

The Fiduciary Duties of Corporate Controllers: A Comparative Study of China's 2023 Company Law and Delaware Corporate Law

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Abstract. As the gap between formal ownership and actual control of contemporary corporations has widened, these de facto controllers have been using all sorts of unofficial channels to influence decision-making without being officially listed as directors or held majority ownership. Therefore, the problems of these controllers have become issues for corporate governance. This paper will examine the fiduciary duties of de facto controllers and compare the corresponding provisions in China's 2023 Company Law and Delaware corporate law. Determine who controls the company under the two legal systems, set limits on and examine compliance with fiduciary duties, and safeguard minority shareholders' interests against abuse of corporate control. A number of relevant provisions in the statute and cases from Delaware have also been collected and compiled for reference in this study. Based on the above comparison, China has created a more explicit statutory basis for regulating actual controllers, whereas Delaware has traditionally been more dependent on judicial development and fact-specific determinations of actual control. Delaware also offers stronger standards for judicial review and procedural safeguards in conflicted controller transactions at the same time. Based on the above comparison, this paper proposes that China further clarify the criteria for identifying de facto controllers, strengthen the standards for reviewing their conduct, enhance the protection of minority shareholders, and maintain flexibility in applying fiduciary duties.

Keywords: de facto controllers, fiduciary duties, controlling shareholders, Delaware Corporate Law, China's Company Law

1. Introduction

In re Match Group, Inc. Derivative Litigation (2024, hereinafter referred to as the "Match Group case") raises a problem in Delaware corporate law: whether and when individuals with substantial control over a corporation should be held to fiduciary duties in the absence of formal ownership or corporate office [1]. Although the Delaware Supreme Court did not present an all-purpose criterion for de facto control in this case, the issue of whether a person should be designated as a controller of a company is important.

Traditionally, the subjects of fiduciary duties have been corporate officers and directors due to their management responsibilities for the company. Under the modern structure of the company, shareholders will also have significant influence over management and make many business decisions [2]. Delaware corporate law has formed a relatively mature system of judicial decisions on the fiduciary duties of corporate controllers. In *Sinclair Oil Corp. v. Levien* (1971, hereinafter referred to as the "Sinclair case"), the Delaware Supreme Court recognized the fiduciary duties of a controlling shareholder in a parent-subsidiary relationship [3]. Later, *Kahn v. Lynch Communication Systems* (1994, hereinafter referred to as the "Lynch case") also believed that actual control, rather than formal ownership, could create a controlling-shareholder situation [4].

China has also had the same problem. In 2023, the amended Company Law introduced a duty of loyalty and a duty of care for controlling shareholders and actual controllers of the company. China has set up a system of statutes for regulating corporate controllers, not case law. The system of fiduciary duties for corporate controllers under China's 2023 Company Law (hereinafter also referred to as the "2023 Company Law") and Delaware Corporate Law is studied in this paper, and differences in the legal basis, identification of controllers, judicial review, and enforcement mechanisms are explored.

2. Legal basis of fiduciary duties of corporate controllers

Given the circumstances, fiduciary duties for corporate controllers have gradually taken shape in law as a response to risks caused by concentrated ownership. This section introduces the legal basis for such duties in China and Delaware. First, it examines the reasons for the obligation of corporate controllers, and then compares how these obligations have been stipulated and developed in the two legal systems.

2.1. Legal basis of fiduciary duties in China's 2023 Company Law

2.1.1. The need to regulate corporate controllers

In 2005, the Company Law added legal duties of loyalty and diligence for directors. However, these liabilities were mainly borne by directors, supervisors and senior executives rather than controlling shareholders [5]. Although the Company Law also prohibited shareholder abuse and improper related-party transactions, these provisions generally dealt with specific types of misconduct and did not establish a general fiduciary duty system for controlling shareholders [6].

