論投資中國之最新公司法,與如何從新公司法思考制度與策略之創新

On the China's latest company law from investing respect and how to make thinking and strategy innovation from the consideration of the new company law

第一章 鼓勵投資興業的服務型公司法

Chapter 1 laws encouraging investment in the service-oriented Enterprise

第一節 大幅下調最低公司註冊資本

Section 1 Greatly cut down the minimum registered capital of the company

一、最低公司註冊資本制度

First, the minimum registered capital system.

二、最低公司註冊資本制度的有限功能和濫用

Second, the minimum registered capital system's limited functionality and system abuse.

三、立法者降低最低註冊資本的心路歷程

Third, the legislators' thinking course of lowering the minimum registered capital Course of Mind.

四、立法者最終大幅下調最低注冊資本的睿智選擇

Fourth, legislators finally dropped a minimum registered capital is a wisdom choice.

五、特殊行業的法定最低註冊資本制度

Fifth, special industry's minimum registered capital system.

六、改革前瞻:原則廢除法定最低註冊資本制度

Sixth, innovation foresight: the abolition of statutory minimum registered capital system.

第二節 法定資本制項下的股東分期繳納出資制度

Section 2 shareholders devided pay their capitals principal under statutory capital system

一、從一次足額繳納出資制到分期繳納出資制

First, process from full payment to staging paying system.

二、投資公司的優惠政策

Second, preferential policies for investment companies.

三、若干解釋難點

Third, several points to explain.

四、分期繳納出資制度的利弊分析

Forth, Phased payment system analysis of the pros and cons.

五、改革前瞻:從分期繳納出資制度走向授權資本制

Fifth, innovation foresight: from staging system to authorize payment system.

第三節 股東出資方式的多元性與安全性

Section 3 diversity and security of shareholders' ways of putting up capital

一、1993年《公司法》的立法態度及其解讀

First, 1993 the attitude of "Company Law" and interpretation of legislation.

二、新《公司法》放寬股東出資方式的必要性

Second, the necessity of "Company Law" relaxing investors' ways of putting up capital.

三、立法演變

Third, the Legislative evolution.

四、非貨幣出資的構成要件

Fourth, non-monetary elements investors conditions.

五、常見的非貨幣財產出資形態

Fifith, Common forms of non-monetary investors.

六、多元化出資結構中的意思自治與立法干預

Sixth, diversified funding structure of autonomy and legislative intervention.

七、發起人之外的股東可否採用非貨幣財產出資形式

Seventh, whether shareholders except originator s can invest with of non-monetary forms.

八、勞務和人力資本作價出資問題

Eighth, labor and human capital funding.

九、非貨幣財產作價出資的防弊措施

Ninth, prevent cheating measures on non-monetary assets investing.

十、非貨幣出資的特別法律規定

10th, special laws on non-monetary assets investing.

十一、立法前瞻:進一步放開股權出資方式

11th, legislative Outlook: further liberalization of financing methods

第四節 簡化股份有限公司設立制度

Section 4 simplify the principles of setting up INC.

一、1993年《公司法》對私募公司的立法態度

First, attitude towards private company in 1993's "Company Law".

二、公募與私募存廢之爭

Second, the retention or abolition debate of Public and private company.

三、"三公"原則向"二公"原則的轉變

Third, changing from "Sangong" principle to "ergong".

四、公開募集與定向募集的區別

Fourth, distinction between public and spotting investing.

五、股份有限公司設立批準制度的廢除

Fifth, the abolition of the administrating principle of setting INC.

第五節 通往證券市場的融資門檻大幅降低

Section 5 sharply lower stock market's financing threshold

一、股份有限公司的上市門檻大幅下調

First, lowered the threshold of listing Inc.

二、公司上市門檻大幅降低必將惠及廣大投資者

Second, lowered the threshold of listing Inc. definitely will be benefitial to the vast number of investors.

三、新股發行門檻大幅降低

Third, sharply lower threshold of issuing new shares.

四、公司債券發行門檻的大幅降低

Fourth, sharply lower threshold of issuing corporate bonds.

第六節 徹底廢除了公司轉投資限制

Section 6 completely abolished limitation of switching capitals

一、傳統轉投資制度的弊端

First, the traditional investment system's malpractice.

二、本土制度的誕生及其演變

Second, the birth of the local system and its evolution.

三、立法爭點與最終抉擇

Third, the Legislative indisputable point and the final choice.

四、廢除轉投資限制的顧慮及其回應

Fourth, the consideration of abolished limitation of switching capitals and its response.

五、認真對待轉投資自由:歷久彌新的扁平化技資智慧

Fifth, take investment freedom seriously: flat funding of technical wisdom increasing with time.

六、轉投資自由的例外法定干預

Sixth, the exception to the freedom of investment statutory intervention.

七、公司相互持股現象的預防與規制

Seventh, prevention and regulation on mutual holding.

八、將企業組織形式平等原則貫徹到底

Eighth, implement the principle "all forms of enterprises are equal" to the end.

第七節 大膽引進一人公司制度

Section 7 bold to introduce a corporate system

一、何謂一人公司.

First, what is meant by a company.

二、一人公司長期遭受封殺的理論根源

Second, a company long been blocked theoretical causes.

三、與時俱進的一人公司實踐與制度創新

Third, a company advancing with the practice and system innovation.

四、我國 1993 年《公司法》的態度

Fourth, China's 1993 "Company Law" attitude.

五、一人公司的現實需求與文化土壤

Fifth, a company needs and the reality of cultural soil.

六、立法爭點與最終抉擇

Sixth, the Legislative indisputable point and the final choice.

七、對一人公司的擔憂及其評價

Seventh, on the one-man company worries and Evaluation.

八、自然人股東可否設立多家一人公司的立法前瞻

Eighth, legislative Outlook; whether Natural person shareholders can set up many one-person companies.

九、一人公司的特殊治理制度

Ninth, the special one-man company governance system.

十、未來《公司法》應否承認一人股份有限公司

10th, Future, "company law" should not recognize one person Inc.

十一、一人公司可否發行公司債券

11th, the one-man company will issue corporate bonds.

十二、一人股東可否與其一人公司共設公司

12th, a shareholder of a company whether their companies were set up.

第八節 公司可以依法擔任合伙人

Section 8 companies can legally serve as partner

一、問題的提出

First, the issue raised.

二、傳統立法對於公司擔任合伙人的態度

Second, the traditional legislative partner for the company's attitude.

三、立法爭點

Third, the Legislative indisputable point.

四、立法者的最終抉擇

Fourth, the ultimate choice of legislators.

五、防弊措施

Fifth, measures for avoiding cheatin.

六、母公司可否為其子公司債務提供連帶責任保證

Sixth, the parent company for its subsidiaries will provide debt associated responsibility to ensure that the second chapter of autonomy to encourage companies.

第二章 鼓勵公司自治的市場型公司法

Chapter 2 market-oriented "Company Law"", encourage companies autonomy

第一節 弘揚公司自治與公司創新的主流價值觀

Section 1 promote the mainstream values of company which combines autonomy and innovation

一、從全球企業自由度排行榜看我國的公司自治程度

First, overview our country's company autonomy degree from global enterprises freedom board.

二、立法者與商人、政府與市場的智慧博弈

Second, wisdom game between legislators and businessmen, the government and the market.

三、新《公司法》弘揚了公司自治精神

Third, the new "Company Law" carrying forward the spirit of the company's autonomy.

四、公司自治精神對裁判實務的影響

Fourth, the spirit of the company's autonomy influences referees.

五、公司自治與公司效率

Fifth, the company autonomy and corporate efficiency.

第二節 "傻瓜"章程現象及其全面改版

Section 2 "fool" rules phenomenon and its comprehensive revising

一、公司章程不應是"填空題"

First, a company's constitution should not be filling mode.

二、"傻瓜"章程應當全面改版和升級

Second, the "fool" the Constitution should be revised and comprehensive upgrade.

三、公司登記機關推薦的公司章程範本應當由公司自由選擇

Third, company's charter model recommended by the company registration office should be free to choose.

四、"蛇吞象"的章程條款成為可能

Fourth, "a snake swallow an elephant" rules may become true.

