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Determining Corporate Opportunity Ownership: An Empirical Study from the Perspective of Loyalty

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Abstract. This paper focuses on the determination of the ownership of corporate opportunities from the perspective of the duty of loyalty. Based on Article 180 of the Company Law (2023 Revision), this paper conducts an empirical analysis of cases to extract three dimensions of the determination of corporate opportunities: relevance, realizability and expectable property rights and interests. The study finds that in judicial practice, there is an absence of criteria for identifying corporate opportunities. This primarily reflects in the lack of clear guidance on providing intangible opportunities and the lack of criteria for the determination of the qualifications of new and old companies, which has led to differences in judgment in the process of practice to a certain extent. This paper aims to analyze the judgment dilemma, explore the path reconstruction, and provide theoretical and practical support for unifying the judgment standards and improving the corporate opportunity protection system, which is of great significance to optimize the business environment.

Keywords: Corporate Opportunities, Duty of Loyalty, Judicial Practice, Legal Application

1. Introduction

With the deepening of China's market economic system and the increasing complexity of corporate governance, the identification of corporate opportunity ownership has become a focus of commercial disputes. The new Company Law, revised in 2023, strengthens the regulation of "usurping corporate opportunities", reflecting the trend of strengthening the protection of corporate opportunities at the legislative level. However, during the implementation process, it still faces the dilemma of determining corporate opportunities ownership. Although judicial practice has summarized the identification dimensions and established relatively unified standards, it is difficult to respond to the complex commercial reality needs due to insufficient coverage. First, unlike tangible business opportunities, the determination of the attribution of intangible business opportunities, such as cooperation intention, lacks quantitative standards. Second, there is no clear "corporate opportunity acceptance qualification" standard. There is still no consensus in the academic field.

Therefore, this study employs an empirical approach, analyzing typical cases retrieved using keywords such as "duty of loyalty," "corporate opportunities," and "business opportunities" through empirical analysis. The findings contribute to exploring practical difficulties through horizontal comparison and refining judicial rules to build optimization paths. This research offers both

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theoretical and practical value by unifying the judgment scale, thereby protecting the reasonable rights and interests of companies and shareholders, and enhancing the business environment.

2. Related work

2.1. Literature review

The study adopts the definition of "corporate opportunities" as referred specifically in Article 180 of the Company Law (2023 Revision), which prohibits directors, supervisors and senior managers from "seeking business opportunities belonging to the company for themselves or others by taking advantage of their positions". These provisions essentially represent the concrete manifestation of the duty of loyalty in the business behavior of directors, supervisors, and senior managers, and their value lies in establishing the order of interest of the company and the scenario of conflict of interest [1]. Shi and other scholars emphasized that the core point of the imperfect provision is that the corporate opportunity has not been defined [2]. As noted by scholars including Li, identifying a corporate business opportunity is the logical premise for determining its usurpation by directors. However, the Company Law does not clarify its considerations, so there is greater flexibility in the application of subsequent laws, resulting in uncertainties and differences in judgment [3].

2.2. The three-dimensional theory of corporate opportunities

Based on existing scholarly research, the criteria for determining corporate opportunities are summarized into a three-dimensional framework. First, corporate opportunities are relevant. The company's opportunities are directly related to its main business, and it has made preliminary investments or established a basic foundation, such as fostering stable customer relations through long-term cooperation. Second, corporate opportunities are actionable.,meaning the company has the capacity to pursue and develop it through normal operational procedures, thereby excluding random and immature market information. Finally, corporate opportunity is reasonably expectable proprietary interests from which the company is positioned to benefit. In essence, the abbreviation of "corporate business opportunities" is a concise expression for "a business opportunity belonging to the company", which explicitly establishes an ownership relation through the phrase " belonging to the company" [4]. In addition, the company must possess the capacity to assert its rights over the opportunity. This implies that the company has not explicitly waived the opportunity, and faces no objective impediments, such as financial constraints or lack of operational qualifications, that would prevent it from capitalizing on the opportunity under normal circumstances.

