

Research on the Protection of the Rights and Interests of Small and Medium-sized Shareholders under the Dual Shareholding Structure

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Abstract: Against the background of shareholder heterogeneity, dual shareholding structure is gradually favored by more companies because it can better meet different investment needs. However, because the rights and interests of small and medium-sized shareholders are easily infringed by controlling shareholders' abuse of corporate control, dual shareholding structure naturally faces many risks and controversies. How to avoid the negative impacts of dual shareholding structure, so that the system can better serve the enterprise operation and economic development, has become a matter of great concern to the academic community. This paper, by studying the two typical share forms of special voting shares and preferred shares, tries to put forward targeted rule of law thinking for improving the framework of protecting the rights and interests of small and medium-sized shareholders under the dual shareholding structure, with a view to protecting the security of investment. This paper argues that the current system mainly suffers from the defects in the allocation of rights and obligations in the system design, risk control in the process, and remedies after the fact, and proposes to optimize the allocation of rights and obligations in the shareholder structure, strengthen the risk control mechanism in the process, and broaden the remedies after the fact. Through a variety of measures, it establishes an institutional framework to guide the benign operation of shareholders' rights in the capital market, reduces the risk of infringement by special voting rights holders, and broadens the ways to protect the rights and interests of small and medium-sized shareholders.

Keywords: Dual Shareholding Structure;

Small and Medium Shareholders; Rights and Interests Protection; Voting Rights

1. Introduction

The trend towards heterogeneity of shareholders has created new demands in the market. While it is generally recognized that shareholders should have "the same shares and the same rights", with the separation of shareholders' voting rights and investment income rights in corporate governance, dual shareholding structures with "the same shares and different rights" have emerged. Although the dual shareholding structure based on the theories of shareholder heterogeneity, contractualism and substantive equality of shareholders can meet the new development needs of modern corporations, it is not without certain obstacles in its implementation. Because of the natural difference in voting rights and the lack of a complete supporting system at the beginning of the development of the system, the interests of small and medium-sized shareholders are more likely to be infringed under the dual shareholding structure, and capital market managers in various countries tend to take a cautious attitude towards it.

In practice, there are already more classes of equity, in order to meet the diversified investment needs of different investors, in recent years, there have been repeated calls for institutional reform in the academic community, which has been reflected in the revision of the company law, the new company law introduced at the end of 2023 allows the issuance of a series of classes of shares different from the rights of ordinary shares in accordance with the articles of association of the company, which indicates that the dual shareholding structure has been formally established in China. Institutional innovation requires a rethinking of the security risks of

market transactions. The design of the dual shareholding structure is considered to weaken the rights and interests of small and medium-sized shareholders and increase the risk of infringement by special voting rights holders and is therefore controversial in both theory and practice. To effectively protect the rights and interests of small and medium-sized shareholders and maintain the fairness and efficiency of market transactions, a reasonable legal path for the protection of the rights and interests of small and medium-sized shareholders under the dual shareholding structure should be explored. This article combs through the current situation of the operation of the dual shareholding structure system in China, analyzes the existing deficiencies in the protection of the rights and interests of small and medium-sized shareholders, and puts forward the rule of law thinking on the improvement of the protection of small and medium-sized shareholders' rights and interests by analyzing the balance of the values and conflicts, with a view to improving the strengths and avoiding the shortcomings, so that the system can operate smoothly in China. In addition, since the main purpose of the dual shareholding structure is to maintain the control of the company by specific shareholders, we will not discuss the types of shares subject to transfer here, but only analyze the preferred shares and special voting shares established in the Company Law.

