The Freedom and Compulsion of Corporate Organ Selection: Interaction Between Organ Selection and Organ Authority

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Abstract: Regarding the selection of corporate organs, the 2023 revision of the Company Law introduced the audit committee as a new supervisory organ, enhancing the diversity of organ selection. It also expanded the scope of simplified organs to joint-stock companies, increasing the flexibility of organ choices. Furthermore, under certain conditions, for the first time, limited liability companies (LLCs) are allowed to operate without a supervisory organ. However, after this revision, the differences in organ selection between LLCs and joint-stock companies have further diminished, failing to address the practical needs of companies of different scales adopting different corporate types. Without changing corporate types, companies can essentially be categorized into two forms based on whether they establish a board of directors, and an interaction model between organ selection and organ authority can be adopted:(1) For companies without a board of directors, there is no separation of ownership and decision-making powers. Authority allocation is unified, and both LLCs and joint-stock companies follow the principle of shareholder centralism. In this model, the shareholders' meeting acts as an all-powerful organ, with shareholders directly participating in management, engaging in negotiations at the shareholders' meeting level, and supervising one another. (2) For companies with a board of directors, ownership and decision-making powers are separated, adopting a board-centric model. The shareholders' meeting only exercises statutory and chartered powers, with residual authority delegated to the board of directors.
Keywords: Organ Selection, Authority Allocation, Simplified Organ, Auxiliary Organ.

1. INTRODUCTION

1.1. Characteristics of Corporate Organ Selection in China: Between Flexibility and Compulsion.

The improvement of corporate governance structures is a core focus of the Company Law revision, as it constitutes the foundational institutional design underlying the entire law. Even minor amendments can lead to systemic changes. Therefore, adjustments to corporate governance structures should align with the objectives of the Company Law, addressing prominent governance issues while maintaining a forward-looking perspective to establish an organizational legal framework that supports the further development of China's market economy. Corporate governance is closely tied to corporate organs, also referred to as corporate organizational structures. In essence, corporate organs serve as the organizational framework and foundational mechanism for internal corporate governance. A fundamental criterion for assessing the quality of a company's internal governance lies in the establishment of its corporate organs and the relationships between them. Internal corporate governance is based on the division of powers, relies on checks and balances as a mechanism, and aims to achieve efficiency and fairness, all of which are realized through corporate organs. It can be said that corporate organs hold a central position in a company's internal governance. The establishment, authority, and responsibilities of modern corporate organs are all prescribed by the Company Law, and these provisions carry a clear element of compulsion. Although individual companies are granted a certain degree of autonomy, it is impossible to return to the completely unrestricted classical enterprise model. However, in the modern commercial society, companies vary significantly in type, scale, number of shareholders, and number of employees. Consequently, company laws in various countries tend to provide a degree of flexibility regarding the establishment, authority, and responsibilities of corporate organs. This flexibility is often expressed through permissive provisions, allowing parties to make choices through the company's articles of association. China's Company Law also reflects this combination of compulsion and flexibility in its provisions on corporate organs. However, overall, the element of compulsion is more pronounced, particularly in the selection of organs for joint-stock companies (hereinafter referred to as "JSCs").

1.2. The Compulsion of Organ Selection in Joint-Stock Companies

As a legal entity, a company performs various functions such as decision-making, business execution, representation, and supervision through its corporate organs. Regarding the classification of corporate organs, the 2018 Company Law categorizes them into three main types: decision-making organs (the shareholders' meeting or general meeting of shareholders), executive organs (the board of directors or executive director and the manager), and supervisory organs (the board of supervisors or individual supervisors). The structure of corporate organs under the Company Law reflects the principle of separation of powers and checks and balances, with these three types of organs being interdependent and mutually restraining With respect to the establishment of these organs, the 2018 Company Law imposes relatively strict requirements (Nielsen &

Pedersen, 1988). The most notable aspect is that, regardless of whether it is a limited liability company (hereinafter referred to as "LLC") or a joint-stock company, all three types of organs must be established concurrently, with none of them being dispensable (Taniguchi, 1988). First, the requirements for organ setup in JSCs are the most stringent. The general meeting of shareholders (Vutt, 2020) the board of directors (Benfatti, 2018) the board of supervisors and even managers are all mandatory organs and must be established simultaneously. Furthermore, there are no alternative options for the board of directors or the board of supervisors in cases where the number of shareholders is small or the company is of a smaller scale. This rigidity may stem from the presumption in China's Company Law that JSCs are a corporate form suited for large-scale enterprises. For such large enterprises, their governance structures are expected to be more comprehensive to facilitate the coordination of interests among various stakeholders. Thus, the compulsion of organ selection in JSCs is particularly pronounced, as evidenced by the requirement that the general meeting of shareholders, board of directors, board of supervisors, and managers must all be established, with no simplified alternatives (Cronin & Douglas, 2010). Secondly, a publicly listed company should, in principle, be organized as a joint-stock company. With regard to the organs of listed companies, Chapter 4, Section 5 of the 2018 Company Law provides specific provisions. In addition to the four standard organs: the general meeting of shareholders, the board of directors, the board of supervisors, and the manager, listed companies are also required to establish independent directors and a board secretary Furthermore, under the influence of regulatory rules issued by the China Securities Regulatory Commission (CSRC), listed companies must establish an audit committee. These three entities are all considered auxiliary or supervisory organs within the board of directors. Regarding the number of independent directors, CSRC regulatory rules explicitly require that independent directors must constitute at least one-third of the board of directors of a listed company. Moreover, independent directors are required to serve as the majority and conveners within the audit committee, nomination committee, and remuneration and appraisal committee. Among these, the audit committee is a mandatory organ, while the nomination committee, remuneration and appraisal committee, and strategy committee are considered specialized committees that listed companies may establish as needed (Barua et al.). In summary, due to the comprehensive regulatory framework established by the CSRC for listed companies, which includes not only disclosure obligations but also specific requirements for internal governance structures, the compulsion of organ selection in listed companies is the highest. In addition to the mandatory establishment of the general meeting of shareholders, board of directors, board of supervisors, and managers, the board of directors of listed companies must also include independent directors, a board secretary, and an audit committee as a minimum requirement (Das, 2000).

