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[中图分类号] D922.287 [文献标识码] A [文章编号] 2096-6180 (2023) 02-0109-18

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Equity Sharing in Implicit Investment: Interest Coordination and Interpretation Approaches

WANG Xiangchun

Abstract: Article 24 of Provisions of the Supreme People's Court on Several Issues concerning the Application of the Corporate Law provides that nominal shareholders have the qualifications of shareholders, and Article 25 provides that nominal shareholder's disposal of equity can be handled in accordance with the rules of good faith acquisition. While protecting the interests of the actual investors, the personal cooperation of company is better maintained, the

protection of the security of the transaction is also more reasonable, and the conflicts of interest between the parties involved is more properly resolved. But these legal provisions exacerbated equity ownership disputes, and therefore received a lot of criticism. In fact, equity includes two sets of rights, which are the rights on shares and the rights attached to the shares. The provisions of Articles 24 and 25 can be interpreted as two sets of rights that belong to the nominal shareholder and the actual investor. Nominal shareholder is the shareholder in the company law and has the rights attached to the shares. He can participate in corporate governance and claim all shareholders' rights to the company. The actual investor is the owner of the stock in the property law and has the rights attached to the shares. If the nominal shareholder disposes of the stock without being authorized by the actual investor, it is Unauthorized Disposition. The analysis of legal norms and empirical research provide a realistic support for this interpretation path. The theoretical basis of the explanation path is that the ownership of the two sets of rights can be judged by different criteria. The ownership of the rights on shares should adopt formal criteria, and the ownership of the rights attached to the shares should adopt substantive criteria. The combination of the two