

Exploring the Introduction and Application of Commercial Law Thinking in Corporate Law Reform

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Abstract: *The reform of corporate law is a difficult problem that must be faced and overcome in the process of development of rule of law in China. With the continuous improvement of China's corporate governance structure, the gradual diversification of corporate business methods, increasingly fierce market competition and increasingly complex enterprise management. In this context, business law thinking as an important part of the rule of law concept and legal system, plays a vital role in the development of modern society and economy. In order to better adapt to the needs of the market economy system and modern enterprise management mode, deepen the reform of the economic system in the new era and establish a sound legal system, etc. have posed great challenges to business law thinking. This paper mainly discusses the introduction and application of commercial law thinking in company law reform, explores the commercial law thinking and business ethics norms suitable for the development of companies in China, and points out the problems that should be paid attention to in the application and improvement of commercial law thinking in company law reform, thus providing a reference basis for the improvement of the socialist market economy system and making the company law a builder of the rule of law under the socialist market economy system.*

Keywords: *Corporate law reform, Commercial law thinking, Exploration of applications*

1. Introduction

The way of thinking of company law is a kind of innovative and flexible legal thinking, which is of great significance to the rational operation of modern companies. The reform of company law is a complex and huge system project, and the thinking of business law and legal thinking are complementary and interdependent with each other. China is still in the primary stage of socialism as well as the period of planned economy, and under the influence of factors that our market economy system is still immature, our company faces various risks and challenges. Therefore, an effective business operation mechanism is needed to deal with these issues to ensure fairness and efficiency, which also requires business law thinking to be widely accepted and recognized as an advanced management concept [1].

The introduction of commercial law thinking in corporate law reform is a long process. From a macroscopic point of view, it is not only related to the construction of China's socialist market economy and the process of rule of law, but also affects China's corporate governance structure, the company's mode of operation and the market competition mechanism. Microscopically, the company's internal management mode and external environment will produce some subtle changes: Changes in the organizational form of enterprises - from a single system to a mixed ownership economic system in which multiple legal person forms co-exist or are mutually constrained. It is a major challenge to introduce commercial law thinking into the corporate law reform and make it play a positive role [2].

2. The Concept of Commercial Law Thinking and the Concept of Uniqueness

2.1 The Concept of Commercial Law Thinking

Thinking is a unique way for people to understand things and solve problems, it is the conclusion reached by human cognitive activities, learning knowledge and using scientific methods to solve complex problems after abstraction of the objective world. In the Modern Chinese Dictionary, the word thinking is defined as follows: one is the use of language and words to process information, and the other is the ability to think and judge. Business law thinking can be said to be one of the most important and valuable skills after the formation of businessmen's legal thinking. From ancient times to

the present, people have always used words they know and can use reasonably to analyze problems and solve them. With the development of the times, our country has also started to enter into business law thinking, and it is constantly used in practice.

Business law thinking refers to the use of legal and moral vision, under certain conditions, people by making judgments and put forward their opinions on social relations and economic phenomena, which is a special kind of jurisprudential thinking. It includes the following elements: firstly, a basic concept, which requires a clear starting base and analysis of the essence of the problem. Secondly, it is to grasp the whole picture from the whole to the local. The last is the need to have a holistic way of thinking when dealing with commercial law issues, that is, to take the whole as the core and combine law and ethics.

2.2 The Concept of Uniqueness of Commercial Law

The concept of uniqueness of commercial law means that the law itself does not exist alone in any subject, but requires the cooperation and coordination of various sectors. In this case, it is necessary to pay attention to the theoretical research and practice of corporate law. Our statutory law provides that the "general meeting of shareholders" should have an independent director to participate in the decision-making, while not by other organs and not by the court to decide whether to make decisions and other important matters. This provides a good idea for the reform of China's company law, and can make the commercial law to avoid the phenomenon of insensitive legal thinking, or even wrong judgment [3].

The principle of uniqueness of commercial law refers to the setting of corporate law, to take into full consideration the scope of application of the law corresponding to different social systems and levels of economic development. China is currently in the primary stage of socialist economic system transition, in this case must adhere to the "people-oriented" concept to deal with the state and individuals, citizens and other organizations and individuals and non-subjects between the various relationships and conflicts of interest, but also can not ignore the limitations of commercial law itself. In other words, the law must serve every economic subject.

