

On the Judicial Review of the Minority Shareholders of Limited Liability Companies Exercising the Right of Veto

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ABSTRACT

In order to avoid the oppression of large shareholders, the minority shareholders of limited liability companies often adopt the terms of one person, one vote, minimum attendance, super majority decision and even unanimous consent. Such clauses give the minority shareholders the right to veto the meeting matters to varying degrees. The dissenting shareholder's right to claim for share repurchase was introduced into China's company law in 2005, and its main function is to protect the interests of small shareholders. This paper analyzes the veto power and the existing problems of the small shareholders of the limited liability company, and then puts forward the relevant scheme to protect the interests of the small shareholders of the limited liability company by increasing the proportion of the voting rights of the resolution. At the same time, it analyzes the rights of small shareholders to prevent them from abusing the company's rights after giving them the power. The experimental results show that the new company law protects the legitimate rights and interests of the minority shareholders of the limited liability company, and restricts the shareholders who abuse the rights of the company. Both the major shareholders and the minority shareholders are satisfied with the amendment of the company law.

Keywords: Limited liability company, Minority shareholders, Veto power, Voting rights

1. INTRODUCTION

A limited company, referred to as a limited liability company [1-3], is a limited liability company registered among less than 50 shareholders in accordance with the regulations of the people's Republic of China on the administration of company registration[4,5]. Each shareholder holds an important position in the company in the form of the amount of shares held by the company. The more shares he holds, the more rights he has and the more responsibilities he has to bear. The economic organizations that bear the debt generally include state-owned enterprises and some other enterprises. The limited company is composed of wholly state-owned enterprises and other companies. Shareholders of a limited liability company may transfer their shares to each other and transfer all or part of their shares to the limited company. A limited liability company can also be transferred to others. If a shareholder transfers it to a person other than the shareholder, the consent of more than half of the other shareholders in the company is required.

As a company's shareholders, regardless of the shareholding ratio, they have the right to obtain the company's information and understand the company's operation status [6,7]. However, in legal practice, it is a big problem for minority shareholders to exercise the right to know. Many companies are worried that the core business secrets of the company will be leaked because the minority shareholders know too much about the company's business

and operation information. Therefore, in the process of exercising the right to know, minority shareholders are faced with many restrictions. Article 106 of the company law [8-10] stipulates that in the election of directors and supervisors by the general meeting of shareholders, the cumulative voting system can be implemented in accordance with the provisions of the articles of association or the resolution of the general meeting of shareholders. The cumulative voting system implemented in the company law requires that every shareholder who owns shares, that is, whether the major shareholder or the minority shareholder, has the same voting right when the company holds the general meeting of shareholders. In addition, the voting rights of shareholders can also be used together. Therefore, small shareholders have the same right to know and vote.

Although the company law gives small shareholders and large shareholders the same rights and obligations, due to the lack of effective external equity transfer market, the oppressed small shareholders want to have the same right to know and vote. In the case of no external transfer of equity, the minority shareholders are forced to stay in the company and endure the oppression of the major shareholders, or transfer their shares to the major shareholders at an unreasonable price. Therefore, almost all the company legislation, judicial practice and theoretical research focus on how to protect the interests of small shareholders, so as not to be oppressed by large shareholders.

2. THE CURRENT SMALL SHAREHOLDER SYSTEM OF LIMITED LIABILITY COMPANY

In the limited liability company, due to the small number of small and medium shareholders, they are generally in a weak position. It is difficult for small and medium-sized shareholders to maintain the development of the company together with large shareholders. Therefore, to establish and improve the effective system of protecting the rights and interests of small and medium shareholders, further improve the enterprise system, and promote the healthy development of the market economy, is a major issue in the socialist market.