五、股東協定是調整股東相互關係的重要法律紐帶

Fifth, important legal links that adjust the relationships between shareholders.

第三節 出資比例與分紅比例、表決比例間的自由脫鉤

Section 3 funded ratio and profit-sharing ratio, the proportion of the vote free link

一、出資比例與分紅比例之間的脫鉤成為可能

First, investors and profit-sharing ratio between the proportion of the possible link.

二、出資比例與表決比例之間的脫鉤成為可能

Second, the proportion of funding between the proportion of the vote with the possible link.

第四節 公司經營範圍制度創新

Section 4 company operating range system innovation

一、公司經營範圍制度之由來

First, the origin of the company's operating range system the scope.

二、公司經營範圍制度的彈性化立法改革

Second, flexibility of the system and its legislative reforms.

三、超營作用中承受行政處罰的規定之廢除

Third, administrative penalty abolition to the operating out of the range.

四、公司經營範圍登記的效力

Fourth, effectiveness of the registration range.

五、公司選擇登記經營範圍的自由度

Fifth, degree which let company freely choose register operational scope.

第五節 公司可否承包經營

Section 5 contract operations of companies

一、公司原則上可以承包經營

First ,A company could, in principle, contract management.

二、公司承包經營制度是否因違反股東有限責任原則而無效

Second, is contracted management system out of effect due to limited liability shareholders.

三、發包公司的對外債務如何承擔

Third, the external debt how to shoulder in contracted companies.

四、公司承包經營期間的收益分配

Fourth, how to distribute income in contracted companies.

五、公司承包經營對股東會制度的影響

Fifth, contracted operations' influence towards board of shareholders system.

六、公司承包經營對公司經理制度的影響

Sixth, contracted operations' influence towards manager system.

七、公司承包經營對公司董事會制度的影響

Seventh, contracted operations' influence towards company's the board of directors system.

八、公司承包經營對法定代表人制度的影響

Eighth, contracted operations' influence towards the legal representative system.

九、公司承包經營對監事會制度的影響

Ninth, contracted operations' influence towards of the board of supervisors system.

十、公司承包經營對股東權利的影響

10th, contracted operations' influence towards shareholder rights sectio.

十一、一人公司的現實需求與文化土壤

11th, a one man company's true need and cultural soil.

十二、立法爭點與最終抉擇

12th, the Legislative indisputable point and the final choice.

十三、對一人公司的擔憂及其評價

13th, anxiety on the one-man company and its evaluatio.

十四、自然人股東可否設立多家一人公司的立法前瞻

14th, legislative Outlook on whether the shareholder of one man company can set up several one man companies.

十五、一人公司的特殊治理制度

15th, the special governance system of one-man company.

十六、未來《公司法》應否承認一人股份有限公司

16th, whether "company law" should recognize one person Inc.

十七、一人公司可否發行公司債券

17th, whether one-man company can issue corporate bonds.

十八、一人股東可否與其一人公司共設公司

18th, whether a shareholder can set up companies with another one.

第八節 公司可以依法擔任合伙人

Section 8 whether companies can legally serve as partner

一、問題的提出

First, raising problems.

二、傳統立法對於公司擔任合伙人的態度

Second, the traditional legislative attitude.

三、立法爭點

Third, the Legislative indisputable point.

四、立法者的最終抉擇

Fourth, the ultimate choice legislators.

五、防弊措施

Fifth, measures preventing cheating.

六、母公司可否為其子公司債務提供連帶責任保證

Sixth, whether the parent company can provide debt associated responsibility for subsidiary companies.

第三章 興利除弊兼顧的安全型公司法

Chapter 3 safety company law which take benefit and cheat preventing into consideration

第一節 引言

Section 1 introduction

第二節 閃亮登場的揭開公司面紗制度

Section 2 corporate system

一、引進揭開公司面紗制度的必要性與迫切性

First, the necessity and urgency of veiling corporate system.

二、引進揭開公司面紗制度是否符合國情

Second, introduction of the system is consistent with national conditions or not.

三、揭開公司面紗制度的立法形式

Third, its legislative form of corporate system.

四、原告的範圍

Fourth, Fourth, the scope of the plaintiff.

五、原告債權人的舉證責任

Fifth, plaintiff creditors have the responsibility to give evidence.

六、被告範圍

Sixth, the defendant scope.

七、被告股東濫用事實的認定

Seventh, how to identify the abuse of defendant shareholders.

八、被揭開面紗的公司類型

Eighth, company type of whose veil is opened.

九、揭開公司面紗的法律效果

Ninth, the legal results of companies whose veil are opened.

十、揭開公司面紗制度與其它制度的區別

10th, distinction between opening veil system and other systems.

十一、揭開公司面紗制度要審慎適用

11th, opening veil system should be applied carefully.

十二、揭開公司面紗案件的訴訟程式

12th, litigation proceedings in opening veil cases.

十三、股東的債權人可否逆向揭開公司面紗

13th, whether shareholders can reverse the creditors and open the corporate veil.

第三節 公司的擔保能力制度創新

Section 3 system innovation about company 's guarantee ability s security system innovation capacity

一、新《公司法》之前的立法態度及其解釋

First, the legislative attitude before the coming of the new "Company Law" and their interpretation.

二、《最高人民法院關於適用擔保法若干問題的解釋》第4條之評析

Second, the "Supreme People's Court on the application of the law on guarantees" Article 4 Review.

三、新《公司法》的正本清源

Third, thoroughly overhaul of new "Company Law".

四、公司為股東或實際控制人外的第三人債務作保時,章程對決策機構約定不明時的處理

Fourth, dealing with those unclear agreements when company guarantee for those except shareholder and real controller.

五、債權人審查擔保人公司的擔保決議時的形式審查標準

Fifth, forms and standards for the guarantor company's creditors to check guarantor's company.

六、公司為股東債務提供擔保的一般程式規則

Sixth, general formula for companies to guarantee debt for its shareholders.

七、股東均享受擔保利益時,如何適用第16條第3款

Seventh, when shareholders are enjoying security interests, how to apply Article 16, paragraph 3.

八、一人公司為一人股東提供擔保時,如何適用第16條第3款

Eight, one man company guarantee debt for shareholder ,how to apply article 16, paragraph 3.

九、股東會決議可否責令全體股東按其持股比例為公司債務提供擔保

Ninth, whether Shareholder resolution can make all its shareholders shoulder equity ratio of corporate debt.

十、上市公司對外擔保的特殊決議程式

10th, the special external debt resolution forms for listing companies.

十一、公司超出章程限額提供擔保的效力

11th, the effect of the guarantee part which is beyond rules the company exceeded the statute limits the effectiveness of the provision of security.

十二、公司可否自行消除自身的擔保能力

12th, whether the company can eliminate its own security capability.

第四節 瑕疵出資股東的民事責任

Section 4 the civil responsibilities for imperfect shareholder

一、瑕疵出資股東對公司的資本充實責任

First, the imperfect shareholder's responsibility to enlarge company's capital.

二、瑕疵出資股東對公司債權人的補償賠償責任

Second, flaws investor's compensation responsibility to creditors.

三、從瑕疵出資股東受讓股份的股東對公司及其債權人是否承擔民事責任

Third, funding from the flaw shareholders of the transferee shareholders if the company and its creditors to bear civil liability.

四、瑕疵出資股東對出資到位股東的違約責任

Fourth, shareholders of the investor flaw funded liabilities of violating a place shareholders.

五、瑕疵出資的表現形式

Fifth, funded manifestations flaw.

六、訴訟時效的起算點

Sixth, the starting point of limitations.

七、公司設立時其它股東的連帶責任

Seventh, the other shareholders' bond responsibility at the time of setting up.

八、瑕疵出資股東的股東又有瑕疵出資行為的難題

Eighth, flaw shareholders flaw reinvest behavior.

九、公司可否將瑕疵出資股東除名

Ninth, whether the company can remove flaw shareholder.

十、瑕疵出資或是抽逃出資股東行使股權應否受到限制

10th, Flaw investor or flight shareholders can equally exerttheir rights.

第五節 抽逃出資股東的民事責任

Section 5 civil responsibilities for shareholders secretly draw back its invest

一、法律責任的制度現狀

First, the status of liability system.

