

The Liability of a Parent Company in Controlling its Subsidiary in China: From the Perspective of Japanese Law

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In China, the problem of parent company abuse of controlling subsidiary is very popular and serious. Therefore, amended Chinese company law provides for controlling shareholders to be liable for harm to a subsidiary. However, those rules are so abstract that they can't really be put into practice. From the perspective of Japanese law, this paper examines the liability of the parent company when its subsidiary and minority shareholders suffer a loss because of exercising control in China.

The discussion focuses on why the parent company should bear the liability for the losses of subsidiary and minority shareholders, and how to regulate the liability of the parent company, director of the parent company and director of the subsidiary.

Through the analysis on interpretation and legislative policy, this paper suggests that it's not desirable to stipulate the fiduciary duty of the parent company (controlling shareholder) to its subsidiary and minority shareholders in China. This paper also suggests that strict liability should be imposed on the parent company, and the director of the parent company should only be responsible for the parent company unless he is intentionally or grossly negligent in damage to the subsidiary, and the director of the subsidiary should be liable insofar as the subsidiary suffers a loss.