2.1. One Person, One Vote

At present, the shareholders do not exercise their voting rights according to the proportion of their capital contribution, and each shareholder has one vote. In this way, minority shareholders can veto ordinary resolutions of the company. In order to resist the oppression of large shareholders, the number of small shareholders should be equal to the number of large shareholders, or the number of small shareholders should be more than one third of the company's important resolutions. The nature of the limited liability company also fully reflects the nature of the limited liability company. However, if the shares held by minority shareholders are less than half or one-third of the total share capital, it is not enough to protect the rights and interests of minority shareholders.

2.2. Specify the Minimum Number of Shareholders to Attend the Meeting

The company law does not stipulate the minimum number of shareholders to attend the meeting, but the voting right after passing the resolution is based on the voting of all shareholders, which is different from the voting right of limited liability company. Although this provision can protect the interests of minority shareholders to a certain extent, if the majority shareholders hold more than 2/3 of all voting rights, then whether the participation of minority shareholders has no effect. Therefore, if only half (or 2/3, depending on the actual situation of the company) of the above-mentioned shareholders participate in the articles of association, the minority shareholders can be called. In this way, the minority shareholders can veto the convening of the shareholders' meeting by not participating in the shareholders' meeting, and then veto the resolution of the shareholders' meeting, thus denying the resolution of the shareholders' meeting, so as to protect their own interests. Of course, if the number of large shareholders group is more than half (or 2 / 3, etc.), then this provision cannot protect the interests of small shareholders.

2.3. Super Majority System

According to the company's articles of association, resolutions on certain matters must be approved by more than four fifths of all shareholders, while the minority shareholders holding more than one-fifth of the shares have the right of veto. Most of the conditions are mainly applicable to unlisted limited liability companies and are commonly used means of control. It can ensure that minority shareholders participate in the election of directors and other important decisions. Its fundamental purpose is to ensure the veto power of minority shareholders. However, if the proportion of minority shareholders in the company is very small, even less than one fifth, the system will be difficult to protect them.

3. EXPERIMENTAL IDEAS AND DESIGN

3.1 Experimental Ideas

As mentioned above, when the minority shareholders have the right to veto a resolution, they may also use the right to seek improper interests or damage the interests of other shareholders or the company. Therefore, the court must examine whether it is proper for minority shareholders to exercise their veto power when facing relevant litigation. Therefore, it is necessary to distinguish between the rights of shareholders and the abuse of rights through a large number of experiments. "Appraisal law" has established the correct realization of fair price, that is, to realize the fair valuation value of shareholders' equity through legal procedures. Obviously, shareholders cannot obtain fair evaluation of equity through fair evaluation system in judicial process. Obviously, the establishment of this system violates its original intention. Therefore, in the share repurchase claim right, when both parties cannot get a fair and reasonable price through negotiation, it is necessary to promote the exercise of the right through the judicial evaluation procedure in litigation.

3.2 Experimental Design

In the design, this paper adopts two forms: questionnaire survey and field interview. 100 minority shareholders of limited liability companies were selected as the experimental group to conduct a questionnaire survey. The purpose of this study is to explore the vetting of limited liability company exercising veto power. At the same time, we selected 100 minority shareholders of limited liability companies as the control group for questionnaire survey. The results are shown in Table 1.

Table 1 Trend of shareholders' exercise of power

Investigation factors	The experimental group (%)	The control group (%)
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One vote, one vote system	75	44
Right to participate in major affairs	76	42
Right to know company affairs	81	53
Veto on Corporate Affairs	86	50

4. DISCUSSION

4.1 Satisfaction Analysis of Revised Company Law

At present, most of the limited liability company system is capital majority system, that is, the amount of shareholders' contribution determines the company's voting rights. This system can stimulate the enthusiasm of shareholders. However, the biggest drawback of modern companies is that large shareholders can manipulate the three meetings

of shareholders' meeting, board of directors, board of supervisors and limited company, which forms the exclusive right of shareholders to exercise their rights, which seriously damages the interests of small and medium-sized shareholders.

