

Judgment Rules for the Naming Disputes of Actual Investors

-- Concurrently Comment on "Minutes of the Nine Peoples"

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Abstract

In the practice of our country, the phenomenon of silent investment is still prone to disputes, the result of different judgments in the same case, and the contradiction between the actual investor and the nominal shareholder and the company. For example, when the actual investor wants to be known and exercise shareholder rights, and the company refuses to do so, how should this be resolved? Therefore, this article takes my country's corporate law system as the starting point to analyze the theoretical basis and legal dilemmas of the actual investor's naming, focusing on the research on the actual investor's naming rules, and try to put forward some actual investor naming rules. Law recommendations.

Keywords

Actual Investor; Jiumin Minutes; Distinguished Shareholders.

1. Introduction

With the changes in the economy and society, the phenomenon of hidden capital contributions is becoming more and more common. In order to adapt to this change, the company law of our country has made some provisions on the phenomenon of hidden capital contribution, so that the equity holding the legal status on behalf of, and clarified the way of responsibilities of investors and shareholders. From a legal point of view, anonymous capital contribution is not only a manifestation of freedom of contract, which is conducive to the free development of social economy, but also shows the characteristics of the principle of autonomy of will, giving the parties more autonomy rights, and enriching investment methods. However, these regulations only involve the relevant content of the capital contribution, such as the effect of the agreement between the actual investor and the nominal shareholder, or the conditions that the actual investor needs to meet for the name of the actual investor, and the nominal shareholder's equity to a third party. The difficulties arising from the transfer have been stipulated, but the issue of determining the qualification of the actual investor and how to protect its related rights and interests has been neglected. At the same time, it has also brought difficulties to the trial of the court.

2. Relevant Overview of the Actual Investor

Before studying the qualification of actual investor, we must first clarify the connotation of "actual investor". According to the current theory of our country, the characteristics of actual investors can be divided into: first, actual investors have real investment behavior; second, the nominal investors are prominent in the company and industrial and commercial registration; third, actual investors Reach an agreement with others on equity issues; fourth, the actual investor mostly exists in a limited liability company[1]. Based on the above characteristics, the actual investor can be defined as: in a limited liability company, one party directly or indirectly

invests in the company after the agreement of both parties, while the other party is clearly named in the company and the industrial and commercial registration, and the investor is the actual investor. The name party is called the nominal investor.

To talk about the essentials of the actual investor's name, first, the shareholders' qualifications must be valid. The long-term stability of the company is the prerequisite for the company's existence. Therefore, the identification of the actual investor's shareholder status and rights should give priority to the company's development and respect Principles of the company's internal governance. Secondly, more than half of the shareholders are required to agree. For most shareholder qualification disputes, when the actual investor wants to confirm his shareholder qualifications, he will also ask for naming. Interpretation 3 of the Company Law solves this problem very well. Article 25 states that the court will only support the request for the name of the actual investor if the consent of more than half of the other shareholders is obtained. In judicial trials, there are four main situations in which "more than half of the shareholders agree". One is that other shareholders of the company are aware of the agreement reached between the actual investor and the nominal shareholder and sign their names to show their consent. Second, after the actual investor makes a request for naming other shareholders who are not known in advance, he directly solicits opinions from other shareholders of the company and asks other shareholders to sign. The third is that after the actual investor made a request for naming, other shareholders did not expressly agree. Fourth, other shareholders were aware of and did not raise objections to the actual investor's name. By analyzing the above four situations, it can be known that as long as the other shareholders of the company have express consent, the court will make a judgment in favor of being named. But when the other shareholders did not make a statement, the court will have differences. By analyzing the latest "Minutes of the Nine Peoples" issued by my country, it can be known that if other shareholders have no objection to the hidden capital contribution, they are presumed to agree, which is very beneficial for the actual investor to be named.

3. Comment and Analysis of "The Jiu Min Minutes"

(1) "Jiumin Minutes" rules on the naming of actual investors

The "Minutes of the Nine Peoples" stipulated the conditions for the actual investor to be known. Among them, 28 disputes are mainly related to the content of Article 24 of the judicial interpretation (3). [2] One view think that other shareholders have explicit consent to be considered as consent; the other view thinks that implied consent is also regarded as consent. Through the analysis of the "Minutes of the Nine Peoples", it is not difficult to see that they agree more with the second point of view. As long as the actual investor has actually participated in the company's production and operation and more than half of the shareholders have not expressed opposition, then the dormant investor can achieve this. Make it famous and gain the identity of shareholders. The understanding and application of Article 28 should mainly be carried out from the following aspects:

First of all, it is necessary to correctly understand the criteria for determining that "more than half of the shareholders know the actual amount of capital contributed by investors". Under normal circumstances, actual investors can prove that they have been approved by the company and shareholders based on evidence such as the shareholders' meeting or shareholders' signatures.[3] Otherwise, you may face adverse consequences. If the actual contributor only contributes the capital, no one except the nominal contributor knows the actual contributor. However, if the actual investor has exercised shareholder rights, based on the characteristics of human compatibility, then the actual investor only needs to provide evidence of exercising shareholder rights to consider that the company knows the actual investor.

