

# *Research on the Protection of Shareholders' Rights in Company Law*

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**Abstract:** The article explores the current state, existing problems, and suggestions for improvement in the protection of shareholders' rights from the perspective of company law. It first reviews the development of Chinese company law and its several significant amendments, especially reforms aimed at protecting minority shareholders' rights, such as the cumulative voting system and shareholders' derivative action rights. Then, the article provides a detailed analysis of the concept and classification of shareholders' rights, including property rights, individual rights, and collective rights, explaining the specific content of each type of right and their importance in corporate governance. Subsequently, the article assesses the current state of shareholders' rights protection under company law, highlighting issues such as inadequate protection of information rights, ineffective protection of voting rights, difficulties in exercising shareholder litigation rights, and insufficient regulation of related-party transactions. To address these issues, the article proposes several improvement suggestions. Finally, the article concludes by emphasizing the importance of protecting shareholders' rights for corporate governance and the healthy development of the market economy, hoping that through the combination of theory and practice, the mechanism for protecting shareholders' rights can be continuously improved, promoting the harmonious development of shareholders, companies, and society.

## **1. Introduction**

The development of Chinese company law can be traced back to 1993, when the "Company Law of the People's Republic of China" was first promulgated and implemented, marking the formal establishment of the modern company system in China<sup>[1]</sup>. The implementation of this law provided a legal framework and guarantee for the development of the Chinese market economy. Since then, the company law has undergone several revisions to adapt to economic development and corporate governance needs.

Since the initial promulgation and implementation of the "Company Law of the People's Republic of China" in 1993, China's company law has experienced several significant amendments<sup>[2]</sup>. In 2005, major reforms were made, including the abolition of the minimum registered capital requirement for companies, the improvement of corporate governance structures, the strengthening of the duties of the board of directors and the board of supervisors, and the addition of protective measures for minority shareholders, such as the cumulative voting system and shareholders' derivative action rights. The 2013 revision further simplified the registered capital

registration system, implementing a subscription system, and enhanced corporate credit information disclosure, thereby increasing market transparency. The 2018 revision made further improvements in the protection of shareholders' rights and corporate governance, expanding shareholders' rights to information and promoting the implementation of the cumulative voting system. The latest 2023 revision abolished the requirement for the consent of more than half of the shareholders for the external transfer of shares in limited liability companies, strengthened shareholders' preemptive rights, expanded the scope of shareholders' rights to information, and improved shareholders' resolution revocation rights and shareholders' litigation rights, further protecting the legitimate rights and interests of shareholders, especially minority shareholders.

As the owners of the company, shareholders' rights protection is crucial for the stability of corporate governance and the development of the market economy<sup>[3]</sup>. The protection of shareholders' rights not only relates to the vital interests of shareholders but also directly affects the efficiency and fairness of corporate governance. Since the implementation of the company law, certain progress has been made in protecting shareholders' rights, but there are still some issues that need to be addressed. This paper will start with the concepts and types of shareholders' rights, analyze the current state of shareholders' rights protection in company law, and propose corresponding suggestions for improvement.

## **2. The Concept and Types of Shareholders' Rights**

Shareholders' rights refer to the rights that shareholders legally enjoy due to their investment in and holding of shares in a company<sup>[4]</sup>. These rights ensure that shareholders can play their proper role in the operation and governance of the company while safeguarding their legal interests. Based on their nature and function, shareholders' rights are generally divided into three categories: property rights, individual rights, and collective rights.

### **2.1. Property Rights**

Property rights are the economic benefits that shareholders enjoy based on their capital contribution to the company<sup>[5]</sup>. The main types include:

#### **2.1.1. Profit Distribution Right**

Shareholders have the right to receive a share of the company's profits in proportion to their shareholding. This right reflects the shareholders' entitlement to the company's earnings and is the primary form of return on their investment. For example, after the company's annual general meeting approves the profit distribution plan, shareholders can receive cash dividends or stock dividends according to their shareholding ratio.

