

A Study on the Appearance of Business in which Equity Holds for Others——From the perspective of the economics of law as an entry point

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Abstract: In practice, the problem of holding shares on behalf of others has been continually disputed in academia. Its existence makes the market transaction cost higher and affects the company and social and economic benefits. This article will explore how to weigh the interests and legal design of equity instead of others from the perspective of law and economics, through effective arrangements for the rights and obligations of hidden shareholders and non-hidden shareholders, to avoid unstable expected utility and risk costs, carry out effective market exchanges, improve the efficiency of economic operations, and maximize personal and social benefits.

1. Introduction

Commercial issues are closely linked to economics, and the use of basic economic theorems, basic methods, and judgment standards on the law to study the problem of holding shares in place of others is in line with the laws of the market economy, and also reflects the transformation of the “paper method” into “operation The applicable law of the "Chinese law". This article will use the opportunity cost of law, judicial benefit, and Caldo-Hicks efficiency standards [1] The three major judgment standards study when and how to apply appearanceism in the issue of holding shares in place of others is more in the interest of economics.

2. Economic Analysis of Law on the Issue of Confirmation of Shareholder Qualification

The holding of equity instead of others is the essence of the hidden shareholders. Driven by the characteristics of the economist, due to the company's shareholder registration system and equity transfer procedures that prevent them from pursuing the maximization of interests, they choose legally evasive actions.

For anonymous shareholders, this behavior is to achieve Pareto's optimal choice. Anonymous shareholders can greatly reduce transaction costs related to company shareholders, including negotiation costs and procedural costs, while increasing their investment opportunities, capital gains, and risk costs. Under the demand of consumers' surplus psychology, anonymous shareholders weighed transaction costs, risk costs and investment returns, and chose to sign equity with non-hidden shareholders instead of holding agreements with others, circumventing legal procedures and directly enjoying rights and interests. For non-hidden shareholders, this behavior is an exchange of self-serving resources, which can obtain the benefits of optimization of shareholders' identity rights at a reduced cost. Under the market mechanism, shareholding negotiations on behalf of others hold agreements to optimize the resource allocation of both parties.

The free contract held by the market subject's equity instead of others not only optimizes its own resource allocation, but also brings negative external problems to the society. For the company and other shareholders, although it is objectively conducive to the company's capital turnover, its rights such as priority purchase rights, right to consent to transfer and right to know have been violated. For external third parties, the inconsistency between appearance and actual reality may lead to unrealized expected utility, and increase uncertainty and risk costs in the market. For society, the transparency of the market transaction environment is reduced, which compromises transaction efficiency and

transaction security, and ultimately slows the development of the optimization of social resource allocation.

2.1 Hide names from the outside Hide name from inside

Can an anonymous shareholder determine the shareholder's qualifications by relying on actual contributions and holding shares with non-hidden shareholders instead of others? In this case, the Caldo-Hicks efficiency criterion can be used to determine whether it is reasonable to apply appearanceism. If the benefits of applying the appearanceist gains outweigh the losses of the injured, it is efficient to confirm that the hidden shareholders are not qualified as shareholders. The profit holders whose shares are held in place of others are anonymous shareholders and non-hidden shareholders. The optimization of personal resources and the increase in company investment. The damaged party held by the equity instead of others is the identity rights of the company and its shareholders, the reasonable trust interests of external third parties and the deterioration of the market trading environment. Moreover, this negative externality involves social interests, and it is difficult to resolve through the free contract of the market subject, and it can only be corrected through civil and commercial law or economic law. It focuses on protecting the company and external third parties, and restricts the rights of anonymous shareholders to the parties holding the agreement on behalf of others. It can properly balance the interests of both parties, satisfying efficiency and fairness. In terms of judicial benefits, appearanceism as a commercial habit reflects "consumer preferences", with little implementation resistance and high legal supply efficiency, and greater judicial gains.

