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Research on Internal and External Effectiveness of Equity Transfer Guarantee

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Abstract: The purpose of this paper is to study the internal and external effectiveness of equity transfer guarantee, through the review and analysis of relevant literature, combined with theoretical discussion and case analysis, to explore the application and influence of this system in legal practice. First of all, this paper summarizes the rules for the identification of equity transfer guarantee, and introduces the main viewpoints and disputes in the current research field. Secondly, the paper analyzes the existing laws on the internal and external effectiveness of equity transfer guarantee and limitations, as well as the problems and challenges in judicial practice. Thirdly, the paper discusses the application and influence of equity transfer guarantee in commercial financing, debt repayment and other practical scenarios, and analyzes its importance to the interests of the parties, market economy and social development. Finally, the paper puts forward solutions and suggestions for the internal and external effectiveness of equity transfer guarantee, including strengthening legal norms, improving judicial logic and optimizing practical operations, so as to promote the standardized application and healthy development of the system.

Keywords: Equity transfer guarantee; Effectiveness; preemption;Autonomy of will

1.Introduction

As an atypical guarantee, equity transfer guarantee plays an increasingly important role in commercial financing and debt repayment. However, the problem of its internal and external effectiveness has attracted much attention, which has triggered extensive discussion and research in academia and legal practice. In this context, this paper aims to deeply explore the internal and external effectiveness of equity transfer guarantee, through the comprehensive analysis of relevant literature and theoretical discussion, combined with case analysis, to explore the application and influence of this system in legal practice.

Equity transfer guarantee involves many fields of legal relations, involving company law, civil law and other legal branches, its internal and external effectiveness is directly related to the rights and interests of the parties and the stability of legal order. However, at present, the legal provisions on the internal and external effectiveness of equity transfer guarantee are not perfect, and there are many disputes and uncertainties, which bring challenges and troubles to legal practice. Therefore, in-depth research on the internal and external effectiveness of equity transfer guarantee is not only helpful to clarify the relevant legal provisions and theoretical basis, but also conducive to the perfection of legal norms and the unity of judicial judgment.

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The main purpose of this paper is to comprehensively understand the internal and external effectiveness of equity transfer guarantee, and put forward solutions and suggestions to promote the standardized application and healthy development of this system. Through literature review, theoretical analysis and case study, this paper deeply discusses the theoretical basis, legal provisions and practical operation of the equity transfer guarantee system, reveals the existing problems and challenges, and puts forward specific solutions and suggestions. Through the research of this paper, it provides theoretical support and empirical basis for perfecting the share transfer guarantee system, and contributes to the healthy development of the market economy in our country.

2. Literature Review

Li believes that equity transfer guarantee is a legal and effective atypical guarantee method, but its internal and external effects still need to be improved and clarified. The article emphasizes the importance of the agreement on shareholders' rights, the system of registration and publicity and the rules of honesty and credit to better protect the interests of the parties and promote the implementation of legal norms.[1] Wang proposed a method to accurately judge the nature of equity transfer by analyzing factors such as the setting of main debt, the purchase and sale price of equity and the situation of repayment. In terms of effectiveness, it is emphasized that the internal act of the transferee is invalid, and the external effect should balance the interests of all parties. In terms of realization, the law recognizes the liquidation mode of creditor's rights, and the liquid equity transfer guarantee can exercise the priority of compensation only after completing the registration of property right change. [2]Cai found that courts usually recognize the validity of equity transfer contracts, but there are differences in the recognition of internal and external relations between creditors and guarantors. The article calls on the judiciary to establish a tolerant attitude and the principle of distinction in order to clarify the effectiveness of equity transfer and related responsibilities. Although the judicial practice has gradually formed the dominant judgment logic, it is still necessary to unify the judgment standard and promote the construction of the system order.[3] Zheng analyzed the root causes of this problem from multiple perspectives and put forward the theoretical basis and specific criteria for the recognition of external effectiveness. It is suggested to clarify the legal attribute, type distinction and external validity criterion of equity transfer guarantee in order to promote the better application of this system in practice. [4]Li shows that the guarantor enjoys both creditor's rights and nominal shareholders, but cannot exercise the rights of shareholders. The author calls for strengthening legislation to clarify the status and effectiveness of equity transfer guarantee, establishing a publicity system, and improving the liquidation system, so as to promote commercial financing activities and social and economic development.[5] Chen mentioned that the determination of the effectiveness of the transfer of security is still controversial, especially when it involves the internal and external interests of the company. Although the Supreme People's Court is inclined to the theory of the construction of the security right, more legal support and clear regulations are still needed in practice. In this regard, it is suggested to strengthen the legislation, especially in the internal and external effectiveness of the company and the identity rights of shareholders, so as to balance the interests of all parties, provide a basis for judicial judgment, and promote the standardized development of the guarantee method. [6]Wang called for a unified judicial interpretation of the legal composition of the non-typical guarantee of equity transfer guarantee to solve the existing cognitive differences and market uncertainties. [7]In Nie through the comparison of judicial practice and international experience, he put forward suggestions to improve the equity transfer guarantee system in order to promote the healthy development of China's market economy. The article calls for the introduction of a special law as soon as possible to clarify the relevant contents of the transfer and guarantee, and provide legal protection for the financing of small and medium-sized enterprises. [8]Liu put forward the

