

Legislative Assurance System for Sustainable Development of Chinese Medium and Small Enterprises' (SMEs)

ETUDE DE LA POTILITIQUE DE LOI POUR LA PROTECTION DU DEVELOPPMENT CONTINU DES PME EN CHINE

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Abstract

The current legislative assurance system for protecting Chinese Medium and Small Enterprises' (SMEs) is not complete. Encourages and preferential terms in the legal system are ambiguous which are not sufficient to be used in promoting sustainable development of Medium and Small Enterprises (SMEs) in practice. This paper gives five related proposes by analyzing problems of sustainable development of Chinese Medium and Small Enterprises (SMEs): Scientific management and governance of Medium and Small Enterprises (SMEs); Standardize government authority's responsibilities legally; Construct perfect and complete market service system; Provide legal protection for Medium and Small Enterprises (SMEs) financing; and Provide preferential tax with SMEs.

Key words: Medium and Small Enterprises (SMEs); Corporation governance structure; Financing; Tax preference

Résumé

Dans la Chine de nos jours, sa politique de loi pour la protection du développement continu des PME n'est pas encore complexe. Les accords d'encouragement et des avantages sont encore très traditionnelles, et ne peuvent pas être réellement introduire dans la partie de développement continue des PME. La présente étude reflète les problèmes du développement continue des entreprises de PME, et propose 5 conseils d'amélioration: La structure du traitement de la science des PME, Spécification des fonctions des organismes gouvernemetale conformément à la loi, Mettre en

place des systèmes de services du marché, Fournir des protections de réformes de loi pour la combinaison des capitaux des entreprises de taille moyenne-petite et les protection de réformes de la loi pour la fiscalité des entreprises de taille moyenne-petite.

Mots clés: PME; Structure de traitement; Financement; Avantage de la fiscalité

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1. CURRENT SITUATION OF CHINESE MEDIUM AND SMALL ENTERPRISES (SMES) LEGAL PROTECTION

Market economy is economy that governed by law and attended by equal market entity. Equal position of market entity is the basic precondition, foundation, and necessary guarantee of healthy development of market economy. However, with the development of market economy and the growth of corporations which are the most important subject of social economic activities, large-scale enterprises and business conglomerates have been coming out continuously. At the same time, the amount of medium and small enterprises (SMEs) has been increasing rapidly. Medium and small enterprises have been in a decisive position in Chinese national economy and turned into important subject of market economy. Medium and small enterprises (SMEs) is a generic term includes medium-sized enterprises and small-sized enterprises. The standard of identifying medium and small enterprises determines the application scope of SMEs law. According to article 2 of "Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises" stipulates: "For

purposes of this Law, small and medium-sized enterprises refer to the different forms of enterprises under different ownerships that are established within the territory of the People's Republic of China according to law, that help to meet the social needs and create more job opportunities, that comply with the industrial policies of the State and that are small and medium-sized in production and business operation"¹. Authorization of detailed standard for identifying Chinese SMEs is determined by the state council. From Chinese practical situation, generally, to distinguish different industries is determined by promoting employment, encouraging technological innovation, and other elements. The defining method covers lots of areas. According to it, the amount of Chinese SMEs takes a great majority of Chinese enterprises. However, in fact, large-scale enterprises and business conglomerates usually use their giant economic power to break the balance of equal position of market entity. Therefore, in order to create a fair competition environment, the government must set up special legal system to protect rights of SMEs.

Recently, China has successively amended the "Company law of the People's Republic of China", "Securities Law of the People's Republic of China", and "Law of the People's Republic of China on Enterprise Bankruptcy" and related laws and regulations about company. Although those amendments are recognized of epoch making significance, by deeply analysis it can be found that most of these amendments are designed for large-scale enterprises or listed companies while the attention on SMEs is rare. Development of SMEs does not catch much attention in the social economic construction. Special laws and regulations for SMEs in China at present are "Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises" and "Interim Provisions on the Standards of Small and Medium-Sized Enterprises". The "Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises" passed in 2002 is the basic law in the SMEs legal system. It has played active role in promoting SMEs development although lots of its provisions are not specific and they have mainly been used for guidance. Nevertheless, the "Interim Provisions on the Standards of Small and Medium-Sized Enterprises" 2003 is too strict. It is very possible that SMEs needing support be refused by government concessions. Have been influenced by the global financial crisis in 2009, Chinese SMEs were in difficult producing and marketing situation. Accordingly, the state council has promulgated the "Suggestions on further promote of SMEs development" which gives several principles for SMEs development and these principles will be specified by different levels of governments. At present, Zhejiang, Liaoning, Heilongjiang, Hunan, Hubei, Shandong, Shenzhen,

