Revista Argentina de Clínica Psicológica
2021, Vol. XXX, N°1,710-719
DOI: 10.24205/03276716.2020.2067

Analysis of Controlling Shareholders' Influence and Abuse of Legal Regulation from the Perspective of Comparative Company Law

Huashan Lin

Abstract
In today's corporate governance structure, the controlling shareholders and directors, as controllers, have legal basis for controlling the company. But this "legitimate" control right is often abused. Combined with the legal provisions and practical cases, this paper holds that only by forming an effective prevention and control system to control the abuse of shareholders' rights from the aspects of entity protection, procedural relief and government supervision can we better stabilize the internal structure of the company and promote the development of the capital market. We should also attach importance to the function and significance of indirect regulation adopted in company law, consider complex scenarios such as enterprise groups and mergers and acquisitions, and consolidate the theoretical basis to adjust the extension of the system in order to build a more perfect and effective regulation of controlling shareholders.
Keywords: Company law; Controlling shareholder; Legal regulation; Right of action

1. Introduction

In China's capital market, the phenomenon that controlling shareholders infringe on the interests of companies has been more serious [1], so how to effectively regulate the behavior of controlling shareholders in China's company law has always been an important issue. Shareholders can't and can't do everything personally. They can only entrust professional directors to handle the daily operation and management affairs of the company. Judicial power cannot replace the normal business judgment of the company. First of all, judges should respect the decisions made by companies (which have passed the shareholders' meeting and the board of directors) according to law, respect their freedom of expression of will and freedom of corporate autonomy, and should not make harsh post-examination on good-faith business judgments [2-3]. The Company Law, which promotes and regulates investment activities, must be actionable, and one of its manifestations is to provide protection for the legal rights and interests of minority shareholders.

At present, many scholars in China mainly focus on this aspect, which is commonly known as "M&A", and its purpose is to solve the operational problems of the transfer of control rights. China's current Company Law has clearly defined the types of directors' obligations and legal responsibilities. At the same time, in order to better protect the rights and interests of the company and shareholders, the functions and powers of the board of supervisors and the rights of shareholders to derivative litigation under specific circumstances have been further strengthened [4-5]. Although China's company law clearly regulates the behavior of controlling shareholders abusing shareholders' rights to harm the interests of the company and other shareholders, there is no clear regulation on controlling shareholders abusing their influence to harm the interests of the company and other shareholders.

The focus of this paper is to provide judicial relief to the legitimate rights and interests of small and medium shareholders, that is, when disputes arise between small and medium shareholders, large shareholders (controlling shareholders), directors and other stakeholders on the establishment, governance and dissolution of the company, judicial review will provide quick, efficient and low-cost relief channels for the parties to resolve disputes, and at the same time, it will not affect the efficiency of the company's operation because of excessive interferen-

School of law, City University of Hong Kong, Hong Kong, 999077, China
*Correspondence e-mail: huashalin2-c@my.cityu.edu.hk

ce in corporate governance. The main purpose of this paper is to balance the protection of the legitimate rights and interests of small and medium-sized retail investors with the efficient autonomy of companies.

2.On the legal basis of regulating the abuse of control rights by controlling shareholders

2.1 Principle of majority decision of capital

The principle of majority decision of capital is a basic principle of the current joint-stock company law. According to this principle, the voting power of shareholders is directly proportional to the shares they hold. The more shareholders hold, the greater the voting power. The law regards the meaning of majority shareholders in the shareholders' meeting as the meaning of the company, and the meaning of majority shareholders is binding on minority shareholders [6].

Literature [7] thinks that the company should file a lawsuit against the company damage caused by the directors' misconduct, but when the company holds a general meeting of shareholders, it makes a resolution not to file a lawsuit against the directors' behavior. Two of the minority shareholders refused to accept this and filed a lawsuit in court, demanding that the directors bear the responsibility for the losses caused by the company [8]. Therefore, from the perspective of regulating controlling shareholders, the essence of Article 21 of the Company Law that "controlling shareholders shall not harm the interests of the company by using their relationship with the company" can be understood as "prohibiting controlling shareholders from improperly exercising their influence on the company (relationship)". In principle, it is required that all companies must establish shareholders' meeting, board of directors and board of supervisors, except for limited liability companies with a small number of minority shareholders and a small scale. The board of shareholders is the highest authority, which restricts the authority of the board of supervisors and the board of directors.