2. Basic Theory of Dual Shareholding Structure

2.1 Rationale for the Dual Shareholding Structure and Definition of Minority Shareholders

Dual shareholding structure refers to the form of shareholding structure of "different rights for the same share", which is a special corporate governance structure formed by the issuance of two or more shares with different rights by the company. Dual shareholding structure breaks through the traditional "one share, one right" structure of the company's shares, and is a form of "one share, multiple rights", which is a typical form of class shares, and its content is a special arrangement regarding shareholders' rights in terms of voting rights^[1]. The structure of "one share, one right" is a

form of "one share, many rights", which, as a typical form of class shares, consists of a special arrangement regarding shareholders' rights in terms of voting. The main reason for the preference for dual shareholding structures is the strong demand from certain groups of people to maintain control of the company, and dual shareholding structures have a natural advantage in this regard. On the one hand, the company can introduce financing to meet the company's development needs, while preventing the dilution of control caused by the entry of financing, so that the holders of the special shares still maintain control of the company; on the other hand, the stability of the company's control is able to effectively resist hostile takeovers and satisfy the vision of the enterprise's long-term development plan.

The form of shares in a dual shareholding structure may generally consist of three types of shares: special voting shares, ordinary voting shares and preferred shares. It should be noted that in special matters stipulated in the articles of association, the voting rights of special voting shares and ordinary voting shares may not be differentiated, and preferred shares also do not exclude the possibility that their shareholders may still enjoy voting rights in special matters. The current institutional structure of China's dual shareholding structure includes differential voting arrangements and preferred share system, corresponding to the above three share forms^[2]. The current institutional structure of dual shareholding structure in China includes voting rights differential arrangement and preferred share system, which correspond to the above three share forms.

Regarding the scope of small and medium-sized shareholders, small and medium-sized shareholders under the dual shareholding structure should be relative to shareholders enjoying control of the company, and therefore small and medium-sized shareholders include not only ordinary voting shareholders under the voting rights differential arrangement, but also preferred shareholders, who hold shares with less than one unit of voting rights per share. This demonstrates the core characteristic of small and medium-sized shareholders that they do not hold control of the company,

and they have both the status of shareholders and the research value of having their rights and interests easily infringed upon.

2.2 Legitimate Basis for Dual Shareholding Structure

2.2.1 Trend of Heterogeneity of Shareholders' Interests

It has long been recognized in corporate law theory that the exercise of the majority rule of capital represents shareholder democracy and is the natural form of corporate governance. In the "one share, one right" structure, where the ratio of income rights to voting rights corresponds to each other, shareholders who have contributed more capital are required to obtain several voting rights that corresponds to the ratio of their capital contributions, since they are responsible for distributing the company's benefits and assuming greater business risks. However, this flat thinking model is based on the homogenization of shareholders, who have the same interests, and this consistency provides equal incentives for all shareholders^[3]. As practice has evolved, this theoretical foundation has become increasingly difficult to adapt to the changes in the modern corporation. Obviously, the interests of shareholders are not homogenized, and the diversified investment subjects and investment purposes make the shareholders' concern for the company and the ways and means of exercising their rights differ from each other^[4]. The thinking, advantages, abilities, and interests of shareholders are not equal. As a result of these differences, there is a need to reorganize the mode and content of shareholders' rights.

2.2.2 Requirements of the Principle of Private Law Autonomy

The corporation is the product of a series of commercial contracts. The establishment of a company and the formulation of its articles of association by shareholders through free negotiation, through which they independently agree on the content of the company's governance structure and share rights, is a manifestation of the autonomy of the company and is conducive to meeting the needs of a diverse range of shareholders. According to the requirements of the principle of private law autonomy, if the shareholders' consensus, based on not harming the interests of the state,

society and others, and not destroying the public order and morals, the company's operation and management behaviors should be less interfered with, and the law should respect the shareholders' space for autonomy and provide institutional safeguards. In the dual shareholding structure, differentiated voting shareholders and preferred shareholders decide to invest through independent consultation, agreeing on the content of the rights needed by each of them, and forming a governance structure in line with the actual development of the company, which is consistent with the connotation of corporate autonomy.

