

Research on the Division of Jointly-owned Equity in Divorce Litigation

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Abstract: The issue of marital equity division in divorce litigation is an emerging topic in contemporary legal practice and theoretical research, involving the intersection of civil law and company law, and there are multiple legal and practical difficulties. This article, through empirical analysis of 90 sample cases, finds that there are mainly three major problems: unclear equity ownership, conflicts between the division of equity between husband and wife and the interests of company shareholders, and difficulties in equity value assessment. The root cause of the problem lies in the dispute over the scope of equity co-ownership, the value conflict between company law and family law, and the absence of an equity value assessment system. It also puts forward suggestions for improvement, such as establishing a registration system for joint ownership of marital equity, standardizing equity assessment standards, improving the reversal of burden of proof, and introducing a "company repurchase" system.

Keywords: Joint Equity between Husband and Wife; Equity Division; Segmentation Range; Equity Ownership; Equity Value Determination

1. The Current Legislative Situation Regarding the Division of Jointly-Owned Equity by Divorced Couples

1.1 The Transfer of "Capital Contribution Amount" is Subject to Mutual Agreement

The Marriage and Family Chapter of the Civil Code clearly stipulates that production, business operation and investment income belong to the joint property of the couple. Although it does not explicitly define equity, the catch-all provision leaves room for interpretation in its determination. Article 73 of the "Interpretation of the Marriage and Family Chapter (I)" has

been slightly adjusted on the basis of the old regulations, clearly stipulating that when a couple reaches an agreement on the division of equity, the acquisition of shareholder status should refer to the "Company Law". However, this provision has shortcomings: First, taking "capital contribution amount" as the object of division is inaccurate, ignoring the dynamic changes in equity value and identity rights, which may lead to injustice. Second, it only covers situations where the couple has reached an agreement and is unable to deal with the majority of complex cases where no agreement has been reached in practice. Moreover, the 2024 "Interpretation (II) of the Marriage and Family Chapter" does not impose new regulations on such issues. It merely emphasizes that the proportion of equity division cannot be determined solely based on the capital contribution in the shareholders' register or the company's articles of association, and must be handled in accordance with Article 1087 of the Civil Code.

1.2 Rules on the Transfer of Equity to External Parties under the New Company Law

Article 4, Paragraph 2 of the Company Law of 2024 categorically lists the shareholder rights system into property rights and identity rights. Among them, the property rights and interests centered on asset income rights cover profit distribution, income from equity disposal, and the right to request the distribution of remaining property, etc. The right to propose, the right to vote, the right to be informed and other rights that constitute the identity attributes of corporate governance participation rights fall within the scope of major decision-making. In terms of the equity transfer of limited liability companies, the current legislation has established different transfer rules. According to Article 84 of the Company Law, when there are no special restrictions in the articles of

association, shareholders have the freedom to transfer internally, while external transfers must follow the rule of preemptive right. This is because a limited liability company has strong personal cohesion, a limited number of shareholders, low equity liquidity, and closed governance. Trust among shareholders is the key to the survival of the enterprise. Introducing external investors at will may disrupt the governance structure and affect the stability of operations.

It is worth noting that the current legislation has made significant adjustments to the double restriction standards of the Company Law of 2018. Under the original framework, the transfer of equity to an external party required the simultaneous satisfaction of "the consent of more than half of the shareholders" and "the waiver of the preemptive right", which led to repetitive procedures. The initial notice is to seek consent, and subsequent notices are to close the exercise of the preemptive right. However, in reality, shareholders who agree to the transfer usually do not exercise the preemptive right. Shareholders who refuse and do not exercise their rights are regarded as having agreed according to regulations, resulting in a lengthy and inefficient transaction process. The new law deletes the prerequisite for prior consent, optimizes and integrates the transaction procedures, which not only maintains the personal nature but also enhances the efficiency of equity circulation.