2.2 Hide name from outside No hidden names inside

Hidden shareholders resolve negative externalities through free contracts and trading behaviors of market entities, that is, negotiate and cooperate with the company and its shareholders, and actual capital contributions, actual exercise of shareholder rights, and equity holding agreements on behalf of others are recognized by the company. This method makes the anonymous shareholders "signify" within the company, and reduces the negative externalities brought to the company and its shareholders through the negotiation of transactions between the two parties. However, the negative externalities of the external third party and the stable market expectation order must still be resolved through legal correction. At this time, appearanceism is not applicable between the anonymous shareholder and the company. However, through negotiation and negotiation between the two parties, the company's internal recognition of the identity and rights of the anonymous shareholder can achieve Pareto's improved [3] effectiveness. Appearance is applied to external third parties and market order, focusing on preventing private agreements from damaging the trading order, and providing a stable expected utility and self-hedging mechanism for the trading market. After the anonymous shareholding has made actual capital contributions and actually exercised its rights under the company's approval, it has actually obtained the shareholder qualifications and can be registered as a shareholder. The system supplements the agreement between the hidden shareholder and the company through legal corrections, and promotes the shareholder name. This is also the way to deal with legal circumvention, and to guide more anonymous shareholders who have not surfaced to become famous in legal procedures. Only by further clarifying and safeguarding the rights of all parties concerned can we maximize social resource allocation and judicial benefits.

3. Economic analysis of the law on the exercise of the rights of hidden shareholders

According to Hobbes' theorem, a clear definition of rights helps to eliminate barriers to cooperation. In the issue of holding shares on behalf of others, there are situations where the scope of rights and the objects of exercise of rights are ambiguous, leading to increased transaction costs and stagnation of social resource flows. The clear definition of the rights of anonymous shareholders can reduce the transaction cost of holding shares in place of others, and promote the flow of resources to those who use them more efficiently to improve the efficiency of economic operations.

3.1 Absolute power

An empirical analysis of the legal benefits held by equity instead of others does not completely deny that anonymous shareholders pursue the Pareto optimal behavior out of the economic man, but seeks to match private rational behavior with expected benefits without harming or even having A legal system conducive to the effective allocation of social resources [4]. The absolute rights of anonymous shareholders who do not involve an external third party are mainly divided into asset income rights and shareholder identity rights. The pure asset income right is based on the equity agreement signed between the hidden shareholder and the non-hidden shareholder or the company to replace the other person's holding agreement. Its essence is a debt negotiated by both parties. Equity identity right is the actual exercise of shareholder rights by the unidentified shareholder after the company and its majority shareholders recognize it, and already has shareholder qualifications within the company, then the right is essentially a property right to the shares. Defining different rights boundaries and obligation limits for two different kinds of rights is the legal balance of social conflicts of interest. The object of request for the exercise of rights is divided into non-hidden shareholders and non-hidden shareholders:

3.1.1 Through unhidden shareholders

Without the approval of the company and its shareholders, the rights of anonymous shareholders are limited to the scope stipulated in the contract between the parties. Therefore, an anonymous shareholder can only use the equity instead of the other person holding the agreement as the object of request for the exercise of rights, but not directly to the company [5]. There is a simple debt-debt relationship between hidden shareholders and non-hidden shareholders. Similar to this model, the United States adopts the equity trust model to regulate the holding of equity instead of others, and establishes a stronger fiduciary relationship than free contract. The fiduciary duty between the two parties reduces the opportunistic behavior and expected risk in the performance of successive contracts. Contract law focuses on the free will of both parties to negotiate, while trust law pays more attention to the protection of property rights. The trust law provides a relatively complete legal guarantee for the rights of actual investors, and is safer than the general contract law when it involves litigation. China can learn from the US equity trust model to solve the uncertain risks and information asymmetry problems that occur in long-term commitment transactions, and protect the company's stable financing and the reasonable expected interests of actual investors [6].