#### **2.1.2. Residual Property Distribution Right**

In the event of company liquidation, shareholders have the right to distribute the company's remaining assets in proportion to their shareholding. This right allows shareholders to claim the company's assets after its dissolution. For example, when a company undergoes liquidation due to bankruptcy or other reasons, the remaining assets after settling the debts will be distributed among the shareholders according to their shareholding ratio.

## **2.2. Individual Rights**

Individual rights are the rights shareholders enjoy to protect their personal interests<sup>[6]</sup>. The main

types include:

### **2.2.1. Share Transfer Right**

Shareholders have the right to legally transfer their shares to others. This right ensures the liquidity of shareholders' investments, allowing them to adjust their shareholding ratio or exit the investment as needed. For example, a shareholder needing personal funds can sell their shares on the secondary market or transfer them to other investors through an agreement.

### **2.2.2. Preemptive Right**

When the company increases its capital by issuing new shares, existing shareholders have the right to subscribe to the new shares in proportion to their current shareholding, thereby maintaining their shareholding ratio. This right prevents the dilution of existing shareholders' equity and ensures their relative controlling position. For example, if a company decides to issue 10 million new shares, existing shareholders can subscribe to these new shares according to their shareholding ratio to maintain their relative control.

## **2.3. Collective Rights**

Collective rights are the rights shareholders enjoy to protect the overall interests of the company and to participate in corporate governance<sup>[7]</sup>. The main types include:

### **2.3.1. Voting Right**

Shareholders have the right to vote on major company matters (such as electing directors, amending the articles of association, and merging the company) at the general meeting. The exercise of voting rights directly affects the company's decisions and governance structure and is an important way for shareholders to participate in corporate governance. For example, shareholders vote on whether to approve a major investment plan at the general meeting, with each shareholder exercising their voting rights according to the number of shares they hold.

### **2.3.2. Proposal Right**

Shareholders have the right to propose motions at the general meeting and request discussion and voting on them. This right allows shareholders to actively participate in corporate governance and to put forward suggestions or opinions for improvement. For example, if a shareholder believes that the company's management needs to improve a certain business strategy, they can propose a related motion at the general meeting for discussion and voting.

### **2.3.3. Right to Information**

Shareholders have the right to understand the company's operating and financial conditions, to inspect important documents such as the company's articles of association, shareholder register, general meeting minutes, board resolutions, and financial reports. This right ensures that shareholders can obtain the necessary information to make informed decisions. For example, shareholders can request to review the company's latest financial and audit reports to understand the company's financial health and operating performance.

### 3. Current Status of Shareholder Rights Protection in Company Law

The protection of shareholders' rights is a core aspect of company law, essential for ensuring fairness and transparency in corporate governance<sup>[8]</sup>. Below is an overview of the current status and specific manifestations of shareholder rights protection in company law:

#### 3.1. Protection of Share Transfer Rights

**Legal Provision:** The new Company Law Article 84 abolishes the requirement for more than half of the shareholders to consent to the external transfer of shares in a limited liability company. It specifies that written notice to other shareholders must include the number of shares to be transferred, the price, the payment method, and the deadline.

**Significance:** This amendment increases the liquidity of shares and reduces obstacles to shareholders transferring their shares, thus enhancing market vitality. The previous requirement for the consent of more than half of the shareholders often complicated and delayed share transfers. The new provision simplifies the procedure, encouraging shareholders to freely trade their shares, thereby increasing their investment enthusiasm.

**Case Analysis:** A minority shareholder, Zhang, wished to transfer his shares but was repeatedly blocked under the old law due to opposition from majority shareholders. After the new law's implementation, Zhang successfully completed the transfer by notifying other shareholders in writing, avoiding the previous cumbersome procedures and unnecessary conflicts.

#### 3.2. Protection of Preemptive Rights

**Legal Provision:** The new Company Law stipulates that when a company increases its capital, existing shareholders of a limited liability company have the preemptive right to subscribe to the new shares under equal conditions. For shareholders of joint stock companies, this right can be specified in the company's articles of association or decided by the general meeting of shareholders<sup>[9]</sup>.

