

Study on the Relationship between Supervisors' Remuneration in Listed Companies and Tobacco Control Measures

Wang Miao, PhD
Li Pengfei, PhD

Wang Miao, Lecture in Commercial Law, Graduate School of Law in Sungkyunkwan University, Seoul, South Korea. Li Pengfei, Lecture in Commercial Law, Northwest Agriculture & Forestry University, Yangling, Shaanxi, China. Correspondence author: Li Pengfei, lipengfei139@126.com

Objectives: At present, the theoretical study on supervisors' remuneration under the *Company Law* is still too principled, and many "chaos" occur in the remuneration practices for supervisors. First, the lack of clear understanding of the incentive function and institutional specificities of supervisors' remuneration results in many problems in the application of supervisors' remuneration in practice, as well as the ignorance of the Board of Supervisors in corporation governance. Second, rather than reaching the intended effect, the legislative approach of authorized "blank" intentionally adopted under the *Company Law* leaves an inducement for the ineffective supervision of supervisors in practice. Third, there is not only a lack of theoretically self-consistent discussion on the special problems of concurrent supervisors and employee supervisors' remuneration, but also a divorce of the institutional structure and application from good expectations. If the research background of the problem is placed in "tobacco regulatory science", it will be found that there is no inevitable connection between supervisors' compliance expectations and remuneration, but mainly depends on the provisions of legislation. Going back and forth between theory and practice of supervisors' remuneration, this paper combs and interprets the issue of supervisors' remuneration from the perspective of the legislative provisions and theoretical study under the *Company Law*, and analyzes the difference between the reality and the necessity of the *Company Law* with respect to the issue of supervisors' remuneration in the light of the legal principle of the *Company Law*, with the view to improvement of the rules of the *Company Law*.

Key words: supervisors' remuneration; tobacco control measures; incentive mechanism; legislative intervention

Tob Regul Sci.™ 2021;7(6): 5074-5086
DOI: doi.org/10.18001/TRS.7.6.2

INTRODUCTION

Since its implementation in 1993, the *Company Law of the People's Republic of China* has gone through short but extraordinary 28 years.¹ During this period, the corporate governance system has always been the subject of concern in the reform

and development of the *Company Law*, but its effect in the actual operation is still far from satisfactory, one of the prominent problems being the supervision efficiency of the Board of Supervisors of listed companies. The independence of supervisors and remuneration incentives are universal issues, and the supervisors' remuneration incentives raise

concerns over the standard and form of payment of the remuneration. Some scholars believe that the single form of payment of remuneration for company supervisors, the lack of high enough remuneration and the lack of obvious long-term incentive effect, among other things, are the main reasons which directly lead to the ineffective supervision of company supervisors in China; while scholars in opposition to this view believe that the main reason for the ineffective supervision of company supervisors in China is the problem of the mechanism arrangement of the supervisor system itself, and is not much related to the supervisors' remuneration. This paper proposes to consider this problem from the following aspects. First, whether the remuneration standard for supervisors, whose status and duties are different from the directors and senior management personnel of the company, should be linked to their supervision effect on the company; second, whether the supervisors' remuneration as an incentive can affect the supervision of supervisors. On the basis of mathematical statistics of the annual reports disclosed by several companies listed on Shanghai Stock Exchange and Shenzhen Stock Exchange, this paper combs the issue of supervisors' remuneration under the supervisory board system of listed companies in China in terms of theory and practice through data analysis and in the light of individual cases. On this basis, this paper further discusses how the *Company Law* should be acted on the issue of supervisors' remuneration and whether more legislative intervention measures under the *Company Law* should be taken in this respect, and seeks advice from colleagues. While exploring the legal issues of supervisors' remuneration, it is also necessary to put this content into the general environment of enterprise compliance operation to further perspective whether supervisors' remuneration has an impact on the implementation effect of tobacco control measures and what impact it has.

In addition to Introduction, Part I of this paper interprets the theory of the *Company Law* around the company supervisors' remuneration, and tries to answer the role of supervisors' remuneration. Part II introduces the survey data of supervisors' remuneration in listed companies in China, and it mainly

introduces and analyzes the specific situation of supervisors' remuneration currently in practice in China by taking the companies listed on Shanghai Stock Exchange and Shenzhen Stock Exchange as the sample and by combining the legislation in China. Part III combs the rules on supervisors' remuneration in China's legislation and practice, focusing on explaining that the current role of the law in the issue of supervisors' remuneration is essentially limited information disclosure obligation and takes a completely laissez-faire attitude towards this issue, and that the legislative provisions are not yet perfect. Part IV interprets and analyzes the remuneration and rules from the perspective of the theory of the *Company Law*. This paper ends with conclusion.

