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Logical Layering and Criteria Reconstruction for the Determination of Usurpation of Corporate Opportunities

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Abstract. China's Company Law introduced the rule of corporate opportunity in 2005. The 2024 revision (new Art. 183) refined the rule, yet its language remains loose, giving rise to inconsistent adjudication, intricate tests, and an unbalanced burden of proof. Precisely identifying usurpation is vital to protecting corporate assets and market integrity. This paper discusses a "two-step" logical hierarchical framework based on the doctrine of corporate interest through case analysis and literature research. The framework aims to clarify the elements of the foundation and core layers for the determination of corporate opportunity and the key elements for the characterization of usurpation. The study shows that applying the "two-step" logic expands the scope of subject matter to include controlling shareholders and beneficial owners, and adds "express corporate refusal" as an exception. Although the "two-step" logic needs to be improved, it can reduce the different judgments in the same case, lay the foundation for the formation of guiding cases, and help judicial practice and corporate governance.

Keywords: adjudication logic, duty of loyalty, corporate opportunity, usurpation behavior

1. Introduction

In an era of rapid growth, proliferating opportunities bring both promise and peril. After the separation of powers, insiders are in charge of management, and their profit-seeking nature conflicts with the duty of fidelity. Without clear constraints, they may usurp the company's opportunities, harming stakeholders and unsettling the market.

The corporate opportunities doctrine was first forged in Anglo-American case law. China began experimenting with the idea in 1994 and 1997, formally codified it in the 2005 Company Law, and, in the 2024 revision, expanded the circle of obligated persons, distinguished the doctrine from the non-compete rule, and elevated a business opportunity to an independent legal interest [1].

However, the rule remains skeletal. Statutory language is vague, the range of duty-bound actors is still too narrow, and courts—lacking concrete standards—have adopted divergent logics: "two-step" logic (such as the case of lu moubing), confusion and non-compete rules (such as the case of jin xuejun), mechanical according to the identity of the subject (such as the case of bao lingxian) [2-4].

This paper explores the current situation and problems of the application of relevant laws through literature analysis method and case study method, and proposes reasonable standards through

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comparative analysis. This paper aims to construct a scientific framework to enhance the uniformity and rigor of legal application.

2. Logical hierarchical framework construction: from "chaotic identification" to "two-step"

2.1. Theoretical basis of the "two-step" logic of adjudication

Article 180 of the company law provides for the directors, supervisors and senior management of the duty of loyalty, while Article 183 serves as its theoretical basis [5]. The duty of loyalty requires these individuals to act in the best interests of the company and refrain from engaging in behaviors that could undermine its interests for personal gain. This framework categorizes the elements of Article 183 into two aspects: one is that the director, supervisor, or senior management takes advantage of his position or status in the company to seize a certain business opportunity; the other is that the business opportunity belongs to the company's opportunity [6]. These two elements reflect the "two-step" decision logic concerning corporate opportunities and usurpation, emphasizing the duty of loyalty. However, the determination of the second element - corporate opportunity is more abstract and difficult to determine. In judicial practice, generally the determination of the company's opportunity as the core of the trial whether to constitute usurpation of the company's opportunity [6]. Scholars believe that the approach taken by China's judicial practice often mirrors the common law system too closely, which may lead to inconsistencies. In Anglo-american law, judicial decision guide the identification of torts and corporate opportunities, resulting in various interpretational challenges Therefore, the scholars proposed that China should develop its own protection mechanism for corporate opportunities, avoiding the pitfalls of the common-law system by firmly adhering to the “two steps” judicial logic [7].

2.2. "Two-step" logic of judicial application of the dilemma

Case analysis reveal significant discrepancies in judicial practices, particularly regarding the "two-step" adjudication logic. Therefore, it is necessary to deeply analyze the "two-step" logic in the judicial application of the dilemma.

One dilemma is the mismatch and materialization of elements in determining corporate opportunities.. The key to the "two-step" logic lies in defining these opportunities, yet its abstract nature complicates standardization, leading to inconsistent interpretations in practice. For example, the "functional convenience" will be included in the determination of usurpation, but in fact it should be more reasonable as a corporate opportunity to determine the elements. "Duty facilitation" refers to the acquisition of business opportunities by a company's internal personnel based on their duty status to carry out commercial behaviors, as well as the use of the company's resources to obtain opportunities based on the convenience of their duties, which is essentially the way to obtain company opportunities. If it is taken as the determining factor of usurpation, it will lead to a logical error, i.e., as long as the company insiders do not use their positional convenience to usurp the opportunity, it does not constitute a violation of the rule, which is obviously not in line with the legislative intent [8]. In addition, the determination of usurpation relies on the judge's discretion, which is subjective, and the lack of clear guidelines for specific discretion can easily lead to different judgments in the same case. These problems are caused by the "two-step" adjudication logic can not be universally applied a major obstacle, so in order to make it become the mainstream of the adjudication logic, it is necessary to solve its determination of the standard boundary is not clear, easy to mismatch the elements of leniency and severity of the problem.

