

董事會內部瑕疵與外部效力影響之實證研究

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摘要

2017年我國公司法全盤修正修法委員會發佈了修法建議，其中一項即是引進外國行之有年的「內部管理原則」，以回應我國學者對實務見解將公司內部具有瑕疵之決議與外部法律行為效力連動，造成有害交易安全，欠缺對善意第三人保護的質疑。本文嘗試透過實證研究的方式重新檢視此議題，首先，將董事會決議之瑕疵類型化，並整理法院對各該類型瑕疵內部效力之認定。再者，就公司本於該有瑕疵之董事會決議所做成之外部法律行為，分成公司營業上行為、非營業上行為、發行新股行為、涉及董事利益衝突行為等，探討是否在個案中確實對善意第三人保護不足。就本文觀察後發現，雖然我國並未明文引進內部管理原則，然而實質上在個案判斷中已納入保護交易安全之精神。

An Empirical Study on the defectiveness of Board resolutions and its effect

Hsu, Sheng-Ping

Abstract

In 2017, the Steering Committee of Company Act Reform proposed several amendments and recommendations to Taiwan's Company Act, including the well-established legal principle "Indoor Management Rule" from the common law. The aim of incorporating Indoor Management Rule into Taiwan's Company Act is to response to the longstanding criticisms of the domestic practice aligning the validity and effectiveness of board resolutions with that of defective corporate acts which ignored the protection of bona fide third party and led to severely adverse influences on transaction security. However, this article contends the accuracy of the arguments above based on an empirical study on Taiwanese judicial decisions. Part I typifies the defectiveness of board resolutions and discusses the following effects. Part II divides the defective corporate acts into four categories to examine if the bona fide third party's rights received insufficient protection in each case. Finally, with empirical support, we can make a short conclusion. Although we haven't introduced the Indoor Management Rule into Taiwan's Company Act officially, we can still tell that the spirit of this doctrine has actually been implemented in most of cases by the judges with their carefully fact-specific analysis.