3.1.2 Without the help of non-hidden shareholders

An anonymous shareholder can directly exercise rights against the company without going through the non-hidden shareholders. The source of this right is divided into two types: one is the hidden shareholder, the non-hidden shareholder and the company, the three parties have signed an agreement to replace the other person's shareholding, and the agreement clearly stipulates that the hidden shareholder can directly exercise the right to the company. For example, in the Supreme People's Court's 2006 case analysis of the dispute over the confirmation of equity between Hua Xia Bank Co., Ltd. and UNGA Group Co., Ltd., based on a tripartite agreement, the hidden shareholder can directly exercise the right to investment income from the company. Claims in contract law. The other is that the anonymous shareholders actually exercise the rights of shareholder identity after they have been "named" within the company. This kind of right is a property right owned by the company's shares, and its content does not need to be negotiated by both parties. The method of establishing a set of procedures between the actual investor and the company in the US company law is somewhere in between: relative to the first type of contractual rights, the establishment procedure is the right established in the company law. Relative to the second type of "manifest" property rights within the company, anonymous shareholders only enjoy partial negotiation rights in the established procedures, rather than complete shareholder rights. Therefore, we can learn from the United States by giving the company recognition of shareholders' rights in the company law, and protecting the

reasonable interests of the actual investor and the company's economic benefits with a stronger legal relationship than the contractual relationship [7].

3.2 Relative right

Is it effective for anonymous shareholders or non-hidden shareholders to dispose of their shareholder rights, including transactions, mortgages and enforcement, to an external third party? This depends on the nature of shareholder rights. If the rights of the hidden shareholders are based on the claims of the contract, due to the relativity of the claims, the claims cannot be disposed of to an external third party. If the rights of the hidden shareholders are based on the "manifest" property rights within the company, the hidden shareholders can use the ownership of the shares to dispose of the rights to an external third party. Since the shares are registered under the names of shareholders who are not hidden, external third parties have reason to believe that the shareholders who are not hidden actually have shareholder rights. When there is a dispute between a benevolent third party and a non-hidden shareholder for disposition of rights, appearance protection can be applied based on reasonable trust of the third party. Different allocation of rights in claims or real rights will result in different transaction costs. The allocation of rights of creditors and non-hidden shareholders who have no right to dispose under registration leads to higher transaction costs and hinders the free flow of resources in the transaction market. Therefore, the excessive transaction costs are corrected by protecting the bona fide third parties through appearanceism. The hidden shareholders' rights of property rights can be freely exchanged according to market prices due to the clear boundary of their rights, which minimizes the transaction cost [8].

4. Economic Analysis of Law on the Issue of Performing Shareholders' Obligations

Shareholders' rights and obligations are relative, and they set corresponding obligation limits for the rights of unhidden shareholders and unnamed shareholders, so as to define their respective rights boundaries and ease the conflict of their rights. At the same time, the fulfillment of obligations will also affect the recognition of rights, and the rights cannot be set aside without obligation. The following will analyze the respective obligations of anonymous shareholders and non-hidden shareholders:

4.1 Obligations of anonymous shareholders

Academics and judicial practice on the rights of anonymous shareholders can be described as full of sweat, but rarely on the obligations of anonymous shareholders. Ownership of shares on behalf of others is an opportunistic behavior of hidden shareholders taking a rational attitude to the law, because evading the law can bring greater benefits to the hidden shareholders than actively applying the law. However, this kind of lawless behavior that does not consider the order of social transactions and only considers the maximization of private profits is not worthy of encouragement. According to the reciprocity of rights and obligations, obligations can be used to adjust the income of the hidden shareholders. The most important obligation of an anonymous shareholder is actual capital contribution, which is the most basic requirement for obtaining shareholder rights. If the hidden shareholders in the contractual relationship do not perform the actual capital contribution or the prior obligations stipulated in other agreements, the non-hidden shareholders may refuse to fulfill the shareholders' rights they requested to perform based on the right of defense. Since the hidden shareholders of the company "explicitly named" actually exercise the rights of shareholders in the company law, they should also fulfill the obligations of shareholders in the company law. Different from the loss of claim rights in the contract law, the "obvious name" of the invisible shareholders can not obtain the qualification of shareholders without fulfilling the company's obligations. In the above two cases, the corresponding obligations are set to limit the gains brought by the opportunistic behavior of the hidden shareholders, so that the lawful gains of the hidden shareholders are greater than the evasion of legal gains, and the standardization and safety of the trading market are guaranteed.

