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Corporate Governance Model: Shareholder Primacy or Board Primacy?

--By Comparative Analysis Between China and Australia

Jiaming Zhang[1, a]

[1]Faculty of Law and Justice, University of New South Wales, Sydney 2052, Australia.

[a]jiaming.zhang4@student.unsw.edu.au

Abstract

The corporate governance structure determines in whose hands the decision-making power for the company's operations. The two current mainstream corporate governance structures correspond to Shareholder Primacy and Board Primacy theories, respectively. There are many types of companies and diverse governance structures in China. Therefore, this paper analyzes the characteristics of different companies in China and compares the advantages and disadvantages of different governance structures. After analyzing the company law practice in Australia, we believe that the reform direction of Chinese company law should be biased towards providing governance templates and recommendations for companies, appropriately relaxing the flexibility of corporate structure, and leaving the decision to corporate autonomy.

Keywords

Corporate Governance; Shareholder; Board; Corporate autonomy.

1. INTRODUCTION

The corporate governance models of various countries have experienced cross-over from the shareholder primacy to the board primacy and even the manager primacy. Different corporate governance models have their strengths and weaknesses, and there are no perfect models. Whether to adopt shareholder primacy or board primacy was not answered by statutory rules and still facing controversy. Should China's corporate law system choose one of the two, or should it adopt a more flexible system model? This question will be addressed in this essay.

The concept of corporate governance first appeared in the United States and was universally recognized by academia in 1970. [1] Among the many theories on modern corporate governance, the main issue of discussion primarily focused on the relationship between the board of directors and shareholders. [2] The Board Primacy held that the board of directors should have more powers in corporate governance. Scholars who support this theory believe that the board of directors is at the core of corporate governance. Therefore, the board of directors should be the supreme authority to determine the company's operating policies and resource allocation. [3] However, the shareholder primacy argued that in the modern corporate governance system, shareholders should be given more power to ensure that shareholders are the ultimate controllers of the company. [4] In this way, it is ensured that shareholders' demands and opinions will not be ignored by the managers and the board of directors.

First, this essay will introduce the theories and developments of shareholder primacy and board primacy and discuss their concepts. Subsequently, "define the corporate governance center: owners' or operators' power" will be addressed. It will discuss the distinction between owners' and operators' power and then demonstrate which standard is more reasonable. Finally, a comparative analysis between China and Australia will be conducted. It will discuss

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the legislative practice of corporate governance in China and Australia. Finally, it will propose formulating a legal framework for this specific question.

2. THE DEFINITION OF SHAREHOLDER PRIMACY AND BOARD PRIMACY

2.1. Shareholder Primacy

Shareholder Primacy originated as an unincorporated company in history. Nowadays, most civil law countries such as Germany and Japan adopt Shareholder Primacy. British East India Company was initially regarded as an inherent product of private contracts. [5] The power of a British company is understood as being directly authorized by the shareholders to the board of directors, which is the shareholder's agent. Therefore, in the Shareholder Primacy model, the board of directors' power comes from the delegation of shareholders, and the board of directors' responsibility is to seek maximum benefits for shareholders. The corporate power structure constructed by modern corporate law adds particular constitutionalism to the company. [6] In this model, shareholder-oriented thinking is vital. Moreover, the company's articles of association are analogously regarded as the status of the national constitution and thus are respected as the company's internal charter. Furthermore, the political philosophy that voters should supervise governors is extended to the economic philosophy that company managers should supervise the shareholders' meeting. In general, corporate regulations stipulate the power of shareholders in a company, especially the power of the shareholders' meeting that reflects the will of the shareholders. However, the board of directors became the passive and mechanical executor of the resolutions of the shareholders' meeting. [7]