Literature [9] pointed out: First of all, the appropriate plaintiff who claims to have committed misconduct against the company and can file a lawsuit against it should be the company itself; Secondly, if the alleged misconduct is an act that can be ratified by most members of the company and is therefore binding on the company, individual members of the company cannot bring a lawsuit against it. Because of the different amount of capital contribution, different rights and status, different positions on understanding problems, different knowledge, experience and skills, it is entirely possible for shareholders to hold different opinions on some issues [10-11]. If the lawsuit is an act that does not conform to the company's internal management rules, it will be futile to file a lawsuit against this act unless it is approved by the shareholders' meeting. Because this kind of behavior can be effectively ratified by the general meeting of shareholders.

2.2 Principle of equality of shareholders

Under the current corporate legal system, the principle of majority decision of capital allows major shareholders to decide the company's development direction through controlling shares, master the company's daily business decisions and determine the distribution of benefits by selecting directors, all of which may only bring benefits to major shareholders themselves and cause damage to the company and minority shareholders. Directors can't sacrifice the interests of the company for their own benefit, and can't take advantage of the opportunity of serving as directors to capture personal interests, and can't take the business opportunities of the company as their own [12]. China's company law has relatively rough provisions on the right of small and medium shareholders to disagree with the resolutions of the shareholders' meeting, and the scope of matters that can be disputed is relatively small, which mainly focuses on the procedural norms of the resolutions of the shareholders' meeting, procedural norms and superficial compliance with statutory laws and articles of association in content.

The dissenting shareholders of the company must be the minority shareholders of the company, because the major shareholders can raise their own will to the will of the company by virtue of the principle of capital majority decision, and there can be no resolutions of the shareholders' meeting that violate their will. We can't guarantee that every shareholder will exercise the rights granted by law, but we must guarantee that if they want to exercise them, they will have the opportunity to realize them; Literature [13] holds that "what a jurist must do is to understand this problem and realize that this problem is put forward to him in such a way that it may protect all social interests and maintain a certain balance or coordination between these interests consistent with the protection of all these interests.

3. Substantive demands of small and medium shareholders to exercise their right to appeal

3.1 The right of small and medium shareholders to challenge the company's resolutions to the court

Once the resolutions of the general meeting of shareholders and the board of directors are effectively made in accordance with the law or the articles of association, they are legally recognized as the expression of the company's will and are binding on all shareholders. However, in the practice of corporate governance, it is not uncommon for corporate resolutions to be flawed. Article 22 of China's newly revised Company Law stipulates that the resolutions of the shareholders' meeting or the shareholders' meeting of the company are invalid if they violate laws and administrative regulations. Within 28 days from the date when the resolution of the shareholders' meeting is passed, they have the right to bring a lawsuit to the court, demanding that the resolution of the shareholders' meeting of the company on financial assistance for the purchase of shares of the company be revoked.

Under certain conditions, the British company law grants minority shareholders the right to disagree with the resolutions of the general meeting of shareholders, which does not mean that the judges will definitely support the minority shareholders' objections. After accepting the objection litigation of minority shareholders, the judges of the court will examine whether the resolutions of the shareholders' meeting are beneficial to the development and overall interests of the company from the principles of common law, equity and honesty and credit [14]. If the judge finds that the controlling shareholder embezzles the legitimate rights and interests of the company and the minority shareholders through the legal form of the resolution of the shareholders' meeting, the judge will declare the relevant resolutions of the shareholders' meeting invalid.

3.2 Request the court to order the controlling shareholder or company to acquire the shares of dissenting minority shareholders

Article 75 of China's newly revised Company Law stipulates that under any of the following circumstances, the minority shareholders who voted against the resolution of the shareholders' meeting may request the company to purchase its equity at a reasonable price: (1) The company has not distributed profits to shareholders for five consecutive years, and the company has made profits for five consecutive years and meets the conditions for distributing profits as stipulated in this Law; (2) The company merges, splits or transfers its main property; (3) When the business term stipulated in the Articles of Association expires or other dissolution reasons stipulated in the Articles of Association appear, the shareholders' meeting adopts a resolution to amend the Articles of Association to make the company survive. If the shareholders and the company cannot reach an equity purchase agreement within 60 days from the date of the resolution of the shareholders' meeting, the shareholders may bring a lawsuit to the people's court within 90 days from the date of the resolution of the shareholders' meeting.

