

Refactoring Supervisors System in China—Professional Supervisors

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Abstract. Board of supervisors system is a special function in the stock company, which plays a very important role in the operation of the company. However, in our country it just stays in system level, its value and effect did not play out in practice. To set up the professional supervisors system is a good idea to solve this problem and give full play to the function of the board of supervisors.

Introduction

With the separation of ownership and management to the modern enterprises has become the norm, there comes the monitoring systems. The board of supervisors, produced legally, is a permanent supervision institution for directors, management behavior and Company finance. But in the actual execution, its value function did not play out in practice. The survey data about corporate governance which listed by the Shanghai and Shenzhen stock exchange shows that: those company which think the board of supervisors can play an important role in supervision and administration accounted for only 5.2 percent, on the country, more than 74.3 percent of the board of directors think so. And there is no fixed office space and no special funds to support in 80 percent of the companies, as a result, the board of supervisors cannot carry out their supervision work.[1]The board of supervisors should be a leading institutions which has a say in the governance and supervision of listed companies, but in reality is led obeys the status. A critic once had said that it just like "the deaf ears".[2]That is to say, the capability of the board of supervisors need to improve. This paper puts forward a new perspective for improving the capability of the board of supervisors, professional supervisors.

The Defects of the Board of Supervisors System in China

Lack of Scientific Appointment or Dismissal Mechanism. “Company law “Provision: “the board of supervisors shall include representatives of shareholders and worker representatives with proper proportion no less than a third”, “director or senior manager shall not concurrently hold the position of a supervisor”. In this case, on the basis of the principle of cumulative voting, minority shareholders could not get a supervisor position, more not to protect their rights through the board of supervisors. Therefore, in practice, the supervisors often appointed by president, big shareholders or company executives.[3] Second, the current board of supervisors system does not attach importance to legal restrictions and supervision of supervisors and supervisors tend to choose the company's shareholders, management personnel agency, this is illegal. In a result, Most of the supervisors will not take the initiative to effectively monitor the running of the company.

Lack of Independence. The mechanism of appointment or dismissal of supervisors is vital to keep its independence. When the controlling shareholder get out of line or damage the legal rights of the small and medium-sized shareholders and the companies, the supervisors controlled by the major shareholder are often turn a blind eye, so, many irregularities cannot get effective regulation. At the same time, although the company law provisions the board of supervisors shall have the right to propose for an interim shareholders' meeting under special circumstances, the company law also stipulate that the shareholders' committee convened right is the exclusive authority of the board of directors.[4]As a result, it's likely that supervisors exercise the right of the proposed, nor is called by the board of directors. Finally, in terms of financial supervision, supervisions also need to see the

face of the board of directors. Corporate law only stipulated the financial supervision of the board of supervisors, but not the specific means of financial supervision. Worse, the appropriation of its the working funds depend on the board of directors.

Lack of Professional Ability. Supervision behavior, especially in financial supervision, needs the related professional knowledge and skills. But the law does not expressly provide the professional qualifications for the supervisors, such as their professional background and academic requirements. Modern company management behavior involved in finance, management, legal and other professional knowledge and skills, and there has higher requirements for the specialization of operation and management staff. But survey data show: supervisors overall education status on a low side, compared with directors and senior management personnel, the percentage of who has a bachelor degree or above accounted for 52%, 48% and 27%.^[5]As a result, the supervisors cannot fully qualified for the function of supervision and management of the company.

Lack of Performance Appraisal and Salary Incentive Mechanism. First of all, there are no targeted and perfect performance appraisal systems, nor the constraint mechanism which is about the tacit collusion between the board of directors and the board of supervisors, so there is no much difference for the supervisors to do or not to do. On the contrary, as a supervisor's compensation and material guarantee are controlled by executives, to do something could damage the interests of some people and may get revenge, the supervisors are more likely to choose to turn a blind eye. There are some illegal phenomenon's in 73 listed companies between 2008 and 2013, such as inflated corporate profits and take illegal possession of the property of the company, but none of the board of supervisors discovered and reported problems. Next, the remuneration of supervisors is lower than that of the managers and the directors, and there also lack of the necessary incentives.^[6]China has an old saying, "The troops did not move, the supply is in advance", if not enough remuneration and incentives, the work of supervisors could not start.

Establishment of Professional Supervisor System

Occupational Requirements for Professional Supervisor. Occupational requirements is the basic requirements of necessary knowledge, skills, abilities for a career. Professional supervisor should have essential knowledge in terms of finance, accounting, management and law, and meanwhile they should receive training, which can help they be competent in business supervision and financial supervision. Therefore, those related sectors and associations in a country should regularly organize examinations such as CPA (Certification Public Accountant) examination. Professional supervisor can acquire relevant qualification for this career by passing the nationwide unified examination which has four different subjects including finance, accounting, management, law.

Establishment of the Professional Supervisor Association and Firm. CSRC (China Securities Regulatory Commission) can organize the professional supervisor association, which mainly takes the responsibilities for setting operation rules and code of conduct, identifying qualification and making annual verification, being in charge of organizing exchanges and examinations of insiders, providing professional training and career guidance.

