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TITLE: Family Enterprises In China From a Legal Approach

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## Abstract

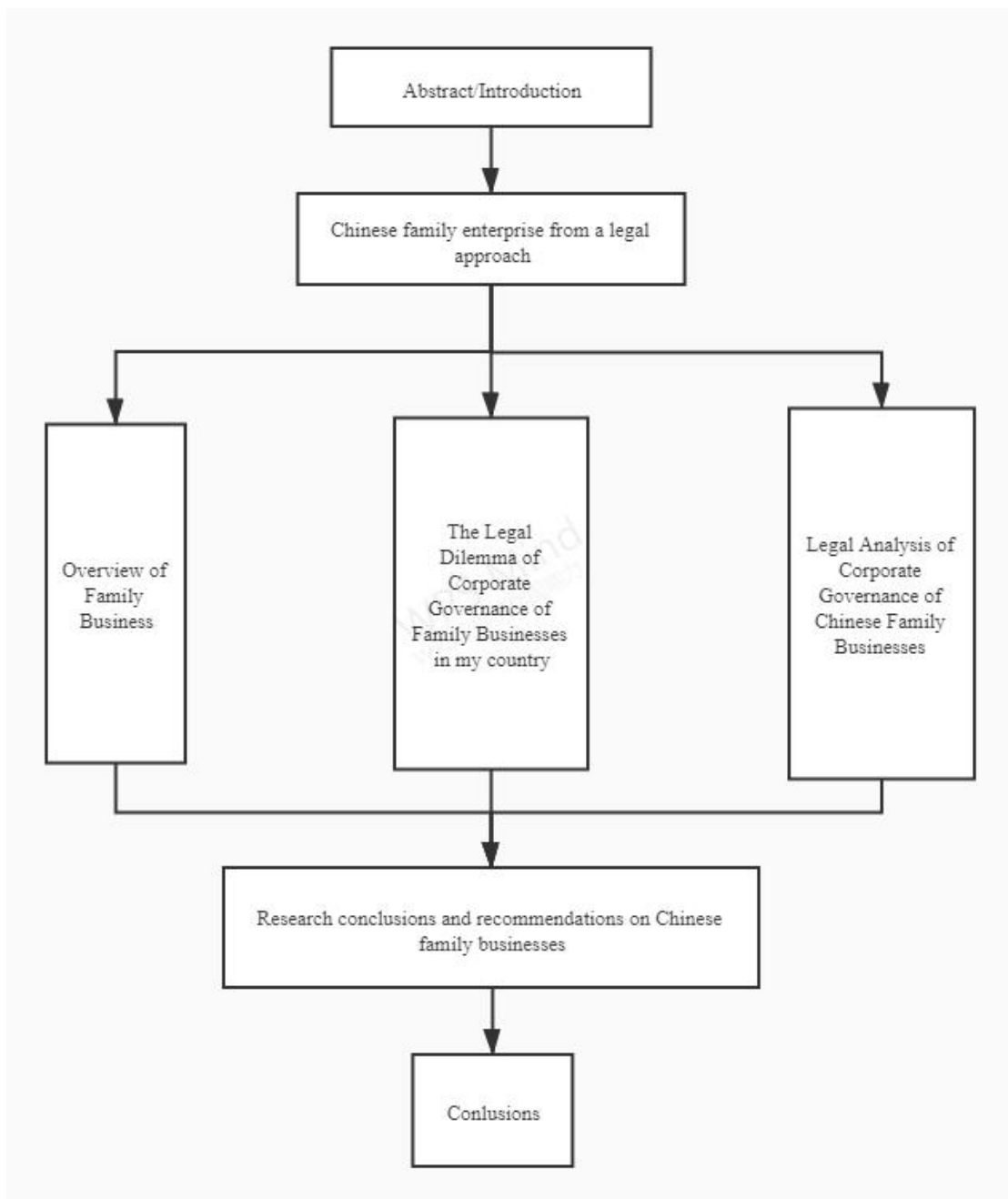
Family enterprise is an integral part of the country's economic system. It continues to produce, develop and change, and it also plays an important role in economic development. It is the most active economic entity in today's society. In China, family enterprises are the main form of private economy. Since China's reform and opening up, family enterprises have gradually shown a momentum of development. However, its development path is tortuous and faces many difficulties that hinder its development. "Economy of scale" and "Limited Liability" are the basic requirements of modern social and economic development for enterprises. Therefore, Chinese family enterprise have also carried out large-scale corporate reforms over the years. Judging from the current organizational form of family enterprise, most of them have adopted a corporate form. The reform of the corporate system has gradually transformed the governance model of family enterprise from "family governance" to "modern corporate governance". However, in general, this transformation is still in its infancy and faces a series of internal governance legal dilemmas. The reasons make the Chinese family enterprise may be in a potential crisis state. The reason is that because China has a long tradition of family culture and the influence of Confucian culture, and the modern legal system started late, there are still certain problems in applying modern corporate governance models directly to family business governance. In addition, unlike Western developed countries, corporate governance research has attracted attention from all walks of life only with the restructuring of state-owned enterprises. Research on corporate governance in China has focused on state-owned enterprises from the outset, and has developed vigorously over the years. Research on the governance of family businesses is relatively weak. Therefore, studying the governance and laws and regulations of Chinese family enterprise undoubtedly has strong theoretical and practical significance for the development of China's private economy.

In this article, I will take a speculative approach and follow the ideas of asking, analyzing, and solving problems. The article describes and summarizes the concept, legal positioning and legal characteristics of family business, clarifies the connotation of family business, and distinguishes it from other economic entities, reflecting the

unique significance and value of studying family business governance. On this basis, the legal dilemma faced by the family business governance structure is discussed and analyzed, and the different governance structures required by different family businesses are pointed out, as well as the long-term development goals of suitable family business governance structures. Finally, I put forward some views on the solutions to these legal dilemmas.

First of all, the foundation of managing a family business is to perfect the ownership. This process cannot be accomplished overnight. It is necessary to judge and realize the optimal allocation of the family ownership structure according to the different stages of family business development and the existing scale. The second is to improve the credit legal system. Third, it is to solve the lack of professional managers' incentive and restraint mechanism in the governance of Chinese family businesses. Formulate specific supervision, incentive and restraint mechanisms for senior managers through the company law or internally through the company.

Next, we will discuss the design and arrangement of legislative technology. On the one hand, we must apply the general provisions of the company law and further improve them; on the other hand, we must also make supplementary provisions for the parts that are not specified in the company law based on the characteristics of the family company's governance structure. In addition, in some related laws, specific legal systems and rules should be established to improve the external legal environment of family business governance, and to achieve legal changes and adjustments to family business corporate governance. I will comprehensively use theoretical research methods, publish the source and acquisition methods of the information in an objective and scientific manner, and conduct research and speculation on the basis of previous research in a concise and clear way of expression.



Structure of Article

## Chapter 1: Overview of Family Business

### 1.1 Legal Positioning of Family Enterprise

#### 1.1.1 Definition of family enterprise

First of all, we can know from the literal meaning that a "family business"(or "family enterprise") should first be an enterprise, and it is a form of corporate organization; secondly, it must be closely related to the "family". We first define the concept of "family". Here we can define the meaning of "family" from the perspective of kinship law. The kinship law is a legal system that regulates kinship relationships (its core content is marriage and family relations). Through the family law, clarify its connotation and extension. The family network (kinship network) based on marriage and blood relationship includes the relationship between many subjects, but from the legal aspect, it is unnecessary and impossible to include all family relationships in its adjustment scope. From the perspective of the family, it is appropriate for us to define the connotation and denotation of the family from the closeness and distance of kinship. Kinship, first is spouse; secondly, blood relationship, which refers to relatives who are related to each other by blood. Blood relationship can be divided into direct blood relationship and collateral blood relationship. In addition, blood relationship can also be created due to legal fiction. This kind of blood relationship is called For the purpose of fictitious consanguinity, such as fictitious consanguinity through adoption; finally, in-laws, who are born as a result of marriage, in principle, should be limited to the consanguineous spouse or the consanguinity of the spouse<sup>1</sup>. Among the three categories of relatives of spouse, consanguinity, and in-laws, only a few relatives have been adjusted in the legislation.