In recent decades, the emergence of institutional investors has gradually changed the pattern of traditional capital markets and replaced individual investors as the main participants in this market. The difference between institutional investors and individual investors is that institutional investors are motivated more and can exert their influence as shareholders. Institutional investors such as financial institutions have sufficient funds to invest in listed companies. However, it is not easy to sell a large number of shares held by oneself in a short period in the security market but would cause significant fluctuations in the entire market. Therefore, the considerable shares held by institutional investors make it more difficult to withdraw their investment from the invested company. [8] Institutional investors cannot behave like traditional individual investors with the "Wall Street Rule" and sell their shares to drop out. Therefore, as long-term investors, institutional investors will pay more attention to its operation to ensure a better return on their investment. [9] Another advantage of institutional investors is that they have professional personnel and teams responsible for the investment and monitoring risks. Therefore, institutional investors will react more quickly when their managers fail to fulfill their duties or infringe on their interests. Moreover, they also can take corresponding measures to its management to ensure its sound development. Therefore, in recent years, institutional investors have played an increasingly important role in the supervision of company management. [10]

As a result, the views of Shareholder Primacy have gradually gained attention. In the beginning, this proposition was only sporadically supported by institutional investors and put into action. In the early 1990s, some radical institutional investors began to propose to reform the corporate governance model at the annual shareholders' meeting. They requested to establish a Shareholder's Advisory Committee in the company as a supervisory and advisory body coexisting with the board of directors. [11] Afterward, the scholars gave up the idea of directly intervening in the company's operations by creating a new internal organization and putting forward the new proposition of Shareholder Primacy. They argued that shareholders with institutional investors as the main body should exert a decisive influence on the company by mastering the power to speak in critical decisions. [12] These propositions mainly included two

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points: First, it was suggested that the shareholders, not the board of directors, should have the ultimate decision-making power for a series of important decisions and transactions involving the company. [13] Second, the shareholders should have the power to nominate an appropriate proportion of directors to ensure their influence in the decision-making process of the board of directors. [14] As a result, the relationship between shareholders and the board of directors has returned to the Principal-Agent relationship. The shareholders eventually become the center of corporate governance.

2.2. Board Primacy

Board Primacy was formed at the end of the 19th century, and its theoretical source was the trust theory. According to the trust theory, the relationship between the company and the directors is a trust relationship. The directors accept the company's trust management to manage the company's assets and behave for the company and all shareholders to maximize the benefits. It is generally believed that the provisions on the powers of directors in the US Model Business Corporation Act and the adoption by states are a manifestation of the establishment of Board Primacy in legal form. [15] The Company Act (1899), Section 24, Chapter 4 of the State of Delaware, the Commercial Company Act, Section 701 of New York State, and the California Company Code, Section 300 also have similar provisions. [16] In Board Primacy's corporate governance model, the board of directors is the core of the corporate governance structure. Moreover, the board of directors has a clear legal status and the company's primary business decision-making powers. The shareholders only enjoy limited powers as stipulated by the law and the company's articles of association. In addition, all company powers are exercised by the board of directors, and the shareholders' meeting shall not interfere. [17]

Some scholars argued that with the expansion of the company's scale, its shareholding structure has gradually been diluted. [18] Therefore, the influence of the shares held by a single shareholder on the decision-making mechanism of the entire company will inevitably be decreased. To that end, the managers with their professional management skills can control their operation. This change eventually led to the transfer of control power from the shareholders to the board of directors in modern large enterprises. [18] Moreover, for individual investors who buy stocks, their attention to the company is focused chiefly on fluctuating the stock price and obtaining profits by buying low and selling high. However, there is an apparent lack of interest in supervising the board of directors.

On the other hand, since most individual investors hold a negligible proportion of the company's capital, it is challenging to perform the duties of supervision and management. Therefore, when the board of directors is incompetent, the individual shareholders, as the company owners, often lack the motivation to supervise it. In contrast, investors are more willing to rely on the "Wall Street Rule." Investors will choose to sell the company's shares in terrible condition rather than vote to replace the current directors. In light of these factors, the management represented by the CEO is actually in a position free from shareholders' supervision. [19]

If the managers failed to fulfill the corresponding responsibilities or even infringed on the company's interests, the traditional corporate governance model has also provided solutions in theory. The company's decision-making organ and the company's internal supervisory mechanism that ensures the regular operation are the two primary responsibilities of the board of directors. Therefore, the board of directors must fulfill its obligations as a supervisor and pay attention to the operation of company affairs. Moreover, the board of directors will exercise its decision-making power to prevent any illegal or detrimental behavior of the managers or directly dismiss incompetent senior managers. However, in practice, the insider representative of the management team controls the board of directors by entering the boards and taking