THEORY OF COMPANY LAW ON SUPERVISORS' REMUNERATION IN LISTED COMPANIES

How to overcome the inaction of the supervisors due to overstaff and ensure the supervisors have sufficient motivation to supervise the management level of the company? Generally speaking, in addition to the required fiduciary duties of the supervisors, this is mainly ensured by the company's incentive mechanism for the supervisors. There are generally three types of incentive mechanism in the company system, i.e., honor incentive, material incentive and talent market incentive. Among them, honor incentive and talent market incentive have prerequisites in order to deliver their effects. They need objective evaluation and mature senior talent market, and they are an indirect incentive mechanism. In contrast, material incentive (also known as "remuneration incentive") delivers its effect more directly and does not require other conditions. On the other hand, the work of supervisors is highly specialized and professional, requiring supervisors to contribute their knowledge, expertise, time and hard work and face the situation of assuming relevant liabilities. As such, the company pays remuneration to its supervisors not only for the purpose of motivating the supervisors to fulfill their supervisory duties in a professional, prudent and diligent manner, but also for the purpose of establishing effective fiduciary duties between the supervisors and the company and minority

shareholders through the remuneration mechanism. As such, supervisors' remuneration is deemed an important source for the supervisors to play their role, because it takes both energy and time for the Board of Supervisors to fulfill its duties to supervise directors and senior management personnel, and the supervisors are realistic "economic men". If there is a lack of reasonable remuneration, it will be difficult for the supervisors to have the enthusiasm and motivation to diligently supervise and assume liabilities for major decisions of the company. Therefore, in the theory of the *Company Law*, supervisors' remuneration is of positive significance to motivate supervisors to perform their duties.

In addition, in terms of supervisors' remuneration, it is necessary to balance the relationship between the incentive to supervisors and the relative independence of supervisors. In other words, in order to motivate supervisors to perform their duties actively and effectively, they should be given remuneration equivalent to professionals in return for their contribution to the company, and the remuneration shall not cause the supervisors to be inappropriately attached to the company. The amount of supervisors' remuneration plays a special role in corporate governance. If the remuneration paid by the company to its supervisors is too low, the supervisors may not be willing to spend too much time and energy on their tasks; however, if the company is too generous to its supervisors, the supervisors may be unwilling to raise objections to or diligently supervise the self-dealings of the Board of Directors of the company for fear of losing high-paying positions.² There are also different understandings of this point in the theory of the *Company Law*. Scholars who hold the opposite view believe that "one of the important innovations of the supervisor system is to ensure that supervisors can be independent of the Board of Directors and manager level of enterprises when performing relevant duties, and independent supervision is the basic premise of effective supervision. Remuneration is the extra remuneration incentive offered by the contributors to the supervisors, rather than the remuneration paid by the company to the supervisors, showing that the

system of the Board of Supervisors is detached from the business operation." In other words, due to the requirement to maintain the independence between the supervisors and the company, supervisors' remuneration as an evaluation of the supervisors' performance of duties should be an additional reward or compensation paid to the supervisors by the shareholders, not by the company.³ Therefore, the level of supervisors' remuneration is positively correlated with the supervisors' active performance of duties in the company and does not hinder the independence of the supervisors.

Furthermore, remuneration can not only compensate the supervisors for their time and energy spent on supervision and encourage the supervisors as rational economic men to perform their duties diligently, but also play a role in regulating the rational flow of supervisors in the company's professional talent market. Remuneration is one of the short-term factors that determine the supply and demand of supervisors in the senior talent market. It directly determines the number and obligation performance ability of supervisors.

DATA ANALYSIS OF LEVEL OF SUPERVISORS' REMUNERATION IN LISTED COMPANIES

In order to prevent the study on the company supervisors' remuneration from being unrealistic and being limited to theoretical "empty words" and to make the study more relevant to corporate practice, this paper explores the actual pattern of supervisors' remuneration from a pragmatic perspective, analyzes and discusses the current situation of supervisors' remuneration disclosed by listed companies in China, and makes recommendations. Therefore, this paper firstly raises problems by interpreting the current situation of supervisors' remuneration according to the contents of the annual reports disclosed by listed companies.

At present, Section VIII of the annual reports disclosed by listed companies in China specifically discloses the information on company directors, supervisors, senior management personnel and employees. Among them, the information related

to supervisors includes information on changes of supervisors' shareholding and positions, personal information of supervisors, employment in shareholder units and other units, and supervisors' remuneration. This section only discloses the following information on supervisors' remuneration: principled introduction to the decision-making procedure, basis of determination and actual payment of supervisors' remuneration, as well as equity incentives granted to the company supervisors during the reporting period. By collating and summarizing the information in the above-mentioned annual reports of listed companies, the following categories of cases can be concluded.

Remuneration collection of supervisors

Among the sampled companies, there are 12 listed companies where none of the supervisors receives remuneration from the companies in which they work; there are 23 listed companies where the whole supervisors receive remuneration from the companies in which they work; and in the rest sampled companies, at least one supervisor (mostly employee supervisor) in the Board of Supervisors receives remuneration from the companies in which he/she works. In other words, there are many supervisors with "zero remuneration" in many listed companies, and such supervisors account for a large proportion.