The company law of most States in the United States also authorizes the dissenting shareholders' right to buy shares, that is, when the shareholders' meeting of the company votes on the major decisions of the company based on the majority of capital, such as the merger and division of the company; Conclude, change or terminate contracts for leasing, entrusting operation or operating jointly with others; As we know, in general stock trading, the price of stocks accounting for 49% of the total share capital is much lower than that of stocks accounting for 51% of the total share capital, which is by no means a 2% difference, because the latter shares hold a controlling position in the company. At present, China's company law and relevant judicial interpretations have no principled provisions on the verification of share value of dissenting shareholders' share repurchase. The author suggests drawing lessons from the pricing principles of Britain and the United States, and combining with China's national conditions and economic development stage, establishing a fair share valuation system that is conducive to equal protection of both minority shareholders and companies.

China's "Company Law" Article 143, Item 4, allows the company to acquire the shares of dissenting shareholders [15], and stipulates that the acquisition funds shall be paid out of the company's after-tax profits. Company laws in modern countries generally allow companies to acquire their own stocks, but they often require that the acquisition funds be paid from the distributable profit account of the company instead of the capital account [16]. Although there are differences between China's and America's dissenting shareholders' right to buy shares and the system of requesting the court to order the controlling shareholders to buy the dissenting shareholders' shares, they all protect the legitimate rights and interests of small and medium shareholders who do not have the right to make decisions on major issues of the company to a certain extent. Once the right to buy shares (shares) is

realized, the original shareholders will no longer claim that the resolutions of the general meeting of share-holders are invalid or revoked, unless there are fraudulent factors in the entities and procedures that make the resolutions of the general meeting of shareholders [17].

3.3 The litigation right of small and medium shareholders to request the court to order dissolution and liquidation of the company

Article 182 of the revised "Company Law" stipulates that: if there are serious difficulties in the operation of the company, and its continued existence will cause great losses to shareholders' interests, which cannot be solved by other means, shareholders holding more than 10% of the voting rights of all shareholders of the company may request the people's court to dissolve the company. Does "serious difficulties" only refer to financial crisis, including abuse of power by controlling shareholders, crisis of trust, deadlock in corporate governance and so on? The deficiency of legislation needs to be supplemented by judicial practice.

Article 122 (1)g of the Bankruptcy Law of 1986 stipulates that with the approval of the court, the minority shareholders can request the court to order the dissolution and liquidation of the company in order to recover their investment. Chapter 14, Chapter 3 of American Model Business Company Law stipulates the judicial dissolution of a company, and confirms that the court can dissolve a company if the shareholders of the company file a request to dissolve the company. Therefore, the courts in various countries generally regard applying for bankruptcy as the last means to protect the rights and interests of minority shareholders. If other methods such as declaring the resolutions of the shareholders' general meeting invalid or revoked, stock acquisition, derivative litigation, etc. can be used to relieve the rights and interests of minority shareholders without losing justice, the courts will not order the dissolution of the company.

In addition, Article 124 of the Bankruptcy Law 1986 of the United Kingdom sets a series of conditions for the company's minority shareholders to request dissolution of the company: the minority shareholders have no fault behavior such as seeking personal gain in the company's operation and related disputes [18]; China's "Company Law" also requires shareholders who file a lawsuit for dissolution to hold more than 10% of the voting rights of all shareholders of the company. Moreover, according to the principle of law and economics, if judges think that dissolution and liquidation of a company is uneconomical for both minority shareholders and controlling shareholders, they will refuse to apply judicial relief measures for liquidation and dissolution of a company.