According to the provisions of China's current "Marriage Law" and other laws, the family relationship that is the subject of legal adjustment includes: husband and wife, parents and children, siblings, grandparents (maternal grandparents) and grandchildren (grandchildren), and in certain circumstances, also include Collateral blood relatives within three generations. Children here should include children born in

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<sup>1</sup> Yang Dawen: "Family Law" Law Press, April 2004, 4th edition, p. 20



wedlock, children born out of wedlock, adopted children, and stepchildren. Brothers and sisters are not limited to siblings. Through analysis, it is believed that it is more complicated to make general provisions. Conceptually, the definition of the concept of father family should refer to the family relationship network based on marriage and blood relationship, including spouse, blood relationship and in-laws. It should be said that this is a non-generalization rule. If a generalist rule is to be able to fully encompass all legal relationships involving family matters, then the scope is too wide, otherwise the scope is too narrow. Second, let's look at the connection between family and business. The inherent implicit condition of the family business is the ownership of the business by the family. An important basis for judging the different stages of a family business is the different degree of control over its management power. The mastery of corporate ownership ranges from complete control by family members to only a small percentage of shares; the mastery of corporate management power ranges from the control of the company's business operations completely controlled by family members to the strategic significance of the company's management. All of the management decision-making powers belong to the category of family businesses.

Then, we define the concept of family business from the perspective of ownership and control, which can be summarized as follows:

1. Determine whether it is a family business from the degree of ownership of the capital of the business by the family. Most scholars will somewhat require the family business to have control, and believe that a business owned and controlled by a core family is a family business. For example, the American business-historian Alfred D. Chandler defined a family business as: "The founders of the business and their closest partners (and families) have always held most of the equity. They maintain close personal relationships with their managers and retain high The main decision-making power of hierarchical management, especially in relation to financial policies, resource allocation and selection of senior personnel."<sup>1</sup> However, scholars have different opinions on the specific ratio of ownership. This is due to the differences in the degree of concentration of property ownership of family businesses in different countries and the differences in the corporate laws of different countries or regions. Some scholars only gave a flexible quantitative standard in their research. We will not repeat them here. Some scholars have proposed a critical control of the shareholding ratio and used this as a measurement standard. But this is only a relative concept and

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<sup>1</sup> [(United States) Alfred Chandler: "The Visible Hand"]

it is difficult to quantify. Therefore, we regard the development of a family business as a dynamic process of development and change, and it may be more reasonable to understand the family business as a state of continuous distribution of family business.

2. The family business is defined by the degree of participation of family members. According to this definition method, the family business should be judged from the degree of family involvement and influence in the business, and the participation of family members in the business should be positioned in the decision-making power of key positions. However, in terms of the actual situation of family businesses in mainland China, due to historical reasons, modern private enterprises in mainland China have only started for more than 30 years, and the control of most enterprises is still mainly in the hands of the older generation. It is not passed on to the next generation. Therefore, the inter-generational inheritance standard may not be suitable for China's status.

3. The family business is defined with the management control power as the core. The definition method considers that the control of entrepreneurial family is the most basic and core feature of family business. However, how to distribute the operational control rights within the enterprise? This is a problem that family business research must pay attention to. This question is particularly important in the study of Chinese family businesses. Many documents show that, compared with Western family businesses, Chinese family business owners are less willing or more difficult to delegate business control to non-family members. Therefore, it is foreseeable that the research on the internal governance of Chinese family enterprises will be mainly launched from the perspective of ownership of control rights.

The concept of family business is far more than the above. From the point of view of the essence of the definition, the definition is mainly centered on the degree of the family's mastery of the ownership and management control of the enterprise. Based on the above analysis, we can conclude that a concept suitable for Chinese family businesses should include three conditions: family conditions, ownership conditions, and control rights. Here, we define the concept of family business as: family business refers to a form of corporate organization in which family members, mainly tied by blood and marriage, hold the control of corporate property, and directly or indirectly control the power of business management.

### 1.1.2 Chinese family enterprise from a legal approach

There is no corresponding type positioning in the corporate classification of Chinese family businesses. In China, the classification of enterprises was first based on the nature of enterprise ownership. Divided into public enterprises (that is, state-owned enterprises and collective enterprises) and non-public enterprises (that is, private enterprises and self-employed). Later, in the 1980s, China established the goal of establishing a socialist market economy, and formulated relevant corporate laws in accordance with corporate organizational forms, forming a corporate system in which companies, partnerships and sole proprietorships coexist. But this also caused the conflict between the legislation on the form of enterprise organization and the legislation on the form of enterprise ownership at that time, which was rather chaotic. In order to clarify the enterprise legislation, we divide the enterprise legislation system into enterprise entity legislation and enterprise promotion legislation.

The enterprise entity law is classified according to the form of enterprise organization, and the enterprise promotion law is classified according to the form of enterprise ownership. The classification of the corporate entity law is a typical model in Western countries, and the corporate promotion law is a corporate classification form with Chinese characteristics. In the classification of the enterprise entity law, there are many forms of organization of family enterprises in my country, some are limited liability companies or joint stock limited companies, some are sole proprietorships, and some are partnership enterprises. In the classification of the Enterprise Promotion Law, family businesses should be classified as private businesses. Among private enterprises in China, around 2005, 90% of private enterprises were family businesses. In 2010 it was 85.4%. Today, more than 80% of private enterprises belong to family businesses, but family businesses are the representative of China's private economy. It is also the main force of the private economy.

## 1.2 Legal characteristics of corporate family enterprise

As mentioned above, family relationship is a network of relatives including spouses, blood relatives and in-laws, which are introduced into corporate relationships. So there are differences in such enterprises. Taking the corporate family business as an example, after integrating into a family relationship, it has its own unique legal characteristics compared with ordinary companies, which are specifically manifested in the following aspects:

#### 1.2.1 Mainly limited liability companies

In the early days, China's capital market adopted restrictive or even prohibitive policies on private capital, so most family businesses took the form of limited liability companies. Family businesses in the form of joint-stock companies, especially listed companies, are rare. The report shows that family systems are widely concentrated in private enterprises in our country. A family business in a broad sense refers to those business units in which individuals or families own 50% or more of the controlling rights. In a narrow sense, a family business refers to not only 50% or more of the controlling rights, but also the family's participation in management. According to the 2010 private enterprise sample survey data, if defined by a broad family business, 85.4% of private enterprises nationwide are family businesses; if defined by a narrow family business, 55.5% of private businesses are family businesses.

At the end of 2010, among the 2063 A-share listed companies, there were 762 private listed companies, and family businesses accounted for 36.9% of the listed companies.

In the amendments to the "Company Law" in 2005, new regulations such as reducing the amount of company establishment, reducing the amount of capital, relaxing the time of capital, and allowing the establishment of one-person companies, will allow more family businesses to become limited liability companies.

1.2.2 The capital structure is unitary, and the ownership of equity within the family is not clear enough.

Here, we will discuss the impact of the unitary structure of corporate property rights. All or most of the registered capital of a family business is contributed by family members, that is, the capital structure is unitary. Uniformity refers to the contribution of one person or a family; the capital structure is unitary, and the enterprise can be operated and developed more smoothly through the inheritance system, because this structure is relatively stable. However, this kind of property right structure is likely to cause conflicts of interest among members, which will adversely affect the development of enterprises. At the same time, the simplification of the property rights structure will also weaken the restrictive effect of the property rights structure on the distribution and use of corporate power. In addition, family shareholding tends to make the corporate capital structure closed. This closedness may make the family business incompatible with the open and transparent requirements of the popular investment in the capital market, which restricts the company from raising funds from the society to promote the expansion of business scale And the ability to upgrade technology. In addition, in the early stage, the Chinese market had relatively strict control over private capital, which caused many companies to adopt more closed management. It also promoted the creation of a single structure. Of course, in the last 10 years, the market's policy on capital has been greatly relaxed, and enterprises have been loosened, which has also brought new vitality to the Chinese economy.