Unlike directors and senior management personnel, supervisors who receive remuneration from the companies in which they work have a very big difference of remuneration. This difference exists not only between supervisors and directors and senior management personnel (the general level of supervisors' remuneration is about RMB 150,000 less than the directors' remuneration), but also between supervisors, and even between supervisors of the same company. Although these statistical data cannot show the correlation between the remuneration and the work performance of supervisors longitudinally, they can horizontally reflect that the level of supervisors' remuneration in listed companies in China is generally low when compared to the high level of directors' and officers' remuneration in the listed companies.

As for the disclosure of the remuneration

received by the supervisors, the annual reports only disclose the total amount of pre-tax remuneration received by the supervisors from the companies in which they work, not specific details, and provide no specific statement on the breakdown of employee supervisors' remuneration. As for the remuneration received from related parties and the remuneration received from both the company and the related parties of the company, the annual reports only disclose the status of receipt, not details of the specific amount.

Disclosure of information

In the disclosed reports, the decision-making procedure for remuneration is mostly expressed as "the remuneration proposal shall be put forward by the remuneration and appraisal committee of the board of directors of the company, and shall be approved by the Board of Directors and submitted to the shareholders' meeting for deliberation and approval before being implemented", and only a few companies (3 companies) stipulate that "the supervisor's remuneration plan shall be approved by the Board of Supervisors and submitted to the shareholders' meeting for deliberation and approval before being implemented". The supervisors' remuneration payment methods include "payment of monthly allowance" and "direct payment of pre-tax remuneration". According to the disclosed annual reports, it can be found that none of the listed companies adopts the remuneration payment method of fixed remuneration plus stock or stock option.

The disclosed reports of some companies also stipulate that the remuneration of supervisors who hold administrative positions in the company shall be paid by the company, and that the company will not pay remuneration to those supervisors who hold no administrative positions in the company. Still some companies stipulate that "supervisors working in the company receive remuneration according to their business positions in the company, and the company supervisors are not entitled to any allowance." In other words, "supervisors working in the company receive corresponding remuneration according to their positions and titles, and supervisors who do not work in the company do not receive remuneration."

In addition, there is a special phenomenon in the franchise business groups in the selected listed companies that the supervisors of the head office directly concurrently serve as the supervisors of the regional franchise enterprises. Take the Shenzhen-based Renrenle Commercial Group Co., Ltd. as an example. In the Board of Supervisors consisting of three supervisors, except for the chairman of the Board of Supervisors, the other two supervisors respectively concurrently serve as the supervisors of 13 and 22 regional franchise enterprises. They receive no remuneration from such enterprises; instead, they each only receive pre-tax remuneration of RMB 204,600 and RMB 207,900 (employee supervisors) from the head office.

In a word, although there are many shortcomings in the annual information disclosure reports of listed companies, such reports are still the main channel for us to obtain information of listed companies at present. According to the sampling statistics of supervisors' remuneration in the annual reports of some listed companies on Shanghai Stock Exchange and Shenzhen Stock Exchange in 2019, the supervisors' remuneration system of listed companies fails to play the expected role of remuneration incentive in practice, and completely ignores the role of supervisors' remuneration in establishing effective fiduciary duties between supervisors and companies and minority shareholders.

RULES ON SUPERVISORS' REMUNERATION IN LEGISLATION AND PRACTICE

The provisions on supervisors' remuneration in the currently *Company Law of the People's Republic of China* and relevant regulations are mainly reflected in the following aspects:

Firstly, as a general provision, Articles 37 and 99 of the *Company Law* provide that the right to determine the supervisors' remuneration remains with the shareholders' meeting which is the authority to determine the supervisors' remuneration. This general provision is a mandatory provision which cannot be changed by the Articles of Association. This provision will help the shareholders' meeting to keep supervisors'

enthusiasm and objectivity by using the remuneration incentive mechanism. However, the *Company Law* only provides that the shareholders' meeting is the subject to determine supervisors' remuneration, and does not specify the subject to propose the supervisors' remuneration plan. The lack of legal provisions shows the fact that China's company legislation is imperfect. In practice, for the convenience of operation, companies stipulate that the supervisors' remuneration plan shall be put forward by the Board of Directors and submitted to the shareholders' meeting for decision, which is also one of the crucial reasons for the ineffective supervisor system in China. The provision that the Board of Directors shall be responsible for submitting the matters related to supervisors' remuneration restricts supervisors' willingness to supervise independently and objectively to some extent. Although the departmental regulations and normative documents of the China Securities Regulatory Commission and the exchanges provide that listed companies can or should set up remuneration committees, they fail to play their due role in the specific implementation process due to the low effectiveness level and the inherent defects of the system, even if they "seem to be well-intentioned". By studying the annual reports of listed companies, it can also be confirmed that the current decision-making procedure for supervisors' remuneration in listed companies is that the remuneration proposal shall be put forward by the remuneration and appraisal committee of the Board of Directors, and approved by the Board of Directors and submitted to the shareholders' meeting for deliberation and approval before being implemented.