suggestion of restructuring the judgment under the framework of the Civil Code, advocating recognizing the validity of equity transfer contracts and clarifying the status of creditors in order to promote reasonable operation. The paper calls for balancing the exercise of creditor rights and promoting financing potential. Through the introduction of the fiduciary theory, the author challenges the controversy over its efficacy and proposes possible ways to solve the obstacles.[9] Chen raised in the internal relationship, the equity transfer guarantee contract and the company's will form a double constraint to ensure fair liquidation, balance the autonomy of the parties' will and the protection of creditors' rights and interests. When dealing with external relations, it involves the bona fide acquisition system and the theory of commercial externalism, which indicates the expanding trend of the scope of law application. In addition, perfecting the registration and publicity system of equity transfer guarantee is crucial to balance the interests of all parties. [10]Ge discussed the legal relationship of equity transfer guarantee as an agreement between the debtor or a third party and the security right holder, which triggered the conflict between the Civil Code and the Company Law. The system reflects the true intention of the parties, does not violate the mandatory provisions of the state, and has effect. The analysis of internal and external relations shows that in the internal relations, the security right holder is the creditor and the shareholder of the company, and the shareholder's rights are limited. In foreign relations, it involves externalism and protects the reasonable trust of third parties. The legal status and rights and obligations of the security right holder can be explained by the trust principle, and the equity is clearly defined as trust property by the way of "record/publicity" to prevent the formation of trust by the third party. This study highlights the contradiction between the Civil Code and the Company Law, and puts forward suggestions to ensure the legitimate rights and interests of security rights holders.[11]

3. Methodology

3.1. Literature review

In this study, we will comprehensively review the domestic and foreign research literature related to equity transfer and the internal and external effectiveness of guarantee through literature review method. This includes the theoretical discussion, legal basis and practical operation mechanism analysis of the equity transfer guarantee system in the existing literature, as well as the views, disputes and solutions of the internal and external effectiveness. Through literature review, we will establish a comprehensive understanding of the research field and provide a theoretical basis and research framework for subsequent theoretical analysis and case analysis.

3.2. Theoretical analysis

On the basis of literature review, we will carry out theoretical analysis and discuss the theoretical basis, legal framework and relevant provisions of the internal and external effectiveness of equity transfer guarantee. We will deeply interpret the norms and constraints of the existing laws on the internal and external effectiveness of equity transfer guarantee, and analyze the legal logic and practical problems. Through theoretical analysis, we will clarify the status and role of this system in the legal system, and provide theoretical support for the subsequent case analysis.

3.3. Case study

In the case analysis stage, we will select some representative cases to deeply explore the application and impact of equity transfer guarantee in actual legal practice. We will analyze the internal and external effectiveness issues involved in these cases, the court's decision logic, and the impact on the interests of the parties. Through case analysis, we will investigate the internal

mechanism and practical effect of the equity transfer guarantee system from an empirical perspective, and provide practical case support for proposing solutions and suggestions.