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advantage of the company information within an asymmetric status. This has formed the dictatorship of Insider Control and even the CEO. However, other non-management personnel on the board of directors, namely Outside directors or Non-Executive directors, will lose their independence and not perform their duties actively due to a lack of motivation to supervise insiders or face pressure from insiders. Therefore, it is difficult for them to supervise the management strictly and effectively. [20] In the modern Board Primacy academic theory, scholars tried to demonstrate the rationality of the board of directors as occupying a core position in corporate governance from a new perspective. [21] It essentially originated from the Nexus of Contracts theory in corporate law theory. This theory believes that a company is a combination of contracts. Many participants in the company, such as shareholders, managers, and general employees, form a necessary connection by signing various written or unwritten contracts with the company and conducting business activities in the name and form of the company. [22]

3. How to Define the Corporate Governance Center: Owners' Power or Operators' Power

The ownership of modern joint-stock limited companies is separated from the management power, resulting in the separation between the company's ownership and control. Otherwise, the powers of the owner will be hollowed out. Therefore, the control powers of modern companies arise with the separation of the ownership and operator's power. The power to operate and control a company is a pair of closely related concepts. According to various countries' corporate legislation, there is a tendency to restrict the power of the shareholders and strengthen the power of the board of directors. [23] Some scholars also believe that the transformation of Shareholder Primacy into Board Primacy is the development trend of modern companies. Modern corporate legislation shows a tendency to gradually weaken the power of shareholders and strengthen the functions of the board of directors. [24] However, this phenomenon represents a change in the company's management model that requires a clear definition of the criteria defined by Shareholder Primacy and Board Primacy.

The enterprise has experienced a historical change from a sole proprietorship and partnership enterprise with the individual proprietorship to a corporate enterprise. The fundamental feature of individual proprietorship enterprises is the integration of ownership and operator's power, thus forming an enterprise system with unlimited liability. The corporate enterprise is the separation of ownership and operator's power, correspondingly forming a corporate system of limited liability. Moreover, corporate enterprises separate ownership and operator's power, with owners exercising ownership and operators' power. Therefore, a fundamental question arises about how owners' and operators' power are defined between the shareholder and the board.

3.1. The Definition of the Owner's Power

The owner's power in corporate governance includes the matters concerning the company's existence, development, and shareholder investment powers. It is the power that the shareholders, as the company owners, retain over the most fundamental matters related to the company. In addition, it is related to the company's foundation and directly determines the affairs of the company's survival and development. Moreover, it will also affect the significant investment powers of all shareholders. Some scholars have put forward three main views on the owner's powers: the theory of election of directors, determining company policies, and strategic decision-making power. [25]

Scholars who support the theory of electing directors believe that in modern joint-stock limited companies, company investors only become company shareholders by holding company stocks.

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[26] Investors are not directly involved in the operation and management of the company. In addition to the powers exercised by the shareholders' meeting as required by the company's articles of association or laws, the company's business management is usually implemented by the executive agency. This executive body is the board of directors, elected by all shareholders based on capitalist democracy and shareholders' meetings. In principle, as the company owner, all company shareholders only retain the power to elect its board of directors and realize their control over the company by electing and dismissing all company directors.

Scholars who support the theory of company policy believe that the election of directors is undoubtedly an essential connotation of the owner's power, but it is not the entire connotation of control. [27] Corporate control should be defined as the power to determine a company's broad policies. The broad policies mainly include the company's goals, the company's expansion strategy, the company's financing strategy, and the company's profit distribution policy.

Scholars who support the theory of strategic decision-making power divide modern joint-stock limited companies' decision-making and operational decision-making. [28] Strategic decisions include assessing and evaluating the investment plans, financing plans, senior management personnel, and establishing company institutions. The content of operational decision-making refers to the transactional decision-making in the company's specific business activities, including the formulation of product sales strategies, the determination of the salary standards of employees, and the selection and appointment of middle-level managers in the company. Compared with the transactional characteristics of operational decision-making, corporate strategic decision-making generally involves the company's long-term development strategy, is related to the company's long-term development, and is a strategic decision on significant issues related to the company's life and death. Therefore, scholars who view a company's strategic decision-making power believe that who owns the company's strategic decision-making power means who can decide and control the company's fundamental development direction.

