

Shareholder Voting Trust, Shareholder Agreement and the Related Problems: Delaware and Taiwan Law in Review

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Abstract

Shareholder voting trust, or in a broader sense including other forms of voting agreement, has been one troubling question in corporate law for several decades. It is so mostly because of its intended consequence of separating the political right in corporate share from its economic beneficiary position. This article traces back the root of this issue in the Delaware law and a line of its cases. By doing so, this article tries to explain why a separation of this sort poses a plausible threat to the fundamental corporate law setting and provide a picture of how courts have been struggling with diverse issues in this legal design. Obviously shown in cases, these issues range from poor contract drafting, post-signing changes and opportunistic behaviors thereof, to the inevitable incompleteness in a long-time horizon in corporate voting setting. A long history of this back-and-forth in Delaware's law, often in name of "public policy" or "public interest", vividly illustrates the magnitude of threat, if not insolvability, of this corporate law design and its practice in the real world.

After a careful analysis of issues arising from the course of shareholder voting trust/voting agreement's cases both in the U.S. and Taiwan, this article identifies "a mix of agency problems" as the main threat in separating votes and freely transferring them from shares. Using this observation as the baseline, this article then weighs in a possible balance among the contractual freedom in transacting voting right, the possible threat it poses, and the cost of a total prohibition. With the help of hindsight as well as being restricted by the current

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legislation, this article finds the benefit of a small-scale utilization with a clear stipulation of strict formality as a reasonable or at least an acceptable compromise. Finally, this article reevaluates and concludes with several concrete suggestions in helping this mechanism's transition in Taiwan's context.

Keywords: shareholder voting trust, shareholder agreement, political right in share, communitarian, a mix of agency problems