2. The Practical Predicament of Dividing the Jointly-Owned Equity of Divorced Couples

2.1 Disputes over the Determination of Equity Ownership

There are two opposing viewpoints in the theoretical circle regarding whether equity obtained with the joint property of the couple and registered under one party's name during the marriage is considered joint property of the couple: 1. Equity is considered as joint property of the couple: It is believed that the equity registered under one party's name is actually jointly owned by the couple, and the equity obtained after marriage should be regarded as joint property according to the presumption rule of joint property [1]. Moreover, Article 73 of the "Interpretation of the Marriage and Family Chapter (I)" allows for the negotiated division of equity, which also indirectly confirms this

point. In the divorce case between Zou and Wang, the court determined that the equity held by Wang was obtained during the marriage with personal property that had no evidence to prove, and thus recognized it as joint marital property [2]. The court ruled that Zou should receive half of the share. 2. The equity itself is not joint property; only its property interests are considered joint property: It is believed that what the couple jointly owns is the property value or the proceeds from the sale of the equity, rather than the equity itself. In terms of nature, equity is a member's right under the Company Law and there is no possibility of shared exercise. In the divorce case between Xu and Zhu, although the court recognized the property rights and interests involved in the equity obtained by Zhu during the marriage as joint property, due to the company's personal nature and the registration of shareholders, it only ruled that Xu was entitled to 50% of the equity property rights and interests. At present, the divorce rate is high and venture capital is active, leading to an increase in divorce lawsuits involving equity division. However, judicial decisions on this issue are clearly divided. To avoid "different judgments for the same case", it is imperative to improve the rules for determining the ownership of such equity [3].

2.2 Conflict between Equity Division and Preemptive Right

After the court determined that the equity was the joint property of the couple, there were two divergent views on how to divide it, with the core issue being whether it was restricted by the shareholders' preemptive right: 1. The claim that the division of equity shares is not subject to the preemptive right: It is believed that the division of jointly-owned property of the couple during divorce should respect the wishes of both parties and have nothing to do with others, which is in line with the purpose of marriage and the spirit of legislation. If the couple cannot reach an agreement, the court may directly rule on the division of equity. In the divorce case between Zhang and Hong, the court ruled that the 80% equity obtained by Hong during the marriage was joint property. As neither party provided a company asset report, the value could not be assessed. Therefore, the court directly ruled that each of them held half of the shares without inquiring whether other shareholders exercised their preemptive rights.

2. Claiming that the division should be subject to the restriction of the preemptive right: It is believed that the essence of the division of marital equity is the transfer of equity and must comply with the provisions of the Company Law on external transfer. The reasons include that non-shareholders have not participated in the company's operation, have no substantial contribution, and the arbitrary division may undermine the trust relationship among shareholders. Therefore, the interests of other shareholders should be given priority for protection. In the divorce case between Ren and Huang, after the court confirmed that Huang's 3.5% equity during the marriage was joint property, and on the premise that other shareholders explicitly waived their preemptive rights and agreed to allow Ren to become a shareholder, the court ruled that the two should share the equity equally [4].

The conflict between the two viewpoints has led to inconsistent judicial decisions. Some courts focus on protecting the right to divide marital property and directly award equity, while others give priority to shareholders' preemptive rights and decide whether to support the division based on the wishes of other shareholders. As the boundaries between the two rights are blurred, how to balance and resolve conflicts needs to be further clarified.

2.3 The Difficulty in Assessing the Equity Value

An empirical analysis of 90 divorce equity division judgments shows that 32 cases involve the issue of equity value determination. Among them, 17 cases, due to the difficulty in accurately determining the actual value of the equity, the courts were unable to support the parties' demands for compensation at a reduced price. Some of them instead ruled on equity division, and even rejected the demands and required separate lawsuits. This indicates that the complexity and uncertainty of equity value assessment have become a common problem for such cases to reach a deadlock. There are mainly four reasons for the assessment predicament: 1. Difficulty in obtaining information: Non-shareholder spouses are restricted by objective conditions and find it difficult to provide key information required for assessment, such as financial statements and asset details, which prevents assessment institutions from fully grasping the company's