Table 1: Corporate Organ Selection under the 2018 Company Law

Company Type	Corporate Organs
Joint-Stock Company	General Meeting of Shareholders + Board of Directors + Board of Supervisors + Manager
Listed Company	General Meeting of Shareholders + Board of Directors + Board of Supervisors + Manager + Independent Directors + Board Secretary + Audit Committee (+ Specialized Committees)
LLC	General Meeting of Shareholders + Board of Directors + Board of Supervisors (+ Manager)
	General Meeting of Shareholders + Executive Director + Supervisor (+ Manager)
	General Meeting of Shareholders + Board of Directors + Supervisor (+ Manager)
	General Meeting of Shareholders + Executive Director + Board of Supervisors (+ Manager)

1.3. The Compulsion and Flexibility of Organ Selection in Limited Liability Companies (LLCs)

In contrast, the organ selection of LLCs exhibits both compulsory and flexible characteristics. First, in principle, the general meeting of shareholders the board of directors and the board of supervisors are also mandatory organs. However, exceptions exist for LLCs with fewer shareholders or smaller scales: ①An LLC may appoint a single executive director instead of a board of directors (Pearson, 1994). ②An LLC may appoint one or two supervisors instead of a board of supervisors This is because, under the presumption of China's Company Law, LLCs are primarily designed for small- to medium-sized enterprises. When the number of shareholders is small or the company's scale is limited, it is unnecessary to mandate the establishment of collective decision-making bodies like a board of directors and a board of supervisors. Instead, a single executive director can function as the business execution organ, and one or two supervisors can act as the supervisory organ. These provisions aim to reduce the establishment and operational costs for small- and medium-sized enterprises (Dickinson, 1929). Second, managers are not mandatory organs in LLCs The manager is an executive organ responsible for the daily production and operational management of the company under the leadership of the board of directors. Their primary function is to assist the board of directors with business execution and management tasks. Since the board of directors itself is not a mandatory organ in LLCs, the manager, as an auxiliary organ, is also not mandatory. Even if an LLC chooses to establish a board of directors, it may still opt not to appoint a manager. LLCs can decide whether to establish a manager as an auxiliary organ for the board of directors based on factors such as the company's size and operational needs. For LLCs that appoint a single executive director instead of a board of directors, the executive director may concurrently serve as the manager. This provision was introduced in the 2005 revision of the Company Law (Organ et al., 2005).

2. THE 2023 COMPANY LAW'S REFORMS ON ORGAN SELECTION AND THEIR ISSUES

The reforms introduced by the 2023 Company Law regarding organ selection can be analyzed and evaluated from two perspectives: the diversification of organ selection and the flexibility of organ setup.

2.1. The Diversification of Corporate Organ Selection and Its Issues

The 2023 Company Law introduced the audit committee as a new supervisory organ, providing companies with more options for organ selection. Compared to the 2018 Company Law, the board of supervisors is no longer a mandatory organ and can be replaced by an audit committee (Koenig-Archibugi, 2002), thereby shifting external supervision by the board of supervisors to internal supervision by the audit committee within the board of directors. This reform enhances the effectiveness of supervision and introduces an additional supervision model in corporate governance, thereby improving the diversity of organ selection to a certain extent. However, there are specific requirements for the number and composition of audit committees in JSCs. The audit committee must consist of at least three directors, with a majority of members not holding any other positions within the company and not having any relationships with the company that could impair their independent and objective judgment. These provisions aim to enhance the independence of the audit committee, enabling it to exercise its supervisory powers from the perspective of protecting the interests of minority shareholders.

Table 2: Organ Selection for LLCs under the 2023 Company Law

Corporate Organs
General Meeting of Shareholders + Board of Directors + Board of Supervisors (+ Manager)
General Meeting of Shareholders + Board of Directors + Supervisor (+ Manager)
General Meeting of Shareholders + Board of Directors (+ Manager)
General Meeting of Shareholders + Board of Directors + Audit Committee (+ Manager)
General Meeting of Shareholders + Director(s) + Supervisor (+ Manager)
General Meeting of Shareholders + Director(s) + Board of Supervisors (+ Manager)
General Meeting of Shareholders + Director(s) (+ Manager)

In contrast, no specific requirements are provided for the number and composition of audit committees in LLCs. This may be because, under the presumption of China's Company Law, LLCs are primarily designed for small- and medium-sized enterprises. Greater flexibility in organ selection is therefore granted, allowing companies to independently design the composition of their audit committees based on their size, equity structure, governance needs, and other factors.