### 1.2.3 Family enterprise with the establishment of shareholders' meeting, board of directors, and board of supervisors

According to the "2002 China Private Enterprise Survey Report" <sup>1</sup>by the "China Private Enterprise Research" research group, the proportion of Chinese family businesses that have a board of directors increased to 47.5% in 2002, 26.6% of the board of supervisors, and 33.9% of the general meeting of shareholders. In 2011, in the "Report on the Development of Chinese Family Businesses" <sup>2</sup>published by Wang Wenjing of the Beijing Institute of Socialism, pointed out that family businesses have problems with informal mechanisms. It can be seen from this that although most

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<sup>1</sup> 2002 China Private Enterprise Survey Report. Research Group on Chinese Private Enterprises. 2002

<sup>2</sup> Report on the Development of Chinese Family Businesses, Wang Wenjing, Beijing Institute of Socialism, 2011

family businesses are registered as limited liability companies, their internal governance structures are not set up in accordance with the provisions of the company law. This situation has always existed. It can be said that in the internal governance structure of a corporate family business, the board of directors, managers, and the board of supervisors cannot effectively restrict the composition of the family. This is likely to cause the unconstrained expansion of the boundary of the family will, and supervision is prone to problems. The modern corporate governance concept has been hindered to some extent in the implementation of corporate family businesses. The separation of two powers in Chinese family businesses has not matured and family management is a common phenomenon.

#### 1.2.4 The governance model has family characteristics

Family businesses are mainly maintained by family relationships that are tied by blood and marriage, and have family characteristics in the internal governance of the company. First of all, the decision-making power of the management of a family business is mainly concentrated in the hands of “family members, and centralized leadership is adopted, which is centralized in business decision-making. It is arbitrary in specific daily management affairs, often expressed as “rule by man”, which has been formulated. The rules and regulations cannot be strictly followed. The family-style hierarchy has largely replaced the scientific management concept. Secondly, the phenomenon of setting posts and nepotism is serious. In enterprises, functional differentiation and organizational differentiation are lacking. Clear. There is no stable organizational system based on functional differentiation. In this case, family logic may surpass certain business principles. In order to take care of the interests of family members at the expense of the overall situation. Many positions in many family businesses. The functions are not very different, but the settings are repeated continuously, which makes the definition of individual rights, responsibilities and interests ambiguous. This situation is common in early developing enterprises. First of all, because China's market economy started late, and the awareness of Chinese civil laws and regulations was not strong. Early families Enterprises also have strong traditional cultural characteristics. They show a certain degree of closedness and familiarity. However, with the passage of time, the overall Chinese

economy has been steadily rising, and relevant laws and regulations have been continuously improved. Most importantly, most of the steady development of family businesses have been The transition has been completed from different scales of enterprises. It is both active and passive, both subjective and objective, and gradually formed a more modern and institutionalized form of corporate organization and management. Then the problems listed above are now all Better improvement. But in the top of the company, the family nature still exists. But in terms of the nature of the family business itself and its extension, combined with the family business itself is a kind of private enterprise. Family nature and mature, complete system How to find a balance in the structure of the chemical enterprise? This is a question worthy of further discussion.

#### 1.2.5 The employment system is somewhat closed

The control of important departments of a family business is dominated by family members, and the sources of board members and management personnel are closed and family-oriented. Because of family ethical concepts, property inheritance concepts, trust crisis between people and the degree of marketization, their own cultural level, management level, legal awareness and the degree of social legalization, these internal and external, complex and numerous factors , Causing obstacles and difficulties for outsiders to be employed in decision-making positions. However, the internal members have average quality and average personal abilities, and they are indeed incapable of operating management or enterprises. However, the expansion of the scale of the enterprise does require specialized talents before hiring outsiders into the decision-making level of operation and management. This situation is called “passive” employment of outsiders. The family inheritance of the personnel system has become an unstable factor, but the shortcomings of this system are also very obvious. This way of inheriting management power will have a negative impact on the work enthusiasm of non-family members and the efficiency of the company, and it is easy to inhibit outside the family. Of professional management talents play their due role.

It is relatively rare for a family business to incorporate external members into the decision-making level of the corporate governance structure. In some small and

medium-sized enterprises, the owners of certain family-owned enterprises often find it difficult to distinguish the relationship between personal asset growth and company development. Family owners naturally believe that they should own the company's shares and should not be allocated to the main external managers of the company. At the same time, they should not allow family outsiders to participate in the decision-making and supervision functions of the corporate governance structure. This kind of behavior cannot mobilize the enthusiasm of external managers, which makes them often resist various decisions made in corporate governance, and it is difficult to effectively implement the reasonable intentions of the decision-making. They also allow those decisions that are obviously flawed, and eventually form a deformity. China's corporate governance structure and the role that corporate governance should play have become empty talk.

## CHAPTER 2: THE LEGAL DILEMMA OF CORPORATE GOVERNANCE OF FAMILY ENTERPRISE IN CHINA

A family business is a typical business tied by blood or marriage. The core of its internal governance mechanism is the power distribution and checks and balances among family members tied by blood or marriage. Although family businesses have carried out corporate reforms and set up organizational structures and power distribution and operation in accordance with the company law, most of them have no name. The internal governance of the family business still has a strong family color, and the family does not really delegate power. This is the family governance model, that is, under the condition of the integration of the two powers, the centralized leadership is adopted, and the key positions and important positions of the enterprise are held by family members A model of corporate governance<sup>1</sup>. The root of the family governance model of family businesses lies in the close integration of the two powers of ownership and management, which results in the overlap or partial overlap of the two systems of family and business, and the resulting management power and

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<sup>1</sup> Xue Tianshan: Family Governance—The Unsurpassed Choice of Chinese Private Enterprises, Inner Mongolia Social Sciences, Issue 3, 2004, p.117.



decision-making power are concentrated in the hands of family members , The internal management of the enterprise has the characteristics of strong family color.

The family governance model is a relatively effective and practical management model for a certain period of time, with its existence objective reality and rationality:

First, the family business has a cost advantage. First, family businesses use blood and kinship to easily obtain the material and human capital needed to start the business in the initial stage of business establishment, reducing the cost of business creation; second, the property rights system of family businesses is conducive to reducing agency costs. When the ownership and management rights of an enterprise are concentrated on the entrepreneur alone, there is no agency cost at all. When family members own most of the shares, and the day-to-day management is given to non-family members, the agency cost is also very low, because these managers Does not have important decision-making power; third, corporate cohesion caused by blood relationship is conducive to reducing internal integration costs. Because the main members of the family business are related by blood, the personal trust established between them is better than the institutional trust<sup>1</sup>.

Second, make the enterprise's production and operation decision-making rapid and optimized. The early entrepreneurs in the development of a family business almost completely own the ownership of the business, and the capital owners of the business are the decision makers. They make careful decisions, rely on their experience and talent to make decisions quickly, and thus seize business opportunities in time.

Third, it can produce the best incentive effect and save transaction costs. The benefit-sharing and risk-sharing mechanism of the family business makes the survival and development of the family business closely related to the interests of family members, so family members regard the business as their own life. From the perspective of vertical cooperation within the enterprise, family members have strong centripetal force, a sense of identity and loyalty. From the perspective of horizontal cooperation, relying on personal relationships and credit, and relying on the social network of kinship, clan, and fellow villagers can reduce the cost of companies searching for information, signing and fulfilling contracts.