Jurisdictions with concentrated ownership may also be prone to conflicts among controlling shareholders who have significant impact on the company's affair and minority shareholders [7]. This concern is particularly relevant in China, where shareholders may use their influence over corporate decisions to engage in related-party transactions, tunnelling, improper asset transfers, and other forms of control abuse [8, 9].

Therefore, the Company Law was amended in 2023 to specify that controlling shareholders and actual controllers of the company who engage in corporate management should also be subject to duties of loyalty and diligence.

2.1.2. Statutory basis under the 2023 Company Law

The 2023 revision of the Company Law also lists controlling shareholders and actual controllers as potential subjects of duties of loyalty and diligence. Articles 180(3) and 192 provide the general

legal provisions for their duties and liabilities [10].

Article 180(3) provides that if controlling shareholders or actual controllers do not serve as directors but actually manage the company, then the provisions on directors' duties of loyalty and diligence shall apply. Therefore, those who manage without a formal corporate position are still subject to fiduciary duties. However, it does not impose such obligations on all controlling shareholders or actual controllers automatically. Whether it is applied depends on whether a person exercises functions similar to those of directors, supervisors or senior management [11].

Article 192 refers to another case where controlling shareholders or actual controllers instruct directors or senior executives to behave in a way that harms the interests of the company or its shareholders, and they bear joint liability with those directors or senior executives. Unlike Article 180(3), which focuses on the actual exercise of managerial functions, Article 192 regulates indirect influence through instructions [12].

Some scholars also believe that Article 21 may provide a general legal basis for recognizing obligations of controlling shareholders, but this has not been confirmed [13].

Therefore, the 2023 Company Law provides for a statutory system that imposes fiduciary duties or other liabilities on controlling shareholders and actual controllers under certain circumstances. It now gives greater legal backing to the liability of controlling shareholders than before.

2.1.3. Characteristics and limitations of China's approach

China has established legalist norms for regulating the fiduciaries' duties in publicly listed companies. Articles 180(3) and 192 extend liability to controlling shareholders and actual controllers who exercise management or control without holding formal positions in the company.

Another kind of feature is that actual controllers can be considered the subjects of fiduciary duties. Article 265 also covers control exercised by means of investment relationships, agreements and other arrangements, as well as cases of effective control without formal ownership.

However, the legal recognition of the controller's fiduciary duty does not fully solve the problem of determining the extent of such duties in practice [12]. For example, the key concepts of "actually conducting corporate affairs" and the scope of "instructions" have not yet been specified. Therefore, although the 2023 Company Law provides a more explicit legal basis for the controller's liability, specific criteria to identify actual control and determine the scope of fiduciary duties have yet to be established.

2.2. Legal basis of controlling shareholders' fiduciary duties in Delaware Corporate Law

2.2.1. The need to regulate controlling shareholders

Historically, the fiduciary duty of directors and officers under Delaware corporate law has been imposed because they formally manage the company's affairs and make decisions for the company. Therefore, the distinction between shareholders and corporate managers served as the foundation for the traditional framework of fiduciary duty [14]. Corporate control does not have to be carried out through formal management. The controlling shareholders can exercise their voting rights to influence the company's decisions and appoint directors of the board. This is particularly important in conflicted transaction cases in which a controlling shareholder abuses their position to obtain benefits for themselves at the expense of the company or minority shareholders [3].

Therefore, Delaware courts have developed a control-based theory of fiduciary duty [15]. Therefore, if the shareholder exercises substantial control over the company, this person may be

subject to fiduciary duties. The focus is not only on formal ownership, but also on the actual exercise of corporate control.

2.2.2. Judicial recognition of controlling shareholder fiduciary duties

Delaware courts have gradually formed the fiduciary duties of controlling shareholders. Early cases such as *Sterling v. Mayflower Hotel Corp* in 1952 identified fiduciary issues due to the control of shareholders in corporate transactions [16]. The Sinclair case is a typical case that has provided a general framework for the analysis of controlling shareholder fiduciary duties [17]. It also provided that a controlling shareholder should bear fiduciary duties and that intrinsic fairness review would be conducted if the controller engaged in self-dealing [3].

