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The Protection of the Rights and Interests of the Actual Investors in the Equity Proxy Holding

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Abstract: The investment method of stock holding on behalf of the actual investors not only meets the anonymous investment needs, but also makes the investors bear a series of legal risks, which will easily cause the actual investors' rights and interests to be damaged and lead to disputes. The corresponding rules of our current law are not perfect, and even the basic problems of the concept of equity proxy have not been clarified, which leads to the lack of effective protection of the rights and interests of the actual investors in judicial practice. Based on the actual situation of our country's current laws and regulations, the legal perfection of the protection of the rights and interests of the actual investors should start from the study of the basic theories, and make clear the basic concepts in the relationship of stock rights proxy as the starting point, based on the actual defects of our current law and the needs of judicial practice, and taking the analysis of theory and legislative practice inside and outside the country as the path, in order to perfect the related legislation, we should analyze the legal disputes in the way of stock holding in theory and practice systematically. The. The second part is the summary of the legislative status and judicial practice of protecting the rights and interests of the actual investors in our country. In this part, the author analyzes the inadequacy of the current law about stock right proxy in our country, and makes a systematic analysis of the disputes in judicial practice.

Keywords: The Stock Right Proxy Holds; The Actual Investor; The Nominal Shareholder; The Actual Investor's Rights and Interests.

1. Introduction

In recent years, the rapid development of the market economy in our country under the general environment, to promote the company as a commercial subject of the economic status continues to rise. As a kind of comprehensive right closely related to the normal production and operation of the company, the exercise and legal protection of the stock right has the practical interests of the shareholders, the company and the creditors. Today, with frequent business activities and diversified forms of investment, equity proxy is favored by investors because of its high maneuverability, privacy and efficiency. But everything has two sides, this kind of investment way constructs the equity “The name separates the reality” the right structure, has caused the related question in the academic argument, it has a direct impact on how to resolve disputes over proxy ownership in practice. For example, there are different opinions on the legal nature of the proxy holding, such as partnership, agency or trust, form, substance or internal and external differentiation.

In order to solve the frequent disputes in judicial practice, the relevant legal system is also being improved. At the same time, although the local high court has issued the relevant trial guidance opinion combining with the local characteristics, due to the limitation of its effectiveness and scope of application, the application of protecting the rights and interests of actual funders also appears to be limited. The unclear judicial interpretation and the unclear application of the legal relationship of stock ownership will not only lead to different judgments in the same case, but also lead to frequent legal risks in investment activities, the legitimate rights and interests of actual investors can not be effectively protected. On the one hand, from the academic point of view, through in-depth analysis and study of our existing system of stock rights holding holds in the more controversial theory, to clarify the legal nature of stock rights holding, the legal relationship theory, straighten out the logical structure behind the theory of the proxy holding. On the other hand, from a practical point of view, to analyze and make up as far as possible the theoretical loopholes in the protection of the rights and interests of the actual investors, and to promote the formation of a unified rule of adjudication, avoid the phenomenon of different judgments in the same case in judicial trial. In order to balance the interests of the main parties, stimulate the main commercial investment enthusiasm, and maintain the steady development of the market.

2. Theoretical Analysis of Improving the Protection of the Rights and Interests of Practical Contributors

2.1. Current Status of Rules at the Legal Level

Our country's current law does not make a special provision for the contract type of the equity proxy agreement, so it belongs to the unnamed contract in the contract type. On the basis of different understanding of the nature of stock ownership proxy, we should refer to different legal provisions to deal with this issue. If the shareholding is considered to be an agency relationship, then the rights and responsibilities of the parties shall be distributed in accordance with the provisions of the civil code; if it is considered to be a trust relationship, then the rights and responsibilities of the vicarious subject should be adjusted according to the trust law; if it is considered to be a partnership, then it should be dealt with according to the relevant provisions of the partnership enterprise law. After clearly defining the nature of proxy ownership, it is helpful to analyze more clearly the legal relations and the distribution of rights and responsibilities among proxy subjects by referring to the specific legal

provisions under different relations, so as to solve the problem of the rights and interests of the actual investors.

The actual investor to implement the investment behavior of the relevant legal provisions will also have a certain impact on their rights and interests. The provisions of the company law are comprehensive and concrete, including the norms of the procedures of the establishment, organization and operation of the company, as well as the legal norms of the rights and obligations of shareholders and the internal and external relations of the company. Although the “Company law” does not provide for the rights and interests of actual investors, but may also have a regulatory effect on the rights and interests of actual investors.

