



The Analysis of the Application of Classified Stock Ownership in Limited Liability Companies from the Point of the Split Share Structure Reform

Lin Shi

Tianjin Polytechnic University

Tianjin 300387, China

E-mail: fidelshi@gmail.com

Abstract

The split share structure reform in listed companies has waned to the close by now. What kind of influence can this reform of stock ownership have is uncertain. However, it is obvious of the active significance this kind of classified treatment have on protecting the benefits of minority stock holders and stimulating assorted stockholder to exercise their power. What our essay lays importance on is that whether the stock ownership classification can be carried out definitely and widely in limited liability companies to protect the benefits of minority stock holders.

Keywords: Stock ownership classification, The protection of the benefits of minority stock holders

1. Introduction

The split share structure reform in listed companies is a process of eliminating the system difference of stock transfer in A-share under the mechanism of balanced benefits and negotiation. Through the split stock structure reform, it stabilizes and improves the corporate governance and capital operation mechanism, and it protects the benefits of minority stock holders and eliminates the dominant shareholder to consolidate the mutual benefits of all the stock holders. The differences of stock ownership aren't ignored because of reform, but is established step by step on the foundation of consolidating the mutual benefits of stock holders to realize the equality of stock ownership essentially: New Company Law article 127 In term of the same sort of stock distributed at a time, issue terms and price of per share should be same. The split stock structure reform in listed companies is envisaging the assorted classification of stock ownership, and it will establish a variety of stock ownership benefits step by step to balance assorted stock holders' benefits. Whether the theory of split stock structure can be applied widely in listed companies or whether it is necessary to apply this application worth considering deeply. The author of this essay just lists his ideas more or less on the basis of the hotspot of split stock structure reform to extract something more valuable and important.

2. The theoretical foundation of the application of classified stock ownership in limited liability company

2.1 Traditional theory

Stock ownership, is a conveyable right purchased by stock holders, by which stock holders can be involved in affairs and enjoy property interest in companies in a manner prescribed by law or under the regulation and procedures of articles of association. Make a general survey of discussion on the nature of stock ownership in our country, several theories have been formed.

A theory of ownership: It holds that stock holders enjoy the ownership in real rights towards their contribution.

A theory of creditor's rights: it holds that the substance of stock ownership is creditor's rights. The stock holders become the creditors of the companies when finishing their contribution to companies. Stock ownership is a kind of conditional creditor's rights of asking for profits.

A theory of the right of members: This theory is a general theory in German, Japan and other countries of Continental Legal System. And it is put forward by Germany scholar Penaud in 1875. It holds that stock ownership is a kind of right which the stock holders can enjoy, either does the membership identity the stock holders have in the profit-generating

collegiums. And the stock ownership belongs to one kind of the right of members, which consists of property rights and other rights of taking part in managing company affairs.

A theory of right of independence: It holds that stock ownership can only be a kind of self-contained independent rights type. What we called as stock ownership, is a conveyable right purchased by stock holders, by which stock holders can be involved in affairs and enjoy property interest in companies in a manner prescribed by law or under the regulation and procedures of articles of association.

Marxism said that, "every stock enjoys identical benefit, just as the proportional land of a member of Marc, the right and obligation of each stock can also be separated."The complexity and separability of the stock ownership make the major class features of the nature of stock ownership rather obvious.

2.2 The comparison of stock ownership between joint stock company and limited liability company

According to the phylogeny of forms of enterprise organization, stock company is the product of natural development, however, limited liability companies evolved on the basis of stock companies and partnership, which adopted the capital of stock companies and the personality of partnerships. We can know that clearly by comparing their content of stock ownership.

The differences reflected by personality: The ownership and management right in stock companies separate from each other, and the owner of the company is not the manager of the company. However, corporations, especially corporations in East Asia embody richer personality characteristics, making managers show different interest towards "commonweal rights".

The differences reflected by closure: The stock ownership of corporations is a holistic property rights. The stock owners are difficult to make profits by making use of stock ownership independently, which makes stock owners show different inclinations towards profit sharing and other so-called personal profit rights.

2.3 The legal basis of classified stock ownership in corporations

The legislation in our country has made clear regulation on classified treatment of the stock ownership in corporations. Company Law Article 127th holds that: the distribution of stocks should be under the principle of fairness and justice, per share of the same sort should enjoy identical rights.

Article 33 Shareholder shall get dividends in proportion to the amount of investment they have made. If a company wants to increase its capital, its shareholders have the priority of subscription..But, it is to the exclusion that if all the shareholders come to a agreement that they don't get dividends in proportion to the amount of investment they have made or its shareholders don't have the priority of subscription.

According to the explanation supreme court had made about marriage law II Article 26th: When referring to making a partition of community property, according to the amount of investment of one side in limited liability company, on the condition that the other side is not the stockholder of this company, the couple both sides come to a agreement transfer the investment to the spouse for a section of it or all of it. Under the consent of more than half of the shareholders, on the condition that other shareholders show their willingness of giving up the privilege of purchasing the stock, the spouse of this couple can be the shareholder of this company. Apparently, here, we use the voting system of one man one vote, which is we called a kind of human joining voting system relative to join assets. The co-existing of two voting system brings shareholders different right of voting gained by the same investment. And this kind of difference is the foundation of classified treatment of stock ownership.

As we can see, in many areas, legislation has admitted the existence of classified stock ownership in corporations, and its first appearance in legal practice happened a long time ago.

Draw on the experience of foreign legislative on share distribution.

Today, the development of society goes more and more international, we certainly needn't toil at work and keep ourselves to ourselves, that is "test each step before taking it", From the research of law and the application of theory, we can draw on the legislation experience of some countries who have more mature development of law.

1). The comparison between our law and related Germany legislation

In the legislation in Germany, no matter from organization form or from shareholder responsibility, limited liability companies are more like partnerships rather than joint-stock company. Any one of the shareholders can't purchase more than one piece of basic contribution when establishing the company. One share should be possessed by several obligee without partition, which lead them to exercise their right together generated from it. The account payable which can not gain from some individual shareholder should be shared by other shareholders in proportion to their stock shares. The regulation of entity capital compensation is not suitable for those shareholders whose investment accounting for 10% or lower than 10% in the basic capital and those who don't practice their business.

The Law of Corporation in Germany clarified the concept of stock of different sorts and the regulation of board

members' have participation in the profit due to their operation: Board members can have participation in the profit due to their contribution of working, in addition, the board members are not necessary to be the stockholders of the company⁴. From the above, the Company Law in German has clarified the classification of stock ownership and the right of sharing the profit among operators, which make joint-stock of services possible from the point of allocation of profits and the management of business.

2). The comparison between our law and related Japan legislation

Commercial Code of Japan Article 222th, item 1st: Companies can release different kinds of stock of different content according to the distribution of earnings, dividend distribution, distribution of residual property, eliminating stock based on profit. Stockholders who possess less than one share (1000 yen) have not the right to vote, the stock of several stockholders reach one share or more than one share can practice their right of voting together.⁵

3. Conclusion

No matter from theory or experience in reality, we find out the foundation of their application of stock ownership classification in limited liability company. However, we have a long way to go to think about how to apply the stock ownership classification into the Company Law. The opinion of the author is that, first, it should separate the right of management from ownership, if so, we can make the organization form of corporation more flexible and more vivid on the basis of taking advantage of stock ownership classification.

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