二、抽逃出資事實的認定

Second, identify of investor flight.

三、抽逃出資與借款行為的區別

Third, the distinction between flight and borrow.

四、抽逃出資股東對公司的民事侵權責任

Fourth, flight shareholder civil responsibilities to its company.

五、抽逃出資股東對公司的債權人的補充清償責任

Fifth, flight shareholder compensation responsibly to company's creditor.

六、抽逃出資股東之外的行為人對公司的債權人的補充清償責任

Sixth, shareholders except flight investor compensation responsibility to company's creditor

七、從抽逃出資股東受讓股份的股東對公司及其債權人是否承擔民事責任

Seventh, whether the flight shareholder have to shoulder civil responsibilities to its creditors and company.

八、訴訟時效的起算點

Eighth, the starting point of lawsuit.

九、抽逃出資股東的債務補充清償責任的限制

Ninth, limitation compensation responsibly for flight shareholders.

第六節 一人公司的防弊措施

Section 6 cheat preventing measures

一、一人公司防弊措施設計的正當性與必要性

First, the legitimacy and necessity of cheat preventing measures.

二、立法爭點與抉擇

Second, the legislative dispute and final choice.

三、一人公司及其股東的訊息披露義務

Third, one man company and disclosure obligations of its shareholder.

四、法人資格濫用推定制度

Fourth, presumption of legal personality abuse.

五、《公司法》第64條的適用範圍

Fifth, scope of application "Company Law" Section 64.

第七節 活化會計師事務所的市場監督機制

Section 7 activation supervision mechanism in accounting firms market

一、強力彙入強制審計制度

First, strongly push the implementation of audit system.

二、會計師事務所選擇程式的公正性

Second, fair choice process of choosing accounting firm.

三、公司對會計師事務所的法定協助義務

Third, the company's statutory obligations to assist accounting firm.

四、會計師事務所的協助調查業務

Fourth, the accounting company's statutory obligations to assist investigation.

五、會計師事務所的失信制裁機制

Fifth, accounting firm's dishonest sanctions mechanism.

六、關於起草審理會計師事務所民事侵權賠償案件的司法解釋的幾點思考

Sixth, sevral consideration on the drafting of judicial interpretation of accounting firm 's compensation In tort cases.

第八節 公司分立、合併時債權人的保護

Section 8 creditors protection when the separation and merger of the company

一、公司分立的法律涵義和法律效果

First, the legal meaning and effect of company separation.

二、1993年《公司法》在債權人保護方面的態度及其評價

Second, attitude to the protection of creditor in 1993 "Company Law" and its comments.

三、新《公司法》對公司分立前債權人保護的務實選擇

Third, real protection of creditors before separation in the new "Company Law".

四、公司合併也可能潛伏著對債權人利益的損害

Fourth, the merger may also damage the interests of the creditors.

五、新舊《公司法》對公司合併前債權人保護的態度

Fifth, attitude to creditors before merger in old and new "Company Law".

六、公司減資時的債權人保護

Sixth, creditor protection in the capital reduction.

第九節 債權人保護的其它公司法機制

Section 9 creditor protection mechanism in other company laws

一、更加透明有效的公司訊息披露手段

First more transparent ways to exposure company info.

二、債權人的自覺與自我保護

Second creditors' conscious and self-protection.

三、防範公司重大決策的風險

Third, avoid great risk in decision making.

第十節 創新裁判理念,保護金融債權

Section 10 innovative judging concept and protection of financial claims.

一、債權神聖的裁判思維

First, financial claims are holy.

二、鼓勵金融創新的裁判思維

Second, encourage financial innovation judging.

三、智慧型的裁判思維

Third, intelligent judicial thinking.

四、服務型司法的裁判思維

Fourth, the service-oriented judicial thinking.

五、高效型司法的裁判思維

Fifth, high efficiency of the judicial thinking.

六、辨法析理的裁判思維

Sixth, identify and correct judicial thinking.

七、善於調解的裁判思維

Seventh, conciliation magistrate.

八、凡訴必立的思維

Eighth, there is a case ,there is a lawsuit.

第四章 股東資格確認制度

Chapter 4 Shareholders accreditation system

第一節 認定股東資格的三大證據

Section I Three evidences identify shareholder qualification

- 一、源泉證據
- 1.Source evidence
- 二、效力證據
- 2. Validly evidence
- 三、對抗證據
- 3. Confrontation evidence
- 四、各種證據相互衝突時的解決思路
- 4. How to dealing with conflicts among evidences
- 五、一則股東資格確認的案例分析
- 5. Case analysis on how to confirm shareholder qualification

第二節 運用股權信托關係梳理代持股權現象

Section II Representative shares phenomena sorting with stock ownership trust

- 一、名義股東與實質股東相互分離的合理性與正當性
- 1. The rationality and correctness of separation between nominal and real shareholders
- 二、股權信托關係的基本法理
- 2. The basic jurisprudence about trust relationship
- 三、股權信托的設立
- 3. The establishment of the Trust stakes
- 四、股權信托登記的效力
- 4. The effectiveness of the registration equity Trust
- 五、信托登記制度的完善
- 5. The improving Trust registration system
- 六、旨在欺詐債權人的股權信托的效力
- 6. The effectiveness of shareholders whose purpose is to cheat creditors
- 七、信托股權的獨立性
- 7. The independence of the Trust stake
- 八、股權信托關係中委托人的權利。
- 8. Client's rights in trust relationship
- 九、股權信托關係中受托人的誠信義務
- 9. Trustees' duties in trust relationship

- 十、股權信托關係中受益人的權利
- 10.Beneficiaries rights in trust relationship

第三節 股權信托與職工持股排程

Section III Trust and ESOP shares scheduling

- 一、職工信托持股的法律框架
- 1. The legal framework for ESOP
- 二、靈活多樣的職工股權受托人
- 2.Flexible and diverse workers stake trustees
- 三、案例分析
- 3. Case Analysis

第四節 代持股權語境下的委托代理關係

Section IV Representative relationship under trust share holder

- 一、股權委托代理關係的內容
- 1. The content of shareholding trust relationship
- 二、股權信托與股權委托代理的區別
- 2.Difference between shareholding trust and representing shareholding
- 三、股權信托與股權委托代理在維護交易安全方面的異曲同工之妙
- 3.Different approaches to the same purpose which shareholding trust and representing shareholding are doing at maintaining business transactions safety
- 四、債權投資關系與股權投資關係的區別
- 4.Difference between investment from claims and shareholding
- 五、被冒名頂替為股東者的法律地位
- 5.Legal status of shareholders who is misrepresented

第五章 股東友好型的公司法

Chpater 5 shareholder-friendly company law

第一節 新《公司法》弘揚了股權文化

Section I New "Company Law": carry forward the equity culture

- 一、新《公司法》確認了股東主權的思想
- 1.New "Company Law," recognizes the sovereignty of shareholders
- 二、新《公司法》豐富了股東權的內涵與外延
- 2.New "Company Law," has enriched the connotation and extension meaning of shareholder rights
- 三、新《公司法》弘揚了股東平等原則
- 3.New "Company Law" carries forward the principle of equality of the shareholders
- 四、新《公司法》旗幟鮮明地向中小股東傾斜
- 4.New "Company Law" clearly tilts to the small and medium-sized shareholders
- 五、閉鎖型公司中小股東的五大救濟措施
- 5. Five major relief measures for the medium-sized and small shareholders in Atresia company
- 六、新《公司法》弘揚了股東誠信精神
- 6.New "Company Law" carries forward the spirit of integrity shareholders
- 七、弱勢大股東的維權問題
- 7.Disadvantaged majority shareholder rights issue

第二節 股東的查賬權

Section II Shareholders' right to examine records

- 一、1993年《公司法》的態度
- 1.In 1993, the attitude of "Company Law"
- 二、新《公司法》抓住了股權保護的牛鼻子
- 2. The new "Company Law" seizes the key point ("the nose of an ox") the shareholding protection
- 三、股東查賬程式和濫用預防
- 3. Shareholders and abuse prevention program is responsible
- 四、股東查賬目的是否正當的判斷標準
- 4. The procedure for shareholders 'records examining and how to avoid abusing
- 五、股東可否查閱公司的原始會計憑證
- 5. Whether shareholder can check the company's source accounting voucher
- 六、原股東可否查閱公司的會計賬簿
- 6. Whether shareholder can check the company's accounting books
- 七、股份有限公司的股東可否查閱會計賬簿
- 7. Whether shareholder in INC. can check company's accounting books
- 八、一則案例分析

