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Exploration of Shareholder Delisting in Limited Liability Companies: Centered on Human Harmony

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Abstract: The limited liability company has exceptional human qualities; it has fewer shareholders and operates on a smaller scale, which makes its owners more prone to disagreements. Its distinctive corporate structure also makes shareholder removal a peculiar legal phenomenon. However, there is currently a gap in the building of this system in China's pertinent laws. In order to propose a more workable and practical way to enhance the shareholder exclusion system, this paper aims to clarify the fundamental idea of the shareholder exclusion system, discuss the necessity of constructing this system in China, and explore the reconstruction of substantive norms, specific procedural rules, and clear legal consequences based on the advanced legislative experience in Germany and judicial practice in China.

Keywords: expulsion of shareholders, human harmony, limited liability company

1. Introduction

The Limited liability company has strong human characteristics, such as simple establishment procedures and adaptable organizational forms, even though it is categorized as a joint venture company due to its management system, which demands division of powers, and its attribution system, which reflects capital responsibility. As a result, SME investors who select the LLC as their corporate form believe that this mode of business organization will foster entrepreneurship and invention as well as advance the development of the law governing business organization [1]. Every benefit has a drawback; the limited liability company system has facilitated the growth of sole proprietorships, the intimidation of minority stockholders by the majority shareholder, and shareholder abuse of the limited liability structure. Human harmony, which is the fundamental characteristic of the company's operation, relies on the relationship of trust between individuals for its shareholders to maintain their personal standing, reputation, and financial stability. Due to this, it is easier to figure out that fewer participants, opaque capital raising, the existence of certain restrictions on the transfer of shares, the arbitrary relationship between shareholders and the incomplete separation ownership and management are prominent deficiencies of this machinery [2]. In the absence of a thorough system of regulation, the relationship between shareholders could remain close as long as a trust relationship exists. Nevertheless, if an aggressive dispute breaks out and destroys the credit relationship, those involved to the conflict risk suffering substantial damages and the company might ultimately dissolve. The mechanism for removing shareholders of limited liability companies has the necessity to establish

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because the consequences of the conflict could be irreversible. A system for shareholder removal has so far been created in the civil law nations represented by Germany, and one is scheduled to be built in China as well. One of the common instances in China where the shareholder removal method is used is the situation involving Song Yuxiang and Hangzhou Haoxu Trading Co., Ltd.

Although Haoxu held 99% of the stock in this case, the Chinese People's Court upheld the resolution of the shareholders' meeting in which the minority shareholder with only 1% of the shares had successfully excluded the majority shareholder's right to vote at the extraordinary shareholders' meeting and removed his name from the list of shareholders. This judgment serves as a practical illustration of the fundamental shareholder exclusion regime rule that voting rights need to be excluded [3]. In accordance with the exclusion of voting rights, the majority dominate of capital does not become an instrument of capital bullying in reality [4]. In this regard, the decision emphasizes how the law safeguards the legitimate rights and interests of shareholders who make small capital contributions and prevents the phenomenon of major shareholders oppressing the remaining shareholders with malice. This decision reflects the particular human nature of limited liability companies and encourages friendly cooperation and shared advancement among shareholders. Consequently, the shareholder delisting system in China might be inspired as a result of this instance, which serves as an illustration of a typical decision. The development and improvement of the pertinent laws in China will also benefit from the applicable advanced legal systems in other nations.

