

Research on the Legal System of Shareholders' Rights Exercise for China's State-owned Enterprises

Xinsheng Zhang¹, Jin Liu², Wenhao Zhu³, Haolan Li⁴

¹State Grid Energy Research Institute Co., Ltd., Beijing, China 102209

²State Grid Energy Research Institute Co., Ltd., Beijing, China 102209

³State Grid Energy Research Institute Co., Ltd., Beijing, China 102209

⁴State Grid Energy Research Institute Co., Ltd., Beijing, China 102209

Abstract: In the context of the new round of reform of China's state-owned enterprises, the modernization of governance system and governance capabilities has put forward new requirements for Chinese central enterprises to exercise shareholders' rights, which not only means value reconstruction, business restructuring and process reengineering, but also requires central enterprises to make positive responses in terms of corporate governance, group management and control, and shareholder exercise. This study effectively integrates corporate governance and group management and control, constructs a modern legal system for shareholder exercise, and provides useful legal guarantee and reference for central enterprises to exercise shareholders' rights.

1 Introduction

In 2016, Chinese President Xi Jinping proposed for the first time "two consistent" at the national state-owned enterprise party building work conference. In 2019, the Fourth Plenary Session of the 19th Central Committee proposed to uphold and improve the socialist system with Chinese characteristics and promote the modernization of the national governance system and governance capabilities. In this context, it is of great urgency for Chinese state-owned enterprises to optimize group management and control methods and to exercise shareholder rights in compliance with laws and regulations, which is of great practical significance for building a state-owned enterprise system with Chinese characteristics. The comprehensive deepening of reforms of state-owned enterprises, the improvement of the modern corporate governance structure, the transformation of state-owned asset supervision functions and supervision methods, and the deepening of mixed ownership reform have also put forward new requirements for the exercise of shareholder rights.

2 Legal definition of shareholder rights, ways and risks of exercising rights

2.1 Shareholder rights and types

Article 4 of China's "Company Law" stipulates that the shareholders of a company shall enjoy the rights of asset income, participation in major decision-making and

selection of managers in accordance with the law. The rights of major shareholders can be summarized as the following eleven (see Table 1).

Table1. Shareholder rights and types

Right type	Specific rights
Management right	Shareholders' identity right
	Right to participate in major decision-making
	Right to select and supervise managers
	Right to know
	The right to propose, convene and preside over the extraordinary meeting of the shareholders meeting
	Right to revoke a resolution
	Related party transaction review right
Benefit right of assets	Preemptive right and preemptive right
	Asset income right
Remedy right	Litigation and subrogation right
	Right to withdraw

2.2 Ways to exercise shareholders' rights

Paragraphs 1 and 2 of Article 20 of China's "Company Law" stipulate that company shareholders shall abide by laws, administrative regulations and company articles of association, and exercise shareholder rights in accordance with the law. The ways to exercise shareholder rights in China's central enterprises include direct exercise and indirect exercise.

The direct exercise of shareholder rights means that the shareholders directly use the rights granted by laws, regulations and the company's articles of association to

manage the company. From the perspective of the level of shareholder rights, the exercise of shareholder rights in China's central enterprises can be divided into three levels: SASAC, company headquarters and provincial companies. From the perspective of the expression of shareholder rights, the direct exercise of shareholder rights is usually manifested in the formulation of the subsidiary charter and control of the subsidiary board of directors. The indirect exercise of shareholder rights is actually authorization. By granting the rights that should belong to shareholders to the board of directors or other institutions, it reflects a kind of entrusted relationship. Under the new state-owned asset management method, the SASAC has continuously issued the "Authorization List" to grant investors' rights to the board of directors or enterprise groups for exercise.

2.3 Risk of shareholder rights exercise

In practice, some large shareholders in a controlling position will often use their superior position in company management and voting rights in the shareholders meeting to pursue private interests and improperly exercise shareholder rights. This kind of abuse of shareholder rights is regulated by the "Company Law" and related laws. The most typical example is "lifting the corporate veil."

The legal risk points of lifting the veil of the company mainly include personnel mixing, business mixing and financial mixing, as well as related transactions, document rights, unauthorized representation, and property use (see Table 2).