The revised company law still follows the traditional company law and stipulates in principle the capital system under various systems of "one share, one right". Article 43 of the company law stipulates that "shareholders shall exercise their voting rights in accordance with the proportion of their capital contribution at the general meeting of shareholders, except as otherwise provided for in the articles of association. Article 104 of joint stock limited company has similar provisions. Article 43 stipulates that "unless otherwise specified in the articles of association", however, due to the small amount of capital contribution, small and medium shareholders often adopt the "format" prescribed by the industrial and commercial department for registration and establishment. Therefore, this paper takes the revised "company law" as the breakthrough point to study the shareholders' satisfaction of limited liability companies.



Figure 1 Investigation on the satisfaction of large shareholders and small shareholders to the company law

From the data in Figure 1, we can see that both small shareholders and large shareholders are satisfied with the new company law, in which the satisfaction of small shareholders is higher than that of large shareholders. The company law mainly protects the legitimate rights and interests of small shareholders of limited liability companies. It can be seen from the data in the figure above that 86% of the minority shareholders are satisfied with this, and at the same time, the satisfaction of the major shareholders is also relatively high, because the "company law" states that "unless otherwise stipulated in the articles

of association".

However, after giving the minority shareholders some power, they often abuse the rights of the company. For example, the minority shareholders threatened at the shareholders' meeting that if the company did not give them special benefits, they would exercise the veto power; or if there was a conflict between the small shareholders and the large shareholders, they would exercise the veto power on any resolution without any reason, thus causing the company to fall into a business deadlock. Therefore, the court must examine whether it is proper for minority

shareholders to exercise their veto power when facing relevant litigation. In this regard, Article 20 of the company law forbids the abuse of shareholders' rights, which provides a solid legal basis for the court. We have conducted an investigation on whether we are satisfied

with Article 20 of the company law, and the results are as follows. Among them, the experimental group is 100 minority shareholders of limited companies, and the control group is 100 major shareholders of limited companies.

