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The research of the property right institution of family business and its innovation

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ABSTRACT

In the beginning of the business, family management model is proper for the development of the business. But with the expansion of the scale of the family business, its defects such as the single property right, the vague boundary of the internal property right, the reserve space of the flow property right, the closing of the property right, and so on, not only cause the gradual increase of external profit, but also make the requirement of changing the property right institution more intensive. This article, from the nature and the characteristics of the family management, analyzes the property right features of our country's family business and the inducement of changing the property right institution, and puts forward the countermeasures of innovating the property right institution of family business.

KEYWORDS

Family business; Property right institution; The changes of institution; Innovation methods.



THE DEFINITION AND NATURE OF FAMILY BUSINESS

The definition of family business

Qian Dele, the famous business historian, defines family business as that “The founder and his familiar partners (and the family) control most stock rights. They and the managers keep an intimate personal relationship, and they also keep the main decision-making right as the high-level administrators, especially in the aspects of financial decisions, allocation of resources and the selection of high-level staff.” That is to say, family business not only exists in the classical business of two authorities syncretism, but also exists in the modern business of two authorities detached. As long as the individual or the family controls the financial decisions, allocation of resources and the selection of high-level staff of the business, and keep an intimate personal relationship with the managers, can be also called family business.^[2]

Ye Yinhua, a scholar from Taiwan, suggests dividing the family business at the rate of critical controlling interest. He thinks if a business contains the following three conditions, it can be called a family business. First, the rate of family’s controlling interest is more than the rate of critical controlling interest; second, family members or the relatives within second class become the chairman of the board or manager of the company; third, the company’s family members or the relatives within third class take more than half of the seats in the board of directors. Professor Zhu Xiaoping agrees with Ye Yinhua’s above definition, he thinks from the family owning both the two rights to most control powers and then to critical control powers, are all family businesses. Liu Xiaoping defines the family business as that family business’s characteristic is that the single business possesses the most residual usufruct and control powers, and undertakes the main risk of the business.^[1]

Synthesizing the definitions of family business of the scholars at home and abroad, it can be generally considered that: Family business refers to an economic organization that at the ties of genetic connection, at the primary purpose of family profits, at the method of practical control powers, at the organizational form of business.

The nature of family business

Family business is an economic category, and also a historical, cultural, social category. If we take no notice of this, we would not understand the nature of family business roundly and precisely. In China, “family culture” is deep-rooted. Weber considers Chinese trust is “established in the kinship or pure personal relationship with the relatives.” It is a special trust depends on the family superiority of the same ties of blood and the religious ties. Therefore, those people who are out of this genetic connection, namely outsiders, are not trusted at large. As there is an old saying in China that “killing tigers with brothers, battle soldiers with father or son”. This sufficiently proves that people who have genetic connection believe each other extremely. The “family culture” formed by this Chinese family business, it is obvious that the business carries a “relational culture”. The strategic point to distinguish the family business is the cultural trait of “special doctrine” reflected by this “relational culture”.

That the business choosing family administration or modern stock system administration structure or other forms is not depending on people’s subjective will, but is depending on the survival examination of market competition that the business faced. Generally speaking, family administration would not be changed by people’s will, but it is an institution-choosing behavior under the market environment and social environment.

CHARACTERISTICS OF THE FAMILY FIRM PROPERTY SYSTEM

External property right structure features

Equity highly concentrated in family hands

Some related surveys and data in our country shows that business owner family has the absolute advantage in the enterprise final ownership structures. In addition, in the family enterprise personal stake, besides the business owners and families take part most of the share, some technicians, management staff and other workers also take part some shares of the enterprises. To ask some talents to leave business owners also give some stock to some technicians and management staff to let their own part of the shares of the enterprises.

In a word, the equity of family business is highly concentrated in family hands, and enterprise property belonging to family will let the enterprises to have an unlimited expansion power. In the early stage, this kind of concentrated equity structure has ever greatly promoted the development of the enterprises. Some foreign scholars think that only the family business is real and vivid and substantial owner. Objectively, because of the equity is highly concentrated in a few people, owners are deeply rolled in the production and operating activities of the enterprises, and the owners have enough motivation and condition to make sure that the enterprises is operating for their best interests.