2. Overview of Shareholder Delisting in Limited Liability Companies

2.1. Introduction to the Shareholder Delisting System

Legal scholars from China and abroad disagree have different perspectives on how to define the idea of shareholder exclusion systems. Nonetheless, the legal profession has come to a consensus on a few key issues: regarding the grounds for removal, the company should apply the system appropriately based on the existing specific grounds, and the definition of the grounds should be carefully considered and not arbitrarily, carelessly, or abusively; regarding the resolution, it is more appropriate for the majority of shareholders other than the shareholder himself to decide unilaterally whether to remove this given shareholder, such shareholder could still legitimately voice an objection to this motion; Regarding the scope of deprivation, the system's application should be limited to the starvation of the shareholder in inquiries shareholder status, but not the property rights corresponding to his or her status, after the shareholder is removed, he or she can still receive the corresponding consideration for his or her prior shareholding; regarding the system's purpose, the main goal of the system's construction is to protect the rights of majority shareholders and maintain its human harmony. When it comes to the subject matter of the right to have a shareholder's name removed, the system to accomplish so is designed, in part, to promote goodwill among shareholders and to ensure the smooth operation of the business through the elimination of disloyal shareholders [5]. The "removal" effect is determined by the vote of the shareholders' meeting. A delisting can only be successful if the delisting settlement is successful. As a result, the resolution of removal reflects the company's general decision to exclude the concerned shareholder, and the company itself—not just some of the shareholders—is the subject of the right of removal. As a logical extension, the shareholder delisting system refers to a legal framework wherein the limited liability company and the legitimate interests of other shareholders have suffered or will suffer serious harm as a result of a shareholder's actions, undermining the company's unity, and the company decides to remove the shareholder from the company based on this specific removal reason through legal procedures.

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2.2. The Necessity to Construct a Shareholder Delisting System

2.2.1. The Needed Path to Punish Defaulting Shareholders

Since a limited liability company has strong closure, the owners' adherence to their fiduciary responsibilities is crucial to the continual development of the business. The concept of good faith in commercial law, which calls for everyone involved to be truthful and reliable and take into account the other party's legal rights and interests when exercising their own, is embodied in this obligation [6]. Subsequently, a shareholder engages in conduct that is seriously disinterested in the business as a whole, such as failing to submit the required capital contribution, violating the non-competition agreement, or willfully conspiring with others to harm those interests, it not only jeopardizes the legal rights of other shareholders but also undermines the economic and social foundation for the continued prosperity of the company, thus affecting the normal operation of the enterprise group and the favorable economic order of the market. The shareholder expulsion system has a stronger deterrent effect than the way to assume due obligations, such as paying the capital within a certain amount of time, which can deter shareholders to the greatest extent and effectively restrain their corporate behavior. The result of removing the name of a shareholder in a fraudulent manner for this category is typically finalized and has an intense punitive nature. Although the courts have been watchful in this area and to a certain degree loyalty can take the place of control, minority shareholders' interests might ultimately be protected by the majority of the remaining shareholders [7]. As a result, if a majority of shareholders abuse the system, it could also lead to haphazard actions, which would be against the joint venture character of the business. Those individuals should exercise caution when using the shareholder exclusion system and endeavor prevent doing so as much as feasible.

2.2.2. Required Measure for the Improvement of Corporate Governance Structure

In practice, the limited number of stockholders in a limited liability company frequently serve in multiple capacities, including those of owners, decision-makers, executors, and supervisors, which has a consequence on the organization as a whole. If an enormous conflict of interest arises between shareholders in a scenario like this, the chain of trust between shareholders might get severed, leaving the company in a long-term unstable state in terms of decision-making, management, and execution, which negatively impacts the average growth of the company. However, by this point, the trust relationship between the involved shareholder and the remainder of the shareholders has been shattered, making it challenging to reach an equity transfer agreement through reasonable negotiation. In instances like this, comparatively mild regulatory measures, such as equity transfer and shareholder dissent buyback, do not punish the shareholder involved. The best supervisors are perceptive, adept at hearing others' concerns, and consistently receptive to the interaction of various points of view [8]. However, the company may find itself in a difficult situation if the concerned shareholder determines a passive avoidance strategy with regard to the company's delisting motion and fails to express an explicit objection. Operators can therefore conduct a detailed study of the unique issue. It is crucial for the advancement and development of a contemporary corporate management system of this kind to create the shareholder removal system as a supplement to the aforementioned regulatory system in order to effectively resolve this type of challenging situation and partially make up for the inherent flaws of the limited liability company governance system.