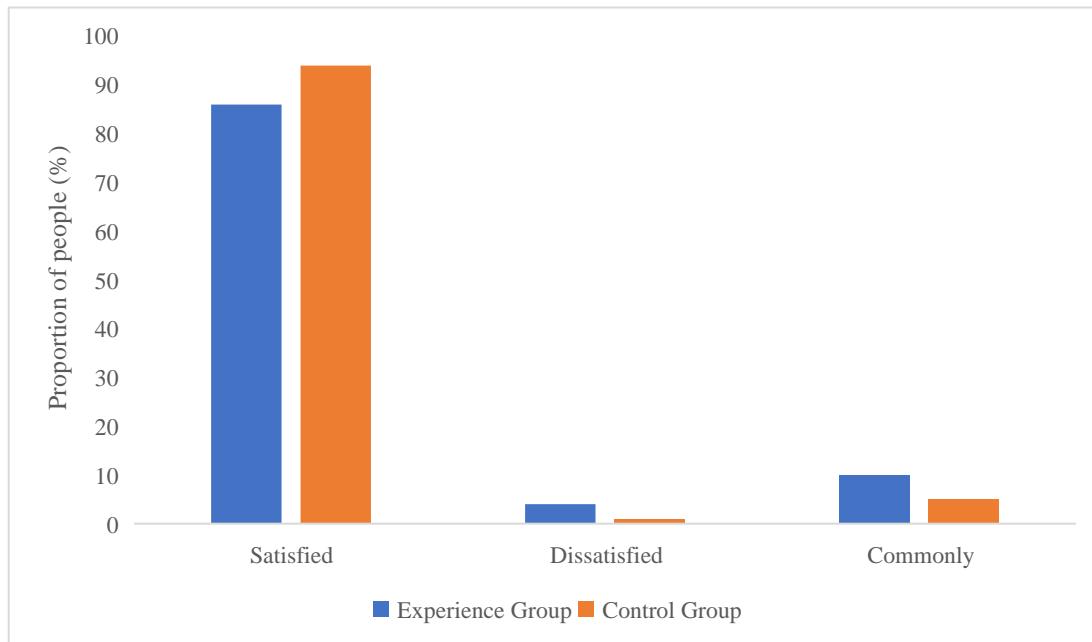


Figure 2 The experimental group and the control group were satisfied

From the data in Figure 2, we can see that both small shareholders and large shareholders are satisfied with Article 20 of the company law, and the satisfaction of large shareholders is higher than that of small shareholders. The company law is mainly to prevent small shareholders from abusing the rights of the company. It can be seen from the data in the figure above that 86% of the minority shareholders are satisfied with this, and 94% of the major shareholders are satisfied with Article 20 of the company law. At the same time, the satisfaction of small shareholders is also relatively high.

4.2 Reconstruction of Stock Right Protection System of Limited Liability Company

The revised Company Law establishes the shareholder representative litigation system, which plays an extremely important role in preventing directors, supervisors and senior managers from violating the law. Administrative regulations and articles of association infringe upon the rights of the company, especially the rights of small and medium shareholders, when the company performs its duties. However, from the content of the amended company law, the new shareholder representative litigation system plays an important role. To truly play the role of representative litigation system, we need to further improve the following aspects.

(1) When a shareholder brings a representative lawsuit to

the people's court, it may apply for the corresponding guarantee clause. The second and the third paragraph of the company law have detailed explanations on the resolution of shareholders' revocation. If the general meeting of shareholders violates the articles of association or laws and regulations of the company, the shareholders may cancel the resolution within 60 days. If the shareholders' meeting brings a lawsuit in accordance with the provisions of the preceding paragraph, the shareholders' meeting may revoke its guarantee in accordance with the provisions of the preceding paragraph. For example, the court requires the plaintiff's shareholders to provide the same amount of guarantee as required by the company. This paper holds that the legislation should limit the situation of the plaintiff shareholder providing guarantee. In fact, in foreign countries, the court mainly considers the existence of the plaintiff rather than abuse. Generally speaking, only when there is evidence that the plaintiff abused the right of action, the court will rule that the plaintiff should provide the necessary guarantee.

(2) In order to prevent the manipulation of large shareholders, we can refer to the international practice to restrict their voting rights. We should take the following measures: first, the company strictly implements the limited system of 10 persons. For example, under Belgian and Luxemburg laws, shareholders who own more than 40%, of the company's shares, will lose their voting rights when they vote at the general meeting of shareholders. Second, in the limited liability company, it is necessary to

establish the majority shareholder voting power system. Article 106 of the revised Company Law of China stipulates the algorithm of cumulative voting right system, that is, when the general meeting of shareholders elects' directors and supervisors, the calculation method of shareholders' voting right is the number of shares multiplied by the number of directors and supervisors. However, the new system is only applicable to the listed companies in limited liability companies. Not for small companies. The main reason is that the majority shareholder's voting right can be restricted by majority voting system in the listed company of limited liability company, on the other hand, the listed company can implement the cumulative voting right of small shareholders.

5. CONCLUSIONS

In order to resist the oppression of large shareholders, the minority shareholders of limited liability companies often adopt the articles of association such as one person, one vote, minimum attendance, super majority and unanimous consent to protect their interests. These "self-insurance clauses" empower minority shareholders to unilaterally veto specific resolutions. However, if the minority shareholders cannot exercise the veto power properly, it may infringe on the interests of other shareholders and corporate stakeholders. This paper proves that the new company law protects the legitimate rights and interests of the minority shareholders of the limited liability company, and restricts the shareholders who abuse the rights of the company. With the development of corporate governance, there is often a new mode of separation of right consciousness from equity, ownership and management right. Then, how to ensure that the existing legislation can better solve the complex situation in practice is the key to promote the process of rule of law

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