In addition, CSRC can set up the professional supervisor firms like accounting firms and law firms. In order to accept business, professional supervisors only can either establish or join the independent supervising firms. While those firms can only be established with the permission of CSRC and have registration. Professional supervisor firms should impose restrictions on registrants through some laws and rules such as the company law.^[7] Those firms are in charge of assigning supervisors to companies. The examination and assessment for these supervisors are made by both the company (mainly) and the supervising firm. Those professional supervisors, who gain better feedback, may continue to be employed by the company and acquire good credit ratings. For those professional supervisors who gain worse feedback, the company shareholder meeting will make a decision for employment, and supervising firms record the credit ratings according to real conditions.

In terms of salaries, those firms pay salaries to professional supervisors to avoid mutually beneficial connection between the company and the supervisor. A part of the salary comes from the supervision fee that is given by the company.

Appointment of Professional Supervisors. Appointment of professional supervisors is the priority of the nomination of supervisory board members, is also the key to independence of supervisory board. The appointment of professional supervisors should apply this mechanism: the supervisory board (the first board consists of initial elect) nominates over three professional supervisor firms, and then those firms can present their supervising concepts, structure of employees and service fees. A shareholder meeting chooses the best one of them, makes a contract with this firm and meanwhile examines the independence of the assigned professional supervisor. The professional supervisor firm assigns the fixed number of supervisors to enter the supervisory board of the target company. As The Company Law rules that the number of supervisory board members should not be less than three. Therefore, in order to partially affect the supervisory board, there must be at least two professional supervisors. The rule is that: the proportion of professional supervisors in supervisory board should reach to 70% to 80% or even more.

Apart from that, there is complex structure of employees in and accumulated amount of information in a company, professional supervisors should spend a large amount of time to gain deep understanding of the truth of company operation. To ensure that they have sufficient energy to conduct supervision, they should only work for two to three companies.

Dismissal of Professional Supervisors. According to the contract, the professional supervisor firm assigns the fixed number of supervisors to enter the supervisory board of the target company; this contract should present clearly the conditions of termination and dismissal, obeying the contract law and the company law. If the professional supervisor loses the independence or qualification, or cannot execute duty for some reasons, or missing, or death, or misconduct or commit some other illegal matters, thus the professional supervisor firm can assign others when acquire the permission from Target Company. If the board does not agree that, it can be decided by shareholders meeting.

Functions and Powers of Professional Supervisors. Professional supervisors belong to the board of supervisors, in addition to the authority conferred by the company law and other relevant laws and regulations, the listed company shall also give professional supervisors under special rights: Submitted to the board of managers of business report, professional supervisors have the right to veto or reservations; Professional supervisors have in the name of the company entrusted financial experts such as lawyers, accountants audit the company's financial power, its expenses included in the company's lawsuit right, stop the infringement for illegal director or the general manager or damages litigation; [8] the right to recall proposed company operators and members of the board of directors. It should be pointed out that the scope of vocational supervisors to supervise is the legitimacy of the company business execution, and should not include the rationality of the company business execution. Understanding of legitimacy should be generalized, namely, in accordance with laws, regulations and rules as well as the company's articles of association. [9]

Establish Evaluation, Incentive and Constraint Mechanism. The results of the performance appraisal will determine the professional supervisors' compensation and social reputation. Professional supervisors' performance appraisal shall be the responsibility of the professional firm and the company, including the ability for work, implementation, work attitude, professional morality, etc. Professional supervisors firm shall regularly or not regularly send personnel to companies to understand professional supervisors' performance, and carries out the comprehensive performance evaluation in the year-end, and let shareholders, directors, supervisors and investigators sent by regulatory authority to grade the parties at the same times that we can make an evaluation to the parties both comprehensively and objectively.

Professional supervisors' office issues professional supervisors' salary and bonus according to their performance assessment and internal management regulations. Professional supervisors office could signed a service contract with part B companies and asks needed to pay according to the

reputation of their own office and the specific situation of the monitoring company. Association of China securities regulatory commission (CSRC) and professional supervisors association also can supervise and check professional supervisor's office, if a professional supervisors office or a supervisor performs well in a certain period of time, they should be awarded the honor to make them more competitive in the market competition.

As a member of the company board of supervisors, they constitute a trust relationship between the company, and they deal with the company to undertake the legal duty of loyalty, duty of care and confidentiality obligations and other obligations stipulated in the contract.[10] If they violate compasses operation, the parties should be penalized according to the certain rules, accumulated to a certain extent, they will be disqualified; Losses to the company, professional supervisors firms and professional supervisors shall bear civil liability, administrative liability, and even criminal responsibility. If their behaviors end up costing the company in terms of money, professional supervisors firms and professional supervisors shall bear civil liability, administrative liability, and even criminal responsibility.

Summary

There are some problems of the board of supervisors in China, its supervision power is weakening. To set up the professional supervisor system can improve the independence of the board of supervisors and improve its monitoring ability. Practice shows that only the systems which suit their own needs and the actual situation are useful. In this sense, professional supervisors system is necessary and feasible.

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