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Analysis Research of Changes in Equity about the Joint Stock Company

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Abstract: Legal fact of the changes in equity is all legal fact that can cause, change or eliminate the legal relationship of equity. The legal fact of the changes in equity includes juristic act and factual act that cause the stock transfer. This article will analyze the legal fact which include such as stock donation, stock transfer, withdrawal, corporate merger, corporate division, capital increase, and capital reduction and so on. The factual act analysis in this article include such as inheritance, dissolution of marriage, compulsive execution of share ownership and so on..

Keywords Joint stock company, changes in equity, legal fact

LEGAL ANALYSIS OF REASONS ABOUT CHANGES IN EQUITY

The changes in equity is ultimately caused by any juristic fact in civil law that can cause, change or lose the legal relationship of equity [Zhao, 2008]. This fact exists in two reasons: civil juristic act and factual juristic act. We will based on this legal fact and discuss the legal reason of changes in equity.

In the science of civil law, the legal fact includes juristic act and factual act, which is known as the deeply investigation of the legal act. The actor carries out the act, he or she can act legally and produce legal consequences. On the contrary, is the non-legal act that not subject to legal adjustment, no legal effect, and no legal effect. This act does not have any legal meaning, as we know about moral behavior, political behavior, and economic behavior.

LEGAL FACT OF CHANGES IN EQUITY

The legal fact of the changes in equity includes juristic act and factual act that cause the changes in equity.

Juristic act of the reason about changes in equity

Juristic act in the sense of civil law is the core element of civil subject. The meaning lies in the act of establishing, changing and terminating civil rights and obligations. Legal act is the main reason for changes in equity.

(1)Stock donation leads changes in equity

Stock donation is one popular change in equity of recent years, which has three advantages. Firstly, stock donation eliminates the procedure of stock realization. This kind of donation is more convenient and more efficient. It is convenient for the donor to donate in time. Secondly, there is an appreciation expectation and space for the donated stock. For the accepter, it means the value increase of the donated assets. Thirdly, tax avoidance. There are tax incentives for companies and natural people to donate in many countries. Moreover, the donors can pay less property taxes and income taxes through donations.

With the increase of stock donation, it brings the advantages of convenience, efficiency and stability. Moreover, it also brings a series of legal issues.

For the limited company, whether other shareholders have priority of stock donation? Whether the donation act will destroy the characters based on shareholders? If other shareholders are allowed to have the stock right, other shareholders will be allowed to take ownership of the donor without compensation. There is no doubt that it is quite absurd. If other shareholders do not have the stock right, and there is no right to buy the donation, which will lead "strangers" entering the company. It is more obvious specially the ostensibly donation between the donor and the recipient. They just want to release from debt.

Compare with the limited company, the joint stock company will face more challenges. Firstly, from the donor view, they donate the stock with relatively large amount and it will change the corporate governance [Liu, 2004]. The following problem is whether the donor will lost the position, especially the controlling status. If he or she lose the status, whether it will change the management model, operation condition, even the survival of the company. Secondly, from the accepter view, no matter the donor is charities, foundations or the person, they are different from the professional investor. It is hard to grantee the management ability and business capacity. Finally, from the third view of the relevant benefit, stock donation brings great destabilizing factors to the company operation. We need to strictly abide by the Corporation Law, the Securities Law, securities regulatory commission and stock exchange prohibitive provisions. Strict stock trading and information disclosure system can ensure that other shareholders, especially minority shareholders, are protected from infringement.

(2) Stock transfer leads changes in equity

Equity transfer is the act of transferring the company shares that held by shareholders to others according to law or by agreement. Stock transfer is the main reason of changes in equity.

Based on the transfer object, the stock transfer includes internal transfer and external transfer. Internal transfer is the stock transfer among the shareholders, which is not involved new shareholders, just the equity change of stock holdings and ownership structure. Laws and articles of association has limited regulation on the internal transfer. The external transfer means the shareholders transfer their stock right to the third party. It brings great challenges especially to the limited company and non-public stock-limited company. The Corporation Law and the articles of association will have limits on this.

Based on the transfer subject matter and model, the stock transfer includes preferred stock transfer, stock transfer and buy-back.

Based on the transaction directed object, the stock transfer includes limited company, joint stock company and the joint stock company can divide into public company, and non-public stock-limited company.

The Corporate Law has detailed regulation on the stock transfer of the limited company: use shareholders right of agreement and preemptive right system to limit the transfer. Chinese scholars has fully research on the stock transfer of the limited company with great research. This article will pay more attention to the stock transfer rules of the joint stock company.

Based on the stock exchange is publicly traded, the joint stock company divides into listed company and non-public stock-limited company.