4. Problems in the control right regulation of listed companies in china

4.1 Major shareholders abuse the control of listed companies and infringe on the interests of small and medium shareholders

The general meeting of shareholders of listed companies in China adopts the principle of majority decision of capital. As the rules of procedure of collective decision-making mechanism, the principle of majority decision of capital embodies the right to speak of the majority, but this "number" is determined by capital. At the general meeting of shareholders, it can have a decisive influence on the appointment and remuneration of directors and supervisors. There are often representatives of controlling shareholders in the board of directors and senior managers, and the controlling shareholders themselves are also members of the board of directors, so that they have a dominant position in voting on the board of directors and can actually grasp the control rights of the company. Therefore, it is not uncommon for companies to violate the interests of minority shareholders in their actual operation.

Controlling shareholders take advantage of their voting position in the shareholders' meeting to transfer their non-performing assets to listed companies according to the assessed value, or transfer their assets with certain profitability to listed companies at a price much higher than the market value. The bank shall issue a certificate of payment, or collude with the asset appraisal institution and capital verification institution to issue a certificate of property ownership transfer and capital contribution, so as to defraud the company's registration, thereby obtaining the company's equity and infringing on the legitimate rights and interests of other shareholders. Controlling shareholders often use listed companies to guarantee their debts for profit. Once the controlling shareholder is in debt crisis, the listed company will bear the guarantee responsibility for it. Based on the control and controlled status between the controlling shareholder and the listed company, even if the controlling shareholder has the ability to pay off to the listed company, it will not pay off.

4.2 Small and medium shareholders are lazy in

exercising their rights

Small and medium shareholders are scattered in different places, even if they all get together for a meeting, it is difficult to reach a consensus. Small and medium shareholders don't know much about the company's operation, so they need to pay a certain cost to understand the company's operation, which may reduce their own income. In addition, due to the differences in their own abilities, it is difficult for them to make reasonable judgments on whether the company's decisions are in line with their own interests. Many small and medium-sized shareholders are holding a wait-and-see attitude to see whether other shareholders exercise their power. If other shareholders exercise their power, they will advocate their own power, but they are unwilling to take the initiative to stand up and supervise. The final result is that everyone will not supervise. Most of its investments are aimed at obtaining the price difference in the secondary market, lacking the enthusiasm to participate in corporate governance, and unable to deny the management's decision. Therefore, the control right of listed companies can easily be controlled by controlling shareholders and management.

4.3 The market development of corporate control rights lags behind

It refers to the acquisition of control over enterprises by collecting equity or voting agency rights, so as to achieve the purpose of taking over and replacing bad management. It is an external governance mechanism that leads to the transfer of corporate control rights by means of external market mechanism, and then supervises corporate managers. This kind of collection can be bought gradually from the market, or it can be bought in batches from the big shareholders. Compared with developed countries in Europe and America, China's control market started late, developed slowly and was not very mature. There are some problems, such as the imperfect basic system of stock market, the imperfect laws and regulations of company merger and acquisition, and the complicated administrative examination and approval procedures in the transfer of company control rights.

5. Legal regulation of controlling shareholders' abuse of influence in China's company law

5.1 Definition of controlling shareholder

In the history of company law, the theory of company law is mostly based on the principle of capital majority decision, and whether it constitutes the controlling shareholder of the company is judged according to whether the capital contribution is more than half. With the decentralization of shareholders' structure in the capital market, besides voting rights, more and more attention has been paid to the dispatch, cooperation and financing of the company's operators. Therefore, including these elements in the judgment standard of controlling shareholders has gradually formed the mainstream judgment standard today [19].

In the "principal-agent" relationship, in order to reduce the agency cost of directors in managing corporate affairs and executing corporate business, the laws of various countries have strengthened the directors' obligations in corporate governance structure. A series of issues, such as what kind of obligations the company directors should undertake as agents, their legal status, and how to regulate their tort, are all included in the scope of fiduciary duty (Figure 1).

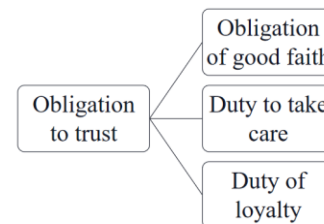

Figure 1 Contents of directors' fiduciary duty

In Japan's company law, the definition of parent company and subsidiary company in Japan's commercial law used the formal standard of more than half of the capital contribution. In Japan's company law established in 2005, the definition of controlling shareholder was adjusted, and the formal standard was retained while the substantive standard was added (Item 3 and Item 4, Article 2, Paragraph 1, Japanese Company Law). In addition, the definition of controlling shareholder in the Corporate Governance Guidelines formulated by the American Law Society also adopts the same standard as that in Japan [20].