2.2. Status of the Rule at the Level of Judicial Interpretation

Article 24 of “Judicial Interpretation of company law (3)” recognizes the validity of the agreement of stock right proxy, and for the first time, this investment method of stock right proxy is approved at the legislative level, fully respecting the autonomy of will, however, there are no provisions on the legal status of the actual investors and the specific content of the protection of their rights and interests. In addition to Article 26, which belongs to the actual investor to fulfill the obligation of contributions, article 24,25 are related to the actual investor's rights and interests. The provisions of Article 24 of judicial interpretation of company law (3) are an important embodiment of protecting the rights and interests of actual investors. If the actual investor can provide evidence to support the investment facts, the People's court will not support the objection of the nominal shareholder's request to confirm that the actual investor is not the shareholder of the company. In addition, article 25 of the judicial interpretation of company law (3) provides that after the nominal shareholders transfer their shares without authorization and the third party obtains the shares in good faith, when the actual investor's investment rights and interests are damaged, he can only ask the nominal shareholders for compensation. However, “Judicial interpretation of company law (3)” does not provide for the actual investors to enjoy the specific types of rights and interests and content. The relevant judicial interpretation provisions can not be fully applied to deal with the current types of diverse and gradually complicated disputes of shareholding, there is a limited scope of adjustment and circumstances of the characteristics.

The above reasons directly lead to the actual investors in the implementation of investment behavior and the establishment of the relationship between their own rights and interests is difficult to form a correct understanding and understanding, naturally, there may be loopholes or unfavorable factors in the rights and obligations arrangement between the actual investors and the nominal shareholders, resulting in the occurrence of disputes [1] .

2.3. Status of the Rules at the Level of the Court's Trial Guidance Recommendations

The “Opinions on handling certain issues concerning the trial of cases involving company litigation” issued by the Shanghai higher people's court clarifies the rights and responsibilities of actual investors and the way to handle the private transfer of shares by nominal shareholders. In addition, it makes an opinion on the conditions for determining whether there is a relationship between the two parties on behalf of shareholding, and considers that if there is no relevant content on behalf of shareholding in the agreement or no relevant act on behalf of shareholding is performed in practice, the creditor's rights and liabilities.

In the opinions on certain issues concerning the trial of company dispute cases issued by the Shandong provincial high people's court (trial) , it is made clear whether the parties have made an agreement on the ownership of shares in the relationship of proxy ownership and the consequences of investment acts, etc. , if the agreement or the actual behavior can not be found to exist, it can also be found that there is no holding relationship, but the creditor's rights and liabilities relationship. In addition, the actual investors may be jointly and severally liable for corporate debt to explain the situation.

The Supreme People's Court has also issued judgment opinions on cases concerning disputes over proxy stock ownership, with 13 typical cases as indexes, this paper gives some opinions on the practical problems, such as whether the actual investor can exclude the third party's enforcement, the effectiveness of the act of Commercial Bank's holding on behalf of the third party, and the definition of the relationship between the holding on behalf of the third party and the relationship between the creditor's rights and debts.

To sum up, although the above-mentioned guidelines can be used for reference for dispute settlement in practice, they may not be fully applicable to all disputes due to the limitation of case selection and the particularity of the situation, there is still ambiguity in the application of the law regarding the protection of the rights and interests of actual investors.

2.4. Status of the Rules Governing the Application of Guidelines on Civil Causes of Action

The cause of a case is one of the most direct reflection of the nature, content and legal relationship among the subjects of a dispute. It is very important to determine the cause of a case in the stage of filing a case and to adjust the cause of a civil case in court. Especially in the case of disputes of stock ownership proxy, different legal relations require different rights and obligations of the proxy subject. If the parties to the existence of a proxy relationship.Lack of evidence or inconsistent understanding of the case may lead to the case on the loan contract recognized as a dispute, resulting in the actual loss of the rights and interests of investors.

In the judicial practice, the disputes of stock ownership are relatively concentrated, except for part of the entrustment contract disputes, entrustment.In addition to the disputes over financial contracts, most of them are disputes relating to the company in Article 242 of the provisions on the causes of civil cases Disputes, that is, disputes over the recognition of shareholders' qualifications. On the one hand, different cases directly or indirectly reflect shareholding. How the rights and obligations of the two sides agreed, agreed how to implement and how to identify the legal relationship and so on. On the other hand, different causes of the case will also involve different legal norms to deal with the allocation of rights and obligations, if the cause of the case is correct. The author thinks that the principal contract disputes should be balanced by the relevant stipulations of principal-agent in the case trial,Responsibility involves the common adjustment of commercial law and civil law. Therefore, it is accurate to determine the ownership relationship. The cause of the case is very important, and it can help the judge and the parties to understand the case correctly and analyze the legal relationship between the vicarious subjects.To lay the

foundation plays a key role in determining the judgment path to protect the rights and interests of the actual investors. [2]

3. Theoretical Analysis of Improving the Protection of the Rights and Interests of Practical Contributors

3.1. An Analysis of the Nature and Validity of ESO Agreements

Based on the convenience and diversification of commercial transactions, the ways and means of establishing the relationship of stock ownership are complex and changeable, which directly leads to the diversification of the form and content of stock ownership agreement. In practice, in order to achieve quick transactions, hidden needs and other purposes, equity holding agreements are often concluded orally, due to the lack of written terms caused by related disputes. However, in the written holding agreement, there are contract terms are not clear, or even lack of breach of contract Terms. An objective statement is not considered when the parties reach an agreement. [3] therefore, if there are problems in the form and content of the escrow agreement, it is likely to lead to the negation of the establishment of the escrow relationship in the judgment, and even affect the liability of the nominal shareholders to breach the escrow obligation. Therefore, the standard of validity and the consequence and relief of invalidity of the agreement should be made clear.