2.2. The Flexibility of Corporate Organ Setup and Its Issues

Regarding the flexibility of organ setup, the 2023 Company Law introduced improvements from two perspectives: simplified organs and auxiliary organs. First, regarding the scope of application for simplified organs, the 2018 Company Law did not provide for simplified organs in JSCs. The 2023 Company Law, for the first time, recognizes this option. Smaller-scale JSCs or those with fewer shareholders can now also opt to set up simplified organs, thereby enhancing the flexibility of organ selection. This represents progress. As for auxiliary organs (managers), compared with the 2018 Company Law and the first draft of revisions, the second and third drafts of the amendments proposed making the manager a mandatory organ in LLCs, thereby reducing flexibility. This was a step backward because, although the role of the manager can be concurrently held by a director, it still requires the establishment of an additional organ. Fortunately, the final version of the 2023 Company Law corrected this and reverted the manager to a non-mandatory organ. For LLCs, greater flexibility in organ setup is necessary to address varying practical circumstances (Gharajedaghi & Ackoff, 1984). Companies can decide whether to appoint a manager based on their needs and specify this in their articles of association.

Table 3 Corporate Organ Setup in JSCs under the 2023 Company Law

Corporate Organs
General Meeting of Shareholders + Board of Directors + Board of Supervisors + Manager (+ Other Committees)
General Meeting of Shareholders + Board of Directors + Supervisor + Manager (+ Other Committees)
General Meeting of Shareholders + Board of Directors + Audit Committee + Manager (+ Other Committees)
General Meeting of Shareholders + Director(s) + Supervisor + Manager
General Meeting of Shareholders + Director(s) + Board of Supervisors + Manager

Second, regarding simplified organs for the board of directors, the 2023 Company Law no longer uses the term "executive director" as in the 2018 Company Law, instead referring to this position simply as "director." This change is not merely terminological but is accompanied by adjustments to the powers of simplified organs, which now "exercise the powers of the board of directors as prescribed by this Law." Under the 2018 Company Law, the powers of the executive director were determined by the articles of association and did not directly encompass all the powers of the board of directors (Gorriz, 2019), leaving some room for autonomy in the articles of association. For instance, the articles of association could allocate certain powers of the board of directors to the general meeting of shareholders, leaving only a limited scope of powers to the executive director, thus creating a substantive "shareholder-centric model." This allocation of powers may align better with the realities of many small- and medium-sized enterprises and family businesses, where ownership and management are closely aligned (Schäfer, 1981). However, the question remains whether a single director can adequately perform all the statutory functions of the board of directors, which is traditionally a collective decision-making body. When a company has more than one shareholder, many decisions require deliberation and resolution at the board level by directors representing the interests of different shareholders. If only one director is appointed, disputes over who should assume this role may arise, creating difficulties in balancing shareholder interests. In such cases, even for companies with a smaller scale or fewer shareholders, the establishment of a board of directors may still be preferred. This could lead to a decline in the practical adoption of simplified organs (i.e., a single director). Third, concerning simplified organs for the board of supervisors, the 2023 Company Law (Abram & Buchanan, 1977), for the first time, permits companies, under certain conditions, to forgo establishing a supervisory organ altogether, retaining only the decision-making organ (the general meeting of shareholders) and the business execution organ (the board of directors or director). On the one hand, this reflects greater respect for corporate autonomy and facilitates more flexible corporate governance. On the other hand, requiring unanimous consent from all shareholders as a condition helps protect the interests of minority shareholders (Kolber, 2002). However, regarding the rules for setting up the two types of simplified organs, the 2023 Company Law does not provide clear and detailed guidance. When a company is small in scale or has few shareholders, it may independently choose to establish either a board of directors or a single director, and either a board of supervisors or a single supervisor. Furthermore, if all shareholders unanimously agree, the company may opt not to establish a supervisory organ at all. This flexibility leads to six potential configurations:

Table 4: Options for Organ Setup in Small-Scale Companies or Companies with Few Shareholders

①**Board of Directors + Board of Supervisors**	②**Board of Directors + Supervisor**	③**Board of Directors**
④Director(s) + Board of Supervisors	⑤Director(s) + Supervisor	⑥Director(s)

Among these options, two configurations may pose certain issues. First, Option ④ (Director(s) + Board of Supervisors) involves the company appointing only one director as the business execution organ, while establishing a board of supervisors consisting of three or more members to supervise this single director. Neither the 2018 Company Law nor the 2023 Company Law imposes any restrictions on this arrangement, but it undoubtedly constitutes a waste of supervisory resources. Although this configuration is relatively rare in current practice, it may become more common after the implementation of the 2023 Company Law (Kelsen, 2012). Specifically, for companies with more than 300 employees, the 2023 Company Law permits the company to choose between appointing either an employee director or an employee supervisor. However, for companies with few shareholders, to avoid appointing an employee director, they may opt to appoint only one director instead of a board of directors. In this case, to meet the requirement for appointing an employee supervisor, the company cannot establish only a single supervisor but must form a board of supervisors. This decision would not be based on the genuine need for a board of supervisors to exercise supervisory functions but rather on the need to avoid the requirement to appoint an employee director. This could further exacerbate the "ceremonial" nature of the board of supervisors, rendering it ineffective. In such cases, allowing for simpler organ configurations would likely be more practical. Second, Option ③ (Board of Directors) involves the unanimous agreement of all shareholders to forgo establishing a supervisory organ while retaining a board of directors as the business execution organ. This scenario is the opposite of the one described above. The business execution organ takes the form of a collective decision-making body (the board of directors), but there is no supervisory organ in place. Typically, when a board of directors is established, its members are appointed by shareholders representing different interests, enabling the board to coordinate and make operational decisions on behalf of the company. However, in the absence of a supervisory organ, there is a higher risk that majority shareholders could exploit their control over the board of directors to harm the interests of the company or minority shareholders. This situation calls for the imposition of certain mandatory safeguards.