Henan, and Beijing and various provinces have taken out policies and measures to support SMEs, however, to which degree will these policies function in assisting SMEs development is still waiting for examining. There are a series of problems existing, such as some encouraging, preferential policies are too ambiguous and certain detailed provisions on specific issues are not complete. Totally, the current legal protection for SMEs in China is not complete; encouraging and preferential provisions are ambiguous; promotion for sustainable development of SMEs cannot be carried out in practice.

2. ANALYSIS OF PROBLEMS INFLUENCING CHINESE SMES SUSTAINABLE DEVELOPMENT

Nowadays, there have been many issues blocking the development of Chinese SMEs and many SMEs cannot escape from "short life". The reasons of this can be generalized into two factors: the one is "human" and the other is "resources". The "human" factor means the difficulty in SMEs survival and development caused by various aspects subjective reasons in the process of SMEs development. It includes three kinds of subjects: the SMEs themselves, management organization, and service department. First, unscientific self management of SMEs blocks the development of them. Second, government organ which is in charge of SMEs does not have proper responsibility and right position. Last, service organization does not provide sufficient support for SMEs development which means there is no complete service system and it is mostly reflected in financial support system, legal service system, and technology support system, etc.. The "resources" factor mainly means the fund or capital factor. Capital is the blood of SMEs and also the first cause and sustainable driving force of them. SMEs healthy development depends on capital supply and support. At present, the capital problem bothering Chinese SMEs development includes the difficulty of SMEs corporate financing and heavy load of taxes.

3. PERFECTING CHINESE SMES SUSTAINABLE DEVELOPMENT LEGAL PROTECTION SYSTEM

It is a worldwide task to support SMEs development. In modern international economy, SMEs play important role in national economy, especially in Japan, U.S.A, EU and Taiwan where SMEs are well-developed. SMEs have become the traction engine and locomotive of economic development which have provided huge

¹ Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises

amount of jobs and employment opportunities and also promote technology innovation and improvement. These countries have a common advantage for SMEs sustainable development that they all have complete laws and policies to provide legal guarantee for SMEs development. Although detailed contents of the laws and policies vary in different countries, they have all successfully protected SMEs in the legal point. Based on its "Primary Law of Small and Medium-Sized Enterprises", Japan has created favorable legal protection for SMEs development by setting up "Law for Promoting Small and Medium-Sized Enterprises Creative Activities", "Law for Promoting Entrepreneurship", and other special laws. There are "Small Business Investment Act", "Laws on Small and Medium-sized enterprises policies", "Law of expanding small and medium-sized enterprise output", "Small and medium-sized enterprise investment reward Act", and other related laws and regulations providing legal guarantee for SMEs development. Taiwan has a complete and perfect SMEs legal system which is based on "Small and Medium Enterprises Development Act" and other special rules and regulations such as "Bank Act". China has been discovering and researching how to support and help SMEs develop and grow. With encouragement and support for SMEs from Chinese government, it is very important to grasp the opportunity of promoting SMEs, learn from foreign countries' legislations, and combine Chinese SMEs current situation with what we learnt to create a systematic and complete legal system according to China's actual conditions so that to support Chinese SMEs sustainable development. From the practice of Chinese SMEs governance, aiming at breaking the bottleneck of Chinese SMEs development, we need to complete and perfect legal protection system for SMEs sustainable development.

3.1 Scientific Governance Structure of SMEs

SMEs develop after experiencing lots of difficulties. However, there are a lot of them still have problems need to be concerned about: problems left in unfinished restructuring of enterprise such as unclear assets relationship and nonstandard management and operation; problems in popular closed management style of short history private enterprises; and also problems of unstable labors and employers relations and so on. According to these existing problems in reality, we need to build a complete SMEs corporate governance structure, perfect SMEs property right structure, SMEs equity allocation structure, SMEs scientific decision operation structure, harmonious relation between employees and employer, SMEs credit system, and related aspects in order to realize corporatization and scientific management and decision making structure.

