A Study on Shareholder's Withdrawal and Expulsion of the Chinese Limited Liability Company

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[Abstract]

The Limited Liability Company (LLC) has both the characteristics of person cooperation and assets joint, and the characteristic of person cooperation is most important reason for closed nature of LLC which will create a deadlock within the company. Because of the closed nature of LLC, the entire company may be "bound" by the individual shareholders and can not get out of the deadlock. The company may also become a "cage" which prevents other shareholders from escaping. In reality, this deadlock is embodied in the dispute of shareholder's withdrawal and expulsion of the Chinese LLC. However, with regard to the rules on shareholder's withdrawal and expulsion of the Chinese LLC, there are loopholes or even blanks in current Chinese legislations which can not satisfy the needs for the judicial resolution of such kind of disputes. Based on the study of theory and legislation about shareholder's withdrawal and expulsion of the Chinese LLC, the author is in attempt to make an analysis of how Chinese judges make up for the loopholes and blanks existed in the legislations. In so doing the author would like to undertake an effort to perfect the mechanism for shareholder's withdrawal and expulsion of the Chinese LLC.

This Thesis is composed of the following five parts. Part I and Part V respectively are introduction and conclusion. The contents from Part II to Part IV are the main body of this thesis:

Part I(Introduction): First of all, the author will use two cases to show the origin of problems on shareholder's withdrawal and expulsion of the Chinese LLC; After that, the author will show the significance and purpose of this thesis in light of Chinese practical needs; finally, the author will present her lines of reasonings .

Part II: The author will study on the theories of shareholder's withdrawal and expulsion of Chinese LLC. Firstly, the theoretical basis of shareholder's withdrawal and expulsion of the Chinese LLC will also be discussed. The author mainly focus on

five theories including the expected fall theory and the benefit balance theory. Secondly, the theories holding either negative or positive attitude toward shareholder's withdrawal and expulsion of the Chinese LLC will be put forward and based on the theories, the author will raise her own view of point. Thirdly, summarizes the present research of shareholder's withdrawal and expulsion of the Chinese LLC.

Part III: The author studies on the problem of applicable law on shareholder's withdrawal and expulsion of the Chinese LLC. The study will cover relevant legislations and their legislative backgrounds. After that, the author will examine the existed problems in judicial practice.

Part IV: This section is also the key part of this thesis. In this part, the author will make an analysis on judge-made law of shareholder's withdrawal and expulsion of the Chinese LLC. Firstly, the author will clarify the meanings and necessity of judge-made law. Secondly, under the two circumstances, respectively "the company regulation has already made the provision of shareholder's withdrawal /expulsion right" and "the company regulation has not yet made the provision of shareholder's withdrawal /expulsion right or the company regulation is unreasonable", the author will discuss how judges solved the problems by judge-made law, mainly including how to identify the effect of the company regulation about shareholder's withdrawal /expulsion right、substantive rules and procedure rules of shareholder's withdrawal /expulsion、legal outcome and so on.

Part V(Conclusion): On the one hand, the author will express her concern on the limits of judge-made law for the purpose of avoiding damages to the creditor's benefit because of shareholder's withdrawal and expulsion of the Chinese LLC. On the other hand, the author will look forward to formulation of Chinese relevant legislations and judicial interpretations to reduce the disadvantages of judge-made law"dose see the tree but doesn't see the forest".

Key words: Withdrawal, Expulsion, Significant matter, Judge-made law