

通过少数股权获得控制权的审查实践
**Examination on Gaining Controlling
Power through Minority Shareholding**

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目录/Outline

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The background of the slide features a photograph of the Temple of Heaven in Beijing at night. The main structure, the Circular Hall, is visible in the lower half, its dark silhouette contrasting with the deep blue night sky. A bright, full moon is positioned at the top center of the frame, casting a soft glow. The overall atmosphere is serene and traditional.

规制范围

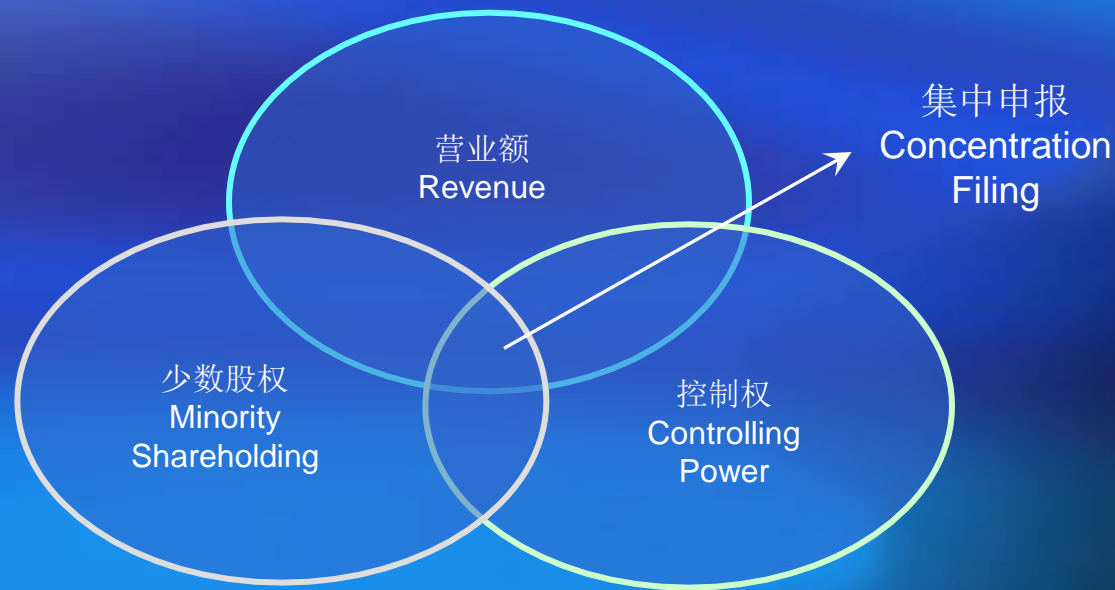
Scope of Regulation

少数股权/Minority Shareholding

- 公司法/Company Law
 - 未定义/No definition
- 会计准则/Accounting Standard
 - 没有达到控股比例的公司股东权益，即公司51%以上控股权益外的其他股东权益

经营者集中审查/Examination on concentration

- 集中对控制权的要求
 - Requirement on Controlling Power of Concentration



控制权/Controlling Power

- 反垄断法/AML
 - 未定义/No definition
- 其他法律存在不一致/Discrepancy of other laws
 - 公司法/Company Law
 - 证券法/Security Law
 - 会计法/Accounting Laws

指导意见/Guiding Opinions

- 《关于经营者集中申报的指导意见》 2014.6
 - Guiding Opinions on the Application for Concentration of Business Operators
- 第三条/Article 3
 - 交易目的和未来的计划/purposes and future plan
 - 交易其他经营者的股权结构及其变化/equity structure and changes
 - 其他经营者股东大会的表决事项及其表决机制，以及其历史出席率和表决情况/structure and practice of voting
 - 其他经营者董事会或监事会的组成及其表决机制/board of directors and supervisors
 - 其他经营者高级管理人员的任免/appointment and removal of senior management personnel
 - 其他经营者股东、董事之间的关系，是否存在委托行使投票权、一致行动人/shareholder-director relationship, proxies, acting in concert, etc.
 - 该经营者与其他经营者是否存在重大商业关系、合作协议/significant business relationship, cooperation agreement, etc.

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执法实践

Practice of Enforcement

上市公司/Listing Company

- 相对明确/relatively clear
- 株式会社森精机收购吉特迈/DMG – GILDEMEISTER
 - 吉特迈为德国上市公司/GILDEMEISTER is a Germany listing company
 - 森精机拟从20.1%增资至24.9%/DMG increases its shares in GILDEMEISTER from 20.1% to 24.9%
 - 吉特迈：出席股东超过50%表决权取得控制/GILDEMEISTER: 50% voting rights of attending shareholders having the control over the company
 - 股东大会记录：24.9%股权即可获得50%表决权/Practice of voting: 24.9% of shares will acquire 50% voting rights

非上市公司/Private Company

- 股东意思自治/Shareholder autonomy
- 少数股东取得共同控制权/Minority shareholder gains joint controlling power
- 战略投资基金公司收购欧米伽公司/FSI – OMEGA
 - 战略投资基金公司收购欧米伽10%股权/FSI acquires 10% shares of Omega
 - 有权任命董事、CEO、各主要委员会成员/FSI: appointment of director, CEO, members of major committees
 - 董事会一致通过事项：年度经营计划、公司中长期发展规划、公司预算/Unanimously matters of BOD: annual plan, medium and long term development plan, budget, etc.

非上市公司/Private Company

- 2家或以上少数股东共同取得控制权/Two or more minority shareholders jointly acquire controlling power
- 住友商事、住友轻金属及古河收购阿科铝业/Sumitomo Corporation/Sumitomo Light Metal/Furukawa – Arco
 - 住友商事 – 40% / SC – 40%
 - 住友轻金属 – 35% / SL – 35%
 - 古河 – 20% / Furukawa – 20%
 - 每家可任命一名董事及高管/each appoints one director and one senior management personnel
 - 所有重大商业活动均须三方一致/unanimously approval of all important commercial activities



非上市公司/Private Company

- 通过否决权获得控制权/acquiring controlling power through veto rights
- 帝人株式会社收购浙江万方公司/Frontier – Wanfang
 - 帝人收购万方10%股权 / Frontier acquires 10% shares of Wanfang
 - 帝人委派的董事享有对任何年度金额在人民币50万元及以上的经营计划的否决权 / Directors appointed by Frontier enjoy the veto right over any operation plan of Wanfang with the annual amount equal to or over RMB500,000

Thank You

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