

Legal Problems of Property Right Transactions of State-owned Enterprises from the Perspective of Mixed Ownership

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Keywords: Mixed Ownership; State-owned Enterprises; Property Right Transaction; Legal Problems

Abstract. One of the core steps in managing state-owned assets is the property right transaction of state-owned enterprises, which not only can optimize the layout and structure of the state-owned economy, but also can increase the value of state-owned assets. In addition, this will make the management of state-owned enterprises more perfect to form a sound and diversified capital market ultimately. The relevant legal system can effectively ensure the good operation of property right transactions of state-owned enterprises. Therefore, it is necessary to continue to innovate the relevant legal system to promote further development of property right transactions of state-owned enterprises. Based on the author's learning and practical experience, this paper analyzed existing problems in the legal regulation of property right transactions of mixed ownership enterprises and then put forward legal countermeasures to improve the property right transactions of mixed ownership enterprises.

Introduction

A considerable number of scholars have made in-depth studies and researches on property right transactions of the state-owned enterprises, and they have achieved a series of research results. Many scholars generally agree that one of the cores of China's multilevel capital market is the property right transaction market, but they have not formed a unified view in the following things: the nature, status and regional distribution of the market. On the whole, when scholars in related fields analyze property right transactions of state-owned enterprises, they ignore the property right transaction market, which results in that the research on the related problems is not comprehensive. This paper argues that there is a close relationship between the property right transactions of state-owned enterprises and the development of related markets. They exert an influence on each other and cannot be separated from each other.

Existing Problems in the Legal Regulation of Property Right Transactions of Mixed Ownership Enterprises

The particularity of legal rules of the property right transactions of mixed ownership enterprises. The typical organizational form of the mixed ownership economy is the joint-stock enterprise, whose property rights include the corporation property rights of the enterprise and the stock equity of the shareholders. Corporation property rights refer to the investment right, merger right, borrowing right, lease right and financing right to outside enterprises, the right to transfer assets and the right to price products. Cooperation property rights can flow in accordance with legal procedures and the shares can be traded in the stock market. The legal rules of the property right transactions of mixed ownership enterprises have its particularity. Compared with the laws of the state-owned property right transactions, the property right transaction of the mixed ownership enterprise is special. First of all, in the transaction content, the mixed ownership enterprises mainly conduct equity transactions and there is no physical assets transaction. Second, in the transaction results, the mixed ownership should be private capital which participates in state-owned enterprises in accordance with national policy. The legal regulation should focus on the corporate control right,

decision-making right and key issues of enterprise development after the transaction. For the unlisted mixed ownership enterprises, they should refer to the listed companies to establish and improve corporate governance system to protect the legitimate rights and interests of small and medium shareholders to ensure their speaking right.

The deficiency in the legal system of property right transaction of mixed ownership enterprises. First, there is no uniform legislation. Property right transactions of mixed ownership enterprises mainly rely on the Law of National Assets. However, other provisions in this respect are norms which are not laws strictly. These legal norms can determine the legal framework that mixed ownership enterprises follow to conduct property right transactions. However, these norms can not be well coordinated.

Second, there is a conflict between legal norms. Although there exists the concept of property right in many norms in China, the interpretation of the concept is quite different in different norms. The following legal norms use this concept: Interim Measures for the Administration of Property Right Transfer of State-owned Enterprises, Interim Measures for the Administration of Property Rights of State-owned Assets and Interim Measures for Handling Property Disputes and so on. Some regulations have repetitive content. For example, in the approval procedures of property right transactions of state-owned enterprises, the following two laws have the corresponding content, namely Interim Measures for the Administration of Property Right Transfer of State-owned Enterprises and Interim Regulations for the Supervision and Management of State-owned Assets. The former believes that it is the assignor to propose to evaluate the state-owned assets and the latter argues that the consignor should be the asset appraisal agency.

Third, some legal norms are out of date. At this stage, some legal norms on property right transactions of state-owned enterprises do not adapt to the current situation, but they are still in use, including Interim Measures for Corporate Mergers. The use of legal norms which are not appropriate even clash with other legal norms. These legal norms has not been abolished and they still have legal effect, which cause many specific problems in the property right transactions. In addition, Law of the People's Owners of Industrial Enterprises which was promulgated in 1980s is a law with the highest legal force, but Interim Measures for the Administration of Property Right Transfer of State-owned Enterprises with lower legal effect is more in line with the actual situation. In other words, the law with higher force lacks practicality and the law with high practicality lacks legal effect, which is not consistent with the basic legal principles.

