

## Rule by Law in Company

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### Abstract

Rule of law is the concrete performance for company following state rule by law strategy. Rule by law in company is the embodiment of law-based governance also the improvement for corporate governance. Rule by law is conducive to the healthy development of the economy, which is beneficial to strengthen the key competitiveness of the company, to integrate into the international society and to realize the strategy of “going out”.

**Key words:** Corporate governance; Rule by law; Rule by law in company

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### INTRODUCTION

The fourth plenary session of the 18th Communist Party of China (CPC) Central Committee announced law-based governance. The building of socialist democracy country needs correct leadership of the party and the government and further positive participation among people and social organizations. Company, as the China’s most important enterprise form and the driving force for economic development, it should be pioneer not only in the current steady economic transformation but also an

important driving force for implementing the concept of socialist rule of law and promoting social harmony and progress. We should understand that the idea of rule by law refers to “some concrete ideas and rational belief which reflect the nature, principle, structure, function and value orientation of rule by law, It is the basic leading thought for legislation, law enforcement, judicial, law-abiding and legal supervision also the essence and soul of rule of law system” (Xie, 2007). For corporate governance, it means to regard law as top criterion, respect company rules and regulations, make it guiding principles and action plan when doing design of the corporate governance structure and authority distribution, management development and the protection of the rights and interests of stakeholders. When it comes to company stable and long-term development, rule by law is a required element of corporate governance. Take the concept of the rule of law into corporate governance, the ideal state is rule of law in company. Company under the rule of law is the embodiment of the rule of law, is the sublimation of corporate governance. Rule by law in company is the embodiment of law-based governance also the improvement for corporate governance.

### 1. CONTENT AND CHARACTERISTIC OF RULE BY LAW IN COMPANY

#### 1.1 Content of Rule by Law in Company

Rule by law in company is a kind of external corporate governance behavior and good governance for laws, company’s rules and regulations those inner beliefs. From the process, it refers to a series of corporate governance behaviors such as corporate governance structure design, permissions assignment, configuration, management, benefit balance, incentive improvement, risk control and responsibility, which all based on law, system of belief. From the results, rule by law in the company is the good

condition and treatment results generated by rule of law concept.

## **1.2 Characteristic of Rule by Law in Company**

### **1.2.1 Rule by Law in Company Is Corporate Governance Advocating Idea of the Rule of Law**

Corporate governance is the topic of mutual interest among law, economics, management science and one of the core problems of corporation law. Since corporate governance idea will decide the characteristics and effectiveness of management behavior, different ideas can lead to differential treatment results, while corporate governance with the idea of rule of law more emphasis on justice and order as well as efficiency. Therefore, rule by law in company is the inevitable result and expected state of the concept of the rule of law and rule of law ought to be.

### **1.2.2 The Goal of Rule by Law in Company Is Goodness Governance**

Rule of law is good condition resulted by observation, implementation and running the legal system. Its goal isn't the simple conscience law but realizes goodness governance by conscience law. The goal of rule by law in company, of course is good governance by conscience law, realize companies, shareholders and stakeholders harmonious and orderly development through company laws and regulations, articles of association, so as to realize the company's long-term stability and development.

### **1.2.3 Rule by Law in Company Is Corporate Governance Giving Full Play to the Company's Independency**

Infusing of idea of rule of law is for more fair and effective corporate governance, strengthening of abiding by laws and regulations is not rigid governance but more often for relief of damage of the rights and interests. Rule by law in company is not excessive intervention in the company management under government but emphasizes the company autonomy under the rule of law concept.

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## **2. THE REALISTIC SIGNIFICANCE OF RULE BY LAW IN COMPANY**

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### **2.1 It Is an Important Part of Law-Based State Governance**

Relevant resolutions from the fourth plenary session of the 18<sup>th</sup> Communist Party of China (CPC) Central Committee not only require to protect the legal rights and interests of the company as all kinds of market main body, meanwhile ask for multi-level governance in accordance with the law in many areas. Company as "corporate citizenship", it plays a big role in the journey to promote the rule of law. It can be said that the company is the national important cells and microstructure. The realization of the rule of law in the company will greatly promote the process of governing the country based on law. At present, given that we are still in initial stage in law-based governance, the

function of company as a driving force didn't play well, however, with the improving of whole society under the rule of law concept, companies, and other enterprises will surely become the guardian of law. To some extent, it is the concretization of law-based state governance.