Secondly, it is necessary to reasonably grasp the meaning of "more than half of other shareholders have not raised objections to actual investors' exercise of shareholder rights". Since nominee shareholders have the right to disclose the actual investor to other shareholders, when other shareholders know the actual investor behind, the nominal investor continues to exercise shareholder rights on behalf of the actual investor. If more than half of the other shareholders have no objection, the other shareholders can be considered to be Recognizing the existence of the actual investor. If under normal circumstances, the actual investor exercises shareholder rights by himself, the majority of shareholders have not expressed objection, but, when necessary, the nominal shareholder will come forward to resolve the issue of formal legality. This can also be considered to have recognized the existence of the actual investor.

Finally, we must correctly understand the relationship between the "Minutes of the Nine Peoples" and the "Company Law (Interpretation 3)". The content of Article 28 is a further interpretation of Article 24, which makes the content of the company law more specific, and solves the unnecessary problems faced by actual investors when exercising shareholder rights. From the perspective of protecting actual investors, While maintaining the interest relationship between the actual investor and the company. With the promulgation of the "Company Law (Interpretation III)", most of the courts made "the right of consent of the majority of other shareholders" too absolute in the trial, regardless of whether the actual investor has evidence of the knowledge or consent of other shareholders, or even other shareholders of the company. If the fact is denied knowledge or consent, the court will also reject the actual investor's request to be named in accordance with the provisions of Article 24.

In our country's practice, there will often be such a situation: In a limited liability company, the actual investor has exercised shareholder rights, and other shareholders have not expressed clear objections, but when the actual investor made a request for publicity, other shareholders raised objections., Clearly opposed to the actual investor name and the exercise of shareholder power. Prior to the promulgation of the "Jiumin Minutes", the court generally followed the relevant provisions of the "Company Law (Interpretation III)", but the "Jiumin Minutes" expanded its interpretation, that is, if more than half of the other shareholders only gave implied consent, it is believed that the identity of the actual investor shareholder has been recognized. Therefore, if other shareholders agree first and then explicitly object to it, then based on the principle of good faith and the actual investor's previous continuous exercise of shareholder rights, the request for the actual investor's name should be supported. It is not difficult to see that Article 28 in the "Minutes of the Nine Peoples" enriches the content of Article 24, and corrects the mistakes in our country's past judicial practice. Article 28 expands the interpretation of Article 24. Therefore, Article 24 still applies. It is only necessary to further consider the intentions of other shareholders of the company during the court trial and make judgments on this basis.

(2) The influence of "Jiumin Minutes" on the naming rules of actual investors

The publication of the "Minutes of the Nine Peoples" is of great significance to my country's civil and commercial fields. Its content is mainly to make decisions on various controversial issues in my country's current civil and commercial fields, so as to avoid the phenomenon of different judgments in the same case. The "Minutes of the Nine Peoples" has a great positive impact on the qualification of the actual investor. It stipulates that in the process of naming the actual investor, if more than half of the shareholders agree to the existence of the actual investor, then as long as the actual investor Provide evidence that more than half of the shareholders are aware of their existence, and then it can be presumed that other shareholders are tacitly agreeing to this. Although there is no clear consent, it has actually participated in the company's production, operation and management. This way, it can provide a trial idea for the actual investor qualification confirmation dispute case, and solve the problem of different judgments in the same case for such cases.

In my country's judicial practice, the resolution of shareholder qualification disputes should mainly focus on the records of the company's articles of association, and whether the investor has made a true expression of his intentions and whether he has fulfilled his capital contribution obligations and other factors.[4] Under such a premise, the actual investor is no longer in a state where he can only enjoy investment income and cannot use his identity as a shareholder to maintain his rights, but obtains shareholder qualifications under the "default" of other shareholders and truly becomes a shareholder of the company. However, it should also be noted that although the "Jiu Min Minutes" provides ideas for the qualification of actual investors, the issue of the actual investor's name is still relatively vague. For example, regarding the issue of employees holding shares in secret during the restructuring and reorganization of the company. In this case, if shareholders want to appeal the court to make their shareholder qualifications public, they will face a problem. Even if they meet the requirements agreed by more than half of the other shareholders of the company, they cannot break through the "Company Law" regarding the number of shareholders of the company. limits.[5] Due to the limitation of the number of shareholders, most employees cannot achieve naming, cannot enjoy the status of shareholders, and cannot protect their due shareholder rights. At present, there are few laws and regulations on the naming of actual investors in our country, and it is impossible to solve the practical problems in the very complicated business environment more comprehensively. Silent investment is a business habit gradually formed by businessmen over the years, and it is also a manifestation of their autonomy of will. Regarding the state of keeping the law blank, it should be the legislature's respect and caution for this business habit. The Jiumin Minutes does not have the right to interpret, and therefore cannot be used as a basis for the court to conduct a trial. In light of the current situation, the legal provisions on anonymous capital contributions should be improved to further stipulate or explain possible controversial issues.