3. Practical case analysis

3.1. Presentation of typical cases

3.1.1. Case of a digital technology company in Henan Province

A digital technology company in Henan (hereinafter referred to as "digital technology company") has been engaged in software development and project bidding for a long time, and legally enjoys the core software copyright required for the bidding project involved in the case (the copyright is the legal qualification requirement for project bidding, and is the key entity carrier for the opportunity to land). Liu, the Executive Director of the Digital Technology Company, took advantage of his position to illegally transfer and register the copyright to the intelligent technology company, which

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used his bid to obtain the corporate opportunity that belonged to the former. The court held that the bidding opportunity was a company opportunity of a digital technology company, and Liu and the company had infringed its rights [5]. The reasons for core judgment include three aspects: opportunities were directly related to the company's core assets (copyright) and had the potential for early accumulation, which could be realized through copyright registration, and the company had not given up and had the ability to undertake.

3.1.2. Case of Huatuo Online Company

Huatuo Online Company (a wholly-owned subsidiary of Meigujia), whose core business is the operation of the Internet medical platform, has signed an agreement with the provincial second medical institution to jointly build an Internet hospital. Li, Chairman of the Board of Meigujia Company, manipulated Youdeyi Company to take over this project without obtaining approval from the Shareholders' Meeting. After the trial, the court determined that the cooperation opportunity belongs to Huatuo Online Company, and that Li illegally obtained the company opportunity [6]. The core judgment reasons include three aspects: First, the opportunity was related to the company's business operations, and the company has made a preliminary investment through practical actions (such as negotiation and signing intention). Second, the project had determined the content of cooperation through agreement (clarify the core of cooperation mode), which could be implemented and promoted according to the normal process, and was not a pure market information of "possible cooperation". Thirdly, the project income should have belonged to Huatuo Online Company, and the company had the qualification to claim rights and interests and had a "reasonable expectation" for the opportunity.

3.1.3. Case of Xinqizheng Company

The license of the old Qizheng Company was revoked by the market regulatory department for liquidation (involuntarily) due to the failure to submit annual reports in accordance with regulations. During the same period, the new Qizheng Company was established with the same business scope and operated in the name of the old Company. Chen, the general manager of the new Company, concealed the facts and asked Longjian Company to sign a lease contract with the Lisheng Company under his control. After hearing the case, the court found that the market leasing opportunity involved in the case belongs to Xinqi Zheng Company, and Chen's act constitutes abuse of rights [7].

The reasons for the core judgment include three aspects: First, the business of Xinqizheng Company had a close business connection with Old Jiuqizheng Company, and the market involved in the case had been actually operated and managed for a certain period of time in the name of the old company after its establishment. Second, if Chen had not concealed the facts, Xinqizheng Company would have been able to continue to obtain the lease right instead of the old one, and Longjian Company also would have had the intention to provide this business opportunity, which could have been actually implemented. Thirdly, Xinqi Zheng Company had the ability to continue to perform the Lease Contract, and the Company has not given up on the opportunity to maintain expectations for the lease.

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3.1.4. Case of Mouke Company

The original business scope of a certain company includes "robot training services". Due to the need to obtain the approval and permission of the relevant administrative departments, it finally abandoned the application and changed its business scope and company name (removing the words "education" and "training"), and explicitly withdrew from the training industry. Lu, a former executive of Mouke Company, established another company (Mouda Company) to obtain a robot training license for robot training services, and engaged in the operation of this business. Mouke Company filed a lawsuit against Lu on the grounds of "Lu's misappropriation of the company's business opportunity" [8]. The reason for the ruling is that a certain company had abandoned the training business through a series of acts and no longer enjoys the opportunity.

