

Brief Analysis of One-Man Company Credit Legal System

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Abstract: One-man company's credit comes from commercial credit. One-man company credit legal system is a kind of the system that the company makes the credit rating resources that one-man company has gained in the economic activities for effective allotment. However, because of the new "law of one man's company" give a loose policy for the establishment of company, it makes the shareholder easily to abuse the corporate personality and capital flight. What's more, the related departments neglect the management so that creditor's benefit cannot obtain well maintenance and the commercial trade market is along with its confusion either. Although the law already had the related measure, but still had the crack. Facing up to the legal and practical issues of the one-man company, it should be based on both the micro and macro aspects. It is necessary to perfect public registry system, capital system disregard of corporate personality, and to assist the government's macro-action, and increase the transparency of information, in order to establish a sound legal system of one-man company credit legal system.

Keywords: one-man company; credit; perfect measures

1. The original and contents of the one-man company credit legal system

1.1 The original

One-man company's credit comes from commercial credit. After the development of commodity economy, when business transactions can not be reached in some cases, the "give credit" phenomenon had appeared. This should be the earliest way of commercial credit, namely people carried on the transaction taken the credit into intermediary, based on the bilateral credit index to be engaged in the trade activity^[1]. This enables to have the universal significance morals to change into the business ethics specifically; however the trading credit is one kind of institution response of the business ethics. But with the development of commodity economy, the disloyal behavior of "the economic man" faced to the economic interest force the people to strip the moral credit from the trading credit, binding to the mandatory law, and it could strength to regulate moral the soft rule, maintaining the market credit order.

With the deepening social division of labor and market expansion, credit system played a significant role in the community, especially in the economic development dimension of the field. After joining WTO, Chinese enterprises in the international conglomerate are weak in the situation before the show, and there is no high-quality competitive strength and market controlling. On the one hand, it is decided by the policy guidance; on the other hand, in order to be recognized and supported by the market it depends more on the efforts of their own. Enterprise or the organization that has the good faith

will win the numerous consumers and the customer inevitably and more investors and the property.

1.2 The contents

One-man company precisely appears under such historic condition that the trading transaction's main body and the sphere of exchange expand. One-man company credit legal system is a kind of the system that the company makes the credit rating resources that one-man company has gained in the economic activities for effective allotment. And, one man's company's credit must be very obviously included the company's shareholders credit and the corporate capital credit: What one-man company shareholder credit refers to is the creditor as well as the social public regarding shareholder's in operative activity good faith strength dynamics and the shareholder individual creditworthiness high one kind of approval and the appraisal, and this establishes one-man company credit legal regime's foundation^[2]; What one-man corporate capital credit refers to is the creditor and the social public regarding corporate capital openness approval, or the right to know degree approval which should enjoy regarding them, and the public appraisal which as well as the capital authenticity, the stability, the actual investment value and so on involve the creditor benefit the capital to flow to the understanding which and grasp.

Presently, we may see that many merchants or the economical practitioner or the company enterprise loose commercial faith seriously in the processes of trade, service and so on. The chairman of Meitong Company Weijia Wang said that "Altruistic and good faith were social person's most basic faith, was also the enterprise

core. The enterprise is loyal to the customer, and the unemployment could do more bigly.” To the development of enterprise, the fund, talented person investment and the technological innovation is very important, but the good faith cannot loose even more.

2. The basis of construction of one-man company credit legal system and the hazards of its missing

2.1. The risk of establishing one-man company credit legal system and theory basis

Firstly, there is the lack of the club nature of one-man company. Juridical association is a long-standing concept in civil law countries. When one-man company appears, we have to consider whether the company can also be called a juridical association? Due to the traditional concept of company law, our company is still subject to the shackles of the juridical association, but it must have a combination of two or more societies. There is the sole shareholder--this condition of one-man company is clearly incompatible with it.

Secondly, the pattern of company administration is a challenge to traditional corporate governance. Traditionally, company government mechanism's effective operation and the consummation lie in the harmonization and restriction among the shareholder meeting, the board of directors and the board of supervisors to a great extent, in order to display the proper function respectively, to balance all quarters' benefits^[3]. It is based on the diversification of property rights. But the one-man company shareholders in the form of a person broke this tradition. They had greater differences.

Finally, the theory lies in shareholder's limited liability theory. This is the intrinsic driving influence which one-man company produces. The corporate personality as modern company essential feature is independent, and has certain relatedness with the limited liability. Specifically speaking, it causes the company to become respectively the different legal subject with its shareholder due to the company has the independent personality in the law. Thus creditor's legal relationship is shut off between the shareholder and the company. In this case, then shareholder's limited liability could have the possibility. Therefore it said that the limited liability is the natural result of corporate personality independent, and namely the company should undertake the civil liability by its complete property to the company itself debt, but company's shareholders are only responsible to the company to fulfill duty of the investment after its fulfillment of investment duty, and no longer undertakes any direct or indirect responsibility.