Table2. The legal risk points of lifting the veil of the company

Risk type	Connotation	Common behaviors of enterprises
Personnel mixing	Personnel mixing is also called institutional mixing, commonly known as "a set of personnel, multiple brands", which refers to the prominent overlap in the organization and employment of shareholders and the company. The essence is that the institutional mixing has caused the company to fail to form an independent will based solely on the company's interests, resulting in the loss of the company's independence.	<ol style="list-style-type: none"> 1. State-owned enterprises have a high degree of overlap with the legal representatives and managers of lower-level enterprises and affiliated enterprises. 2. State-owned enterprises lack statutory procedures for appointing or dismissing directors, executives or key staff of lower-level enterprises. 3. State-owned enterprises and subordinate enterprises and affiliated enterprises entrust the same employee as their agent in litigation, which may become the basis for personality mixing.
Business mixing	Business mixing means that the business of a company is difficult to distinguish from that of its shareholders. The main manifestation is that the company and the shareholders are engaged in the same business, and the form subject of the related transaction activities is inconsistent with the actual subject or cannot be identified. The essence is that business mixing has caused the company to lose its operational autonomy.	<ol style="list-style-type: none"> 1. The superior and subordinate enterprises do not distinguish between corporate entities in corporate publicity, causing the counterparty to confuse the trading partner. 2. In the specific commercial transactions of state-owned enterprises, the superior and subordinate enterprises participate in the performance of the contract at the same time, which causes the counterparty to confuse the debtor. 3. The superior and subordinate enterprises share the same business contact person to participate in the same transaction. 4. The superior and subordinate enterprises share the same business place.
Financial mixing	Financial mixing means that the property of the company and the property of shareholders are not really separated. It is mainly reflected in the non-separation of the company's account books and the shareholders' account books, and it can also be manifested in the integration of the interests of the company and the shareholders, that is, there is no difference between the income of the company and the shareholders, and the company's profits can be converted into the personal property of the shareholders at will.	<ol style="list-style-type: none"> 1. The company's financial and accounting systems are not perfect, the corporate accounts are mixed, and the collection and payment items between enterprises are not settled. 2. Cross use and management of important assets between companies. 3. The superior enterprises directly intervene in the financial management of the subordinate enterprises. 4. Enterprises transfer assets through related transactions, which will affect the solvency of enterprises.
Other risks	Related transactions	The parent company evades external debt by taking measures such as related party transactions and illegal return of undistributed profits.
	Document rights	In the process of operation, the superior and subordinate enterprises replace the corporate governance mechanism by asking for instructions and approval, which damages the interests of creditors.
	Unauthorized representation	Shareholders violate the provisions of the articles of association and sign contracts in the name of the company without the resolution of the board of directors.
	Property use	The controlling shareholder makes its wholly-owned subsidiary use the property of other subsidiaries for free without authorization.

3 Identification of legal risk points of shareholder rights exercise in Central Enterprises

On the basis of the legal risk points, the potential risk points of shareholder rights exercise in Central Enterprises can be divided into the following categories according to the different roles of shareholders:

As for the wholly-owned subsidiary, when the central enterprise as a shareholder controls the wholly-owned subsidiary, the risk point mainly focuses on "piercing the company veil". From the perspective of its manifestation, the typical is the personnel mixing and the parent company's excessive control over the subsidiary.

For the holding subsidiary, the state-owned enterprises are in the position of large shareholders, and it is easy to be suppressed by shareholders. The typical manifestations of shareholder repression are depriving minority shareholders of their right to know, crowding out minority shareholders to participate in the company's operation and management, refusing to distribute dividends to minority shareholders and arbitrarily diluting the shareholding ratio of minority shareholders.

4 The construction of the legal system of shareholder rights exercise in Central Enterprises

4.1 Construction framework

The construction of the system is based on the company's articles of association. Establish the highest effective status of the articles of association in the company, carry out the construction of shareholder rights exercise system around the articles of association of the company, and give play to the fundamental role of the articles of association in shareholder rights exercise.

The construction of this system takes board building as the key. Improve the construction of the board of directors, improve the company's mechanism for dispatching directors, relying on the professional advantages and management experience of dispatched directors, and truly give play to the important role of outside directors in subsidiaries.

The construction of the system focuses on the improvement of the dual capabilities. On the basis of the enhancement of the dual capabilities, combine of authorization and supervision, and the integration of deregulation and management will further establish the market subject status of each subject and fully stimulate the vitality of micro subjects. Combining authorization and supervision, unified demobilization and management on the basis of the dual-capacity enhancement, further establish the market subject status of each subject, and fully stimulate the vitality of micro subjects.

The construction of the system takes authorization management as the path. The management authorization embodies the internal management relationship of the enterprise, the legal person governance authorization

reflects the external legal effect, and the legal person governance authorization and management authorization are effectively connected to promote the operation of the enterprise in compliance with laws and regulations.

The construction of the system is supported by shareholder agreements. Central enterprises make reasonable use of the informality and confidentiality of shareholder agreements, it can enrich the provisions of the company's articles of association.

The construction of the system requires a combination of direct exercise and indirect exercise of shareholder rights. Combine the shareholders' design of the company's articles of association with the control and authorization management system of the company's board of directors.