Later, in the Lynch case, control status did not need to be formal majority ownership. A shareholder with less than 50% of the voting rights may also be considered a controlling shareholder if there is sufficient proof of actual control over the company's decisions [4]. This established actual control as the basic foundation for determining controller status.

Delaware courts have formed a system for regulating conflicted transactions since then. In *Kahn v. M&F Worldwide Corp.* (2014, hereinafter also referred to as the "MFW case"), the Delaware Supreme Court held that business judgment rule may apply when an independent special committee and an informed and uncoerced majority-of-the-minority vote are used from the start [18]. The Match Group case later added to the need for such protections in controlling shareholder transactions [1].

2.2.3. Characteristics and limitations of Delaware's approach

Delaware adopts a judicial approach for regulating the fiduciary duties of controlling shareholders. Unlike the statutory provisions of the 2023 Company Law, duties and liabilities for controlling shareholders have been developed through judicial decisions in Delaware. Sinclair, Lynch and Match Group believe that control, rather than a formal position in the company, can also serve as the basis for fiduciary duties [1, 3, 4].

Another feature is that the recognition of actual control serves as the foundation for the controller status. As a result of the Lynch case, Delaware courts have also considered shareholders without majority ownership to be "controllers" when they exercise real power over the company's management [4].

The court's interpretation of the controlling shareholder's fiduciary duty has not clarified how to identify control in practice. It is still very fact-specific, and the division between substantial influence and legally recognized control has yet to be determined. Therefore, although the system of regulating controlling shareholders in Delaware is flexible, a more precise definition of a controller may be more predictable. Recently, the new development of Delaware Company Law have also clarified the definition of a controlling shareholder in writing.

3. Comparison of the fiduciary duty regimes between China and Delaware

As shown in the above analysis, both China and Delaware have been moving to regulate corporate controllers through fiduciary duties, but the legal basis and development of these duties differ in the two systems. Therefore, this section will compare the two approaches based on the following three points: identification of controllers, standards for evaluating the conduct of controllers, and protection of minority shareholders.

3.1. Different approaches to identifying corporate controllers

The 2023 Company Law in China provides a particular legal system for identifying and regulating corporate controllers. Articles 180(3) and 192 provide for the circumstances in which controlling shareholders and actual controllers bear duties and liabilities. Article 265 refers to control exerted via investment arrangements, agreements and other modes of organization, irrespective of whether one is a shareholder. Therefore, the Chinese model gives more weight to actual exercise of control rather than just formal corporate status or shareholding.

Delaware law has, on the other hand, primarily developed the criteria for identifying controlling shareholders through judicial practice [19]. A shareholder with more than 50% of the voting rights is generally considered a controlling shareholder per se, and a shareholder without a majority stake may also be deemed to exercise actual control if sufficient evidence shows that they do so [4, 20]. Thus, under Delaware law, both formal voting control and actual control have traditionally served as grounds for controller status. The 2025 amendments to Article 144 of the Delaware General Corporation Law (hereinafter also referred to as the "DGCL") have added some specific provisions and still employ a control test.

Both legal systems know that formal ownership or corporate position are not always the indicators of controlling shareholders. China has established an all-encompassing system of laws for all types of control, whereas Delaware has relied more heavily on flexible judicial interpretations of cases.

3.2. Different approaches to determining fiduciary duty review

Under the 2023 Company Law in China, fiduciary duty review is closely connected to the controller's actual involvement in corporate affairs. Article 180(3) applies the duties of loyalty and diligence to controlling shareholders and actual controllers who actually conduct corporate affairs without formally serving as directors. Article 192 further imposes joint liability when they instruct directors or senior executives to engage in conduct that harms the interests of the company or its shareholders. The main issue is whether the controller's conduct falls within the statutory conditions giving rise to fiduciary duties or liability.