According to Item 2, Paragraph 1, Article 216 of the Company Law, the controlling shareholder of the company shall be constituted if it meets any of the following requirements: (1) The amount of capital contribution accounts for more than 50% of the total capital contribution of the company; (2) Holding shares accounts for more than 50% of the total shares of the company; (3) Even if the amount of capital contribution or shares held is less than 50%, the voting rights of the company due to the amount of capital contribution or shares held can have a signify-

cant impact on the resolutions of the shareholders' meeting.

5.2 Relationship between improper exercise of influence by controlling shareholders and abuse of rights by shareholders

According to Article 21 of the Company Law, controlling shareholders shall not use their influence on the company to harm the interests of the company. If the controlling shareholder violates this regulation, it should bear the corresponding liability for damages. As for the direction of this regulation, if it is expressed literally in Article 21 of the Company Law, it is obviously a company. Therefore, we can find that there are differences between the legal consequences of controlling shareholders' improper exercise of influence and the legal consequences of controlling shareholders' abuse of shareholders' rights. In short, if the controlling shareholder damages the interests of other shareholders due to abuse of shareholders' rights, it should bear the corresponding liability for damages, while if the controlling shareholder damages the interests of shareholders due to improper exercise of influence, it is not necessary to bear the liability for damages to the injured shareholders. This structure obviously has problems in the balance and fairness of the system.

The author thinks that the reason of the "relationship" between the controlling shareholder and the company is that the controlling shareholder holds a majority of shares, so the controlling shareholder has influence on the company. Therefore, "improper use of the relationship" can be included in the category of "abuse of shareholders' rights". This arrangement is obviously very natural and fair. From the perspective of legal interpretation, it can be said that it is natural and proper to attribute the "improper use of related relations" stipulated in Article 21, paragraph 2 of the Company Law to the "abuse of shareholders' rights" stipulated in Article 20, paragraph 2 of the Company Law. This point, as a potential logical relationship between Article 20 and Article 21 of the Company Law, is very noteworthy.

5.3 The scope of responsibility for controlling shareholders' abuse of influence and the means of accountability

Regardless of whether the improper exercise of influence by the controlling shareholders harms the interests of the company or other shareholders, the controlling shareholders should bear the liability for damages to the victims. For the company's losses, in addition to the company's obligation to file a lawsuit for damages against the controlling shareholder, other shareholders (mainly minority shareholders) of the company can also pursue the controlling shareholder's liability for damages to the company by filing a lawsuit on behalf of shareholders in accordance with Article 151 of the Company Law. Whether "shareholder's loss" only refers to "direct loss" or also includes "indirect loss" is controversial. For this problem, there is a view that because indirect losses can be solved by shareholder representative litigation, "shareholders' losses" should be limited to direct losses [21].

There are three types of self-transaction behavior: one is the transaction between the fiduciary duty and the company; Second, the fiduciary duty holder has substantial economic interests in the transaction; Third, the transaction between the company and the person related to the fiduciary duty or the person related to the fiduciary duty has substantial economic interests in the transaction (Figure 2).

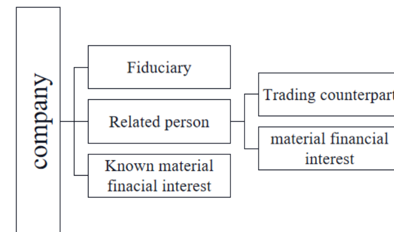

Figure 2 Scope of self-transaction

In many cases, the controlling shareholder is also the operator of the company. In this case, the means to protect minority shareholders is limited to shareholder representative litigation. Even if minority shareholders win the lawsuit and restore the interests of the company, as long as the ownership structure of the company has not changed. The biggest difference between indirect damage and direct damage is whether the company has suffered damage or not. There is no difference between shareholders who are victims, whether directly or indirectly, and shareholders who are victims, whose interests have been damaged by controlling shareholders' abuse of rights. From this point of view, it is unreasonable and unnecessary for the law to deliberately distinguish between direct loss and indirect loss, and then deny indirect loss.