3. APPROACHES TO IMPROVING THE SELECTION AND CLASSIFICATION PRINCIPLES OF CORPORATE ORGANS IN CHINA

3.1. Approaches to Improving Corporate Organ Selection: The Boundary Between Flexibility and Compulsion

Corporate governance norms regulate a company's internal legal relationships, primarily focusing on three aspects: the rules for organ setup, the rules for organ powers, and the rules for organ operation. Generally speaking, corporate governance norms do not directly affect the legitimate rights and interests of external parties nor pose a risk to public interest. Thus, in principle, these norms should be discretionary. However, if certain rules involve requirements or conditions essential to the existence and operation of corporate organs, they should be mandatory. Under the presumption of China's Company Law, JSCs are primarily suited to large-scale enterprises, while LLCs are intended for small- and medium-sized enterprises. Whether this presumption is accurate and reasonable, and how it should be adjusted, remains a subject of significant debate in theory. Any adjustment would involve reclassifying company types, which would be a systematic legislative reform with widespread implications. Therefore, under the premise of not altering this presumption, JSCs, which are designed for large-scale enterprises, should maintain a relatively high degree of mandatory requirements for organ selection. This helps define boundaries for resolving conflicts of interest among various internal stakeholders. In contrast, LLCs, which are designed for small- and medium-sized enterprises, typically have fewer shareholders. Ownership and management are generally not separated, and it is common for shareholders to participate directly in the company's operations. Supervision in such companies often relies on mutual oversight among shareholders. To avoid the issue of "formalism" in organ setup, reduce the costs associated with organ establishment, and meet the diverse needs of different companies in practice, LLCs should be granted greater flexibility in organ selection. At the very least, the Company Law should provide a range of options for organ setup, from simple to complex, which companies can choose from based on their specific circumstances.

3.2. Principles for Classifying Corporate Organs: Mandatory vs. Optional Organs

If the Company Law is to provide companies with various options for organ setup, the first question to address is: which organs are mandatory? The rules for organ setup should be defined based on practical needs. If an organ is essential for the operation of the company, its establishment should be mandatory; otherwise, it can be left to the company to decide whether to establish it. The 2023 Company Law divides company organs into three categories: decision-making organs (e.g., the general meeting of shareholders), business execution organs (e.g., the board of directors, director(s), or manager), and supervisory organs (e.g., the board of supervisors, supervisor(s), or audit committee). Decision-Making Organs: As the decision-making organ, the general meeting of shareholders is undoubtedly a mandatory organ for all companies. For any company with more than one shareholder, the general meeting of shareholders is indispensable for coordinating and unifying the exercise of shareholder rights. Therefore, the general meeting of shareholders is a mandatory organ for all companies (except single-shareholder companies). Business Execution Organs: The board of directors is the typical business execution organ, composed of three or more directors elected by the general meeting of shareholders. It represents the interests of various shareholders and is responsible for coordination and decision-making at the operational level. However, for smaller-scale companies or those with fewer shareholders, a single director can be appointed as a simplified organ to reduce costs and improve operational efficiency. Thus, the board of directors is not a mandatory organ; under certain conditions, companies can stipulate in their articles of association that a single director will replace the board. Regardless of the configuration, since the primary function of the general meeting of shareholders is to make decisions on major corporate matters rather than execute business operations, every company must have at least one business execution organ. Therefore, a single director, as a simplified organ, is a mandatory organ. The manager, on the other hand, is an auxiliary organ to the board of directors, playing a supporting role in business execution. It is not essential for the operation of the company. Thus, the establishment of the manager can remain discretionary, allowing companies to decide whether to appoint a manager based on their needs. Supervisory Organs: The board of supervisors is the typical supervisory organ in China's corporate governance system. It is composed of three or more supervisors elected by the general meeting of shareholders and is responsible for overseeing the business execution organ. However, for smaller-scale companies or those with fewer shareholders, it is not always necessary to establish a board of supervisors. To reduce costs or improve supervisory efficiency, companies can appoint a single supervisor as a simplified organ. Thus, the board of supervisors is not a mandatory organ. Whether a single supervisor, as a simplified organ, is mandatory is somewhat different from the case of directors. Even the newly introduced audit committee under the 2023 Company Law is not a mandatory organ. Since the audit committee operates within the board of directors, it logically follows that if the board of directors is not mandatory, neither would the audit committee be. In practice, a specialized supervisory organ is not indispensable for a company's operation. For instance, in many small- and medium-sized companies with concentrated ownership structures, it is common for controlling shareholders to participate directly in operations. Supervision in such companies often relies on mutual oversight among shareholders. Therefore, under certain conditions, companies may be allowed to opt out of establishing a dedicated supervisory organ.