Primitive property subject an ill-defined category

Primitive property subject an ill-defined category is shown in two aspects: firstly, unclear definition of property among family members. When the family business were in its entrepreneurial period and in small scale, family members often live in a peace with each other, and the cohesion is strong. However, with the development of the enterprise, genetic relationship among family members is often impacted and loosened by economic interests. In addition, the requirement of redefining and repartition the enterprises property right is growing stronger and stronger. Secondly, it is previous mentioned, the relation between family business and outside property is not clear. To gain some political, economic and social agreement

and special treatment, family business is still wearing the hat of state-owned or collective. Consequently blurs the relations of the enterprise property right, and it is harmful to the long-term development of the enterprise.

Internal property right structure

Enterprise property ownership and management is not distinguished

In most of the family business, the family business owner is not only the biggest stockholder but also the main operator of the enterprise. Enterprise property ownership and management is not distinguished.

Thanks to modern economic socialization degree is deepening. The family enterprise system of regard property owner and manager as a whole is less adaptable to the development requirement. It is inevitable to require on the property right system of enterprise to have adjustment accordingly.

Personal corporate ownership is not distinguished and the indissolubility and global of the enterprise is threatened

In family business, the ownership of the business entity is deeply disturbed and controlled by the family owner. It shows on this aspect: firstly, the management of the enterprise. The ownership of family business is highly concentrated in the hand of the business owner. It is not only provides guarantee, but also provides incentives for the family owner to interfere the management. The business owners' intervention to the enterprise management makes the enterprise corporate ownership and personal or family ties close, and makes the enterprise development deeply restricted by personal and family relationship. Moreover, it the family enterprise cannot exist independently. Secondly, enterprise inheritance problem. The threats of family business always take place in the inner part of the family. When the inheritor of the enterprise has no business capacity, the existence of the enterprise faces threats.

THE REASON OF THE CHANGES OF FAMILY ENTERPRISE PROPERTY RIGHT INSTITUTION

The system equity is the system substitution, is a process of transition and trade and it is also a process of one kind of higher benefit system (target mode) replace the other kind of system. The system has two patterns: non-independent institutional transition and mandatory institutional transition. D·North thinks that the non-independent factor of system innovation is the innovation subject hoping to gain maximum potential profits. It is profitability in existing arrangement structure cannot be in realization, can cause a new system arrangement (or change the old system arrangement) formation. The so-called "the potential profit" is "the external profit", it means the profit that exists in the new system arrangement and cannot be achieved in the existing system.^[4]

Property single structure caused multiplication demand

At present, the property right structure of most family business is single subject and most of them are belong to proprietor or family. Substantially, the owner and the operator are the same, the ownership and managerial authority is syncretism. According to the survey, the property system of family business is still has closed features, the owner has more than 50% of the property right, but they all have the power to master and control. It has five ways of holding: couple control, father-son control, father-son brother control, and mix control; owners, spouses, sons, daughters, brothers, and sisters, schoolfellows and friends and family members hold higher share; although management unit and technology stocks and other elements shares take place some proportion, but not general. Another survey shows that most private enterprises consist of a strong stock holder and other minority stock holders, but the property right of the enterprise is also closed.

However, a single property right structure also has its own insurmountable defects. Firstly, because the property right structure is centralized, it always leads to regard the property right relations and blood relations as a whole. So it is hard to get rid of family blood intervention, and it causes the hardship of enterprise management. The major structure of property right is single and it makes the ways for family business to gain capital source is restricted. It is not good for enterprise to expand its scale. Seeing from the investment subject of the family enterprise, it is only included family member and some close kith and kin. This kind of coterie that only put family members in the centre can't provides enterprise with huge capital. The tendency of contradict between the simplification of investment subject and the acceleration of capital accumulation is intensified. Secondly, because the single property right cut off the structure of human capital and money-capital, sit always occurred the problem that the man who has the ability to manage the enterprise, however, has no money; to the contrary, the man who has enough money, however, doesn't have the ability to manage the enterprise. The ownership structure centralization of family enterprise has badly blocked the combination between the before-mentioned capital, when comes to a degree, it will has serious opposition. Finally, the ownership structure centralization is short of the supervision mechanism of socialization, which makes the enterprise take too many risks, and it also blocked the process of the professionalization of nurturing the professional managers. In this ownership structure centralization system, enterprise can live without personal and family relationship, and it is seriously restricted by personal and family relationship. Family business must adjust property structure to make the diversified ownership, taking full advantage of using social resources, optimizing various of manufacture factors, and achieving diversified external profits.

Internal property boundary chaos caused biaxial stretching needs

To the external world, family enterprises possess clearly the definition of property right, all of which belongs to the family members or the family close personnel. But from family enterprise internal speaking, the property border is often

chaotic. Family enterprises seldom define the right between family members, which in the future buried hidden trouble for the property dispute between the family members.