5.4 Actual controllers and controlling shareholders abuse their influence

In the regulation of controlling shareholders' abuse of influence, the actual controller, like controlling shareholders, may not damage the interests of the company by taking advantage of the

status of association (Article 21, paragraph 1, Company Law). If the actual controller violates this regulation and damages the interests of the company, the actual controller also needs to bear the liability for damages to the company. Of course, because the actual controller does not have the obligation of not abusing shareholders' rights like the controlling shareholders, even if the actual controller abuses its influence and damages shareholders' interests, it does not need to bear the liability for damages to shareholders.

6. Perfection of control right restriction mechanism of listed companies in china

6.1 Improve the classified voting system for classified shareholders

Classification voting system, also known as classification voting system, refers to the system in which shareholders vote separately according to the different types of shares they hold. Before 2004, non-tradable shareholders relied on the principle of "majority decision of capital" in the modern company system, and made use of their shareholding advantages to often make resolutions infringing on the interests of tradable shareholders in shareholders' meetings, so the legitimate rights and interests of tradable shareholders could not be guaranteed. We can't think that the shareholder classification voting system should also be abolished. In fact, it is common for controlling shareholders to abuse their control rights and infringe upon the interests of other shareholders, whether in the developed securities markets in Britain and America or in the securities markets under the conditions of economic transition like China.

The purpose of establishing the voting system of class shareholders is to let small and medium shareholders express their opinions on major issues concerning the core interests of small and medium shareholders, so that large shareholders can not despise the wishes of small and medium shareholders, avoid controlling shareholders infringing on the legitimate rights and interests of small and medium shareholders under the principle of capital majority decision, and coordinate the interests of controlling shareholders and small and medium shareholders. At the same time, we should also limit the share of small and medium shareholders who participate in the general meeting of classified voting shareholders, and those who fail to meet the requirements of holding shares cannot participate in the general meeting of classified voting shareholders. Classified voting system for classified shareholders needs to be implemented through perfect design procedures and related supporting systems. China has a vast territory, with a large number of small and medium-sized shareholders scattered all over the country, so it is difficult to have time to gather together to hold classified voting shareholders' meetings. With the popularization of Internet in China, the introduction of online voting system can solve this problem well.

6.2 Coordination between Company Law and Securities Law

Companies and securities are economic phenomena with natural connection, which also leads to the close connection between the Company Law and the Securities Law. With the development of the securities market, there are higher requirements for the governance structure of listed companies, but the current company law lacks corresponding system norms. Therefore, the securities regulatory authorities have formulated many departmental regulations that belong to the scope of company law, such as the independent director system, the norms of related party transactions, the convening and resolution procedures of shareholders' meetings of listed companies, etc. These departmental regulations should be classified into the scope of company law in content.

The new "Company Law" deletes the listing conditions, suspension of listing and suspension of listing, and only retains the special provisions on the organization of listed companies, and adds the independent director system and the related party transaction standard system. These additions and deletions have achieved the coordination of the two laws to a certain extent, but there should be some matters that need to be clarified. In the regulation of mutual shareholding of companies, the holding restrictions and voting rights restrictions of mutual shareholding of companies belong to the legal norms of companies; The disclosure of mutual shareholding information of companies is a legal norm of securities. As for the right to appeal, some types of litigation for minority shareholders may not be stipulated in the company law, but be left to the neighboring laws such as Securities Law (such as controlling shareholders and directors engaged in insider trading and market manipulation in listed companies), Contract Law (such as liability for breach of contract in equity transfer contract), Inheritance Law (such as equity inheritance), Marriage Law (such as equity division in divorce)

6.3 Construct and improve the related party transac-

tion system and rules

First of all, because the obligations undertaken by controlling shareholders, actual controllers, directors and senior managers in related party transactions are essentially part of the fiduciary duty, the provisions on related party transactions should be under the control of fiduciary duty, that is, the provisions on loyalty duty and diligence duty in Article 148 of the Company Law should be advanced to the General Section of the Company Law, which plays a role in guiding the fiduciary duty of directors in limited liability companies and joint stock limited companies. The author thinks that in order to make the law forward-looking, it is better to legalize the basis of directors' obligations in the general chapter of China's Company Law in accordance with American law, directly put forward the theory of "fiduciary duty", and use "fiduciary duty" to unify the duty of loyalty and diligence.

