



Research on the Application of the New "Company Law" from the Perspective of State-owned Enterprise Reform: Legislative Trends and Practical Prospects

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Abstract: The reform process of state-owned enterprises in China has been accompanied by the improvement of the legal system, and the revision of the new "Company Law" also partially carries the legislative response to the reform practices of state-owned enterprises. The implementation of the new "Company Law" brings new challenges and opportunities to the efficient management of state-owned enterprises. As the stabilizer of the socialist market economy with Chinese characteristics, state-owned enterprises should continue to deepen reforms, strengthen compliance management, and ensure that all business activities comply with legal and regulatory requirements.

Keywords: reform of state-owned enterprises; new "company law"; legislative trends; practical prospects

1. Introduction

Since the reform and opening up in 1978, Chinese state-owned enterprises (SOEs) have undergone a long process of gradual transformation. Many large SOEs in key and strategic sectors have successfully transitioned from inefficient production units under the state economic plan to profitable, merged corporate entities, with appropriate corporate governance structures being gradually implemented [1]. Over the past 30 years since the implementation of the Company Law in 1993, it has undergone six revisions, each of which has carried forward the advanced achievements of China's economic system reform and SOE reform, establishing and continuously developing them in legal form.

The reform of SOEs and the revision process of the Company Law are indeed inseparably linked. In order to adapt to the new situation of SOE reform, it is necessary to revise the Company Law accordingly to better regulate and guide the operation and management of SOEs. By revising the Company Law, the legal status, organizational structure, operating mode, and other aspects of SOEs can be clarified, providing a clear legal basis for SOE reform. This helps to protect the legitimate rights and interests of SOEs and promotes the smooth progress of reform. Furthermore, SOE reform and the revision of the Company Law mutually reinforce and complement each other. The practical experience of SOE reform can provide useful reference for the revision of the Company Law, while the revision of the Company Law can further promote the deepening of SOE reform. This positive interaction helps to continuously improve China's enterprise legal system and enhance the governance level and market competitiveness of SOEs.

In order to further deepen the reform of SOEs, optimize the business environment, promote the healthy development of the capital market, and better facilitate the improvement and development of corporate systems and practices, the Company Law of 2023 has officially come into effect. In the new era, SOEs shoulder a new historical mission. Based on the solid foundation of past reforms, they continuously push forward deeper reforms and strive to achieve development at a higher level.

2. Legislative Trends of SOE Reform in the New "Company Law"

2.1 Incorporating Party Leadership into Corporate Governance

With the deepening of SOE reform and the establishment of a modern enterprise system, the role and status of party organizations have gradually transformed and strengthened from providing oversight and support to serving as a core leadership component. The 19th National Congress of the Communist Party of China explicitly defined the leadership role of SOE party organizations in the Party Constitution, emphasizing that SOE party committees (leading party groups) should play a central leadership role, responsible for guiding the development direction of enterprises, managing the overall situation of enterprises, ensuring the implementation of various tasks, and participating in discussing and deciding major

affairs of enterprises in accordance with the law [2]. In 2018, the revision of the Constitution further incorporated the principle of "Party leadership" into the main text of the Constitution, providing solid constitutional support and legal basis for the embodiment of "Party leadership" at the legal level. The revision of the Company Law this time is precisely a positive response and legalization of the achievements of political and economic system reforms and SOE reforms. The new law clearly stipulates the leadership role of party organizations in corporate governance, establishing this reform achievement in the form of legal provisions, thereby providing legal protection for party organizations to play a leading role, control the overall situation, and ensure policy implementation in the process of SOE reform and corporate governance. At the same time, the new law also lays the institutional foundation and opens up commercial law space for special rules such as the "three important and one major" decision-making mechanism, the governance model of "bidirectional entry" and "cross-appointment," as well as the research and deliberation by party organizations before decision-making [3].

2.2 Improvement of the Board of Directors System

During the ten years of practice since the implementation of the Company Law in 1993, the power of the shareholders' meeting had been increasingly inflated, leading to a gradual imbalance in the coordinated governance with the board of directors and the board of supervisors. The difficulties in fulfilling the supervisory responsibilities of the board of supervisors prompted the reform of corporate governance structures in SOEs. In 2004, the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council issued the "Notice on the Establishment and Improvement of the Pilot Work of Establishing a Board of Directors in Centrally-administered SOEs with Exclusive State Ownership," which explicitly required the establishment of an "external director system," marking the beginning of pilot practices for this system. The new Company Law clarifies the system of having a majority of external directors on the board, which is an important achievement formed through twenty years of reform practices in SOEs. External directors are appointed by the SASAC or group companies, do not receive remuneration from the companies they serve, and do not have labor contract relationships with those companies. Therefore, they can maintain a certain level of independence, constrain the management and internal directors, separate decision-making power from execution power, and prevent internal control [4]. The employee representative on the board of directors is elected by the company's employee congress and is generally held by the chairman of the labor union, safeguarding the rights of the broad masses of employees in SOEs to be the masters. Employee directors have the same powers as other directors on the board, which is significant for improving the distribution of power within the board of directors.