3.4. Data collection and analysis

In the process of case analysis, we will collect and sort out the legal documents, judgment reasons and party statements of relevant cases, and carry out systematic data analysis. We will use qualitative analysis methods to dig deeply into the legal logic and the demands of the parties in the case, as well as the specific manifestations and influencing factors of the internal and external effectiveness issues.

4. Equity transfer guarantee

4.1. The basic theory of equity transfer guarantee

Equity transfer, equity transfer guarantee and equity pledge are all legal acts involving corporate equity change, but there are obvious differences in essence and legal effect. First of all, equity transfer refers to the behavior of shareholders to transfer equity to another party with consideration. This is a kind of compensated trading behavior, after paying the consideration, the assignee obtains the status of the company's shareholders, and enjoys the corresponding rights and obligations. The transfer of equity is legally required to follow the relevant registration procedures and is clearly stipulated by law to protect the pre-emption rights of other shareholders and ensure the free flow of equity. The difference is that the equity transfer guarantee is not the real equity sale, but the equity as a guarantee to provide security for borrowing financing. Although it is similar to equity transfer on the surface, its essence is a legal act to guarantee the performance of debt. In the equity transfer guarantee, the equity is not actually transferred, and the security right holder is only the nominal shareholder, whose rights are limited and cannot directly exercise the relevant rights of the shareholder. In addition, as a typical guarantee method, equity pledge is clearly regulated by law. It involves the pledgor taking his own equity as collateral to set up pledge right and provide guarantee for the lending relationship. In law, equity pledge needs to complete the effective pledge contract and go through the corresponding registration procedures to ensure that the pledgee has the priority to be repaid when the debt cannot be performed.

In general, equity transfer, equity transfer guarantee and equity pledge have obvious differences in legal effect, right nature and mode of establishment. Equity transfer is a kind of paid equity transaction, equity transfer guarantee is a legal act to provide security for debt, and equity pledge is a guarantee method clearly stipulated by law. These differences need to be fully considered in practice and legal constraints.

4.2. Equity transfer guarantee recognition

Equity transfer guarantee is a kind of special guarantee with company equity as security, which involves the transfer of legal rights such as equity ownership to the security right holder to ensure the performance of the debtor's debt. After the debt is discharged, the collateral should be returned to the original owner; If the obligation is not performed, the security right may have priority in receiving payment from the subject matter. In the Chinese legal system, although Article 68 of the Interpretation of the Security Law recognizes the validity of the security of transfer, the specific definition of the security of equity transfer is still unclear, and it is generally regarded as the security of transfer with equity as security. In the establishment of equity transfer guarantee, the following conditions should be met: First, the existence and confirmation of loan agreement: The establishment of equity transfer guarantee first requires a clear debt relationship between the two parties. This relationship may result from the signing of loan contracts between the two parties, or financing in the name of investment, including the signing of investment agreements, repurchase

agreements, etc. These agreements not only clarify the existence of the debt, but also provide a legal basis for the transfer of equity.

Secondly, the guarantee intention and agreement of both parties: according to the principle of autonomy of will, the establishment of the guarantee relationship should be based on the common intention of both parties. Although the act of equity transfer itself may not imply a transfer of ownership, it constitutes an effective security of transfer if the parties genuinely intend to use it as security. Whether the contract contains specific terms regarding the security and the parties' understanding of the purpose of the security are the focus of the review. Third, to complete the necessary legal procedures, the effective equity transfer guarantee must also go through a series of legal procedures, including but not limited to the actual transfer of equity and industrial and commercial change registration. The transfer process may require holding a shareholders' meeting, obtaining shareholders' consent to the transfer of equity or waiving the preemption right, which are all necessary steps to ensure the effectiveness of the transfer security.

In this way, the equity transfer guarantee not only serves as a means to protect creditor's rights, but also may involve the actual transfer of equity control rights, which has a profound impact on both parties and their rights and obligations. Therefore, the legal relationship between equity transfer and guarantee requires the parties and the court to have a clear understanding of its nature and an accurate legal judgment.

5. The validity of equity transfer guarantee in practice

5.1. The internal effect of equity transfer guarantee

According to the "doctrine of meaning" adopted, after the contract of equity transfer is established between the creditor and the debtor and becomes effective, the legal effect of equity transfer occurs between the parties, and the creditor "obtains equity". However, whether "acquisition of equity" means full equity, and whether creditors can exercise all shareholder rights as equity owners, is a complex issue.