4. Legislative Suggestions for the Naming of Actual Investors

(1) The legitimacy of the naming rules of the actual investor into the law

Legal legitimacy is an important feature of modern legal systems and a core concept in jurisprudence. The naming of actual investors requires legal legitimacy, and precisely because of this, the current legal system should be reformed in many ways on the basis of facing legal legitimacy to resolve the dilemma of naming actual investors. If you want to solve the issue of the actual investor's naming, you should first determine whether the actual investor has a right basis for obtaining shareholder status.

In general, obtaining shareholder status can be based on the following two aspects. The first is the investment behavior of the actual investor. First of all, since the promulgation of the Company Law, actual capital contribution has been the main way to obtain shareholder status. Secondly, considering the nature of the company, whether it is a company limited by shares or a limited liability company, no matter the size of the company, it is bound to have the characteristics of joint capital.[6] Based on this, it can be seen that the actual investor has a real investment behavior to the company, and its real investment behavior determines the possibility of the actual investor to obtain the qualifications of shareholder status. The second is the existence of a shareholding agreement. First, if the two parties agreed in the shareholding agreement that the actual investor shall enjoy shareholder qualifications, although the relativity of the contract will not directly bind the company and its shareholders, it is still valid for both parties of the agreement. Secondly, even if the two parties did not agree on the ownership of the equity, the shareholder qualification of the nominal shareholder is not only from the shareholder register and other documents, but also the capital contribution and authorization of the actual investor. Therefore, the actual investor, as the party of capital

contribution and authorization, should obtain the shareholder status from the nominal shareholder.

In summary, I believe that the naming of the actual investor is based on the legal principles of legitimacy, which embodies not only the academic significance, but also the value of judicial practice. With the theoretical support of legal legitimacy, the issue of the naming of actual investors will surely be well resolved.

(2) Suggestions on the entry into the law by the naming rules of actual investors

Because the naming of the actual investor is legally justified, the requirements for the naming of the actual investor should be determined based on the different expressions of the shareholders' intentions and the degree of the actual investor's naming. Specifically, it can be improved according to the following aspects:

First, if the company's articles of association have an agreement on holding shares on behalf of the company, the agreement shall prevail. Because the company's articles of association have great autonomy, the stipulations of the company's articles of association will be recognized by the law if they are legal. If the number of shareholders is small and the shareholders have a strong sense of trust, then shareholders can prohibit the existence of proxy holdings in the articles of association to maintain the company's integrity. The legal effect of the company's articles of association is extremely high. On the one hand, it can protect the principle of autonomy of the company's will to the greatest extent and protect the rights of shareholders. On the other hand, it also considers the real needs of actual investors, so that legal regulations are not too rigid.

Secondly, if the articles of association do not provide for the holding of shares on behalf of others, if other shareholders are aware of the existence of the actual investor and have not expressed objections, then the actual investor can directly obtain shareholder status. In practice, there are more cases in which the hidden capital contribution relationship is known to other shareholders and other shareholders do not express objections and are deemed to agree.[7] To apply this rule, the following conditions must be met: one is that the company's articles of association do not provide for the agreement on proxy holding; the second is that the proxy holding agreement is legal and valid; and the third is that other shareholders know or acquiesce in the existence of the actual investor. When the above conditions are met, the actual investor will be directly named.

Finally, in the case that other shareholders do not know, the actual investor who wants to be known should be based on the rules for external transfer of equity. If the actual investor does not directly exercise shareholder rights, then there is no difference between the actual investor and a third party who has no interest in the company in terms of the appearance of the rights. If more than half of the shareholders refuse to be named, the actual investor can continue to remain anonymous and continue to receive only investment income as before. In this way, not only can the rights and interests of the actual investors be protected, but also the integrity and stability of the company can be protected.

Based on the above insights, it is suggested that these provisions can be added in the next revision of the Company Law, so that the path to the naming of the actual investor will be clearer. [8].

5. Conclusion

The qualification of the actual investor has always been controversial. Therefore, the issue of the naming of the actual investor requires a reasonable grasp of the conflicts of rights in all aspects, to maximize the effectiveness of the actual investor without harming the interests of third parties. Obtain shareholder qualifications. From the above summary, we can see that the actual investor to obtain the company's shareholder status needs to meet the following five

aspects: First, the investor should have the qualifications to become a shareholder, and there are no legal obstacles to becoming a company shareholder in terms of identity and profession. However, if the actual investor has certain legal obstacles when making capital contributions, but the legal obstacles no longer exist when confirming shareholder qualifications, then there will be no legal obstacles to the actual name of the investor. Second, the actual investor needs to provide that he has actually invested in the company, regardless of when and how it contributed. Third, there is a written agreement representing the true intention of the shareholders, or although there is no written agreement representing the true intention of the shareholders, there are other evidences that can represent the true intention of the shareholders. Fourth, if the evidence provided by the actual investor can prove that other shareholders are aware of its existence, then the shareholder's wishes are no longer a restriction on the actual investor's name. Fifth, when the actual investor can meet the above-mentioned conditions, but obtaining shareholder qualifications may harm the interests of third parties, then the actual investor can only obtain shareholder qualifications if the problem between the actual investor and the third party is resolved.

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