**Significance:** The preemptive right is crucial for protecting existing shareholders' interests during capital increases, preventing their equity from being diluted. By granting shareholders this right, the law ensures their equal rights during capital increases and prevents majority shareholders from using capital increases to dilute minority shareholders' equity.

**Case Analysis:** When a company decided to increase its capital, a minority shareholder, Li, exercised his preemptive right according to the new Company Law, successfully maintaining his original equity proportion and avoiding dilution due to the capital increase.

#### 3.3. Expansion of the Right to Information

**Legal Provision:** The new Company Law expands the scope of shareholders' right to information, allowing shareholders to delegate intermediaries to exercise this right. It also introduces the right of shareholders of joint stock companies to copy documents such as the company's articles of association, shareholder register, general meeting minutes, board resolutions, supervisory board resolutions, and financial reports.

**Significance:** The right to information is a fundamental basis for shareholders' participation in corporate governance and supervision. The new law not only expands this right but also grants shareholders of joint stock companies the right to copy relevant documents, ensuring they can fully understand the company's operations and major decisions to effectively exercise their other rights.

**Case Analysis:** A shareholder of a joint stock company, Wang, felt unclear about the company's

decisions. By exercising his right to information, he reviewed the board resolutions and financial reports, identified potential issues, and raised concerns at the general meeting, prompting the management to improve decision-making processes.

### **3.4. Improvement of the Right to Rescind Resolutions**

**Legal Provision:** The new Company Law improves the right of shareholders to rescind resolutions, stipulating that shareholders can request the court to rescind resolutions within a certain period, including a maximum protection period of one year from the date the resolution was made for shareholders who were not notified of the general meeting and a starting point of 60 days from when they knew or should have known about the resolution.

**Significance:** The right to rescind resolutions is a crucial means for protecting shareholders from unjust decisions. The improvement in the law ensures that shareholders who were not notified can still use legal means to protect their rights, enhancing the fairness and operability of the law.

**Case Analysis:** A company held a general meeting and passed a significant resolution without notifying a minority shareholder, Zhao. Upon learning of the resolution, Zhao requested the court to rescind it according to the new Company Law, successfully protecting his rights.

### **3.5. Strengthening of Dissenting Shareholders' Right to Request Repurchase**

**Legal Provision:** The new Company Law clarifies that when majority shareholders in a limited liability company abuse their rights to seriously harm the company or other shareholders' interests, the affected shareholders have the right to request the company to repurchase their shares at a reasonable price. It also introduces the right of shareholders of joint stock companies to request repurchase<sup>[10]</sup>.

**Significance:** The right to request repurchase provides minority shareholders with a legal avenue to counteract the abuse of rights by majority shareholders, preventing unjust resolutions from harming minority shareholders' interests. This provision strengthens minority shareholders' voice and protection in corporate governance.

**Case Analysis:** A company's majority shareholder abused his power to conduct unjust related transactions, harming the interests of a minority shareholder, Chen. Chen invoked the new Company Law to request the company to repurchase his shares, successfully avoiding further losses.

### **3.6. Expansion of Shareholder Derivative Action**

**Legal Provision:** The new Company Law expands the scope of shareholder derivative action to include wholly-owned subsidiaries. When the directors or senior management of the company or its wholly-owned subsidiary infringe on the company's interests, eligible shareholders can initiate litigation<sup>[11]</sup>.

**Significance:** The expansion of shareholder derivative action enhances supervision and restraint over internal misconduct. This right enables shareholders to pursue legal responsibility when the company or its subsidiaries are harmed, thereby protecting the overall interests of the company.

**Case Analysis:** A subsidiary's management was suspected of misappropriating company assets. Shareholder Liu, invoking the new Company Law, filed a derivative lawsuit and successfully held the responsible parties accountable, protecting the interests of the company and all its shareholders.

## 4. Existing Problems

Despite the numerous improvements made by the new Company Law in protecting shareholders' rights, there are still some issues in practical implementation:

**Legal Provision and Practical Challenges:** Although the law stipulates shareholders' right to information, there are many limitations in practice regarding the channels and methods through which shareholders can access information. Particularly for minority shareholders, it is challenging to fully exercise this right. Sometimes, company management may refuse to provide relevant information citing business secrets, making it difficult for shareholders to effectively exercise their right to information.