8. Case analysis

第三節 股東的分紅權

Section III Shareholders' profit sharing right

- 一、公司營利性背後的股東營利性
- 1. Shareholders' profitability behind profitability of the company
- 二、我國股東分紅權的現狀
- 2. The status of shareholders' profit sharing in our country
- 三、法院原則上不宜干預公司股利分配政策的實體內容
- 3. In principle, entity content which the court doesn't interfere with the dividend distribution
- 四、法院例外干預公司股利分配政策的必備條件
- 4. Necessary condition for the court to interfere with the dividend distribution
- 五、強制公司分派股利之訴
- 5.Lawsuit about dividend distribution

第四節 退股權

Section IV shares retreat

- 一、新《公司法》確認股東退股權的法理基礎
- 1.Tthe basic jurisprudence about shares retreat in new "Company Law"
- 二、我國的立法演進
- 2. China's legislative evolution
- 三、股東退股權在中小股東救濟體係中的作用
- 3. For shares retreating's relief efforts to small and medium size shareholders
- 四、股東退股的條件
- 4. The conditions for shareholders retreat
- 五、股東退股的程式
- 5. Shareholders Divestment procedure
- 六、退股價格的確定
- 6.Price making in shares retreat
- 七、惡意規避退股條件的法律問題
- 7. The legal issues about malicious circumvention toward condition of shares retreat
- 八、上市公司的股東可否行使股份買取請求權
- 8. Whether the shareholders of a listed company can buy the shares to exercise the right to request

第五節 解散公司訴權

Chapter IV lawsuit right in dismissing company

一、打破公司僵局的先進立法例

1. Aadvanced legislation example breaks the deadlock of the company

- 二、立法引進之由來
- 2.Legislation introducing source
- 三、解散公司的重要功能
- 3. The important functions of company dismiss
- 四、解散公司的法律構成要件
- 4. The legal condition for company dismiss
- 五、原告股東的資格
- 5.Demand ant shareholders' right
- 六、公司的訴訟地位
- 6. The lawsuit status for the company
- 七、上市公司股東可否行使解散公司訴權
- 7. Whether the shareholders of a list company can exercise the right to dismiss company

第六節 股東對瑕疵公司決議的訴權

Section VI Shareholder resolution on the right to appeal flaw company

- 一、公司決議瑕疵和新《公司法》的制度創新
- 1. New resolution's imperfect and system innovation of the new "Company Law"
- 二、公司決議無效確認之訴
- 2. The lawsuit about the in validity of company 's resolution
- 三、公司決議復原之訴
- 3. The lawsuit about the restoring the effect ness of company 's resolution
- 四、原告股東擔保制度
- 4. The plaintiff shareholders guarantee system
- 五、公司決議不存在確認之訴
- 5. Lawsuit about reorganization company's resolution doesn't exist
- 六、公司決議違反行政規章的瑕疵
- 6.Imperfectness for a company's resolution goes against administrative regulations
- 七、公司決議的復原變更登記
- 7. The company's restore resolution registration

第七節 股東代表訴訟制度

Section VII litigation system on behalf of the shareholders

一、引言

1.Introduction

- 二、壓抑股東代表訴訟的傳統制度根源及新《公司法》第152條的制度創新
- ${\bf 2. The\ source\ of\ traditional\ litigation\ system\ suppresses\ shareholders\ on\ behalf\ litigation\ and\ the\ system\ innovation\ of\ new\ ''Company\ Law''\ Section\ 152}$
- 三、股東代表訴訟的法律含義

3. The legal implications of shareholders on behalf litigation

四、如何區分股東代表訴訟與股東直接訴訟

4. How to distinguish litigation between shareholders on behalf and shareholders

五、股東代表訴訟的被告範圍

5. Shareholders representative Litigation's defendant range

六、原告股東提起代表訴訟的資格

6.Qualification for the plaintiff representative shareholder to bring a case to court

七、公司的訴訟地位

7. Company's legal status

八、股東提起代表訴訟的前置程式:竭盡公司內部救濟規則

8.Pre-procedure of representative shareholder lawsuit : do internal relief rules

九、代表訴訟費用的算定

9. The cost of representative shareholder lawsuit

十、原告股東的權利和責任

10.the plaintiff shareholders' rights and responsibilities

十一、股東代表訴訟案件的管轄法院

11.Jurisdiction of the Court about representative shareholder lawsuit

十二、股東提起代表訴訟的訴訟時效

12. Time Limitation of Actions for representative shareholder lawsuit

十三、股東訴訟請求之合併

13. Shareholders request litigation merger

十四、股東代表訴訟中反訴的提起

14. Counterclaim in the representative shareholder lawsuit

十五、股東代表訴訟案件中調解方案的司法審查機制

15. Judicial examine mechanism of conciliation in representative shareholder lawsuits

十六、雙重、三重及多重股東代表訴訟中的特殊問題

16. The special problems in double, triple and multiple representative shareholder lawsuits

十七、股東代表仲裁

17. Shareholder representatives arbitration

十八、小結

18.Summary

第八節 股東累積投票權

Section VIII Shareholders' cumulative voting rights

一、股東累積投票權的起源與流變

1. The Origin and Evolution of shareholders' cumulative voting rights

二、新《公司法》的態度

2. The attitude of new "Company Law"

- 三、股東累積投票制度的積極作用
- 3. Positive efforts of cumulative voting rights system
- 四、小股東通過累積投票控制董監多數席位的效力
- 4. The validity for small size shareholders controlling majority of seats through cumulative voting
- 五、選舉特定董事所需的最低股份數
- 5. Specific minimum number of shares which can decide directors
- 六、特定股份數能選出的董事的最多數目
- 6. Specific number of shares elected to the maximum number of directors
- 七、抵消或緩衝累積投票權功能的若干做法的效力
- 7. The validity of cut down or Contra cumulative voting rights

第九節 股東的質詢權

Section IX Shareholders' question right

- 一、股東質詢權的性質與價值
- 1. Properties and value of shareholders' question right
- 二、新《公司法》的制度創新
- 2.System innovation of new "Company Law"
- 三、股東質詢權行使的範圍
- 3. The scope of the exercise of question right
- 四、董監的說明義務
- 4. The supervisor's explanation the obligations
- 五、事前的書面質詢制度
- 5.Prior written question system
- 六、侵害股東質詢權對股東大會決議效力的影響
- 6.The influence of infringe on shareholders' question right toward effectiveness of the General Assembly resolution

第十節 中小股東的其它救濟措施

Section X Small and medium size shareholders' other relief measures

- 一、股東對公司經營者的索賠權
- 1. Claim for compensation to company runners
- 二、《中華人民共和國刑法修正案(六 n 對投資者保護的影響)
- 2.The "People's Republic of China Criminal Law Amendment (6 n the impact on investor protection
- 三、對中國證監會試行公司重大事項社會公眾股股東表決制度的評價
- 3.The evaluations on public shareholders voting system which is Implemented by the China Securities Regulatory Commission