3.1.1. The Nature of the Escrow Agreement is Established

Although the judicial interpretation of company law (3) takes a positive attitude towards the legality of the equity proxy agreement, the nature of the equity proxy agreement has not been determined, directly lead to the lack of unified judicial process of thinking, the specific conclusion of the trial will inevitably appear the scale of different rights and interests of the problem. It is not appropriate to draw a conclusion directly when judging the legality and validity of the stock ownership agreement, but to determine the legal nature of the agreement first. [4] At present, there are three theories in the qualitative analysis of the equity holding agreement: The Theory of anonymous partnership, the theory of agency relationship and the theory of trust relationship.

Equity proxy is an anonymous partnership. A silent partnership is one in which some of the partners participate in the operation and Assume Unlimited Joint and several partnership debts. The rest of the partners are anonymous, assume capital obligations and share liability for losses within the limits of capital contributions. Thus, the relationship constructed by the silent partnership is indeed similar to that of the equity proxy. First, both are based on a certain degree of trust to enter into relevant agreements with the consent of those engaged in business operations and management activities; second, both are financed by anonymous investors and enjoy specific investment returns; and finally, both are exercised by anonymous investors, direct participation in the management of the company. Some people think that partnership is more beneficial to explain the real relationship between the risk-sharing and benefit-sharing. [5] but I think this view is not completely consistent with the structure of the legal relationship between the equity proxy, and the debt assumption rules of the two are different. If it is considered that the shareholding is a partnership, the nominal shareholders should bear unlimited joint and several liability, which unreasonably expands the scope of the corporate debt that they should bear supplementary liability. In addition, it is not proper to deal with the relationship of stock ownership of listed companies and financial institutions, and the relationship of "Incomplete ownership".

Proxy ownership is a principal-agent relationship. If it is regarded as an agency relationship, both parties shall exercise their rights in accordance with the agreement by entrustment. From this point of view, the agency is indeed more relevant to the logic of equity ownership than partnership. Part of the point of view that the legal relationship between the ownership of shares and the characteristics of the anglo-n law system is the same as the secret agent, combined with our civil and commercial law system, it can also be regarded as an indirect agent. [6] however, if it is regarded as agency relationship, it cannot break through the provisions of "Company Law" and judicial interpretation on such issues as the qualification of shareholders and the name of actual investors, which will result in rule conflicts.

The stock right proxy holding belongs to the trust relation. To define proxy holding as trust can give proxy ownership independence, which cannot be formed by proxy relationship. [7] Referring to the trust relationship, the distribution of rights and obligations of the proxy holding of stock rights can be constructed as the exercise of shareholder rights by the nominal shareholders entrusted by the actual investors. Therefore, both parties are legally responsible for the performance of trust obligations and bear the consequences of breach of trust obligations. Therefore, it is reasonable for the trust relationship to satisfy the characteristic that the property is independent of the actual investor under the above two legal relations.

The evaluation of three theories: in the handling of specific cases, the nature of holding stock rights will lead to different judge's discretion. For example, when dealing with the case of whether the actual investor can be named, if equity holding is regarded as an indirect agent, then the actual investor, as the principal, enjoys the right of intervention provided in Article 926 of the Civil Code, and may claim the right of publicity on this basis; in a trust relationship, if the nominal shareholder is a trust company or its principal business is a proxy, it can not be named unless the trust terminates with the actual investor as the principal. [8] for example, in a trust relationship, the relevant provisions on the duration and obligations of the trust should be taken into account, and the actual investor can not be given an arbitrary right to rescind the trust at will. In an agency relationship, in general, the actual investor has the right to terminate at will.

To sum up, it is very important to analyze and judge the above three theories in theory, so as to determine the nature of the escrow agreement.

3.1.2. The Criteria for Determining the Validity of an Agreement on the Representation of Stock Rights

Equity proxy holding should be formed by agreement. Of course, there are also non-agreement forms of proxy holding, most appear in the impersonation of shareholders, transfer of shares or gift after not timely registration of changes, and so on, only a short-lived fact holding, this situation does not fall within the scope of this article. This article focuses on the proxy relationships that are commonly found in practice in the form of agreements. There is no formal legal requirement for holding an agreement on behalf of the contract, as long as there is no civil legislation provided that the contract is invalid,

it should be recognized in writing or oral agreement. Although written agreement and oral agreement have the same status in effect, but especially in the disputes involving multi-party shareholding, written contract is much stronger than oral contract.