First of all, when the equity transfer contract comes into effect, the transferee will usually request the company's assistance to complete the change of the register of shareholders and the business registration, so as to become the nominal shareholder of the company. However, whether the nominal shareholder can exercise the full share interest depends on the agreement in the contract. Under normal circumstances, the equity transfer contract between the debtor and the creditor is based on the equity as the guarantee of the creditor's right, so in the contract, the debtor usually agrees on the rights that both parties can exercise over the equity of the company. This means that the transferee may only enjoy the priority right of transfer in the event of non-performance of the debt, while the equity is still exercised by the transferor. If there is no explicit agreement in the contract, the assignee may still not be entitled to the full equity interest depending on the interpretation. In a limited liability company, the identity of the shareholder is crucial to the management and operation of the company, so the new shareholder usually needs the consent and approval of other shareholders to fully enjoy the equity. The transferee may be a nominal shareholder and not actually have a full equity interest. This view has been recognized in judicial practice. As for the priority of the assignee, when the debtor fails to pay the debt on time, what rights the creditor has to the equity is also an important issue. In the transfer of equity, if the creditor can not be preferentially paid, then the transfer of equity will lose significance to the creditor. Therefore, liquidation clauses are usually introduced, which discount the equity and give the transferee priority to receive compensation. The plausibility of this arrangement has been accepted to a certain extent.

In general, the transfer of equity involves a complex relationship between creditors and debtors, and it is necessary to determine the rights of the transferee and the priority of the creditor according to the specific contract content and legal provisions.

5.2. External effectiveness of equity transfer guarantee

The external recognition of equity transfer guarantee involves complicated legal relations, especially the rights and interests of the third party, which needs to be discussed carefully. First of all, whether the creditors of the company can recover from the assignee. According to Article 32 (3) of the Company Law, the name registration of shareholders is effective against third parties. However, the creditors of the company cannot require the assignee to make up the contribution unless the assignee has bad faith. The assignee often has limited liability in an equity guarantee, so the creditors of the company are usually unable to require the assignee to assume additional liability. Second, after the transferee transfers the equity to a bona fide third party, whether the equity can be enforced. This involves the protection of third party trust. Some advocates of enforceable shareholdings argue that commercial registration should protect the reasonable trust of third parties. However, under current logic, commercial registration is not sufficient as a facade of equity rights. Therefore, they tend to support the views of the original shareholders who advocate the execution of the dissent. Finally, whether the third person can become the owner of the equity. The logic goes that nominal shareholders are not actual equity owners. However, if the third party is bona fide, meets the requirements for bona fide acquisition, and is protected by the Companies Act, then the third party should be able to acquire the equity. Bulletin of the Supreme People's Court, Issue 1, 2020, Heilongjiang Mincheng Investment Group Co., LTD., Xilin Iron and Steel Group Co., LTD., private lending disputes, the essence of the judgment is that the parties to sign the equity transfer agreement for the guarantee of private lending claims, this atypical guarantee method for the transfer of security. The relevant equity transfer agreement shall be valid provided that it does not violate the mandatory provisions of the validity of laws and administrative regulations. Whether the guarantee of equity transfer has real right effect should be based on whether it has been publicized according to the principle of real right publicity. In equity pledge, the pledgee may have priority in receiving compensation for the equity that has been registered as pledged. In the equity transfer guarantee which has registered the change of the equity as security property to the name of the security right holder, the security right holder is already the holder of the equity as the subject matter of the security, and its priority right to be repaid in respect of the equity as security should be protected and in principle enjoy the effect of real right against the third party. In the Bulletin of the Supreme People's Court, No. 2, 2020, contract disputes between Shenzhen Yizhifan Trading Co., LTD., Hou Qingbin and Shenzhen Zhaobang Group Co., LTD., Shenzhen Konofu Information Consulting Co., LTD., Shenzhen Liyue Gate Investment Development Co., LTD., and Guangdong Lizhao Electronic Technology Co., LTD., the main points of the judgment are: The parties agree in the contract establishing the assignment security that if the value of the security is insufficient to cover the relevant debt, the creditor is entitled to claim the exercise of the assignment security right even if the performance period of the debt has not expired. The agreement does not violate the mandatory provisions of laws and administrative regulations and shall be deemed lawful and valid. In order to prevent the difference between the value of the subject matter and the amount of the claim, which is similar to the situation of liquid pledge, the realization of the transfer of the security right should impose the liquidation obligation on the parties. The agreement reached between the parties to guarantee the value of the subject matter may be regarded as an effective means of determining the value of the subject matter. In the case that the value of the guaranteed subject matter has been determined, but both parties foresee that the amount of the claim may change, the parties shall still perform the corresponding liquidation obligations on the basis of the actual amount of the final settlement of the debt.