第六章 股權轉讓程序中的安全與效率

Chapter 6 Security and efficiency in stake transfer process

第一節 引言

Section I Introduction

第二節 股權轉讓合同的效力

Section II Effectiveness of equity transfer contract

- 一、股權轉讓合同的成立生效主義原則及其例外
- 1. The principle for equity transfer contract doing into effect and its exceptions
- 二、股權轉讓合同與股權變動的效力之別
- 2. The validity difference between equity transfer and Ownership change
- 三、可以取得、但尚未取得的股權可否成為股權轉讓標的
- 3. Whether the dued stake which has not been got can be the object
- 四、部分老股東之間相互轉讓股權時,其它股東有無優先購買權
- 4. Whether other shareholders have the prior right to buy stake when parts of the old shareholders are transferring stakes
- 五、股權轉讓導致股東人數超過50人時,是否影響股權轉讓合同和公司的效力
- 5. In the case of the number of shareholders are over 50, whether the effect ness of equity transfer contract and company are influenced
- 六、股東出資瑕疵對股份轉讓效力的影響
- 6. The shareholder imperfect invest's influence to transfer validity
- 七、慎重對待無效或是可復原的股權轉讓合同
- 7. Cautiously deal with the invalid or recovery of equity transfer contract
- 八、股權轉讓合同被確認無效或是復原之後的處理
- 8. The treatment of the equity transfer contract which is confirmed to be invalid or recovered
- 九、股東權中的權能可否分別轉讓
- 9. Whether the right of shareholders can be respectively transferred
- 十、公司章程可否限制股權轉讓行為
- 10. Whether company's charter can limit the transfer of shares
- 十一、未成年人可否受讓股權
- 11. Whether minors could accept transferee stake
- 十二、法院強制轉讓股權時其它股東的優先購買權
- 12. Other shareholders' Priority to buy shares when the court force to transfer stake

第三節 股權變動的效力

Section III Validity of shares ownership change

- 一、股權變動效力的界定難點:公司內部登記生效主義與公司外部登記對抗主義的協調
- 1. The difficult define points in the change of ownership, the principle of registration in and outside the company
- 二、股東權變動的效力之一:公司內部登記生效主義
- 2. One effect of ownership change, the principle of registration in the company
- 三、股東權變動的效力之二:公司外部登記對抗主義
- 3. Another effect of ownership change, the principle of registration outside the company
- 四、公司內部登記與外部登記相互衝突時的解決思路
- 4. The dealing methods when registrations in and outside the company have conflicts

第四節 股東向非股東轉讓股權的特殊限制規則

Section IV Special rules and limitation for shareholders transferring their shares to non-shareholders

- 一、限制規則之一:其餘老股東的同意權與否決權
- 1. Rule one: other shareholders' for or against right
- 二、限制規則之二:老股東的優先購買權
- 2. Rule two: the old shareholders pre-emptive rights
- 三、老股東行使優先購買權之前,出讓股東與第三人簽訂的股權轉讓合同的效力
- 3. Before old shareholders using their pre-emptive rights ,the effectiveness of transferring contract signed between shareholders and a third person
- 四、老股東瞞著其餘股東而徑直與第三人訂立的股權轉讓合同的效力
- 4. The effectiveness of transferring contract signed secretly between shareholders and a third person without no other shareholder knowing
- 五、老股東堅持受讓部分股權,導致非股東放棄購買其餘股權的問題
- 5 The old shareholders persist Lets their rights, making non-shareholders abandon the purchase of the remaining stake
- 六、老股東的同意權制度與公司章程修改制度之間的無縫對接
- 6. The seamless connection between old shareholders' agree right system and change of rules of the company
- 七、人民法院強制執行股權時的股權轉讓規則
- 7. Rules for the people's courts to enforce the transfer of equity stake

第五節 國有股權轉讓的特殊規則

Section V Special rules for the transferring of state-owned shares

- 一、、國有股權轉讓的法律依據
- 1. Legal basis for transfer of state-owned shares
- 二、違反批準程式的國有股權轉讓合同的效力

- 2. Effectiveness of the contract which violates the approved program of the state-owned stake
- 三、應當納入評估範圍的資產未履行評估程式的國有股權轉讓合同的效力
- 3. In case of the assets which have to count into the scope of assessment, effectiveness of the transferring contract
- 四、以職工安置問題作為交易條件的合同條款的效力問題
- 4. Validity issue for those transferring contracts which are based on the condition of rehousing employee
- 五、國有股權未進場交易的法律效力
- 5. Effectiveness of the contract the transferring state-owned shares which is not enter to the transaction field
- 六、國有股權進場交易時的買受人資格與老股東優先購買權之間的衝突
- 6. The conflict between the qualification of buyers and the pre-emptive rights of old shareholders in the state-owned shares transaction field
- 七、國有股權強制拍賣程式中保留價的確定與降低
- 7. Pricing making and downing rules in the auction procedure of state-owned shares
- 八、以債務承擔作為受讓國有股權對價的行為的效力
- 8. Validity of takes over debts which is as the transferring of shares
- 九、檢察機關可否代表國家就國有股權轉讓糾紛案件提起民事訴訟
- 9. Whether the procuratorial organs can be on behalf of the State to conduct a suit in the disputes of state-owned stake

第六節外商技資企業的股權轉讓特殊規則

Section VI Special shares transferring rules for enterprises with foreign technology and invest

- 一、特殊的轉讓規則
- 1. A special transfer rules
- 二、未經審批機構批準的股權轉讓協定的效力
- 2. Effectiveness of the transferring contract without approving
- 三、轉讓雙方私下達成的股權轉讓補充協定的效力
- 3. Effectiveness of a supplementary agreement which is secretly made by transfers
- 四、股權轉讓合同的效力與股權變動效力的區分
- 4. Difference between shares transferring and ownership changing
- 五、股權轉讓導致的外商投資公司的身份轉換
- 5. Transfer of shares leads to the identity switch of foreign-invested companies
- 六、外商投資公司股權轉讓糾紛案件中的特殊程式法問題
- 6. Special program laws for foreign-invested companies' equity transfer dispute cases
- 七、一則外商投資企業的股權轉讓案例
- 7. Foreign-invested enterprises stake case analyze

第七節股東資格的繼承

Section VII Shareholders qualification successor

- 一、問題的提出
- 1. Raising the issue
- 二、立法爭點
- 2. Egislature indisputable point
- 三、立法者的最終選擇與解釋
- 3. Legislators' final choice and explanation
- 四、股權分割、贈與場合的法律適用
- 4. Application of the law for the shares split and giving

了股東平等原則

3.New "Company Law" carries forward the principle of equality of the shareholders

四、新《公司法》旗幟鮮明地向中小股東傾斜

4.New "Company Law" clearly tilts to the small and medium-sized shareholders

五、閉鎖型公司中小股東的五大救濟措施

5.Five major relief measures for the medium-sized and small shareholders in Atresia company 六、新《公司法》弘揚了股東誠信精神

6.New "Company Law" carries forward the spirit of integrity shareholders

七、弱勢大股東的維權問題

7.Disadvantaged majority shareholder rights issue

第七章 最佳化公司治理的規範型公司法

Chapter 7 the scale company law's best management

第一節 引言

Section I introduction

第二節 董事長制度改革

Section II, chairman system reform

一、1993年《公司法》推出的第一次法定代表人制度革命

First, in 1993 the "Company Law" introduced the first revolution of legal representative system.

二、新《公司法》推出第二次法定代表人制度革命的背景

Second, the background of second revolution of legal representative system, the new "Company Law".

三、董事長職權的大幅壓縮

Third, drastically cut down the power of chairman.

四、新舊董事長奪印之訟的法學思考

Fourth, the power struggle between the previous and Latter chairman.

五、前法定代表人攜帶企業法人營業執照出走後,公司登記機關應當及時為公司補發企業法人營業執 照

Fifth, the previous legal pre representative run away with the company's operational license, the registration Dep should renew it in time.

六、公司法定代表人的多元化與一元化之爭

Sixth, the dispute about diversity and individual of legal representative.

七、董事長未必是公司的法定代表人

Seventh, the chairman should not be the legal representative.

第三節 股東大會制度的改革

Section 3 reform of general meeting system of shareholders

一、股東大會職權的微調

First, the slight adjustment of power and responsibility of general meeting.

二、股東大會決議與董事會決議的效力的關係

Second, The relationship between resolution effectiveness the general meeting of shareholders and chairman.

三、活化股東大會召集程式

Third, activation shareholders meeting gathering program.

四、明確臨時股東大會的主持權主體

Fourth, clarify the main holding body of interim general meeting of shareholders.

五、增設了股東的提案權

Fifth, add the right to issue a project.

六、董事、監事與公司高管的股東大會的列席和接受質詢義務

Sixth, the attending of chairman, supervising and top administrators in the general meeting and their obligation to accept quest.

七、鼓勵公司通過自治行為提高股東大會召開和表決程式的合法性3刀

Seventh, encourage company to improve the legality of the opening of general meeting and its resolution form.