2.3 Strengthening Internal Compliance Management

In the process of deepening the new round of SOE reform, internal control, risk management, and compliance construction are regarded as crucial tasks. The new Company Law elevates the compliance management of SOEs to the legal level, requiring all state-funded companies to establish and improve internal supervision, management, and risk control systems. This provides a solid legal foundation for improving the rules of internal control, risk management, and compliance construction in the reform of SOEs [5].

At the institutional level, from 2018 to 2022, SASAC of the State Council issued a series of documents dedicated to promoting central enterprises to comprehensively strengthen compliance management, which, together with the new Company Law, constitute the legal basis for the compliance governance of SOEs in China. At the practical level, internal control, risk management, and compliance construction in SOEs belong to three separate systems due to their different focuses. However, there is some overlap or duplication of work in these three systems in practice, necessitating the coordination and integration of related functions, clarifying the scope of responsibilities, unifying the management system, and optimizing the management platform. The establishment of this system is not only conducive to improving the transparency of SOE governance, reducing the probability of operational risks, establishing and improving the internal control and compliance system and regime, thereby enhancing professional capabilities and supervisory effectiveness, and reducing capability costs in the field of business compliance. Furthermore, the construction of internal compliance management should also fully consider the nature and characteristics of different SOEs for differentiated design, aiming to strike a balance between ensuring the effectiveness and security of SOE governance.

3. Practical Prospects for the Deepening Reform of SOE

3.1 Continuous Improvement of the Modern SOE System with Chinese Characteristics

The new Company Law explicitly stipulates the leadership role of party organizations in corporate governance within state-capitalized companies, marking a significant shift from policy to legal status. This provision not only reinforces the

central position of party organizations in corporate governance but also provides a legal basis for enterprise party organizations to better participate in corporate governance. In practice, it is essential to clarify how party organizations should exercise leadership in the operation of SOEs. Combining the new Company Law and the "Opinions of the General Office of the CPC Central Committee on Strengthening Party Leadership in Improving Corporate Governance of Centrally-administered Enterprises," the practical pathways for SOE party organizations to exert their leadership role are mainly manifested in grasping the responsibilities of "deciding" and "deliberating" in the decision-making process. Major matters related to party building must be decided by the party committee, including the implementation of major policies and guidelines of the Party Central Committee, important personnel appointments and dismissals within the enterprise, and the strategic direction of enterprise development. The party committee deliberates and decides on these matters, while the board of directors and management implement legal procedures. Major operational and management matters must be studied and discussed by the party committee before the board of directors makes decisions. Relevant governance entities make decisions in accordance with legal procedures and regulations, supporting the shareholders' meeting, board of directors, board of supervisors, and management in performing their duties according to the law, thereby consolidating the class foundation of the Party's governance [6]. In the specific implementation process, various types of enterprises should refine and improve the list of major operational and management matters that require prior deliberation and discussion by party organizations, clarify the rules and procedures for the party committee to perform its duties and exercise its powers, ensure that party leadership is organized and practical, and enable the leadership of SOE party organizations to integrate with SOE corporate governance, avoiding antagonism and conflicts that may lead to inefficiency and waste of resources.

3.2 A More Scientific Corporate Governance System with Chinese Characteristics

The implementation of the new Company Law indicates that the corporate governance structure with Chinese characteristics is gradually evolving into a new paradigm, shifting from shareholder meeting-centric governance to board-centric governance. This means that while the shareholders' meeting serves as the foundational organization for corporate governance and retains control over major issues related to the company's operation and development, it delegates residual powers to the board of directors or the party committee, making them the decision-making centers for the company's daily operations and development. This shift clarifies the responsibilities and powers of various governance bodies such as the party committee, board of directors, and executive committee. For instance, some operational powers of the shareholders' meeting have been removed or explicitly authorized to the board of directors, providing space for the board to play a central role in operational decision-making. At the same time, the supervisory board system has become more flexible, allowing enterprises to choose whether to establish a supervisory board or to delegate its functions to the audit committee of the board of directors based on their specific circumstances. These adjustments contribute to enhancing the efficiency and flexibility of corporate governance [7].