3.2. Divergences in the burden of proof for tangible and intangible corporate opportunities

3.2.1. Proof threshold for tangible corporate opportunities

The core of the division standards between tangible and intangible opportunities is twofold: whether there exists an objective and stable carrier of rights or contracts, and whether the proof relies on directly related carrier evidence or the procedural evidence of a comprehensive presumption.

Because tangible company opportunities have clear rights or contract carriers, their proof threshold is unified and objective, with the core centered on the direct relevance of "carrier evidence". Taking the case of the Digital Technology Company in Henan Province as an example, the court held that the bidding opportunity in this case is a typical tangible company opportunity. Its proof relies on two types of key carrier evidence: The first one is the copyright-related materials, which directly prove the legal enjoyment of the core assets (copyright involved) by the Digital Technology Company. Second, the bidding documents and the matching materials regarding the copyright and bidding requirements demonstrate that the bidding opportunity based on copyright has the practical conditions for implementation.

During the trial, the court only needs to verify the authenticity (registration for Data Technology Company), legality and relevance to the company's business (where the copyright can directly meet the bidding requirements). Then it can clearly determine the ownership of the opportunity. The standard of proof is clear and unified, the direction of the parties' proof is clear, and the predictability of the judgment result is strong.

3.2.2. Certification threshold for intangible corporate opportunities

In practice, business opportunities are sometimes simply defined as trading opportunities for counterparties to sales and other contracts, and sometimes as opportunities involving buying shares, mergers and acquisitions, and participating in bidding. The degree of certainty and the possibility of realizing the ultimate interests vary greatly and change constantly [9]. The essence of the company's business activities is to continuously seek and grasp numerous opportunities, so as to turn the possibility into reality [10]. Intangible corporate opportunities are often in a transition period from business opportunities with abstract transaction potential to tangible corporate opportunities. Their form (as opportunities) is underdeveloped. Due to the lack of substantive carriers, they are mostly manifested in dynamic procedural information such as business negotiation records and cooperation intentions. The standard of proof for such opportunities is ambiguous and subjective, with the core depending on a comprehensive presumption based on "process evidence". Taking the case of Huatuo

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Online Company as an example, the court held that the opportunity to jointly establish an Internet hospital with the Provincial Second Hospital in this case was an intangible company opportunity. Its proof mainly relies on the procedural evidence, such as the previous negotiation records, the cooperation framework agreement, and the communication letters between the two sides.

However, in existing judicial practice, there is neither a quantitative requirement for "to what standard the degree of intention should be meet" nor a specific threshold of "what the proportion of initial investment should be". The court can only presume through the existence (or ownership) of the corporate opportunity based on the "holistic relevance" of the evidence. The judgment of the sufficiency of the evidence lacks clear guidance and relies on the subjective judgment of judges. This not only increases the difficulty for the parties' proof but also affects the stability of the business environment.

3.3. Ambiguity in the standards for new and old entities' eligibility to succeed to corporate opportunities

3.3.1. Core elements of referee logic

The two core judging factors for the determination of the new and old entity companies are "the termination nature of the old company" and "the connection between the new and old companies", which together constitute the key factual basis of judicial decisions.

"The nature of the old entity's termination" focuses on the subjective intent of the old entity's termination. If the old company terminates its business involuntarily due to the revocation of its business license and other circumstances, without having voluntarily abandoned its business, it still has the opportunity to undertake the foundation. If the old company voluntarily gives up its business by changing its business scope and name, it will forfeit its right to those original opportunities, and the new entity lacks a factual basis for undertaking. For example, Mouke Company in Lu's case can voluntarily withdraw from the robot training business.

Old and new company connections focuses on the substantive connection between the two at the business level. This connection should be judged by considering the consistency of business scope, asset sharing, business succession and other factors. For example, in the case of Xinqizheng Company, the court recognized that the business scopes of the old and new entities were completely overlapping. However, there is no uniform standard for the degree to which these actual factors. As a result, different courts may reach contradictory conclusions. Ultimately, the judgment standard completely depends on the judge's subjective discretion.