3. The Key to the Operation of Our Commercial Law Thinking

3.1 Business Law Concept is the Core Spirit of the Operation of Business Law Thinking

The core idea of commercial law thinking is the theory of corporate law, which guides the legal practice and constrains the judges, thus constituting a system of logical reasoning as the main body, using deductive and other jurisprudential methodological topics, in this case forming a unique and effective mode of thinking. The philosophy of commercial law contains the concept of "rule of man" and "rule of law", and the concept of public and private ethics and morality, as well as the concept of social responsibility, are the theoretical system and value orientation based on this. These ideas provide a basic guideline for the practice of legal services, which is also the essential attribute of corporate law [4].

Business law thinking is the soul of the law, in the change of business entity rights, judicial reform and the construction of the rule of law in China are reflected in its ideological and institutional thinking. Business law thinking is, in a sense, a social practice, and this practice is based on certain values and concepts. Therefore, only based on the theory of corporate law and the traditional Chinese cultural background bred out of the legal thinking model with Chinese characteristics of socialist humanism, so that it can become a truly free and independent, fair and just as the core content of the rule of law country. The concept of business law is the core spirit of the operation of business law thinking, and business law thinking, as an important part of China's legal thinking, plays a vital role in building a socialist rule of law state with Chinese characteristics.

3.2 The Principle of External Reliance is the Key to the Operation of Commercial Law Thinking

In today's era of globalization of the world economy, the corporate system is becoming more and more complex, and both commercial and civil law have their own special characteristics. In order to better maintain the security of transactions and the immediate rights of stakeholders, the protection of legitimate rights and interests must comply with the legal thinking, but due to various problems in the reform of corporate law led to the slow development process of China's market economy or even a

serious imbalance situation. The main reason for this is that enterprises in business activities will produce a large number of unstable factors affecting the corporate system, so that commercial law and civil law collision conflict, which is also a major problem in the process of market economy development.

The principle of appearance reliance means that the basic principles and methods of commercial law can be applied in practice, because it is compatible with the corporate law model, so the relevant law provides that "the shareholders' meeting, the board of directors, the supervisory board and the internal personnel of the company shall ensure the formal interests." This is a general description of the appearance of the reliance on the viewpoint, not only from the substance to determine, which is not replaced by logical reasoning of the law is one of the most essential and most basic principles. Thus, it seems that the principle of appearance reliance is the key to the operation of commercial law thinking [5].

3.3 The Identification of the Normative Nature of Commercial Law is the Basis for the Operation of Commercial Law Thinking

The standardization of commercial law is a very important issue in the reform of corporate law. Only a certain degree of adjustment of the original legal framework will enable the entire legal and practical community to find a suitable path for the development of our national conditions. The differences in national conditions, social environment and economic and cultural aspects of each region make the local legal way of thinking also very different (e.g. some countries have statutory laws), and sometimes even conflict with the norms of international business law.

The essence of the commercial law is to specify in law the legal person of the commercial act. In the General Principles of Civil Law, civil subjects and businessmen are divided into three categories. The first category refers to contractual relations. The second category refers to the objects, interests and other rights and obligations arising between subjects that form a whole and exist together in the Civil Code. The third category is a special legal relationship (such as property rights) or civil liability regime (also known as security deeds, general property regimes and trust regimes) between the parties to a debt or claim [6].

4. The Efficacy and Specific Application of Commercial Law Thinking in Corporate Law Reform

4.1 Reshaping the Philosophical Roots of Corporate Law

The philosophical basis of corporate law is business law thinking, i.e. the business jurisprudence approach to discernment. Logically speaking it means to give priority to legal reasoning and logical proof, which requires the legislator to develop appropriate solutions after analyzing specific problems. This approach also affects the degree of personal thoughts, values and moral values of the judges. Therefore, the prerequisite for reshaping the foundation of corporate law theory is to form an overall framework based on the relationship between jurisprudence and philosophy, so as to constitute a system of commercial jurisprudence discernment methods and thinking development mode in the current environment, and to make corporate law theory an organic whole [7].

Business law thinking is the core of corporate law philosophy, which not only reflects the development and progress of society, but also determines whether a country's rule of law system is well constructed. Therefore, in order to solve this problem, we must adhere to the concept of "fairness and justice", and establish a new legal system under the modern socialist market economy system with Chinese characteristics that meets the national conditions and reflects the requirements of the principle of unity of democracy and the rule of law, so as to achieve the value of fairness and justice. Business law thinking is one of the most important ideological foundations of corporate law philosophy, which provides new ideas and principles for the construction of corporate law system.