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<sup>1</sup> Dong Zhiqiang: Rational Analysis of Family Management of Private Enterprises, Yantai Forum, Issue 6, 2003, p. 31

Under the condition of imperfect market economic order and legal system construction, the family enterprise adopts the family governance model to be reasonable and effective, but when the enterprise develops to a certain scale, in the process of modernization, internationalization and group development, the family enterprise The governance model has increasingly exposed its shortcomings and is facing a series of legal dilemmas.

Next, let us sort out the legal dilemmas faced by family businesses.

## 1.1 Ownership Dilemma

The property rights structure of family businesses is characterized by a unified property rights structure, and for most family businesses, a single ownership structure is basically adopted at this stage, that is, the property rights of the business are basically owned by a certain individual or a family. This ownership structure has the following legal dilemmas:

### 2.1.1 Ambiguous ownership

In the early days of establishment and development of family businesses, ownership ambiguity is extremely common. The ambiguity of family business property rights is mainly manifested in the following two aspects:

One is the unclear definition of property rights among family members. At the beginning of the establishment of a family business, the development of the business urgently needed funds and manpower. It is the common practice of most families to absorb family members into the business. However, few or almost no companies have defined the property rights among family members at the beginning of their business, which lays down the hidden danger of unclear property rights among family members in the future.

Second, the ownership relationship between the family business and the outside world is unclear. This was determined by the specific economic, political and social background of our country at that time. In order to obtain various policy support, or

even just to avoid discriminatory treatment that may be encountered in economic (such as financing), political and other aspects, family businesses have put on the cloak of state-owned or collective enterprises. With the liberalization of the private economy and other non-public economic policies, the gradual loosening of the social environment, and the rapid expansion of enterprises, these factors eventually led to a large number of ownership disputes.

2.1.2 The ownership of personal property and the ownership of corporate assets are confused

This property right arrangement under the family business system makes the family's personal property ownership and corporate legal person property ownership irrelevant, thus threatening the integrity and sustainability of the enterprise. In my country's family businesses, the property ownership of corporate legal persons is deeply disturbed and controlled by the family's personal property ownership. It is not clear to distinguish between personal property and corporate property. The development of a company is deeply interfered by individuals or families and cannot exist independently. The integrity of the company is questioned. Although the family business takes the form of a limited liability company and a joint-stock company, the corporate organization is only formalized<sup>1</sup>. In terms of form, the family business does not operate according to the standard corporate legal person, and there is no sound corporate legal person system to ensure that the company exists as an independent legal person.

The interference and control of family business property ownership over legal person property ownership are mainly manifested in two aspects:

One is the issue of business operations. The property ownership of family businesses is highly concentrated in the hands of business owners or their families, which provides both a guarantee and an incentive for family business owners to intervene in the business management. The intervention of business owners in business management makes the development of the business deeply restricted by individuals and families, and the sustainability and integrity of the business cannot be

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<sup>1</sup> Wang Guomin, Zheng Ye: Family System and the Reform of Private Enterprises in China-A Comparative Study of Eastern and Western Family Systems, Economic System Reform, 2002 Issue 6, pages 46-48.

guaranteed.

The second is the issue of corporate inheritance. Family business inheritance is always carried out within the family. If the family members have people who are good at business, the business can survive by chance; when the business does not have such talents, the survival of the business is threatened. Therefore, it is difficult for a family business to have a large longevity company.

### 2.1.3 Confusion of ownership and management rights

In the sequence of the internal property right structure of the enterprise, from the ultimate ownership to the legal person property right to the management right, it actually constitutes a multi-link vertical chain of property rights, and a multi-level principal-agent relationship arises from this. In most family business systems, the investor and the business manager are unified as a natural person. The family is not only the capital investor, but also the business manager. The property chain is extremely short, and there is rarely a principal-agent relationship<sup>1</sup>. Most family business ownership and management rights are highly concentrated in the hands of family business owners. Although some family businesses seek to release the management rights of the business and let professional managers take over, such introductions often end in failure. The decision-making power of the family business is mainly concentrated and controlled in the hands of the "parents". The important departments of the family business are controlled by family members. The source of the board members and management personnel is closed and family-oriented. Due to the unification of ownership structure, it often leads to the integration of ownership and blood relationship, and therefore cannot get rid of the interference of family blood relationship. In the management of family business, the owner is the manager. Chandler wrote in "The Visible The book "Hands—Management Revolution in American Enterprises" examines the specialization of commerce, finance, insurance, and transportation, and points out that it is the specialization of production in these industries that leads to the professionalization of management. With the expansion of

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<sup>1</sup> Lu Tianqi: Research on the Innovation of the Internal Governance Structure of Chinese Family Businesses, Social Science Research, Issue 6, 2003, p. 34.

the scale of business operations, not only the division of labor within the enterprise has become more refined, but also a corresponding requirement for enterprise management to employ a larger number of more professional operation and management personnel to implement management division. When the enterprise develops to a certain scale, the coordination and division of labor in management can produce higher efficiency, and the management power of the enterprise will be transferred to specialized management personnel. At this time, the "professional managers" referred to by Chandler gradually emerged<sup>1</sup>. . Just as the division of labor has greatly improved production efficiency, the division of labor has also greatly improved the efficiency of enterprise management. It can be seen that if the limited separation of ownership and management rights is not implemented, and management professionals are hired to manage the company, the family business will not only not be able to share the huge benefits brought by the division of management, but its further development will also be restricted, and even lead to the decline of the company And bankruptcy.

## 1.2 Looking at the crisis of trust from the perspective of "Manager Revolution"

The advantages of the family business in the early stage of development are appropriate to the excellent trust resources generated by the blood or in-law relationship, that is, "family trust", and thus a family-style governance model has emerged. The modern corporate governance theory emphasizes a modern corporate system based on "social trust". Social trust is a kind of institutional trust. It uses the legal system to endow social members with rights and obligations and necessary punishments to maintain the trust relationship. In comparison, social trust is certainly more stable and authoritative. Family trust replaces social trust and family governance model replaces modern corporate governance model. It is the last resort to reduce opportunistic losses under certain social and economic conditions. However, with the establishment of China's credit system in recent years and the improvement of the social credit investigation system, this phenomenon is gradually improving. But here, we have to mention the dilemma brought about by familism. The so-called familial

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<sup>1</sup> Chandler: *The Visible Hand*—The Management Revolution of American Enterprises, Business Press, 2011 Edition, p.110.

dilemma refers to: under a certain value system formed by institutional culture, only familial trust can form optimal cooperation. However, this kind of cooperation is not the most efficient. When it is difficult for our system to establish and maintain trust through laws and formal open institutional procedures, family trust is only an alternative system for social trust, but family trust cannot solve the dilemma of familism. This is the fundamental reason why a large number of family businesses in our country maintain family governance. The establishment of social trust requires the establishment and improvement of my country's social credit legal system and system, which mainly refers to the personal credit legal system.

Scholar Wang Dingding once profoundly stated that the economic development of both foreign countries and China has shown that it is the most difficult thing to convince resource owners to bring together the resources they control, to be controlled by entrepreneurs, and to realize entrepreneurial innovative solutions. . In the entrepreneurial spirit of cooperation, the core thing is "credit." All kinds of enterprises, often cause the enterprise's survival crisis, is the trust relationship between the partners<sup>1</sup>; "Capital", especially the raising of large-scale capital, is fundamentally dependent on the market economy, the core system of the modern model-a credit system. The large-scale division of labor and cooperation between people, without the support of the "credit system", cannot be extended beyond the support of family or blood relations<sup>2</sup>. In China, due to the lack of a personal credit legal system, family businesses, which are linked by family relationships, will inevitably encounter further socialization. Stagnation in the crisis of confidence. Since 2006, China has gradually developed its credit system. It adds a layer of protection to the corporate credit crisis. In "The Development History, Current Status and Trends of Chinese Enterprise Credit Reporting Industry (3)", we can find the early content of the development of credit reporting more than ten years ago. Corporate credit service is a mature industry that has been developed for more than 100 years in the world, but its development in China has only lasted more than ten years. Nevertheless, a large number of professional companies engaged in corporate credit services have emerged in the Chinese corporate credit reporting industry, and individual companies (such as Sinotrust, China Xia) have even grown to a certain scale and are playing an active role

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<sup>1</sup> Wang Dingding: "The Economics of My Thinking", Sanlian Bookstore, 2013 edition, pages 186-192.

