China has established a series of mechanisms to protect the rights and interests of minority shareholders, including laws and regulations, regulatory systems, information disclosure systems and so on. These mechanisms protect the rights and interests of minority shareholders to some extent, but there are still some problems. First of all, the imperfect system of laws and regulations is the main bottleneck. Although the Company Law has been revised for many times to strengthen the protection of shareholders' rights and interests, in practice, the meticulous attention to minority shareholders still needs to be deepened. There is still room for improvement in clarifying the right to know and participating in corporate governance, so as to ensure that the rights and interests of small and medium-sized shareholders are effectively protected with more comprehensive and clear provisions. Second, there are loopholes in the regulatory system, which have failed to completely eliminate violations. In performing their duties, the regulatory authorities need to stop and punish their violations more strictly and quickly, so as to avoid further damage to the rights and interests of minority shareholders. To establish a more efficient complaint and reporting mechanism and improve the efficiency of supervision is one of the urgent directions to improve. Finally, the imperfect information disclosure system makes it difficult for minority shareholders to obtain comprehensive and accurate information. Improving information disclosure norms, clarifying disclosure standards and frequency, and advocating more transparent information disclosure will help to improve the right to know of minority shareholders, so that they can make investment judgments more rationally and scientifically.

Therefore, at present, it is necessary to take more effective measures to strengthen laws and regulations, strengthen supervision and law enforcement, and improve information disclosure, comprehensively improve the level of the protection of the rights and interests of minority shareholders, and build a healthier, fair and transparent capital market environment.

4. The breakthrough idea of the company law revision

4.1 Exit relief path of the controlling shareholders' abuse of rights

The new amendment stipulates that if the controlling shareholder abuses its rights to harm the interests of the company or other shareholders, other shareholders shall have the right to request the company to purchase its equity at a reasonable price. This provides minority shareholders with an exit relief path and increases the flexibility of the company. The regulation aims to promote the healthy development of the company, solve the problem of equity concentration, and the abuse of rights of major shareholders to damage the interests of the company and minority shareholders. In order to achieve this goal, the third draft introduces the rules of foreign shareholders' suppression, and provides the exit relief paths for minority shareholders with damaged rights and interests. This regulation not only helps to solve the deadlock of the company, increase the flexibility and flexibility of the company, but also is the implementation of the property rights equality policy.[2]

4.2 Improve the regulations on minority shareholders' right to know

The new bill further strengthens the right to know of minority shareholders, and stipulates the specific provisions for

shareholders to consult and copy the relevant materials of the company. This measure improves the transparency of minority shareholders' access to company information and strengthens the supervision of minority shareholders over the company. In the three review drafts of the Company Law, the protection of shareholders' right to know has been significantly strengthened. Whether in the general company or a special company, shareholders have the right to request access to accounting vouchers. In addition, in addition to the static information of the "register of shareholders," the internal members of the company, the "accounting book" is also included in the scope of access. "Accounting books" can directly reflect the occurrence and completion of economic business, it reveals the dynamic operation situation of the company, and indirectly gives minority shareholders the authority to participate in the operation of the company. At the same time, in order to protect shareholders' rights and interests, shareholders are allowed to entrust third-party intermediary agencies to conduct investigations, which further strengthens the close contact between minority shareholders and the company.[3]

4.3 Restricting the company shall not increase the shareholding ratio of shareholders of the provisional proposal

The new bill stipulates that the company should increase the shareholding ratio of provisional proposed shareholders, restricts the practice of major shareholders from prevent minority shareholders from exercising their functions and powers by amending the articles of association and other ways, and provides legal guarantee for minority shareholders. Although the resolution control of the proportion of temporary proposals in the third draft provides a legal guarantee for minority shareholders and prevents them from being deprived of their powers by major shareholders, in practice, we still need to realize that commercial norms should be based on autonomy. To maintain the flexibility of commercial transactions, many details of corporate governance are up to the company itself. However, this also has "hidden" consequences that we need to devote more energy to deal with. For example, minority shareholders may maliciously interfere with the normal operation of the company, or maliciously use the proposal right because of the small proportion of investment. The law will be more convincing if legislators can consider them in subsequent legislation. In short, we need to balance the relationship between the rights protection of minority shareholders and the commercial autonomy, to ensure that the law is both fair and practical.