4.2 Non-hidden shareholders' obligations

The non-hidden shareholders' obligations to the hidden shareholders are not limited to the monetary payment behaviors corresponding to the hidden shareholders' asset income rights, but may also involve the shareholders' identity rights, such as the decision-making power agreed by both parties. In addition to obeying the obligations stipulated in the agreement that both parties hold shares on behalf of others, as well as hidden shareholders, non-hidden shareholders theoretically have two additional obligations due to their apparent identity: information disclosure obligations and obligations to avoid misunderstandings. Under asymmetric information, anonymous shareholders, as information disadvantaged parties, will be forced to face "unfavorable choices" and bear the transaction risks of both parties. In order to protect the hidden shareholders who are in a disadvantageous position of information, the non-hidden shareholders, as the information superiors, are obliged to provide true and comprehensive information disclosure, such as the true operating status of the company. From the second extension of Posner's theory, non-hidden shareholders can also avoid misunderstandings at a lower cost than anonymous shareholders because of their apparent identity. The external third party has a reasonable trust interest in the public equity of the public trust, but the unhidden shareholders who enjoy the most comprehensive information can prevent the expected risks caused by misunderstanding at a lower cost. If the non-hidden shareholders are sure to avoid misunderstandings and do not do their best, then imposing legal liability on him will help reduce the possibility of future disputes. The two additional obligations of shareholders that are not hidden are not restrictions on additional income, but because of their dominant status can reduce the risk cost in the trading market and improve the efficiency of resource allocation in the market economy.

5. Economic Analysis of Law on Dealing with Problems of Contractual Relationships When Equity Holds for Others

The above has carried out legal and economic analysis of the rights and obligations of anonymous shareholders and non-hidden shareholders. It can be seen that equity instead of others holds contracts as a written carrier of rights and obligations, which plays a role in promoting the best trading opportunities for economic activities and ensuring transaction security. Plays a vital role. How to use contract legal relationships to balance interests, reduce transaction costs, and regulate market order is the key to studying the economics of law regarding equity to hold contract relationships for others.

5.1 Transaction cost analysis of a contract that uses equity instead of others

5.1.1 Contracting costs

Based on the long-term succession of equity holding agreements for others, the two parties must consider the total flow of future services and predict various incidents that may affect performance when exchanging resources.

The longer the succession period for the performance of the contract held by the stockholders on behalf of others, the more traffic will be considered in the future. Its basic function is to prevent one party from taking opportunistic actions against the other party, so that it is not necessary to take high-cost self-protection measures to prevent the best opportunity for trading activities. Both anonymous shareholders and non-hidden shareholders use equity instead of others to hold agreements to prevent the other party's interests from being infringed, but the increased contracting costs need to be weighed against future risk costs. Under the measurement, an anonymous shareholder can choose to trust the counterparty to reduce the contracting costs, or spend contracting costs to formulate strict contractual clauses to avoid expected risks. When the probability of accidental incidents affecting performance is actually low and the cost of formulating a solution exceeds its benefits, even if the parties are aware of the possibility and potential risks, it is difficult to spend large costs to carefully plan risk protection clauses. Therefore, when the cost of establishing an individual contract is too large to prevent accidental risk protection planning, the law can reduce

market transaction costs and speed up the flow of social resource allocation by regulating the contract terms necessary for accidental events.

5.1.2 Performance cost

The performance of the contract held by the stockholders on behalf of others is also a process of interest balancing, trying to maximize the performance gains and minimize the performance costs. Both anonymous shareholders and non-hidden shareholders only care about their own interests, and have little interest in their common interests. If both parties are excessively pursuing the optimization of personal income, they will fall into the predicament of Nash equilibrium and damage the common interests of both parties, and the final result will only be "to the detriment of others." Therefore, the greater the company's benefit, that is, the greater the amount of common revenue, the greater the self-interest that both parties can obtain from it. This is also the motivation for the parties to voluntarily fulfill their obligations in addition to the contract's constraints on the obligations.