<sup>2</sup> Wang Dingding: Reviewing the "Financial Revolution", "Economic Research", Issue 12, 2007.

in the normal operation of market transactions<sup>1</sup>. With the further development of the socialist market economy, credit transactions between enterprises will become more frequent and will become the main means of market transactions. Faced with such a trend, the corporate credit management awareness and level of credit management will steadily improve. At the same time, the products and services provided by financial institutions to enterprises will also be more integrated with credit transactions between enterprises. This will steadily promote the development of the corporate credit investigation market. The main obstacle to the development of corporate credit service industry comes from the external environment of corporate credit information. In 2013, the "Regulations on the Management of Credit Reporting Industry" was officially released. This regulation was formulated to regulate credit reporting activities, protect the legitimate rights and interests of the parties, guide and promote the healthy development of the credit reporting industry, and promote the establishment of a social credit system. It was promulgated by the State Council of the People's Republic of China on January 21, 2013 and since March 15, 2013. It will come into effect today. Enterprise credit service is also an information service. The development trend of information services is scale. The larger the scale, the more obvious the advantages of information cost-effectiveness, especially today when modern information technology is widely used. It is foreseeable that in the next ten years, China will have several large-scale corporate credit reporting agencies that play a huge role in the healthy operation of China's market economy.

### 2.2.1 The inevitability of "managerial revolution"

Do family businesses have to undergo a "manager revolution" or a "control revolution"? First of all, let us say that the "manager revolution" is more difficult for Chinese corporate family businesses than for ordinary companies. The reason lies in the profound influence of China's "family culture" tradition. In China, the cornerstone of all trust and all business relationships is obviously based on relatives or purely personal relationships of relatives. The industrial structure of the Chinese society is similar to that of Catholic Latin-speaking countries, and businesses tend to be owned and managed by families, so they are relatively small in scale. A society that

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<sup>1</sup> Development History, Current Status and Trends of Chinese Enterprise Credit Reporting Industry 2006 Sina Finance Report

emphasizes familism is more difficult to create large-scale economic organizations, and the limitation of scale will eventually hinder the participation of SMEs in the global economy. The trust among the Chinese is limited. It is the trust between individuals and the loyalty to the individual, which denies objectivity and impartiality, thus preventing the development of a truly rational and professional strict management system. It is obvious that there are great difficulties in promoting family businesses through the implementation of the so-called "manager revolution" in the West, that is, transferring power to professional managers and separating control from ownership<sup>1</sup>.

Secondly, since the "manager revolution" of Chinese family enterprises is facing such a difficult problem, then why do we have to carry out the "manager revolution" or "control rights revolution"? As the company faces increasing uncertainties in the external environment, making it increasingly dependent on human capital, manager human capital is undoubtedly the scarcest. If state-owned enterprises are facing the problem of the absence of owners, then the Chinese family business is facing the problem of the absence of managers. The development of an enterprise will inevitably move from closed to open, which includes not only the opening of ownership but also the opening of operating rights, making the corporate governance structure more scientific. On the one hand, "Manager Revolution" can solve the requirements of enterprise management specialization and complexity, on the other hand, it can also solve the problem of intergenerational inheritance of enterprises. This kind of managerial revolution is not as simple as the company's hiring a few managers, but a fundamental revolution in control rights, so that the company's senior managers can obtain key operational and management information that matches their responsibilities and have ownership of resources. Decision-making power, namely information right and decision-making power.

### 2.2.2 The lack of personal credit legal system

With the development of modern society, while focusing on credit, it has also

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<sup>1</sup> (English) Redding (G. Redding): "Management Thoughts of Overseas Chinese Entrepreneurs-Cultural Background and Style", Shanghai Sanlian Bookstore, 1993 edition, pages 287, 85, 183, 240. [(Italian) Giuseppe Grosso: "History of Roman Law", translated by Huang Feng, China University of Political Science and Law Press, 1994 edition, p.234.



increased and enriched the nature of credit property rights. The nature of credit property rights is reflected in the following aspects: First, credit itself is an intangible property. The owner of good credit can gain the trust of others in his own financial ability. It means that it has increased its ability to bargain in market competition. The second is that credit is also a kind of property credit. In traditional Chinese society, it is no longer feasible to judge a person's credit status with informal systems such as morality. In modern market economy society, it is more reasonable to judge the credit status of the parties based on their economic capacity, including economic status, debt repayment ability, and degree of honesty and trustworthiness. Of course, this judgment of property credit needs to be regulated by the legal system. therefore. my country's personal credit legal system needs to be further improved.

### 2.3 Lack of incentive and restraint mechanism for professional managers

After the completion of the managerial revolution, the problem that the family business will face is the improvement of the internal incentive and restraint mechanism of professional managers.

The lack of professional managers' incentive and restraint mechanism plays an important role in the internal governance of family businesses. , Its effective supervision, incentive and restraint mechanism, relying on the credit legal system, is the most feasible way. But this will have to wait until the credit system is perfected. In the practice of corporate governance, we can formulate specific corporate manager selection systems and incentive and restraint mechanisms.

Professional managers are relative to the owners of the enterprise. They mainly serve the enterprise. They are a class that masters power and understands important information about the enterprise, and has a great influence on the development of the enterprise. Generally speaking, their powers are directly proportional to the information they have and their influence on the company. Once they leave and continue to engage in related industries, they will cause huge losses that are irreparable to the original company. The incident of Lu Huaqiang, the general manager of Yuanwei Group and his management team collectively jumped to Gaoluhua Group in 2000, has a profound impact on Skyworth Group, and also aroused the concern of all walks of life on the professional ethics of my country's professional managers. Although we will not discuss whether Lu Huaqiang's approach

is appropriate, it is an indisputable fact that there are many professional managers in my country who lack professional ethics. The reason is that the existing legal system lacks regulations on the incentive and restraint mechanism for managers. From an empirical investigation, my country's Company Law stipulates that restraints are less important than incentives. The sixth chapter of the "Company Law" stipulates the qualifications and obligations of the company's senior managers, but there is no specific clause in the company law about motivating directors and managers. Although the law provides for a stricter restraint mechanism, since there is no corresponding incentive mechanism to cooperate with it, managers will have opportunistic behavior. Professor Zhou Qiren pointed out that the use of human capital can only be used to inspire but not squeeze, otherwise the owner of human capital can close its human assets. The supply of manager's efforts is arranged and implemented by the incentive mechanism. Insufficient incentives will lead to insufficient supply of manager's human capital<sup>1</sup>. What is more frightening is that insufficient incentives will directly lead to the failure of the restraint mechanism, and may Cause managers to "inspire" themselves privately, harm the interests of business participants, and lay hidden dangers for the development of the enterprise. In addition, the regulations on the manager's restraint mechanism are also not perfect, manifested in the lack of corporate contractual restraint, company charter restraint and corporate law norm restraint. Taking the company law as an example, it directly stipulates the manager's loyalty obligation, but this deterrence only stays in the legal text, and lacks the legal responsibility of the manager for violating the legal obligation and its investigation mechanism.

At the same time, my country's relevant market environment is not perfect in terms of the restraint mechanism for professional managers. Due to the chaos and immaturity of the current manager market, companies have fewer objects to choose from, and it is impossible to talk about obtaining agents through competition. Due to the asymmetry of information, the business owner's information about the agent's job behavior is incomplete, and there are also differences in the objective function between the agent and the family business owner. In this way, the owner faces a great moral hazard. This is also a concern for family business owners.

