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Current Status and Deficiencies of China's Anti-takeover Laws

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Abstract: From reform and opening up to the current "One Belt, One Road" policy, more and more countries have started trading with China. Transactions between multinational and Chinese companies are becoming more frequent and complex, it is particularly important to control the business practices of large foreign companies in China and prevent hostile takeovers, given the coexistence of crises and interests. Anti-takeover measures and anti-takeover laws are now the main effective means of dealing with hostile takeovers worldwide. Currently, for China, which is in the process of telling development, it is very necessary to formulate anti-takeover laws and regulations in the context of frequent and complex economic activities. This article focuses on the existing domestic anti-takeover laws and regulations using the method of legal regulation analysis. It was found that the main rea-son for this is that China is at an early stage of development and has not given much attention to anti-takeover issues in the early stages. In light of this, China must add clear legal provisions to regulate anti-takeover, focus on the comprehensive combination of anti-takeover measures and anti-takeover laws, and establish relevant regulatory bodies to address the problems caused by existing legal loopholes.

Keywords: hostile takeover, anti-takeover laws, anti-takeover measures

1. Introduction

Firstly, the provisions relating to anti-takeover measures Listed Companies administration will be analyzed to identify the deficiencies of a hostile takeover, which is the act of an acquirer acquiring a counterparty at will when the acquired party is unwilling to be acquired. Although China's existing laws and regulations do not yet provide a clear definition of hostile takeovers, China's market economy has grown rapidly in recent decades. The rapid growth of various large and medium-sized enterprises has gradually strengthened China's ties with the rest of the world. Furthermore, China's economic development will allow for an increasing number of cross-border acquisitions, and the changing and unpredictable market conditions are a constant reminder of the importance of having anti-takeover laws in place. The "Bao Yan case" was the first M&A case in China in 1993. With its huge potential consumer market and a series of open regimes, China drew many foreign companies to the Chinese market as a result of the subsequent reform and opening up. Several notable cases of inbound M&A occurred around 2006. Johnson & Johnson purchased Dabao, Nestle purchased Xufuji, and SEB purchased Nepal. Furthermore, many other state-owned enterprises in other sectors have been acquired by foreign firms. While these acquisitions indicate that the domestic economy

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has reached a certain stage of development, the target companies all have a lot in common. The acquired domestic companies have a good reputation and brand image, and they not only have a sales network in China, but they also have a significant domestic market share in their respective industries. Furthermore, in many cases of foreign companies acquiring Chinese companies, it is discovered that Europe and the United States monopolize the market in most industries. Although there are many rising stars in China, many European and American companies are large companies that have been developing for a century, with a wide range of markets and a strong base. It is more difficult to influence them across borders. As can be seen from these cases, these frequent and precisely planned acquisitions show the eagerness of foreign companies.

With the increasing likelihood of hostile takeovers in the future, it has become critical to introduce timely anti-takeover laws and implement relevant measures in the Chinese market. China must explore the shortcomings of existing laws and regulations and propose appropriate solutions to respond quickly to any problems it may face in the future. Economic law mainly regulates economic management relations and a certain range of business coordination relations in the process of social production and reproduction, in which various types of organizations are the basic subjects so that the overall economy of society can develop sustainably and stably social productivity. A country's ability to maintain an effective supply of resources necessary for its economic survival and development, and the ability of its economic system to operate with sufficient independence and stability to withstand force majeure and remain in good shape, are key to stable economic development. In other words, the country's economic security is very important, and the country's own ability to grasp the market is necessary to maintain the health of society as a whole. As competition in the market becomes increasingly intense, it is increasingly important to grasp control, and the merger and acquisition of enterprises is the control of equity, so in this fierce business competition, malicious mergers and acquisitions will inevitably occur. Relevant laws, on the other hand, are required to serve as guidelines for market transactions. Economic law is the primary adjustment of economic management relations and a specific range of business coordination relations in the process of social production and reproduction, in which various types of organizations are the primary subjects involved, in order for society's overall economy to develop sustainably and stably and to increase social productivity [1]. As things stand, there have been fewer hostile takeovers in China with foreign investors, and most of them have been bona fide acquisitions. However, the risk of encountering a hostile takeover is increasing in the future due to global economic integration. Foreign companies mainly use their techno-logical and financial advantages to acquire Chinese companies. As SOEs in various industries have developed common interests over a long period, there are strong horizontal and vertical ties between enterprises. If foreign investors ac-quire a key enterprise, the whole chain will be broken [2]. Therefore, on the premise that Western countries are more mature in their M&A tactics, it is all the more important for China to take precautions at home and build on the existing foundation.