3.3.2. Subjective criteria and overly broad conclusions

At present, there is ambiguity in judging the eligibility of new and old entities to succeed to corporate opportunities. The core problem lies in two aspects: on the one hand, the existing practice does not define the specific objective conditions, such as "consistent business scope," that a "strong association" (between new and old entities) must satisfy, nor does it specify the degree of each condition.

On the other hand, "formalization of determination of termination nature". First, the imputability of the causes of "involuntary termination" is not distinguished. For example, the license of the old company was revoked due to involuntary termination caused by the entity's own illegal acts, and was forced to involuntary termination caused by external factors, which may enable the illegal entity to acquire corporate opportunities through "shell changing" to avoid punishment. Second, the

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determination of "voluntary waiver" fails to exclude cases involving the possibility of "objective constraints", such as the sudden tightening of policies leading to the denial of license approval, and the business unprofitability due to industrial risks. There is a risk of "overly formalistic determination", which may ignore the complex situation of "passive abandonment under objective constraints" in commercial practice.

4. Analysis of the causes

4.1. Legislative level: absence of rules and deficiency in legal basis

From the perspective of the current legal norms, the lack of clear and detailed legislative support in determining the ownership of corporate opportunities is the root cause of the dilemma. Article 148 of the Company Law (concerning "corporate opportunities belonging to the company") does not define criteria for determining "belonging", nor has this abstract concept been concretely implemented into the legal text. As for the dilemma of opportunity proof for intangible companies, there is currently no law in China that stipulates the key quantitative indicators of such procedural evidence as "what criteria should be met for the degree of clarity of intention". Although the contract part of the civil code regulates the signing and performance of contracts, it does not specify the effectiveness of procedural limits to the cooperation intention (without a formal contractual relationship) when proving the ownership of corporate opportunities.

Similarly, as the basic law regulating the organization and behavior of companies, the company law also lacks direct and clear provisions on the recognition of the opportunity acceptance qualification of new and old subject companies. Both the tangible and intangible corporate opportunities, and the determination of the ownership of opportunities in the business undertaking of new and old companies, lack special legal provisions for direct invocation in judicial practice.

The core idea of the corporate opportunity doctrine as "the mechanism for the distribution of property rights between companies and operators" comes from the Anglo American case law [11]. The approach to recognizing corporate opportunities formed in Anglo American judiciary based on the concept of trust is a kind of thinking to pursue the balance of interests. Specifically, balancing the interests of directors and corporate owners (shareholders) by clarifying business opportunities ownership [12]. China has introduced the company business opportunity rule of the common law system, but as a non-case law country, it cannot be directly invoked in judicial trials.

4.2. Practical level: the challenge posed by complex business operations

The dynamic and complex nature of business activities is the deep practical root of the dilemma in determining the ownership of corporate opportunities. Business opportunities are not static entities, but rather exist in a dynamic evolutionary process from information acquisition to negotiation promotion and then to implementation. There is no clear node for the transformation from preliminary market information to mature trading opportunities, and it is difficult to define when such opportunities come to belong to a company. This dynamic nature makes the application of judgment dimensions such as "relevance" and "realizability" lack a stable benchmark, which aggravates the difficulty of identification.

At the same time, in commercial activities, the problem of fuzzy business scope is more common, and there is a deviation between the superficial business form and its actual control over opportunity.. This dislocation makes it difficult for the court to accurately determine the ownership of the opportunity solely based on the surface evidence such as industrial and commercial

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registration and contract text, which necessitates in-depth verification of the commercial essence and further increases the difficulty of adjudication.

4.3. Judgment level: the tension between cognitive differences and experience limitations

Judges do not have the same ability and skills to judge business matters as directors of companies [13]. The individual cognitive differences of judges in judicial adjudication and the limitation of industry experience are the direct factors leading to the dilemma of judgment. Firstly, there are differences in the perception of key concepts. Secondly, there is insufficient experience in emerging business areas. Most of the opportunities for intangible companies exist in emerging industries such as Internet medicine and robot training. Such businesses have the characteristics of "ignoring entities and focusing on intentions", but most judges lack an in-depth understanding of industry practices. When examining the "relevance of negotiation records" and the "authenticity of cooperation intentions", they are vulnerable to the impact of their own past judgment experience and it is difficult to form a unified judgment scale.