On the one hand, if there is no written agreement, it is difficult to identify the nature of investment, and indirect shareholding, private lending, equity transfer and other relations are easy to produce confusion. [9] such as "Xu, Wu and Jun Yue real estate company, Wang and other equity transfer disputes," the court held that, "Xu, Wu by indirect shareholding means is the actual control of the target company, not the case of the actual shareholders involved in the equity.". In the case of du V. Zhang in a company-related dispute, the court held that "The agreement in question had the content of share-holding on behalf of a significant character, and therefore did not support the claim that the loan relationship." In the "Guohong real estate company and Shenyin Securities Company property rights dispute case," The court held that: "The case involves an agreement not on behalf of the agreement but the Equity Transfer Agreement, the agreement to transfer consideration and other related issues as the main content.". Therefore, the defendant's holding of the disputed legal person's shares is not an act of holding on behalf of the defendant." Professor Zhao Xudong questioned the verdict of the case, the author thinks that the nature of the contract only focuses on the formal contract of assignment, while neglecting the substantive evidence and facts.

3.1.3. The Boundaries of Reasonableness of the Conditions Applicable to Third-Party Bona Fide Acquisitions

The legal and effective agreement of stock ownership is an important basis to solve the disputes arising from the performance of the contract. At present, the judgment path to determine the validity of the proxy agreement is relatively uniform, while in the proxy relationship involving the participation of special subjects such as listed companies, because of the lack of detailed legislative explanation, there are different criteria for determining the invalidity of such proxy agreements. In addition, the current law does not have a clear answer to the question of how to distribute the equity and other rights and interests reasonably after the substitute holding agreement is deemed invalid. In order to perfect the relevant rules of protecting the rights and interests of actual investors, it is necessary to further analyze the distribution of rights and interests and the way of relief after the substitute holding agreement is found to be invalid.

In theory, the judicial interpretation of company law (3) makes it clear that as long as there is no such situation as stipulated in article 153 of the Civil Code, any kind of proxy relationship should be recognized and protected by law, that is, proxy agreement as long as it does not violate the law, the mandatory provisions of administrative regulations or social order.All customs are valid. Based on the two types of invalid civil juristic acts stipulated in article 153 of the Civil Code, the general way to judge the validity of the agreement on behalf of the holder can be roughly summarized as: to find the basis that can prove the relationship between the holder-to confirm whether the agreement on behalf of the holder violates the law or the public interest-to explain the basis and effect that the agreement on behalf of the holder violates the law or other interests-to declare the agreement on behalf of the holder invalid. Judicial decisions and academic theories still have different opinions on the criteria of invalidation of the agreement on proxy, especially on the validity of the act of proxy involving special subjects. In addition to the existing legal rules, the revision of the future company law makes the criteria for determining the invalidity of the agreement of stock rights holding more clear.

After the conclusion that the basis of the agreement is invalid, the ownership of the shares invested by the actual investors and the balance of the public interests are realized, it is a useful consideration to protect the rights and interests of the actual investors in the environment of frequent business transactions. Specifically, the court found that the other agreements or related acts can not be invalid after the nullity of the agreement with the following three doubts: first, the nullity of the agreement with the investment act caused by the nullity of the Investment Act? Part of the argument is that the invalidation of the agreement will lead to the invalidity of the Investment Act. However, the view was also expressed that although the agreement on behalf of the holder was invalid, the validity of a series of other acts of the two sides should be considered separately. Second, how does the proxy ownership belong? The prevailing view in practice is that the shares involved in the case should belong to the nominal shareholders. Third, what about equity appreciation? There is a difference in the nature of compensation and discount compensation, similar to the return of unjust enrichment. [10] this generation holds the invalid consequence processing pattern also has in "Foreign investment dispute explanation (1)" manifests. But at present, our country has not stipulated anything about the consequence of the invalidation of the substitute holding of the general subject except the above-mentioned laws and regulations, what to do with the proceeds.

3.2. Theoretical Path Analysis of Actual Contributor Manifestation

When the actual investor wants to obtain the effect of external confrontation through the name, the confirmation of shareholder qualification and the application of the name condition will increase the uncertainty. [11] when the nominal shareholders abuse their rights, the actual investors' rights and interests about the company's operation are often ignored before they are named.

3.2.1. Obstacles to the Naming of Beneficial Owners

The condition of whether the actual investor can be named has already achieved a breakthrough in typology through "The records of nine people", but the existing conditions of recognition will also lead to the actual investor being especially difficult to be named, it is embodied in the following three aspects;

First, from the perspective of maintaining the interests of the actual investors, this mode makes the actual investors into a passive name. The non-shareholding nature of shareholders' capital contribution, the limitation of the number of shareholders and the simplicity of the organization all embody the color of human cooperation. On the one hand, in the case of collusion between nominal shareholders and other shareholders of the company, it will make it impossible for the request to be supported by any means of litigation; on the other hand, when the nominal shareholders have agreed with the actual investors to exit the company, if other shareholders do not agree to exit, it will form the actual investors want to enter the name can not be named, the nominal shareholders who want to exit can not exit the embarrassing situation.

Second, from the point of view of the value of institutional fairness, this condition is hardly fair to the subject of rights

and interests. But in the general transfer of shares, the law sets up the obligation that other shareholders should buy when they do not agree to the transfer. That is to say, the actual investor, as the subject which has a close relationship with the target company, is more strict than the third party who has nothing to do with the company.