Table 5: Classification of Mandatory and Non-Mandatory Organs

Organ Type	**Organ Name**	**Mandatory**
Decision-Making Organ	General Meeting of Shareholders	Mandatory Organ
Business Execution Organ	Director(s) (Simplified Organ)	Mandatory Organ
	Board of Directors	Non-Mandatory Organ
Auxiliary Organ	Manager	Non-Mandatory Organ
Supervisory Organ	Board of Supervisors	Non-Mandatory Organ
	Supervisor(s) (Simplified Organ)	Non-Mandatory Organ
	Audit Committee	Non-Mandatory Organ

4. PATHWAYS FOR IMPROVING THE SELECTION OF CORPORATE ORGANS IN CHINA

4.1. The Key Role of the Board of Directors in Organ Power Allocation

The allocation of powers between the general meeting of shareholders and the board of directors has long been debated, with arguments centering on shareholder-centric governance versus board-centric governance. Shareholder-Centric Governance: This model aligns the company's ownership with its management, significantly reducing agency costs. It is particularly suitable for small-scale, closely held companies with concentrated ownership, as it helps maintain the general meeting of shareholders as the core decision-making organ. Board-Centric Governance: This model, on the other hand, is more advantageous in large-scale public companies with dispersed ownership. It leverages the expertise of professional managers and enhances the efficiency of the board of directors as a standing decision-making organ, enabling timely decisions. The first draft of the amendment to the Company Law attempted to introduce board-centric governance by allocating residual powers to the board of directors. However, the second draft, third draft, and the final 2023 Company Law abandoned this approach, reverting to the enumerative approach of the 2018 Company Law to define powers. Given that both governance models have their strengths and that companies vary in their specific circumstances, a more flexible approach could be adopted. The choice of governance model can be left to companies themselves, allowing each entity to decide based on its asset size, ownership structure, personnel composition, and even cultural philosophy. In practice, both LLCs and JSCs are utilized by small- and medium-sized enterprises as well as large-scale enterprises. For companies with smaller scales or fewer shareholders, regardless of their type, it may be preferable to allow them to decide through their articles of association whether to establish a board of directors, thereby enabling the selection of different governance models. Specifically, the choice between shareholder-centric and board-centric governance models can be determined by whether the company establishes a board of directors: （1）Shareholder-Centric Governance Model: When a company stipulates in its articles of association to appoint a single director as a simplified organ without establishing a board of directors, it effectively adopts shareholder-centric governance. In this case, the general meeting of shareholders operates as the company's all-purpose organ, with shareholders directly participating in operations and supervising one another. （2）Board-Centric Governance Model: When a company stipulates in its articles of association to establish a board of directors, it signifies the adoption of board-centric governance. Under this model, the powers of the general meeting of shareholders are confined to those prescribed by law or the articles of association, while all residual powers related to decision-making and business execution are vested in the board of directors. This design offers another advantage: under certain conditions, companies are allowed to decide through their articles of association whether to establish a board of directors and, accordingly, adjust the distribution of powers among organs. This approach not only enhances the value of the Company Law's "model articles of association" but also grants companies substantial autonomy, thereby avoiding the legislative dilemma of unclear or rigid definitions regarding the governance center. Such a method transcends the legislative presumptions about the scenarios for the two types of companies and represents a more flexible solution that aligns better with China's practical needs. At the same time, this approach has already been adopted in comparative law. For example, Japan's Company Law employs a model where organ selection is directly linked to organ powers: （1）When a company does not establish a board of directors, the general meeting of shareholders functions as the all-purpose organ. It can resolve all matters prescribed by the Company Law as well as any issues related to the company's organization, operation, and management. （2）When a company establishes a board of directors, the general meeting of shareholders is limited to deciding on matters prescribed by the Company Law or the articles of association, while residual powers are allocated to the board of directors. Moreover, the articles of association are prohibited from assigning the statutory powers of the general meeting of shareholders to the board of directors or other organs.

4.2. Criteria for Determining Whether the Board of Directors Must Be Established

Allowing companies to adjust the distribution of organ powers through their articles of association, and granting them the freedom to decide whether to establish a board of directors, reflects a high degree of internal governance autonomy. However, there must be a clear boundary between freedom and compulsion: under what conditions can a company choose not to establish a board of directors, and under what conditions must a board of directors be established? In this regard, Japan's Company Law adopts the criterion of whether share transfers are restricted. Specifically: companies with restricted share transfers are classified as non-public companies and can choose not to establish a board of directors; companies with unrestricted share transfers are classified as public companies and must establish a board of directors. According to this classification method, all Chinese LLCs qualify as non-public companies, and JSCs that issue restricted shares also qualify as non-public companies. Only JSCs that issue unrestricted shares qualify as public companies. This classification method in Japan's Company Law is essentially similar to the provisions of the 2018 Company Law in China: LLCs, as non-public companies, can choose whether to establish a board of directors; JSCs, as public companies, must establish a board of directors and cannot merely appoint a single director. However, given that the 2023 Company Law introduces simplified organs and restricted shares for JSCs, the classification method used in Japan's Company Law is no longer directly applicable in China. The 2023 Company Law provides two criteria for determining whether a board of directors must be established: when a company is small in scale or has few shareholders, it can opt not to establish a board of directors and instead appoint a single director. However, both the "company scale" and "number of shareholders" criteria are somewhat ambiguous, which may lead to difficulties in practical application. Therefore, based on the legislative intent and considering the actual circumstances of company scale and shareholders in China, clearer standards should be established. (1) Standards for Company Scale : Company scale can be measured using various dimensions, such as registered capital, revenue, total liabilities, and number of employees. During the 2005 revision of the Company Law, the draft submitted in August adopted the State Council's recommendation and defined company scale as follows: "An LLC with registered capital of over 5 million RMB or more than 200 employees must establish a board of supervisors with no fewer than three members." This draft used registered capital and the number of employees as evaluation dimensions to define company scale. However, this standard was ultimately not retained. In subsequent amendments and revisions of the Company Law, no further provisions were made regarding the definition of company scale. Nevertheless, the 2023 Company Law provides a reverse standard. Article 68, Paragraph 1 stipulates that LLCs with more than 300 employees must appoint employee directors within the board of directors or employee supervisors within the board of supervisors, which suggests that such companies are not considered "small in scale." (Hu, 2024)Similarly, for

