

Legislative Perfection on Board of Supervisors System of Chinese Companies

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Abstract: The board of supervisors system is a product of the modern enterprise system and an important part of the corporate governance structure. At present, the supervisory function of the board of supervisors has not actually played its role. The main problem is that the connection between the design of the board of supervisors system and the market environment is not in place. This paper analyzes the current problems on the board of supervisors of Chinese companies, and puts forward some suggestions for its obstacles. This paper hopes to strengthen the supervision and restriction of the board of directors and management through these ways. Only by strengthening the power on the board of supervisors can it play a real role.

1. Introduction

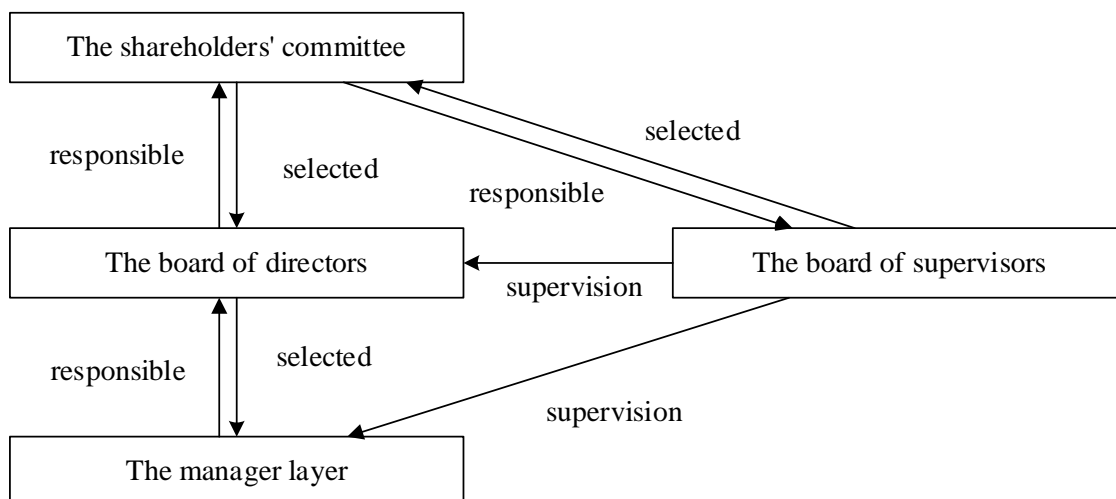


Figure 1 The relationship about the company structure

The board of supervisors system originated in Germany, and then Japan and China made innovative development on the board of supervisors system. The board of supervisors system is an important part of the power balance mechanism of the legal person organ. It is an important guarantee to maintain the sustainable development of the company. At present, the governance structure of Chinese companies adopts the mode of juxtaposition between the board of supervisors and the board of directors. The board of supervisors and the board of directors are jointly

responsible to the general meeting of shareholders. From the perspective of company law, the board of directors and the board of supervisors restrict each other. The board of directors is responsible for the correct decision-making and operation of the company. The board of supervisors is mainly responsible for supervising the directors and management personnel. However, due to the influence of system and legislation, the supervisory function on the board of supervisors has not played its role. The board of supervisors violates the internal requirements of establishing a modern enterprise system in China. The relationship between the board of supervisors, the board of directors and the management is shown in figure 1.

2. The legal nature on the board of supervisors

2.1 The board of supervisors is the product of the company's internal control

If the company wants to implement the mechanism of self-restraint and supervision, it must set up the internal organization to check and balance the power, which is reflected by certain laws. After the company establishes the function of operation and management, the board of supervisors will assume the role of supervision and balance. In general, most shareholders do not directly participate in the management of the company, and the management control is exercised by the board of directors. Once the power of the board of directors is determined by law or the company's articles, it becomes a highly independent and exclusive power that even shareholders cannot interfere with. If we want to limit the enormous power of the board, we have to create an institution to counter it. The larger the corporate body, the more diversified the company's interests.

2.2 The board of supervisors is a necessary supervisory organ of the company

In the company, shareholders, no matter how big or small, are the investors and creditors of the company. Shareholders are the most powerful force to supervise the managers when the control of the company is gradually separated. The shareholders of modern companies are highly dispersed, but the general meetings of shareholders are not permanent institutions, which are held once or twice a year. So, the oversight function is very limited from the shareholders' meeting on the operator. In order to promote the healthy development of the company, it is necessary to set up a regular and efficient organization to supervise the board of directors. So, the board of supervisors came into being.

