

集團監理機制：關係企業治理機制之解構與建構 —兼論金融集團之內部監控*

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摘 要

傳統公司法以單一公司法人為規範對象之法制基礎，顯然已無法解決企業集團化之發展現象。鑒於企業集團在現代經濟活動扮演重要之角色，各國公司法逐漸將企業集團視為一個經濟實體，並增訂關係企業法制，以面對此嚴峻之挑戰。

就我國關係企業之監控法制而言，偏重從屬公司少數股東及債權人之保護，其規範重點聚焦於控制公司濫用控制力而使從屬公司為不合營業常規之行為、控制公司之民事責任、關係企業之資訊公開、交叉持股之限制及控制公司權利行使之限制，顯然仍停滯在個別單一公司法人之思考層次，並未能充分反映控制公司負責人具有統一指揮整體企業集團業務經營及分配集團利益之經濟現實。申言之，傳統公司法對於股東會權限之分配、股東監督權之行使及監督機關監督權之行使，皆以單一公司法人為對象，顯然無法完全因應關係企業之經濟現實。再者，當前經濟發展之潮流下，金融集團及跨國關係企業日益增加，因此如何面對此種經濟現象之挑戰，建立現代化之治理機制及嶄新之企業集團法制，亦為我國當前關係企業法制所應解決之課題。

本文首先探討我國企業集團形成之法制基礎，並分析立法政策上對企業集團統治權集中所生之法律問題所採取因應措施。其次，則從關係人交易之監控、責任機制、內部監控機制、企業集團重整等角度，分析我國現行監控機制之現況及界限，進而解構現行法制對整體企業集團之監控盲點。再者，尚從比較法之觀點，參酌美國及日本之法制經驗，試圖擴大責任機制之適用範圍及企業集團重整之效力範圍，並謀求突破公司法人格之高牆及藩籬，期能建構以整體企業集團為規範對象之優質監控機制，而有效因應企業集團統治權結構之特殊性。最後，則提出本文之結論。

關鍵字：企業集團、關係企業、關係人交易、不合營業常規交易、公司治理

The Governance Mechanism of Corporate Groups : The Anatomy and Construction of Corporate Governance to Affiliated Entities and Financial Groups

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Abstract

The traditional corporation law presupposing as its subject the individual corporation and looking upon it as the basic legal unit entity no longer adequately serves all the needs of modern corporate jurisprudence. The response of corporation law to the challenge presented by the emergence of corporate groups as the dominant institutions in the world's economy is a major development in world jurisprudence. To deal with this institutional weakness, the traditional corporation law in a growing number of areas is being supplemented by the rules of corporate groups that focus on the business enterprise as a whole, not on its fragmented components.

The legal institutions adopted by the Company Law in Taiwan, mainly put much more emphasis on the protection of minority stockholders and creditors of subsidiary companies, and also focus on the arms-length transactions or irregular behaviors of subsidiary companies which were caused by the abuse of controlling companies' power, the civil responsibilities of the controlling companies, the information disclosure of affiliated entities, and the limitation of controlling companies' rights, the information disclosure of affiliated

companies' transactions , the limitation to the mutual investment of affiliated companies, the limitation to the performance of voting power of mutual investment companies, and so on. In governance mechanism of corporate groups, each company exists as independent legal entity. However, the responsible persons of the controlling company can command the management of whole corporate group in unison and decide the distribution of interest of the corporate group, so the whole corporate group has the signature of being one economic entity. The fact of traditional corporation law regulating the distribution of the power of shareholder's meeting and the performance of shareholder's and internal institution's power of supervision toward single company legal entity clearly indicates the incompetence of not be able to fit in the economic reality of corporate groups. With the fact of the responsible person of controlling company having the authority of commanding the whole corporate group, it is definitely an major theme to make the important factors issued above capable of recovering the holes of the mechanism. In addition, the numbers of financial groups and multinational corporations increase day by day in the trend of economic globalization, therefore the problem of facing the challenge and development trend of this specific economic phenomenon is also an important issue which should be solved by a modern governance mechanism and a new doctrine of corporate group law.

The primary purpose of this paper is to analyze legal history of corporate groups and in Taiwan, and how did the policy of corporation law to deal with the associated problems of centralized

dominion by controlling company? Part III of this paper will discuss the control of related parties transactions, accountability regime, internal governance institutions and the reorganization of corporate group exist in the corporation law, and anatomize the lacks of the governance mechanism in Taiwan. Both Japan and the United States have been slow in making legislation or creating new rules of case law for establishing sound governance mechanism of corporate group as a whole. Part IV of this paper investigates the necessary revolution to current corporation law based on the comparative study. Part V of this paper makes brief conclusion and suggestion.

Key words : Corporate Groups, Affiliated Entities, Related Parties Transaction, Arms-Length Transactions, Corporate Governance.