The stock right of the listed company trading on a stock exchange. Its openness involves the interests of non-specific people, especially small and medium investors. The state protects there interests based on the Corporate Law, the Securities Law, Code of Corporate Governance for Listed Companies in China, Order of China Securities Regulatory commission, Administrative Measures for the Issuance of Securities by Listed Companies and other laws to limit the stock transfer system.

Our country pays enough attention to the legislation of listed company. The protected stock transfer transaction is free and orderly under the complete law. However, it is different on the non-public stock-limited company. Only the Corporate Law and the Securities Law stipulates with few words.

The law agreed the legal stock transfer of the non-public stock-limited company, which must base on the place or manner designated by the state council. However, the place is worthy to discussion, and there are no clear rules on the manner [Peng, 2012]. The non-public stock-limited company has three existing transfer channels. Firstly, negotiating transfer. The question is hard to find the transfer object with high chance cost. The information disclosure system is not sound, which seriously affects the transaction security. Moreover, the concentration degree of equity is higher as well as the capital trading requirement. Secondly, agency of stock transfer system. The listed company’s number is limited and the construction of investment and financing function is low. Thirdly, local property rights market. The uneven economic development and the uneven level of participating companies leads to the failure of the property rights market to form unified management rules. Through the investigating we can find out the stock transfer of non-public stock-limited company is free in theory but impossible to realize in realistic. In order to operate the normal stock transfer, listed transaction is the only way for the non-public stock-limited company [Yang, 2008]. If the path of its listing is blocked, the transaction value will be impaired, and the transfer openness will be seriously implemented.

(3) Withdrawal leads changes in equity

The Corporate Law has no rules on the shareholders withdrawal. The regulation of share repurchase and dissolution of the company produces the legal effect of withdrawal.

The Corporate Law has two parts of the withdrawal: Appraisal Value of stock. It is known as the legal withdrawal right. It is in article 74 of the Corporate Law and suitable for the limited company. The accurate legal definition of the appraisal rights is the appraisal right of dissenters. The appraisal right is not the virtual right of claim. Article 74 has the meaning of protecting the interests of minority shareholders. The priority rules is the shareholder and the company make an agreement that the agreement is not necessary to bring a suit. Once in the litigation process, shareholders will be unable to play its practical role. We should define the appraisal right of dissenters as the more conducive right to the realization of the purpose protection. This means that shareholders withdrawal can make the legal effect of stock transfer. The right of dismissing the company. It is in article 182 of the Corporate Law and suitable for the limited company and the joint stock company. For the shareholders, exercise appraisal right is same with the right of dismissing the company. It's all out of the company. However, the economic impact, legal consequences and social impact of the company dissolution are too serious. The law stipulates that the exercise of this right can only be realized through the effective judgment of the court. This is the last resort to protect vulnerable shareholders, and we need to use them with caution.

We should advocate the realization of shareholders' withdrawal through normal channels, so as to minimize the use scale, use scope, and use proportion about the right of dismissing the company.

(4) Corporate merger, corporate division, capital increase and capital reduction of the company leads changes in equity

Corporate merger, corporate division, capital increase and capital reduction will change the registered capital of company. Then, the ownership structure changes, resulting in the stock right change of the company. It is actually the complex, multi-party and multiple stock transfer.

Factual act of the reason about changes in equity

The factual fact that cause the changes in equity does not need the shareholder's meaning to express. It only depends on certain facts and occurrence of the event, which can happen the behavior of the legal result about the ownership change. The factual act includes inheritance, marital breakdown, and legal compulsion.

(1) Inheritance causes changes in equity

Stock inheritance is after the death of the decedent, the ancestor shall inherit the stock in accordance with the law and will have the legal result of changes in equity.

Stock inheritance not only involves the ancestor' benefit but also involves the company interests and the benefit of other shareholders. For characters based on shareholders, the limited company is prudent to inherit equity. The share of inheritance is positive, but the qualification of shareholders is uncertain. No one is allowed to make any restriction on the succession of the ancestor, including the share of the shares and the qualification of the shareholder.

(2) Marital breakdown leads changes in equity

Marital breakdown must related to the property division of both husband and wife. The company stock has the property of property rights and is also the division object. Generally speaking, equity as the joint property of husband and wife will be divided, which will cause the company's actual controller to have an uncertain shareholding ratio, the shares of listed companies are unstable and the listed company cannot be listed. This requires the law to protect the legitimate interests as much as possible on the basis of fairness and justice.

(3) Legal compulsion leads changes in equity

Legal compulsion of the creditors shall be on the basis of the effective legal instrument. Apply for a compulsory transfer of shares in the company of the person that subjected to execution by the people's court. Then realize its claims.

Legal compulsion includes freezing, compulsory transfer, auction, sale, and equity in debt. The provisions of auction, sale and debt-to-equity are basically in line with the provisions of other articles.

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