2. Literature Review

As more foreign companies enter the Chinese market, the significance of the relevant issues cannot be overstated. Hostile takeovers and anti-takeovers are inextricably linked. Most countries have enacted and improved anti-takeover laws and measures in response to hostile takeovers. The existing Securities Law, Company Law, and supporting regulations, as well as other relevant regulations, in China, create a legal environment conducive to acquisitions and mergers. Interim Provisions on Enterprise Mergers and Acquisitions, Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, Provisions on Mergers and Acquisitions of Foreign Invested Enterprises, and Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors are examples. The initial framework already regulated acquisitions related to foreign-related

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factors and industry monopolies. However, there is no clear legal definition of anti-takeover in existing Chinese law, and it is only covered in a few laws and regulations. Currently, the core of China's latest Measures for the Administration of the takeover of Listed Companies lies in the concrete implementation of the relevant provisions in Chapter IV of the new Securities Law. At the same time, in the spirit of "effectively preventing and controlling market risks, improving the quality of listed companies and effectively safeguarding the legitimate rights and interests of investors", the takeover system of listed companies has been improved in a targeted manner in response to the outstanding problems that emerged in the process of takeovers of listed companies in the past [3]. And another and most important point: in addition to the takeover management provisions, there are anti-takeover-related elements, mainly restrictions on the board of directors. Supervisors and senior management have a duty of loyalty and diligence to the company [4]. Article 8(2) of the Measures for the Administration of Takeovers of Listed Companies qualifies the anti-takeover in direct principle. The target company's board of directors' decisions and actions in response to the acquisition must be in the best interests of the company and its shareholders, and it must not abuse its authority to create undue obstacles to the acquisition. The funds of the company shall not be used to provide any form of financial assistance to the acquirer and shall not be detrimental to the company's and its shareholders' legitimate rights and interests [5]. In addition, Article 23 of the Measures for the Administration of Takeovers of Listed Companies provides that an offer by an acquirer may be divided into a general offer and a partial offer. Article 33 provides for restrictions on the terms of reference of the directors of the company during the offer period. In addition, there are no more direct provisions on takeover and anti-takeover-related measures. As can be seen, very few laws and regulations relating to anti-takeovers are largely prevented or protected from within by the acquire, except for a few provisions in the Takeover of Listed Companies Regulations, which are directly relevant to anti-takeovers. Several other provisions, while not directly outside the explicit instructions on anti-takeovers, are correspondingly helpful. For starters, the finance department's legal responsibilities have grown. Because corporate acquisitions involve a variety of highly complex procedures, professionals from multiple disciplines, such as accountants, strategic advisors, transaction advisors, and lawyers, must typically collaborate to ensure the acquisition's success. Therefore, in addition to the legal department, strengthening the vetting requirements of other relevant departments is also a safeguard for the original company. Secondly, there are stricter requirements on shareholdings. For shareholders of more than 5%, every 1% increase or decrease in voting rights cannot be used for irregular increases in shareholdings, and all fundraisers must disclose the source of funds. These three requirements for shareholdings require a degree of legal protection against the early purchase of shares in the target company for a hostile takeover.

Overall, the promulgation of the Measures for the Administration of Takeovers of Listed Companies has provided certain legal safeguards for mergers and acquisitions, regulated the domestic market and brought new development opportunities and challenges to the economy. However, the content related to anti-takeover is less mentioned and not directly mentioned. It is an important process in gradually improving the Chinese legal system. Currently, the law protects eco-nomic development, but the situation in China has particularities. In terms of external factors, foreign companies have entered the Chinese market since the 1980s, gradually shifting from direct investment to mergers and acquisitions. In other words, it is assumed that the M&A policy will not change and that the rele-vant safeguards will be strengthened. In that case, the competitiveness of Chinese industries worldwide will be weakened, affecting the country's overall economic competitiveness. In terms of internal factors, to better integrate into the global economic environment, Chinese companies need to upgrade their industries and enhance their international competitiveness through M&A restructuring.

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3. Problems and Analysis of Causes

The anti-takeover decision is the basis and foundation of anti-takeover legal legislation. The study of anti-takeover laws and regulations in China is still in its infancy. In comparison, the UK and the US, as representatives of countries with developed legal systems, can serve as effective references. Studying the relevant anti-takeover measures in these two countries will guide and reference China's legislation.

In the United States, anti-takeover laws were enacted for the same purpose as in this country, to assist acquired companies in opposing hostile takeovers. The main theoretical basis for the legislation is primarily the stakeholder theory advanced by Dr Blair. Attributing anti-takeover decisions in US anti-takeover law is primarily a matter for the board of directors. The aim of this model is that management is the steward of the company and is familiar with its management. However, the particularities of the US situation also require attention to the complexities of federal and state laws, which are sometimes transient and inevitable conflicts. These laws are improving in the face of the increasing complexity of takeover issues. Management ownership of anti-takeover decisions enables the target company to respond quickly to a hostile takeover. It avoids the short-sightedness of shareholders who focus on immediate interests at the expense of the long-term development of the company [6]. Secondly, the law in the UK is different. The main pieces of UK legislation relating to takeovers are currently The City Code on Takeovers and Mergers and The Company Act 2006, which primarily give shareholders decision-making powers. However, it suggests that UK legislation is based on the centrality of the general meeting and the principles of economic democratization. Shareholders are considered the company's owners, and the general meeting is the company's supreme authority of the company [7]. There are advantages and disadvantages to each of these two different models, but what is certain is that each country's legislation is tailored to its national context and policies.