Secondly, company is authorized by legislation of China to determine at its sole discretion the form of payment of remuneration to supervisor, provided that the form of payment is specified in the Articles of Association. It is believed theoretically that currently in China, the two forms of fixed remuneration (fixed monthly pay or fixed annual pay) and fixed remuneration + variable remuneration are adopted for supervisors' remuneration system. Some of companies also allocate certain shares of these companies to their supervisors as supplement to remuneration. Some other companies appraise the work performances

of their supervisors on a regular basis, and make decision on reward or punishment for the supervisors on the basis of the appraisal results. However, it can be found out through investigation that in practice, the mode of paying fixed remuneration and subsidy to supervisor is more frequently noticed, supplemented by allocation of certain shares and options (accounting for a very small number). Even more companies pay the fixed remuneration (before tax) to their supervisors. The point in dispute is the mode in which company provides some assets in kind to supervisor, such as vehicles and drivers for business, i.e., whether these assets in kind can be regarded as remuneration. It is generally believed that some convenience and assistance provided for supervisor to actively and completely fulfill the duties can only be regarded as benefit premium other than remuneration. Moreover, some of companies think little of the form of payment of supervisors' remuneration, i.e. they only pay corresponding remuneration as internal employees other than dedicated supervisors' remuneration to employee supervisors.

Thirdly, the provisions on employee supervisors: It is stipulated in the *Administrative Measures for Employee Directors in Pioneer Enterprises for Board of Directors as Solely State-owned Corporation (Trial)* issued by State-owned Assets Supervision and Administration Commission of the State Council in 2006 that company shall provide necessary conditions for employee supervisors to fulfill their duties.³ Compensation to employee supervisors for their business trip and office work during their fulfillment of supervisor's duties shall abide by the standards applicable to other supervisors. Employee supervisors are not entitled to additional supervisors' remuneration or subsidy. However, company shall make corresponding compensation to them once their remuneration drops to a level below the normal level of remuneration because of their fulfillment of supervisor's duties. Moreover, it is also stipulated in some local supplemental provisions that "no deduction in remuneration and welfare is allowed for reduction in time of work due to fulfillment of supervisor's duties by employee supervisors". Although the above-mentioned provision

s put forward by the State Council are aimed at solely state-owned corporation, in practice, these provisions (except for "employee supervisors are not entitled to additional supervisors' remuneration or subsidy") are also applicable to supervisors of other listed companies.

Fourthly, the provisions on disclosure of supervisors' remuneration by listed companies: Article 14 (V) of the *Administrative Measures for the Disclosure of Information of Listed Companies* requires that the annual remuneration of supervisors shall be recorded in the annual report of listed companies but requires no further disclosure in the details of supervisors' remuneration in such report.

PROBLEMS ABOUT SUPERVISORS' REMUNERATION AND SUGGESTIONS FOR IMPROVEMENT

Provisions on the Board of Supervisors may be implemented at will because of a simple company legislation. Some companies prepare these provisions in name only as sloppiness. The author, with reference to the theoretical and practical requirements specified in the *Company Law*, believes that the following aspects are to be improved in the future *Company Law*:

Payment of supervisors' remuneration

Who to pay supervisors' remuneration

As mentioned above, by now, there are many supervisors with "zero remuneration" in many listed companies of China. Such "zero remuneration" means that supervisor receives remuneration from associates or shareholders of the current companies, and does not mean that supervisor obligatorily or for free fulfills the supervisor's duties.

As for payment of supervisors' remuneration by current company or shareholders/associates, not only conflicting viewpoints exist in theory, but also various modes can be found in practice. As stipulated in the *Company Law*, supervisor is conventionally defined as the competent person who is elected on the shareholders meeting (or congress of workers and staff of company) to act as the member of the Board of Supervisors to supervise the business progress and financial

status of the company, i.e. to serve as the member of the company's supervisory department, which shall be regarded as a relationship of appointment.⁴ For this purpose, supervisors' remuneration shall be paid by company. However, based on the *Company Law* of Germany, supervisor is deemed as agent of company (Theory of Fiction Juristic Person), to act on behalf of company's shareholders to supervise the daily operation and management of the company. In this case, the relationship between supervisor and company shall be regarded as agency relationship. Therefore, under this circumstance, supervisors' remuneration shall be paid by shareholders. However, it can be found out in practice that many supervisors are nominated by means of mutual negotiation between shareholders of company, and are actually deemed as the agents of shareholders, indicating an extension of proprietary rights of shareholders. They act on behalf of proprietary rights of shareholders to supervise the operation management by the Board of Directors and senior management for the purpose of preventing reduction in company's properties due to illegal business. In particular, as for the Board of Supervisors in China, many supervisors take up more than one post. It is found out in empirical study that "zero remuneration" for many supervisors is because such supervisors also take up other posts in current companies, and receive remuneration from relevant shareholders to fulfill their supervisor's duties. In other words, it is more common that supervisors' remuneration is paid by shareholders, and that these supervisors are paid not for their fulfillment of supervisor's duties, but for other posts taken up by them in the current companies, which may lead to the following circumstance, i.e.: Supervisors may not completely fulfill their duties if no remuneration is received, and supervisors may be controlled by associates to independently exercise their supervisory rights if receiving remuneration from such associates.