2.2.3 From Formal Equality of Shareholders to Substantive Equality of Shareholders

The essence of the traditional "one share, one right" shareholding structure is the equality of shares, i.e., the formal equality of shareholders, which advocates equal rights for each unit of shares and prohibits any differential treatment. This model measures equality of shareholders based on capital rather than based on human beings^[5]. The dual shareholding structure seeks not to be universal. The dual shareholding structure pursues not universal and absolute equality, but relative equality, each taking what he or she wants. This promotes the theory of shareholder equality from formal equality to substantive equality. The theory of substantive equality of shareholders argues that it should be based on human beings and does not generally prohibit unequal treatment among all shareholders, but rather prohibits unequal treatment that is not justifiable^[6]. The theory of substantive equality of shareholders is that it should be based on human beings. The dual-shareholding structure, based on respecting the independent will of shareholders and implementing differentiated treatment, arranging different rights according to the shareholding preferences of different shareholders, while shareholders in the same category still enjoy the same content of rights, is a more flexible and practical equality, which is precisely the requirement of substantive equality of shareholders.

3. Deficiencies in the Protection of the Rights and Interests of Small and Medium-sized Shareholders under the Dual

Shareholding Structures

In 2013, China launched the pilot project of preferred stock system, and at the same time, the amendment of the Company Law stipulated the voting right difference arrangement and preferred stock system, it should be said that China's law has formally introduced the dual shareholding structure, but there is still no comprehensive and specific norms on the protection of the rights and interests of small and medium-sized shareholders at the level of the Company Law and the Securities Law, and the system of protection measures for the order of transactions in the dual shareholding structure is scattered in several normative documents. These rules are general and scattered. These rules are rather general and scattered, and after analysis, the following problems are found.

3.1 Distribution of Rights and Obligations in the Design of the System

3.1.1 Protection of the Rights and Interests of Preferred Shareholders needs to be Strengthened

Firstly, the preferred shareholders are limited to enjoying voting rights within the scope of the directly relevant contents in the articles of association, changes in the company's existence, etc. and other matters stipulated in the articles of association as enumerated in the Measures for Administration of Preferred Share Pilot Programs (hereinafter referred to as the "Administrative Measures") issued by the CSRC in 2014, which not only are not sufficiently detailed and clear in terms of the contents of the provisions but also in terms of the fact that, in addition to the matters enumerated above, there are other matters relating to preferred shareholders' interests. In addition, in addition to the matters listed above, there are other matters related to the interests of preferred shareholders in which they do not have voting rights. Many acts that infringe on the rights and interests of preferred shareholders do not require an amendment to the Articles of Incorporation, and therefore such cases may easily pose a risk to the rights and interests of preferred shareholders. Therefore, the provisions on the exercise of voting rights by preferred

shareholders should not be limited to an amendment to the Articles of Incorporation, but rather, any resolution involving a change in the rights and interests of preferred shareholders should be passed by the general meeting of preferred shareholders^[7]. The preferred shareholders' right to vote should not be limited to the amendment of the articles of association.

Secondly, the scope of protection of the right to information of preferred shareholders is not sufficient. Although the right to information of small and medium-sized shareholders is protected by law, there are still certain restrictions. Preferred shareholders have limited access to relevant information. According to the Administrative Measures, they have the right to inspect the articles of association, shareholders' registers, bond stubs, meeting minutes and resolutions, etc. Compared with ordinary shareholders' right of access to information under the Company Law, which excludes the company's accounting books and documents and does not entitle them to copying rights, their right of access to information is not even comparable to that of ordinary shareholders in this respect. Preferred shareholders generally do not participate in the company's management, there is a certain information gap in the understanding of the company's situation, such as the above differences will be placed in a very unfavorable position, not only difficult to avoid risks beforehand, but also not conducive to the measures taken after the fact to protect their legitimate rights and interests.

Finally, the lack of exit channels for preferred shareholders prevents them from protecting their own rights and interests by stopping losses in a timely manner. In addition to the statutory repurchase situations stipulated in Articles 161 and 162 of the Company Law, there is no other way for the company to repurchase the shares of the shareholders, which undoubtedly restricts the exit route of the preferred shares. Moreover, since the specific repurchase terms are decided by the company, the preferred shareholders' exit path may be blocked, and from the practice of preferred share pilots, most of the companies have not stipulated that the

preferred shareholders have the right to take the initiative to request the company to repurchase their shares. In terms of conversion of preferred shares, the Administrative Measures do not allow preferred shares to be converted in principle, and only commercial banks can issue mandatory conversion preferred shares under certain circumstances. The increase in the exit threshold for preferred shares will inevitably lead to cautious entry by investors, which is not conducive to encouraging investment and improving economic vitality. In this regard, the exit route for preferred shareholders should be further expanded.