The theory of determining company policy and strategic decisions indicates that the company's control power is the decision-making power. The theory of determining company policy holds that all company decisions are within control. However, the corporate strategic decision theory believes that only the company's strategic decision is the scope of control exercised. The company's policy decision-making power belongs to the company's operating power category. Under the primary operating mode of the separation of modern company ownership and operator's power, the company's operator's power is generally authorized to be exercised by the company's operators. The authorization of the company's operating powers is generally partial, and modern corporate laws allow the company owner to determine the scope of this partial authorization independently. In the United States, although the Model Business Corporation Act stipulates that all the company's operating powers are granted to the company's board of directors, shareholders can still stipulate that part of the company's operating powers must be finally confirmed by the shareholders' meeting in the company's articles of association. The Company Law of the People's Republic of China mandates the major business decisions that the shareholders' meeting must finalize.

Moreover, the Model Business Corporation Act stipulates that the company's shareholders can independently decide the company's business matters that the shareholders' meeting must finally confirm. Although the company's shareholders exercise the decision-making power of this part of the business matters, its nature is still its operating power, not its control power. Therefore, it is not feasible to believe that the company's operating powers directly exercised by the company's shareholders belong to the company's control powers, and the company's operating powers authorized to the company's professional operators to exercise that belong to the company's operating powers. It should be distinguished from the owner's power and

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management. The theory of determining company policy and the theory of corporate strategic decision-making does not distinguish the power of company management and control from the essence of the power of control. However, from the difference of the subjects exercising power, the company management power exercised by the company's operator is regarded as the company's management. The power to operate the company exercised by the company owner is considered the power of control exercised by the owner. The theory of determining company policy and the theory of company strategic decisions do not distinguish the power of managers and the power from the essence of control. These two theories regard the operator's power to operate the company as the power to operate based on the subjects' differences. On the other hand, the power to operate the company exercised by the company owner is considered the power to control the company exercised by the owner.

3.2. The Definition of the Operator's Power

The power of managers in corporate governance is the power that the company's actual managers have over the company's management. [29] Modern companies are the subjects of powers with independent powers and capacity. The company has the legal personal property ownership of all assets under the company's name. Therefore, the power to operate a company is the power to operate the property of the company's legal person. Moreover, the power to operate a company stems from owning the company's legal person's property.

In a limited liability company, its shareholders invest all their property as a capital contribution to form its property. Therefore, the company owns its property and can possess, use, earn, and dispose of its property. In the classical form of a company, the ownership of company property is exercised by the company's shareholders. However, modern companies are large-scale, resulting in specialized business operations. Moreover, the company's shareholder structure is highly dispersed. Therefore, company shareholders generally separate the separable powers of its legal person property ownership and entrust them to professional company operators. Therefore, the company's management power is part of the company's property ownership, the use of income, and the disposal of the powers that have functional attributes and are separable and can be entrusted to be exercised by others.

However, management power is not the unity of possession, control, and powers. This definition of the concept of company management power touches on the nature of the power of company management power in terms of content. There is a conceptual confusion between the power of dominance and disposal, which is one of the powers of ownership. In the theory of civil law, the right of domination and disposition are different concepts. [30] The power of control referred to in the theory of civil law is a significant type of civil power. The primary function of the power of control is to control a particular object directly.

Furthermore, in the sense of dominance, the exercise of the power is directly, and the power holder can directly control it without external intervention. Therefore, when the control power holder exercises the control power, the power counterpart has the obligation of inaction and tolerance, but it does not require active cooperation. The direct control of the power by the power holder is exclusive, and it is not allowed to set an incompatible second power on the same subject. Therefore, the function form of dominance power is dominance and exclusive dominance. Ownership is a typical form of domination, and property powers are all. Therefore, the complete form of the power of control in civil law refers to possession power, use, benefit, and disposal of the subject of the power, and the power of disposal is only one of the powers of the power of control. If the management power includes the power of possession, control, and use, there are logical problems, and it is not consistent with the intended meaning of the management power.