4.2 Specific measures

(1) Optimize the system of indirect exercise of shareholder rights according to business development needs

Optimizing the system of indirect exercise of shareholder rights according to the needs of business development, including improving the parent-subsiary charter as the core, perfecting the legal person governance authorization management; coordinating and optimizing the management authorization, and realizing the effective connection with the legal person governance authorization.

Perfecting the legal person governance authorization management. Establish the highest effective status of the articles of association in the company, carry out the authorization system construction around the articles of association of the company, and give play to the fundamental role of the articles of association in the all levels of authorization management. Improve the company's mechanism for dispatching directors, relying on the professional advantages and management experience of dispatched directors, and truly give play to the important role of outside directors in subsidiaries.

Coordinate and optimize management authorization. The first is to strengthen the management of the company's articles of association, build a system of rules and regulations with the "articles" as the core, and fix the authorized content, authorization methods, authorization rights, and exercise procedures through the system. The second is to strengthen the authorization according to law. For management authorization matters (including the implementation of parent company's systems, standards, personnel appointment and dismissal recommendations, business management requirements, investment approval powers, etc.), involving legal acts that have legal effect externally, they should perform legal procedures such as the shareholders meeting and the board of directors in accordance with the requirements of governance authorization, and exercise their powers and perform their duties according to law.

(2) Improve the system of direct exercise of shareholder rights based on the equity structure

Aiming at the legal risk points of shareholder rights exercise, based on the differences in the role of shareholders, from the perspective of the company's articles of association and board of directors, it proposes optimized measures of shareholder rights exercise for

different wholly-owned and holding companies.

Table3. Optimization measures of shareholder rights exercise for wholly-owned subsidiaries

Connotation	Common behaviors of enterprises
Optimization of the company charter	The first is to design and improve the articles of association of the subsidiaries at all levels, and formulate the articles of association for each subsidiary based on the differences in business segments, so that the main business is prominent and the characteristics are distinctive.
	The second is to clarify the appointment and selection qualifications of the company's directors, supervisors, managers and other senior managers in the company's articles of association, establish and improve the company's financial system, clarify the scope of the company's main business, separate the company's personnel, finance, and business, and achieve clear responsibilities.
	The third is to clearly stipulate the method for shareholders to exercise their rights in the articles of association of the subsidiary, and specify the provisions of the general system applicable to lower-level companies in the articles of association.
	The fourth is to clearly stipulate related transactions between subsidiaries in the company's articles of association and regulate management.
Optimization of board building	The first is to improve the management methods for outside directors, employee directors and other directors, clarify the source, selection, training, evaluation, incentives, and resignation of directors, so as to achieve standardized management of directors.
	The second is to improve the rules for the board of directors to exercise their rights. Revised and perfected the "Rules of Procedure for the Board of Directors", "Working Rules for the Secretary of the Board of Directors", "Working Rules for the General Manager", and "Rules for the General Manager's Office Meeting" to effectively regulate the rights exercise mechanism of the Board of Directors.
	The third is to establish an accountability system for directors' responsibilities to implement directors' responsibilities.

Table4. Optimization measures of shareholder rights exercise for holding subsidiaries

Connotation	Common behaviors of enterprises
Optimization of the company charter	The first is to reflect the principle of good faith exercise of rights in the articles of association of the subsidiary, and it is clear that all shareholders should uphold the principle of good faith when exercising their rights.
	The second is to refine the voting system of shareholders' meeting resolutions in the articles of association in light of the specific ownership structure of the subsidiary and the close familiarity between shareholders.
	The third is to clearly protect the minority shareholders' right to know in the articles of association of the subsidiary.
	The fourth is to clearly stipulate the conditions for surplus distribution and the procedures for surplus distribution in the articles of association of the subsidiary to protect the profit distribution rights of minority shareholders.
	The fifth is to further refine the circulation of equity, and fully respect the right to know, consent, and preemption rights of small shareholders in equity transfers.
Optimization of board building	The first is to strengthen the institutionalization of the exercise of shareholder rights to ensure shareholder rights. Clarify behavior boundaries, exercise shareholder rights in accordance with the law, and avoid abuse of shareholder rights. Clear responsibility interface to avoid disconnection and omission in the exercise of shareholder rights. Standardize the procedures for the exercise of shareholder rights and ensure that the internal mechanisms of the controlling subsidiaries support the implementation of legal regulations.
	The second is to further establish the core position of the board of directors in the governance of holding subsidiaries and give full play to the role of the board of directors.
	The third is to strengthen the construction of the market mechanism of the board of directors and implement market-based selection and appointment of directors.
	The fourth is to improve the rules of procedure and decision-making procedures of the board of directors and improve the efficiency and quality of board meetings.
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