Just because supervisors receive remuneration from the shareholders who nominate or elect them before, these supervisors are difficult to independently fulfill their supervisor's duties, which of course makes the Board of Supervisors the "vase" of the company or "tools" of shareholders.

For this reason, the nature of supervisor and legal relationship between supervisor and company can be further and earnestly considered. Neither relationship of agency nor relationship of delegation between supervisor and company can represent a special relationship that can be perfectly interpreted. Supervisor is elected and authorized with supervisor's rights on shareholders meeting of company, where this kind of rights include the agency rights. However, in fact, this kind of rights already represent legal rights, and therefore only the authorization and revocation of this kind of rights can be decided on the shareholders meeting, that is, exercising this kind of rights is more controlled by the *Company Law*, which in turn indicates a difference from legal agency relationship under which the agent is always controlled by the principal. Moreover, generally, supervisor is entrusted with supervisor's duties other than proactive management and punishment.⁵ For this reason, there is a formal difference in terms of duties between supervisor and his/her principal. For this purpose, in view of the special legal relationship, the relationship between supervisor and company can be deemed as a special relationship involving delegation and agency, and the supervisor is also agent and fiduciary. Generally, supervisor will be deemed as agent when his/her acts will restrict company or bring about legal effect on external party; supervisor will be deemed as fiduciary when his/her acts involve the company's properties and shareholder's interests.

Moreover, supervisor will only be deemed as agent or fiduciary of controlling shareholders or major shareholders when being paid by such controlling shareholders or major shareholders, which will bring the supervisor with reasons to ignore the interests of other shareholders in the company. By means of paying remuneration to supervisor from company, effective fiduciary duties may be established between supervisor and minority shareholders. Just because of the vague understanding of payer of supervisors' remuneration and even conflicting viewpoint in this regard, the effect caused by supervisors' remuneration is unconcerned in the *Company Law* of China.

Problem of standard to pay supervisors'

remuneration

Remuneration is paid to supervisor as consideration for the supervisor to fulfill the supervisor's duties, with a reasonable relation to service and to overall financial status of company. As mentioned above, supervisors' remuneration in China generally features a lower standard, a large gap and lack of clear set of criteria. There are many factors affecting the standard to pay supervisors' remuneration, including supply/demand in market of management personnel, standard of labor capital, operating status of company, expectation of company's governance structure on effect of supervisor etc. A scientific assessment system is required to comprehensively reflect these factors. However, by now in China, mature market of management personnel has not yet been formed and no unified understanding of payer of supervisors' remuneration has been realized, so assessment of supervisor with reference to market factors is hard to be reflected by supervisors' remuneration.⁶ As for expectation of effect of supervisor, as restricted by supervisor's duties to be undertaken by supervisor, the operating status of company shall not be taken as the standard to measure the standard of remuneration. For this reason, the standard is measured by means of comprehensive financial accounting methods by most companies. That is, many plans for supervisors' remuneration are measured by means of financial accounting instead of profitability calculation. However, measurement by means of financial accounting is subject to a problem that the methods used for financial accounting may be manipulated, because supervisor is to supervise the legal compliance by directors and managers while such legal compliance is related to company's business performances but there is no causal relationship there between. If company's business performances are taken as the standard to measure supervisors' remuneration, the power rent-seeking problem may arise, i.e. supervisor may counterfeit company's business performances together with directors and managers to raise the standard of payment.

In short, as for supervisors' remuneration, not only the basic compensation shall be provided as per

difficulty of supervisor's duties fulfilled by supervisor, but also appropriate incentives shall also be provided to enhance supervisor's working enthusiasm, try to control the agent cost of company and prevent collusion between supervisor and company operator. Vague standards and methods to determine supervisors' remuneration shall be avoided, but company shall be encouraged to prepare detailed standards for assessment.

Problems about legislative stipulation for supervisors' remuneration in China

One of the problems existing in procedures to determine supervisors' remuneration is that although it is stipulated in the current version of the *Company Law* that supervisors' remuneration shall be determined on shareholders meeting, there are no clear provisions about proposal for supervisors' remuneration. In fact, on company's shareholders meeting, the proposal is only considered, but no voting will be made with regard to the proposal. Therefore, the most important problem involving supervisors' remuneration is who to decide on the contents in the proposal involving supervisors' remuneration of company, which will directly determine the standard to pay supervisors' remuneration. For the reason that in principle, the authority to convene shareholders meeting belongs to the Board of Directors as the Board of Shareholders is not the permanent establishment of company, and there are no other legal provisions about the proposal for supervisors' remuneration, the Board of Directors which may be controlled by the General Manager or Executive Director shall decide on the proposal of supervisors' remuneration, which may cause some problems in determining the proposal of supervisors' remuneration. However, in practice, this will bring about a strange situation that the Board of Directors, which shall be supervised, in turn has the right to propose supervisors' remuneration. It is not hard to image the disadvantages caused by this handicap that supervisors' remuneration is decided by the supervised object. Although it is stipulated by China Securities Regulatory Commission and Stock Exchange to different extents that the Board of Directors of listed companies can or must set Professional Remuneration Committee, currently