Delaware law takes a different approach. Its controlling-stockholder doctrine has developed mainly in the context of the duty of loyalty and conflicts of interest [19]. In the *Sinclair* case, the court connected entire fairness review with self-dealing by a controlling shareholder [3]. The *Lynch* case further developed the review of conflicted transactions and recognized the role of procedural protections in shifting the burden of proof [4]. In the *MFW* case, the Delaware Supreme Court held that a freeze-out transaction may qualify for business judgment rule if an independent special committee and an informed, uncoerced majority-of-the-minority vote are established at the beginning [18]. Later, the *Match Group* case ruled that entire fairness is still required when a controlling shareholder takes both sides of a transaction and receives a non-ratable benefit, even outside the context of a freeze-out merger [1].

Therefore, although both systems are responsible for regulating corporate controllers, the scope of supervision over their behavior is not the same. China links reviews more closely to statutory conditions of actual involvement or direction, whereas Delaware takes into account the controller's conduct, conflicts of interest and the appropriate standard of review.

3.3. Different approaches to protecting minority shareholders

The 2023 Company Law has introduced some statutory obligations and liabilities for controlling shareholders and actual controllers to protect minority shareholders. Article 180(3) expands the duties of loyalty and diligence to include controllers who actively participate in the operation of the company, and Article 192 stipulates joint liability for controllers who instruct directors or senior executives to cause harm to the company or its shareholders. Protection therefore mainly takes the form of legal liability for misconduct. However, the core terms "actually conduct corporate affairs" and "instruct" have not yet been judicially defined [12].

Delaware law provides more protection for minority shareholders against the abuse of power by controlling shareholders through judicial and procedural means. In conflicted controlling shareholder transactions, the entire fairness review will be more stringent if the controller is at both sides of the transaction and receives a non-ratable benefit [21]. Delaware law also provides procedural guarantees, such as an independent special committee and an informed and uncoerced vote of a majority of minority shareholders [22]. The above mechanisms will help the minority shareholders better protect their interests and reduce the risk of controller opportunism.

Thus, both systems aim to protect minority shareholders from the abuse of corporate power but have taken different paths. China is more in favor of statutory duties and liability, and Delaware will be subject to judicial review and procedural safeguards.

4. The development direction of fiduciary duties for de facto controllers in China

As shown in the comparison above, both China and Delaware have established systems to regulate corporate controllers, but the two systems differ in how they identify de facto controllers, supervise the conduct of these controllers, and protect minority shareholders. The above discrepancies are also deficiencies in the present system of China. Therefore, the three directions for strengthening the framework of fiduciary duties for de facto controllers in China are introduced below.

4.1. Clarifying the criteria for identifying de facto controllers

First, set out the norms that will be applied to identify de facto controllers. Article 265 recognize control through investment relationships, agreements or other arrangements, and Article 180(3) extends fiduciary duties to controlling shareholders and actual controllers who exercise actual control over the company. The above provisions offer a broader legal basis for regulating de facto controllers, but their broad wording may lead to ambiguity in application [23].

Several problems have thus been exposed. For example, it is not clear how "control through agreements or other arrangements" should be evaluated, and whether legally recognized control requires general control over the company or can also arise from control over a particular transaction. Distinguish between a significant influence and actual control, and note that a minority shareholder can exercise influence through board nominations, personnel appointments, connections in finance, etc.

Delaware law serves as a good reference. The 2025 revision of Article 144 in the DGCL introduced a more specific system for identifying controlling shareholders in conflicted transactions, such as holding a majority of the voting rights, having the power to convene a general meeting of shareholders, or possessing at least one-third of the voting rights in combination with functionally equivalent power and management authority over the company. The reform aims to increase the

foreseeability of controller status, but the scope of "managerial authority" and its connection with previous case law have not been clarified.