2.2. The hazards of missing credit legal system

Firstly, it is easy to cause the phenomenon of dummy companies in terms of social basis. When the Company

Law does not recognize the legitimacy of one-man company, there is the large number of "dummy companies" in the market. If the company is insolvent and the real shareholders leave while the nominal shareholders can not afford to repay the debts, it will inevitably produce conflict.

Secondly, it is easy to cause the abuse of legal personality in terms of the club nature of company. As one-man limited liability has only one company shareholder, the company is controlled completely by one person, and it lacks of constraint of other shareholders. This should be power which is exercised respectively by the shareholders, board of directors and board of supervisors were exercising by one person, and the individual will of shareholder will not be necessary to converse into the company will. This traditional corporate governance structure has undergone so great impact that making the company's corporate governance structure cannot play a role, resulting in the abuse of legal personality of the company is more likely.

Finally, the company assets are easily confused in terms of corporate nature of company and the limited liability system. Due to the simplex of the investment body of one-man company, the property of the shareholders and the company's property are easy to be confused with each other, and shareholders often do not strictly distinguish between property and personal property division^[4]. In some cases, the company's property is to be used for personal expenses without a corresponding record, or did not have the complete company's property records system. Therefore, the creditors may not get the full compensation due to the loss of company assets to enable the creditors to suffer losses.

3. The present situation of one-man company credit legal system and the suggestion in our country

3.1. The specific institutions of one-man company's own specific system

Firstly, strengthening of one-man company's registration and the public announcement system. New *Company Law* prescript the company of one shareholders of the important decision should be taken in writing and signed by the shareholders of a company. In order to make a full understanding of the company for the shareholders to keep with the company in a transaction, the company is not only should be open in the establishment and in the company registration authority in the register, and in the company after the establishment of the business process, but also after the establishment of the company during the company's operations the company should also exercise significant power to the shareholders registered in its own custody issues can be publicized on the register on the public^[5]. It intends to emphasize one

form of legal requirements of the shareholders. The behavior has the public announcement effect in order to protect the good intentions relative person's right to know, and further it can establish these one-man companies' social credit.

Secondly, improving the system of one-man company's capital. The 59 Article of new *Company Law* says that one-man limited liability company to the minimum amount of registered capital is 100,000 RMB yuan. The pay should be a full and firm constitution of the registered capital contribution. The minimum registered capital system is very important. In one-man company, it is so easy to have the problem which the capital not reality or the capital confuse, In order to enable the lowest registered capital to have the practical significance, it should also take the company to register the capital in cash the enrichment. This stipulation may prevent one-man company to appear the cheat and the congenial behavior as well false capital and the non-investment and the shell company. This note is based on "constant capital principle". A set of the company, if it is in substance, intellectual property, recessive capital investment, must be accurate assessment and regular inspection application, in order to ensure the minimum capital requirement.

Finally, the shareholders' personal quality of credit. The article 58 of the new *Company Law* shows the contents in this respect and its intention is to establish a limited liability company's scope. What's more, in article 59 to shareholders are also restricted. Any one-man limited liability company should have a clear identification of the business that is "natural person or corporation sole proprietorships. Require not only its must be registered, and were written into the document, showing the enterprise names of one-man company, in order to remind the shareholders to make a correct judgment of the company's financial strength and commercial credit before in business, and guaranteeing the right to know^[6]. It helps a company of creditors in the company to deal as a full understanding of the company.

3.2. The suggestions for government departments and the public with details

Firstly, we should emphasis the macro instruction from government. In spite of confirming the legality of one-man company, standardize effectively the business of one-man companies through related legal system and institution economics comes as a more important issue. All the rights divisions and government departments are supposed to increase the intensity to suppress the asset management without their credibility, and push the

companies to keep faiths with giant dishonesty lost, in which case, we can build up the philosophy for credit management, and set up the behaviour criterion for business operators, avoid the unnecessary lost of creditor.

Secondly, we should increase the information transparency, bring the information out to the open and accept the supervision from the public. Meanwhile, the related government departments should increase the intensity to build and complete the information sharing system. Being fast, open and high transparency should become the basic guarantee of the economic society's development, so as to instruct the benign development of companies.

Thirdly, we should establish authority credit evaluation organization at the right time to justify the companies and reward and punishment regularly^[7]. Also, they can take charge of publishing the information about companies' financial affairs, business records, credit records, major decisions and personal credit statements, just in case of the appearance of shell companies.

Finally, we should increase the intensity of supervision from the public. China should effectively collect, reasonable integrate, scientific analyze the credit information from all sorts of ways, and issue the authority evaluation of credit report, strict punishment measures and social supervision system, under the support of government and the cooperation of the community. The firm foundation of building up the legal system for one-man company depends on the positive mobilization, supervision and collaboration from the entity society.

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