In light of these factors, the management power of a company is not the concept of planning, organization, leadership, and control of management in modern management theory but a

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collection of powers with operating attributes and separability in the company's property ownership, including the power to possess, use and dispose of the property.

3.3. The Comparison and Evaluation of two Standards

According to the composition of the matters in corporate governance and the two powers, namely, the power of the owner and the operator, the scientific basis for judging the center of corporate governance should not be all company matters, but only the management matters among them. Therefore, the power center of corporate governance should be judged based on the distribution of the operator's power, and the enjoyment of the owner's power has nothing to do with the positioning of the power center of corporate governance. If the owner's power judges the corporate governance center, then the governance model of any company can only be the center of the shareholders' meeting because the owner's power of any company naturally belongs to the shareholders. The essence of the operator's power is to control operations, not to control the company's fundamental decisions. The shareholders' meeting still holds power to determine the company's fate, such as amendments to the articles of association, mergers, business transfers, and dissolution.

Moreover, the shareholders' meeting still firmly grasped the power of appointment and removal of directors. Scholars who support the operator's power believe that the power of an operator that achieves a certain degree of superiority can ultimately become the center of corporate governance. [31] Whether a country adopts Board Primacy's standards or critical factors is that the board of directors is the core of the company's business decision-making. To be more specific, the board of directors has a clear legal status and enjoys independent major business decision-making powers guaranteed by the company law. The power of the shareholders' meeting is greatly restricted. It only has the power to approve and approve significant issues related to the company's existence, such as amendments to the articles of association and changes in its organizational form. Therefore, only in the distribution of the power of the operators, some different legal designs and choices are mainly exercised by the board of directors or mainly exercised by the shareholders' meeting. This is the fundamental difference between different corporate governance models.

4. THE LEGISLATIVE PRACTICE IN CHINA AND AUSTRALIA

4.1. The Legislative Practices on Corporate Governance in China

The Chinese Company Law stipulates the functions and powers of the internal organization of a limited liability company. According to the provisions, the core powers of the shareholders' meeting include the power to elect and replace directors and supervisors and determine the existence and dissolution of the company. "Determining the company's operational guidelines and investment plans; Electing and changing the directors and supervisors assumed by non-representatives of the employees and deciding the matters relating to their salaries and compensations; Deliberating and approving reports of the board of directors; Deliberating and approving reports of the board of supervisors or the supervisor; Deliberating and approving annual financial budget plans and final account plans of the company; Deliberating and approving company profit distribution plans and loss recovery plans; Making resolutions about the increase or reduction of the company's registered capital; Making resolutions about the issuance of corporate bonds; Adopting resolutions about the assignment, split-up, change of company form, dissolution, liquidation of the company; Revising the bylaw of the company; Other functions as specified in the bylaw." [32] The core powers of the board of directors are determining the company's business plan, establishing the company's internal organization and basic management system, and hiring the management personnel of the company's executive agency. "Convening shareholders' meetings and presenting reports thereto; Implementing the

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resolutions made at the shareholders' meetings; Determining the company's business and investment plans; Working out the company's annual financial budget plans and final account plans; Working out the company's profit distribution plans and loss recovery plans; Working out the company's plans on the increase or reduction of registered capital, as well as on the issuance of corporate bonds; Working out the company's plans on merger, split, change of the company form, or dissolution, etc.; Making decisions on the establishment of the company's internal management departments; Making decisions on hiring or dismissing the company's manager and his salary and compensation, and, according to the nomination of the manager, deciding on the hiring or dismissal of vice manager(s) and the persons in charge of finance as well as their salaries and compensations; Working out the company's basic management system; Other functions as specified in the bylaw." [32] The core power of the manager is to organize the company's daily production and business activities. "Taking charge of the management of the production and business operations of the company, organizing the implementation of the resolutions of the board of directors; Organizing the execution of the company's annual business plans and investment plans; Drafting plans on the establishment of the company's internal management departments; Drafting the company's basic management system; Formulating the company's specific rules and policies; Proposing to hire or dismiss the company's vice manager(s) and the person in charge of finance; Deciding on the hiring or dismissal of the persons-in-charge other than those whom the board of directors shall decide; Other powers conferred by the board of directors." [32] The core power of the board of supervisors is to supervise the company's finances and prevent illegal operations by directors and managers. "To check the financial affairs of the company; To supervise the duty-related acts of the directors and senior managers, to put forward proposals on the removal of any director or senior manager who violates any law, administrative regulation, the bylaw, or any resolution of the shareholders' meeting; To demand any director or senior manager to make corrections if his act has injured the interests of the company; To propose to call interim shareholders' meetings, to call and preside over shareholders' meetings when the board of directors does not exercise the function of calling and presiding over shareholders' meetings as prescribed in this Law; To put forward proposals at shareholders' meetings; To initiate actions against directors or senior managers according to Article 151 of this Law; Other duties as provided for by the bylaw." [32] Chinese legislators' division of the functions and powers of the four departments is scientific and reasonable. It has formed a complete set of comprehensive and balanced mechanisms of mutual restraint within the limited liability company.