Third, from the understanding and application of the provisions, there is still room for analysis. First of all, "With the consent of more than half of the other shareholders of the company" should do specific understanding. Secondly, there is a ambiguity in the time-point understanding of the expression of will by other shareholders, which should be judged on the basis of the shareholders' opinions obtained in the case hearing or the agreement in the normal course of the company's operation. Finally, what should be the understanding of "Implied consent" in the cognizance mode of other shareholders "Implied consent" created by "The records of nine people", it is also a question that should be clarified in the current situation where there are no clear legislative provisions.

3.2.2. The Alternative Path of the Qualification Criteria for Shareholders

At present, there is no unified standard for the determination of shareholder's qualification in theory. After summing up, it can be divided into three kinds of views: "Form theory", "Essence theory" and "Internal and external differentiation theory". As far as the "Form theory" is concerned, the qualification of shareholders is determined by the Articles of Association of the company, the Register of shareholders and the industrial and commercial registration as the form elements, which follow the commercial externalism; [12] as far as the "Substance theory" is concerned, there are still some people in the academic circle that we should adhere to the substantive justice and take the act of capital contribution as a single condition to judge the qualification of shareholders. As far as the theory of "Internal-external differentiation" is concerned, it adopts materialism in dealing with internal disputes and formalism in dealing with external disputes to protect the rights and interests of the third party. In theory, the three theories have both advantages and disadvantages, whether it is the "Essence Theory", which focuses on protecting the interests of actual investors but runs counter to commercial externalism, as well as the "Form theory" of excessive compliance with commercial externalism and the "Internal-external distinction theory" of the possibility of inaccurate certification of complex legal relations, cannot perfectly balance the interests of multiple parties in the shareholding relationship.

In the case of dissension of confirmation of shareholder's qualification between Dai Jia and Wang, the Court regards the receipt of investment payment as the fact element of confirmation of shareholder's qualification of actual investor And in the case of "Ma Zhitao et al and outsiders in the Wujiang case" [13], the court held that if the shares are registered in the name of the nominal shareholders, then they are shareholders in the legal sense, therefore, the actual funders cannot resist the enforcement of the shares by the bona fide third party, and in the camp of "Inside-outside distinction theory", most of the courts judge by this standard, but in the judgment of the show is still inclined to "Substance". In short, the lack of a unified qualification criteria for shareholders lead to actual investors may not be able to successfully through the "Name" and the target company to establish links. [14] therefore, the current reform of company law should make precise and uniform provisions on the qualification standard of shareholders.

3.3. Analysis of the Problem of Equity Transfer Caused by Nominal Shareholders

3.3.1. The Third Party Obtains in Good Faith the Reasonable Boundary of the Applicable Conditions

In the investment model of proxy holding, if the nominal shareholders can properly exercise their "Shareholder rights" under the proxy contract, the probability of disputes will be greatly reduced. However, in practice, when the nominal shareholders hold the shares on behalf of the actual investors, they often make use of the actual investors to exercise the shares on behalf of the backward management information, unauthorized disposal of the shares, resulting in the actual investors' investment rights and interests damage. If it is determined that the third party satisfies the requirements of obtaining in good faith, the actual investor may request compensation for the acts of the nominal shareholders, but the determination of the specific amount and scope of compensation is at the discretion of the People's court, may result in the actual investor's investment interests can not be fully compensated.

At present, there are different opinions on whether bona fide acquisition can be applied in the context of equity transfer. The negative side holds that the traditional acquisition in good faith is based on the absolute appearance of real right. But the stock right itself does not belong to the real right, because it has the relativity to favor the creditor's right, itself can not carry on the effective announcement, from the nature

The positive side believes that the stock right does not belong to the real right in nature, but it is homogeneous with the real right, and there is a big difference between it and the ordinary creditor's right, after the investment certificate, industrial and commercial registration and other procedures on the equity can form a sufficient representation of the appearance of rights, so may refer to the application of bona fide acquisition system. If the court agrees with the view of right to dispose, and regards the nominal shareholder as the real shareholder of the company, it need not consider whether the third party is bona fide or not If the court agrees with the opinion that there is no right to dispose, and finds that the nominal shareholders can not dispose of the shares under their name without authorization, then it should make a determination according to the standards of the Civil Code on acquisition in good faith, it should be considered whether the third party is in good faith, which is more conducive to protecting the rights and interests of the actual funders than the former point of view; if the court agrees with the compromise point, it should consider whether the other shareholders of the company know and agree with the proxy holding in the light of the specific circumstances of the case, then judge whether to refer to the "Civil Code" on the system of bona fide acquisition provisions, the actual protection of the rights and interests of investors is relatively beneficial. However, it should be noted that the reference to the system of bona fide acquisition can effectively protect the interests of actual investors is still unknown.