3.1.2 Lack of Fiduciary Obligations on the part of Controlling Shareholders

Company law imposes a duty of loyalty and diligence on the directors and supervisors of a company, which is considered to be the legal embodiment of the duty of fiduciary duty^[8]. However, the institutional framework for applying fiduciary duties to controlling shareholders has not yet been constructed under this norm. Controlling shareholders have the right to control the company and even directly participate in the management of the company, so they should also have the obligation of fiduciary duty. The attitude towards this can already be seen in the company law, which prohibits shareholders from abusing their rights and harming the interests of the company, indicating the intention to control the behavior of shareholders. Small and medium-sized shareholders in a dual shareholding structure transfer control of the company to the controlling shareholders based on trust, but the interests of the two are not always the same, and the latter may have the incentive to jeopardize the rights and interests of the former for self-interested purposes. Therefore, the necessity of restraining controlling shareholders with fiduciary obligations lies in restraining the self-interested behavior of those who have the right to exert control over the company^[9]. The establishment of their fiduciary duty is the basis for the construction of a system to protect the rights and interests of small and medium-sized shareholders under the dual shareholding structure.

3.2 In-process Risk Control

3.2.1 The type of Sunset Clause is Designed to be Relatively Homogenous

The SSE introduced the Rules Governing the Listing of Stocks on the SSE Technology and Innovation Board (hereinafter referred to as the "Listing Rules") in 2019, which stipulate the circumstances under which the special voting shareholders must convert to ordinary shares in the corresponding proportion and immediately disclose the information, including the circumstances under which the shares held by the special voting shareholders are less than 10% of the issued shares of the Company, the death or incapacity of the special voting shareholders, or the transfer of the special voting rights to other persons. The purpose of the sunset clause is to terminate the inefficient dual shareholding structure in a timely manner, and to prevent the special voting shareholders from seeking private interests and jeopardizing the rights and interests of small and medium-sized shareholders under the above circumstances^[10]. While the above event-specific sunset clauses are subject to delay, uncertainty and lag, their practical effect is limited. In particular, how special voting stockholders harm the interests of small and medium-sized shareholders are usually abusive use of voting rights, circumvention of the General Terms and Conditions and repurchase of shares by the controlling person, etc., and special voting rights cannot be converted into ordinary shares, and the sunset clause may not be effective. Fixed-term sunset clauses will terminate a company's dual shareholding structure with the expiration of the term. When a founder or manager is unable to better lead the company, the special voting shares he or she owns are no longer justified, and fixed-term sunset clauses will enable the company to compulsorily withdraw from the dual shareholding structure, but such an effective measure has not yet been incorporated into the legal norms.

3.2.2 Vulnerability of Internal Oversight Forces

The internal oversight bodies of listed companies are mostly independent directors

or supervisory boards, and their independence is the basis and guarantee of the role of supervision, and only by maintaining the independence of the internal oversight bodies can the exercise of supervisory power not be swayed by special voting rights holders or other interested parties^[11]. Only by maintaining the independence of the internal oversight body can the exercise of oversight not be influenced by special voters or other interested parties. The Listing Rules give the supervisory board the main responsibility for internal oversight, but in the case of differential voting arrangements, controlling shareholders are able to utilize their control over the company to decide on the selection and appointment and removal of supervisory board members, making the latter accountable to the controlling shareholders rather than all shareholders, which results in the supervisory board not being able to independently perform its duties.