JSCs, the threshold of more than 300 employees is also applied. Requiring different corporate organs based on company size is a common practice in foreign legislative frameworks. For example, Germany's Company Law uses the number of employees as an evaluation criterion: companies with 500 or fewer employees are not subject to the Co-Determination Act and, therefore, are not required to establish a supervisory board. However, the articles of association may provide for the establishment of a supervisory board and freely determine its composition, powers, and procedures This demonstrates that Germany uses the number of employees as a standard to differentiate company scale, thereby determining whether a supervisory board must be established and even defining its structure. Accordingly, when considering the standard for company scale in China, a reverse interpretation and systematic explanation of the 2023 Company Law could be employed to establish the following rule: companies with more than 300 employees should not be classified as "small in scale" and must establish a board of directors, meaning they cannot appoint just a single director. Conversely, companies with fewer than 300 employees may be considered "small in scale" and can choose not to establish a board of directors, appointing only a single director instead. Although the evaluation dimension of registered capital (e.g., over 5 million RMB) was abandoned during the 2005 revision of the Company Law, registered capital remains a useful indicator for determining company scale. For example, Japan's Company Law uses registered capital (5 billion yen, approximately 24.59 million RMB) or total liabilities (200 billion yen, approximately 9.84 billion RMB) as evaluation dimensions to distinguish between large and non-large companies, requiring large companies to appoint auditors (Taniguchi, 1988). However, the use of total liabilities as an evaluation criterion is not without controversy in Japanese academic circles. According to data from China's State Administration for Market Regulation, as of December 2020: Approximately 19.77 million LLCs had registered capital below 1 million RMB. Approximately 14.43 million LLCs had registered capital between 1 million and 10 million RMB. Approximately 2.87 million LLCs had registered capital above 10 million RMB. Based on these statistics, if registered capital is used as a criterion, even under the fully subscribed capital system, the vast majority of LLCs in China would still qualify as "small in scale." The 2023 Company Law reintroduces a subscription period for LLCs and a paid-in capital system for JSCs, which closely resembles the paid-in system under the 2005 Company Law. Therefore, it could be considered reasonable to define companies with registered capital below 5 million RMB as "small in scale." Combining the dimensions of employee numbers and registered capital, company scale could be assessed more comprehensively. (2) Standards for the Number of Shareholders: According to statistical data released by the State Administration for Market Regulation (SAMR) as of December 2020, there were approximately 36.989 million LLCs nationwide, accounting for 96.52% of the total, with three or fewer shareholders. Based on this, it is reasonable to consider companies with three or fewer shareholders as meeting the criterion for "few shareholders." The key issue, however, lies in the relationship between the number of shareholders and company scale. Some argue that, compared to the phrasing in the 2018 Company Law, which stated "few shareholders or small scale," the 2023 Company Law reversed this order to "small scale or few shareholders," thereby emphasizing that company scale is the primary consideration when determining whether simplified corporate organs are appropriate, with the number of shareholders being secondary. The rationale for this change is that company scale is typically determined by factors such as revenue, business volume, number of employees, and number of branches, which are not necessarily correlated with the number of shareholders. This perspective treats the number of shareholders as a sub-criterion for assessing company scale, with company scale serving as the primary criterion. However, the number of shareholders, as an independent standard for determining whether a board of directors must be established, differs fundamentally from company scale and has its own distinct significance. This is because the number of shareholders directly affects the degree of separation between ownership and management, as well as the relationships among shareholders. On the one hand, when the number of shareholders is small, shareholders often simultaneously assume managerial roles, resulting in a combination of ownership and management. In such cases, since shareholders are responsible for both execution and supervision, it is reasonable to allow simplified corporate organ structures to reduce costs and improve efficiency. On the other hand, the number of shareholders directly influences interactions among shareholders. When the number of shareholders is small, corporate governance tends to exhibit a "contractual" nature, characterized by high levels of mutual trust among shareholders. Under such circumstances, the establishment and operation of the company can be managed through full shareholder consultation. Thus, regardless of the company's scale, when the number of shareholders is small (e.g., three or fewer), there is a clear need for simplified organ structures. Companies with few shareholders should be granted the autonomy to decide whether to establish a board of directors, thereby enabling them to independently choose their governance model.