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Another dilemma is the limitations in judicial capacity. The two-step logic requires judges to have the ability to make business judgments—assessing a company's capacity to exploit opportunities—and legal interpretation skills to differentiate between "corporate opportunity" and "usurpation." In jurisdictions where judges often lack specialized training, especially in complex fields like artificial intelligence, decisions may diverge from reasonable expectations. Although Article 79 of the Civil Procedure Law provides for expert auxiliaries, the utilization rate is still low in practice Data Source [9].

Lastly, litigation efficiency poses a significant challenge within any adjudication framework. Current judicial pressures, such as the imbalance of cases to judges—274 cases per judge in 2022—strain resources. Furthermore, the Company Law does not specify the rules of evidence for Corporate Opportunity Rules (COD), and most courts often require the plaintiff to bear the "absolute burden of proof", resulting in an imbalance in the distribution of the burden of proof and lowering the efficiency of the judiciary.

2.3. Comparative analysis: practical value of the "two-step" judgment logic

In addition to the "two-step" approach, there are two other types of adjudication logic that have obvious flaws. First, mixing the corporate opportunity rule with the non-compete rule, ignoring the broader scope of the former (including similar and related business opportunities), resulting in inaccurate determinations. Such as "Liu Guangtao case", the defendant usurped the company's engineering projects, but the court only from the perspective of competition, such mixing is not uncommon in judicial practice [10]. Second, the mechanical application of the company law provisions, according to the fixed elements of judgment, difficult to adapt to the complex business practice, easy to lead to the decision and the actual disconnect.

Although the "two-step" logic faces the challenges of element determination and judge's ability, but the advantages are more prominent. Its progressive judgment framework can clarify the boundaries of adjudication and alleviate the dilemma of element stacking; focusing on the core elements in stages (first judging the accessibility of opportunities, and then reviewing behavioral violations) can clarify the weight of the elements, alleviate the pressure of proof and trial, and enhance judicial efficiency. In addition, in the standard of proof and burden of proof, laddering standard (first low-capability to determine the existence of opportunity, after the high standard of proof of usurpation) and dynamic distribution model (after the plaintiff's initial proof, the defendant to bear the burden of rebuttal), more in line with the principle of fairness and efficiency.

3. Specific steps to determine the standard reconstruction

3.1. The legal nature of corporate opportunities

Company opportunities and business opportunities are different in nature, need to be judicially determined to meet the specific elements are regulated by the company law, the formation of the "first to determine the attribution, and then regulate the use of" two-stage logic for the regulation of usurpation to lay the foundation of the behavior [11]. From the jurisprudence, the need to clarify the legal nature of the company's opportunities to start the rules to improve. There are three main types of doctrine in the academic community:

The right doctrine contains "expectancy right doctrine" (the company opportunity belongs to the realizable expectancy right) and "priority right doctrine" (the company has the priority right of access to the opportunity) [12-13]. The Property Rights Doctrine considers corporate opportunities

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to be property in the broad sense. Zhang Yaoming calls it a "right to value", Wu Handong believes that an incorporeal object can be a property interest, and Feng Guo advocates its inclusion in intangible property [11, 14, 15]. The doctrine of corporate interest holds that the corporate opportunity is a property interest associated with the operation and reflects the interests of the company as a whole. Lv Laiming points out that it is the "possibility of profit" formed by the company's inputs, the "possibility of profit realization" accumulated by the company's operations, and the object of protection contains costs and expected benefits [16]. The usurpation of the opportunity to substantially violate the potential interests of the company chain, the said for the regulation of behavior to provide "damage to the interests of - liability relief" chain, in line with the company law to protect the overall interests of the company's goal [6, 17]. In summary, the company's interests that more reasonable, can fully explain the relevant characteristics, fit the company law framework, to provide support for the construction of rules.

3.2. The core elements of company opportunity recognition

In the evolving landscape of company law, determining the attribution of corporate opportunities is essential for balancing the interests of the company and the rights of management. Traditional single-dimensional approaches struggle to address complex business scenarios, prompting the proposal of a composite determination standard under the "two-step" adjudication logic. This standard integrates the agent's duty of fidelity to the company and employs two levels of judgment: a basic level focusing on "business relevance" and "positional convenience," and a core level assessing "exploitation possibility" and "expectation of benefits."

Firstly, the basic layer serves as a formal screening to exclude opportunities that are obviously unrelated to the company and narrow the scope of examination. It consists of two elements: business relevance and functional convenience. Business relevance assesses how closely a business opportunity aligns with the company's existing or potential operations, recognizing that a company's business scope is dynamic and may evolve over time. If an opportunity relates to the company’s current or future business, it is more likely to be deemed a corporate opportunity.