As for the independent directors, the Listing Rules do not contain clear provisions on their role, and most of the members of the Board of Directors still originate from the election of the special voting shareholders, and due to the "virtual" status of the independent directors in China at this stage, it is difficult for them to have a substantial impact on the selection of the same shareholders and the same rights^[12]. Most of the members are still elected by the special voting shareholders. Due to the complex overlap of the identity of the management members of many companies with dual shareholding structure, the boundaries between the performance of directors and executives are not clear, and if the special voting shareholders and the members of the management hold concurrent positions, it will be more difficult to ensure the fairness of the selection process of the independent directors, and therefore it is not possible to make the outside directors independent of the controlling shareholders^[13]. Therefore, it is not possible to make outside directors independent from controlling shareholders.

3.3 Remedies of the Right After the Event

The voting mechanism of a company with a

dual shareholding structure makes the abuse of voting rights by shareholders usually have formal legitimacy, which makes it more difficult for the court to recognize the abuse of voting rights by shareholders. When the court examines the abuse of rights by shareholders, it often takes the abuse of voting rights as a formal manifestation of the shareholders' other entity violations, and the determination of the abuse of voting rights is often limited to the formal examination, i.e. whether the voting procedure follows the law and the articles of association, rather than the substantive examination. However, the legal compliance of the procedure does not necessarily mean that there is no infringement of the substance, and the court also faces the dilemma of the lack of specific standards when distinguishing between private law autonomy and the abuse of voting rights.

Among the shareholders of a company, especially for listed companies, due to the dual shareholding structure under which most of the voting rights are controlled by the controlling shareholders, a wide range of public investors are dispersed and weak, and when facing infringement by the controlling shareholders they are often in a disadvantageous position due to the lack of information, difficulties in proving evidence, and high litigation costs, and they even give up their rights to remedies^[14]. The securities law has set up a representative litigation system. The securities law sets up a representative litigation system to deal with this, giving investor protection organizations the right to sue under certain conditions, but still requiring them to hold company shares, which undoubtedly restricts the scope of investor protection organizations to participate in defending their rights. The CSI Small and Medium-sized Investor Service Center Special Representative Litigation Rules (Trial) (hereinafter referred to as the "Business Rules") have refined the rights and obligations of the Investment Service Center as a representative litigant, but they also limit the scope of the cases that can be sued by the Center, and the enumeration is not sufficient to cope with the changing market environment and the various

possibilities of infringement. Moreover, the conditions for accepting cases stipulated in the Rules of Practice lack clearer standard rules and regulations, and therefore lack operability^[15]. It is also not conducive to the openness and transparency of case adjudication, which in turn produces good social benefits. In addition, the securities law describes the litigation responsibility of the representative of the investor protection organization as "may" rather than "shall", which is easy to indulge the latter in exercising their litigation rights for various reasons, and the space in which they can play their role is difficult to provide adequate protection for small and medium-sized shareholders.

4. Reflections on the Rule of Law to Improve the Protection of the Rights and Interests of Small and Medium-sized Shareholders under the Dual Shareholding Structure

4.1 Optimizing the Distribution of Rights and Obligations in the Shareholder Structure

4.1.1 Strengthening the Protection of Preferred Shareholders' Rights and Interests

First, the norms for classified voting and the system for resuming the exercise of voting rights for preferred shares should be improved. In addition to the articles of association, the possibility of damage to the rights and interests of preferred shareholders should be used as a precondition for triggering a classified vote. This can be expanded for underpinning provisions, while the judgment on the occurrence of damage or the existence of the possibility of damage can be established as a prerequisite for the amendment of the company's articles of association in a way that does not harm the interests of preferred shareholders, and the board of directors' judgment on the risk of damage of the company's actions^[16]. The Board of Directors should also determine the risk of harm from the company's actions. In addition, it should be stipulated that, in the event of the resumption of the exercise of voting rights, the preferred shareholders may be restored to full voting rights corresponding to the proportion of their

capital contribution, and it is not permissible for the Articles of Incorporation to stipulate only a certain proportion, which is clearly contrary to the principle of substantive equality of shareholders.