in China, establishment of such committee relies mainly on the regulations and normative documents subject to a lower level of legal effect other than the *Company Law*, so this kind of committee can restrict the company to a very limited extent while it has to face the defects in its operating mechanism due to lack of necessary independence and transparency. Therefore, this kind of committee will play little role in this regard. It shall be stipulated in the future version of the *Company Law* that "the proposal for supervisors' remuneration shall be put forward by the Remuneration and Appraisal Committee of Board of Directors in a company, and the proposal shall be approved by the Board of Supervisors and submitted on the shareholders meeting for acceptance before being put into practice".

Form of payment for supervisors' remuneration

In China, there is only a single form of payment for supervisors' remuneration. It is indicated by the disclosed financial statement that the supervisors' remuneration is only subject to cash payment of fixed amount (before tax). On one hand, the single form of payment for supervisors' remuneration (cash payment of fixed amount, before tax) is significantly different from various forms of payment for directors' remuneration; on the other hand, the fixed amount that is already agreed may be hard to motivate supervisor to fulfill supervisor's duties in company. For these reasons, new form of payment shall be considered. For example, some of non-listed companies adopt the form of deferred payment for supervisors' remuneration, that is, part of the supervisors' remuneration (fixed portion) is deposited in the fund account dedicated for supervisors' remuneration of company, and will only be paid when supervisor leaves the post after diligently and dutifully fulfilling the supervisor's duties.

Moreover, in practice, tax avoidance is also one of the important factors to be considered by company to choose the form of payment for supervisors' remuneration. For example, a lower supervisors' remuneration is paid, but supervisor can be additionally paid with higher subsidy in a form of meeting affair charge.

Payment of remuneration to part-time supervisor

As supervisor of company is responsible for

supervising the business of company and for accounting and auditing in this regard, it is stipulated in Articles 51 and 117 of the *Company Law* that directors and senior management personnel of a company must not also serve as supervisors. It is generally recognized that these stipulations are aimed at the directors and senior management personnel in the same company, not directors and senior management personnel from other companies.⁷ That is, the affiliated companies and competing companies are not subject to these stipulations (alternate appointment is not restricted). Therefore, the disclosed reports of some companies also stipulate that the remuneration of supervisors who hold administrative positions in the company shall be paid by the company, and that the company will not pay remuneration to those supervisors who hold no administrative positions in the company. Still some companies stipulate that "supervisors working in the company receive remuneration according to their business positions in the company, and the company supervisors are not entitled to any allowance." In other words, "supervisors working in the company receive corresponding remuneration according to their positions and titles, and supervisors who do not work in the company do not receive remuneration." It is very common that CPC organization is not established in many listed companies in China. In many cases, supervisor serves not only as cadre of CPC organization, but also as supervisor in the company. It can be found out in many companies that secretary of the Party Committee and secretary of Committee for Discipline Inspection also serves as part-time supervisor. Chairman of the Trade Union serving as part-time supervisor is another common case. Under these circumstances, it is necessary to determine what procedures shall be prepared to decide the remuneration paid to other non-senior management personnel of company, and whether the payment shall be made as supervisors' remuneration or remuneration for business operation and administration posts of the company. In other words, whether supervisor is allowed to receive remuneration for business operation and administration posts of the company in addition to the remuneration for consideration

of his/her fulfillment of supervisor's duties in the current company. There are three viewpoints in this regard: I, supervisor is allowed to receive additional remuneration for business operation and administration posts of the current company, that is, it is believed in this viewpoint that there is a difference between supervisor and business operation and administration posts due to the difference in decision makers, so the remuneration for business operation and administration posts shall not be included in supervisors' remuneration but shall be paid separately.⁸ II, supervisors' remuneration includes the remuneration for other concurrent posts. It is believed in this viewpoint that although the relationship between company and supervisor is different from the relationship between company and business operator in terms of legal nature, it is most important that determining supervisors' remuneration on shareholders meeting is to guarantee the independence of supervisor, so it is hard to differentiate the title, function and cost between supervisor and business operator when supervisor serves also the ordinary business operator of the company. Therefore, in this case, once the remuneration for ordinary business operator and administrative staff is paid separately, supervisor may pursue illegal profits out of the control by Board of Shareholders. III, a compromise theory, that is, although remuneration for other posts is excluded from supervisors' remuneration, supervisor shall file a special report to Board of Shareholders for receipt of remuneration for other posts in the company when Board of Shareholders is making decision on supervisors' remuneration.

Another problem is that supervisor taking up more than one post will cause that the supervisor may inevitably face the conflicts of interest when fulfilling supervisor's duties. It is stipulated in the Rules of Sociological Method about division of labor that one taking up more than one post can only do a good job in one post, or cannot do a good job in either post. In many cases, supervisor also taking up other administrative posts in a company will not only affect his/her independence and neutrality as a supervisor, but also cannot give consideration to two or more things in many cases, thereby bringing about inevitable conflicts of interest.

