

Brief Analysis of Husband and Wife Shareholder Company

Yu Sun

School of Law, Qingdao University of Science and Technology, Qingdao 266061, China

1286510901@qq.com

Abstract

In today's society, the country's support for innovation and entrepreneurship, there has been a large number of new Husband and Wife shareholder companies, but in some cases in the relevant judgment of the Husband and Wife shareholder companies defined as a One-person company, such related problems emerge in an endless succession. Therefore, from the concept, characteristics and classification of the Husband and Wife shareholders of the company, the characteristics of the Husband and Wife shareholders of the company is the composition, equity composition and property distribution of the particularity, as well as the simplicity of the internal structure. There are a number of different categories of Husband and Wife shareholder companies, some according to the form and substance of division, and some according to the time sequence into nature and acquired type. If the Husband and Wife shareholder company is identified as a One-person company, there will be various improper, conflicts with laws and regulations, marriage law and the relevant provisions of One-person company, and even bring bad effects on the independence of personality and the good development of economic society. Therefore, in order to better adapt to the needs of economic development, Husband and Wife shareholder companies still have a lot of areas to improve.

Keywords

Husband and Wife Shareholder Company; One-person Company; Concept; Type; Legal Characteristics.

1. Introduction

With the current development of China's economic market, the encouragement of innovation and entrepreneurship by the state, and the concept of "mass entrepreneurship and innovation" proposed by Premier Li Keqiang, more and more mom-and-pop stockholder companies appear in the market. However, in some cases, the relevant judgment of mom-and-pop stockholder companies is unfair. In some cases, according to the actual situation, the Husband and Wife shareholder company was identified as a One-person company, for example, the appeal case of Qingman Company, the court finally rejected the request of Qingman Company to add the person subject to execution. Instead, the court ruled that The Company can be considered a One-person company.

So, there is a contradiction, what kind of company is the Husband and Wife shareholder type company, how to define it, in real life again encounter such problems, how to make the corresponding judgment? These problems are worth studying, so in this kind of dispute more and more now, I for the Husband and Wife shareholders of the company to carry out their own analysis.

2. The Concept of a mom-and-pop Shareholder Company

A company with Husband and Wife shareholders refers to a company with only two shareholders who are Husband and Wife, or a company whose controlling shareholders (and

actual controllers) are Husband and Wife. Such companies exist in a large number of small and medium-sized enterprises in China. However, because China's relevant laws are not perfect, there are also great differences in judicial practice, so this kind of related disputes have become a practical difficulty. Therefore, the concept of husband-and-wife shareholder company should be analyzed from the academic and theoretical aspects.

First of all, academically, the related concepts of the husband-and-wife shareholder company can be divided into the following two types: first, the husband-wife shareholder company is the company whose shareholders are only Husband and Wife during the existence of the company; [1] Second, the Husband and Wife shareholder company is a company jointly funded by the Husband and Wife, that is, when the Husband and Wife shareholder company is established from the beginning, it is jointly funded by the Husband and Wife.

Theoretically, Husband and Wife shareholder companies can be divided into two types, one is Husband and Wife limited liability company, the other is Husband and Wife limited liability company, but in reality, the Husband and Wife set up a joint stock company is rare, so the Husband and Wife shareholder company mentioned in this paper refers to limited liability company.

3. Characteristics of Husband and Wife Shareholder Companies

The particularity of the constitution is that the shareholders of a husband-and-wife shareholder company are the Husband and Wife, and the actual controllers of the company are the Husband and Wife. The relationship between the Husband and Wife includes the commercial partnership and the spouse relationship, and the property between the Husband and Wife is subject to the adjustment of both the Company Law and the Marriage Law. [2] In fact, the controlling parties of the Husband and Wife shareholder type company are Husband and Wife, and they are more closely related to each other. Compared with other types of companies, they have a better understanding of each other, so the person integration of the Husband and Wife shareholder type company is more prominent.

Secondly, the shareholding structure of the Husband and Wife shareholder company has its particularity, that is, the ownership attribute of the equity in the company is obviously different from that of other companies. Husband and Wife shareholder company seems to be the company of Husband and Wife, with relatively dispersed equity, but in fact, the equity of Husband and Wife is highly concentrated, and even can be regarded as a unified whole, which is the basis for some cases to recognize Husband and Wife shareholder company as a One-person company.

