

Discussion on Legal Issues of Minors Obtaining Shareholders' Qualifications through Inheritance

Hanmeng Xue

School of Law, Shanxi University of finance and economics, Taiyuan, China

xhm26yz@126.com

Keywords: Minor Shareholder, Shareholder Qualification, Share Inheritance

Abstract: At present, commercial activities are becoming more and more complicated, and the problem of minor shareholders is constantly emerging. However, since there is no clear stipulation on this in our company law, scholars and experts also have different opinions on whether minors can inherit the qualification of shareholders. Starting from the cause of formation and combining the opinions of experts and scholars, this paper analyzes the problems arising from minors' inheritance of shareholder qualifications, and makes a feasibility analysis of minors' inheritance of shareholder qualifications by comparing with relevant foreign experiences.

1. Introduction

With the development of today's economy, the number of companies is increasing rapidly, and the accompanying problems are becoming more and more prominent. In 2010, Sunflower Co, Ltd, located in Shaoxing, Zhejiang Province, publicly issued and subscribed for new shares on the Growth Enterprise Market. A 6-year-old child appeared on the company's 73 shareholders list. Thus, the issue of "baby shareholders"-the qualification of minors as shareholders has aroused wide public discussion. In this regard, there is no very clear stipulation in China's "Company Law" and related laws and regulations. Scholars in the theoretical circle have different views and have not formed a relatively unified understanding of whether minors have shareholder qualifications. Therefore, through the legislative spirit of relevant laws and regulations and relevant foreign legislation, how to protect the legitimate rights and interests of minors to obtain shareholder qualification through inheritance, and how to protect the minority shareholder qualification from being used are particularly important.

2. Summary of Minors Inheriting Shareholder Qualification

2.1 The cause of the problem of minors inheriting shares

In 2007, Dang Weizhen inherited 412,600 shares of Lai Mei Pharmaceutical after the death of his mother; in 2008, Gong Hanyuan inherited 72,650 shares of his father in Sanwu Interconnect; in 2009, Zhao Zitong accepted his mother's friend Zhao Min as Baode shares 2.7 million shares. In 2010, Wu Qinyi inherited 62,500 shares of his father in Sunflower.

We can see why minors are shareholders of the company through several "doll shareholder" incidents that have a wider impact. Due to the low threshold for listing on the GEM, many of them are developed by family businesses. As a family business, it must be transformed into a joint-stock company to increase its number of shareholders in order to go public. Therefore, in order to ensure that the shares do not flow out and still have control over the shares, the actual controller of the company will transfer or "give" some of the shares to children and other relatives and friends. This gave birth to a number of "doll shareholders" on GEM. This is the case for the aforementioned Sanwu Internet and Sunflower companies.

In addition to the case where the elders of the above family are shareholders of a company and the equity is inherited in the event of an elder's accident, there may also be historical reasons, such as the state-owned bank forming a part of the equity during the restructuring process, which was actually

"spread" to the system The staff of the internal organs subscribed. These people legally obtained the equity, but at the same time were not able to disclose their names, so they chose to register as their children's names.

To sum up, there are various reasons for minors to inherit the shareholder qualification, but many of them are due to the natural succession of shares based on the Inheritance Law after the accident of the decedent. However, the succession of shares is not equivalent to the actual enjoyment of the shareholder qualification. Therefore, it is worth discussing whether the shareholder qualification can be enjoyed through the share succession.

2.2 The rationality of minors to inherit shares

According to the provisions of Articles 75 and 146 of the Company Law of our country, minors cannot serve as directors, supervisors and senior management personnel of the company, and the articles of association stipulate that shareholders cannot inherit the shares of shareholders after their death, they must abide by the provisions of the articles of association, and minors cannot become shareholders of the company through inheritance. However, except for the general circumstances stipulated in the company's articles of association, minors' act of becoming shareholders of the company through inheritance is not subject to any restrictions. According to the provisions of articles 3 and 10 of the Heritage Law, minors, as children, have the right to inherit the deceased's free will to inherit shareholder status and should be protected. Therefore, minors who inherit the qualification of shareholders should be protected in accordance with the relevant principles of inheritance law if they conform to the provisions of the articles of association of the company.

In addition, according to the Reply of the State Administration for Industry and Commerce on Whether Minors Can Become Shareholders of a Company does not stipulate whether minors can become shareholders of a company, nor does the relevant law stipulate the age of shareholders. Therefore, it is not restricted and excluded by our laws and corresponding regulations for minors to inherit the company's shareholder qualification, that is, it is feasible for minors to inherit the shareholder qualification.