### **2.2 It Is the Important Guarantee to Realize Economic Healthy and Sustainable Development**

As the China's most important enterprise form and economic power, company plays a decisive role in realizing national strategy. Currently our country faces with macroeconomic downward pressure, a large number of enterprises are facing serious difficulties in management, then the central proposed economic growth mode transformation and industrial structure adjustment, for enterprises, firstly they need to change ideas, from obtaining benefits by opportunistic and institutional defects to standard operation and management in accordance with the law. Realization of the rule by law is helpful for sustaining China's economic development, is conducive to the realization of the "Chinese dream".

### **2.3 It Is the Important Guarantee to Realize Rights and Interests of Shareholders, Employees, Creditors, Community and Other Stakeholders**

The company should not only pursue for the company and shareholders interests but also interests of other relevant subject, it is the important ideas of company law and relevant laws and regulations. Carry out and realize the rule by law in the company are helpful for establishing effective checks and balances, right remedy mechanism, it is advantageous for the company to respect and satisfy the interests of the relevant subject consciously in accordance with the relevant regulations.

### **2.4 It Is the Inevitable Requirement for Strengthening International Competition**

The rule of law culture is enterprise key competitiveness. Prime Minister Mr. Li Keqiang indicated several times that government will firmly support strong Chinese enterprises with good credit and obeying the law to go out. Developing the concept of the rule of law and building company law culture can ensure company legal and efficient operation and help to avoid damage caused by "ruled of man", in this way, it can give full play to the advantages of company system, which is conducive to step into the international market and enhance its international competitiveness, satisfy the central proposed strategy of "going out".

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## **3. CURRENT OBSTACLES FOR REALIZING RULE BY LAW IN COMPANY**

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### **3.1 Weak National Consciousness of the Rule of Law**

The rule of law consciousness is the essential content and the precise condition of the country under the rule

of law construction and the premise condition. With the historical and cultural reasons, we have a long history of “ruled by man”, the understanding of government by law is relatively weak also, consciousness for respect of law by leading cadres and the masses of the people need to be improved. The trend for opportunistic is still popular and respect for the rule is still in the lower level. This is what pointed at the fourth plenary session of the 18th Communist Party of China (CPC) Central Committee, “the phenomenon which failure to abide law, slack law enforcement and refrain from punishing lawbreakers are still quire often”, “Part of the social members have weak consciousness in respect, trust and law-abiding.”

### **3.2 Insufficient on Company’s Rule of Law System Construction**

Since the formulation in the year of 1993, corporation law has gone through several revisions, with the addition of three judicial interpretation by Supreme People’s Court, we have initially formed a relatively complete system of company law. But we have to notice that company activities and business face a variety of complex social relations, corporate law failed to comply with the requirements for companies to grow quickly. Besides, some ossification existed in supervision department during supervision and law enforcement process, they paid less attention to the establishment of the company autonomy rules and regulations, especially for the function of articles of incorporation.

### **3.3 Weak in Company’s Rule of Law Culture**

Most companies didn’t sense the great meaning of legalization and have almost nothing building regarding it. Shareholders, directors, supervisors and management personnel are relatively lack of legal knowledge, the company’s introduction and training on talents with rule of law is not enough, what’s worse, the role of the legal department often turns after disposal of disputes, showing that they are with low status.

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## **4. PATHES FOR US TO CARRY OUT RULE BY LAW IN COMPANY**

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### **4.1 Set Up Idea of Rule of Law Among Whole Society**

As the micro social organization, truly realization of rule by law in the company relies on whole members’ consciousness building and respect, trust laws. Especially, state organs and leading cadres must do by law applied, really set up the authority of law, make all members of society generate a sense of awe.

In ideal cultivation of law rule for citizens, not only the extensive publicity and universal education in the national level are necessary, but also the conscious study and execution by social members are also required.

Governments shall intensify publicity of idea of law rule, accelerate legal knowledge popularization, and lead social members to learn, know and use laws. Party and government shall respect the lawful rights of the masses and lead them to reasoningly express their appeals and learn to safeguard their legal rights according to laws. Punishment intensity towards illegal and criminal behaviors shall be intensified to truly achieve that violations of the law must be investigated and dealt with. Social members shall actively learn legal knowledge and develop their own legal consciousness. Laws shall be the significant basis and solution channel for maintaining lawful rights and settling disputes. Besides, social members are advised to enhance their consciousness of keeping lows and build strict social supervisory mechanism, so as to develop a favorable atmosphere of respecting and obeying laws and acting by law in the whole society, and provide necessary macro environment for law rule of company.