2.3 The board of supervisors is a compound organization

From the perspective of corporate governance theory, the board of supervisors supervises the board of directors and managers. So, the members should be shareholders or their principals. But in the company practice, the composition on the board of supervisors is compound. When the supervisory board exercises its supervisory function, it should not only conduct single supervision, but also conduct compound supervision. It should be noted that the board of supervisors is an organizational body, rather than an individual body. China's company law also stipulates that limited liability companies with small scale and small number of shareholders can have one or two supervisors. Both limited liability companies and joint stock limited companies require the establishment of supervisory boards.

3. The problems on the board of supervisors system in Chinese company

3.1 The supervisory power is vaguely defined

The board of supervisors is an organization that restricts the operation and management. However, the power is vaguely defined in the company law of China, which lacks the executive power guarantee mechanism of the board of supervisors. According to article 53, paragraph 4 of the company law. No director or senior manager may concurrently serve as a supervisor. But the reality is that in many companies there is a relationship between supervisors and board members. This relationship has seriously affected the supervisory function of the board of supervisors. As a result, the board of supervisors perform their functions in a negative manner.

3.2 The independence is inherently insufficient

Chinese companies only attach importance to the role of the board of directors, but the status is not enough attention. Essentially, the board of supervisors is only the deliberative body controlled by the board of directors. Under a huge shareholding structure formed by "one share one vote", the election about the board of supervisors, the board of directors and senior managers is basically under the absolute control of major shareholders. Supervisors and the supervision are also arranged by the major shareholders, supervisors can't be independent. In this case, it is hard to expect them to exercise oversight independently.

3.3 The supervisory power is nominal

Although the company law stipulates that the board of supervisors should be equipped with some relevant authorities, it cannot be implemented in actual operation. The company law does not give every supervisor but the collective personnel the right to supervise in his own name. In this way, major shareholders can control the board of supervisors by controlling most seats on the board of supervisors. In the end, the authority is formalized and empty talk, which leads to the complete failure on the board of supervisors system in Chinese company.

4. Improving the boards of supervisors system in Chinese company

4.1 Safeguard the independence on the board of supervisors

The independence of supervisors makes them play a very important role in giving full play to their functions. At present, the relationship between supervisors, board of directors and enterprise managers hinders the work of supervisors. In view of this, the author believes that some improvements can be made from the following aspects in order to better improve the construction on the board of supervisors system. Firstly, the author believes that the board of supervisors should be empowered to appoint board members by legislation, so that it can act as a deterrent to the board of directors. Second, we can employ some social professionals as independent directors of the company, and we can increase the proportion of external independent supervisors. Third, the company raises the discharge threshold of supervisors. The author suggests that supervisors should have a fixed term. If the supervisor is dismissed before the expiration, he has the right to request the company to compensate for its losses.

4.2 Clarify the supervisory responsibilities on the board of supervisors

China's company law only stipulates the scope of functions and powers, but does not specify the

supervision responsibilities of supervisors. At the same time, there is no relevant punishment for improper supervision. This paper suggests that the supervision responsibilities and obligations of supervisors should be clearly stipulated in legislation. The supervisors who conscientiously perform their duties shall be rewarded with salary, and the supervisors who neglect to perform their duties shall be punished. Only with clear rewards and punishments can the work be carried out smoothly.

4.3 Strengthen the construction on the board of supervisors

The members shall be familiar with the characteristics of the company and industry in which they work, and they must have legal, financial, computer and other relevant knowledge. Only in this way can they supervise the company. In addition, the board of supervisors can extensively absorb creditors, investors and business operators, and then forming a common supervision mechanism. Enterprises should strengthen the training of members and fully improve their working ability. At the same time, it is necessary to improve the professional skills of supervisors, so as to improve their own quality and comprehensive ability. Those can help the company better development and improve their own system.

5. Conclusions

Although the company law has been amended for many times, the original board of supervisors system cannot meet the needs of social development according to diversified operation modes of the company. The reform on the board of supervisors is necessary for the development of market economy. The future development direction is to strengthen the functions and powers and make it an independent, fair and professional institution.

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