

学校编码: 10384

分类号_____密级_____

学号: 13020101150299

UDC _____

廈門大學

碩 士 学 位 论 文

我国公司司法解散制度探析

A Study on Company Judicial Dissolution System of China

罗 振 磊

指导教师姓名: 刘永光 副教授

专业名称: 法律硕士(非法学)

论文提交日期: 2013年4月

论文答辩时间: 2013年 月

学位授予日期: 2013年 月

答辩委员会主席: _____

评 阅 人: _____

2013年 月

厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下，独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果，均在文中以适当方式明确标明，并符合法律规范和《厦门大学研究生学术活动规范（试行）》。

另外，该学位论文为（ ）课题（组）的研究成果，获得（ ）课题（组）经费或实验室的资助，在（ ）实验室完成。（请在以上括号内填写课题或课题组负责人或实验室名称，未有此项声明内容的，可以不作特别声明。）

声明人（签名）：

年 月 日

厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

（ ） 1. 经厦门大学保密委员会审查核定的保密学位论文，
于 年 月 日解密，解密后适用上述授权。

（ ） 2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

厦门大学博硕士学位论文摘要库

厦门大学博硕士学位论文摘要库

厦门大学博硕士学位论文摘要库

内 容 摘 要

一直以来，我国公司立法在股东权利保护方面存在很多不足之处，为了改变这一境况，2006 实施的《中华人民共和国公司法》（以下简称《公司法》）加强了股东权利救济方面的立法内容，其中，公司司法解散制度作为救济僵局中股东权益的股东退出制度也被纳入《公司法》的规范之列。我国《公司法》第 183 条规定：“公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司全部股东表决权百分之十以上的股东，可以请求人民法院解散公司。”

但是我国《公司法》对公司司法解散制度的规定过于模糊，给司法实践带来很多的困惑和不便，虽然最高人民法院针对《公司法》第 183 条作出了司法解释，但仍显不足。另外，公司司法解散的制度价值不仅仅在于为陷入僵局的公司股东提供一条退出公司的途径，而且，在保护权益遭受压迫的股东、公司、公司债权人及其其他利害关系人乃至社会公益方面都有着不可忽视的积极作用。为此，本文主要从以下几个方面对公司司法解散制度进行研究：

第一章介绍公司司法解散制度的基本理论。首先，阐述了司法解散的涵义及其分类。其次，介绍了司法解散的理论基础。最后，介绍了公司司法解散制度的意义。

第二章分析了我国公司司法解散制度的立法不足。主要介绍了公司司法解散请求权主体比较单一；公司僵局的认定标准过于模糊；公司司法解散的替代性措施规定过于粗糙和公司司法解散判决与公司清算衔接问题。

第三章介绍了相关境外立法现状，给我国公司司法解散制度完善提供了一些借鉴。

第四章介绍完善我国公司司法解散制度的具体措施。针对我国公司司法解散制度存在的不足，我提出了完善我国司法解散制度的具体建议。一是完善司法解散制度的基本原则，二是明确司法解散的公司类型，三是拓展请求权主体范围，四是完善明确判定公司适用司法解散的标准，五是是

完善与补缺替代性救济措施和公司解散后的清算事务。

最后是本文的结语，旨在对全文进行总结，建议尽快完善我国的公司司法解散制度。

关键词：公司；司法解散；替代性措施

厦门大学博硕士论文摘要库

ABSTRACT

For a long time, there exist a lot of deficiencies in shareholder rights protection of China's corporate legislation. In order to change the situation, *The Company Law of the People's Republic of China* (hereinafter referred to as the "Company Law") implemented in 2006 has strengthened China's legislation in shareholder rights relief, among which, company judicial dissolution system, as a shareholder withdrawal system for rights and interests relief in deadlock has also been incorporated in the Company Law. It is stated in Article 183 in the Company Law of China that: "Where there are serious problems in corporate operation and management, ongoing existence of which may severely undermine shareholders interests, which is beyond other means of resolution, shareholders holding more than 10% of the right to vote of the company may file an application to People's Court for corporate dissolution."

However, the Company Law of China makes a vague expression on provisions of the company judicial dissolution system, hence the great confusion and inconveniences in judicial practice. Although the Supreme People's Court has allowed judicial dissolution in accordance with Article 183, the Company Law, it still lacks sufficiency. In addition, the company judicial dissolution system is not just an approach to corporate withdrawal of the shareholders in deadlock, but also carries great implications for rights and interests protection of shareholders, the company, creditors and other stakeholders, and even of the social benefits when they are under difficult conditions. As such, the paper attempts to make a thorough analysis of the company judicial dissolution system from the following perspectives:

Chapter One provides a general description of the basic theory of the company judicial dissolution system. The chapter first expounds meanings and classifications of judicial dissolution, followed by its theoretical basis. Then, it introduces the implications for the company judicial dissolution system.

Chapter Two analyzes legislative deficiencies of the company judicial

dissolution system in China. It mainly centers on over-singularity of provisions on subject on right of claim, vagueness of corporate deadlock identification, roughness of alternative measures in the company judicial dissolution and linkage between judgment and liquidation of the company judicial dissolution.

Chapter Three introduces the status quo of overseas legislation relative to the company judicial dissolution system and provides some references for the company judicial dissolution system of China.