### **4.2 Reinforce Law and Relevant Institutional Improvement of Company**

As previously mentioned, Corporation Law is provided with extremely strong practicalness, while the high variability of the social environment often brings hysteretic nature to Corporation Law. The realization of law rule within company firstly requires “good laws”, and the legal system of company that can reflect company features and also accord with practical requirements. Legislators shall conform to requirements of the times. When they give sufficient rights of autonomy to company, they shall raise higher requirements towards law rule of company including running enterprises abiding by the law and protecting legal interests of relevant subjects, duly modify Corporation Law and give full play to the function of explanation by Corporation Law.

While enhancing the scientization level of legal system for corporate governance, company shall establish and perfect various inner rules and regulations pursuant to laws, and strive to develop a good situation of external laws and regulations and internal rules and regulations required for law rule of company. The generalized internal rules and regulations include shareholder agreement, articles of association and other company management system. The nation shall guide formulation of these institutions by joining abundant elements of rule of law. When rules and regulations of company respect and protect the legal interests of all stakeholders, explicit stipulations are made for the obligations of relevant objects, especially the responsibility in violation, so that the authority of rules and regulations within company can be enhanced. The key point of law rule lies in shareholders and board of directors, while articles of association are the core document for standardizing rights and obligations of shareholders and management. At present, our country shall pay particular attention to the role of articles of

association in the process of realizing law rule within company. Governments shall change those ragescent requirements in the form of articles of association, practically guide company autonomy and power balance, and encourage individuation and scientificity of contents of articles of association, so that articles of association can become the significant link of connecting laws of company and specific rules and regulations.

#### **4.3 Reinforce the Study of Legal Knowledge Within Company**

Idea of rule of law is not visional concept or castle in the air, and the cultivation requires the premise of understanding and mastering specific legal knowledge. In the long-term solid legal knowledge study, people can only develop the idea and belief of rule of law above specific knowledge. All shareholders, directors, supervisors, senior executives and general staff shall not only learn those general knowledge about law, but also shall learn Corporation Law, Contract Law, Labor Contract Law and other common laws directing at the practice requirements of company, so as to enhance inherent quality of staff. The company shall forward education and training of various contents directing from different subjects, to achieve rich contents, flexible forms and favorable effects.

#### **4.4 Establish Supervision and Restriction Mechanism of Company**

Our national corporation law makes explicit provisions for corporate governance structure and power and responsibility division, to develop board of shareholders as the cooperation and restriction mechanism of the board of directors, board of supervisors and managers under the organ of authority. However, some specifications are not so scientific. For example, setting requirements towards institutional framework of limited company are relatively ragescent, which fails to sufficiently reflect the relatively simple feature of company autonomy. Although Corporation Law makes stipulation regarding responsibilities of various institutional frameworks, the respect towards company autonomy still remains to improve. Stipulations about supervision and restriction mechanism of all institutional frameworks in Corporation Law are too few, and this is one of deficiencies in this law. It is necessary to reinforce legislation in restriction towards the rights of shareholders, supervision and

counterbalance towards the board of directors, so as to practically give play to the board of supervisors and effectively prevent the rights of shareholders from being abused and insider control. The realization of law rule within company requires positive participation of all relevant people. Under the premise of keeping perfecting rules and regulations within company, everyone is equal in the face of system, and supervision mechanism and mechanism for correcting errors are available for those behaviors of violating laws and regulations. The company shall establish and perfect supervisory organization of law rule, and set up corporate counsel, and strive to play positive role in institutional improvement, supervision and restriction, risk prevention and other aspects. According to actual requirements of law rule, the status of legal department shall be practically enhanced within the company.

#### **4.5 Cultivate Legal Culture of Company**

Enterprise culture is the habit, thought and emotion developed in the process of long-term progress for enterprises. Enterprise culture is part of core competitiveness of enterprises with the functions of guidance, standard and punishment. For further progress, company must keep to the healthy and positive enterprise culture environment.

Current background of law-based governance endows enterprise cultural construction with new era significant and realistic contents. Some necessary elements of the rule of law shall be joined in enterprise cultural construction, so that enterprises can develop rule culture, just culture and right culture, and finally achieve realize legitimacy, effectiveness and harmony of corporate governance. Formation of legal culture requires ideal attention, leading by example and positive promotion by strong stock holders and members of the board of directors; requires the establishment and perfection of rules and regulations within company; and requires positive participation and supervision and restriction of all staffs. The formation of legal culture will provide a favorable internal environment for the realization of law rule within company.

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