Finally, by contrasting mature and systematic legal provisions for anti-takeover of target listed companies in other countries. As can be seen, the company's dominant authority for anti-takeover is primarily internal. The focus of anti-takeover law is the attribution of anti-takeover decision-making power, which serves as the foundation for the subsequent development of a variety of anti-takeover measures. The role of the law is mainly supplementary and complimentary. In contrast, there are three main problems with anti-takeover legislation in China. Firstly, the anti-takeover decision-making power is unclear. Although the relevant Measures for the Administration of Listed Companies stipulate the responsibilities and obligations of the company's top management, they do not assign the anti-takeover decision-making power to the board of directors, supervisory board or shareholders. The overall idea of regulating the anti-takeover decision-making power is unclear, thus creating a dilemma of difficult application of the law in complex anti-takeover practices [8]. Secondly, the complexities of anti-takeover practice have created difficulties in applying the law, as China's legislation is mainly based on the UK and the US. The cultural, economic and political differences between each country mean that some of the anti-takeover measures that have been effective abroad cannot be implemented in China.

Apart from this, the Company Law, the Securities Law and the related Anti-Monopoly Law, which currently have high legal authority, only mention the parts related to takeovers, and the contents are relatively fragmented and general. The only one with specific content is the Measures for the Administration of Takeovers of Listed Companies, a refinement of the Securities Law and the Company Law and a more specific implementation policy. Yet, there are too few references to anti-takeover, and the legal ranking is low. Because the scope of application of the lower law is part of the scope of application of the higher law, the scope of application of the higher law is broader than the scope of application of the lower law [6]. Therefore, a higher level of law with a broader scope of

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application would also be better able to cope with the increasing complexity of the securities market and the economic situation. Thirdly, there is a lack of an effective regulator. Existing anti-takeover laws have the potential to allow listed companies to take advantage of anti-takeover measures. Although the current law states that company executives "shall not abuse their authority to create improper obstacles to a takeover", how is "abuse of authority" defined? Are anti-takeover measures still legal if the company's interests are not harmed but not defended? Is it true that the target company is more likely to be acquired by the other company if this loophole is exploited? Beyond this, while the legal compliance of corporate anti-takeover measures has begun to receive attention in recent years, there is still a lack of substantive regulatory authority.

4. Improvements and Measures

Firstly, the legislation on anti-takeover measures should be improved, mainly concerning the Securities and Company Law. The adaptability of anti-takeover measures to Chinese law is key to ensuring that anti-takeover measures can be implemented successfully. Further improving the relevant laws is also a way to ensure that anti-takeover can work in important ways. Firstly, companies must have anti-takeover measures in place. Given the variable and uncertain nature of the actual situation, companies should first develop some appropriate anti-takeover measures under the existing legal system. In China, most of the anti-takeover measures now in use, for example, have been imported mainly from the US and the UK. In general, the basic principles of anti-takeover law are as follows: first, the principle of maximizing shareholders' interests; second, the principle of shareholder equality; third, the principle of limiting the powers of the target company's board of directors; and fourth, the principle of information disclosure [9]. When China draws on and develops relevant anti-takeover measures, it should consider whether these principles are consistent with China's national conditions and align with these four principles. For example, implementing the "poison pill plan" requires a sound legal background and prerequisites, but in China, the restrictive nature of preferred shares prevents its full implementation [10]. Thus, to implement a "poison pill preference share" scheme, the preference shares in the target company would need to be exchanged for ordinary shares. However, this cannot occur because our preference shares laws and regulations. Therefore, we need to consider whether these measures are appropriate in China's social and legal system and find anti-takeover measures suitable for China's political and judicial system. Depending on the balance of power between the merging parties and the intention of the merger, companies should choose one or a combination of these anti-takeover strategies within the framework of existing Chinese laws and regulations and in the context of promoting the long-term development of the company and maximizing the interests of shareholders [11]. Based on this, it is possible to supplement the Securities Law and the Company Law, which have a broader scope of rights, with relevant provisions favoring anti-takeover measures on the one hand, and to improve anti-takeover measures from abroad so that they can be adapted to China's needs in the broader economic context.