Second, functional convenience expands the scope of consideration while introducing limitations. If a company insider discovers an opportunity through their position—such as access to specific information or business channels—that opportunity is considered a corporate opportunity. Conversely, if the insider acquires the opportunity through unrelated means, it is deemed a personal opportunity, even if it overlaps with the company's business scope [6].

After passes the basic layer, an opportunity's status as a corporate opportunity must be confirmed at the core layer. This layer consists of two elements: exploitation possibility (i.e., firm capability + firm substantial effort) and expectability. A business opportunity, although formally fulfilled, cannot be recognized as a corporate opportunity if the company does not have the capacity or does not make substantial efforts to develop the opportunity. From the resource base theory of economics, a company's competitive advantage is derived from its unique resources and capabilities. If a company possesses the capabilities and resources to develop a business opportunity and uses them through substantial efforts, then it is likely to gain an advantage in market competition and realize the value of the business opportunity. This is also in line with the principle of fairness, i.e. a company should enjoy the benefits of a business opportunity only if it has put in the effort and possesses the corresponding capabilities. The company's ability includes human, material, financial and technical resources, etc. Only when a company invests in market research and preparation can it demonstrate a genuine intent to utilize the opportunity.

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Expectability is the main consideration of the willingness of the counterparty. Although a business opportunity belongs to the company, if the counterparty does not have the tendency to trade with the company, the company loses the utilization of the opportunity from the source, and does not need to invest a large amount of resources to strive for it, thus resulting in a waste of resources.

3.3. Key elements of usurpation characterization

After completing the identification of the company's opportunities, it is necessary to carry out the characterization of usurpation behavior, only accurate identification of usurpation behavior, in order to effectively safeguard the company's legitimate rights and interests, and to realize the ultimate purpose of the company's opportunity identification system, and its constitutive elements can be identified with reference to the infringement of rights and interests:

Subject identity, in addition to directors, supervisors, senior management, should be included in the controlling shareholders, the actual controller. According to article 180 of the company law, this kind of subjects even if they do not serve as a director but the actual implementation of the company's affairs, also has the duty of loyalty and diligence, will be included to fill the legal gaps, more comprehensive protection of the interests of the company [5].

Subjective fault, there needs to be intentional. This is in line with the duty of loyalty, can distinguish between unintentional commercial behavior and intentional usurpation, fit the subjective and objective unity of the principle of responsibility.

Behavioral elements, damage results and causation, the relevant subject of illegal occupation of the company's opportunities for the behavior of illegal, and the behavior needs to actually cause damage to the company, the two have a causal relationship. The result of the damage is based on the actual damage rather than the profit of the actor, which reflects the core purpose of the company law to protect the interests of the company.

In addition, it is necessary to examine whether there are any exceptions. In addition to the "report to the board of directors or shareholders' meeting and adoption of a resolution" and "the law or the bylaws stipulate that the company cannot make use of it" as stipulated in the company law, the phrase "the company expressly refuses to make use of it" should be added. Compared with implied waiver, explicit refusal is easier to be judicially determined and can avoid the problem of complicated operation.

4. Conclusion

The rule of prohibiting usurpation of the company's opportunities is a concrete embodiment of the duty of loyalty of directors, supervisors and other personnel as stipulated in Article 180 of the Company Law, which is of great significance in safeguarding the legitimate rights and interests of the company. However, due to the roughness of the relevant laws and regulations of the company law, there are problems such as confusing logic of adjudication, difficult to unify the elements of determination, different standards of discretion and low efficiency of litigation in judicial practice, which need to be improved urgently. In judicial practice, in addition to the "two-step", there are two types of defective adjudication logic, namely, mixing the rules of corporate opportunity with the rules of non-competition and mechanically applying the provisions. Based on the analysis, this paper puts forward the perfect suggestion: applying the "two-step" adjudication logic, branch opportunity identification and usurpation behavior characterization of two steps; analyze the legal nature of the company's opportunity and clarify the identification criteria of each step, expand the subject range of

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usurpation behavior characterization to controlling shareholders, actual controllers; supplement "the company's explicit refusal" as an exception. explicitly refused" as an exception.

Although this paper reveals the problems in judicial practice through case analysis, the number of cases is limited, and there is no categorization of companies in different regions, industries and sizes. The lack of broader empirical data support makes it difficult to fully reflect the whole picture of judicial practice. Future research can increase the number of cases and expand the scope of research. By means of big data analysis and other means, it can reveal the problems and trends in judicial practice more comprehensively and provide stronger empirical support for the improvement of rules.

Although the "two-step" logic still needs to be perfected, its structured path and flexible mechanism can help judges to follow the rules, reduce the different judgments in the same case, lay the foundation for the formation of guiding cases, and then enhance the judicial predictability and consistency, and promote the rules of adjudication logic to improve the uniformity of the better choice to crack the current judicial dilemma.

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