

Supervision deficiency in Chinese listed corporations – Need for reform of the supervisory board information system from a comparative law perspective of the German stock corporation Law

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Abstract

The recurrent grandiose corporate scandals on the Chinese capital market indicate significant defects in the corporate governance of Chinese listed corporations. These include the poor internal supervision performed by the supervisory board. The supervisory board –being the statutory supervisory body –often maintained astonishingly silent in cases such as balance sheet manipulation and defective information disclosure. In most cases the misuse of power by controlling shareholder and/or management board can neither be detected nor prevented by the supervisory board. This raises in particular the question whether and to what extent the supervisory board of a Chinese listed corporation is equipped with necessary information to exercise its supervisory function under the current regulatory framework.

To answer this question this paper deals with the information system of the supervisory board of the Chinese listed corporations on the basis of a comparative study with the German stock corporation law. The analysis is conducted from macro and micro perspectives, i.e. i) whether the management and the supervisory board under the current legal framework have the motivation at all to actively facilitate the supervisory board to obtain information, and; ii) whether the supervisory board has the ability to acquire sufficient information to exercise its supervision function as a matter of fact. From a macro perspective, neither the supervisory board nor the management is motivated to fulfill their respective information obligations due to defective design of the entire supervisory board information system, in particular inadequate allocation of rights and obligations between supervisory board and management, flawed confidentiality obligation for supervisory board members as well as the inexpedient liability regimes for the management and the supervisory board. From a micro perspective, the supervisory board misses a stable information base, which would



allow it to get a full picture of the management activities. Unlike in Germany, the management in China are in principle not obliged to periodically report to the supervisory board. The auditor of the annual accounts is not obliged to report to the supervisory board either. Also the occasional examinations initiated by the supervisory board itself cannot provide enough information. As a result, the supervisory board in fact cannot obtain sufficient information to exercise its supervisory function on account of the extensive malfunction of the information system. This paper further points out that this is rather an intended arrangement for the supervisory regime than a careless mistake of the Chinese legislator. Reform proposals to improve the current situation are presented in the last part of this paper.