2.2.3. Established Requirement to Maintain Human Harmony

As was already stated, the restricted number of shareholders' close association between "capital" and "human harmony" has evolved to be the cornerstone of the limited liability company's advancement and expansion. The "capital cooperation" emphasizes the necessary capital contribution obligation of

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shareholders and is a cold concept with the core being financial resources, while the "human cooperation", which serves as the legal foundation for the distribution of managerial authority within the limited liability company, has a more favorable and humanistic connotation [9]. A limited liability company's formation, administration, and even operations are founded on the reciprocal confidence of its shareholders, and the resolution of business affairs is heavily impacted by the shareholders' autonomous consultation process. The original unity of motive among shareholders will also be transformed into centrifugal, mutual suspicion, and ostracism in the aforementioned closed-off the organization system, which has a significant negative impact on the regular operation of the business and the efficiency of resource integration. As a result, issues such as no-fault shareholders to withdraw from the company, the dissolution of the company and other irreversible serious consequences arise, which affect the enterprise's association between the legal relationship. The shareholder exclusion system is a last-ditch effort to maintain the regular operation and survival of the business when crucial bottom lines are violated and conflicts are challenging to reconcile, in contrast to other systems that aim to settle disputes between individuals in a company. By ensuring that the group can continue to function and grow routinely even if certain of its members are severed from the group, this system also somewhat confirms the separability of the company as a whole. From this vantage point, it is clear that the LLC's continued growth will be aided by its reasonable use of the shareholder exclusion scheme to preserve employee harmony.

3. Review of the German Shareholder Exclusion System and Its Implications

3.1. Basic Information on the German Shareholder Exclusion System

Germany established the first shareholder exclusion system in countries with civil law. In the beginning, the legislator developed this system to address an operational conflict that arose between KG(Kommanditgesellschaft) and unlimited companies. The German Limited Liability Company Act, which was passed in 1980 and gave rise to the LLC business structure, included a more thorough shareholder exclusion scheme. This system is being set up in order to replace the civil contract that states, "If we unite, we gather; if we don't, we disperse", with the concept of autonomy for the company's commercial law, which states, "Stay if you agree, leave if you don't".

Regarding the reasons for removal, thersubsee are two categories of merits that can be utilized for dismissing a shareholder in Germany: statutory merits and intentional merits. Aside from the capital contribution provision, the most crucial legal statutory merit is the standard of material cause, which must be severe enough to allow for the company's eventual dissolution. When this criterion is used, the shareholders' meeting decision to remove the company name is already in effect due to the fact that was heard by the court and resulted in a judgment of removal. "Material cause" is defined as "a breach of contract by a shareholder through gross negligence or intent, where the shareholder is under a material obligation, or where the performance of such obligation becomes impossible" in Section 133 of the German Commercial Code (HGB). This criterion obviously has a wide scope and calls for a certain degree of flexibility on the component of particular courts. In German legal practice, the causes that can be comprised include the shareholders' personal actions, such as financial crisis, disloyalty of the shareholders to the company, and causing the company to fall into a major crisis. For instance, according to German legal precedent, any shareholder who, without a legitimate reason, persuades a company's administrator to act against the interests of the business and the other shareholders in order to further an illegal goal violates the law [10]. A shareholder may also be dismissed for personal reasons, such as advanced age, physical or mental infirmity, loss of legal capacity, or the invalidity of specific certificates. In light of this, it follows that a shareholder need only have or be likely to have a significant negative effect on the company's operations that the removal resolution is to be held accountable. Germany accords the limited liability company some

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liberty in terms of the intended cause and to a certain degree acknowledges the legitimacy of the firm's-chartered cause of removal due to its profound personal harmony. The exclusion of voting rights in the event of a decision to delist must be implemented, and Germany mandates that the firm give the shareholder in issue notification in advance with a minimum grace period of one month as a component of the delisting process. The choice of whether or not to delist must be reviewed by a court of law on a case-by-case basis before it takes effect, and it only does so after the shareholder has been compensated for the shares he donated.