However, in practice, many limited liability companies are smaller in size. In these companies, it is not uncommon for the shareholder with the most capital to serve as chairman and general manager at the same time. This is the result of a variety of reasons. First, shareholders exercise voting rights in proportion to their capital contributions. Therefore, the results will benefit the shareholder who has invested the most in the election of directors and supervisors. Even if the number of board members is allocated according to the proportion of capital contribution, the shareholder with the most capital will be advantageous. Afterward, when the board of directors elects the chairman, the shareholder with the most capital will undoubtedly be elected. Subsequently, when the board of directors appoints the general manager, the chairman will have a greater probability of concurrently serving as the general manager. In light of these factors, the concurrent assignment of important positions in the limited liability company by the shareholders with the most capital is a chain-link process. This means that the shareholder with the most capital in a limited liability company will always control the company. Although the board of supervisors is theoretically independent, the company is an autonomous entity, and the supervisors do not have the power to control the company. Therefore, it is difficult for the supervisors to play a supervisory role honestly. [33] Therefore, most investment in China's

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limited liability companies generally holds owners and operators. It also means that the governance structure of China's limited liability company is Shareholder Primacy.

Although the internal organization powers of the limited liability company and joint-stock limited company, which the Chinses Company Law stipulates, share the same provisions, the joint-stock limited company has its unique characteristics of the corporate governance structure. The capital jointing of the joint-stock limited company is more potent than that of the limited liability company. There are more shareholders in the joint-stock limited company, and the shareholding is dispersed. Therefore, it is difficult to concentrate the powers of owners and operators on one shareholder. Shareholders own the owner's power, and the operator's power belongs to the board of directors. Three reasons contributed to this situation. The first is that many shareholders intervene in the company's operations. This makes it difficult to agree on opinions and impossible to operate. Small shareholders' shares are not much, so they have less interest and influence. Therefore, they will not care about company operations.

Furthermore, the most significant shareholders are legal persons, so it is impossible to participate in its operations director. The business of the joint-stock limited company is more technical and complex, which makes the vast majority of shareholders incapable of operating the company. Therefore, shareholders must transfer company operation matters to directors with professional skills. In the business process, the operator needs to make timely decisions and deal with the company's problems. It is difficult for the meeting of shareholders, which is held once a year, to deal with these issues. However, the board of directors usually has fewer members and is easy to convene. Therefore, the board of directors is more suitable for the role of company operator. In light of these factors, the joint-stock limited company is more inclined to Board Primacy for the corporate governance structure.

Although the listed company belongs to the joint-stock limited company in the classification of company types, its corporate governance structure also has unique features. The main issue is that significant shareholders manipulate most shareholders' meetings of listed companies. This led to many shareholders' power tends to be weakened and formalized. They are mainly manifested in two aspects. The number of shareholders attending the general meeting and the shares represented by the shareholders who attend the general meeting is too low. [34] This leads to the fact that the controlling party controls the company's owner's power. The shareholders' meeting elects the board of directors, so the controlling party owns the owner and operator.