Secondly, Article 21 of the Company Law remains in the General Chapter of the Company Law, but in order to maintain the beauty of logic, it is suggested that it should come after the provision on fiduciary duty. At the same time, the voting rights guaranteed by the company for shareholders or actual controllers in the second paragraph of Article 16 of the Company Law can be integrated with Article 149 of the Company Law, and be located behind the related party transaction clauses, as one of the infringement cases of directors in related party transactions.

Furthermore, in the limitation of directors' liability, China can try the intentional exemption method first, and then gradually open to the statutory exemption method after the system matures. In order to prevent the major shareholders from manipulating the resolutions of the shareholders' meeting, the author suggests that there should be strict meeting notification procedures and voting procedures for the ratification of directors' behaviors in China, and the approval of the board of supervisors should be obtained for the ratification.

Finally, China should increase the liability insurance system for directors, so as to increase the liability of directors and relieve their pressure, and encourage them to continue to operate enterprises after making mistakes, so as to keep the company running safely and steadily.

6.4 Control premium and its attribution

In the process of corporate control trading, controlling shareholders can usually sell their shares at a price higher than the market price, while minority shareholders have repeatedly questioned this and demanded equal sharing of this value. When a certain number of shares are combined, the company's mechanism only gives the controlled value to this part of shares, while other shares are not enjoyed. Therefore, the control value contained in the shares held by the controlling shareholder belongs to the property of the company. When the controlling shareholder sells the shares, the part of the income obtained because the shares contain control rights should belong to the company. If it is based on the company opportunity theory, the company behavior theory or the company position selling theory, it should be re-acquired by the company; Because the court held that the value could not fall into the hands of the wrongdoer (that is, the buyer who paid the premium) [22].

In order to promote the occurrence of control right transaction, American courts still consciously or unconsciously take "wealth maximization" as the starting point to deal with control right transaction cases. As a result, the controlling shareholders will not be required to share the premium with others in principle. This premium is the extra price that investors are willing to pay for the power that directly affects the affairs of the company. At present, state-owned shares and legal person shares cannot be listed and circulated in China's securities market, so it is unlikely to produce a control premium higher than the price of tradable shares (there may be exceptions to the agreement acquisition). At the same time, we need to investigate the economic and social background of our country under specific circumstances, and balance the interests between pursuing fairness and maximizing efficiency, without sacrificing fairness and justice, and pursuing the maximization of the benefits of the company and shareholders.

7. Conclusion

The consequence of controlling shareholder's abuse of control right is that it directly damages the interests of the company or other minority shareholders, and the damage of the company's interests is finally reflected in the interests of other minority shareholders or creditors. The regulation of controlling shareholders in China is based on the simple scene that "controlling shareholders harm the interests of the company and other shareholders for their own interests", and its judgment of good and evil is also very clear. However, from a broader perspective, the essence of controlling shareholders

regulation is to adjust the interests between shareholders, more specifically between controlling shareholders and small and medium shareholders. It is possible to limit the commitment of part or all of its responsibilities through the effective ratification of the shareholders' meeting or the board of directors, and it is also necessary to establish a director liability insurance system to reduce the professional risks of directors.

Political democracy originates from the development of market economy, which is a fair, equal and paid legal economy, which inevitably requires the implementation of democratic principles and spirit in the arrangement of economic system. To strengthen the legal protection of the legal rights and interests of the minority shareholders of the company, so that the rights can be relieved, and investors can fully express their wishes and reap the expected legal interests, which will inevitably enhance the investment confidence and democratic awareness of the majority of investors, thus making the whole society develop economically and the democratic concept deeply rooted in the hearts of the people.