八、程式嚴謹、內容合法的八字方針

Eighth, the top principal of strict program with legal procedure.

九、切實方便股東參加股東大會平行使相關權利

Ninth, practically convient the shareholders taking part in the general shareholder meeting and equally exercise their power.

十、確保股東大會順利召開的正常秩序

10th, ensure the normal procedure of general shareholder meeting

十一、股東大會的權力邊界與行政權的例外干預

11th,the power boundary of general shareholder meeting and the exceptional interface if administrative body.

十二、現場股東大會的替代決議形式

12th, the shareholders general meeting replace the resolution.

第四節 董事會制度創新

Section 4 the innovation of chairman system

一、董事會職權的重塑

First;, rebuild chairman's power and responsibility.

二、利害關係董事回避表決制度

Second, obviation of the chairman whose interest is related

三、新《公司法》出台前董事會內部"宮廷政變"的屢戰屢敗

Third, he power struggle inner the company before the coming out of the new company law.

四、一則案例分析

Forth, a case analyze.

五、新《公司法》出台後董事會內部"宮廷政變"有可能更加頻繁

Fifth, after the coming out of the new company law, may be the struggle will become more frequent.

六、國有企業公司制改革程序中要妥善處理好"老三會"與"新三會"之間的關係

Sixth, during he SOE system reform procedure, the relationship between previous three and new three should be well handled.

第五節 監事會制度創新

Section 5 the system innovation of supervising system

一、現代公司法框架下的監事會制度

First, the supervising system under the modern company frame

二、充實監督職權

Second, fulfill supervising responsibility.

三、強化監督手段

Third, strengthen the supervising means

四、關於監事會規模的立法爭點

Forth, the legislative dispute about the scale of supervising meeting.

五、股東可否排除監事會和監事制度

Fifth, whether shareholders can exercise beyondsupervising meeting

第六節 總經理制度

Section 6 general manager system

一、一言九鼎的經理負責制及其在公司法框架下的制度變遷

First, the manager has to be responsible for his words and deeds and this change of principle in the frame of the company law.

二、新《公司法》確認的經理地位

Second, new company law confirm the manager's status.

三、新《公司法》確認的總經理職權

Third, the authority confirmed by the new company law

四、董事長與總經理的角色區分

Forth, the role distinguish between chairman and chief manger-

五、公司董事長、總經理越權行為的效力

Fifth, the effectiveness of the deed excess their authorities by chairman and manager.

第七節 公司高管的誠信義務

Section 7 top official 's obligation to be honest

一、公司高管中的四類"貓"現象及其啟示

First, four kinds of cat phenomena and its enlightenment.

二、新《公司法》對公司高管誠信義務的確認

Second, the affirmance about top official 's honest obligation

三、公司高管的範圍及其消極任職資格

Third, the range of top officials and disqualification procedure.

四、公司高管的忠實義務

Forth, top official 's obligation to be faithful.

五、強化公司高管忠實義務的其它措施

Fifth, other measure for strengthening the top official's faithful obligation.

六、公司高管人員挪用公司巨額資金的啟示

Sixth, money appropriation by top official and its enlightenment.

七、公司高管的勤勉義務及其衡量標準

Seventh, top official's diligence obligation and its measure standard.

八、公司高管的問貴機制

Eighth, the responsibility system of top official.

九、在司法實踐中彙入經營判斷規則的思考

Ninth, introducing managing and judging thinking gin the legislative pratice.

十、改革前瞻:建立健全公司高管的激勵機制

10th, reform outlook, establish and perfect the stimulative system to the top offcials

第八節 上市公司治理機構中的特殊問題

Section 8 special problems in the governacing body of listing company

一、股東大會的特別決策事項

First, special resolution item of shareholders general meeting.

二、董事會秘書制度

Second, the secretary system of board.

三、董事回避制度

Third, the obviation system of the board.

四、上市公司治理立法的"瘦身"變化

Forth, the downsizing of lefilative governacing of listing company.

五、加強新聞媒體對上市公司股東大會運作程序的監督

Fifth, strengthening the supervision of the running procedure of listing company's shareholder's general meeting by the news media.

六、中國公司赴美上市的薩班斯成本

Sixth, the cost of Chinese company listing in Sarbanesof the USA.

第九節 獨立董事制度

Section 9 the independent chairmen board system

一、英美國家建立獨立董事制度的歷史背景

First, the history background of the independent system in America and Britain

二、中國證監會強力引進的獨立董事制度試點評析

Second, he analyze of China Securities Regulatory Commission's introducing the independent system in spot places.

三、新《公司法》應否規定獨立董事制度的爭論

Third, the dispute on whether the new company should regulate the independent board system.

四、獨立董事制度與監事會的關係

Forth, the relationship between independent board system and securities regulatory commission.

五、尋求良好的獨立董事與外部董事的構成比例

Fifth, search for better constructing between independent board and outer board.

六、完善獨立董事的能力建設機制

Sixth, perfect the ability suggestion structure of independent board.

七、完善獨立董事的選拔機制

Seventh, perfect the picking out system of independent board.

八、明確獨立董事的問責機制

Eighth, clarify the responsibility system of independent board.

九、獨立董事的利益激勵機制

Ninth, the benefit stimulation system for the independent board.

十、獨立董事角色定位應當準確

10th, independent board 's role should be correctly justified.

第八章 新〈公司法〉對固有企業公司制改革的影響

Chapter 8 new company law influences the reform of SOE

第一節 新《公司法》對國有企業公司制改革的整體影響

Section 1 new company's thoroughly influence toward reform of SOEs.

一、貫徹新《公司法》,加快國企公司制改革

First, carry out new company law, and speed up the reform of SOE.

二、1993 年 《公司法》的歷史作用

Second, the history function of company law 1993.

三、新《公司法》在深化國企改革方面的制度創新

Third, the system innovation which new company deepening SOE reform.

四、建議盡快廢止《全民所有制工業企業法》,全面推進國有企業的公司制改革

Fourth, suggest withdraw the Law of the PRC of Industrial Enterprises Owned by the Whole People ai soon as possible and thoroughly put reform of SOE in force.

五、鼓勵大多數國有企業改制為股份有限公司

Fifth, encourage the majority of state-owned enterprises Inc reform into limited liability companies.

第二節 國有企業改革的三部曲及其評析

Section 2 SOE reconstruction's three step s and their analyze

一、物權模式

First, property mod.

二、債權模式

Second, claim mode.

三、股東權模式

Third, shareholders mode

第三節 國有企業公司制改革中的國家股東權保護

Section 3 the protection of state owned shares in the reconstruction process.

一、權利守恆定律與國家股權"革命"

First, law of conservation of power and revolution of state owned shares.

二、國家股東不必在每個股份公司中控股

Second, state shareholder don't have to control the company in all limited liability companies.

三、建議原則上將競爭性領域的國家股權界定為無表決權的優先股

Third, principal suggest classify state owned shares into preferred stocks without voting.

四、國家股東代理人要積極行使股東權利

Fourth, the agent of state owned share shares has to actively practice his rights.

五、制定《國有資產保護法》的若干思考

Fifth, everal consideration on making stated owned property protection law.

第四節 積極推進上市公司股權分置改革的法學思考

Section 4 legislative thinking on actively carry out the reform of non-tradable shares in listing company

一、推進上市公司股權分置改革的歷史背景

First, the history background of carry out reform of non-tradable shares in listing company

二、2001年國有股減持政策的無功而返

Second, 2001, State Stock Reduction policy without any benefit.

三、股權分置改革涉及的法律關係

Third, reform of non-tradable shares related lawful relationship's.

四、妥善解決股權分置改革中涉及外資股東的難點法律問題

Fourth, suitable handle the legislative dispute on suitable handle the reform of non-tradable shares related to foreign stock owner.

第五節 國有獨資公司制度的改革

Section 5 system reform of state-owned Proprietary Corporation

一、國有獨資公司制度存廢之爭論

First, the dispute on the abolition of state-owned Proprietary Corporation System.

二、國有獨資公司制度與有限責任公司制度的相互關係

Second, the mutual relationship between state-owned Proprietary Corporation System and limited liability INC.system.