4.3. Recommendations for Improving the Allocation of Corporate Organ Powers

(1) When a company establishes a board of directors as its executive organ, the board, as a collective decision-making body, should play a more significant role than a simplified organ (e.g., a single director) and should be granted broader powers. From a legislative perspective, it would be preferable to revert to the residual powers allocation model proposed in the first draft of the 2023 Company Law. This approach would help clarify the board's central role in corporate decision-making and reduce disputes arising from unclear residual power allocation. If the goal cannot be immediately achieved through legislative amendments, the interpretative approach suggests that the 2023 Company Law to some extent reflects characteristics of board-centric governance. Compared to the 2018 Company Law, it removes provisions regarding the "formulation of the company's annual financial budget and final accounts," thereby eliminating the requirement for private legal entities, such as companies, to prepare annual financial budgets and final accounts. This streamlining of the corporate financial system further respects corporate autonomy. Notably, the authority to "determine the company's business plans and investment proposals" was repeatedly added and removed during the three rounds of deliberations on the draft law, but was ultimately retained In essence, whether concerning business matters or investment matters, unless they involve structural changes, they fall within the scope of commercial discretion and should be exercised by the board of directors. Furthermore, Article 59 of the 2023 Company Law removes the authority of the shareholders' meeting to "determine the company's business policies and investment plans." This shift in power allocation reflects legislative intent. Additionally, the inclusion of a provision in the default rules allowing shareholders' meetings to delegate authority, unless otherwise stipulated in the articles of association, further demonstrates a legislative inclination toward board-centric governance. Given that both Article 59 (general meeting powers) and Article 67(2) (board powers) include residual power clauses, in practice, companies could utilize their articles of association to allocate any unspecified residual powers to the board of directors. This approach would further highlight the centrality of the board in corporate governance. Notably, for publicly listed companies, which cannot meet the conditions of having a smaller scale or fewer shareholders, the establishment of a board of directors as the executive organ is mandatory.

Similarly, for wholly state-owned companies, the board of directors is also a required organ. Moreover, aside from five specific powers, namely the appointment of directors, the formulation and amendment of the articles of association, decisions on mergers, divisions, dissolution, bankruptcy applications, increases or reductions in capital, and profit distribution, which must be decided by the institution performing the duties of the capital contributor, other statutory powers of the shareholders' meeting may be delegated to the board of directors by the same institution. This demonstrates that wholly state-owned companies exhibit even stronger characteristics of a board-centric governance structure. (2) When a company does not establish a board of directors, leaving all statutory powers of the board to be exercised by a single director, doubts remain as to whether a single director can effectively fulfill the responsibilities of a collective decision-making body. This issue may lead to a decline in the practical application of a single-director governance model. Conversely, if the company's articles of association are allowed to retain only a limited range of powers for the single director while allocating most powers to the general meeting of shareholders, enabling shareholder-level consultation and discussion, the selection of the single director would become easier and more practical. Under the 2018 Company Law, the powers of the executive director were determined by the articles of association, rather than being identical to those of a full board of directors. This allowed room for autonomy within the articles. For instance, the articles could allocate part of the board's powers to the general meeting, making the general meeting the company's all-purpose organ while reserving only minimal powers for the executive director. In essence, this approach reflected a shareholder-centric governance model. Such a distribution of powers may better align with the realities of many small- and medium-sized enterprises (SMEs) and family businesses where ownership and management are closely intertwined. From a legislative perspective, it is recommended to reinstate the provisions of the 2018 Company Law, allowing the powers of a simplified organ (a single director) to be determined by the company's articles of association. If legislative amendments cannot be achieved in the short term, an interpretive approach could be adopted to unify the allocation of powers in companies without a board of directors. Since both the statutory powers of the general meeting and the board of directors include residual power clauses, companies should strive to minimize the delegation of powers to a single director through their articles or general meeting resolutions. Instead, any residual powers not explicitly specified by law or the articles of association should be allocated to the general meeting of shareholders. Only the statutory powers outlined in Article 67(2) should be retained by the single director, thereby reflecting a more shareholder-centric governance model.