The enterprises, is chaotic in internal property, the longer, the more conflicting. Although family and the household in the framework of society is regarded as the most stable, the most cohesive structures, the genetic relationship between family members will loose stroke by economic interests, which also makes the relationship between family and family members diverge. Marx once said, "Economic interests can tear that veil full of languishing blood relationship. If the blood relationship falls apart, the contradictions and disputes in the responsibility rights of the internal enterprise, interests distribution, and so on, will be more intense. When the transaction costs rise sharply with the increased interest conflicts because of the property rights are not clear between family members, the request that the property should be defines and divides between natural persons is put on the agenda, which will cause the partition phenomenon between the family enterprise. Reducing the transaction cost is the expected goal arranged by the effective property rights system to achieve, the requirements by reducing the transaction cost will lead to the enterprises redefining the property, to make the property order change. If you are not clear about the internal property, not establishing a set of effective corporate mechanism, the development of the company will be restricted, what's more, other shareholders' rights and interests also can't get effective guarantee.

The false of the flow property right lead to dynamic needs

Compared with the original financing volume, human capital and production factors is a kind of flow, this property section is called "flow property". In the family enterprises consisting of more than two investors, the original capital are all clear, however, as these funders in the meantime are the operators, its position, ability and contributions without exception are different, while the segmentation in the enterprise incremental often takes the proportion of original capital into account, with little considering the functions of human capital. For most family enterprises, the form of stock rights is basically currency or physical capital, and few other production factors as access enterprise shares, such as technology stocks, govern stocks, marketing stocks, project stocks and other element stocks still haven't got recognition of family enterprises. Because the production factors are pushed aside the shares, which causes mentality instability in enterprises technical staff and senior management, then affected the technology progress and scientific management of the enterprises. The contributions made by all kinds of production factors to output in different periods are different. A new more efficient production factor once appears or the importance of the production factors on production is increased, which all produce a strong demand to this kind of production factor. As a result, the price of key elements will change. The change requirement of factors' price should be reflected on the property rights, so as to give full play to the role of factors in the production. Under the modern economic system, the decisive factor of development of the enterprises is no longer the amount of substance capital, but the quantity and quality of human capital, that is to say, the role of human capital is becoming more and more obvious. In the human capital, the enhancement of the relative effects, the increase of the relative price, all produced needs that change original property rights arrangement, to fully mobilize the enthusiasm of the human capital and other production factors. In reality, some professional managers of the family enterprise have no stock rights, just lacking of protracted and responsibility to enterprises. Only setting the flow property up can make actors in trade have definite expectations, thus help internalization of external profits.

The sealing property caused openness demand

In the family enterprises, the consciousness of loyalty hold the mainstream, the group values tend to increase, enterprise members can consciously safeguarding the harmony of enterprises. But it may constitutes a relatively closed group, displaying a kind of obvious closed feature. In the perspective of property right trading, the property of the Chinese family enterprise has the stubborn closure, the poor liquidity. Market-oriented economy bring about the resources allocation through transactions, its competitive adequacy, liquidity freedom, frequent transaction are the general conditions of resource allocation efficiency. The more fully of the property transactions, the more intense of the competition, and the higher the efficiency is. By the form of distinguishing the ownership movement and corporate property rights movement, modern enterprise system coordinates the contradiction between the adequacy of the proprietary trading and corporate assets stability. The shareholder may transfer the stock according to the law, but can not get refunds or require dividing the enterprise assets before the enterprise bankruptcy. However, many family enterprises in Chinese doesn't handle this contradiction, making the enterprise property transactions get great restrictions, which leads to not only the low enterprise operating efficiency, but also the frequent occurrence of the enterprise assets division, severely restricting the further development of the enterprise. In addition, due to the closed property, poor liquidity, etc, potential foreign investors, the company's holders of the core human capital enterprise property rights, etc, also cannot break the single structure of the property.

THE SUPPLY RESTRICTION AND INNOVATION PIPELINE OF THE FAMILY PROPERTY RIGHT SYSTEM'S CHANGES

The supply constraints of the family enterprises property right system's changes The restriction of the current laws, regulations and policies

There are two main restrictions: one is the lack of protection for private property of family enterprises. Although legislators amended the constitution, regarding the non-public economy as transformation component part of socialist market,

the constitution does not specifically protect personal lawful property for inviolate, additionally, the reality is that the problems of invading personal property frequently happen. The other is the relatively lagging of the existing laws and regulations, without definite rules to the new problems arose in the development of family enterprises. In recent years, many new organization forms appears in the family enterprise, such as a joint stock limited company and listed company, etc. For these new forms of enterprise, national laws and policies don't make clear and definite provisions and explanations, which, for the family enterprises, will have adverse effects on the transition to modern property rights system.

