Analysis of the legal issues of proxy shareholding

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Abstract
The shareholding is a separation between the shareholders recorded in the register of shareholders and those who are actually entitled to a share of the capital or income from the shares. In practice, the nature of shareholding is mostly explained by the proxy theory. The key to the determination of the relationship between the shareholding on behalf of the agreement. The effect of equity holding agreement is closely related to the nature of the company. Contract cancellation should be considered from the consensual cancellation, agreement cancellation, arbitrary cancellation, statutory cancellation, on the cancellation of the contract of equity holding compensation for loss, need to pay attention to whether the person being held as the actual right holder can obtain the equity in the name of the equity and equity loss of the close relationship.

Keywords
proxy shareholding, relationship recognition, validity issues, contract cancellation

1. Introduction

Equity in economic life has a long history, in 2011, the supreme people's court on the application of the company law of the People's Republic of China on a number of issues in the provisions of (three) (hereinafter referred to as the company law interpretation of the three) confirms its legal status, and on the validity of the contract and the vesting of the equity investment interests and other legal issues occurring in the practice of the trial to make provisions, but our country has not yet been on the equity in the construction of the complete normative system, a number of However, China has not yet constructed a complete normative system for equity holding, and there are many issues with different understandings at the theoretical and judicial levels, and both parties of the equity holding contract are facing potential legal risks.

For the nominee, the consequence of defective and evasive capital contributions by the actual contributor is a supplementary liability to the company's creditors, who will claim rights against the nominee on the basis of the appearance doctrine. For the nominee, the nominee may dispose of the equity without authority; may deviate from the nominee's intention or commit acts detrimental to the nominee in the acquisition of dividends, the exercise of voting rights, the distribution of assets, etc.; and, in the case of an enforcement case arising from the nominee's own external liabilities, the enforcement court may enforce the nominee's shareholdings in the nominee's name.

Shareholding is not a legal concept in the strict sense of the word, but can be summarized as a separation be-

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tween the shareholders recorded in the register of shareholders and those who are actually entitled to a share of the capital or the proceeds from the shares. The corresponding concept of "nominee" is not necessarily the "actual contributor" embodied in the legal provisions, because the actual contributor is not necessarily the nominee, and the person who has not actually contributed is not necessarily not the nominee. In this paper, the terms "nominee" and "nominee" will be used.

2.Legal nature of proxy shareholding

Equity holding as a description of the factual situation, the definition of its legal nature is to resolve the equity holding disputes to determine the premise of the application of the law, but the current law is not clear on this, resulting in the lack of a unified normative basis for the handling of disputes in practice, the emergence of the differences in the determination of the disputes of the same kind and the ruling of the different. There are three main doctrines regarding the legal nature of equity holding: principal-agent theory, fiduciary relationship theory, and nameless contract theory. Delegate agency theory that the equity holding parties is a principal-agent contractual relationship, complete anonymity equity holding set up not open indirect agency, not complete anonymity equity holding set up open indirect agency. The fiduciary relationship theory holds that the person to be held as a principal and beneficiary will entrust specific property to the agent as a trustee, and the trustee will use this property to contribute to the company to convert into equity. The noname contract theory holds that equity holding is a series of contractual arrangements in which the holder and the person to be held sign a holding contract agreeing on rights and obligations.

In judicial practice, the equity holding is defined as a contract of entrustment. Although the supreme court also has a different interpretation, but there are cases clearly "entrusted to hold shares on behalf of the contract belongs to a kind of entrustment contract", or not clear the legal nature of the entrustment contract, but expresses "on behalf of the formation of the relationship should be based on the entrustment relationship," the close connection. The supreme court of several judges also expressed in the article of the nature of equity entrusted contract, which WangYuYing judge after in-depth discussion, concluded that "entrusted agent of the legal nature of equity entrusted to the interpretation of the legal nature of the legal system not only can integrate contract legal system and the company legal system, but also to adapt to the needs of the judicial practice, it is a better path of interpretation." In summary, in the absence of clear existing law, equity holding is generally defined as a proxy in the field of practice. For example, in wang mou and jiangsu new intercontinental international trade co., ltd equity dispute, suzhou intermediate people's court of second instance that: wang mou and new intercontinental company there is a relationship of entrustment, wang mou should be in accordance with the "investment co-operation contract" agreed to return the equity.

3.Determination of proxy shareholding

With respect to proxy holding, the first and foremost thing is that there exists a consent to proxy holding between the two parties, i.e., the proxy holder and the person being proxy should form an agreement on proxy holding. This opinion is not necessarily expressed in a written document, and needs to be judged by considering whether there is a consensual agreement on shareholding, whether the rights of shareholders are actually exercised, and whether other shareholders are aware of the situation. For example, in Liu Jing and Wang Hao Shareholder Qualification Confirmation Dispute Appeal, the court held that "where no contract