References

[1] Zhu Deyu. The impact of the full subscription system on shareholders' defective investment-from the perspective of the capital system reform of the newly revised Company Law in 2013 [J]. Journal of Heilongjiang Ecological Engineering Vocational College, 2017, 030(003):43-47.
[2] Monsalve S, Ferreira F, Garcia R. The connection between animal abuse and interpersonal violence: A review from the veterinary perspective[J]. Research in Veterinary Science, 2017, 114:18-26.
[3] Dong Zhongyuan. On the perfection of the legal regulation of controlling shareholders in the company law [J]. Foreign Trade and Economic Cooperation, 2018, No.289(07):142-144.
[4] Jelena Perović. Limitations on liability for loss caused by a breach of business contracts: From the perspective of the Serbian Law on Obligations[J]. Ekonomika preduzeca, 2017, 65(7-8):468-479.
[5] Pu Ting. Analysis on a Translation of a Tourism Text from the Perspective of Comparative Stylistics [J]. Campus English, 2018, No.437(49):223-224.
[6] Puosi F, Pasturel A, Jakse N, et al. Communication: Fast dynamics perspective on the breakdown of the Stokes-Einstein law in fragile glassformers[J]. Journal of Chemical Physics, 2018, 148(13):131102.
[7] Zhu Daming, Xing Gang Muyan. The legal regulation of controlling shareholders' abuse of influence-from the perspective of the comparison of Chinese and Japanese company laws [J]. Tsinghua Law, 2019, 13(02):69-87.
[8] Du Weihua. Research on the Protection of the Rights of Small and Medium Shareholders Based on the Company Law [J]. Staff Legal World: Next, 2018, 000(002):147-147.
[9] Weeks L, Dupuis-Blanchard S, Arseneault R, et al. Exploring gender and elder abuse from the perspective of professionals[J]. Journal of Elder Abuse & Neglect, 2017:127-143.
[10] Wang Q, Jiang X T, Yang X, et al. Comparative analysis of drivers of energy consumption in China, the USA and India - A perspective from stratified heterogeneity[J]. The Science of the Total Environment, 2020, 698(Jan.1):134117.1-134117.10.
[11] Lombardi C. The passing-on of price overcharges in European competition damages actions: A matter of causation and an issue of policy[J]. Social Science Electronic Publishing, 2018.
[12] Zhang Haibo. Analysis of the preemptive right of shareholders under the background of Judicial Interpretation of Company Law (IV) [J]. Legal Expo, 2019, 000(013):171.
[13] Chen Zerong, Fang Si, Liu Minxian. Analysis of shareholders' right to know-from the perspective of Judicial Interpretation IV of Company Law [J]. China Logistics and Purchasing, 2020(1):69-70.
[14] Wang Rui. Analysis on the protection of the interests of minority shareholders in company law [J]. Legal Expo, 2018, 000(016):P.189-189.
[15] Sun A S. Research on Protection of Consumer Personal Information From the Perspective of Consumer Protection Law[J]. Applied Science & Management Research, 2017, 4.
[16] Jiang Yingfan. On the legal regulation of controlling the abuse of shareholders' rights-from the perspective of the principle of capital majority decision [J]. Legal System and Economy, 2018, No.446(05):107-109.
[17] Shuai S, Fan Z. Modeling the role of environmental regulations in regional green economy efficiency of China: Empirical evidence from super efficiency DEA-Tobit model[J]. Jour-

nal of Environmental Management, 2020, 261(May1):110227.1-110227.8.

[18] Wang yi. legal regulation of controlling shareholders' abuse of control [J]. modern business, 2018, 000(021):79-80.

[19] Zhao fengyin. protection of shareholders' rights and interests of tea enterprises from the perspective of new company law [J]. Fujian tea, 2018, 40(6): 76-76.

[20] Mathis S M, Hagaman A, Hagemeier N, et al. Provider–patient communication about prescription drug abuse: A qualitative analysis of the perspective of prescribers[J]. Substance Abuse, 2019(1):1-11.

[21] Liu W, Yang Y, Wang S, et al. A scheduling model of logistics service supply chain based on the time windows of the FLSP's operation and customer requirement[J]. Annals of Operations Research, 2017, 257(1-2):183-206.

[22] Shuai S, Fan Z. Modeling the role of environmental regulations in regional green economy efficiency of China: Empirical evidence from super efficiency DEA-Tobit model[J]. Journal of Environmental Management, 2020, 261(May1):110227.1-110227.8.