三、國有獨資公司概念的重塑

Third, remodeling the concept of state-owned Proprietary Corporation.

四、國有獨資公司可否再設國有獨資公司

Fourth, whether state-owned Proprietary Corporation can set up another state-owned Proprietary Corporation.

五、代行股東權的國家股東代理機構

Fifth, state shareholders agency.

六、國有獨資公司的董事會

Sixth, the board of state-owned Proprietary Corporation

七、國有獨資公司的監事會

Seventh, the security board of state-owned Proprietary Corporation

八、國有獨資公司高管兼職之禁止

Eighth, forbidden state-owned Proprietary Corporation's top officials to take part time job.

九、國有獨資公司的資產轉讓的特別規定之移除

Ninth, remove the special provisions of transferring of state-owned Proprietary

十、國有獨資公司被授權行使資產所有者的規定之移除

10th, re-owned Proprietary Corporation was authorized to exercise the provisions of the assets of the owner to remove.

十一、已成立國有獨資公司的效力

11th ,has set up the effectiveness of the state-owned Proprietary Corporation effectiveness of the pilot Option Incentive

第六節 企業國有產權向管理層轉讓制度

Section 6 the transferring system of state owned property to administrative level

一、完善企業國有產權向管理層轉讓制度的必要性

First, the necessary of the transferring.

二、《暫行規定》與《企業國有產權轉讓管理暫行辦法》的關係

Second, the relationship between the interim regulation and Interim Measures for the Management of the Transfer of the State-owned Property Right of Enterprises.

三、《暫行規定》的適用範圍

Third, the application range of interim regulation.

四、管理層不得採取信托、委托等方式間接受讓企業國有產權

Fourth, administrative level can't accept or transferring e State-owned Property Right through trust and agent.

五、企業國有產權向管理層轉讓後改制企業留存國有產權的代表主體

Fifth, after the transferring ,the representative body of transfer of the State-owned Property Right of Enterprises.

六、大型國有及國有控股企業管理層的股權或期權激勵試點的效力

Sixth, the shares of the administrative level of large-scale state-owned enterprise and stated controlling or the effectiveness of program test point

第九章 新〈公司法〉是一部民營經濟促進法

Chapter 9 New company promote private economy

第一節 民營經濟政策和立法的回顧及前瞻

Section 1 private economy policy and review and outlook of its legislation.

一、《憲法》確認非公有制經濟法律地位的簡要歷史回顧

First, the history review of The constitution confirmed the lawful position nonpublic economy.

二、黨的十六大報告和 2004 年修憲的歷史性突破

Second, sixteenth Communist Party of China (CPC).and the historical breakthrough in 2004's constitution amendentment.

三、制約非公有制經濟發展的立法現狀

Third, The legislative limitation which depress the development of nonpublic economy.

四、《國務院 2005 年 3 號文》的政策"禮包"

Fourth, the policy bag of NO.3 notice of State Council in 2005

五、完善民營企業法律調整模式的立法前瞻

Fifth, the legislative outlook of perfect the adjustment of private economy

第二節 "重國有、輕民營"的立法烙印及其清除

Section 2 the legislative stamp; stated owned weigh over private and its remove

一、1993年《公司法》重國有、輕民營的缺陷

First, the 1993 company law's weakness of stated owned weigh over private.

二、1993年《公司法》重國有、輕民營的成因

Second, the reason of weighing SOE over private ventures of 1993 company law.

三、新《公司法》的鼎新革舊

Third, new company law remove the old and innovate new.

第三節 民營企業及其投資者的合法權益保護

Secction 3 protect the legitimate rights of private enterprises investors and other investor

一、問題的提出

First, the issue raised.

二、民營企業摘掉"紅帽子"的思考

Second, the consideration on private enterprises getting rid of the "red hats".

三、既承認物權的社會化,又要避免濫用公共利益之名侵害物權

Third, recognize the property rights of the community and also to avoid abuse of public interest against the property rights.

第四節 民營經濟健康發展與慎獨自律

Section 4 the health development of private enterprise and its self-consciousness.

一、馮某巨額騙貸案對民營企業家的警示

First, the enlightenment of Feng's cheating loan case to private Entrepreneur.

二、某香港上市公司老總被刑拘的思考

Second, the thinking of the detain ceo of a HK listing company.

三、奧克斯退市與企業的社會責任

Third, Aux delisting and corporate social responsibility.

第十章 新〈公司法〉對外商投資企業的影響

Chapter 10 New company law's influence to the foreign invest

第一節 公司法與外商投資企業法之間的關係

Section 1 the relationship between the company law and foreign invest law

一、外商投資企業法的曆次修改回顧

First, the amend process of foreign invest law.

二、外商投資企業法與公司法是一般法與特別法的關係

Second, the relationsip between the company law and foreign invest law is as the relationship between general law and special law.

三、外商投資企業法與公司法的主要制度區別

Third, the major system distinguishing between the above two.

四、改革前瞻:外商投資企業立法與公司立法應當並行

Fourth, the reform outlook ,the above two laws should be carried out together.

第二節 新《公司法》對外商投資企業資本制度的影響

Section 2 the new company law's influence to capital system of foreign invest

一、外商投資的一人公司

First, foreign invest-one person company.

二、分期繳納出資制度與外商投資企業

Second, tatus input ones's invest and foreign invest enterprises.

三、出資方式創新對外商投資企業的影響

Third, investment means innovation's influence on foreign invest enterprises.

四、股東瑕疵出資的法律後果

Fourth, the legislative result of imperfect shareholder's invest.

五、外商投資企業轉投資上限的廢除

Fifth, the limitation abolition on the foreign transfer its invest.

六、外商投資企業中的中方合作者身份

Sixth, the Chinese invest's indentity in foreign invest venture.

七、外商投資企業的合併分立更加便捷

Seventh, the merger or split of foreign invest venture becomes more convenient.

八、有限責任公司與股份有限公司的組織形態互換更加暢通無阻

Eighth, the change ment between limited liability company and Stock Limited Company is more easy.

九、外商投資公司設立辦事處和分公司的自由化

Ninth, foreign investment companies can freely set up branched and offices.

第三節 新《公司法》對外商投資企業治理結構的影響

Section 3 New company law's influence to administration construction of foreign investment companies

一、《執行意見》的基本態度

First, the pratice suggestion'ss basic attitude.

二、中外合資經營企業與普通內資公司的董事會制度比較

Second, the board system comparing between Chinese-foreign joint venture management enterprise and Domestic capital company.

三、中外合資經營企業與普通內資公司的經理制度比較

Third, the manager system comparing between Chinese-foreign joint venture management enterprise and Domestic capital company.

四、公司高管誠信義務的加強

Fourth, strengthen the obligation of top officials.

五、中小股東救濟措施更加靈活多樣

Fifth, flexibility and diversity of saving system of middle and minor-size company.

第四節 外商技資企業的清算制度

Section 4 liquidation system of foreign-funded enterprises

一、《外商投資企業清算辦法》的效力

First, the effectiveness of measures for liquidation of foreign investment enterprises.

二、外商投資企業清算的種類

Second, the liquidation forms of foreign-funded enterprises.

三、普通清算程式

Third, general liquidation procedure.

四、特別清算程式

Fourth, special liquidation procedure.

五、一波三折的深圳賢成大廈有限公司清算之爭及其評析

Fifth, the dispute about the liquidation of Shenzhen Xiancheng company and analysis.

第十一章 強調公司社會責任的人本型公司法

Chapter11 stressed that social responsibility of people-oriented of Company Law

第一節 為何強化公司的社會責任

Section 1, why stress company's social responsibility

一、從"中凱現象"和"非典"現象看公司的社會責任意識

First, finding company's social responsibility Through zhongkai Phenomenon and SARS.

二、新《公司法》的態度

Second, new company's attitude.

三、公司社會責任的概念

Third, the concept of company's social responsibility.

四、公司社會責任的內涵和外延

Fourth, the intension and extension meaning of company's social responsibility.

五、強調公司社會責任的理論根據

Fifth, the theorical reference of stress company's social responsibility.

六、公司社會責任的國際實踐

Sixth, the international practice of stress company's social responsibility.