Secondly, the scope of the right to information of preferred shareholders should be expanded. Adopt a positive enumeration to clarify the circumstances under which preferred shareholders are entitled to the right to reproduce corporate information and set up a provision to deal with new circumstances arising in practice. In order to guarantee the realization of the preferred shareholders' right to know, it is possible to set up procedures applicable to preferred shareholders with reference to the procedures for ordinary shareholders to exercise the right of inspection and copying established in Article 57 of the Company Law, expand the scope of inspection to include accounting books and documents, and grant preferred shareholders the right to make suggestions and inquiries on the management of the company following the example of the right to know granted under Article 110 of the Company Law, so as to give operational value to the right to know and expand the scope of the right to know from the substantive rights to procedural remedies. The expansion of rights and procedural remedies have formed a comprehensive protection system for the right to know.

Finally, the exit mechanism of preferred shares should be eased. On the one hand, it is the repurchase of shares by the company. Appropriate relaxation of the issuance conditions of preferred shares can promote their smooth circulation, change the situation of issuers dominating the preferred share market, and increase the opportunities for the company to repurchase shares, which will help to broaden the exit path of preferred shareholders. We can also consider the preferred shareholders' right to request for repurchase of dissenting shareholders, which is stipulated in Article 161 of the Company Law, but it only includes ordinary shareholders and excludes the corresponding mechanism in listed companies, and this right is not clear for preferred shares. This right should be recognized at the legislative level and the

corresponding procedures should be set up so that the preferred shareholders can avoid the risk when there is a legal cause. On the other hand, preferred shares should be allowed to be converted to common shares to avoid blocking the earnings channel of preferred shareholders. Even if the company develops well, the preferred shareholders will only get the expected dividend income, but not enjoy the equity appreciation. Allowing the conversion of preferred shares can give the market a greater choice of space, which is conducive to the realization of the rights and interests of preferred shareholders.

4.1.2 Structuring Fiduciary Duties Towards Controlling Shareholders

Traditionally, fiduciary duty is a requirement for company directors, and although many controlling shareholders are currently serving as company directors themselves, if they are bound by fiduciary duty only in their role as directors, there will inevitably be a gray area in their status as controlling shareholders. In view of the potential conflict of interest between small and medium-sized shareholders and controlling shareholders, the construction of controlling shareholders' fiduciary duty can effectively regulate the abuse of corporate control. However, there are differences between the two fiduciary duties. Compared with the fiduciary duty in the context of directors, the fiduciary duty in the context of controlling shareholders should place more emphasis on the control of the company, and therefore the model of directors' fiduciary duty cannot be copied completely, and attention should be paid to the relationship between controlling shareholders and other shareholders. When there is a conflict between the interests of the company and the interests of the controlling shareholders, the controlling shareholders are not bound by the duty of fidelity; when the controlling shareholders threaten the interests of the other shareholders by pursuing their private interests, they should be subject to the restrictions of the duty of fidelity. The controlling shareholders of a company with a dual shareholding structure are subject to the same duty of care as the directors because of their participation in the

company's management affairs. When the controlling shareholders violate the duty of fidelity, their liability, and the right of action of the small and medium-sized shareholders should be clarified to form a coercive force for the controlling shareholders to comply with the duty of fidelity.

4.2 Enhanced in-process risk control mechanisms

4.2.1 Improving the Type of Sunset Clauses

The critical role of the original thinking possessed by a company's founders for the long-term development of the company makes it necessary for them to maintain control of the company, but there is no guarantee that the founders will always maintain this original thinking, and their advantages tend to weaken over time. Companies with a dual shareholding structure may enter a state of inefficiency over time, necessitating the introduction of fixed-term type sunset clauses in our laws to terminate the structure in a timely manner in the event of impropriety. Such a clause would result in the conversion of special voting shares to common shares at the end of the term and the automatic termination of the dual shareholding structure, with a vote by all shareholders on whether to continue the dual shareholding structure and again for a limited period. The duration of such sunset clauses may vary according to different corporate governance practices and may be specified by the company in its bylaws.

The existing event-specific sunset clauses should also be further refined. In conjunction with the above, the fiduciary obligations of controlling shareholders should be included in the scope of the triggering conditions^[17]. In the event of abuse of control by the company's managers or serious damage to the company's interests, the company should be converted to a "one share, one right" shareholding structure as soon as possible to protect the rights and interests of the small and medium-sized shareholders by preventing the damage from continuing to grow.