To sum up, the internal and external effectiveness of equity transfer guarantee involves many interests, and needs to weigh the rights and interests of all parties to maintain the fairness and legitimacy of the transaction.

6.Results

Several important conclusions and recommendations can be drawn from the above research results and discussions:

6.1.Necessity of unified judgment standards

The research finds that although a certain consensus has been formed on the issue of equity transfer guarantee, there are still differences in the cognition of different courts and different subjects in judicial judgment, resulting in inconsistent judgments. This inconsistency not only damages the fairness of individual cases, but also affects the stable expectations of market players. Therefore, in the future, the judiciary should pay more attention to the unification of judgment standards and strengthen cooperation and communication between courts at all levels to ensure the fairness and consistency of judgment.

6.2.Strengthen supervision and law enforcement

Strengthening supervision and law enforcement in the field of equity transfer guarantee is the key to maintaining market order and legal dignity. The regulatory authorities should establish a sound supervision mechanism, strengthen the supervision and inspection of market players, strengthen the monitoring and analysis of market information, timely release relevant information and early warning tips, and guide investors to rational investment and risk prevention.

6.3.Strengthen information disclosure and transparency

In the field of equity transfer guarantee, strengthening information disclosure and transparency is an important measure to protect the legitimate rights and interests of investors and promote the healthy development of the market. The regulatory authorities should formulate relevant laws, regulations and normative documents, stipulate that enterprises and financial institutions should disclose information as required, and establish corresponding supervision and inspection mechanisms to ensure the timeliness, accuracy and completeness of information disclosure.

6.4.Strengthen risk management and control

The field of equity transfer guarantee involves high financial risks, and it is necessary to strengthen risk management and control to prevent the occurrence of financial risks. Financial institutions and enterprises should establish a sound risk management system and internal control mechanism, and regulatory authorities should standardize the risk management behavior of financial institutions and enterprises by formulating relevant regulatory provisions and requirements, and strengthen the supervision and inspection of risk management.

To sum up, in order to solve the legality of equity transfer guarantee in the future, it is necessary to comprehensively use legal, regulatory and market means to strengthen cooperation and coordination among all parties, and promote the improvement and implementation of relevant laws and regulations, so as to maintain market order, protect investors' rights and interests, and promote the steady development of the financial market.

7.Discussion

In recent years, the judicial circle has gradually formed a consensus on the legality of equity transfer guarantee. This consensus focuses on the internal effect of equity ownership and disposal, and the external effect of whether the security right holder has the priority to receive compensation and whether to bear the liability of shareholders' defective investment. However, despite the formation of this consensus, there are still some pain points in judicial decisions. First of all, different courts and different subjects have different cognition of such cases, which leads to the widespread existence of "different sentences in the same case". This situation not only damages the fairness of the case, but also weakens the stable expectations of market players for relevant transactions, and thus affects the business environment of the financing and credit market. In the absence of legislation, judicial initiative becomes the key. Justice not only needs to explore justice in individual cases, but also needs to actively integrate the rules and principles of adjudication. This means that the judiciary needs to be more actively involved in the creation of law, in order to fill the gap between law and practice, and provide more clear guidance for the trial of relevant cases. Therefore, when dealing with the legality of equity transfer guarantee in the future, the judiciary needs to pay more attention to the unification of judgment standards and strengthen the cooperation and communication between courts at all levels to ensure the fairness and consistency of the judgment. At the same time, while actively exploring new judicial solutions, the judiciary should also call on the legislature to introduce relevant laws and regulations as soon as possible to provide a clearer basis for judicial judgment, so as to promote the stability of the market environment and the progress of the rule of law.

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