Informality restrictions of the arrangement

Custom culture and other informalities restrict the transition of system seriously. If custom culture has the concept that it should go together with the arrangement of new system, it will reduce the cost of system's transition. Of course, for there is opposite concept between Chinese traditional culture and the new system arrangement, it could increase the cost of system's transition. Our traditional culture emphasizes the concept of Home very much, but shortens the association between Home and the world outside; social capital which is based on relationship and acquaintance was over deep. This point appears quite obviously in family firm. While legal and credible social capital is seriously lacked in family firm, Family Culture and social capital's rareness affects the process of system's transition a lot.

Restrictions of other system's arrangement in the system's structure

Any arrangement of system is a step of the whole system's structure, it affects and influents with other systems together, one system's arrangement changes or not, you should not only consider this system itself alone, but also other relative system's arrangements. In the process of family firm's system transition, no matter the separation of proprietary right and management right, or from centralized to diversification, or absorbing the outside fund, they all can't be separated with market system outside. Current various kinds of market, like manager market and capital market, they are not mature, so, it increases the agent cost and the financial leasing of family firm's system transition.

Way of property right system's innovation in family firm

Clarify the inner property right, avoid internal risk

Through clarification and division of property rights among family members, eliminates the firm's further property right issue, establishes the basis for its further improvement. In a sense, family firm is a pioneer working structure of property right and management right together; decision right, operation right and supervision right together, it has an very important meaning and function to family firm which is in first invent stage. But turn to firm's inside, inner property right is vague and in disorder, the responsibilities and duties are unclear, the financial expenses and receipts are informal, these can produce internal friction easily, and it will influent the achievements. Only does the company clarify the internal property right, can family members become the direct and personalize shareholder, their benefits will have clear personalize delegates to quicken the protection. Thus, it will reduces the inner conflict, decreases the internal risk, and increases the operation achievements.

Dilute the stock right, to realize property right's diversification

In order to gather more improvement fund, absorb outstanding qualified person, depress firm's risk, family firm should base on clarifying inner property right, stride forward to the public, to realize the diversification of property right. Here is a specific way of doing it: Firstly, link property to individuals, so every natural person as a property owner, and become an independent achievement subject; Secondly, increase capital and stock, sell property right, switch property, by these means to import new investors; Thirdly, family firms that have good condition and large scale, they can through being listed, absorb social public investment, this is also an important way of realizing diversification. Recent days, some family firms in Zhejiang province with large scales, high level of technique, excellent managers and prominent technicians' function, at the same time, family firms with high educational boss start to emerge the trend of separating the stock.

Practice discharging stock, bring element achievement into play

Compared with original capital's stock, manpower capital and other produce element is a kind of discharge, this property right can be called "discharge property right". In some large scale family firms, they need practice discharging stock; adopt technique, annual contribution, achievement, manager's stock right and option. In this way, form a beneficial community; in the diversification of property right, we also need to absorb staff to buy the stock widely. Zhejiang Ningyu Company adopted this method, and avoided property familial, used property right to arouse more qualified person's enthusiasm.

Open property right, establish public firm

Family firm with large scale, should through gathering stock from society, transit part of property right to its staff, and firm's territory, unite, and join stock each other, toward developing a modern company system, like limited liability company, share limited company, through these new organized form, becoming stock, improve firm's organized structure; make use of modern company's competition superiority in capital market, technique innovation, brand strategy, market extension and other aspects. Through self-accumulation, combine direct financing with indirect financing; consume free social fund and other firm participation.

Carry on capital operating, promote property right's circulation

At present, our country's stock markets' process of commercialization is going quicker and quicker, this provides family firms a good chance for joining in stock market directly, going on financing, and carrying on capital operating. Firms take advantage of cooperation, consolidation, controlling stake, and other forms to carry out capital operating; firms which have good conditions can through capital restructured to actively sought to be listed.

Change the concept,enhance the manager's quality in family firm

Family firm's owner should give up the insular inner family interest concept, adapt to modern market economy's request, base on building a modern firm system, study actively, enhance self-quality instantly, also the government needs to create good conditions actively, to encourage and promote firms to improve level of management. The owner of family firm should make use of various training to promote family manager members' quality, so as to realize the quick growth of family firms.

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