operating conditions. 2. Passive cooperation of the parties: Some parties, due to considerations such as litigation strategies, still refuse to proactively apply for an audit and assessment even after being informed by the court of the necessity of the assessment [5]. 3. Dispute over cost assumption: When the conflict between the two parties intensified, both refused to bear the assessment costs, resulting in the inability to initiate the assessment process [6]. 4. Company information Opacity and evaluation disputes: The financial information of a limited liability company is not made public. When the company is not involved in litigation, it is difficult for the court to conduct a comprehensive audit of its assets and debts. Even when entering the assessment stage, differences in the assessment base date, methods and considerations can easily lead the parties to question the results, affecting the efficiency of the trial.

3. Improving the Path Suggestions

3.1 Establishing a Joint Ownership and Registration System for Marital Equity

The fundamental reason why equity division has become a judicial conundrum lies in the fact that the normative conflicts between marriage and family law and company law have not yet formed a systematic solution. Establishing a joint ownership and registration system for marital equity can not only respond to the practical need of "different judgments for the same case" in judicial practice, but also improve the connection between the commercial registration system and the family property system. In view of the current ambiguous legal definition of whether the equity jointly contributed by husband and wife is co-owned and the differences in judicial practice, the legislation should be revised to grant the decision-making power over the articles of association of companies: The General Provisions of the Company Law clearly stipulate that the equity jointly contributed by the couple is of course jointly owned by the couple (the object covers property rights and shareholder status), and at the same time, it sets up a clause allowing the articles of association to exclude the shareholder status of the shareholder's spouse. This forms a clear logic of judgment - if the articles of association do not make provisions, the court can directly rule that

the equity should be transferred between the couple. Where the articles of association have exclusionary provisions, the division shall only be made within the scope of equity property rights and interests, in order to balance the co-ownership of family property and the personal nature of the company. Starting from the requirements of commercial appearance, it is also necessary to refine the rules for equity disclosure: The administrative department for industry and commerce shall be responsible for the registration of co-owned equity and grant it the power to investigate the source of capital contribution, marital status and other matters. During the registration, the marital status and the provisions of the articles of association shall be verified [7]. If the articles of association exclude co-ownership, it shall be registered under the name of one party. If there is no such provision and the spouse consents, the co-ownership registration shall be processed. The company shall truthfully record this in the register of shareholders. At the level of exercising rights, the couple can negotiate to determine the equity representative and file for record. If no representative is elected, it is assumed that they have reached an agreement. In case of disputes, the rules of the United States shall be followed (if one party votes, the spouse is bound; if both parties vote, the voting rights are evenly distributed). At the same time, a relief mechanism should be established. If the articles of association do not restrict co-ownership but it is not registered as co-owned, and the shareholder infringes upon the rights and interests of the spouse, the spouse may file a lawsuit to re-register. In conclusion, this system, through legislation, adds a co-ownership model under the restrictions of the articles of association, standardizes public notice and relief, can clarify the scope of equity division, reduce judicial chaos, improve the efficiency of judgment, achieve effective connection between marriage and family law and company law, and build a balanced and coordinated standardized path between the effect of commercial public notice and the co-ownership of family property.

3.2 Clarifying the Equity Assessment Standards

At present, there is a systemic gap in the standards and norms for equity assessment in our country. However, the assessment results