It has been agreed that the transfer of shares by nominal shareholders should refer to the system of bona fide acquisition of real estate, but there may be logical loopholes in this reference. The credibility of the real estate register is indeed similar to the publicity of the rights of the industrial and commercial register. In practice, the "Credibility" of the

register or the presumption of its correctness is often invoked. But there is still a difference in credibility between the two. But the credibility of real estate registration is statutory. [15] however, to a certain extent, the stock rights registration does not have the credibility, on the one hand, the legislation does not stipulate that the content of the industrial and commercial registration has the credibility. On the other hand, the examination obligation is limited in the registration of Industry and commerce, and there is a fundamental difference between the registration of real estate. The appearance of rights in industrial and commercial registration can not be compared with the appearance of rights in real estate registration, which leads to the improvement of the logical basis of the system of bona fide acquisition. At the same time, if the court mechanically considers that the business registration is registered in the name of the nominal shareholder when it hears the relevant cases, it can give the business registration the same credibility as the real estate registration and thus find that the third party acquired the shares in good faith, is to reduce the third person's duty of care, for the actual investors is hardly fair.

3.3.2. Commercial Appearance Doctrine's Reliance Protection and Enforcement Objection Defense Thoughts

In view of the existing legal provisions in the relevant elements of the vague, commercial appearance of the principle of the limits of application of disputes, and other reasons, whether the actual investor can exclude the implementation of the dispute cases, judges often hold the balance of rights and interests of different scales, “Different judgments in the same case” phenomenon occurs from time to time, so that the rights and interests of actual investors can not be stable protection.

The definition of “Third party” in Article 32 of the company law is not clear. The dispute lies in whether the definition of “Third party” only refers to the relative person who deals with the nominal shareholders. Part of the view that the “Third party” should not be expanded interpretation, the article was established primarily to protect the third party based on the appearance of the commercial registration of transactions arising from the trust interests, “Transaction” as the core. [16] the latter view is that non-transactional counterparts are naturally protected. The difference between the two kinds of views is controversial in practice, which leads to the judge's subjective judgment on the scope of “The third person” in the process of case hearing, according to the situation of the case and their own understanding of the scope of the third party definition, which has led to the trial of the case there is great uncertainty, the same case decision is not consistent, the protection of the actual funders has great uncertainty.

Whether the actual investor can exclude the implementation of the judgment standards are different, some courts in the judgment that the third party on the appearance of industrial and commercial registration, investors can not exclude the implementation; The other part holds that the actual investor has the right to exclude the execution according to the real ownership of the stock right. There are also differences in the views of the Supreme Court on this issue, such as the differences in Article 13 of the Supreme People's Court's interpretation (1)(draft for seeking opinions) . It can be seen that the Supreme Court in the enforcement of equity holding whether to adopt the principle of externalism is still wavering.

4. Suggestions for Improving the Protection of the Rights and Interests of Beneficial Owners

4.1. Pre-Basic Recommendations for the Protection of Beneficial Owners' Interests

4.1.1. Clarify the Nature of Our Shareholding Relationship: Fiduciary Relationship

The current legislation is not clear about the nature of the shareholding relationship, the differences and vague understanding of the nature of the shareholding relationship will not only make the effective protection of the actual investors difficult to achieve, it will also lead to differences in the application of laws and regulations by judges in judicial trials, which is not conducive to the effectiveness of unified adjudication of laws. Therefore, the author thinks that we can design the legal nature of the proxy relationship in the legislation, in order to properly solve the proxy dispute, balance the interests of the parties for the unity of the rules of adjudication.

At present, it is the theory of trust relation that occupies the mainstream position. Although some scholars think that the stock right proxy does not accord with the essential characteristic of the trust property “Independence” in the trust relation, compared with the theory of agency relation, compared with agency, trust relationship does provide a theoretical basis for the transfer of property rights in equity proxy. In essence, trust is an institutional arrangement with the principal, the trustee and the beneficiary as the main body. There are two advantages to defining the nature of equity proxy as a trust relationship:

First, to establish the property independence of proxy shareholding. The proxy holding of shares under the nature of trust completely places the shares outside the property of the nominal shareholders and is not mixed with the property of the main bodies of the parties, in order to solve the nominal shareholders creditors to apply for the registered in their name of the equity enforcement issues for another way of thinking and options.

Second, strengthen the binding obligation of proxy holding. Article 51 of the trust law provides protection for actual investors when nominal shareholders abuse their rights in breach of trust obligations. Therefore, the fiduciary duty to the nominal shareholder's restraint may urge to fulfill the nominal shareholder's prudent, the loyal, the good-hearted manager duty. It can bypass the dispute of whether to give the actual investor the right to terminate arbitrarily in the agency relationship, and provide a more complete relief path for the actual investor.

To sum up, the trust relationship is an attempt to analyze the power-responsibility relationship between the holder and the holder, which can provide a more complete system guarantee for the protection of the rights and interests of the actual investors.

4.1.2. Establishing Principles for Determining the Validity of Shareholding Agreements: General Principles of Validity

Different from the general commercial subjects, the structure of stock ownership in the listed companies, commercial banks, insurance companies and other special subjects more involved in the public interest. Therefore, compared with the limited liability company laws and regulations on its greater supervision, more stringent norms.