3.2 Stipulate the Responsibility of Government Organ According to Law

An effective government organ can make sure SMEs develop healthily, in proper order; carry out preferential policies for SMEs thoroughly; and is also convenient for SMEs service function work coordinating. In fact, the malposition of government duty and lack of legal responsibility of government organ have become obstacles for SMEs development. Therefore, it is necessary to change the function of government in China and readjust the whole government's position under the Chinese market system. The SMEs management organ should provide service for them first. In addition, because government managerial section must be given certain administrative functions to provide legal protection for SMEs, if these functions do not come along with related legal responsibilities or lack of necessary supervision, regulation, and remedies for the private party in the administrative process, then legal protection for SMEs is only an empty talk. Therefore, we should identify administrative responsible organ's legal responsibilities, set up detailed remedy procedures, protect SMEs benefits and rights in practice, and promote SMEs development.

3.3 Build Comprehensive Market Service System

The first step of building comprehensive market service system is to establish and investigate financial support system which is suitable for Chinese national conditions. In the long run, we can set up special development bank for SMEs. On one hand, it can expand financing channels for SMEs; on the other hand, it can help financial industry work for national industrial development policies and become special financial institution for executing national macro-control policies and laws. In addition, we should also make use of the market regulation function positively, build up other supporting service systems, allow some commercial organizations and non-commercial institutions enter into the area, for example, Small and Medium-Sized Enterprise Development Promotion Association, Small and Medium-Sized Enterprise Management Consulting Company, legal services agencies, and technological services organizations and so on.

3.4 Legal Guarantee for SMEs Financing

The difficulty for Chinese SMEs in financing has become the biggest bottleneck in the process of their development. Most Chinese private enterprises depend on self-financing. The problem of lack of capital must be resolved if Chinese SMEs wish to develop. The restriction of Chinese bank system, excessive monopoly on credit of State-owned commercial banks (SOCB), and immature capital market, and other related reasons have caused the difficulty of SMEs financing (Xiao, 2010, p.72-77). In allusion to these reasons, it is required to standardize capital market according to laws and regulations so to protect SMEs direct financing and construct financing tunnels for SMEs. In the process of constructing legal system for regulating capital market, the threshold for

SMEs get listed must be set reasonably. Attention should be paid to constructions of different capital market levels. It is required to strive to develop capital market for SMEs to find ways to financing. When setting up SMEs indirect financing channels, firstly, we need to deepen revolution of SOCBs; secondly, according to China's national conditions, we can set up several finance companies and provide appropriate and stable loans to SMEs; last, we can establish credit institutions inside of commercial banks which is more effective and easier to operate than deepen revolution of SOCBs.

3.5 Guarantee of Preferential Tax System for SMEs

Another legal method for resolving SMEs financing difficulty is the preferential tax system. If SMEs financing is made by "increasing" capital to support the development of them, then the preferential tax system for SMEs provides support for SMEs development by "decreasing" capital expenditure. The preferential tax system has already been a common policy method adopted by every county around the world for supporting SMEs development, effectively helping SMEs get through their capital bottleneck, and also shows the instrumental value of preferential tax policies on promoting SMEs development. However, we need to know that different preferential tax policies have different effect and power on supporting SMEs. Therefore, when take advantage of

preferential tax, we need to strengthen the pertinence of it firstly. Preferential tax has positive effect in reducing company operation cost and increasing discretionary liquidity. If it is properly used, it can also strengthen company's competitiveness. Otherwise, inappropriate preference will cause unfair market competitions (Liu, 2008, p.137). It is very essential to avoid misuse of preferential tax in destroying economic resources allocation. On the other hand, we need to coordinate preferential tax with financial expenditure. When applying preferential tax among SMEs, we have to consider the overall economic policy environment of the state and pay attention to effective integration of preferential tax policies and other related measures so that to realize the best effect of preferential tax.

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