Therefore, China may adopt the trend of greater legal certainty in Delaware without setting a specific numerical threshold. The legislature or the courts may have prescribed the components of "actual control", such as voting rights, the power to influence directors and senior management, contractual rights, financing arrangements, and the exercise of decision-making power. Clarification will help distinguish between legally significant control and mere influence, and keep the flexibility of the new forms of corporate governance.

4.2. Improving the judicial standards for fiduciary duty review

Another is to raise the judicial standards for examining the behavior of de facto controllers. Although the 2023 Company Law has introduced fiduciary duties for controlling shareholders and actual controllers under certain circumstances, it does not specify how courts should determine the conduct of such controllers in cases of conflict of interest [23].

Delaware courts do not require the existence of fiduciary duties before applying a standard of review. When a controlling shareholder is on both sides of a transaction and receives an unquantifiable benefit, entire fairness should generally be applied [1]. The MFW framework allows for a business judgment rule if some procedural safeguards are introduced early on [24]. Thus, the scope of judicial review can be adjusted according to the behavior of the controller and the safeguards afforded to minority shareholders.

China does not need to directly apply the Delaware standards because the two systems of law and corporate governance are different. China can learn from the experience of Delaware to develop more explicit standards for identifying the trigger of fiduciary duty and the penalties for violating it. This will make the application of the 2023 Company Law more predictable and enhance the protection of the abuse of corporate control.

4.3. Strengthening the protection of minority shareholders

The protection of minority shareholders in transactions involving de facto controllers is one of the main goals of regulating corporate controllers [15]. The 2023 Company Law lists the legal obligations and liabilities of controlling shareholders and actual controllers. However, these mechanisms only take effect after the behavior is wrong. Therefore, minority shareholders will still be unable to protect their own interests when the controlling shareholder abuses their power.

Delaware will give the minority shareholders of the company more voting rights in the conflicted transaction. Under the MFW system, an independent special committee and an informed, uncoerced majority of the minority vote can act as procedural safeguards against controller opportunism [25]. The above mechanisms enable minority shareholders to participate in the decision-making process and are not subject to ex post liability.

China does not have to follow the Delaware model directly because the two legal systems and procedural systems for corporate governance are different. Nevertheless, the requirement for minority shareholder participation offers a reference. The Company Law of China provides additional procedural guarantees for transactions with controlling shareholders or actual controllers in cases of conflict of interest. The above measures will add to the existing statutory duties and liabilities and strengthen protection against the abuse of corporate control.

5. Conclusion

The 2023 Company Law has provided a more explicit legal basis for the regulation of controlling shareholders and actual controllers, but some problems in identifying and regulating de facto controllers have not been solved. Delaware has established a relatively flexible system through judicial practice in the state and has recently begun to introduce corresponding legislation. Based on the above comparisons, neither a purely statutory approach nor a purely case-by-case method can address the problem of corporate control. It is likely that China will establish more specific criteria for identifying de facto controllers, raise the standards of behavior for such controllers, and strengthen the protection of minority shareholders. Delaware law offers some good comparative references in the above areas, but its rules should not be applied directly to China. China needs to construct a system that offers more legal certainty and can accommodate all kinds of corporate control flexibly.