4.4 The cumulative voting system

The new Company Law adds a "cumulative voting system", which stipulates that when the general meeting of shareholders elects directors or supervisors, the cumulative voting system may be implemented in accordance with the provisions of the articles of association of the company or the resolutions of the general meeting of shareholders. According to the system, in the general meeting of shareholders to elect directors or supervisors, each share and should choose the same number of directors or supervisors vote, shareholders can have their voting election one, also can elect several people, so small and medium shareholders can choose their satisfactory directors, make representative of minority shareholders into the board of directors or the board of supervisors, expand the voice of minority shareholders, weaken the voting weight of the controlling shareholders.[4]

4.5 Provide the conditions for the company to reduce its registered capital

The new act stipulates that the reduction of registered capital should be reduced according to the proportion of shareholder contribution or shareholding, so as to avoid the damage to the interests of minority shareholders by improper means. However, it is necessary to carefully consider whether there is an overcorrection to avoid the restrictions on the exit path of minority shareholders. This article stipulates that while ensuring equal protection of property rights, the interests of minority shareholders and the needs of maintaining corporate autonomy should also be fully considered. Lawmakers should take this regulation with caution and avoid excessive intervention to damage the normal operation of the market. As a mechanism of corporate autonomy, directional capital reduction may be an important way for minority shareholders to exit in some cases. The ban on unequal capital reduction may limit the exit path of minority shareholders and have a negative impact on investors' enthusiasm and business environment. In view of the situation that the controlling shareholders and the actual controllers damage the interests of the company and the minority shareholders, they should be further strengthened to regulate, let them assume fiduciary obligations and strengthen their own constraints. This can be achieved by improving relevant laws and regulations and strengthening supervision. When formulating relevant regulations, it is necessary to balance the relationship between corporate autonomy and external constraints to ensure the fairness and protection of the interests of all parties.

5. Explore other paths to protect the mechanism of the rights and interests of minority shareholders

5.1 Strengthen the duty of loyalty of the relevant personnel of the company

By increasing the responsibility of the actual controller, strengthening the independence of the board of directors and the board of supervisors, and establishing the right of independent independence of property, to strengthen the supervision of the company. Strengthening the loyalty obligation of relevant personnel of the company is to improve the transparency of corporate governance and protect the rights and interests of shareholders. This includes increasing the responsibility of the actual controller, strengthening the independence of the board of directors and the board of supervisors, and establishing independent property independence.

5.1.1 Increase the responsibility of the actual controller

The actual controller is required to assume greater legal obligations to the company's operation and decision-making. This may include clarifying the responsibilities of the actual controller in the operation of the company, emphasizing its statutory obligation to the best interests of the company, and stipulating the possible legal consequences of his breach of the relevant obligations.

5.1.2 Strengthen the independence of the board of directors and the board of supervisors

By establishing a more independent and professional board of directors and supervisory board, reduce the excessive influence of internal personnel on decision-making. This can be achieved by setting up the proportion requirements of independent directors and clarifying the responsibilities and rights of independent directors, so as to ensure that the leadership of the company performs its duties more objectively and serves the interests of the entire shareholder group.

5.1.3 Establish independent independent property rights

Strengthen supervision, improve the supervision system to emphasize the financial independence of the company and its related personnel, to ensure that the company's financial decisions are not overly affected by external interests. This may include stipulating that the company should establish an independent financial management system to prevent the abuse of financial power by the personnel within the company and protect the property safety of the company and shareholders.

Through these means, the company will be able to establish a more fair and transparent governance structure, improve the loyalty of the company related personnel to the overall interests of the company, so as to enhance the trust of shareholders in the management of the company.

5.2 Clarify the scope of the right to know

The purpose of the right to know is to ensure the transparency of shareholders to the company's decision-making and operation. It is necessary to clarify the meeting resolutions and meeting minutes, as well as the legal compliance of the meeting minutes, so as to protect the inquiry rights and interests of minority shareholders' right to know.