3.2. Implications of the German Shareholder Exclusion System for China

In regard to its theoretical underpinnings, Germany's shareholder removal system builds an emphasis on interpersonal harmony, highlights the value of the theory of association autonomy, and places a premium on the trust relationships between shareholders within the enterprise, thereby establishing an essential standard with the question of whether the human bond has been broken as its central test. In order to foster the tranquil growth of the community, the human harmony of the limited liability business can also be wholeheartedly taken into account while contracting the shareholder removal system in China. Germany primarily utilizes the materiality criterion when determining the justifications for removal, which is particularly applicable in cases where the shareholder is not objectively at fault. The company continues to be given the authority to come up with the grounds for removal through the statute of association, while this system is used with caution and only pertains to situations where the problem shareholder's actions cause extremely serious harm to the company and the legitimate interests of other shareholders. China can therefore benefit from Germany's advanced experience in improving the system's subject matter if it adopts the guiding principles of adhering to the company's self-reliance as a business entity, strictly limiting the grounds for delisting, eliminating the drawbacks of its unclear and evasive norm regarding materiality, and leveraging the court's judicial interpretation to render the standard's specific application more explicit and clearer. In regard to the removal procedure, Germany has carefully laid out the applicable procedures of the system with the aim to safeguard the shareholder removal system from ending up a tool for malicious exclusion of dissidents by shareholders in the company, whereas the current Chinese law is obviously hazier in terms of the procedures. In this regard, the Chinese legislature should pay close attention to the demand to perfect the method, and it can take the lead from Germany by creating clear rules for essential requirements such prior processes and voting procedures in the shareholder exclusion system.

4. The Path of Improving Shareholder Removal System in China

4.1. Concretization of Entity Specifications

China can officially integrate this system of law in the Company Law and embrace it into its legislative plan as soon as feasible, which will give judicial professionals a legal framework to adhere to and assist in preventing problems when carrying out their official obligations. Regarding the question of the grounds for delisting's breadth of application, Chinese law's current legislative grounds for delisting are too narrow and inadequate to effectively deal with the intricate and complex practice. Therefore, China can adopt the more versatile and comprehensive "the standard of material cause" of German law and broaden the statutory cause's definition. The criteria for materiality should in particular satisfy the following requirements: first, the company's primary goal of requiring shareholders to hold equity has not been attained or the shareholders have already caused or will soon cause the company and other shareholders significant harm; second, the material act must be as a consequence of the shareholders' misconduct or self-interest; Lastly, the removal of shareholders should be in accordance with the company's capital maintenance principle; complying

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with the removal of the problematic shareholders, the company will transfer their shares or accomplish a capital reduction to purchase back the treatment. This is one of the conditions for an efficient elimination of the name, along with the shareholders' meeting to approve a legally binding resolution for removing the name [11]. As a result, in accordance with this accepted, China may incorporate specific instances into the statutory grounds for removal, such as shareholders' breaches of fiduciary duties, shareholders' violations of non-competition compromises, and shareholders' lack of ability to participate in the executive leadership of the company as a consequence of old age and other psychological and physical infirmities. Regarding the predetermined grounds for delisting, our law should affirm the legitimacy of the grounds for delisting that are in compliance with the law, consistent with the limited liability company's human harmony, and primarily constrained to those agreed upon in the company's articles of incorporation. Additionally, our law should establish a mechanism for underwriting major grounds to guarantee that this system is as flawless as feasible.