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<sup>1</sup> [Zhou Qiren: "Enterprises in the Market: Special Contracts between Human Capital and Non-Human Capital <Economic Research>", 1996, No. 6]

## 2.4 the lack of modern corporate governance structure

The internal corporate governance structure is the most important part of the corporate governance structure. In a narrow sense, the corporate governance structure actually refers to the internal corporate governance structure. Its essence is to coordinate the various rights relationships among the company's shareholders' residual claim rights, the board's operating decision-making power, the manager's operating and management power, and the supervisory power of the board of supervisors.

In family businesses, due to the lack of independence of the board of directors, they are basically or even completely dependent on the will of the family. At the same time, the members of the board of supervisors of family businesses are often appointed by the board of directors (the family behind the board of directors), which leads to financial supervision, audit supervision, etc. The functions within the company appear weak, and corporate supervision is prone to "black holes". In addition, there is generally a special personal relationship between the manager and the family, which transforms insider control into the family control of the operator. Compared with the modern corporate governance structure, the family governance model has the following disadvantages:

### 2.4.1 The checks and balances of modern companies are better than the governance of traditional family businesses

The most obvious sign of a family business is that the final decision-making power of operation and management is concentrated in the hands of the "parents", and the "rule by man" management model is implemented. Therefore, the management power and decision-making power of contemporary family businesses, and the identities of major investors and major managers are mostly highly integrated. Although larger family businesses basically have a board of directors, a board of supervisors, a manager's office, etc., the important decision-making of a family business is still based on the individual decision-making method of the entrepreneur. The business owner owns the power, and the decision-making function of the board of directors and the board of supervisors. However, the supervision function of the

system cannot be effectively exerted.<sup>1</sup>

The modern company system realizes the separation of the ownership of the shareholders meeting, the management power of the board of directors and managers, and the supervision power of the board of supervisors. It can effectively prevent and overcome the shortcomings of the dictatorship of the family business. The "Company Law" pays special attention to the checks and balances of powers, clarifying the respective scope of powers of the shareholders' meeting, the board of directors, the board of supervisors, and the high level of the enterprise, as well as the mutual coordination and cooperation, especially the relationship of mutual checks and balances. Under the structure of property rights where ownership and management rights are separated, owners cannot make decisions and employ people at will. The owner focuses on considering and dealing with strategic issues, and at the same time, in accordance with the requirements of enterprise development, select the most experienced professional managers from a wider range, so as to make the decision-making of the enterprise more scientific and reduce the probability of major decision-making errors; The general meeting of shareholders is elected to make decisions on the company's development goals and major business activities. At the same time, it must protect the rights and interests of investors; while the board of supervisors is a company supervisory organization set up under the shareholders' meeting and parallel to the board of directors. The financial and directors' and operators' behaviors play a supervisory and restrictive role. In this way, the company's "three legs" can have

Effectively play their due functions, and can supervise and restrict each other, thus protecting the interests of shareholders. It also promoted the healthy development of the company.

#### 2.4.2 Shareholders' meeting, board of directors and board of supervisors: Modern firms-family firms

Although some family companies have set up shareholder meetings, boards of directors, and supervisory boards, most of them are half-truths. The core role of the

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<sup>1</sup> [Zhang Zhihong: Modern Corporate Governance Structure and Family Business, Enterprise Research, Issue 5, 2005, page 72. ]

board of directors in the management of the family business has not been played; the members of the board of supervisors are basically made up of family members and cannot play a supervisory and restrictive role; and the shareholder meeting is also monopolized by the family. In contrast, modern company's shareholders' meeting, board of directors and board of supervisors have the following advantages:

1. Modern company's equal shareholders meeting is better than the family business "one share dominates" shareholder meeting. Modern company's shareholders meeting implement the principle of shareholder equality. Article 130 of the "Company Law" stipulates: "The issuance of shares shall follow the principles of openness, fairness, and justice, and the same shares must have the same rights, and the same shares must have the same benefits." The principle of "one share, one right" stipulated in Article 106 is also a shareholder The manifestation of the principle of equality: Article 195, paragraph 3 stipulates: "The remaining property after the company's property has been paid off in accordance with the provisions of the preceding paragraph. A limited liability company is distributed according to the proportion of shareholders' capital contribution, and a joint stock limited company is distributed according to the proportion of shares held by shareholders." Hyundai The company's equal shareholders' meeting is conducive to protecting the property interests of shareholders and the interests of participating in the company's operation and management, avoiding the family business's infringement on the interests of non-family shareholders; it is conducive to preventing and relieving the abuse of capital majority voting, and preventing "one share dominance" Personal arbitrariness. The shareholders' meeting of a family business is "dominant" and is entirely controlled by the family. Other shareholders have not received equal treatment at all, and their interests have even been violated.

2. The quality of the democratically elected chairman of the modern company is better than the chairman of the family successor

In the inheritance of the business, it is possible that the heirs of the family business are too poor in quality and ability and ruin the business. Although some family companies have painstakingly cultivated and tempered the new patriarchs to make up for the shortcomings of the new patriarchs as their successors, after all, due to the limited choice of family members, the overall quality is far inferior to the democratically elected chairman of modern companies. The reason why some famous

western family businesses can successfully solve the problem of the transfer of control of family businesses is that they can democratically elect their successors to non-family members. DuPont in the United States and Toyota in Japan are typical examples.

3. The members of the board of supervisors selected by the social selection of employees are stronger than the members of the board of supervisors with family members as the main body. In modern companies, especially large joint stock companies, in order to prevent the board of directors from abusing their power and seeking personal gain. The shareholders meeting elected a special supervisory authority: the board of supervisors, as the representative of all shareholders. Exercising supervisory powers over all aspects of the company's finances, business decisions and business execution. According to my country's "Company Law", the board of supervisors is composed of shareholder representatives and an appropriate proportion of company employee representatives. The specific proportion is stipulated by the company's articles of association, and the total number shall not be less than three. The employee representatives on the board of supervisors must be democratically elected by the company's employees. Then, such members of the board of supervisors selected by the socially selected employees will truly be able to protect the interests of all shareholders and company employees, rather than pure family interests. On the contrary, the supervisory board of family business is mostly dominated by family members. When family interests are inconsistent or even opposed to the interests of other shareholders and company employees, they can only sacrifice the interests of others to protect their own interests. Therefore, it does not play the role of supervision and restriction at all.

To sum up, through comparative analysis, we can see that the modern corporate governance structure has greater advantages than the family business governance structure, and can effectively avoid and overcome the drawbacks exposed by family operation and management. However, we cannot simply equate family businesses with backward governance structures. Any kind of governance structure has its inherent rationality and its own advantages, and different enterprises need different governance structures.

## CHAPTER 3:LEGAL ANALYSIS OF CORPORATE GACERNANCE OF FAMILY ENTERPRISE IN CHINA

### 3.1 The perfection of ownership

The scientific corporate governance structure depends on the reasonable arrangement of the ownership structure (shareholding structure). Therefore, the fundamental to govern a family business is to perfect the ownership. The characteristic of the ownership structure of the family business in my country is the unity of the ownership structure, and the ownership of the family shares is not clear enough. Although the unity of the ownership structure is beneficial to the stability of corporate property rights, and as long as there are no complicated contradictions within the family, the company can continue to operate and develop through the inheritance system. However, the guarantee function of this ownership structure for enterprise development is too dependent on the unity and ability of the family or family members, and the conflict of interests between members will have a significant adverse impact on the survival and development of the enterprise; at the same time, the unity of the ownership structure will also It has greatly weakened its restrictive effect on the distribution and operation of corporate power; in addition, the absolute control of the family makes the capital composition of the company closed, making it difficult to establish a proper credit relationship between the company and the capital market, thus restricting the company from raising funds from the society. The ability to promote the expansion of enterprise scale and technological upgrading. Due to the unclear status of shareholding, the responsibilities, powers and benefits in corporate governance are ambiguous, and it is difficult to guarantee the efficiency and quality of corporate management and decision-making. Therefore, the equity diversification and socialization of family businesses are considered the only way for the sustainable development of family businesses.

