Developments in the Law in 2010: Corporate Law and Securities Regulation

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Abstract

In 2010, the legislature did not make any changes to the Company Act; however, the Securities and Exchange Act was amended three times. Nevertheless, several corporate cases deserve discussion.

It is held by the court that the provisions of the Civil Code are the supplements of the Company Act and thus managers have a certain legal authority to represent the company. Meanwhile, the court does not answer the issue of directors' remuneration correctly. The court has consistently opined that the word "remuneration" is strictly construed to mean the consideration for directors' services (conceptually similar to laborage). However, from the perspective of investors, the total package that the company pays the director is the issue, rather than the monthly salary. Besides, in terms of how it identifies the payment as the remuneration, the court sometimes provides confusing interpretations. This situation has become worse as the Securities and Exchange Act has made it compulsory to set up the remuneration committee under the board of directors.

Article 157-1 of the Securities and Exchange Act was amended again. It is suggested that some loopholes in the insider dealing regulation should be sealed. As a result, information should be precise in order to constitute inside information; it takes 18 hours for the market to fully access the disclosed material information and insiders are prohibited from trading within 18 hours after the disclosure is made. None of these, however, touch upon the core problem existing under the current legislation.

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It is worth mentioning that the Supreme Court for the first time provides the model to calculate the disgorgement of short-swing profits made by the shareholder and his (her) spouse (together holding more than 10% of the total issued shares). The Supreme Court is also inclined to abandon the method of calculating the damages whereby it simply deducts the selling price from the buying price.

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