4.2. Refinement of Procedural Regulations

Regarding prior procedures, current Chinese law can prescribe a minimum amount of time for the procedure and provide appropriate relief. For instance, if a shareholder suddenly develops a mental illness, the period may be prolonged from 30 to 45 days for the purpose to comply with the demands for contemporary humanistic care. The law should also make apparent the format and content of the company's reminder, including whether it must be in writing and whether or not it must include specifics regarding the reasons for delisting, the final deadline, potential repercussions, and available remedies. It should also ensure that the reminder document is successfully delivered to the concerned shareholder. China ought to initially enforce the voting exclusion rule when it comes to voting processes [12]. As previously stated, if the shareholder to be removed is a major shareholder with absolute capital and the voting exclusion system cannot be utilized, it is very probable that the shareholder will infringe on its right to leverage its advantage in capital voting to modify the outcome of the shareholders' removal resolution, leading the resolution to be against the intention of other shareholders in accordance with the contract. The approach of avoiding the voting rights of the shareholder whose name will be deleted from the shareholder list must thus be established. The provision should apply to be a general recusal rule, meaning that in addition to the concerned shareholders, their associated shareholders should also be disqualified from voting on the motion. To be fair, the law should also permit the involved shareholders and their linked shareholders to be present at the shareholders meeting and submit their ideas, allowing other shareholders to reach a more accurate conclusion. According to the lessons obtained through the evolution of the system in other nations, the resolution to remove the name should also be taken by a combination of capital majority and headcount voting of the voting method and a two-thirds majority of the voting ratio given that the limited liability company is a joint venture company of humanity and possession and the choice is, after all, a matter of critical significance regarding the continuing existence of the company.

4.3. Clarity on the Legal Consequences

The Chinese legislator should attempt to make it apparent what the legal repercussions of adopting the system will be after generating the substantive norms and enhancing the procedural norms. On the one hand, if the delisting resolution's effectiveness is flawed, the resolution would unavoidably undermine the legitimate rights and interests of the delisted shareholders. China should therefore make clearly the legal procedure for removing shareholders from the register, namely the shareholders' removal lawsuit. Once the delisted shareholder files a lawsuit during the exclusion period (also known as the lawsuit for relief of delisting), the court has to notify the company to

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temporarily halt the disposal of the shareholder's equity in question. The court must also review both the procedural and substantive aspects in accordance with the laws and regulations related to the validity of the shareholders' meeting resolution and the system of delisting, so as to clarify the validity of the delisting resolution. The limited liability business engaged can also file a lawsuit to confirm the removal of shareholders within a specific time frame in order to retain the legal rights and interests of the company in order to ensure the balance of interests of both sides. On the other hand, the limited liability company's change in shareholders may result in a corresponding change in the company's capital. For this reason, China should fully take into account the interests of the company's creditors when building the shareholder delisting system. In this regard, the legislator should make sure that the right to know and the right to sue of the company's creditors are not violated within the legal framework.

5. Conclusion

The limited liability corporation has emerged as one of the most significant business structures in the market economy as a result of the swift growth of the contemporary economy and society. Due to important aspects of human nature, shareholders play a significant role in the management of the business. Additionally, relationships between shareholders are expire, and personal interests of shareholders are closely tied to the interests of the business as a whole, the interests of other shareholders, and the future growth of the business [13]. As a result, in order to address the multifaceted conundrum of reality, efficient actions must be taken for settling interpersonal conflicts among shareholders in a company with limited liability. Jurisprudence in numerous nations has lauded the theoretical and practical value of the shareholder exclusion mechanism as a substitute for dissolving a firm when issues cannot be reconciled. However, this method has not been systematically regulated in China, with the exception of a few sentences in Article 17 of the Third Judicial Interpretation of the Company Law. In the practice of law, the vagueness of substantive standards, procedural requirements, and legal ramifications can easily result in judge rulings that are inconsistent with one another and the phenomena of diverse verdicts in the same situations. This paper analyzes the necessity of the system in China by defining the system and offers recommendations to improve the system in China based on the advanced experience of the German shareholder exclusion system in three aspects: substantive regulation, procedural rules, and legal consequences, in order to assist Chinese limited liability companies in overcoming operational challenges and preserving positive relationships among shareholders.

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