In theory, we should point out the direction and path for the future development of the company, so that there are laws to follow.

#### 3.1.1 Complete ownership of small-scale family businesses

In the early stage of business development, the family governance model has tenacious vitality and high efficiency. Therefore, family businesses at this stage should focus on the perfection of ownership in the following aspects: (1) Clarify ownership. By clearly defining the equity between family members, the hidden dangers of future property rights disputes in the enterprise will be eliminated and the foundation for its long-term development will be laid. (2) Appropriate liberalization of equity. By appropriately opening up equity and absorbing social capital, we have made a preliminary breakthrough in the unified and closed equity structure, allowing some middle and senior non-family members to invest in shares with management skills or technology, so that their personal interests are aligned with the long-term interests of the company, and supervision costs are reduced.

### 3.1.2 Improve the ownership of large and medium-sized family businesses

Large and medium-sized family businesses have completed the original accumulation of capital and have begun to pursue scientific management and economies of scale. The unity and closedness of the ownership structure and the resulting family governance model have become obstacles to further expansion of enterprises. In other words, breaking through the unity and family management system is an urgent task currently facing. System introduction is more difficult than technology introduction. Any institutional change is not an isolated process. It will be affected by other related systems such as cultural traditions and legal environment. If a new institutional arrangement contradicts the institutional background, the institutional change will be difficult to proceed. Therefore, the introduction of the system must be carried out at the same time as the localization transformation, so that it can be integrated with the relevant environment, from an exogenous system to an endogenous system<sup>1</sup>. Therefore, we must explore and develop a set of ownership systems suitable for their own cultural traditions and characteristics.

Traditional Chinese ethics represented by Confucian culture emphasizes the role and significance of the family. Every member of the family has an inescapable responsibility for the prosperity and continuation of the family. Like ordinary people, family business owners also have this sense of mission. They regard the business as a

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<sup>1</sup> Coase, North, Williamson, etc.: "Systems, Contracts, and Organizations: A Perspective from the Perspective of New Institutional Economics", Economic Science Press 2003, pp. 65-67.



tool for family profit, and the business activities of the business as an extension of family activities, and narrowly believe that whether the business is "owned" by the family, the key lies in Whether the control of the business is in the hands of family members, if control is lost, the business will become someone else's.

Here, I think we can refer to the second-form modern corporate system proposed by Alfred Chandler. This concept may be helpful to the development direction of the reform of Chinese family businesses. The so-called second-form modern enterprise system refers to the fact that the family (or owner) still holds relatively (or absolute) holdings, and the owners and some family members still participate in the high-level management of the enterprise. To a considerable extent, the family still controls the operation and control of the enterprise right. However, most of the middle and high-level managers and even general managers in the enterprise are non-family members, and they have basically achieved socialization, and the enterprise has become a modern enterprise jointly managed by family members and professional managers<sup>1</sup>. The future development direction of Chinese family businesses should be family ownership, socialization of management, and gradual publicization of equity. According to the different stages of the family business development and the current scale, under the background of the established macro system, the boundary of their own interests can be extended to the greatest extent and the optimal allocation of the family property rights structure can be realized. The specific measures are as follows:

1. Clarify the ownership relationship within and outside the enterprise. Clarify ownership. Clearly define ownership and cannot be affected by traditional ideas. Ownership is the driving force for family business to start a business, and clarity of ownership is the primary issue for family businesses to establish a modern corporate system.

2. Realize the transformation of the internal structure of ownership (equity) from single to diversified. Form a guarantee for a scientific and reasonable governance model. Form an internal equity incentive and check-and-balance mechanism within the enterprise to enhance the cohesion and sense of responsibility of employees.

3. Realize the socialization of the external structure of family business ownership

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<sup>1</sup> Chandler: *The Visible Hand*—The Management Revolution of American Enterprises, The Commercial Press, 1997 Edition, pp. 101-105.

(equity). Absorb social idle funds and other companies' equity participation, appropriately reduce the shareholding ratio of family members, increase the shareholding ratio of outsiders, or form an enterprise group with other enterprises to realize the socialization of capital. The transfer of equity is the main measure. It is also possible to form a corporate group by absorbing other shareholders to invest in shares or reorganizing assets with other companies; qualified companies can also be listed on the stock exchange, so that family companies can truly become modern companies composed of diversified investment entities.

It must be admitted that, compared with the changes in the Western corporate ownership system and the "manager revolution", the family business ownership system reform and the "manager revolution" that occurred under the background of China's strong traditional culture are both incomplete, and the two rights of the enterprise are not complete Separation, but this kind of system is relatively suitable for the cultural soil in China. It is the result of the localization of western corporate governance models. It belongs to the endogenous institutional arrangement and has strong adaptability.

### 3.2 Improvement of the credit system

Contemporary Chinese family businesses face two major development requirements: First, the diversification of investment entities and the socialization of management. The second is corporate inheritance. Facing these two major development requirements, family trust has encountered a dilemma, that is, a crisis of family trust. This requires Chinese family businesses to optimize and integrate traditional trust resources—that is, to carry out a managerial revolution or a control revolution and the protection of the corresponding personal credit legal system.

To survive the trust crisis, family businesses must also establish a corresponding personal credit legal system and improve the relevant market environment. And this requires:

3.2.1 The establishment and improvement of the personal credit legal system: the legal system of credit information disclosure and supervision. Establishment and improvement of personal credit legal system.

3.2.2 Perfection of the professional manager market: To establish an effective professional manager market, we can try: 1. Establish a large-capacity talent information database to facilitate the selection of talents on a larger scale. 2. Establish an information disclosure system for recruiters, and publish the newspaper after hiring employees at a high price, and agree to publish the newspaper if they step down if they fail to do business well, so as to create pressure on the hired. 3. The civil society gradually formed an authoritative and recognized third-party organization to conduct scientific evaluations of managers' abilities and morals, establish a talent assessment system, and assess managers' intelligence, world outlook, hobbies, psychological quality, knowledge, professionalism, and sense of honor Comprehensive and quantitative analysis of evaluation indicators such as ethical responsibility, and past performance, success or failure of previous positions, and the size of the power held, record the individual's employment performance, so that individuals can be responsible for their actions under the constraints of society and the market .

3.2.3 The establishment of a personal reputation mechanism. A good professional reputation increases the entrepreneur's ability to bargain in the manager's market, and has a positive incentive for entrepreneurial behavior.

### 3.3 Innovative exploration of the internal governance structure of Chinese family businesses

Corporate governance structure is a unity of corporate governance economic structure and legal structure. From the perspective of different corporate governance model structures today, different economic structures produce different governance needs, which are formed to solve corresponding problems and use different economic structures as governance resources<sup>1</sup>. In the modern knowledge economy society, the development of family businesses is increasingly dependent on manpower capital. Companies restrict each other through the rational allocation of power, and retain talents and introduce funds through power sharing. At this stage, family businesses

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<sup>1</sup> Wang Hongyi: "*Sociological Analysis of Corporate Law Function and Structural Law-Research on Corporate Legislation*", Peking University Press, 2002, p.274

face a more complex corporate governance structure than non-family businesses. Therefore, in family companies, we take the concept of common governance as the basic guiding direction, and carry out innovative explorations of the internal governance structure of Chinese family companies from the perspective of corporate ownership and management rights.

3.3.1 Establish the structure of the general meeting of shareholders and the director board (or advisory board), and stipulate their respective powers and responsibilities.

It is necessary to prevent the infringement of the interests of non-family shareholders by the shareholders of the "one share dominates" family members. At the same time, a corresponding equity incentive system must be established for human capital holders. The establishment of the director board is considered by many foreign experts who study family businesses as a real contribution to the family business. The director board is different from the board of directors of general limited liability companies. It not only enjoys the power of business decision-making, but more importantly, it acts as a communication and intermediary between the controlling family and the operator.