Thirdly, the property distribution of the Husband and Wife shareholder company is special. The property shares of the Husband and Wife shareholder company at the time of initial registration cannot be regarded as the agreement between the Husband and Wife on the property. Article 1061 of the newly promulgated Civil Code (Article 22 of the Marriage Law) stipulates that: The following property acquired by a Husband and Wife during the period of their marriage shall be their joint property and shall be jointly owned by them: (1) wages, bonuses and remuneration for labor services;(2) earnings from production, operation and investment;(3) earnings from intellectual property rights;(4) property inherited or donated, except as provided for in paragraph 3 of Article 1063 of this Law;(5) other property that shall be in joint possession. Husband and Wife shall have equal right to dispose of their joint property. The capital invested by the Husband and Wife shareholder company, as well as the profits obtained, are in full compliance with the above provisions. Therefore, it is completely different from the property ownership in other types of companies, except for the common agreement between Husband and Wife, otherwise agreed.

Fourth, the internal structure of mom-and-pop shareholder companies is relatively simpler and more efficient. The company law of our country for a smaller number of shareholders or the relatively small size of the company, not request must have the board of directors or the board of supervisors, but need to have executive director and one or two supervisors, shareholders of Husband and Wife only couple type company, so the internal structure and simple, when some of the problems of the company, decision-making is faster, so efficiency is very high.

Fifth, mom-and-wife shareholder companies are not conducive to protecting the interests of creditors. As mentioned in the fourth point above, the Husband and Wife shareholder company is a small company, and there is no board of supervisors, so it is only the Husband and Wife who make the decision. In this way, the Husband and Wife only need to reach an agreement. Creditors may not understand some things that are harmful to their own interests, so the interests of creditors will be damaged.

4. The Type of Company with mom-and-pop Shareholders

Formal Husband and Wife shareholder - type company and substantive Husband and Wife shareholder - type company.

Formal Hus-and-wife shareholder company means that the shareholders are nominally Husband and Wife, and only Husband and Wife, and all the company's capital contribution is jointly owned by two people. in essence, a Husband and Wife shareholder company means that the company is jointly invested by one of the Husband and Wife and others on the surface, but in essence, the company is jointly invested by the Husband and Wife. The others are only nominal shareholders, while the Husband and Wife are substantial shareholders, and the others do not enjoy relevant interests of the company. [3]

Congenital Husband and Wife shareholder company and acquired Husband and Wife shareholder company.

Congenital Husband and Wife shareholder company, as its name implies, is the company initiated by both Husband and Wife that existed before; The acquired Husband and Wife shareholder company is not the Husband and Wife shareholder company when the company is established, but due to the acquired inheritance, transfer, purchase and so on, it becomes the Husband and Wife shareholder company.

5. Five, The Husband and Wife Shareholders of the Company Identified as a One-person Company

(1) Conflict with laws and regulations

The company law of our country although type to Husband and Wife partner companies don't have too many restrictions, but according to the company law of one-man company and shareholders of Husband and Wife company rules, if the Husband and Wife shareholders type hard as one company is not legitimate, is not in conformity with the relevant provisions of the one-man company already, also do not conform to the regulations in "marriage law" is for the harmonious and stable development of society can also cause bad effect.

(2) Conflict with relevant laws and regulations of One-person company

A One-person company is a company that has only one controlling shareholder. this is the relevant provisions of the company law, and a company with Husband and Wife shareholders has two controlling shareholders, so this is inconsistent with the provisions of a One-person company. Second is that the Husband and Wife shareholder type company just because the joint property of Husband and Wife, and most closely the relationship between Husband and Wife, the most cohesive, stakeholders, so only in form as a community, even if there are, however, also cannot deny the Husband and Wife two independent personality, is refers to two or more

individuals joint possession, if is a person will not be able to call it a total of, so, would be Husband and Wife type company shareholders as denial of both for a total of one person company system, also with the relevant regulations of the one-man company caused the conflict. [4]

(3) Conflict with relevant provisions of the Marriage Law

China's "marriage Law" for the joint property between Husband and Wife is the principle of legal joint property and agreed property principle. So, there is a different view of common property between Husband and Wife. Japanese scholar honors my wife put forward "the potential of" theory of the joint property of Husband and Wife, under the theory of Husband and Wife joint property is divided into internal and external two dimensions, in the legal relations of the internal problems will be according to the essence of value to determine the ownership of the property, the person is according to the property name on the external legal relations to determine the ownership of the property. [5] although our country's theory of "marriage law" for a couple of potential has not made clear rules, but our country "marriage law" judicial interpretation 3 of article 10 of one party to buy houses before marriage between Husband and Wife, married to the Husband and Wife joint property to repay the loan, this kind of situation if divorce, is to divide the price according to the essence of marital property, is in line with the theory of "potential of".