For this purpose, it is stipulated in the *Company Law* of China that senior management personnel must not also serve as supervisor, and the terms of reference for senior management personnel shall also be detailed in Articles of Association.

Remuneration payment method: share holding by supervisors and equity incentive

The *Company Law* allows holding shares in the company and obtaining equity incomes by supervisors with regard to the feasibility of share holding by supervisors. Article 141 of the *Company Law* stipulates that "the supervisors shall report to the company their shareholdings held by them and changes therein" and has restrictive provisions that "the supervisors shall not transfer more than 25% per year of the total number of shares of the company held by them during their tenure; the aforesaid person(s) shall not transfer the shares of the company held by them within six months commencing from the termination of their service".⁹ And on top of that, the *Company Law* also authorizes the company to make other restrictive provisions on the transfer of shares of the company held by the company's supervisors through the Articles of Association. Therefore, the *Company Law* imposes no restrictions on supervisors holding shares of the company, especially on the shareholding ratio, but it definitely limits proportion and period for the transfer of shares of the company held by supervisors. However, the practice sees no stocks or stock options used as remuneration incentives for supervisors in the listed companies. This is applicable to the company practice as far as the author is concerned, as equity incentive is not the most effective one for supervisors, which is mainly determined by the special nature of the supervisor's work. Unlike directors or managers and other types of senior management personnel, supervisors shall be independent in performing their supervision duties, and shall be accountable to the capital contributors of the company, i.e. shareholders, and shall not be interfered with by internal factors of the company. As a result, the stock ownership incentive is not appropriate for the Board of Supervisors with discreet distances. However, careful consideration shall be given to avoid "invisible profit distribution" when determining the remuneration in the case of a

shareholder acting as a supervisor.

Remuneration of employee supervisors

The employee supervisors are encountered with a thorny problem in terms of remuneration. The remuneration of supervisors is determined by the shareholders meeting as stipulated in the *Company Law*, but if the remuneration of employee supervisors is also determined by the shareholders meeting, can their loyalty and efforts to safeguard the interests of employees be effectively guaranteed?¹⁰ Some scholars think that it is unreasonable that the right to choose and appoint employee supervisors lies in the congress of workers and staff or the general membership meeting, and the decision-making power of employee supervisors' remuneration is handed over to the shareholders meeting, which will breed corruption among employee representatives desiring for extra pay. To avoid the departure of employee representatives from the interests of the employees tempted by remuneration in large amounts, China's law shall adopt the method of granting allowances to the employee supervisors, which shall be decided by the congress of workers and staff on levels and paid by the company's finance department, tallying with the actual situation where remuneration for employee supervisors is paid by the company, unlike for other supervisors. Alternatively, the company shall allocate special funds to the congress of workers and staff to establish a fund for employee supervisors,¹¹ which shall be managed by the operating mechanism of the congress of workers and staff - the labor union, including one part as the expenses for investigation and training of employee supervisors and the other part as the allowance of employee supervisors, with payment standard to be decided by the congress of workers as per the results of the year-end evaluation of employee supervisors.

Disclosure of information

Article 14 of the *Administrative Measures for the Disclosure of Information of Listed Companies* requires the annual remuneration of supervisors to be recorded in the annual information disclosure report of listed companies and requires no further disclosure in the detailed scheme of supervisors'

remuneration. It seems to the author that the existing disclosure requirements on the supervisors' remuneration are insufficient. This will lead to insufficient information in the market, with insufficient power to spur supervisors, and is not conducive to the supervision on supervisors by shareholders. In the face of the diversified ways for supervisors to obtain remuneration, the shareholders' supervision over the application of these various complex compensation schemes and the measurement and evaluation of their effectiveness are insufficient in cost and ability, so it is of great necessity to change the compensation system in order to ensure the independence and enthusiasm of the Board of Supervisors.

The remuneration and liability insurance system for supervisors are also concerned, such as compensation for the responsibilities or expenses incurred by the supervisor in the lawsuit, and compensation for the expenses incurred by the supervisor in investigating the company's finance. The liability insurance system for supervisors, being a relatively new trend, is the practice insurance insured by the company to the insurance company to encourage the supervisors to make a bold performance in their supervisory duties and restrain the unreasonable burden on the supervisors, and can be regarded as a new development form of compensation. The liability insurance system for supervisors is a payment made by the insurance company within the scope of insurance liability for the loss caused by supervisors' negligence to the company or for the compensation expenses paid by the company to supervisors, without payment by supervisors and the company.