In Chapter Four, it renders specific measures for improvement in the judicial dissolution system of China. In response to shortcomings in China's company judicial dissolution system, the author puts forward detailed suggestions for enhancing the judicial dissolution system of China. The first is to perfect the basic principles of the judicial dissolution system; the second is to clarify the corporate type of the company judicial dissolution; the third is to enlarge the scope of subject on right of claim; fourth is to improve judgment standards for the company judicial dissolution; the last is to enhance and formulate alternative relief measures and liquidation affairs upon dissolution of the company.

The conclusion part aims to make a full summery of the paper and then presents the suggestion of improving the company judicial dissolution system of China at earliest possible.

Key words: company; judicial dissolution; alternative measures

目录

引 言.....	1
第一章 公司司法解散制度的基本理论	3
第一节 公司司法解散的概念及其分类	3
一、公司司法解散的概念.....	3
二、公司司法解散的分类.....	3
第二节 公司司法解散的理论基础	5
一、信托义务理论.....	5
二、股东期待利益落空理论.....	6
三、公司社会责任理论.....	7
第三节 公司司法解散的意义	9
一、保存自己合法权益，减少对社会资源浪费.....	9
二、保护中小股东利益的需要.....	9
三、解决公司僵局和大股东滥权的最彻底方式.....	9
第二章 我国公司司法解散制度的立法缺陷	11
第一节 我国公司司法解散事由及解散途径的规定	11
第二节 请求权主体规定过于单一	12
第三节 公司僵局的认定标准过于模糊	12
第四节 公司司法解散的替代性措施规定过于粗糙	13
第五节 公司司法解散判决与公司清算衔接问题	15
第三章 境外相关国家公司司法解散制度的比较分析	17
第一节 公司司法解散的请求权主体	17
一、公司司法解散制度的原告资格.....	17
二、公司司法解散制度的被告资格.....	18

第二节 公司司法解散法定事由	18
第三节 公司司法解散替代性救济措施	21
第四章 我国公司司法解散制度的完善	23
第一节 明确我国公司司法解散制度的基本原则	23
一、公司法适度干预原则.....	23
二、穷尽其他救济途径原则.....	23
三、公司主体维持原则.....	23
第二节 公司司法解散具体制度之完善	24
一、明确司法解散的公司类型.....	24
二、拓展请求权主体的范围.....	24
三、明确判定公司适用司法解散的标准.....	26
四、完善与补缺替代性救济措施.....	27
五、公司解散后的清算事务.....	31
结 语.....	32
参考文献.....	33
致 谢.....	35

CONTENTS

Preface	1
Chapter 1 The Basic Theory of the Company Judicial Dissolution System	3
Subchapter1 The Concept and Classification of the Company Judicial Dissolution System	3
Section1 The Concept of the Company Judicial Dissolution System.....	3
Section2 The classification of the Company Judicial Dissolution System.....	3
Subchapter2 Theoretical Basis of the Company Judicial Dissolution System ...	5
Section1 Theory of Fiduciary Duty	5
Section2 Failure Theory of Shareholder Interest Expectations	6
Section3 Theory of Corporate Social Responsibility.....	7
Subchapter3 The Implications for the Company Judicial Dissolution System ..	9
Section1 Reserving the Legitimate Rights and Interests and Reducing the Waste of Social Resources.....	9
Section2 Protecting Demands on Interests of the Minority Shareholders	9
Section3 The Most Effective Solutions of Corporate Deadlocks and Power Abuse of the Majority Shareholders	9
Chapter 2 Legislative Defects of the Company Judicial Dissolution System in China	11
Subchapter1 Rules on Reasons for and Approaches to the Company Judicial Dissolution System	11
Subchapter2 Over-singularity of Provisions on Subject on Right of Claim	12
Subchapter3 Vagueness of Judging Standards of Corporate Deadlock	12

Subchapter4	Vagueness of Alternative Measures for the Company Judicial Dissolution System	13
Subchapter5	Connections between Corporate Judicial Dissolution Judging and Corporate Liquidation.....	15
Chapter 2	Comparison and Analysis of the Company Judicial Dissolution System in Related Overseas Countries.....	17
Subchapter1	The Subject on Right of Claim of the Company Judicial Dissolution	17
Section1	The Plaintiff Qualifications of the Company Judicial Dissolution ..	17
Section1	The Defendant Qualifications of the Company Judicial Dissolution System.....	18
Subchapter2	Statutory Circumstances of the Company Judicial Dissolution System	18
Subchapter3	Alternative Relief Measures of the Company Judicial Dissolution System	21
Chapter 4	The Measures for Improvement in the Company Judicial Dissolution System of China	23
Subchapter1	Basic Principle of the Company Judicial Dissolution System in China	23
Section1	Appropriate Intervention Principle of the Company Law	23
Section2	Exhaustion Principle of Other Relief Measures.....	23
Section3	Maintaining Principle of Corporate Body.....	23
Subchapter2	Improvement of the Company Judicial Dissolution System in China	24
Section1	Clarifying the Corporate type of the Company Judicial Dissolution.	24
Section2	Enlarging the Scope of Subject on Right of Claim.....	24
Section3	The Standards for Clear Judging of the Applicable Company Judicial	

Dissolution	26
Section4 The Improvement and Supplementation of Alternative Relief	
Measures	27
Section5 The Liquidation after Corporate Dissolution.....	31
Conclusion	32
References.....	33
Acknowledgement.....	35

厦门大学博硕士学位论文摘要

厦门大学博硕士学位论文摘要库

Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.

厦门大学博硕士论文摘要库