In addition, the laws and regulations in the general meetings of shareholders should be discussed and improved. The general meeting of shareholders, as one of the company's senior management, is closely linked to the interests of the company and the major decisions that are usually made. An anti-takeover bid aims to help the target company resist or even defeat a hostile takeover bid by the acquirer. At its core is the prevention of a transfer of control of the company to another party [9]. The establishment of the right to make anti-takeover decisions is, therefore, a very important aspect that will increase the responsibility of the board of directors or shareholders to consider the company's interests more actively. On the one hand, as the current Chinese legislation is more oriented towards English law, with a tendency to certify the rights of shareholders, it is possible to develop laws and regulations centered on "shareholders' meetings" in line with Chinese conditions, taking into account the uniqueness of the Chinese culture and economy. On the other hand, although the board of directors

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is also part of the company's senior management, the Company Law lacks complete provisions on the obligations of directors, and the Measures for the Administration of Takeovers of Listed Companies also lack provisions like those in the UK City Code. Therefore, although the Measures for the Administration of Takeovers of Listed Companies provide some measures that the board of directors may not take, there is still a risk of inaction [12]. While no law is set in stone, and no perfect law can avoid all risks or solve all problems, laws that are realistic and work well in the national context are often the most effective.

Finally, establishing a regulatory authority to fill in the gaps in the law and strengthen the protection of the relevant laws would allow for an increase in the number of corresponding regulatory authorities. Since legal regulation cannot always keep up with reality, there will always be aspects that the law does not consider in this regard. For example, additional regulatory authorities are necessary for the UK and the US, which now have mature institutional systems. In the UK, regulation is mainly carried out by the Takeover Panel. Their rules on takeovers provide a great deal of flexibility to facilitate a substantive review of specific issues that may arise in the takeover and anti-takeover process [13]. In this regard, the United States empowers shareholders. Since the board has decision-making authority, the US judiciary requires directors to strictly adhere to their fiduciary duties, and there is a body of case law that allows shareholders of a company to sue for torts arising during a takeover [13]. Currently, the highest internal authority of listed companies in China is the general meeting of shareholders. Still, the lack of vesting power makes it impossible to determine whether the board of directors are given the role of "supervisor". Therefore, it is recommended that an external supervisory authority be established. Firstly, the personnel of the supervisory authority should be selected, as the organization in question has been set up to prevent inaction on the part of the company's internal personnel, which in disguise helps the target company to be taken over by a hostile takeover. Therefore, an equal number of persons from the national public authorities and from within the company are selected respectively to supervise the company's top management in terms of compliance with existing laws and regulations and in terms of whether the interests of the company are being safeguarded. Secondly, the terms of the regulatory authority should be Given the specificity of its internal composition, and the agency will not be a formal organ like the formal departments of the state. By contrast, the agency is simply an organization set up on a basis recognized by the government. Thirdly, in terms of the scope of regulation by the regulator. To reflect the effectiveness of the institution's creation, narrowing the scope of regulation allows for greater clarity of purpose. Therefore, the supervisory authority only reviews the company's top management when making decisions regarding takeovers. In any case, the supervisory authority needs to be set up in such a way as to protect the vital interests of the target company's shareholders. In general, anti-takeover laws will vary with a country's economy and over time. There are many areas where the current laws in China need to be improved. Still, it is important to note that laws are created to solve practical problems within the context of the political system. The improvement of laws and their effectiveness will require the cooperation of other administrative departments, companies and the parties themselves. In addition, it is important to recognize that each law can only solve a specific and limited problem. In contrast, we live in a world with unlimited problems and unknown challenges in the future [14]. The law is not a panacea, and it is important not to rely solely on the law to solve problems but to be flexible in its application. The contents of this article are also inadequate due to limited knowledge. It is hoped that the content of this article will contribute to the country's development.

5. Conclusion

In general, anti-takeover laws will vary with a country's economy and over time. There are many areas where the current laws in China need to be improved. Still, it is important to note that laws are created to solve practical problems within the context of the political system and that the improvement

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of laws and their effectiveness will require the cooperation of other administrative departments, companies and the parties themselves. Based on the current basic situation, the recommendations in this paper are to establish additional regulatory bodies, improve anti-takeover laws and regulations and focus on the suitability of anti-takeover measures for the Chinese market and economy.

As the argument in this paper centers on the inadequacy of anti-takeover laws, there is still not enough to consider when thinking about the issues and making relevant recommendations. Firstly, the establishment of regulatory bodies should follow the same procedures and rules as those required for the establishment of legal organizations that are not state bodies in China. Secondly, there are various and complex anti-takeover measures, each of which is implemented differently, and this article does not provide any insight into the specific implementation of anti-takeover measures. The law is not a panacea, and it is important not to rely solely on the law to solve problems but to be flexible in its application. The contents of this article are also inadequate due to limited knowledge. It is hoped that the content of this article will contribute to the country's development.

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