3.3.2 Establish a family committee and arrange family plans in the family system.

The family committee should regularly convene family members to use the authority and identity of the family to discuss issues related to the corporate ownership system. The main purpose of establishing a family committee is to provide family members with a place where they can clearly express their values, needs, expectations for the company and family protection. This will help to clarify the dividing line between the family system and the business system, and provide opportunities for family members who do not work in the business or own the ownership to express their opinions.

3.3.3 Establish a professional managerial level and formulate a corresponding management level development plan.

In the corporate governance structure established by the law, the company's managers have become a pole of contending with the shareholders meeting, board of

directors, and board of supervisors. Then the powers and responsibilities of the managers of family companies should also be different from those of general companies. The managerial stratum built for the family business should be composed of the person in charge of the company's personnel department and senior managers of the company's main departments. In addition to performing daily operations and management, its main purpose is to design a management level development plan for the company. The content of the plan includes: On the one hand, it is necessary to provide training and professional arrangements for family members. Here, it is necessary to distinguish between family business heirs and general family members. On the other hand, we must also support the career promotion and development of important non-family member managers, and clarify their career opportunities in the family business and the highest position they can get.

#### 3.3.4 Establish a family business supervision agency.

In terms of strengthening corporate supervision, common law countries have exercised their power of supervision through the establishment of an audit committee, a remuneration committee, and an appointment committee under the board of directors composed of all independent directors. The civil law system exercises the power of supervision by setting up a board of supervisors, and there is a tendency to introduce independent directors. China's corporate law draws on the practice of the continental law system to exercise supervision by establishing a board of supervisors. Here, we try to learn from the common law system and set up a supervisory agency composed of non-family directors under the board of directors of the family company to exercise corresponding supervisory powers. This can also avoid conflicts between the supervisory board and independent directors in the current law. By establishing corresponding structures and plans to coordinate, ensure that the various systems of the family business give full play to their respective advantages, promote the timely adoption of advanced management techniques and professional management methods by the family business, and realize the sustainable development of the enterprise.

#### 3.3.5 Improvement of the external governance environment

Finally, the improvement of the internal governance structure of Chinese family businesses cannot be separated from the external governance environment. It is

necessary to establish and improve a sound legal environment, comprehensively review the existing basic legal system, and amend the provisions that are not conducive to the development of private family businesses, especially in accordance with the new problems and needs of the development of family businesses, such as the listing of some large family businesses Requires and needs to integrate and develop with the public economy, and timely formulate and improve corresponding legal regulations.

## CONCLUSION

Due to the far-reaching influence of Chinese family culture and traditions, there are some problems in applying the governance structure of modern company directly to the corporate governance of family businesses. The reason why Western family businesses maintain their vigorous vitality lies in their inheritance and innovation in corporate governance. Western family businesses' understanding of "home culture" lies not only in the family's control of the business, but also in how the business operates. Manager's selection, incentives and constraints, etc. Second, rely on the formal market system and legal system to realize the operation of the enterprise. Although most family businesses in China have adopted the form of companies, in terms of internal governance, the family still holds a considerable degree of control over the business. Compared with Western family businesses, Chinese family businesses are more reluctant to delegate power. The understanding of "family culture" is to firmly grasp the control of the business, and believe that if the control is handed over to others, the business will become someone else's. Up. This is due to the lack of relevant legal systems and the imperfect market environment, coupled with the influence of traditional culture. Especially 20 years ago, market chaos was real. However, politically speaking, China is carrying out reforms and opening up, developing the socialist system with Chinese characteristics, and developing a market economy. As a developing country with a huge population, China's development started late and it is difficult to explore many areas on its own. In this case, Subjectively, a certain degree of concession is required, and objectively, there are also inherent difficulties. From China, it is a country with a collective culture. In Chinese culture, there is more emphasis on "collective" rather than "individual". Such a cultural core has also contributed to the core of national organization. But today, this form has made a lot of progress and improvements, so I think it has pros and cons. We can still find that Chinese enterprises are making progress, and China's market economy and system have also made great progress. In the report of "Top 500 Chinese Enterprises in 2018", the number of Chinese large enterprises on the list of the world's top 500 increased from 115 in the previous year to 120, only 6 fewer than the number of companies on the list in the United States, ranking second in the world; The

number of mainland Chinese companies on the list is about three times that of 10 years ago. "Some companies in China have reached world-class levels in some products and technologies, but they have truly become world-class in terms of talents, brands, culture, business models, etc., especially in terms of innovation capabilities, standard voice rights, and international recognition. Companies are still few in number. Striving to be a world-class company has a long way to go, and we need to dare to do good and to catch up." said Wang Zhongyu, president of the China Enterprise Confederation and China Entrepreneurs Association.

I think the main reason for these advances and developments is the optimization of policies in recent years. After many years of exploration, China's policy environment and economic development have continued to improve. Various commercial behaviors that do not conform to the laws of the market have been continuously corrected; the people have emancipated their minds, politics have returned to rationality, and business operations have a relatively loose growth environment; therefore, I have confidence in the current economic development. At the same time, we must continue to find shortcomings and make improvements and perfections.

In practice, improve the governance structure of the family business. It is necessary to improve the company law and solve the problems in details. In addition to improving the governance structure of family businesses in the corporate law, we can also try to stipulate relevant legal systems to create a good legal environment for the corporate governance of family businesses. We can establish and improve my country's personal credit legal system and related market environment in the Enterprise Promotion Law. Lay a solid foundation for the "manager revolution" of the family business. In fact, family businesses are not unwilling to introduce professional managers to conduct scientific and professional management of the business, but because they do not have a sound legal system to escort their managerial revolution. Promote family businesses to truly become modern enterprises composed of diversified investment entities.

In the legislative practice, the corporate entity law and the corporate promotion law are coordinated with each other to jointly solve the problem of corporate governance of family businesses. Family businesses can continue to grow and develop, requiring family businesses to move from closed to open. This includes not only the



opening up of physical capital, but also the opening up of human capital, that is, absorbing the supervision and management of enterprises from outside the family. This requires optimizing the configuration of the family ownership structure according to the different stages of family business development and the existing scale. The future development direction of China's family business should be to improve the family's control of its ownership, improve its management, and make the ownership structure diversified under the premise of clarifying the ownership of the family business. Second, the introduction of professional managers, China's professional manager class still needs to be improved. It is not yet time to completely deny the family system. The family business cannot be completely publicized. However, the family business must be downplayed at a certain time. The professional management of the family business is mainly due to business needs, that is, due to the expansion of the scale of the business itself, The complexity of management, increased professionalism, rapid changes in the external environment and other reasons drive companies to adopt professional management methods.

If state-owned enterprises are mainly faced with the problem of the absence of their owners, then the main problem of family businesses should be the problem of the absence of professional managers. Therefore, Chinese family businesses must introduce professional managers to a certain extent and improve the relevant legal system.

Although we are trying to find and solve the problems faced by family business governance, this is not done overnight. Here, we quote Liu Lianyu's point of view: "The issue of corporate governance is currently a hotly discussed issue in the Western legal world. The theories and propositions of all parties are contending among a hundred schools of thought. It must be noted that each argument is just an attempt to be imperfect at present. Under the company system of China, it's just a matter of trying to improve it. It seems impossible to solve the related problems of corporate governance with one solution." [Liu Lianyu: "Corporate Governance and Corporate Social Responsibility", China University of Political Science and Law Press, 2008 edition, p138] My level and ability are limited. This article is not comprehensive and in-depth about the governance of family businesses. I hope that I will gain more knowledge and experience in my future study and work, and look forward to our economic development. It is expected that the academic circles will have more in-depth research and further attention to the governance of Chinese family businesses.

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