Legal Problems of Property Right Transaction Ways of Mixed Ownership Enterprises. First, legal norms lack guidance on the choice and application of transaction ways. The property right transaction ways of state-owned enterprises mainly based on the Interim Measures for the Administration of Property Right Transfer of State-owned Enterprises. Specifically, the main transaction ways include auction, bidding transfer, negotiating transfer and other ways in legal provisions. It can be seen that property right transaction ways of state-owned enterprises mainly include negotiating transfer, auction and bidding transfer. The three ways have been widely used in property right transactions of state-owned enterprises in China. However, whether they are applicable in property right transactions of the mixed ownership enterprises or whether other ways based on these transactions ways are more applicable has not been decided. There lacks guidance on who will choose transaction ways.

Second, the positioning of the transaction way in property right transaction of mixed ownership enterprises is vague. It is inevitable that there is state-owned property exchange in the property right transaction of mixed ownership enterprises. The three existing transaction ways of the property right transactions of state-owned enterprises mainly take example by other equity transactions. Specifically, the negotiating transfer, bidding transfer and auction method are from the Contract Law, Bidding Law and Auction Law respectively. In the initial stage, these ways are not used in property right transactions of state-owned enterprises. Whether and how property right transactions of mixed ownership enterprises return is unclear. In essence, the reference to these three ways is legal transplant. The specific practice further expands the scope of the application of these three ways. There exist some problems in the use of these three ways. The Contract Law stems from the civil and

commercial law. In other words, it is a private law. In the property right transactions of mixed ownership enterprises, it is necessary to focus on the analysis of its applicability, information symmetry and the involved cost in the transaction. Furthermore, it is indispensable to consider whether it can play its due role in the property right transaction of state-owned enterprises. .

To Improve Legal Countermeasures of Property Right Transactions of Mixed Ownership Enterprises

To unify the legislation on property right transactions of mixed ownership. First is to improve corporate governance. In the past, because of the imperfect corporate governance system, many mixed ownership enterprises with state-owned and non-public assets did not achieve due success. This is because that in such mixed ownership enterprises, the state-owned shareholder is too mighty, which leads to that the private shareholders lack the right of speech.

Second is to improve the protection system of property rights. To develop a mixed ownership economy and promote the sound development of the non-public economy, to improve the protection system of property rights is a very critical prerequisite. If this premise cannot be achieved, the development of mixed ownership economy will face difficulties. In recent years, the poor protection of property rights leading to the unequal status of public economy and non-public economy. Non-public economy cannot get the same status and interests of the public economy. Mixed ownership enterprises accommodate different economic sectors and different property right subjects coexist in the same economic entity. They recognize each other and recognize their ownership. Economic sectors with different nature are unified in the same mixed ownership enterprise. However, their respective economic nature has not changed and economic sectors with different nature have a clear ownership of the same mixed ownership enterprise. They have the corresponding right of earnings and residual claims according to the law.

To build a unified property right transaction market. First is to build a mixed ownership transaction platform according to the law. The introduction of a third-party transaction platform can increase transparency, which will effectively alleviate the strained relation between economic sectors with different nature in mixed ownership enterprises. It will play a buffering role in the relation between state-owned economy and non-state economy. Furthermore, it can prevent collusion between the two sides and avoid administrative intervention, so as to cut off the chain of interests to protect the decisive role of the market.

Second is to establish an orderly property right transaction site for state-owned enterprises. The essence of the market transaction is the transaction of property rights. The premise is that the transaction subject must have definite property right on the articles. On this basis, the transaction entities exchange property rights with each other. After a comprehensive analysis of various factors, property right transaction center of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) can be used as a transaction site of mixed ownership, which has a high feasibility.

To improve property right transaction rules of mixed ownership. First is to formulate special rules. A complete framework of property right analysis should be a unified multidimensional analysis structure composed of ownership system, earnings right system, disposition system and corporate governance structure system. The main trading object of the property right transaction market is the property right of the state-owned enterprises. This part of the property right has characteristics of state-owned assets and ordinary commodity. Although China has introduced the law about the transfer of property rights of state-owned enterprises, there is a large difference between the transfer and the transaction of property rights of state-owned enterprises. This law does not have legal provisions of property right transactions of state-owned enterprises, so that it is necessary to establish a special rule system for property right transactions of state-owned enterprises.

Second is to improve regulations on property right transactions of mixed ownership. According to the particularity of the property right transaction of the mixed ownership enterprises, the current legal rules are not rigorous and cannot meet the requirements of the current social development. At

the present stage, the mixed ownership enterprises usually design relevant transaction rules on property right transactions in the reform by themselves. Therefore, it is necessary to improve some transaction rules as soon as possible.

Summary

This paper mainly analyzed the existing problems of the laws and regulations on the property right transactions of the mixed ownership enterprises, namely, the particularity of the legal rules and regulations on the property right transactions of the mixed ownership enterprises, the deficiency of the legal system of the property right transaction of mixed ownership enterprises and the legal problems of the property right transaction ways of the mixed ownership enterprises. In view of these problems, the following are countermeasures: to unify legislation on property right transactions of the mixed ownership, to build a unified property right transaction market and to improve the rules on property right transaction of the mixed ownership.

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