References

- [1] In re Match Group, Inc. Derivative Litigation, 315 A.3d 446 (Del. 2024). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/court-of-chancery/2024/c-a-no-2020-0505-mtz.html>
- [2] Iman, A., & Lynn, A. S. (2008). Fiduciary duties for activist shareholders. *Stanford Law Review*, 60(5), 1255-1308.
- [3] Sinclair Oil Corp. v. Levien, 280 A.2d 717 (Del. 1971). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/supreme-court/1971/280-a-2d-717-3.html>
- [4] Kahn v. Lynch Communication Systems, Inc., 638 A.2d 1110 (Del. 1994). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/supreme-court/1994/272-1993-3.html>
- [5] Jianbo, L., Hui, Y., & Yang, Z. (2012). A study on the legal application of fiduciary duties of directors, supervisors, and senior executives under company law: An empirical study based on relevant cases of Beijing courts from 2005 to 2007. *Commercial Law Review*, 21(1), 530-564.
- [6] Guo, F. (2024). Research on regulation paradigms of controlling shareholder and actual controlling party in the company law: The reform and improvement on regulation paradigms of dual controlling parties in China's company law. *Academic Forum*, 47(1), 29-43.
- [7] La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (2000). Investor protection and corporate governance. *Journal of Financial Economics*, 58(1-2), 3-27.
- [8] Donald, C. C. (2006). The independent director in Chinese corporate governance. *Journal of Financial Crime. Delaware Journal of Corporate Law*, 31(1), 125-228.
- [9] Qiao, M., Peng, H., & Yeung, B. Y. (2010). Expropriation of minority shareholders in politically connected firms. *Finance and Corporate Governance Conference 2011 Paper*, 1-36.
- [10] Zhao, X., & Li, B. (2024). Interpretation and commentary on the provisions of the new company law. *Law Press China*.
- [11] Lei, Z. (2024). The system composition of fiduciary obligations in company law: Commenting on the relevant provisions of the new company law. *Law and Economy*, 2024(3), 67-80.
- [12] Qiuran, L. (2025). The company law approach to regulating dual controllers: Problems and solutions. *Investor*, 2025(3), 41-54.
- [13] Fei, T. (2025). The proliferation of fiduciary duties: Rethinking the transplantation of fiduciary duties for controlling shareholders. *Commercial Law*, 15(1), 112-134.
- [14] Jill, E. F., & Steven, D. S. (2025). Control and its discontents. *University of Pennsylvania Law Review*, 173(3), 641-703.
- [15] Zohar, G., Assaf, H., & Dorothy, S. L. (2025). Fixing MFW: Fairness and vision in controller self-dealing. *Harvard Business Law Review*, 577(15), 577-634.
- [16] Sterling v. Mayflower Hotel Corp., 93 A.2d 107 (Del. 1952). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/supreme-court/1952/93-a-2d-107-1.html>
- [17] Robert, B. T. (2008). Mapping judicial review: Sinclair Oil v. Levien. Vanderbilt University School of Law Public Law & Legal Theory Working Paper No. 08-36.
- [18] Kahn v. M&F Worldwide Corp., 88 A.3d 635 (Del. 2014). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/supreme-court/2014/334-2013.html>

- [19] Xiangchun, W. (2024). Enhancing the duty of loyalty of controlling shareholders: A comparative study based on Delaware company law. *Securities Market Herald*, 2024(6), 30-42.
- [20] In re Oracle Corp. Derivative Litigation, 2025 WL 249066, at *12 (Del. Jan. 21, 2025). Justia Law. Retrieved from <https://law.justia.com/cases/delaware/supreme-court/2025/139-2024.html>
- [21] Robert, B. G. (2024). A corporate governance solution to the inefficiencies of entire fairness. *Business Lawyer*, 993(79), 993-1041.
- [22] Robert, S. R. (2024). MFW framework requires majority-of-minority stockholder approval even when controller structures transaction to avoid statutory stockholder vote. *Vanderbilt Law Review*, 75(7), 156-165.
- [23] Anqi, W., & Chuanjun, Y. (2026). Challenges in applying the fiduciary duties of actual controllers and paths to improvement under the New Company Law. *Advances in Social Science and Culture*, 8(4), 23-36.
- [24] Nicholas, R. R. (2015). Kahn v. M&F Worldwide Corp.: Risking too much on ab initio conditions. *Journal of Business & Technology Law*, 10(1), 112-136.
- [25] Lawrence, A. H., & Leo E, S. Jr. (2017). Fiduciary principles and Delaware corporation law: Searching for the optimal balance by understanding that the world is not. *Oxford Handbook of Fiduciary Law*, Forthcoming, U of Penn, Inst for Law & Econ Research Paper No. 17-40.