七、我國的公司社會責任實踐

Seventh, domestic company's practice of stress company's social responsibility.

八、利益相關者之間的利益衝突

Eighth, stakeholders' interest conflicts.

第二節 公司對消費者的社會責任

Section 2, company's social responsibility toward consumers

一、強化公司對消費者社會責任的理論依據

First, the theorical reference of stress company's social responsibility toward consumers.

二、鼓勵公司自覺出尊重消費者權益的社會責任政策

Second, Encourage company to respect consumer's right and its social responsibility.

三、尊重消費者權利是完善公司治理的重要內容

Third, respect consumer's right is the important content of perfecting company's administration.

四、市場有眼睛,法律有牙齒:一流的經營者應當正確區分法律決策與商業決策:5 刀

Fourth, market has eyes and laws have tooth, one class lass operator should be correctly distinguish legal decisions and business decisions.

五、商人協會(行業協會)在保護消費者權益方面的作用

Fifth, the businessmen Association or industry Association's function in protecting consumers' rights.

六、消費者協會在強化公司社會責任方面大有可為

Sixth, consumer association can play a much better role in strengthening company's social responsibility.

七、跨國公司對消費者的社會責任

Seventh, multinational company's social responsibility.

第三節 公司對勞動者的社會責任

Section 3 company shoulder social responsibility for workers

一、強化公司對勞動者的社會責任的法理依據

First, the legislative reference of strengthening company's social responsibility towards workers.

二、鼓勵職工參與公司治理的國際潮流

Second, encourage the international trend of stuff joining the company administration activity.

三、1993年《公司法》的立法態度

Third, the attitude of company law in 1993.

四、公司法總則有關尊重勞動者權利的制度創新

Fourth, the system innovation on respect workers' rights.

五、職工監事制度之完善

Fifth, the perfecting of stuff's supervising system.

六、職工董事制度之完善

Sixth, perfecting stuff's chairman system.

七、職工代表與股東代表的平等法律地位

Seventh, stuff representative and shareholder representative are equal before the law.

八、明確職工代表的保密義務

Eighth, clarify the obligation of secrecy.

九、對職工代表的特殊法律保護

Ninth, the special protection to stuff representative.

十、其它配套制度的支撐

10th, the other supporting system.

十一、職工持股排程之鼓勵

11th, encourage stuff to hold the company stock.

十二、公司法定公益金制度之廢除及其評價

11th, abolition of public welfare fund and its analyze.

第四節 提高政府法治行政能力,推動公司社會責任運動

Section 4 promote government administrative capacity, push social responsibility forward

一、更新市場監管理念,樹立科學的發展觀與規範觀

First, update market regulation conception , to establish a scientific concept of development and standardization concept.

二、善用胡蘿卡政策,鼓勵公司自覺履行社會責任

Second, good at using Carrot policy, Encourage the company to practice its social responsibility.

三、善用大棒政策,創新政府執法手段,加強對公司社會責任的監管力度

Third, good at using Big Stick policy, innovate the means of carrying out the law, strengthening the supervising to the company's social responsibility.

四、嚴把市場主體和商品、服務的準入關

Forth, strictly control the entering into market body and products and service.

五、政府機構應當善用行政指導手段強化公司社會責任

Fifth, government should make good use of administrative means to highlight company's social responsibility.

六、政府也應自覺履行社會責任

Sixth, government should practice its social responsibility.

第五節 強化公司社會責任,組建和諧社會是全社會的共同責任

Section 5 strengthening social responsibility of business ,construct a harmonious society is the joint duty of everybody

一、鼓勵社會責任投資

First, encourage the social responsibility investment.

二、消費者也應樹立社會責任思維

Second, consumers should also erect the thinking of social responsibility.

三、新聞媒體在強化公司社會責任方面任重道遠

Third, news media has long way to go in strengthening social responsibility of business.

四、建立與完善公司社會責任訊息披露制度

Fourth, establish and perfect the information disclose system of social responsibility of business.

五、完善社會信用立法,打造公司誠信度

Fifth, perfect the laws on ;credibility,and build credibility analyze of business.

第十二章 強調公司善終的公司法

Chapter 12 the company emphasizes the good ending of company

第一節 公司解散事由的拓寬

Section 1, the reason broaden of dismissing a company

一、公司章程規定的營業期限屆滿或是其它解散事由出現

First, the operation perios is dued or other reasons apppear.

二、公司決議解散

Second, resolution decides dismiss.

三、因公司合併或是分立需要解散

Third, missing due to merger or devide of the company.

四、依法被吊銷營業執照、責令關閉或被復原

Fourth, with draw the operation liscece and asked to shun down or restore according to the laws.

五、司法解散

Fifth, judicial dissolution.

第二節 清算中公司的獨特法律地位

Section 2 unique legal status of the company under liquidation

一、清算中公司的法律人格

First, the legal personality of the company under liquidation.

二、清算中公司的權利能力和行為能力

Second, power and activity of the company under liquidation.

三、公司終止的法律效果

Third, the legal effect of termination of the company.

第三節 公司清算程式

Section 3 company liquidation program

一、清算程式的重要作用

First, the important role of liquidation program.

二、清算組的及時成立

Second, the liquidation group should set up in time.

三、清算組的主要職權與清算程式

Third, power and program of liquidation.

四、清算組的法律内容

Fourth, legal content of liquidation group.

五、清算組應否成為適格的民事訴訟主體

Fifth, whether liquidation group can be suitable the civil affair body.

六、清算群組成員的誠信義務

Sixth, the honest obligation of liquidation group.

七、行政清算程式之廢除

Seventh, the abolition of administrative liquidation program.

第四節 解決清算難的若干問題

Section 4 solving serval difficults in liquidation

一、清算義務人的義務與責任

First, a liquidator's obligation and duty.

二、拒絕或怠於清算的公司的股東不得新設公司的立法爭點

Second, the legislative dispute on the shareholder can't set up a new company once he refuse liquidation or not be cooperative.

三、解決清算資金缺乏問題的立法建議

Third, legislative proposals on how to slove lack of liquidation funds.

第十三章 可訴型的公司法及其解釋

Chapter 13 the company law can be brought to the court and its explanation

第一節 新《公司法》的立法技術更加嫻熟

Section 1 new company law's legislative skill is more mature

一、謀篇佈局更臻完美

First, the structure is more perfect.

二、新《公司法》與新《證券法》更加協調

Second, the relationship between new company law and security law is more harmonious.

三、立法文字更加簡約

Third, the words are more clear and simple.

四、立法邏輯更加周延

Fourth, the legislative logic is moire strict.

五、立法語言更加文通句質

Fifth, legislative language is more understandable.

第二節 新《公司法》的可訴性 622

Section 2 the new company can be brought to the court

一、"立法宜粗不宜細"的傳統思維及其影響

First, the traditional thinking and its influence the laws can be general and not be detailed

二、樹立"立法直細不直粗"的新理念

Second, erect the new concept of laws can be detail not to be general

三、新《公司法》可訴性的增強

Third, promote the possibility of the new company.

四、新《公司法》為配套法律規則預留了制度接口

Fourth, new company law leaves the trace for its aside laws and regulations.

第三節 人民法院受理的公司糾紛案件 631

Section 3 people's Court accepts the case aboutcompany's dispute.

一、人民法院應當受理法無規定或規定不明的公司糾紛案件

First, people's Court should accept the dispute which doesn't have any relevant regulation or have no clear regulation.

二、公司糾紛案件的主要類型

Second, main types of company disputes.

三、法院在積極介入公司內部法律關係時,應當審慎而為

Third, the Court should be cautious when actively involved in the internal legal relations.

第四節 尋找公司糾紛案件的裁判依據

Section 4 find the judgment base for the company dispute cases

一、公司法的特別法

First, special company law

二、公司法

Second, company law

三、證券法

Third, the securities law

四、民法

Fourth, Civil law

五、相鄰法

Fifth, adjacent act

六、公司章程

Sixth, company charter

七、股東協定

Seventh, shareholders agreement

八、商事習慣

Eighth, commercial habits

九、法理與學說

Ninth, jurisprudence and doctrine

十、判例和司法解釋

10th, jurisprudence and judicial interpretations