

摘 要

自改革开放以来，为了适应资本市场发展的新形势，改善公司治理中企业控股股东与中小股东之间的利益不均衡问题，我国开始实施股权分置改革。此外随着现代企业经营规模的扩张和各类资源的涌入，企业股权逐渐由集中转向分散。股权分散随之而来的是控制权争夺事件的频发。董事会作为公司治理的中心组织，是上市公司控制权争夺的焦点。而目前控制权争夺事件中双头董事会接连出现，其相互对峙的乱象，严重影响了企业的正常经营秩序，使得上市公司治理和投资者权益保护频频陷入困境。双头董事会治理僵局已经成为众多深陷控制权争夺战的企业急需解决的治理难题之一。

ST 新潮控制权争夺中双头董事会带来的负面经济影响、形成的原因，与其他同样陷入双头董事会治理困境的企业有诸多共同之处，ST 新潮双头董事会案例具有一定的代表性和典型性。研究其控制权争夺中双头董事会的成因，并提出相应的防范对策和建议，能够为解决双头董事会问题提供一定的思路。在理论层面，能够丰富企业控制权争夺的案例研究，填补目前对双头董事会的研究空白。在实践层面，对优化公司股权结构、增强公司治理法制建设而言也具有重要的意义。

本文首先基于研究背景提出双头董事会现象，通过梳理国内外控制权争夺和双头董事会的相关文献，以 ST 新潮控制权争夺战中出现的双头董事会作为案例进行具体分析。首先对 ST 新潮双头董事会各方的基本情况介绍，剖析其争权的全过程。在双头董事会带来的负面后果方面，本文运用对比分析法发现双头董事会通常会造公司声誉及市场价值受损，其混乱局面还会增加公司治理的不稳定性。在双头董事成因方面，本文研究发现主要原因可以划分为三个层面：其一难以调解的利益冲突，中金系和金志昌顺系董事因 ST 新潮发展战略分歧以及利益侵占问题多次发生激烈的冲突，渴望通过争夺董事会席位进行权力的重新分配；其二严重的公司内部治理缺陷，无实际控制人的局面下控制权长期处于不稳定状态，加之过度分散且接近的股权结构、争夺双方势力不相上下，形成双头董事会长期对立的局面；其三相关法律监管尚不完善，司法机构在分配和确认提案权、表决权等权利方面尚存不足，未能有效规制信息披露冲突的乱象和违规夺权行为，也助长了双头董事会的滋生。最后，针对 ST 新潮及同质双头董事案例，本文提出了相应的防范对策：在战略层面首先应该完善利益诉求表达机制，协调双方利益；加强内部控制，防止管理层侵占股东利益；治理层面应该优化股权结构，对控制权进行合理配置实现股权的有效制衡；并且细化公司章程中的董事会相关条款，完善内部治理体系对双头董事会乱象及时进行矫正；法律监管层面应该进一步完善相关法规，规范信息披露，建立健全依法惩处机制，提高双头董事会违规夺权成本。

关键词：双头董事会；控制权争夺；公司治理；投资者权益保护

Abstract

Since the reform and opening up, in order to adapt to the new situation of the development of the capital market, solve the imbalance of interests between controlling shareholders and small and medium-sized shareholders of enterprises, and improve the level of corporate governance, China has begun to implement the reform of equity separation. In addition, with the continuous expansion of the scale of operation of modern enterprises and the influx of various types of resources, the enterprise shareholding has become more and more dispersed. The dispersion of shareholding is followed by the frequent occurrence of control struggle. The board of directors, as the central organisation of corporate governance, is the focus of the control struggle of listed companies. At present, the relevant laws and regulations are weak, and the emergence of two-headed boards of directors in the control struggle incidents makes the governance of listed companies and the protection of investor rights and interests frequently get into difficulties. The deadlock in the governance of double-headed boards has become one of the governance problems that need to be solved urgently by many enterprises that are deeply involved in the control struggle.

The negative economic impacts and causes of the double-headed board of directors in the control struggle of ST Xinchao have a lot in common with other enterprises also caught in the dilemma of double-headed board of directors, and the case of the double-headed board of directors of ST Xinchao has certain representativeness and typicality. The case of ST Xinchao's double-headed board of directors is representative and typical. Studying the causes of its double-headed board of directors in the control struggle and putting forward corresponding preventive countermeasures and suggestions can provide certain ideas for solving the deadlock of double-headed board of directors' governance. At the theoretical level, it can enrich the case studies of corporate control struggle and fill the current research gaps on double-headed boards. At the practical level, it is also of great significance for optimising the shareholding structure of companies and enhancing the legal construction of corporate governance.

Based on the research background, this paper firstly puts forward the problem of double-headed board governance, and by combing the relevant literature on control struggle and double-headed boards at home and abroad, the double-headed board that appeared in the control struggle of ST Xinchao is analysed as a case in point. Firstly, the basic situation of the parties in the double-headed board of directors of ST Xinchao is introduced, and the whole process of its double-headed board of directors' power struggle is analysed. In terms of the

negative consequences of a double-headed board, this paper finds through comparative analyses that a double-headed board will cause damage to the company's reputation and market value, and its chaotic situation will also increase the instability of corporate governance. In terms of the causes of double-headed directors, this paper finds that the main reasons can be divided into three levels: First, it is difficult to mediate the conflict of interest, the Zhongjin and Jin Zhichangshun line for the development of the ST Xinchao strategic differences as well as the problem of misappropriation of the interests of a number of intense conflict, eager to redistribute power through the competition for the board of directors seats; Second, the serious internal governance deficiencies in the company, the absence of the actual controller of the situation of the right to control the long term Secondly, serious internal governance deficiencies, the control of the company without the actual controller has been unsTab for a long period of time, coupled with the over-dispersed and close shareholding structure, the power of the two contending parties is not comparable, forming the situation of a two-headed board of directors in the long term; Thirdly, the relevant laws and regulations are not yet perfect, and the law enforcement or judicial bodies are still deficient in the allocation and confirmation of the rights of proposal and voting rights, and fail to regulate the disclosure of the conflict of the disorder, which has encouraged the growth of the two-headed board of directors. Finally, for the case of ST Xinchao and homogeneous double-headed directors, this paper puts forward the corresponding preventive countermeasures: at the strategic level, we should firstly choose the foreign capital carefully to avoid the internal conflict of interest triggering the vicious control struggle; strengthen the internal control to prevent the management from encroaching on the shareholders' interests; and at the governance level, we should optimise the shareholding structure to achieve the effective checks and balances on shareholdings through the reasonable allocation of the control rights; And refine the articles of association of the board of directors of the company, improve the internal governance system in order to rectify the chaotic phenomenon of double-headed board of directors in a timely manner; the legal regulatory level should further improve the relevant laws and regulations, standardise the disclosure of information, and establish a sound mechanism for punishment in accordance with the law, so as to increase the cost of double-headed boards of directors in violation of the seizure of power.

Key Words:two-headed board of directors; control fighting; corporate governance; investor protection

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