CONCLUSION

The internal problems of neglecting the incentive and supervision of supervisors under the existing supervisor system stand out from such external factors weakening the functions of the Board of Supervisors as the lack of power given to supervisors by law, which is evidenced by the vague and simple company legislation. From the perspective of the author, on the basis of fully granting the company's autonomy and respecting the company's autonomy, the *Company Law* shall

include more means to interfere with the legislative concept of incentive and supervision of the company's supervisors in terms of the intrinsic mechanism of the supervisor system than it is now. As a matter of fact, the current company legislation makes no difference to the regulations on the supervisors' remuneration, especially in terms of the correlation between the supervisors' remuneration and the business execution of supervisors, completely neglecting the role of the supervisors' remuneration in the incentive and fiduciary responsibilities of supervisors. Therefore, the law shall play a more specific role in the field of supervisors' compensation, establish the incentive mechanism of supervisors' compensation in the form of legislation or articles of association, and provide a complete menu of company legal provisions that meets the requirements. In particular, in order to protect the interests of minority shareholders and capital market investors (also known as financial consumers), the law shall straighten out the relationship between supervisors and shareholders and the company and clarify the payment subjects and resolution procedures of supervisor's remuneration. From the perspective of company law, the performance of supervisors' duties will promote enterprises to seriously carry out compliance management, such as paying attention to "tobacco regulation", but this impact has not yet proved that it forms a causal relationship in law.¹²

The company has, as a democratic organization, implemented the rule of major shareholders. For example, a simple majority of voting rights is enough to control the composition of the company's Board of Directors, and to make resolutions in favor of major shareholders at various meetings of the company. The elected Board of Supervisors of the company also serves as a supervisory body in favor of major shareholders. On the contrary, decentralized equity of the company or passivity of the major shareholders in exercising their rights will result in controlling of the company by the management other than shareholders, and under the circumstances, the management will be absolutely reluctant to adopt an effective supervision system unfavorable to itself if the role of the Board of Supervisors

is not mandatory by law. The legislation specific to the remuneration of the Board of Supervisors of the company may not ignore the correlation between the ownership structure of the company and the remuneration of the supervisor, since the degree of supervision of the management undertaken by the shareholders depends on the ownership structure.¹³ In other words, in a company with only a few shareholders, these shareholders have the motivation and intention to supervise the actions of the managers they employ. For decentralized shareholders in a large public company, it is harder for them to supervise managers since they only own a small part of shares of the company. In such a case, the company is required to bear the expenses of supervising managers - because the major shareholders have the economic motivation to engage in the supervision activities to reduce the remaining losses of the agency cost, and the decentralized ownership structure reduces the effectiveness of supervision undertaken by shareholders, which shall be borne by the company. The theory can be further extended to the difference between the shareholder-controlled company and managers-controlled company in terms of supervisors' remuneration, i.e., the controlling shareholders in the shareholder-controlled company are willing to actively supervise the company, appoint supervisors to the company or pay to supervisors while managers in the managers-controlled company will not pay too much attention to their supervisors. Differentiated legislation shall be adopted in the Company Law on the basis of distinguishing the above two cases.

In this regard, whether the empowering *Company Law* on supervisors' remuneration or the stricter rule is more beneficial to investors will depend on the capital structure of the specific enterprise.¹⁴ Legislation shall impose stricter restrictions on listed companies.

Conflict of Interest Disclosure Statement

The authors have no conflicts of interest, financial or otherwise.

Author Declaration This research is not funded by any organization related to tobacco production.

Acknowledgements

This manuscript was supported with a grant from the Doctoral Fund of Northwest Agriculture & Forestry University (No.Z1090219167).

References

1. Zhao Xudong. Innovation of Corporate Governance System in the Revision of the Company Law. *China Law Review*. 2020; (3):119.
2. Bernard S. Black. The Core Fiduciary Duties of Outside Directors. *Asia Business Law Review*. 2001; 3-16.
3. William T. Allen. Independent Directors in MBO Transactions: Are They Fact or Fantasy? 45 *Bus.Law*.1990; 2055-63..
4. Chul Song Lee. *Company Law Handout*. 22nd ed. Seoul, Pro-Insight; 2014.
5. Berle. *Corporate Powers as Powers in Trust*. 44 *Harv. L. Rev.*; 1931.
6. Shi Tiantao. *Company Law*. 3rd ed. Beijing, Law Press China; 2014.
7. Wang Wenyu. *Company Law*. Beijing, Press of China University of Political Science and Law; 2004.
8. Hideki Kanda. *The Concept of Corporate Law*. Beijing, Law Press China; 2013.
9. Zhu Jinqing. *Company Law*. Beijing, Tsinghua University Press; 2017.
10. Donald C. Clarke. *Law without Order in Chinese Corporate Governance Institutions*. Beijing, Encyclopedia of China Publishing House; 2018.
11. Paul L. Davies. *Gower's Principles of Modern Company Law*. 6th ed. Sweet & Maxwell; 1997.
12. er W, *Predicted Impact of Nicotine Reduction on Smokers with Affective Disorders*, *Tobacco regulatory science* 1 (2) , pp.154-165.
13. Frank H. Easterbrook, Daniel R. Fischel. *The Economic Structure of Corporate Law*. Beijing, Peking University Press; 2014.
14. Romano. The State Competition Debate in Corporate Law. 8 *Cardozo L.Rev*.1987; 709.