4.2 Reinforcing the Systemic Rationality of Corporate Law

The reform of company law is a systematic project, which needs to take into account various factors such as social interests and legal system, and these issues will affect the transformation of China's economic system and the transformation of economic development mode. Therefore, in order to realize the transformation of the corporate law system from traditional type to modern type must be scientific and reasonable as a prerequisite, so as to promote the transformation and improvement of commercial

relations and related legal and regulatory systems in the socialist market economy system with Chinese characteristics. In the process of reform, it is necessary to make a comprehensive analysis and not to rely only on administrative means to implement management measures, but must use legal means to manage. In the process of reform, it is necessary to make an overall analysis and comprehensive consideration, and improve the relevant supporting system.

Commercial law thinking is the core of corporate law and an important factor indispensable to guarantee legal justice and maintain social stability, which requires judges to be able to apply their knowledge rationally to solve specific problems when dealing with cases, so the construction of the internal framework system of the court system should be strengthened. The first thing is to improve the interaction between the court and the government, between the upper and lower departments and the higher leading organs. Secondly, it should clarify the status of leaders at all levels and establish a complete system of supervision of authority, and strengthen the regulation of personnel behavior and market order through legal means, so as to ensure that the legal responsibilities of the company can be truly implemented. Finally, we should strengthen the importance of commercial law thinking, through legal means to regulate the judges and prosecutors in the trial of cases in the company's legal person independent trial awareness [8].

4.3 Highlighting the Sectoral Characteristics of Corporate Law

Business law thinking was introduced to solve problems within the company and to create greater value for shareholders. But this management model also has its drawbacks: it ignores the sectoralism of corporate law. On the one hand, due to the strong uniformity and limitations of commercial law norms, this makes it impossible to apply other laws to coordinate the company law in certain situations. On the other hand, due to the unpredictability of the external environment of the company itself does not have an independent subject status, only as a passive existence to solve internal problems, so it is difficult to achieve fairness and justice, and there is no way to play a role.

Business law thinking is an important part of the modern governance model of the rule of law society, and is also the most critical and fundamental part of the company law reform. Before the reform of the company law system, China mainly adopted the management style of dealing with company affairs with the center of authority and the principle of monolithic as the main feature. But with the development of the times and the economic environment has changed, this kind of power instead of affairs in order to solve the problem of conflicts and disputes in the way can no longer meet the contemporary Chinese national conditions. With the continuous improvement and progress of the market economy system, the national governance model gradually shifted from monism to pluralism, the governance model of the company law can no longer adapt to the development of the times and changes in the economic environment, so we must start from our national conditions, on the basis of the original thinking to innovate and breakthrough.

The introduction of commercial law thinking can highlight three aspects of corporate law. They are power relations, interest distribution and social balance, which are both interrelated and have their own different characteristics. In the promotion of reform, the standardization of commercial law is an important and difficult task, while the standardization of law can effectively guide the smooth implementation of the practice, which is an inevitable result of the combination of government action and rule of law construction - the principle of efficiency [9].

4.4 Improve the Normative Configuration of the Company law

The normative configuration of the company law refers to the adjustment of certain behaviors according to the social development to make them more in line with the actual needs. Commercial law, as a separate and systematic part of civil law, with legal effect and supervision, plays an important role not only in the process of commodity buying and selling activities and protection of legitimate rights and interests of people. It is also necessary to coordinate the interests of all parties to commercial transactions and the allocation of responsibilities [10]. This requires that the company law must develop a complete and effective regulatory configuration system to ensure fairness and justice, so that it is compatible with social and economic development and promote each other.

5. Conclusion

Times are constantly evolving, society is constantly moving forward, and the legal system and

economic culture have undergone great changes. Although China's commercial law mode of thinking has a history of more than twenty years and has a certain degree of positive effect, there are still many shortcomings that need to be improved. The reform of corporate law is a complex and arduous project, which involves all aspects and requires the coordination of all parties. In the reform of company law, commercial law thinking is an integral part, which has brought far-reaching impact on our legal system and social life. From a macroscopic point of view is to better serve the people. On the micro level, it is to promote the development of the rule of law process from the ideological and institutional aspects, and to be able to look at commercial law issues from a new height, thus making the law more reasonable and mature. From another point of view, the company managers to find the company's legal norms in the current national conditions of business law thinking, and will be used in practice, so that it becomes a powerful weapon to solve practical difficulties and improve the relevant provisions.

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