5.2.1 Pay equal attention to meeting resolutions and meeting minutes

Determine the importance of meeting resolutions and minutes to ensure that shareholders have access to and understand the company's key decision-making processes and results. The move helps to prevent internal information asymmetry and enable shareholders to have a more comprehensive understanding of corporate governance.

5.2.2 Legal and compliance agreement of the meeting minutes

Determine the procedures for reviewing meeting minutes and set the legal compliance standards for meeting minutes. This helps to prevent information tampering or improper operation, and ensure that shareholders can obtain true and accurate company information.

5.2.3 Protect the inquiry rights and interests of minority shareholders' right to know

Emphasize the right of minority shareholders to know the operation of the company, stipulate the inquiry procedures and frequency, ensure that minority shareholders can understand the operating conditions of the company when necessary, and improve their participation in corporate governance.

Through these measures, the company will establish a clear scope of the right to know, to ensure that shareholders can access key information to corporate governance, improve the transparency of the company and shareholders' trust in the company's management.

5.3 Strive for the interests of minority shareholders in the articles of association

In order to safeguard the rights and interests of minority shareholders, the articles of association can set up regular reporting and related party transaction restrictions to increase the voice of minority shareholders in corporate governance.

5.3.1 Regular reporting requirements

The articles of association shall stipulate that minority shareholders shall have the right to request periodic reports, including their financial position, business plan and performance. Ensure that they are well informed of the company's operations and improve information transparency. The move will help improve the transparency of minority shareholders about the company's operations and enable them to assess their investments in a more comprehensive and timely manner.

5.3.2 Restrictions on Related-party transactions

The articles of association of the company shall set up a clear review and restriction mechanism for related transactions to ensure that related transactions do not damage the rights and interests of minority shareholders. Clarify the conditions, procedures and disclosure requirements of related transactions, and improve the transparency and compliance of related transactions. In order to reduce the possibility of internal personnel to use related party transactions to damage the interests of minority shareholders.

5.3.3 Establish a mechanism to protect the rights and interests of minority shareholders

In the articles of association, the exclusive rights and interests protection mechanism and dispute settlement mechanism for minority shareholders, such as independent arbitration or mediation procedures, are established to provide an effective and rapid way for minority shareholders to resolve disputes. This can reduce the cost of rights protection for minority shareholders and improve their confidence in corporate governance. Solve the disputes between minority shareholders and the company.

Through these specific provisions, the articles of association will become a medium shareholder rights and interests legal protection documents, small and medium-sized shareholders can in the company's articles of association, to ensure that the corporate governance can enjoy more rights and interests and participation, enhance its position in the business environment, help to create a fair and transparent corporate governance environment, prompting the company to better balance the rights and interests of all kinds of shareholders. The necessity of protecting the rights and interests of minority shareholders is not only reflected in the protection of the rights and interests of individual investors, but also related to the stability and development of the whole capital market. Establish a sound laws, regulations and regulatory system to ensure that the rights and interests of small and medium-sized shareholders in corporate governance are effectively protected, in order to build a fair, transparent and orderly capital market environment.

6. Conclusion

The protection of the rights and interests of minority shareholders is the key to the healthy development of the capital market, so it is necessary to establish a sound protection mechanism for the rights and interests of minority shareholders. Although the new amendments provide more legal support, relying solely on them is not enough. Minority shareholders should enhance their awareness of self-protection, actively participate in corporate governance, formulate reasonable articles of association, and show an independent and prudent attitude. Laws and minority shareholders need to work together to complement each other to create a healthy and equal business environment. This is not only an appeal to minority shareholders, but also an expectation of the legal system and the commercial society to jointly pursue justice and sustainable development. In the future, we should strengthen the construction of the protection mechanism for the rights and interests of minority shareholders, enhance the market fairness and transparency, and at the same time learn from international experience, constantly improve the protection of the rights and interests of minority shareholders in China, and promote the healthy development of the capital market.

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