5.1.3 Litigation cost

The promised transactions in the contracts held by the stockholders on behalf of others are long-term, and it is inevitable that there will be information asymmetry, accidents and uncertainty risks. When a party's unilateral contract expectations are not met and its interests are damaged, it is necessary to seek relief through litigation and other means. The breaching party needs to compensate for the loss of available benefits caused to the injured party due to the breach of contract, but both parties will have a greater dispute over the expected available benefits. Clearly stipulating the liability for breach of contract and the remedy method in the contract in which the shares are held on behalf of others can reduce the additional costs caused by litigation disputes.

5.2 The utility possibility boundary for the equity to replace the contract held by others

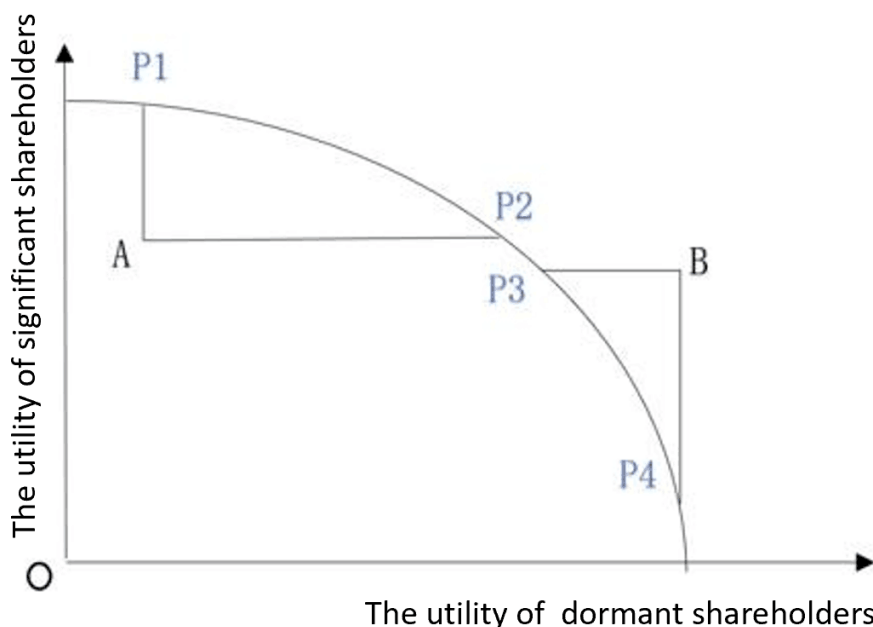


Figure 1. The utility possibility boundary of equity entrustment contract

The hidden shareholders and non-hidden shareholders in the market transaction move from A within the utility possibility boundary to P1-P2. Through voluntary and mutually beneficial resource exchange, Pareto optimization is obtained, which makes the supply and adjustment of contract law the most Effective. When the initial allocation of anonymous shareholders and non-hidden shareholders has reached the boundary of utility possibilities, and one party moves from P3-P4 to B in pursuit of maximizing personal interests, the resulting "self-interest" behavior may be unbalanced interests and negative externalities For the price. The legal system restricts the opportunistic behavior

of "harming others and benefiting oneself" that exceeds the boundary of the possibility of utility, forming a legal arrangement that is conducive to the overall market order.

6. Economic Analysis of the Law of Infringement of Interest and Relief

In order to maximize the self-interest, the possible opportunistic behaviors of both anonymous shareholders and non-hidden shareholders will cause harm to each other. Through the legal system, the opportunistic tendency of both sides is guided to develop in the direction of "self-interest" without harming people, so that the external effects are "internalized", and the best benefits of Pareto improvement are obtained.