are of vital importance to the equity division in divorce cases. Therefore, it is urgent to establish a unified standard through legislation [8]. In practice, the current assessment methods overly rely on data such as the company's financial statements and audit reports to calculate value, neglecting the potential for equity appreciation. To address this, we can draw on the experience of the United States and build a systematic assessment system covering multiple factors such as the value of the company's existing assets, performance, market conditions, and the consideration for equity transactions of similar companies. At the same time, the value of the company's goodwill can be incorporated into the assessment parameters through quantitative models. In the selection of the assessment base date, it is unreasonable to take "the time when the case is filed" as the node. This is because the divorce litigation period is long and the property value changes dynamically, and the value at the time of filing cannot reflect the final division situation. Given that the division of jointly-owned equity between spouses falls within the category of joint property division, the "time of divorce" (the effective point of the divorce judgment) should be taken as the base date. This not only conforms to the legal concept of "joint property of spouses" but also fairly defines the rights and interests of both parties. In conclusion, improving the equity value assessment system should be advanced from both the dimensions of standardization and operation: at the standardization level, the assessment standards should be clearly defined through special regulations, with net assets and other factors listed as mandatory considerations, and dynamic elements such as development prospects and goodwill should be integrated to build a comprehensive evaluation system; At the operational level, it is clearly stipulated that the effective date of the divorce judgment shall be taken as the base date to ensure the objectivity of the assessment and the fairness of the division, providing institutionalized support for judicial practice.

3.3 Improving the Mechanism of Burden of Proof

The evidence presentation stage is crucial to the development of divorce equity disputes, but the non-shareholding party faces many obstacles in presenting evidence. It is necessary to improve

the system to break down the barriers. On the one hand, the investigation and evidence collection rights of non-shareholding spouses should be expanded [9]. Although the current Company Law grants shareholders the right to review the company's meeting minutes, financial ledgers, etc., it does not stipulate the relevant rights of non-shareholding parties. They can be moderately granted the right to access and review ledgers related to co-owned equity. At the same time, to protect the company's operation and business secrets, the scope of rights exercise should be limited to avoid interfering with the company's normal operation. On the other hand, the rule of reversing the burden of proof should be introduced. Given the burden of proof predicament faced by non-shareholders when the company refuses to allow them to exercise their right to review on the grounds of trade secrets, the traditional model of "he who asserts must prove" should be broken through, and the registered shareholders should bear the main burden of proof - because they are deeply involved in the company's operation and more familiar with the company's affairs. Evidence must be provided to prove that the equity does not belong to the joint property of the couple; otherwise, adverse consequences will be borne. In conclusion, it is necessary to adopt a dual approach of granting the non-shareholding party the right to access and establishing a rule of reversing the burden of proof [10]. This will not only safeguard the legitimate rights and interests of the non-shareholding party but also take into account the commercial interests of the company, providing institutional support for the fair trial of the case.

4. Conclusion

The issue of division of jointly-owned equity between spouses in divorce proceedings spans two major fields: marriage and family law and company law. It not only involves the ethical nature of family property co-ownership but also concerns the regulatory requirements for the personal nature of companies and the safety of commercial transactions. The legislative ambiguity and judicial divergence of this issue are even more prominent in the current context of high divorce rates and active venture capital investment. From the current practice, disputes over the determination of equity ownership, conflicts between equity division and

shareholders' preemptive rights, the predicament of equity value assessment, and the difficulty for non-shareholders to provide evidence, etc., jointly constitute multiple obstacles to the proper resolution of such disputes. This not only leads to frequent occurrences of "different judgments for the same case", but also makes it difficult to fully protect the legitimate rights and interests of both spouses and the stability of company operations.

To this end, efforts should be made in both institutional construction and detailed rules: By establishing a marital equity co-ownership and registration system centered on the company's articles of association, the scope of equity co-ownership and the rules for public announcement should be clarified to achieve a standardized connection between the marriage and family law and the Company law. Establish a unified equity assessment standard covering multiple factors through legislation, and take the effective date of the divorce judgment as the assessment base date to solve the problem of equity value determination. By expanding the investigation and evidence collection rights of the non-shareholding party and introducing the rule of reversing the burden of proof, the burden of proof capabilities of both sides are balanced, laying a foundation for fair trial of the case. Only in this way can the legal conflicts and practical predicaments in the division of equity during divorce be gradually resolved, adhering to the ethical value of joint family property while maintaining the transaction order in the commercial field, providing clear and feasible institutional guidance for judicial practice, and ultimately achieving the unity of legal and social effects.

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