The author believes that although this kind of proxy involves various subjects, but as long as the argument of special subject proxy validity is clear, the determination of the validity of different subjects is different only from invoking different departmental regulations or special provisions below their level.

In our country, only the law of foreign investment provides for the consequence of the invalidity of substitute holding, but because of the limitation of its applicable subject, it is difficult to extend the application to a wide range of subjects. It is necessary to establish an orderly exit mechanism after proxy holdings are deemed invalid.

There are three common approaches: (1) proportional sharing; (2) forfeiture; and (3) seizure. In my opinion, it is more reasonable to adopt "Proportional share", which can balance the equity distribution between actual investors and nominal shareholders. From the perspective of the judicial function, the biggest difference between the judicial function and the administrative function is that the judicial function is more important than the punitive effect, the assumption of similar administrative liability for forfeiture and seizure will lead to the overlap of the functions of the judiciary and the executive; [17] and even if it is recognized that it is feasible for the substitute holder to assume administrative liability, it is also not rigid to seize or confiscate all the value-added parts; and from the perspective of the design of the stock rights proxy system, once the seizure or forfeit is included in the way of value-added distribution, it may lead to the problem of the connection between civil and commercial private law and administrative public law. Limited to the lack of relevant proportionality criteria, judges in future judicial decisions may prudently allocate between actual funders and nominal shareholders, taking into account the facts and evidence of their actual contributions to the value-added portion, so as to protect the legal rights and interests of the actual investors and avoid any party benefiting from the invalidity of the contract.

4.2. Establishment of a Process for the Naming of Beneficial Owners

On the basis of the existing name procedure, the author further detailed and reviewed it, combined with the actual situation in practice, and comprehensively considered other important factors such as the articles of association, whether other shareholders know.

The first category: The Articles of Association of the company on behalf of shareholding procedures. The autonomy of the limited liability company should be confirmed within the scope of the law. When the actual investor chooses to invest on behalf of the target company, it should be noted that the articles of association of the company with respect to the name of the content. As there are small limited companies in reality with a small number of shareholders and very close relationships in general, it is possible that the articles of association prohibit the names of the actual investors, or even a higher standard than that of proxy ownership. Therefore, the actual investors should be free to choose investment methods and target companies should do a good balance of interests.

Type 2: when the articles of incorporation do not provide for, the actual investors completely anonymous. At this time, the nominal shareholders fully participate in the management and exercise the rights of shareholders, the actual investors can only obtain investment interests from the nominal shareholders in accordance with the agreement. Therefore, in order to protect the human nature of the company and the interests of other shareholders, it is necessary to examine whether more than half of the other shareholders of the company recognize the name of the investor. In addition, the nominal shareholders and investors have direct interests, can not vote on the issue of the name. [18]

The third category: When the Articles of association does not provide that the actual investors are not completely anonymous. At this point, the name of the actual investor only needs formal recognition, which will not affect the rights and interests of the other shareholders who have acquiesced in their shareholder status, let alone the human nature of the limited liability company, the 28th article of the "Nine people's records" also embodies this spirit.

Class 4: When the actual investors themselves have the status of shareholders and internal holding. Suppose that the shareholders of a company need to be anonymous in other equity allocations within the company. In this case, the name of the actual investor will not destroy the human nature of the company, so it does not need the express or implied consent of other shareholders. In fact, it is based on the same mechanism as the condition that the actual investor transfers shares under the condition of manifest name.

4.3. Suggestions on Remedies for the Rights and Interests of the Actual Contributors

Under the influence of the commercial externalism principle, some judges have formed the usual thinking and discretion habit of protecting the bona fide third party in commercial affairs, in the end, the third party's rights and interests may be harmed because of being unable to fight against the third party. Therefore, it is necessary to perfect the relief path of the actual investor's rights and interests in this legal relationship.

4.3.1. Remedies for Private Transfers of Equity by Nominal Shareholders: Determination of Criteria for Acquisition in Good Faith.

In the case of partial anonymity, when more than half of the other shareholders have no objection to the proxy holding, the actual investor has already obtained the concept of shareholder qualification, so may refer to the bona fide acquisition; Unless the actual investor name, otherwise the nominal shareholders as actual shareholders, it is entitled to disposition, can not be used. The Supreme Court on the system of equity bona fide acquisition of judicial interpretation to answer that equity can refer to the application of the system of bona fide acquisition of real estate. It is necessary to clarify the basis of the applicable system. On the one hand, there is a difference between the changes of rights created by the registration of immovable property and stock rights. The real estate registration can create the public announcement of the ownership of real right directly, but the stock right registration is only the public announcement function generally, is not the basis of the stock right creation; on the other hand, the industrial and commercial registration and the real estate registration have the significant difference in the credibility, the degree of examination is also different. As some scholars have argued, the system of bona fide acquisition of equity should be considered in the long run. The system of bona fide acquisition of real estate has some incoherence in logic and system structure, which should be paid more attention to.