2.3 The problems existing in the inheritance of shares by minors

There are many voices in the academic circle against the succession of shareholders to minors. Some scholars believe that, theoretically, unlike the property nature of the equity of shares, the qualification of shareholders is more an identity right. According to China's "Inheritance Law" and relevant regulations, the nature of heritage is property, including movable property, immovable property, and certain property rights whose subject matter is property. In other words, minors as heirs, shares and other securities are a kind of property rights, while in our country's law, inheritance of shares as property rights is permitted by law. However, as far as the qualification of shareholders is concerned, it is more of an identity right, and the inheritance of the identity right is not allowed under the laws of our country or other countries. Some scholars believe that the company is an enterprise legal person, its main purpose is to make profits, the risks of production and operation are uncertain, and the rights derived from the status of shareholders, such as voting in the shareholders' meeting, asset income, participating in major decisions, and selecting managers, are more complex. Therefore, minors cannot independently exercise their equity rights, and should be represented by their legal representatives or obtain the consent of their legal representatives according to law.

The author believes that if the number of shares held in the company is large, it will have an important impact on the company's decision-making on major issues. However, since the mental development of minors is not mature enough, whether their voting rights based on shareholder status should be restricted is a question worth discussing. In addition, parents are the legal guardians of minor children. Based on the guardianship and agency system, the guardians of minor shareholders can exercise voting rights and even dispose of property on their behalf. However, if the will of his legal representative or guardian is not consistent with or even contrary to that of his legal representative or guardian, minor shareholders will not be able to really exercise their voting rights. As a result, this is likely to be different from the original intention of the decedent to grant rights to minor shareholders when he makes his will, and may even deprive the heir of his true free will, thus

the inheritance of share qualification is no longer meaningful. Therefore, when the guardian exercises his rights on behalf of the ward, he must do so for the benefit of the minor and must not do any harm to the minor's interests. Otherwise, the guardian's behavior is invalid. For example, if a minor inherits his deceased father's equity in a company and his mother is the guardian, his disposition of equity is invalid except for the benefit of the guardian.

2.4 Foreign legislation on the inheritance of shares by minors

In response to the issue of share inheritance, some countries have formulated different legislative provisions for different types of companies. For example, the French Commercial Law stipulates that if a shareholder of a joint-stock company wishes his successor to succeed him as a shareholder of the company after his death, he must be approved by other shareholders of the company. The German Commercial Code stipulates that when a shareholder withdraws from the company because of his death, if the company's articles of association do not directly prohibit him, his successor can become a shareholder of the company through inheritance. The Japanese Company Law stipulates that a joint stock limited company may stipulate in its articles of association the reasons for inheriting shares.

Therefore, it can be seen from the above that there are no clear legal provisions on the inheritance of the qualification of minor shareholders, indicating that minors can directly inherit. For foreign companies, such as unlimited liability companies and two joint-stock companies, if the heirs of natural person shareholders inherit their shares, they must obtain the approval of the company's articles of association or other shareholders.

2.5 Comprehensive Analysis of Minors Inheriting Shares

Although there are some problems for minors to become shareholders through inheritance, based on domestic and foreign experience, this problem can be reasonably regulated through some means and methods, so as to better safeguard the legitimate rights and interests of minors based on inheritance rights.

First of all, the identification of the inherited shares should be handled according to the actual situation of the company and different situations. Under the premise that the current state does not explicitly prohibit it, it can be regulated by the way of the company's articles of association. Whether and how to inherit the shareholder's qualification should be agreed in advance in the company's articles of association. At the same time, the opinions of other shareholders in the company should also be considered. The validity of the succession of shareholders' qualifications permitted by the company's articles of association and without objection by shareholders shall be recognized.

Secondly, in view of the viewpoint put forward by some scholars that minors are contrary to the opinions of guardians or agents, we can start from perfecting the legal system, for example, guardianship system and agency system can require that when guardians or agents exercise the rights of minors' shareholder qualification on their behalf, they must do so based on the wishes or goodwill of the heirs.

In addition, the view that minors become shareholders' meeting will destroy the company's unity and increase transaction risks can be judged by consulting the company's shareholders' register. At the same time, the company cannot completely rely on prohibiting the participation of minor shareholders to solve the problem that the company may have transaction risks. It should also exercise reasonable care in predicting transaction risks.

To sum up, we should analyze specific problems according to different situations in practice, so as to protect the legal rights of minors to become shareholders and enjoy shares based on inheritance, and at the same time protect the company's economic interests and market fairness.

3. Conclusion

The issue of minors inheriting shareholder qualification involves the protection of minors' interests and the safety of the company's operation and transaction. However, the current laws and regulations of our country do not clearly stipulate the relevant aspects of minors' inheriting shareholder qualification. Therefore, it is necessary to establish the system of minors' inheriting

shareholder qualification through continuous improvement in various aspects, so that the interests of minors and the company can be better protected.

References

- [1] Liu Weiwei. Research on the Legal Issues of the Qualifications of Minor Shareholders [J]. Economic Research Guide, 2019 (07): 196-198.
- [2] Li Jun. Discussion on the qualification of minors inheriting shareholders [D]. Jiangxi University of Finance and Economics, 2017.
- [3] Shen Guiming. A Jurisprudential Analysis of the Qualifications of Minor Shareholders: Thinking Based on the Capacity of Rights and Behavior [J]. Social Sciences, 2010 (10): 80-86 + 189.
- [4] Shen Guiming. Analysis of the legitimacy of the path for minors to obtain shareholder qualifications [J]. Law, 2010 (07): 58-67.