According to the "Rules for the Work of the Board of Directors of Central Enterprises (Trial)," the board of directors of central enterprises must establish committees for strategy and investment, compensation and evaluation, and audit and risk. This is a mandatory requirement for central enterprise group companies. For subsidiaries of central enterprises, documents aimed at deepening the development of their boards of directors also stipulate that, in principle, an audit committee should be established [8]. In the context of the reform of SOEs, the scope of authorities and how to effectively exercise them within the audit committee are issues worth considering, necessitating continued observation of the practical effects of SOE reform.

In the future, SOEs will place greater emphasis on operating in accordance with laws and regulations, strengthening internal supervision and management, and utilizing legal means to safeguard enterprise interests and ensure stable operations. First, they will improve compliance management systems for property rights protection, providing a legal basis for resolving property rights disputes by clarifying the definition, transfer, and protection rules of SOE property rights, while also strengthening judicial protection to ensure timely and effective redress when property rights are infringed. Second, they will enhance compliance management in antitrust and fair competition, employing compliance measures to prevent SOEs from forming monopolistic positions in the market and ensuring that all enterprises participate in fair competition. Third, they will strengthen the supervision and accountability mechanisms for state-owned assets, improving the state-owned asset supervision system to ensure the safety and appreciation of these assets. For the loss of state-owned assets due to mismanagement or corruption, legal responsibility of the relevant personnel should be pursued in accordance with the law. The new Company Law elevates the compliance management of SOEs to the legal level, requiring all state-capitalized companies to establish and improve internal supervision, management, and risk control systems. This will help SOEs enhance their compliance awareness, strengthen internal management, prevent operational risks, and provide a solid foundation for their sustained and healthy development.

4. Conclusion

The new Company Law incorporates the achievements of the latest round of reforms in SOEs and will have a crucial impact on the reform practices of SOEs in the next 5-10 years. We must not only understand the changes and connotations of each legal provision but also comprehend the underlying logic and significance behind the revisions, thoroughly implement the central government's major plans for SOE reform, and provide essential support for the high-quality development of SOEs. However, there are still some deep-seated issues in the reform of Chinese SOEs that need urgent resolution, such as the distinction in management rights in mixed-ownership reform, the improvement of corporate governance structures, and the enhancement of management incentive mechanisms. These issues must be gradually addressed during the process of SOE reform to ensure its smooth progress.

References

- [1] Peng Jianguo, Peng Haihou. "A Review and Outlook on the Reform of State-Owned Enterprises in China over the Past 45 Years". *China Development Observation*, no.22, pp. 37-46, 2023.
- [2] Huang Hengxue. "Exploration of Paths to Promote Reform and Innovation in State-Owned Enterprises". *National Governance*, no. 22, pp. 74-80, 2023.
- [3] Sun Minghua, Wang Jiyong, Dong Lei, et al. "A Major Turning Point: The Maturation and Stabilization of the Modern Enterprise System with Chinese Characteristics in the Past Ten Years". *State-Owned Enterprise Management*, no. 19, pp. 28-39, 2022.
- [4] Li Qiang. "The New Company Law: Restructuring Corporate Governance". *Legal Person*, no. 1, pp. 9-12, 2024.
- [5] Guan Yifu. "Legal Response and Model Reconstruction of State-Owned Enterprise Governance in the New Era: Taking the Revision of the Company Law as an Example". *Journal of Hulunbeir College*, vol.32, no. 1, pp. 98-104, 2024.
- [6] Chen Xiaohua, Liu Xingang. "The Theoretical Elucidation and Practical Path of Embedding Party Organizations in State-Owned Enterprises into the Corporate Governance Structure". *Haipai Journal of Economics*, vol.17, no. 4, pp. 58-68, 2019.
- [7] Jiang Daxing. "On the "Company Law Structure" of State-Owned Enterprises: A Route of Legal Technicism". *Journal of Social Sciences, Jilin University*, vol.63, no. 6, pp. 17-31+230, 2023.
- [8] Wang Qingsong. "The Company Law Approach to the Modern Enterprise System with Chinese Characteristics". *Journal of Shanghai University of Political Science and Law (Rule of Law Forum)*, vol.39, no. 3, pp. 14-29, 2024.