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has been signed but both parties have acted in fact, the existence of a proxy holding relationship can also be determined in accordance with the law." In Wang Yun v. Qinghai Zhufeng Cordyceps Pharmaceutical Co., Ltd. and Other Shareholder Eligibility Confirmation Disputes, witness statements included those made by family members or company employees, and the court held that the collection of such evidence could form a more complete chain of evidence, which could indirectly prove the existence of a shareholding relationship. In Feng Mou1 v. Dairy Company, the court confirmed that Feng Mou1 was the actual shareholder of Dairy Company from the transferee's failure to provide a reasonable explanation for the gratuitous transfer of the equity transfer agreement, the lack of evidence to prove that the transferee had actually exercised the rights of the shareholders, the other shareholders' knowledge of the relationship between the shareholders, and the self-admission of Dairy Company in the defence in the other case

4.Effectiveness of proxy shareholding

Equity shareholding situation should be the first to determine the effectiveness of the equity shareholding, the company law interpretation (3) "clearly the legal status of the equity shareholding does not mean that the equity shareholding is certainly effective. In other words, the act of equity holding belongs to a kind of intentional act, not a kind of legal substitution, and its creation is not according to the provisions of the law, but based on the consent of both parties.

In addition to the general rule of invalidity of contracts under the Civil Code, the validity of an equity holding agreement varies according to the type and nature of the company. The shareholding of a limited liability company is, in principle, valid. The Supreme Court does not affirm or support the holding of equity interests in commercial banks. Controversial is the financial companies, listed companies, such as the validity of the shareholding.

For financial companies, it depends on whether there are any restrictions on the qualifications of shareholders under the law. If there is a restriction on the eligibility of shareholders, the purpose of the shareholding is obviously to circumvent the validity of mandatory norms, then the shareholding is invalid. If there is no restriction on the qualification of the shareholders, then even if the financial company, the shareholding is also effective, such as rural cooperative bank issued legal person shares can be held. In guangxi quanzhou rural cooperative bank and jiang zhenggun etc. Confirmation of the contract validity dispute appeal case, sol river company holds the quanzhou agricultural cooperative bank legal person shares 6 million shares, which jiang zhenggun actually contributed to subscribe 2 million yuan of shares. Jiang Zhenggun and Soluble River Company entered into the Equity Holding Agreement, which stipulated that Soluble River Company would be the nominal holder of Jiang Zhenggun's 2 million shares in Quanzhou Agricultural Cooperative Bank. The court held that it should be considered a valid contract.

For the determination of the validity of shareholding in listed companies, it is always necessary to balance the interests between the order of the securities market and the investment rights and interests of the transferee. In principle, it is recognised as invalid and valid under special circumstances. According to the "securities law", "listed company information disclosure management measures", "initial public offering and listing management measures" and other legal provisions and securities industry regulatory basic requirements and industry consensus, listed company issuers must be real, and does not allow the issuance process to

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hide the real shareholders, or the company's shares shall not be listed and issued. This is a series of disclosure requirements for listed companies, related transactions, review, senior management recuse themselves from serving as a regulatory initiative, for the maintenance of the public interest of society is of great significance. In Yang Mouguo v. Lin Moukun, Changzhou Amadon Co., Ltd. equity transfer dispute re-examination case, Yang Mou and Lin Mou signed a commissioned investment agreement, agreed that Yang Mou capital of 12 million yuan commissioned Lin Mou to acquire and hold on behalf of the "original shares" of the industrial company, and later the listing of the industrial company, the court found to be invalid.

In the case of Appellant Chen Liming's dispute with Appellee Jing Jiguo and Trial Defendant Hunan Dakang International Agricultural Foodstuffs Company Limited over the transfer of equity, Chen Liming and Jing Jiguo entered into a Share Transfer Agreement, which stipulated that the Defendant, Chen Liming, would transfer a portion of his shares of Dakang Herding Company to the Plaintiff, Jing Jiguo. Thereafter, Jing Jiguo fulfilled his obligation to pay for the transfer of shares in accordance with the agreement. However, Chen Liming did not deliver the shares to be transferred to Jing Jiguo, but continued to be held by him, and did not agree on a specific period of time for the delivery or change of shares. Later, when Dakang Herding Company was listed on the stock market, Jing Jiguo requested Chen Liming to return the shares held on his behalf. The Supreme People's Court held that the Equity Transfer Agreement, with the content of equity holding, did not violate the mandatory provisions of laws and administrative regulations, and was lawful and valid. It also held that the transfer of the shares in question would not lead to any changes in the shareholder status of the transferor and the equity relationship of the listed company, nor would it lead to any negative impact on the order of the share transfer market. It was also held that according to Article 137 of the Company Law, shares held by shareholders may be transferred in accordance with the law. At the time the Share Transfer Agreement was signed, Dakang was a joint stock limited company, and the provisions of Article 138 of the Company Law on the place or manner of transfer of shares by shareholders of a joint stock limited company had no impact on the effectiveness of the share transfer relationship. Therefore, in this case, the Supreme People's Court actually recognised the validity of the shareholding of the listed company to a certain extent.

5.Cancellation of proxy shareholding contract

Under the proxy theory, the basic rules of contract cancellation and the special rules of cancellation of proxy contract in the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") shall apply to the cancellation of the equity proxy contract. According to the above rules, the cancellation of equity holding contract is divided into consensual cancellation, agreed cancellation, statutory cancellation and arbitrary cancellation.