4.2.2 Strengthening internal oversight capacity

The old mechanism for selecting the supervisory board must be eliminated, and

its independence must be strengthened to prevent the performance of the supervisory board from becoming a mere formality. The purpose of adopting the dual shareholding structure is to avoid the dilution of the company's control, and since the selection of the supervisory board members has nothing to do with this, the restricted voting rights of the small and medium-sized shareholders should be retained^[18]. Since the selection of supervisory board members is not related to this issue, the restricted voting rights of small and medium-sized shareholders should be retained. The Supervisory Board is not subject to the control of the controlling shareholders and is therefore able to perform its duties independently and be responsible for the overall interests of the company.

In addition, the role of independent directors should be emphasized, and their supervisory functions should be implemented to further improve the internal oversight system. The Listing Rules stipulate that the selection of independent directors should follow the "one share, one right" rule, but do not specify the internal oversight function of independent directors. Companies with a dual shareholding structure can be required to form a supervisory committee composed of independent directors to supervise the exercise of special voting rights through the issuance of regular supervisory reports, which not only strengthens the power of internal supervision, but also facilitates the disclosure of information.

4.3 Broadening the Avenues for Ex Post Facto Remedies

To reasonably identify the abuse of voting rights by the controlling shareholders, it is necessary to establish the behavioral standards for the exercise of voting rights oriented to the purpose and result of the behavior to determine whether it is an abuse of voting rights, and the court should also consider the formal review and substantive review in the decision. In addition to examining whether the procedures are legal and compliant, the court should also pay attention to two aspects: whether the exercise of special voting rights represents the interests of all shareholders, and

whether the exercise of such voting rights causes or aggravates the conflict of interests between controlling shareholders and small and medium-sized shareholders. To further lower the threshold for the protection of the interests of small and medium-sized shareholders, it is possible to disregard whether the abuse of voting rights by the controlling shareholders is subjective and intentional.

Currently, the conditions for initiating special representative litigation are still relatively strict and relaxing them will help more victimized small and medium-sized shareholders to obtain relief. The requirement for investor protection organizations to hold company shares should be abolished, and the criteria for preconditions should be lowered, so that for a specific case, only the subject of the infringement should be subject to the investigation procedure of administrative or criminal penalties. Changing the right of investor protection organizations to participate in representative litigation in the Securities Law from "can" to "should" and strengthening the responsibility of investor protection organizations to protect their rights. The conditions for accepting cases must also be refined, and the Rules of Practice require that cases be characterized as typical, significant, socially impactful and exemplary, and that quantitative criteria such as the size of the amount of money involved and the degree of impact should be formulated in conjunction with the level of regional economic development and social and public sentiment, so as to assist investors in effectively applying the law and to enhance the transparency of case handling.

For reducing the conditions for special representative litigation, which may lead to an increase in the number of cases, the investment service center cannot cope with the problem, we should start from the growth of investor protection institutions, open up more types of investor protection institutions, guide the establishment of commercial nature of investment protection of civil self-governance organizations, in the case of other institutions cannot play a role in the investment service center to assume the responsibility of underwriting,

not only to alleviate the pressure of the cases of the investment service center This will not only ease the pressure of cases in investment service centers, but also form a market competition mechanism to promote the enhancement of rights protection efficiency and service quality.

5. Conclusion

The use of dual shareholding structure is an important innovation to meet market needs and promote economic development, and the protection of the rights and interests of small and medium-sized shareholders can promote the application of dual shareholding structure, which is of great significance to the smooth operation of the system. The introduction of dual shareholding structure, to promote the free flow of capital, is China's current economic development needs of the inevitable. Improving the investment environment will not only increase the enthusiasm of investors, but also contribute to the healthy and sustainable development of the capital market. This institutional attempt requires us to further improve the protection of the rights and interests of small and medium-sized shareholders, and to continuously enrich and improve the institutional construction of the dual shareholding structure in the development of practice, to meet the needs of diversified corporate governance and to enhance the national economic strength and the power of the rule of law in the society.

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