**Inadequate Protection of Voting Rights: Majority Shareholder Control:** Under the control of majority shareholders, the voting rights of minority shareholders are often rendered ineffective. Although the law provides for the cumulative voting system, its application in practice is limited, and many companies have not fully implemented this system. As a result, minority shareholders have limited influence in corporate governance.

**Obstacles in Exercising Shareholder Litigation Rights: Complexity and Costs:** The shareholder litigation system is plagued by procedural complexity and high costs, making it difficult for many minority shareholders to seek redress through legal means when their rights are infringed. The complexity of legal procedures and high litigation costs deter some shareholders from effectively using legal means to protect their rights.

**Supervision of Related-Party Transactions: Insufficient Regulation:** The issue of profit transfer through related-party transactions is quite common in corporate governance. The law's supervision over controlling shareholders and related-party transactions needs to be strengthened. Majority shareholders often exploit related-party transactions to siphon off company assets, harming the interests of minority shareholders. The current legal framework lacks adequate supervision and penalties for such actions.

## 5. Suggestions for Improvement

To address the above issues, the following suggestions are proposed to further strengthen the protection of shareholders' rights:

### 5.1. Improve Information Disclosure Systems

**Enhancing Transparency:** Increase the transparency of company information disclosure to ensure that shareholders, especially minority shareholders, can timely and comprehensively access company operation information and exercise their right to information.

**Specific Measures:** Establish detailed information disclosure rules, ensure timely disclosure of important company information, and set up a mechanism for shareholders to report and address issues with information disclosure.

### 5.2. Expand the Application of the Cumulative Voting System

**Mandatory Implementation:** Promote and enforce the cumulative voting system to ensure that the voting rights of minority shareholders are fully represented in board elections.

**Specific Measures:** Amend the Company Law to mandate the implementation of the cumulative voting system in all companies and provide penalties for non-compliance.

### 5.3. Simplify Shareholder Litigation Procedures

**Lowering Barriers and Costs:** Optimize the shareholder litigation system to lower the threshold and costs for litigation. Establish dedicated institutions to protect shareholders' rights, providing legal assistance and support.

**Specific Measures:** Create a shareholder rights protection fund to assist economically disadvantaged shareholders with litigation costs, and establish dedicated courts or tribunals to handle shareholder disputes quickly and efficiently.

### 5.4. Strengthen Supervision of Related-Party Transactions

**Rigorous Examination and Disclosure:** Enhance legal and regulatory frameworks to rigorously examine and disclose related-party transactions, preventing the misappropriation of company assets.

**Specific Measures:** Implement stringent standards for the approval and disclosure of related-party transactions, establish an independent review committee to oversee such transactions, and impose strict penalties for violations.

### 5.5. Strengthen Shareholder Education and Training

**Increasing Awareness and Capabilities:** Improve the legal awareness and rights protection capabilities of shareholders, especially minority shareholders, through education and training. Establish regular shareholder training programs to educate them about company law and specific measures for protecting their rights.

**Specific Measures:** Organize regular training sessions with legal and corporate governance experts, create a shareholder education website offering resources and case studies, and set up a shareholder consultation hotline to assist shareholders in exercising their rights.

## 6. Conclusion

The protection of shareholders' rights is crucial for corporate governance and the healthy development of companies. The new Company Law has made significant progress in this regard but still requires further improvement in practical implementation. By enhancing information disclosure systems, expanding the application of the cumulative voting system, simplifying shareholder litigation procedures, and strengthening the supervision of related-party transactions, the protection of shareholders' rights can be further strengthened, promoting the improvement of corporate governance structures and the healthy development of the market economy.

This paper analyzes the current status of shareholders' rights protection and proposes several suggestions for improvement, aiming to provide a reference for the further refinement of the Company Law. It is hoped that through the combination of theory and practice, the mechanism for protecting shareholders' rights can be continuously improved, contributing to the harmonious development of shareholders, companies, and society.

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