However, most of the listed companies are restructured from the original state-owned enterprises in China. Due to the owner's power owned by the state controlling party, the board of directors has also formed a situation controlled by the state controlling party. Due to the owner's power owned by the state controlling party, the board of directors has also formed a situation controlled by the state controlling party. Moreover, the former senior managers of state-owned enterprises became directors or managers of listed companies. Therefore, the company is continuously controlled by the management of the original state-owned company.

4.2. The Legislative Practices on Corporate Governance in Australia

There are two main corporate governance models worldwide. The first one is a model based on a strict legal system. The model based on voluntariness and principle is the other kind of model. [35] Australia has adopted a voluntary and principle-based model. In this model, relevant agencies will publish best practice standards for corporate governance and recommend that companies implement them voluntarily. If a company's specific governance measures are inconsistent with the recommended measures, the organization needs to explain. The logic behind this is that there is no unified corporate governance model globally, and there will be actual differences in company operations. In 2019, ASX Corporate Governance Council published the fourth edition of Corporate Governance Principles and Recommendations. There

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are eight principles in it, including “Lay solid foundations for management and oversight,” “Structure the board to be effective and add value,” “Instil a culture of acting lawfully, ethically, and responsibly,” and “Safeguard the integrity of corporate reports,” “Make timely and balanced disclosure,” “Respect the rights of security holders,” “Recognise and manage risk,” “Remunerate fairly and responsibly.” [36] This document determines the corporate governance practices of most Australian listed companies.

Australian Corporate Governance Principles and Recommendations believes that the company’s board of directors should be based on independent directors and defines independent directors. [36] “A director of a listed entity should only be characterized and described as an independent director if he or she is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the entity as a whole rather than in the interests of an individual security holder or other parties.” [36] The reason for making such a requirement for independent directors is that independent directors are regarded as an essential role that protects the company’s interests from an objective and fair standpoint. The independent board of directors system helps restrict the controlling shareholders from using their position to infringe on their interests and small and medium shareholders. It is generally expected that independent directors can bear the responsibility of discovering the risks of the company’s operations.

Moreover, independent directors also have the responsibility to warn the company of violations or misconduct. Therefore, the core of the independent director system is the independence of directors. Independent directors do not have any interest in the company, and significant shareholders can make independent judgments. In addition, independent directors also have the responsibility of supervising and objectively evaluating the company’s managers. Since independent directors do not hold positions in the company, their behavior will not be restricted by the managers. Therefore, independent directors are more likely to adhere to objective evaluation standards to evaluate managerial performance, thereby preventing internal directors from seeking shareholder benefits to the utmost extent. In light of these factors, the independent director system can be seen as a display form of the Board Primacy. Its primary purpose is to give the board of directors more operator power.

4.3. Rethinking Chinese Corporation Governance

In practice, the Board Primacy seems to be more scientific and reasonable. However, there is still a long way to go in China. The independent director system faces multiple obstacles. For instance, there are barriers to the company’s shareholding structure. The current status of China’s corporate governance structure is a high degree of concentration of shares. Therefore, the state controlling party dominates a controlling position. As a result, board meetings cannot independently make effective resolutions, and independent directors can only play a limited role.

Moreover, the company law must make a unified model design based on the Shareholder Primacy or the Board Primacy and carry out the corresponding power distribution. However, like other arbitrary company law regulations, such regulations should be used as guiding or advocacy rules for companies to choose. Based on their conditions and needs, the operator’s power will be flexibly configured and adjusted among several institutions. The corporate governance center pre-designed by the company law will also be shifted and replaced due to the strength and extent of the company’s self-allocation and adjustment.

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5. Conclusion

There are many types of companies in China, each of which exhibits different characteristics. Neither Shareholder Primacy nor Board Primacy can perfectly match all types of companies. From the perspective of legislators, the law should impose mandatory provisions on the owner's power exclusive to shareholders. Nevertheless, other arbitrary powers should be left to the company to decide, such as the operator's power. This can show the essential characteristics of the company as an autonomous organization and structure the legal person's conceptual framework. Furthermore, the Company Law can provide contract templates or standard clauses for corporate governance under arbitrary norms by learning from Australia's legislative practice. This can provide more options for corporate governance, thereby reducing learning it. It is likely to promote the development of Chinese corporate governance theory and practice.

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