In practice, the subject of the contract will abandon the right of arbitrary cancellation, i.e., special exclusion, in order to enhance the stability of the contract. On the right of arbitrary cancellation of special exclusion is effective, Professor CuiJianYuan think that gratuitous entrustment of the contractual relationship between the parties rely on the relationship of trust to maintain, trust relationship rupture, there is no need to maintain the contractual relationship, so arbitrary cancellation of the right of exclusion of the contract is ineffective; paid entrustment, in addition to the relationship of trust between the parties, there is also other interest relationship exists, so that "this kind of limitations is valid in principle, unless the restriction is

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contrary to public order and morals, or there are circumstances that necessitate the cancellation of the contract." Supreme Court jurisprudence also adopts the view that the special exclusion of the right of arbitrary cancellation of a paid entrustment contract is valid, and holds that the right of arbitrary cancellation can be excluded on the basis of the consent of the contracting parties. The agreement that the right of arbitrary cancellation shall not be exercised is legally binding. Such as Pan Guangtan, He Shoubin and other disputes related to the company case, the court on the parties through the contract agreement to exclude the right of arbitrary cancellation of the practice is recognised.

The consequences of the cancellation of the shareholding contract shall follow the general provisions of the Civil Code, i.e. restitution, remedial measures or compensation for damages, but the performance of the shareholding contract is more complicated as it radiates a strong involvement of otherness, including, but not limited to, being subject to the limited company's personhood.

Equity holding contract as a contract of entrustment, belongs to the continuation of the contract, the payment is mainly for the actual capital contribution, the capital contribution has become the company's property and transformed into equity, according to the principle of capital maintenance of the company law can not be returned directly by the company, and the person who is the holder of the company has no right to claim the right directly to the company based on the cancellation of the contract of holding with the holder of the company's internal equity holding contract. After the cancellation of the equity holding contract, the proxy shall be freed from the proxy relationship, the proxy equity to be held by the proxy, but under the rules of the company law, whether the proxy can be named subject to the company's other shareholders. In the case of a fully anonymous nominee, the consent of more than half of the other shareholders of the company is required to ensure the company's personhood; in the case of an incompletely anonymous nominee, the fact that the equity is held in lieu of the nominee, with the knowledge of more than half of the other shareholders or with no objections, may be registered as a shareholder of the company. After the dissolution of the equity holding contract, if the person being held in lieu of the company law can not meet the conditions of conspicuous, and the person in lieu of no longer continue to hold in lieu of the company law but can not be withdrawn, i.e., for the impasse in lieu of the holding, how to break, the current law is still a blank. Such as yellow, LuoMou v. S paper and plastic company shareholder qualification confirmation dispute case, LuoMou and HuangMou constitute a legal relationship of anonymous investment, but the agreement is the two sides of the internal agreement, only in the LuoMou and HuangMou between the legally binding, for the S paper and plastic company does not have the legal effect. Without the consent of a majority of the other shareholders of S paper and plastic company, Huang, Luo request for confirmation of Luo as a shareholder of S paper and plastic company should not be supported.

With respect to the issue of compensation loss for the cancellation of the equity holding contract, it cannot be determined directly by whether the nominee obtains compensation for the value of the corresponding equity; nor can the amount of the loss be measured purely by the amount of the capital contribution or the market value of the corresponding equity, and attention needs to be paid to the close relationship between the nominee's ability to acquire the equity in a conspicuous manner as an actual owner of the rights and the loss of the equity. The following considerations can be made: first, after the cancellation of the contract, the nominee can be named, on behalf of the two sides of the special equity arrangements to restore the norm, there is no loss of equity, whether there are other losses by the two sides in accordance with the specific

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circumstances of the determination; second, after the cancellation of the contract, the nominee can not be named, if not due to the nominee's breach of contract or tortious behaviour, but only subject to the obstacles of the company law, should be regarded as the risk inherent in the equity holding, it should choose this kind of equity arrangement should be the risk. It should be foreseen and bear the risk when choosing this kind of equity arrangement, and it is not appropriate for the proxy holder to compensate for the loss of equity of the person being held in trust; if it is caused by the proxy holder's breach of contract or tortious behaviour, such as the transfer of the equity held in trust to a bona fide third party without authorisation by the proxy holder and the setting up of guarantees and other circumstances, regardless of whether there is a company law obstacle, the proxy holder shall compensate for the loss of the equity of the person being held in trust; thirdly, the person being held in trust after the termination of the contract fails to make his or her name known Thirdly, if the failure of the nominee to reveal its name after the termination of the contract is due to its own reasons, the nominee is not required to compensate for the loss of the nominee's equity.

In wang mou v shenzhen oriental wealth venture capital management co., ltd, the contract should be restored to the normal equity, in the equity is pledged to be seized before the state, regardless of whether there is a company law obstacles, the plaintiff can't get the equity, this is the defendant's breach of contract, even if it has not yet been exercised, the loss of equity has actually occurred, the defendant should be compensated. If the defendant lifted the pledge or seizure, even if the plaintiff still enjoys the legal right to terminate, but the loss of equity is difficult to support.

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