So, the potential is internal between Husband and Wife common ownership, that is different with that stipulated in the law of mutual, the total of the concept of a big, property law is a Husband and Wife between internal and external between Husband and Wife common ownership, is the total of the management of content and dispose, however - as its technology companies soar to the shareholders as a couple of such capital contribution and profit is external Shared between couples perspective. In addition, the joint ownership between Husband and Wife is the contribution of the common property to the family, which is used for the internal expenditure of the family. Therefore, the property joint theory is used to prove that the Husband and Wife shareholder company is not a One-person company.

(4) Conflict with the theory of personality independence

Personality independence refers to people's independence, autonomy and creativity. it requires people not to rely on any external spiritual authority, nor to be attached to any real political force, to have independent judgment in the pursuit of truth, and to have an independent spirit in political participation. However type will be Husband and Wife shareholders as one company, that is the default couples is a personality, it's for the independent personality of the couple denied, despite the joint property because of the marital relationship between Husband and Wife, as a community of interests, but that does not erase the independent personality, between Husband and Wife so will couple shareholders as one company is for the destruction of the personality independence theory, is not conducive to protect the individual's personality independence, is not conducive to the development of the company and the harmony of the society.

(5) harm to economic development

First of all, the company with Husband and Wife shareholders is different from the company with one person. Compared with the company with one person, the company with Husband and Wife shareholders is more special, and it is between the company with one person and the ordinary company with two people. If the Husband and Wife shareholder company is determined as a One-person company, it will be extremely unfair for some people who want to set up Husband and Wife shareholder company, and it will strongly discourage their enthusiasm and enthusiasm to set up Husband and Wife shareholder company. Prime minister Li Keqiang, put forward the slogan of "public entrepreneurship, peoples innovation", incentives, many college students and young people start their own businesses, entrepreneurship is not

lip service, of course, so simple, need to consider joint founder's personality, ability, social relationships and so on, this makes the business not so simple, but for couples, is the most intimate relationship between them, between each other is also the most know each other, if they are willing to jointly set up a company, so for the development of national economy has a great pushing effect. On the contrary, if the shareholder type of Husband and Wife as one company, you will deny the independent personality of Husband and Wife, strong blow couples to set up the company's enthusiasm, is not conducive to the development of society and economy, it is with our country to encourage the development of economic market concept, is not conducive to the development of society and economy, slow down the development of market economy, is not conducive to the market order and social order stability.

6. Applicable Suggestions for Husband and Wife Shareholder Companies

Due to our country "company law" in the definition of Husband and Wife shareholder type company boundaries is not clear, lead to some unfair on the judicial judgment, so type to Husband and Wife partner company puts forward some Suggestions related issues, the first is that shareholders to couple type company has a clear definition of what it is qualitative, belong to what type of company model, should be laid down by relevant laws clearly, makes the concept of judicial authority and the social public to have clear qualitative and cognitive. Second is to perfect couple shareholder type company related supporting facilities, completes the corresponding requirement of industrial and commercial registration, type specification of Husband and Wife shareholders of the company's internal organizational structure setting, unified couples shareholders type company applicable standards, perfect the relevant laws and regulations for the regulation of these issues, promote the development of couples shareholder type company better and more orderly, positive social couple set up such companies in enthusiasm and confidence, enhance China's economic and social development, to create more employment opportunities, and promote steady economic growth, make couples shareholder type company in adapt to the socialist system with Chinese characteristics better serve for the socialism with Chinese characteristics.

References

- [1] Lei Lei. Research on Property Rights Decentralization in Conjugal-based Companies, Master's Dissertation of Hunan Normal University, 2011, p. 5.
- [2] Wang Huifang. Research on Conjugal-oriented Companies and Shareholder Responsibility in China: The Application of corporate Personality Denial System [D]. Jiangxi University of Finance and Economics, 2019.
- [3] Wang, J., Wang, J., Wang, J., Wang, J. Hunan Normal University, 2020.
- [4] Jiang Daxing. Milestone, Or Misdirection -- Criticism on the Judgment Thinking of Denying the Personality of Husband and Wife company Law [J]. Nanjing University Law Review, 2001 (2) : 198-220.
- [5] My wife Rong. The Law of Kin (Complete Works of Law) [M]. Youfei Ge. 1961: 102. The potential joint ownership of marital community property [J]. Legal Research.2017 (4): 20-36.