Clear nominal shareholders in the transfer of equity "Good faith" identified. Equity and real rights are of a homogeneous

nature, providing a reasonable explanation by reference to the applicable system. The subjects of the rights involved in the stock rights proxy are more diverse than those in the general real estate transfer, and the transaction costs are also higher. Therefore, the third party should bear a heavier duty of prudence. Therefore, the criterion of bona fide can be distinguished from the relevant criterion of real estate, and the criterion of "No gross negligence" can be set up on the basis of keeping the reference of bona fide acquisition of shares to the applicable real estate system.

Clear "Good faith" judgment time point. As to the bona fide acquisition of shares, there is no concept of delivery, and the time point of ownership transfer is not clear. It should be clear that equity transactions are different from ordinary real estate or chattel transactions, equity transactions involve a wide range of subjects in the process, the process is relatively long. Because of the complexity of commercial transactions, negotiations, signed contracts, change registration procedures after completion, often in the time span is too long. This leads to the third party in this process is likely to be in a process of non-right to dispose of the facts of nominal shareholders. Therefore, we should judge the third party bona fide point of time in the transfer of shares in the whole process, that is, from the negotiation to the end of the registration of Industry and commerce. In order to meet the third party "Good faith" conditions. If, in the above-mentioned time, the third party knows that there may be actual sponsors of the situation, but the third party continues to sign an agreement, it can not constitute "Good faith.".

4.3.2. Enforcement Objections by Beneficial Owners: the Strict Commercial Appearance Doctrine Standard

The core of the principle of strict commercial externalism is to take the trust of commercial externalism as the criterion of judging legal consequence. [19] first, on the question of whether the principle of externalism can be used as a legal basis for a judge to hear an action of objection by the actual funder, the author thinks that the original intention of the principle of externalism should be taken into account and the stability of applying the principle in judicial practice should be guaranteed. Although the principle of externalism is mainly embodied in Article 32 of the company law, it is more general. Therefore, it is necessary to elaborate on this issue in detail in order to have a legal basis. Secondly, although externalism may be invoked in the judgment of a case by legislation, the author believes that the principle of externalism can not be applied in the execution stage. As the introduction of the "Nine people's records", we should be careful to apply the principle of externalism, once the principle is abused will cause harm to the interests of the actual funders.

First of all, the objection to execution is only a formal examination of the registration of the object of execution, that is, the industrial and commercial rights, because the registered nominal person is not the result of the actual investor, it will inevitably lead to the action of the actual investor against the execution objection award. In the course of the trial, we should pay attention to the examination of whether the actual investors really enjoy the right to exclude execution, that is, which part of the equity belongs to which party. Secondly, as to whether the actual investor can file another case of stock right confirmation as the basis to exclude execution, I prefer the view of the Supreme Court, that is, the actual investor can not file another case of stock right confirmation. Litigation is the rights of the parties, under normal circumstances, it is not a problem for outsiders to choose another case to sue. However, if the confirmation of the validity of the judgment as the basis for exclusion of execution, it is easy to lead to jurisdiction and judgment of different views of the confusion. In addition, it may also lead to false litigation by the actual funders in order to get the effective judgment instrument to exclude enforcement. Moreover, in the execution of the objection can also be heard together with the qualifications of shareholders, a separate case is not necessary. Based on the above, the Supreme Court's opinion gradually tends to be that only the court of execution objection can hear the affirmative action of the subject matter of the dispute, and at the same time exclude the other court's right to hear and jurisdiction of affirmative action. Article 26 of the opinions of the Supreme People's court on the rational allocation and scientific operation of the enforcement power, issued in 2011, explicitly excludes the other courts' right to determine another case concerning the seized property, nor does it support the right of the parties to confirm another case. Therefore, the actual investor should be clear about the difference in procedure when choosing the way of relief, consider the influencing factors comprehensively, and maximize the realization of his own rights and interests before saving the cost of litigation.

5. Conclusion

As the product of commercial investment, equity proxy is characterized by its unique anonymity, flexibility and autonomy By the majority of investors favor. But there are two sides to everything, and so is the secrecy and flexibility A double-edged sword, will fulfill the obligations of the actual investors to enjoy the benefits and risk-bearing coexistence. Yes That there are more or less commercial risks in any business activity, but some of them are OK, Effectively avoided by clarifying and refining the relevant specifications. This is the purpose of this article, The international investor's right protection predicament in the stock ownership proxy relations and puts forward the related consummation proposal and the relief path, in order to,To protect the legitimate rights and interests of the actual investors. The protection of the rights and interests of the actual investors is also conducive to the realization of a relative balance between the rights and interests of the nominal shareholders, the target company and even the third party, thus, the investment method of share-holding can develop in the right direction. In this paper, combined with the referee cases, the views of scholars and other content to form the author's personal views, there are still immature. We hope to perfect the legal system of protecting the rights and interests of the actual investors gradually, so that the stock right holding on behalf of the investors can play its real effect, and promote the vigorous development of our market economy.

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