

Baby shareholder established by a decided case

Description

A court in Minhang District in Shanghai delivered a judgment that aroused interests among the public, in which the court held the two babies, one of 5 years old and the other of 6 years old, were entitled to be registered as shareholders of a company. While the copy of the judgment is not available, the information from the Internet suggested that the company is a limited liability company rather than a company limited by shares.

Background

A couple and a real estate company had jointly set up another investment company in Shanghai in which the husband held 30% equity interest and the wife 45% and the real estate company the remaining 25%. However the real estate company was actually owned by the husband.

Later the couple, while having two baby girls who are five years old and six years old, devided and came to an agreement as to the splitting of the marital properties under which the husband agreed to transfer his equity interests together with the 25% held by the real estate company in the investment company to the two babies living with the wife. The real estate company while explicitly assenting to the arrangement by entering into a share transfer agreement with the wife (on behalf of the two babies as the statutory custodian), did not act timely to effect the requisite formalities to give effect to the said share transfer. Angered by the unreasonable delay, the wife took the real estate company to court that rendered the judgment as mentioned above.

Reasoning of the Court

While the PRC Company Law has not gone specific as to requirement of age for being a shareholder, the court reasoned that when recognizing the validity of that share transfer agreement, it found no violation of such arrangement against public policies and accordingly ordered the real estate company to proceed with share transfer procedures.

Though not directly casting light to this case, a provision in the Company Law did offer comfort for the court to make such a judgment. Article 76 of the Company Law provides: upon death of an individual shareholder, its legal heirs may inherit its status as a shareholder unless otherwise stipulated in the articles of association of the company. Since the law does not limit the heirs to be majors, it is reasonable to infer therefrom that minors like babies can legally be a shareholder as a result of death of their parents.

Dissent

It has remained in contention as to whether a baby should be allowed to be a shareholder of a company because what runs with a shareholder is not purely benefits but also obligations which a minor cannot assume. Even though the law has provided a vehicle for these babies by installing custodians for them who shall act for the interests of the babies, concerns are not dispelled for the

reason that in some circumstances there will be conflicts of interest.

Conclusion

While dispute is still there, this judgment is largely welcomed by the public as it gave affirmative signal as to the legality of similar arrangements which have been seen more and more in real life. This may not that much concern the foreign investors since so far Chinese individuals are not permitted to participate in a joint venture with foreign investors except in some special cases where a domestic company with individual shareholders is partially acquired through equity purchase by foreign investors leaving other individual shareholders with foreign investor in the same joint venture.

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