6.1 Shareholders who do not hide infringe on the interests of others

The unidentified shareholder's apparent identity makes it easier to make opportunistic behaviors, such as encroaching on the rights and interests of anonymous shareholders and refusing to perform obligations. Since the rights and interests of the hidden shareholders are only stipulated in the agreement that the two parties' shares are held in place of others, the infringement of the non-hidden shareholders is difficult to appear on the surface. In order to seek remedies in a timely manner after infringement of rights, anonymous shareholders should establish a solid legal relationship with shareholders who are not hidden. The remedy of the hidden shareholders is the damages in the contract law or the rights remedies in the company law. The basis of judgment is whether to recognize the identity of the creditors of the hidden shareholders or the qualification of shareholders.

When a non-hidden shareholder harms the interests of an unnamed shareholder and deals with an external benevolent third party, the protection of external relations by law is stronger than the protection of internal contractual relations, that is, commercial appearanceism applies. However, in the non-trading field, if the enforcement is for the realization of the creditor's rights, there is no trust interest and transaction security needs to be protected, and commercial appearanceism should not be applied. Combining the nature of the rights of hidden shareholders as creditor's rights or property rights, the rights rank or rights are compared with the rights of non-trading third parties to protect high rank rights or prior rights.

6.2 Incognito shareholders infringe on the interests of others

As an actual investor and shareholder, the hidden shareholder holds the contractual relationship on behalf of others, and is in a relatively weak legal relationship. Generally speaking, the rights of anonymous shareholders are difficult to be guaranteed, and they rarely mention their infringement on the interests of others. However, if the obscured shareholders do not seriously fulfill their obligations, it will also cause damage to the interests of others. The non-hidden shareholders' refusal to perform their investment obligations will result in the unrealized shareholders' expected benefits not being realized.

7. Conclusion

This article adopts the relevant principles of economics of law. Here, we study the commercial issues in the distribution of other people's holdings from four aspects: the qualifications of anonymous shareholders, the rights and obligations of shareholders, the replacement of other people's ownership of contracts and the compensation and remedies for infringement of interests. In the confirmation of shareholder qualifications, an anonymous shareholder can only establish a contractual relationship with the internally concealed external name, and can only establish a contractual relationship with the internally concealed name, and does not have the status of a shareholder identity. Commercial interests can be applied to interests outside the contractual counterparty; The explicit name obtains the company's internal shareholder qualifications, and appearanceism is not applicable within the company, but external goodwill third parties still apply appearanceism to protect reasonable trust interests. In the exercise of shareholder rights, hidden

shareholders exercise shareholder rights through non-hidden shareholders through contractual relations. Applicable appearanceism outside the contractual relationship may not directly statutory rights to the company; hidden shareholders pass the contractual relationship with the company or are approved by the company. The actual exercise of rights does not apply appearanceism to the inside of the company, and appearanceism should be applied when a third party with external goodwill is involved. Restrain the opportunistic behavior of both parties through the supplement of shareholder obligations and the holding of contract by the replacement of equity, so that a more solid legal relationship between the hidden shareholders and the non-hidden shareholders can be formed, the negative externalities brought to the trading market can be reduced, and resources can be optimized. Configuration efficiency. When the interests are infringed and the interests of third parties involving goodwill are involved, they are divided into transactional and non-transactional areas: in the transactional field, appearanceism is applied to protect the interests of third parties and maintain market transaction safety and efficiency; There is no market transaction order that needs to be protected, so appearanceism is not applicable, and the rank and rank of rights are divided according to the fair and attributive nature of the rights of the parties.

More than passing the study of law economists is also in line with the application of applicable appearanceism as an exception, to properly grasp the scope of application of appearanceism, and put forward the practical trial concept of the actual attribution of property. Through penetrating trial thinking, avoid the generalization and abuse of appearanceism, explore the true legal relationship, and at the same time improve the legal process of the US law and trust to improve the legal relationship of equity replacement for others, and comply with market economic regulations for effective. The allocation of social resources will maximize the economic and social benefits.

References

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