4.4. Specific Suggestions for Improving the Selection of Corporate Organs

For both LLCs and JSCs, the decision to establish a board of directors creates two distinct corporate structures. Without a board of directors, shareholders directly participate in the company's operations; with a board, the board assumes responsibility for the company's operations. From a corporate governance perspective, these two structures are fundamentally different. Therefore, in addition to differences in the powers of decision-making and executive organs, there should also be significant distinctions in the selection of supervisory and auxiliary organs between the two structures. (1) In companies with a board of directors, a supervisory organ must, in principle, be established to oversee the board. The supervisory organ can take the form of a board of supervisors, a single supervisor, or an audit committee within the board of directors. The manager, as an auxiliary organ, is responsible for the company's daily production and operational management under the leadership of the board. The manager's primary function is to assist the board in executing business operations and managing the company. In LLCs, since the board of directors is not a mandatory organ, the manager, as an auxiliary organ, is also not mandatory. When an LLC establishes a board of directors, it can choose, through its articles of association, whether to appoint a manager. In contrast, JSCs, which are presumed to primarily apply to large-scale enterprises, exhibit more mandatory characteristics in their organ selection. For example, as an auxiliary organ to the board, JSCs can establish additional committees besides the manager. The manager, as the chief executive professional, is a mandatory organ in JSCs, as the company would otherwise lack leadership In JSCs with a clear separation of ownership and management, the role of the manager is essential to assist the board in executing business operations and management. Of course, the board may also decide to appoint one of its members to serve concurrently as the manager. Other committees, however, are not mandatory organs, as their establishment is not standardized and is left to the company's discretion based on its specific needs. (2) In companies without a board of directors, establishing a supervisory organ is not mandatory. For example, in LLCs, if all shareholders unanimously agree, the company can opt not to establish a supervisory organ. This is because, in such cases, shareholders directly participate in the company's operations and can independently monitor the performance of the single director to a certain extent. However, companies should also be allowed to voluntarily establish a supervisory organ. When the executive organ consists of only a single director, the supervisory organ should also be simplified and need not provide as many options as in companies with a board of directors. First, since there is no board of directors, the precondition for establishing an audit committee is not met. Second, it is unnecessary to establish a full board of supervisors to oversee a single director. Instead, companies should be allowed to appoint a single supervisor to oversee the director. Establishing a three-member board of supervisors to monitor one director would result in a waste of supervisory resources, creating a situation akin to "a child wearing an oversized coat." Moreover, such a setup is unlikely to reflect a genuine need for oversight by the board of supervisors. Instead, it might be motivated by an attempt to avoid the legal requirement to appoint employee directors, leading to the further "formalization" of the board of supervisors, which would be wasteful. In other words, for companies with more than 300 employees but relatively few shareholders, if they appoint only a single director, they should not be required to establish a board of supervisors or employee supervisors. Appointing a single supervisor would suffice. As for the powers of supervisory organs, regardless of their form, they should have a certain degree of mandatory authority. Without substantive supervisory powers, the supervisory organ would lose its purpose. Regarding auxiliary organs, their primary function is to assist the board in executing business operations and management. When a company does not establish a board of directors, the manager, as an auxiliary organ, is no longer mandatory. Thus, in LLCs without a board of directors, both supervisory and auxiliary organs are governed by permissive norms, allowing the company to adopt the simplest structure: a general meeting of shareholders and a single director. However, given the higher liquidity of shares in JSCs, there is a greater need to protect shareholder interests. Thus, JSCs should be required to establish a dedicated supervisory organ (e.g., a single supervisor) to oversee the single director. However, since there is only one director, the necessity of appointing a manager to assist the director is significantly reduced. In this context, the manager could be designated as a non-mandatory organ, allowing the company to decide whether to appoint one. Therefore, compared to LLCs, the selection of supervisory organs in JSCs demonstrates a more mandatory nature, while greater flexibility should be allowed in the establishment of auxiliary organs.

Table 6: Improved Proposals for the Selection of Corporate Organs

Company Type	Corporate Organs	Power Allocation
LLC	Shareholders' Meeting + Board of Directors + Board of Supervisors (+ Manager)	Board-centric governance when a board is established.
	Shareholders' Meeting + Board of Directors + Supervisor (+ Manager)	
	Shareholders' Meeting + Board of Directors + Audit Committee (+ Manager)	
	Shareholders' Meeting + Single Director + Supervisor (+ Manager)	Shareholder-centric governance when no board is established.
	Shareholders' Meeting + Single Director (+ Manager)	
JSC	Shareholders' Meeting + Board of Directors + Board of Supervisors + Manager (+ Other Committees)	Board-centric governance when a board is established.
	Shareholders' Meeting + Board of Directors + Supervisor + Manager (+ Other Committees)	
	Shareholders' Meeting + Board of Directors + Audit Committee + Manager (+ Other Committees)	
	Shareholders' Meeting + Single Director + Supervisor (+ Manager)	Shareholder-centric governance when no board is established.

5. CONCLUSION

Corporate organs constitute the organizational foundation that sustains the legal personality of a company, serving as the cornerstone for its existence and operational activities. For this reason, the system of corporate organs has become the core, if not the entirety, of traditional corporate governance frameworks. Corporate governance encompasses a structure, a behavioral process, and an institutional framework. Structurally, corporate governance pertains to the establishment of corporate organs and the allocation of their powers and responsibilities. Behaviorally, it involves the regulatory processes governing the performance of duties by corporate organs and their members. Institutionally, both the structure and the processes of corporate governance must operate in accordance with the law and adhere to the rules of a comprehensive system of corporate governance regulations. However, there cannot be a universally applicable and unified model for the establishment of corporate organs and the allocation of their powers. Corporate governance is a dynamic and evolving process, with no universally optimal model but only the most suitable one for specific circumstances. Therefore, the design of corporate organs and their power allocation under China's Company Law can only provide a principled framework. For closely held companies, sufficient space should be left for corporate autonomy, while for public companies, flexible options should be provided. Accordingly, China’s Company Law could consider adopting a model that links the choice of corporate organs with the allocation of their powers. Given the critical role of the board of directors in the distribution of powers among corporate organs, companies with a smaller scale or fewer shareholders should be allowed to decide, through their articles of association, whether to establish a board of directors, thereby enabling adjustments to the allocation of powers. Whether it is a limited liability company or a joint-stock company, when no board of directors is established, shareholders directly participate in the management of the company. Conversely, when a board of directors is established, it assumes responsibility for the company’s management. These two scenarios differ significantly in terms of the choice of corporate organs and the allocation of powers. In summary, instead of rigidly pursuing legal uniformity in corporate governance structures, it would be more effective to grant greater creative space to the articles of association. This would empower investors to design governance models based on their experience, capabilities, and preferences, fostering flexibility and autonomy in corporate governance.

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