5. Pathway construction

5.1. Legislative improvement: toward a robust legal framework and clear identification standards

Defining corporate opportunities is an urgent task for legislators. Legislators should add dedicated provisions onto the judicial interpretations of the Company Law, with the aim of clarifying the core elements of corporate opportunities. On the one hand, these provisions should define the criteria for distinguishing between tangible and intangible corporate opportunities, and set quantitative indicators such as "proportion of early investment" and "number of negotiations" for intangible opportunities. On the other hand, legislators should refine the rules governing opportunity succession by new and old entities to clarify the specific conditions to be met for "strong association" and the determination of the "nature of termination of old companies".

5.2. Judicial practice

5.2.1. Strengthening commercial substance review and industry adaptation

Judicial trials should penetrate formal examination and focus on judging the commercial substance. For the abandonment of corporate opportunities, it is necessary to combine the purpose of the act with the characteristics of the industry, to avoid relying only on formal elements such as the changes to business scope. For the connection of new and old companies (in opportunity succession), the actual business connection needs to be examined, rather than based on the registration information. At the same time, for emerging industries such as Internet medicine and robot training, industry experts can be introduced to assist in adjudication, judging the attributes and possibilities of business opportunities in reference to industry practices, and thereby improving the professionalism and adaptability of judgments.

5.2.2. Improving evidence rules and judgment reasoning mechanism

The relevant departments need to formulate Guidelines on Evidence for Disputes over Corporate Opportunities to clarify the allocation of burden of proof: If a company claiming ownership of the

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opportunity needs to prove that the core elements such as "relevance" and "realizability" are met, the defender needs to prove the validity of defense such as "opportunity is not exclusive" or "the company has abandoned".

In addition, the Supreme People's Court may issue guiding cases, refine the ruling logic of similar cases, and uniformly stipulate the criteria for determining corporate opportunities or the factors that should be considered to guide the trial practice of lower courts. This measure is not only highly actionable, but also in line with the long-established judicial practices in China [14]. At the same time, it is necessary to strengthen the reasoning requirements of judgment documents, and the court should explain it specifically in three aspects: First, the reasons for the acceptance of evidence in determining the nature of the opportunity. Second, the quantitative assessment of the business relevance between new and old entities. Thirdly, the logic of comparison with the guiding cases ensures the traceability of "the same case and the same judgment".

6. Conclusion

Through the empirical analysis of four typical cases, including that of a digital technology company in Henan Province, this study reveals the core rules and practical difficulties in determining corporate opportunities. The study finds that judicial practice has developed a judgment dimension with relevance, realizability, and predictable property rights and interests as its core, but there are significant shortcomings. First, there are differences in the threshold of proof for opportunities between tangible and intangible companies. The former relies on clear carriers and is easy to identify. The latter is ambiguous due to the lack of quantitative standards. Second, there is a lack of rules for determining the qualifications of new and old companies to undertake opportunities. There is a lack of unified criteria for judging the "degree of relevance" and the "nature of the termination of old companies".

There are two limitations in the study: the coverage of case selection is limited, and the universality of the conclusions needs to be verified. Secondly, the formation mechanism of judges' judicial thinking has not been thoroughly analyzed, and the interpretation of judicial cognitive differences is insufficient. The study can be deepened in two aspects in the future. First of all, we will expand the sample size of cases, build cross-industry and cross-regional empirical databases, and refine the quantitative indicators of such factors as "relevance". Secondly, by combining jurisprudence with legal psychology, the cognitive model of judges on the attributes of corporate opportunities is explored to provide theoretical support for the unified judgment scale.

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